

**SETTLEMENT AGREEMENT
CONCERNING
WATER RIGHTS**

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This Agreement is made among the City of Colorado Springs, acting through its enterprise, Colorado Springs Utilities (“Colorado Springs”), the Colorado River Water Conservation District (“CRWCD”), the County of Summit (“Summit County”), the Town of Breckenridge, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, and the Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise, and collectively referred to as the Parties.

RECITALS

A. Colorado Springs has filed an application for a finding of reasonable diligence for its conditional water storage rights for Spruce Lake Reservoir, Mayflower Lake Reservoir, and Lower Blue Lake Reservoir, which is now pending in Case No. 15CW3019, District Court, Water Division 5. The West Slope Parties (defined below) have filed statements of opposition in Case No. 15CW3019.

B. Colorado Springs has filed an application for a finding of reasonable diligence for its conditional appropriative rights of exchange for its 2003 Homestake-Blue River Exchange, which is now pending in Case No. 18CW3041, District Court, Water Division 5. Summit County has filed a statement of opposition to that application.

C. Summit County has filed an application for a finding of reasonable diligence for its conditional water rights for Swan River Reservoir and Lower Mohawk Reservoir in Case No. 16CW3015, District Court, Water Division No. 5. Colorado Springs has filed a statement of opposition to that application.

D. Each Party to this Agreement owns water rights in the Colorado River Basin and believes that settlement of their respective claims in Cases Nos. 15CW3019, 16CW3015, and 18CW3041, on the terms set forth in this Agreement, will protect their water rights or provide other material benefits to them.

AGREEMENT

In consideration of the foregoing introductory statement, the keeping and performance of the promises contained herein, and other valid consideration to each of the Parties, which is hereby acknowledged and confirmed, the Parties agree as follows:

1. Definitions.

For the purposes of this Agreement, the following terms shall have the following meanings, unless the context clearly requires otherwise:

1.1. “1929 Blue River Water Rights” means the Colorado Springs’ Continental-Hoosier System water rights adjudicated to the East Hoosier Ditch and the West Hoosier Ditch in Civil Action No. 1710 by the Summit County District Court by decree entered on October 26, 1937.

1.2. “1948 Blue River Water Rights” means the following Colorado Springs’ water rights:

1.2.1. “Continental-Hoosier System¹ storage rights” means the water storage rights with a May 13, 1948 appropriation date for Upper Blue Lake (“Upper Blue Reservoir”), Lower Blue Lake (“Lower Blue Reservoir”), Spruce Lake Reservoir, and Mayflower Lake Reservoir, adjudicated in Civil Action Nos. 1805 and 1806 by the Summit County District Court on March 10, 1952 and confirmed by the Blue River Decree.

1.2.2. “Continental-Hoosier System direct flow water rights” means the direct flow water rights with a May 13, 1948 appropriation date for the Blue River Ditch, Crystal Ditch, Spruce Ditch, McCullough Ditch, East Hoosier Ditch, Hoosier Ditch, the “Additionally Intercepted Waters”, and Hoosier Tunnel, adjudicated in Civil Action Nos. 1805 and 1806 by the Summit County District Court on March 10, 1952 and confirmed by the Blue River Decree.

1.3. “Acceptable Alternative” means a permissible alternative that serves substantially the same functions and meets substantially the same needs as the proposed Lower Blue Reservoir that is described in paragraph 2.2.2(2) below.

1.4. “Adverse Action” means an action of a legislature, court, administrative agency, regulatory body or other governmental entity that would cause a material adverse impact to a Party’s interests or resources that have been committed, compromised or otherwise addressed in this Agreement. In the event that an Adverse Action is proposed or is likely to occur, the Party whose interests or resources would suffer a material adverse impact will notify the other Parties. The Parties will meet and discuss in good faith the potential detrimental effect of such Adverse Action and whether such Adverse Action may be mitigated or avoided by changes in operations or other efforts.

1.5. “Blue River Decree” means the Findings of Fact, Conclusions of Law, and Final Judgment entered on October 12, 1955, in Consolidated Case Nos. 5016 and 5017 and the Findings of Fact and Conclusions of Law and Final Decree entered on October 12, 1955, in Consolidated Case Nos. 2782, 5016, and 5017 (“Consolidated Cases”) by the United States District Court, District of Colorado (“1955 Decree”), and all supplemental or amendatory orders, judgments, and decrees in said cases, including,

¹ Sometimes also referred to as the “Continental-Hoosier Project.”

without limitation, the Decree entered on April 16, 1964, therein and the Supplemental Judgment and Decree dated February 9, 1978 .

1.6. “Blue River Decree Stipulations” means the 1955 Stipulation and 1964 Stipulation entered into among the parties to the Consolidated Cases in connection with the Blue River Decree, which are further defined as follows:

1.6.1. “1955 Stipulation” means the Stipulation among the parties to the Consolidated Cases entered into on October 5, 1955, and amended on October 10, 1955, which is set forth in full in paragraph 17 of the Findings of Fact and Conclusions of Law of the 1955 Decree.

1.6.2. “1964 Stipulation” means the Stipulation among the stipulating parties dated April 16, 1964, in the Consolidated Cases.

1.7. “Colorado Springs Substitution Account” has the same meaning as defined in the Substitution Agreement.

1.8. “Construction Agreement” means an agreement between Colorado Springs and the Lower Blue Parties for the design, permitting, and construction of Lower Blue Reservoir that shall be negotiated by Colorado Springs and the Lower Blue Parties and that must be consistent with this Agreement. This Agreement shall control in the event of any conflict between the interpretation of this Agreement and the Construction Agreement.

1.9. “Dotsero Gauge” means the existing U.S.G.S. stream gauging station number 09070500 on the Colorado River near Dotsero, Colorado, or its replacement.

1.10. “Hoosier Tunnel” means Colorado Springs’ tunnel under the continental divide that is used to deliver water to the South Platte River drainage with a maximum decreed flow rate capacity of 400 c.f.s., or its replacement that does not exceed the 400 c.f.s. decreed flow rate capacity.

1.11. “LEDPA” means Least Environmentally Damaging Practicable Alternative.

1.12. “Lower Blue Reservoir Water Right” means the 1,006 acre-feet conditional water right for Lower Blue Reservoir with a May 13, 1948 appropriation date, as decreed in Summit County District Court Civil Action No. 1806, and in United States District Court Consolidated Case Nos. 2782, 5016, and 5017.

1.13. “Lower Blue Reservoir Site” means the location of the Lower Blue Reservoir determined in accordance with paragraph 4.1.1 below.

1.14. “Lower Blue Parties” means the Town of Breckenridge and Summit County.

1.15. “Montgomery Reservoir” means the dam and reservoir owned by Colorado Springs located in sections 13 and 17, T8S, R78W of the 6th P.M., in Park County, Colorado and that stores water diverted from the Middle Fork of the South Platte River and Blue River water diverted and delivered by Colorado Springs under its 1929 and 1948 Blue River Water Rights.

1.16. “Operating Agreement” means the agreement between Colorado Springs and the Lower Blue Parties titled “Lower Blue Reservoir and Montgomery Reservoir Water Storage Operating Agreement.”

1.17. “Substantial Completion” with respect to reservoirs means that the reservoir’s construction is sufficiently complete such that the reservoir can be used for its intended purposes under this Agreement.

1.18. “Substitution Agreement” means the Memorandum of Agreement Regarding Colorado Springs Substitution Operations entered into among Colorado Springs, the Colorado River Water Conservation District, the City and County of Denver acting through its Board of Water Commissioners, Northern Colorado Water Conservancy District (“Northern”), Summit County, Vail Resorts, Inc., and the Town of Breckenridge, that became effective on May 15, 2003.

1.19. “USBR Substitution Agreement” means the Memorandum of Agreement No. 09AG6C0027 between the United States and Colorado Springs Establishing Principles for Substitution of Water to Green Mountain Reservoir, dated February 22, 2010.

1.20. “SPP Water Rights” means the Shoshone Power Plant’s hydropower water rights with a January 7, 1902 appropriation date for 1,250 c.f.s. adjudicated by the Eagle County District Court by decree entered on December 9, 1907, Case No. 466, (“Senior SPP Water Right”) and the May 15, 1929 appropriation date for 158 c.f.s. adjudicated by the Eagle County District Court by decree entered on February 7, 1956, in Case No. 1123 (“Junior SPP Water Right”). The point of diversion for these water rights is located on the Colorado River in the SE ¼ NW ¼ of Section 30, T5S, R87W of the 6th P.M., in Garfield County, Colorado.

1.21. “Plan of Substitution Decree” means the Plan of Substitution/Augmentation decreed on November 14, 2012 in Case No. 2003CW320 by the District Court for Water Division No. 5, Colorado.

1.22. “Substitution” and **“Substitution Year”** have the same meaning as defined for those terms in the Substitution Agreement.

1.23. “West Slope Account” has the same meaning as defined in the Substitution Agreement.

1.24. “West Slope Parties” means the Colorado River Water Conservation District, Summit County, the Town of Breckenridge, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, and the Ute Water Conservancy District.

1.25. “1041 Permit” means a permit or other authorizations issued by a local government pursuant to its authority under the Areas and Activities of State Interest Act, C.R.S. § 24-65.1-101 *et seq.*, or other applicable provisions of a local government’s land use regulations and applicable law.

2. Summary Description and Purposes of Agreement.

2.1. Colorado Springs will pursue permitting and construction of an enlargement of Montgomery Reservoir² in the South Platte River Basin in which to store water from the South Platte and its previously decreed water rights from the Blue River. The West Slope Parties will express general support for the Montgomery Reservoir enlargement project as a component of this Settlement Agreement and will not take any action to prevent or interfere with the enlargement or encourage others to take any action to prevent or interfere with the enlargement.

2.2. The successful permitting and construction of an enlarged Montgomery Reservoir and the terms of this Agreement will:

2.2.1. Allow Colorado Springs to forego the construction of Spruce Lake and Mayflower Lake Reservoirs, to withdraw its requests for exclusion of certain lands from around Spruce Lake Reservoir and Mayflower Lake Reservoir in the proposed Ten Mile Wilderness Area, and to convey the lands owned by Colorado Springs for those reservoirs to Summit County.

2.2.2. Allow Colorado Springs to cooperate with the Lower Blue Parties to permit and build either (1) a maximum of 600 acre-foot active capacity west slope use reservoir in lieu of Colorado Springs’ planned Lower Blue Reservoir, or (2) an

²Colorado Springs is proposing an enlargement of Montgomery Reservoir for federal, state, and local permitting. Upon regulatory agency review, analysis and approvals, Colorado Springs will pursue the proposed project. This Agreement will apply to the LEDPA arising out of the permitting process for an enlargement of Montgomery Reservoir carried out as part of this Agreement, provided that any such LEDPA project will have a substantially similar impact on the Blue River and its tributaries in the volume and timing of depletions as the enlargement of Montgomery Reservoir as proposed by Colorado Springs. If the LEDPA project is not located east of the Continental Divide, then the provisions of paragraph 14.7 shall apply.

Acceptable Alternative to such reservoir if the Lower Blue Parties are unable to secure the permits and authorizations required to construct a 600 acre-foot active capacity reservoir at or near the Lower Blue Reservoir Site. Colorado Springs and the Lower Blue Parties will cooperate on the permitting, design, cost, and construction of an Acceptable Alternative to supply water for use by the Lower Blue Parties on the west slope. If the Lower Blue Parties are unable to obtain one or more of the permits or authorizations necessary to construct Lower Blue Reservoir or an Acceptable Alternative, then Colorado Springs will provide water to the Lower Blue Parties under the applicable provisions of paragraphs 4.15 – 4.18 below.

2.3. When Colorado Springs has received all final permits and authorizations, and after resolution of any appeals, required to construct an enlarged Montgomery Reservoir or permitted alternative, if the Lower Blue Parties construct a Lower Blue Reservoir, then Colorado Springs will convey to the Lower Blue Parties the amount of its conditional water right for Lower Blue Reservoir equal to the lesser of the as-built active storage capacity of the reservoir (excluding dead storage), or 600 acre-feet. Colorado Springs will retain ownership of the remainder of the Lower Blue Reservoir Conditional Water Right. If the Lower Blue Parties are unable to obtain one or more of the permits or authorizations necessary to construct Lower Blue Reservoir or an Acceptable Alternative, then Colorado Springs will convey part of the Lower Blue Reservoir Water Right to the Lower Blue Parties as provided in paragraph 4.15 below.

2.3.1. To provide water for use by the Lower Blue Parties and their respective assignees, whether for storage in the Lower Blue Reservoir or as a release of water directly to the Blue River by substitution for Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir, Colorado Springs will provide the lesser of 475 acre-feet or the unfilled capacity of the Lower Blue Reservoir as of April 1 in all years that are not Substitution Years; and in every Substitution Year, will provide 300 acre-feet, all in accordance with the further terms of this Agreement. In addition, Colorado Springs will release from Upper Blue Reservoir up to 100 acre-feet annually for use pursuant to the Substitution Agreement.

2.3.2. If the Lower Blue Parties are unable to obtain one or more of the permits or authorizations necessary to construct Lower Blue Reservoir or an Acceptable Alternative, then Colorado Springs will provide water to the Lower Blue Parties as specified in paragraphs 4.16-4.18 below.

2.4. For purposes of providing water for storage in Lower Blue Reservoir to the Lower Blue Parties in Substitution Years, 150 acre-feet of the 300 acre-feet of water to be provided by Colorado Springs shall be delivered by means of bypasses of 150 acre-

feet of water available to Upper Blue Reservoir; provided that 100 acre-feet shall be stored in the West Slope Account under the Substitution Agreement in Upper Blue Reservoir prior to the bypass of 150 acre-feet of inflow available at Upper Blue Reservoir to Lower Blue Reservoir. The remainder of the 300 acre-feet shall be provided from water decreed for west slope use: (a) that is physically available in Monte Cristo Creek for storage in Lower Blue Reservoir under the Lower Blue Reservoir Water Right; (b) stored in Upper Blue Reservoir and is not required for Substitution operations; and/or, as necessary, (c) releases at the Combination Flume of water under the Lower Blue Reservoir Water Right stored in the enlarged Montgomery Reservoir as more fully described in paragraphs 6 and 7 below.

2.5. Upon Substantial Completion of the enlargement of Montgomery Reservoir, Colorado Springs will abandon its conditional storage rights for Spruce Lake Reservoir and Mayflower Lake Reservoir. If a reservoir is constructed at the Lower Blue Reservoir Site or alternative location, then Colorado Springs, Summit County, and the Town of Breckenridge will exercise the Lower Blue Reservoir Water Right in the manner and amounts allowed in paragraphs 6 and 7 below.

2.6. Summit County will abandon its conditional water rights to Lower Mohawk Reservoir (a) upon Substantial Completion of either the Lower Blue Reservoir or its alternative or (b) if the Lower Blue Parties are unable to obtain one or more of the permits or authorizations necessary to construct Lower Blue Reservoir or an Acceptable Alternative and Colorado Springs is providing water to the Lower Blue Parties pursuant to the applicable provisions of paragraphs 4.15 to 4.18 below.

3. Montgomery Reservoir Enlargement.

3.1. The West Slope Parties will not assert, now or at any time in the future, that it is unlawful (a) for Colorado Springs to store water diverted under its 1929 or 1948 Blue River Water Rights through the Hoosier Tunnel to an enlarged Montgomery Reservoir; (b) to re-regulate the volume so stored in an enlarged Montgomery Reservoir, in accordance with paragraph 12.2 and 12.3, in other Colorado Springs' existing or future east slope water storage reservoirs; and (c) to divert through the Hoosier Tunnel for delivery to its municipal water supply system water from any other sources, the use of which by Colorado Springs has been authorized in the manner required by law. The provisions of subparagraph 3.1.(c) do not prevent the West Slope parties from opposing any future proceeding in which Colorado Springs seeks authorization to divert through the Hoosier Tunnel for delivery to its municipal water supply system water not currently authorized for diversion through the Hoosier Tunnel.

3.2. Montgomery Reservoir may be enlarged so that the invert of the dam's spillway is at the existing elevation of the invert of the Hoosier Tunnel outlet at

elevation 10,930 feet (Colorado State Plane, central Zone, NAD83-2007 Horizontal, NAVD88 Vertical), which Colorado Springs estimates will result in an increase of 8,100 acre-feet of storage capacity.

3.3. The West Slope Parties shall not oppose, and shall not take any action, or encourage any Adverse Action, that would impair or impede any Federal, state, or local permitting for Colorado Springs' enlargement of Montgomery Reservoir. However, nothing in this paragraph will preclude coordinated or cooperative 1041 Permit review by Summit County and Park County or otherwise limit Summit County's administration of its regulations promulgated under the Areas and Activities of State Interest Act, C.R.S. § 24-65.1-101 *et seq.*, or other applicable provisions of the Summit County Land Use Code and applicable law.

3.4. Colorado Springs shall continue to limit its diversions from the Blue River and its tributaries in compliance with paragraph l.c. of the October 13, 2003 Memorandum of Agreement among Colorado Springs, Summit County, Vail Summit Resorts, and the Town of Breckenridge.

3.5. Colorado Springs shall refrain from diverting its 1948 Blue River Water Rights to the extent necessary to maintain a flow of 5 c.f.s. in the Blue River immediately upstream of the high-water line of Goose Pasture Tarn Reservoir, which is currently located in the NE ¼ NE ¼ of Section 18 7S, R77W of the 6th P.M. with UTM Coordinates Easting: 411036, Northing: 4367098, NAD83, UTM Zone 13. Flows at this location will be estimated based on U.S.G.S. gauge 09046490 Blue River at Blue River, or any replacement gauge which is located just downstream of Goose Pasture Tarn, adjusted to account for diversions out of and storage in Goose Pasture Tarn.

3.6. The West Slope Parties, excluding Summit County, agree that the full implementation of this Agreement, together with Colorado Springs' compliance with any mitigation measures required by applicable federal, state, or local permits, will satisfy all of their concerns with the proposed enlargement of Montgomery Reservoir and Colorado Springs' diversion and use of Blue River water made possible by the enlargement of Montgomery Reservoir.

4. Construction of West Slope Lower Blue Reservoir.

4.1. If Colorado Springs accepts the terms of a Summit County 1041 Permit related to its enlargement of Montgomery Reservoir and after the issuance of all final permits and authorizations, and after resolution of all appeals, for the construction of an enlargement to Montgomery Reservoir or its permitted alternative, Colorado Springs and the Lower Blue Parties shall do the following:

4.1.1. The Lower Blue Parties will identify land ownership for the final Lower Blue Reservoir Site, including the following tasks:

- 4.1.1.1.** Identify land ownership within the reservoir's highwater line.
- 4.1.1.2.** Identify the land owned by Colorado Springs needed for the construction and operation of the reservoir that are to be conveyed in fee to the Lower Blue Parties pursuant to paragraph 4.12. below.
- 4.1.1.3.** Identify federal land ownership and needed federal authorizations.
- 4.1.1.4.** Identify private lands required to be purchased and/or condemned by the Lower Blue Parties.

4.1.2. Colorado Springs shall convey to the Lower Blue Parties, as tenants in common, without cost, the land that it owns that will be inundated by or required for the construction and operation of Lower Blue Reservoir at the final Lower Blue Reservoir Site identified pursuant to paragraph 4.1.1.2 above. Colorado Springs will also convey to Summit County, without cost, such other land that it owns at the final Lower Blue Reservoir Site that is not needed for Colorado Springs current or future operation, maintenance, and repair of Upper Blue Reservoir. Colorado Springs will retain all of its existing interest in roads, and all rights of access necessary for its continued operation, maintenance, and repair of Upper Blue Reservoir, which interests and rights shall also apply to any roads that are relocated for the construction, operation, maintenance, and repair of Lower Blue Reservoir. All such lands shall be conveyed by quit claim deed with title insurance, free and clear of all liens and encumbrances. All such conveyances shall be in accordance with a conveyance procedure to be contained in the Construction Agreement.

4.1.3. Upon Substantial Completion of the construction of Lower Blue Reservoir, Colorado Springs will convey to the Lower Blue Parties, free of any charge, that portion of its Lower Blue Reservoir Water Right equal to the lesser of 600 acre-feet or the as-built active capacity of the reservoir, for use in accordance with this Agreement. Such conveyance shall be by quit claim deed, free and clear of all liens and encumbrances and be made in accordance with a conveyance procedure to be contained in the Construction Agreement. Colorado Springs will cooperate with, and not oppose, any application that may be filed by the Town of Breckenridge and/or Summit County for the change of use of those water rights subsequent to the change of use under paragraph 7 below. Colorado Springs may file a statement of opposition in such proceedings and participate to the extent necessary to ensure they do not impair the exercise of Colorado Springs' diversion and storage of its 1929 and 1948 Blue River Water Rights and do not injure its appropriative rights of exchange decreed in Case No. 03CW314.

4.1.4. Summit County shall convey to the Town of Breckenridge, at a price to be negotiated by those parties, a 50% undivided interest in the land Summit County owns that will be inundated by or acquired for the development of

Lower Blue Reservoir. Such conveyance shall be by special warranty deed free and clear of all encumbrances. The cost of this land is not a reservoir construction or permitting cost under subparagraph 4.5.

4.1.5. The Lower Blue Parties and Colorado Springs shall further cooperate to acquire ownership of or a permit to use the remaining private and federal lands required to develop and operate the Lower Blue Reservoir, the costs of which shall be borne by the Lower Blue Parties in such manner as they may agree. Such additional lands and permits shall be owned by the Lower Blue Parties in such manner as they may agree. Such cooperation by Colorado Springs does not include exercise of its powers of eminent domain or payment for the land.

4.2. The specific lands to be conveyed pursuant to paragraphs 4.1.2, 4.1.4, and 4.1.5 will be determined based on the final design for Lower Blue Reservoir pursuant to a procedure to be set forth in the Construction Agreement.

4.3. The Town of Breckenridge and Summit County shall each own 50% of the capacity of the Lower Blue Reservoir constructed pursuant to this Agreement. Colorado Springs will not own any interest in the Lower Blue Reservoir.

4.4. The Town of Breckenridge and Summit County are each entitled to 50% of: (a) the Lower Blue Reservoir Water Right stored in the Lower Blue Reservoir, and (b) water from the Lower Blue Reservoir Water Right provided by substitution or exchange from an enlarged Montgomery Reservoir.

4.5. The actual costs for permitting, designing, and constructing a Lower Blue Reservoir of the minimum size necessary to achieve an active storage capacity of not more than 600 acre-feet shall be paid in the following percentages:

4.5.1.1. Colorado Springs: 50%

4.5.1.2. Town of Breckenridge: 25%

4.5.1.3. Summit County: 25%

4.6. Colorado Springs', Summit County's, and the Town of Breckenridge's share of the costs for permitting, designing, and constructing a Lower Blue Reservoir will be based on the actual cost to construct a dam, the design for which has been approved in advance by Colorado Springs, Summit County, and the Town of Breckenridge, as determined in accordance with a procedure to be contained in the Construction Agreement.

4.7. The Lower Blue Parties will cooperate in applying for grants from the Colorado Water Conservation Board, Colorado River Roundtable, CRWCD, and any other available sources to fund the permitting, land acquisition, and construction of the Lower Blue Reservoir. The proceeds of such grants shall be available exclusively to the Lower Blue Parties. Colorado Springs shall cooperate with those efforts but will

not be a co-applicant. Colorado Springs may also apply for grants from the Colorado Water Conservation Board or other potential funding sources to pay all or a portion of its costs for permitting and construction of the reservoir that do not reduce the amounts of grants available to the Lower Blue Parties.

4.8. Either Colorado Springs, Summit County, or the Town of Breckenridge may exercise the right to terminate their individual and separate obligations under this Agreement in accordance with paragraph 14.1 below if Colorado Springs, Summit County, or the Town of Breckenridge determines that it is unwilling to pay its pro rata share of the actual costs to construct Lower Blue Reservoir based on the design approved pursuant to paragraph 4.6 above and the Construction Agreement.

4.9. The Lower Blue Parties and Colorado Springs will jointly identify what further authorizations, if any, may be needed from the Denver Water Board, Bureau of Reclamation, Northern, or other persons or entities, for Colorado Springs to provide Substitution for west slope use of Lower Blue Reservoir Water Right as against Green Mountain Reservoir.

4.10. The Lower Blue Parties will be responsible for applying for all permits for, and the construction of, the Lower Blue Reservoir, subject to cost-sharing by Colorado Springs in the percentage stated above. The Lower Blue Parties agree to abstain from pre-permitting discussions and agency coordination with any permitting agency or authority until earlier of (a) January 1, 2029; or (b) all final permits and authorizations have been issued, and after resolution of any appeals, for the construction of an enlargement of Montgomery Reservoir or permitted alternative.

4.11. If a reservoir is constructed at or near the Lower Blue Reservoir Site, it must not have an active storage capacity in excess of 600± acre-feet.

4.12. Colorado Springs and the Lower Blue Parties will cooperate on the design, permitting and construction of Lower Blue Reservoir to ensure that Colorado Springs' access to and ability to continue to use Upper Blue Reservoir is not impaired.

4.13. Colorado Springs and the Lower Blue Parties have entered into an Operating Agreement to implement the water deliveries described in paragraphs 6 and 7 below. A copy of the Operating Agreement is attached as Exhibit 1. This Agreement shall control in the event of any conflict between the interpretation of this Agreement and Exhibit 1, provided that this Agreement does not change the rights of any party to the Substitution Agreement who is not also a party to this Agreement.

4.14 Colorado Springs Permitting Timeline and Provision of Temporary Water Supply for Lower Blue Parties.

4.14.1 Colorado Springs anticipates that it will file complete applications for all necessary federal, state, and local permits or authorizations required for the enlargement of Montgomery Reservoir by December 31, 2025. Colorado Springs anticipates that all such permits or authorizations will be issued by December 31, 2027.

4.14.2 After the issuance by Summit County of all necessary permits, including a 1041 Permit for the enlargement of Montgomery Reservoir, if any other necessary permits or authorizations required for the enlargement of Montgomery Reservoir by federal, state, or local governments (other than Summit County) have not been issued by December 31, 2027, then on the commencement of storage in Upper Blue Reservoir in the spring of 2030, which occurs when the reservoir is safely accessible after snowmelt so that the reservoir's outlet can be closed, Colorado Springs will provide annually, for a period of up to 5 years or until Lower Blue Reservoir is substantially completed, whichever occurs first, 250 acre-feet of water to the Lower Blue Parties. This 250 acre-feet will be the first water stored annually in Upper Blue Reservoir after filling the 100 acre-feet reduced West Slope Account. The 250 acre-feet of water will be provided and used in the following manner:

4.14.2.1 Prior to the Substantial Completion of the enlargement of Montgomery Reservoir, annually the Lower Blue Parties and Colorado Springs will jointly seek approval of a Substitute Water Supply Plan pursuant to C.R.S. § 37-92-308(5) ("SWSP") to allow the use of up to 250 acre-feet of water stored by Colorado Springs in Upper Blue Reservoir to supply the demands of the Lower Blue Parties. Colorado Springs' obligations to make Upper Blue Reservoir water available to the Lower Blue Parties under this paragraph will terminate after (1) the expiration of the fifth annual SWSP; or (2) upon Substantial Completion of an enlargement of Montgomery Reservoir, whichever occurs first.

4.14.2.2 The water provided by Colorado Springs under this paragraph 4.14.2 will be used by the Lower Blue Parties for direct diversion from the Blue River or its tributaries upstream of Dillon Reservoir, or for the replacement of stream depletions to the Blue River or its tributaries upstream of Dillon Reservoir that one or more of the Lower Blue Parties is legally required to replace by Division of Water Resources.

4.14.2.3 Prior to the Substantial Completion of the enlarged Montgomery Reservoir, Colorado Springs will have no obligation to provide up to 250 acre-feet if that quantity of water is not legally and physically available for storage in Upper Blue Reservoir, or if it is required for Substitution purposes.

4.14.3 Upon Substantial Completion of an enlargement of Montgomery Reservoir, and for eight years thereafter, or until the Substantial Completion of Lower Blue Reservoir, whichever occurs first, Colorado Springs will seek administrative approval to exchange annually 250 acre-feet of Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir into Upper Blue Reservoir for release to and use by the Lower Blue Parties. Colorado Springs will have no obligation to exchange 250 acre-feet of Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir into Upper Blue Reservoir if (a) that quantity of water is not legally and physically available for storage in Upper Blue Reservoir; or (b) that storage space in Upper Blue Reservoir is required for Substitution purposes.

4.14.4 The water to be provided by Colorado Springs under paragraph 4.14.2 or 4.14.3 will be the first water stored annually in Upper Blue Reservoir after the annual filling of the then applicable quantities in the West Slope Account and will be provided free of any charge.

4.14.5 The water to be provided to the Lower Blue Parties from Upper Blue Reservoir will be delivered at the downstream end of the outlet from Upper Blue Reservoir pursuant to a delivery schedule provided by the Lower Blue Parties. Colorado Springs and the Lower Blue Parties will coordinate operations to ensure that releases to the Lower Blue Parties do not impair Colorado Springs' ability to make Substitution releases in the amount and at the time required, or impair Colorado Springs' ability to deliver its remaining water stored in Upper Blue Reservoir through the Hoosier Tunnel prior to either (1) November 1st or (2) when Colorado Springs' determines that weather conditions prevent safe access to or operation of Upper Blue Reservoir.

4.14.6 If a request for administrative exchange is formally denied by the Colorado Division of Water Resources, Colorado Springs and the Lower Blue Parties will file an application in the Division 5 Water Court for an appropriative right of exchange for the 250 acre-feet specified in subparagraph 4.14.3.

4.15 Upon receipt of a final determination by one or more permitting authorities that a required permit cannot be issued for the construction of the proposed Lower Blue Reservoir or an Acceptable Alternative, and after all appeals, the Lower Blue Parties will give prompt written notice of the final denial to Colorado Springs. Upon such notice, this paragraph will replace all other requirements for the conveyance of Lower Blue Reservoir water rights to the Lower Blue Parties. Within ninety (90) days after receipt of written notice of such denial, Colorado Springs will convey to the Lower Blue Parties, free of any charge, 475 acre-feet of its Lower Blue Reservoir Water Right, to be provided and used in accordance with this Agreement. Such conveyance shall be

by quit claim deed, free and clear of all liens and encumbrances. The conveyance will be made in accordance with a procedure agreed upon by Colorado Springs and the Lower Blue Parties. That water will be provided to the Lower Blue Parties in accordance with paragraphs 4.16, 4.17, and 4.18 below.

4.16 If the Lower Blue Parties are denied the necessary permits for the construction of Lower Blue Reservoir or an Acceptable Alternative by any permitting authority other than Summit County, then paragraphs 4.16 and its subparts and 4.17 will apply and will replace all other requirements for Colorado Springs to provide water to the Lower Blue Parties under this Agreement.

4.16.1 Lower Blue Reservoir Water provided by Exchange. Upon Substantial Completion of the enlargement of Montgomery Reservoir, Colorado Springs will annually provide by exchange into Upper Blue Reservoir up to 250 acre-feet of Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir. The exchange will be (a) made only during the time that Colorado Springs' 1948 Blue River Water Rights are in priority and water is otherwise legally and physically available for storage in Upper Blue Reservoir; (b) the first water stored in Upper Blue Reservoir after filling the 100 acre-foot West Slope Account (reduced from the 250 acre-feet), or as soon thereafter as exchange conditions permit; and (c) made only to the extent of the 250 acre-feet of storage space in Upper Blue Reservoir that is not required for Substitution purposes. This water will be delivered in accordance with paragraph 4.14.5 above and will be provided free of any charge.

4.16.2 Lower Blue Reservoir Water provided by substitution. Annually, after filling the 100 acre-foot West Slope Account (reduced from 250 acre-feet) in Upper Blue Reservoir and the exchange of up to 250 acre-feet of Lower Blue Reservoir water into Upper Blue Reservoir, in Substitution Years Colorado Springs will provide by substitution from an enlarged Montgomery Reservoir an additional amount of Lower Blue Reservoir water that, when added to the amount of Lower Blue Reservoir water exchanged into Upper Blue Reservoir, equals 300 acre-feet. In Non-Substitution Years Colorado Springs will annually provide by substitution from an enlarged Montgomery Reservoir an additional amount of Lower Blue Reservoir water that, when added to the amount of Lower Blue Reservoir water exchanged into Upper Blue Reservoir, equals 475 acre-feet. These substitutions will be made only during the time that Colorado Springs' 1948 Blue River Water Rights are in priority, and in accordance with a decree granting a change in the Lower Blue Reservoir water rights resulting from the application attached to this Agreement as Exhibit 7. The total amount of water provided annually to the Lower Blue Parties pursuant to paragraphs 4.16.1 and 4.16.2 will not exceed 475 acre-feet in non-Substitution Years and 300 acre-feet in Substitution Years. The water to be provided by substitution to the Lower Blue Parties will be free of any charge and

will be measured and delivered at the Combination Flume, or one or more other points of diversion of the 1948 Blue River Water Rights located upstream of Goose Pasture Tarn, as determined by Colorado Springs.

4.16.3 The Lower Blue Parties bear the risk that the full quantities of water cannot be delivered by exchange or by substitution annually due to insufficient Lower Blue Reservoir water in storage in an enlarged Montgomery Reservoir. Notwithstanding the foregoing, Colorado Springs agrees to operate the enlarged Montgomery Reservoir in a manner to provide the full quantities of water to be delivered to the Lower Blue Parties by exchange or by substitution to the maximum extent practicable.

4.17 The Lower Blue Parties must take delivery of all Lower Blue Reservoir water stored in Upper Blue Reservoir by the earlier of November 1st or when Colorado Springs determines that weather conditions prevent safe access to or operations of Upper Blue Reservoir. The Lower Blue Parties are not entitled to credit for any Lower Blue Reservoir water stored in Upper Blue Reservoir that they do not request the delivery of sufficiently in advance to permit its full release prior to November 1st or when Colorado Springs determines that weather conditions prevent safe access to or operation of Upper Blue Reservoir.

4.18 If the Lower Blue Parties are denied the necessary permits for the construction of Lower Blue Reservoir or an Acceptable Alternative by Summit County, then this paragraph 4.18 and its subparts will apply and will replace all other water delivery requirements by Colorado Springs to the Lower Blue Parties under this Agreement. Colorado Springs will deliver Lower Blue Reservoir water to the Lower Blue Parties only by substitution at the Combination Flume, or one or more other points of diversion of the 1948 Blue River Water Rights located upstream of Goose Pasture Tarn as determined by Colorado Springs. Colorado Springs will deliver 475 acre-feet in non-Substitution Years and 300 acre-feet in Substitution Years. The substitution will be (a) made only during the time that Colorado Springs' 1948 Blue River Water Rights are in priority, and (b) only to the extent of Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir. Colorado Springs agrees to operate the enlarged Montgomery Reservoir in a manner to provide the full quantities of water to be delivered to the Lower Blue Parties by substitution to the maximum extent practicable. The Lower Blue Reservoir water will be provided to the Lower Blue Parties free of any charge.

4.19 Not an Acceptable Alternative to Lower Blue Reservoir. The Lower Blue Parties assert that the procedures under paragraphs 4.16.1, 4.16.2, 4.16.3, and 4.18 above are not a reasonable or Acceptable Alternative to the construction and use of Lower Blue Reservoir as otherwise contemplated in this Agreement, and that said

procedures do not adequately attain the primary objectives, purposes, and needs of the Lower Blue Parties in meeting their future water requirements. No Party will take the position in any process for any permitting associated with the construction of Lower Blue Reservoir that the procedures under paragraphs 4.16 and 4.18 above are a preferred or Acceptable Alternative to the construction and use of Lower Blue Reservoir as contemplated in this Agreement. The Lower Blue Parties may initiate agency consultation and permitting for the construction of Lower Blue Reservoir upon the first to occur of (a) Colorado Springs receipt of all permits needed for construction of an enlarged Montgomery Reservoir and after resolution any appeals, or (b) January 1, 2029.

5. 1041 Permitting - Summit County. Colorado Springs will seek a 1041 Permit from Summit County for the change in operation of its Continental-Hoosier System made possible by the enlargement of Montgomery Reservoir. In any such permitting process, and in determination of the level of review, Summit County shall consider as mitigation of any significant impacts to Summit County each of the actions to be undertaken by Colorado Springs under the following paragraphs and their subparts under this Agreement: 2.2.1, 2.2.2, 2.3, 2.4, 2.5, 3.5, 4.1.2, 4.1.3, 6, 7.1, 7.3, 8.5.2, , 9.1.6, 10.5.2, 12.2, and 12.3. This paragraph does not limit the action that Colorado Springs may assert as mitigation of any significant impacts to Summit County as part of its 1041 Permit Application to Summit County.

6. Quantity of Water for a Lower Blue Reservoir to be Provided by Colorado Springs. This paragraph 6 and its subparts apply upon the Substantial Completion of Lower Blue Reservoir or an Acceptable Alternative.

6.1. In every year that is not a Substitution Year, Colorado Springs will provide up to 475 acre-feet of the water available under the Lower Blue Reservoir Water Right to the Lower Blue Parties for storage in Lower Blue Reservoir. The volume provided in any non-Substitution year shall be the lesser of 475 acre-feet or the unfilled capacity of Lower Blue Reservoir on April 1. This obligation to provide the 475 acre-feet in non-Substitution Years will take operational priority over diversions and storage by Colorado Springs under any of its 1948 Blue River Water Rights available at or upstream from the as-built Lower Blue Reservoir, after the storage of 100 acre-feet in the West Slope Account. Colorado Springs will not exercise its 1948 Blue River Water Rights in a manner that reduces the amount of water available for storage in Upper and Lower Blue Reservoir pursuant to this Agreement. Colorado Springs will not be required to provide water for this purpose after September 30th of any year.

6.1.1. In any year following a year in which water has been delivered to the west slope from an enlarged Montgomery Reservoir, Colorado Springs will refill the Lower Blue Reservoir account in an enlarged Montgomery Reservoir to the extent

water is lawfully available to the 1948 Blue River Water Rights, up to a maximum of 600 acre-feet or such lesser amount as will ensure that (a) the combined amount of physical storage under the Lower Blue Reservoir Water Right in Lower Blue Reservoir and the Lower Blue Reservoir account in an enlarged Montgomery Reservoir, shall never at any one time exceed 1,006 acre-feet; and (b) no more than 1,006 acre-feet shall be stored in any one year (April 1 to March 31) under the Lower Blue Reservoir Water Right, including carry-over storage from the prior year. Water may be delivered to and stored in an enlarged Montgomery Reservoir under the Lower Blue Reservoir Water Right under this paragraph only after the full amount of water supply specified herein has been provided to the Lower Blue Parties.

6.2. During a Substitution Year Colorado Springs shall continue to be responsible for the release of “Replacement Water” (see subsection 9.27 below) for up to 100 acre-feet of water in Upper Blue Reservoir dedicated to west slope use pursuant to the Substitution Agreement, and in addition thereto will release replacement water on the quantity of the Lower Blue Reservoir Water Right stored that year in the Lower Blue Reservoir and stored in an enlarged Montgomery Reservoir use to provide water to the Lower Blue Parties, all in accordance with the USBR Substitution Agreement.

6.3. In every Substitution Year, Colorado Springs will provide to the Lower Blue Parties the lesser of 300 acre-feet or the unfilled capacity of Lower Blue Reservoir on April 1st and will not provide water after September 30th of any year unless Colorado Springs 1948 Blue River Water Rights are in priority and stream flow conditions permit such delivery. The 300 acre-feet shall be provided in the following order and from the following sources of water decreed for west slope use by the Lower Blue Parties:

6.3.1. The first 150 acre-feet of the 300 acre-feet of water to be provided by Colorado Springs during Substitution Years shall be delivered by means of bypasses of 150 acre-feet of the first water available at Upper Blue Reservoir after storage of 100 acre-feet in the West Slope Account. Colorado Springs will not exercise its other 1948 Blue River Water Rights in a manner that reduces the amount of water available at Upper Blue Reservoir to supply the 150 acre-feet.

6.3.2. The remainder of the 300 acre-feet shall be provided from water decreed for west slope use: (a) physically available in Monte Cristo Creek at Lower Blue Reservoir (excluding Replacement Water released from Upper Blue Reservoir that are made for the purpose of meeting the “CSU Replacement Obligation” pursuant to the Substitution Agreement and the Plan of Substitution Decree); and then either (b) the release of water from Upper Blue Reservoir that is not required for Substitution operations; and/or (c) releases at Colorado Springs’ combined flume

on Monte Cristo Creek or one or more other points of diversion of the 1948 Blue River Water Rights located upstream of Goose Pasture Tarn as determined by Colorado Springs and more fully described in paragraph 7.1 below.

Colorado Springs' obligation to provide the 300 acre-feet in Substitution Years will take operational priority over diversions and storage by Colorado Springs under any of its 1948 Blue River Water Rights on Monte Cristo Creek other than the storage of 100 acre-feet in Upper Blue Reservoir in the West Slope Account. Colorado Springs' obligation to deliver the 300 acre-feet in Substitution Years shall be limited to water legally and physically available from the sources listed in subparagraphs 6.3.1 and 6.3.2.

6.4. In the event that more than 300 acre-feet was delivered to Lower Blue Reservoir prior to the determination that a given year is a Substitution Year, then Colorado Springs is entitled to regain and use the difference between the actual delivery to Lower Blue Reservoir that year and 300 acre-feet. For example, if Colorado Springs had delivered 475 acre-feet to Lower Blue Reservoir prior to declaration of a Substitution Year, Colorado Springs would be entitled to use 175 acre-feet ($475 - 300 = 175$) stored in Lower Blue Reservoir for Substitution purposes or delivery through the Hoosier Tunnel to Montgomery Reservoir.

6.5. Colorado Springs will not operate exchanges with priorities junior to 1948 on Monte Cristo Creek if the effect of such exchanges is to deprive Lower Blue Reservoir of the amounts of water Colorado Springs has agreed to provide for storage in that Reservoir by exercise of its 1948 Blue River Water Right as described in paragraphs 6.1, 6.2, and 6.3 above.

6.6. Colorado Springs shall continue to pay power interference charges on the amount of Lower Blue Reservoir Water Right stored annually in Lower Blue Reservoir and in an enlarged Montgomery Reservoir in accordance with its power interference agreement with the United States. Colorado Springs is entitled to seek credit from the United States against power interference charges for any unconsumed portion of this water that returns to the Blue River. The Town of Breckenridge and Summit County will provide sufficient information concerning their diversions to allow Colorado Springs to quantify the unconsumed water reaching the Blue River.

6.7. The Lower Blue Parties may exchange their respective Clinton Gulch Reservoir, Dillon Reservoir, and/or Old Dillon Reservoir water to storage in the Lower Blue Reservoir. Colorado Springs is not required to provide replacement or substitution water for such water stored in the Lower Blue Reservoir.

6.8. The Town of Breckenridge and Summit County may file one or more applications to adjudicate such exchanges. Colorado Springs may file a statement of

opposition to such applications. Its participation therein shall be limited to ensuring they do not impair the exercise of Colorado Springs' diversion and storage of its 1929 or 1948 Blue River Water Rights or impair its appropriative right of exchange decreed in Case No. 03CW314.

6.9. Nothing in this Agreement shall preclude the storage by exchange in Lower Blue Reservoir by the Lower Blue Parties of additional water that may be available under their exchange priorities.

7. Confirmation of type and place of use of Lower Blue Reservoir Water Right.

7.1. Colorado Springs, with the support of the Lower Blue Parties, will be responsible for filing and prosecuting a separate change of water rights application to obtain:

7.1.1. A change of up to 600 acre-feet of the Lower Blue Reservoir Water Right to be diverted annually at the Monte Cristo Creek diversion (located between the outlet of Lower Blue Reservoir and the Combination Flume on Monte Cristo Creek) and to be held in an enlarged Montgomery Reservoir for the purposes of effectuating an appropriative right of substitution/exchange to facilitate making water available as specified in paragraph 6.3 above. To provide water to the Lower Blue Parties by exchange, Colorado Springs will release water diverted in priority under its 1948 Blue River Water Rights at the Combination Flume on Monte Cristo Creek, or one or more other points of diversion of the 1948 Blue River Water Rights located upstream of Goose Pasture Tarn as determined by Colorado Springs, back to the Blue River, or provide water to the Lower Blue Parties by book-over of Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir.

7.1.2. A change of up to 600 acre-feet of the Lower Blue Reservoir Water Right to an alternate place of storage in Lower Blue Reservoir or an Acceptable Alternative;

7.1.3. A change of the 1,006 acre-feet Lower Blue Reservoir Water Right to add places of use and types of use identified by Summit County and the Town of Breckenridge; and

7.1.4. Confirmation by the District Court for Water Division No. 5 that the Lower Blue Parties' use on the west slope of the Lower Blue Reservoir Water Right conveyed by Colorado Springs is a lawful beneficial use that is not contrary to the terms of the Blue River Decree Stipulations and Blue River Decree.

7.1.5. The West Slope Parties may file statements of opposition to this change of water rights application and participate therein. Their participation shall be limited to ensuring the application and the decree entered thereon are consistent

with this Settlement Agreement. The West Slope Parties shall bear their own costs and fees for participation in that proceeding.

7.1.6. Colorado Springs will have no obligation to provide water from the Lower Blue Reservoir Water Right to the Lower Blue Parties under the change of water rights decree until the Substantial Completion of the enlargement of Montgomery Reservoir or the Substantial Completion of a permitted alternative project as described in footnote 2 of this Agreement.

7.2. Colorado Springs and the Lower Blue Parties will be jointly responsible for securing all administrative approvals needed for the Lower Blue Parties' use of the Lower Blue Reservoir Water Right.

7.3. Colorado Springs' application filed pursuant to paragraph 7.1 above will seek a determination that the use of the Lower Blue Reservoir Water Right in the Colorado River Basin by the Lower Blue Parties is not subject to the following requirements of the Blue River Decree applicable to Colorado Springs' 1948 Blue River Water Rights:

7.3.1. Submit to the Secretary of the Interior, on or before December 31 of each calendar year, beginning with the year water is first stored in Lower Blue Reservoir, a report showing by months for the water year ended September 30th last past, the quantities of water diverted from the Blue River System.

7.3.2. The quantities of return flow (unconsumed water) resulting from the use of such water.

7.3.3. Such report will also show what steps, by legal action or otherwise, the reporting entities have taken to utilize such return flow by exchange or otherwise reduce or minimize the demand of such entities on Blue River water.

7.3.4. Exercise due diligence in taking, with respect to their return flow of water, all steps that, in view of legal limitations and economic feasibility, might reasonably be required of such entity in establishing, enforcing, utilizing, and operating a plan designed to minimize or reduce the demands on Blue River water.

7.4. The Town of Breckenridge and Summit County shall have the first right, without limitation, to use, reuse, successively use, dispose of, consume, allocate, assign, dedicate, take credit for, and claim for mitigation purposes all water stored in and released from Lower Blue Reservoir under the Lower Blue Reservoir Water Right and all return flows therefrom. After the exercise of such rights by the Town of Breckenridge and Summit County, and to the extent not inconsistent with the environmental mitigation or enhancement use of such water by the Town of Breckenridge and Summit County, Colorado Springs may seek to use any remaining

water as part of any required environmental mitigation or enhancement in any permitting process for the construction of an enlarged Montgomery Reservoir. None of the West Slope Parties warrant or guarantee that any agency or governmental subdivision including, without limitation, Summit County, will recognize or agree to Colorado Springs' request. Colorado Springs shall be entitled to claim as an off-set against its power interference charges any unconsumed return flow.

7.5. Nothing in this Agreement grants to the Lower Blue Parties any interest in or right to storage space in Upper Blue Reservoir (subject to the operations described in subparagraphs 4.16 and 4.17) or Montgomery Reservoir, nor does it grant an interest or right to any water stored therein. Colorado Springs will provide Lower Blue Reservoir water to the Lower Blue Parties by release, by-pass, exchange, or substitution in conformity with the terms of this Agreement.

8. Colorado Springs and Summit County Diligence Cases.

8.1. Colorado Springs' diligence applications in Cases No. 15CW3019 and 18CW3041.

8.1.1. In Case No. 15CW3019, the Parties will enter into a stipulated settlement consenting to a decree confirming diligence on the development of the conditional rights for Lower Blue Reservoir, Spruce Lake Reservoir, and Mayflower Lake Reservoir as part of an overall settlement agreement. The stipulated proposed decree will be substantially in the form of Exhibit 2 and will specifically determine that Colorado Springs' failure to obtain diligence decrees for said water rights from the U.S. District Court in Consolidated Cases No. 2782, 5016 and 5017 did not and does not deprive the Colorado water court of jurisdiction to enter diligence decrees.

8.1.2. In Case No. 18CW3041, Colorado Springs and Summit County will enter into a stipulated settlement consenting to a decree confirming diligence on the development of the conditional rights for the Colorado Springs 2003 Homestake-Blue River Exchange, substantially in the form attached hereto as Exhibit 3.

8.2. In Summit County diligence Case No. 16CW3015, Colorado Springs and Summit County will enter into a stipulated settlement consenting to a decree confirming diligence on the development of the conditional rights for Swan River Reservoir and Lower Mohawk Reservoir, substantially in the form attached hereto as Exhibit 4.

8.3. So long as this Agreement remains in effect, the Parties agree not to oppose diligence applications filed by any other Party with respect to their existing conditional water rights, including exchanges, in or through the Blue River Basin. A Party may file a statement of opposition in such proceedings and participate to the extent necessary

to ensure any decree does not contain terms or conditions, other than a finding of reasonable diligence, that may impair the Party's water rights.

8.4. Colorado Springs agrees not to oppose entry of a decree for (1) any applications by the West Slope Parties for exchanges, changes of water rights, substitute supply plans, and plans for augmentation or amendments thereto that are related to the portion of the Lower Blue Reservoir Water Right conveyed to the Lower Blue Parties under this Agreement or storage of water in Lower Blue Reservoir or an Acceptable Alternative under this Agreement, and (2) any other water court or substitute supply plan applications utilizing the Lower Blue Reservoir Water Right conveyed to the Lower Blue Parties, whether held in Lower Blue Reservoir or provided by substitution, exchange, or book-over from an enlarged Montgomery Reservoir, provided that the proposed decrees do not impair the exercise of Colorado Springs' diversion and storage under its 1929 and 1948 Blue River Water Rights or impair its appropriative right of exchange decreed in Case No. 03CW314. Colorado Springs may file a statement of opposition in such proceedings and participate to the extent necessary to ensure the decree does not contain terms or conditions that may impair the exercise of Colorado Springs' diversion and storage under its 1929 and 1948 Blue River Water Rights or impair its appropriative right of exchange decreed in Case No. 03CW314.

8.5. Long term disposition of conditional water rights and related interest in land:

8.5.1. Summit County agrees to abandon its conditional water rights for Lower Mohawk Reservoir upon Substantial Completion of Lower Blue Reservoir. If the Lower Blue Parties are denied the necessary permits for the construction of Lower Blue Reservoir or an Acceptable Alternative, then Summit County agrees to abandon its conditional water rights for Lower Mohawk Reservoir upon commencement of deliveries of water by Colorado Springs under the applicable provisions of paragraphs 4.16 -4.18 above.

8.5.2. Upon Substantial Completion of Montgomery Reservoir Enlargement, Colorado Springs will:

8.5.2.1. Abandon its conditional storage rights for Spruce Lake Reservoir, Mayflower Lake Reservoir, and will exercise the Lower Blue Reservoir Water Right in the maximum amounts allowed in paragraphs 6 and 7 above. If the Lower Blue Parties are denied the necessary permits for the construction of Lower Blue Reservoir or an Acceptable Alternative, Colorado Springs will exercise the Lower Blue Reservoir Water Right in accordance with the applicable provisions of paragraphs 4.16 -4.18 above.

8.5.2.2. Upon abandonment of its conditional water rights for Spruce Lake and Mayflower Lake Reservoirs, Colorado Springs will convey the land it owns at those reservoir sites to Summit County. All such lands shall be conveyed by quit claim deed with title insurance, free and clear of all liens and encumbrances in accordance with a procedure to be contained in the Construction Agreement.

8.5.2.3. Withdraw its requests for exclusion of lands from around Spruce Lake Reservoir and Mayflower Lake Reservoir in the proposed Ten Mile Wilderness Area.

9. Future Operations under the Substitution Agreement

9.1. Within 15 days of the execution of this Agreement by all Parties, Colorado Springs and the CRWCD will file a request with the Water Court for Water Division No. 5, seeking confirmation that they are no longer required to seek approval of the Decree in Case No. 03CW320 from the U.S. District Court in the Consolidated Cases, and the Decree in Case No. 03CW320 remains in full force and effect without such approval. The form of request is attached hereto as Exhibit 5.

9.2. This paragraph 9.2 goes into effect upon the Substantial Completion of Montgomery Reservoir if all necessary permits or authorizations required for the enlargement of Montgomery Reservoir by federal, state, or local governments have been issued by December 31, 2027. If, after the issuance by Summit County of all necessary permits, including a 1041 Permit for the enlargement of Montgomery Reservoir, and if any other necessary permits or authorizations required for the enlargement of Montgomery Reservoir by federal, state, or local governments (other than Summit County) have not been issued by December 31, 2027, then this paragraph 9.2 goes into effect upon the earlier of the commencement of storage in Upper Blue Reservoir in the spring of 2030, or upon the Substantial Completion of the enlargement of Montgomery Reservoir.

9.2.1. Colorado Springs will permanently forebear the exercise of 1,050³ acre-feet of its rights under paragraphs 3 and 4 of the Substitution Agreement and the Plan of Substitution Decree for storage in and release of water from the Colorado Springs Substitution Account in Wolford Mountain Reservoir.

³ The CRWCD will continue to provide up to 700 acre-feet for the Colorado Springs Substitution Account in Wolford Mountain Reservoir pursuant to the terms of the Substitution Agreement.

9.2.2. Colorado Springs further agrees that the CRWCD can use the 1,050 acre-feet previously dedicated to the Colorado Springs Substitution Account storage for any lawful purpose.

9.2.3. The Parties agree that they will forebear the storage of all but 100 acre-feet of Wolford Mountain Reservoir water in the West Slope Account in Upper Blue Reservoir under the Substitution Agreement, which water will be released in accordance with the terms of the Substitution Agreement as needed by the entities entitled to the use thereof. The actual use of such 100 acre-feet of West Slope Account water pursuant to the Substitution Agreement shall have operational priority over other water in Upper Blue Reservoir that is to be provided to the Lower Blue Parties pursuant to either paragraphs 4.14.2, 4.14.3, 4.16, 4.17, 4.18, or 6.3.

9.2.4. The CRWCD, Summit County, and the Town of Breckenridge mutually release each other from any obligations with respect to water stored in the West Slope Account in Upper Blue Reservoir.

9.2.5. The Parties agree that the future exercise of the annual reservoir book-over (water trade) from Wolford Mountain Reservoir to Upper Blue Reservoir under the Substitution Agreement and described in the Plan of Substitution Decree, will be limited to 100 acre-feet pursuant to Colorado Springs' forbearance described in paragraph 9.2.1.

9.2.6. The Parties agree that 150 acre-feet of the water available to Upper Blue Reservoir that was part of the West Slope Account in Upper Blue Reservoir will be bypassed and delivered to the Lower Blue Parties in Lower Blue Reservoir in every substitution year. Colorado Springs will forebear the exercise of its rights under paragraphs 3 and 4 of the Substitution Agreement and the Plan of Substitution Decree for (a) storage in and release of water from the Colorado Springs Substitution Account in Wolford Mountain Reservoir with respect to this water, and (b) the annual reservoir book-over (water trade) from Wolford Mountain Reservoir to Upper Blue Reservoir with respect to this water.

9.2.7. Replacement Water releases by Colorado Springs from Upper Blue Reservoir for purpose of meeting the "CSU Replacement Obligation" pursuant to the Substitution Agreement and the Plan of Substitution Decree must be passed through the Lower Blue Reservoir by the Lower Blue Parties at the same time and rate as the release from Upper Blue Reservoir.

10. Shoshone Outage Protocol (ShOP), and Shoshone Permanence.

10.1. The Shoshone Power Plant is a hydroelectricity plant with generation facilities located adjacent to the mainstem of the Colorado River downstream from its

confluence with Shoshone Creek and west of Exit 125 of Interstate Highway 70 (“SPP”). The SPP is currently owned and operated by Public Service Company of Colorado, d/b/a Xcel Energy (“PSCo”). The SPP Water Rights are diverted at the SPP. Several entities⁴ entered into an Agreement dated June 27, 2016, referred to as the Shoshone Outage Protocol (US Bu Rec Agreement No. 13XX6Co129) (“USBR ShOP Agreement”). Included within the USBR ShOP Agreement are provisions addressing when certain parties thereto would not divert under their water rights per the operating procedures.

10.2. Colorado Springs is the owner of one-half of the Homestake System which system includes, *inter alia*, the Homestake water rights first decreed in Eagle County District Court Case No. CA-1193 with appropriation dates of 1952. The Parties acknowledge that as co-owner of the Homestake System, Colorado Springs cannot bind, and is not binding, the other co-owner of the Homestake System, the City of Aurora (“Aurora”), to any of the provisions of this Agreement. Colorado Springs agrees that its portion of the Homestake water rights is subject to the terms of this Agreement. The Parties acknowledge this Agreement does not change, modify, revise, amend, replace, displace, or supersede any currently existing contract or agreement between the Colorado Springs and Aurora concerning the Homestake System (“Homestake Agreements”). Further, Colorado Springs acknowledges that on July 31, 2018 Aurora entered into an agreement with various parties (the “Busk Ivanhoe Agreement”) that separately binds Aurora to operate its portion of the Homestake System in accordance with the ShOP provisions contained in the Busk Ivanhoe Agreement.

10.3. Colorado Springs is the sole owner of the 1929 and 1948 Blue River Water Rights for its Continental-Hoosier System. The 1948 Blue River Water Rights were made absolute in part by the Decree in Consolidated Case Nos. 2782, 5016 and 5017 (U.S. District Court, District of Colorado) dated February 26, 1968. Colorado Springs agrees that its 1929 Blue River Water Rights and 1948 Blue River Water Rights are subject to the terms of this Agreement.

10.4. Term of Colorado Springs’ ShOP Agreement. The initial term of Colorado Springs’ agreement regarding its one-half of the Homestake water rights and its

⁴ US Bureau of Reclamation, Colorado Division of Water Resources, Denver Water Board, CRWCD, Middle Park Water Conservancy District, Northern Colorado Water Conservancy District & its Municipal Subdistrict, Grand Valley Water Users Association, Orchard Mesa Irrigation District and the Grand Valley Irrigation Company.

Continental-Hoosier System water rights in accordance with the ShOP herein will be for a period of 35 years commencing upon execution of this Agreement by all Parties.

10.5. Colorado Springs ShOP Agreement. Colorado Springs agrees to the following ShOP (the “Colorado Springs ShOP”):

10.5.1. The water rights owned by Colorado Springs that are subject to the Colorado Springs ShOP are its interest in the Homestake Project⁵ water rights and its 1929 and 1948 Blue River Water Rights, and any water rights it acquires or appropriates hereafter that divert from the Colorado River and its tributaries upstream of the SPP that are junior to and legally and physically subject to call by the senior SPP Water Right (collectively Colorado Springs ShOP Water Rights).

10.5.2. If the SPP is not operating because of repairs, maintenance or other reasons and the flow at the Dotsero Gauge is less than or equal to 1,250 c.f.s. (not including Shepherded Streamflow Reservoir Releases as defined in the USBR ShOP Agreement), then Colorado Springs agrees to operate the Colorado Springs ShOP Water Rights as if the Senior Hydropower Right was calling for a streamflow of 1,250 c.f.s. to be measured at the Dotsero Gauge. Colorado Springs’ operations under this paragraph 10.5.2 are referred to herein as “Colorado Springs ShOP Operations”.

10.5.3. During Colorado Springs ShOP Operations, Colorado Springs agrees that, with respect to its interest in the Homestake Project, the West Slope Parties to the 2010 Consolidated Water Exchange Agreement between Colorado Springs, CRWCD and others (the “2010 Consolidated Exchange Agreement”) may operate exchanges into the 4,000 acre-foot portion of west slope credit available pursuant to the 2010 Consolidated Exchange Agreement at Homestake Reservoir. If the 4,000 acre-foot west slope credit available pursuant to the 2010 Consolidated Exchange Agreement at Homestake Reservoir is full or if the West Slope Parties to that agreement do not operate under that exchange, then Colorado Springs will operate its interest in the Homestake Project water rights and its 1929 and 1948 Blue River Water Rights as if the Senior Hydropower Right was calling for a flow of 1,250 c.f.s. to be measured at the Dotsero Gauge.

10.5.4. During Colorado Springs ShOP Operations, Colorado Springs may operate exchanges into the Continental-Hoosier System facilities, so long as the sources of replacement water are delivered to the Colorado River or its tributaries

⁵ The Homestake Project is a transmountain diversion project located in the headwaters of the Eagle River basin and owned by Colorado Springs and the City of Aurora

above the Dotsero Gauge and the exchanges do not reduce flow at the Dotsero Gauge to less than 1,250 c.f.s. To the extent that the West Slope Parties to the 2010 Consolidated Homestake Exchange Agreement are not utilizing exchange capacity into Homestake Reservoir in accordance with paragraph 10.5.3 above, Colorado Springs may operate exchanges into the Homestake Reservoir so long as the sources of replacement water are delivered to the Colorado River or its tributaries above the Dotsero Gauge and the exchanges do not reduce flow at the Dotsero Gauge to less than 1,250 c.f.s.

10.5.5. Voluntary Lease During Colorado Springs ShOP Operations. If the 4,000 acre-foot west slope credit available pursuant to the 2010 Consolidated Exchange Agreement at Homestake Reservoir is full or the exchanges by West Slope Parties contemplated by that Agreement are not being exercised during Colorado Springs ShOP Operations, then Colorado Springs may choose to lease from the CRWCD, on a one-year spot-market basis (i.e., if available), up to 500 acre-feet from the CRWCD's Wolford Mountain Reservoir water marketing pool for replacement purposes by Colorado Springs for diversions by portion of the Homestake System. During Colorado Springs ShOP Operations, Colorado Springs may request an additional 500 acre-feet and the CRWCD may choose to lease 500 acre-feet to Colorado Springs for replacement purposes by Colorado Springs for diversions at its Continental-Hoosier System. The CRWCD agrees that, due to the unique nature of this Agreement and the mutual compromises included herein, the rate of any such lease shall not be greater than two times the CRWCD's then-current spot-market lease rate for in-basin municipal use. The form of such lease will be generally consistent with the CRWCD's then-current standard form contract, the current version of which is attached for example purposes only as Exhibit 6. The Parties agree not to oppose Colorado Springs' efforts to use water leased pursuant to this paragraph by exchange or substitute supply for replacement purposes in accordance with the priority system but may participate in any judicial or administrative proceeding regarding such exchanges to ensure compliance with the terms of this Agreement.

10.5.6. Drought Exception to Colorado Springs ShOP. If the following two conditions exist ("Drought Triggers") as of April 1, and for the duration of the time period that both Drought Triggers exist, Colorado Springs will not be required to follow the Colorado Springs ShOP: 1) the 50% Forecast Exceedance Probability of streamflow prepared by the Natural Resources Conservation Service (or such other forecast as the CRWCD and Colorado Springs agree to use) indicates the April through July streamflow at the Colorado River near Dotsero Gauge will be less than or equal to eighty-five percent (85%) of average; and 2) the City of Colorado Springs' municipal potable water customers are subject to watering restrictions

that limit outdoor use of potable water for landscape irrigation to two days per week, or less (Stages II, III and IV in the current Colorado Springs Water Shortage Ordinance). Colorado Springs agrees to negotiate a mutually acceptable uniform drought exception applicable to all ShOP participants that when agreed upon will replace the provisions of this paragraph.

10.5.7. “Paper-fill” Accounting during Colorado Springs ShOP Operation.

The Parties acknowledge that the Colorado State Engineer currently has an administrative practice known as “Paper-fill” accounting for water storage rights. Generally, under this administrative practice, if a water storage right is in-priority and can legally and physically store water, but the operator(s) thereof choose not to store water, then the State Engineer or his/her designee account for the exercise of the water storage right as though the available water was physically placed into storage for purposes of determining the total lawful storage in that Water Year. The Parties acknowledge that pursuant to the Colorado State Engineer’s current administrative practice during ShOP Agreement operations, bypasses and the resulting “Paper-fill” made in the current Water Year are only accounted for under that Water Year’s storage volume and are not carried forward and accounted for against the lawful storage volume in the next Water Year. If future administrative actions by the Colorado State Engineer require that “Paper-fill” of water storage rights resulting from bypasses under the Colorado Springs ShOP made in the then-current Water Year are carried forward and accounted against either the Homestake Reservoir water storage right decree or the Upper and Lower Blue Reservoir water storage rights decrees under both the current Water Year and the next Water Year’s lawful storage volume, then the Colorado Springs ShOP Operation will not be required for the remainder of the then-current Water Year and the subsequent Water Year to the extent of such “Paper-Fill.” Colorado Springs may choose to lease from any west slope supplier or the CRWCD’s Wolford Mountain Reservoir water marketing pool, on a one-year spot-market basis (i.e., if available), up to the amount of any Paper-fill for the then current Water Year for exchange or substitute supply for replacement purposes by Colorado Springs so that Colorado Springs may divert and store water at its facilities and so that water will be released from Wolford Mountain Reservoir or other sources as a component of maintaining flows of 1,250 c.f.s. as measured at the Dotsero Gauge. The CRWCD agrees that, due to the unique nature of this Agreement and the mutual compromises included herein, the rate of any such lease shall not be greater than two times the CRWCD’s then-current spot-market lease rate for in-basin municipal use. The form of such lease will be generally consistent with the CRWCD’s then-current standard form contract, the current version of which is attached for example purposes only as Exhibit 6. The Parties agree not to oppose Colorado

Springs' efforts to use water leased pursuant to this paragraph by exchange or substitute supply for replacement purposes in accordance with the priority system.

10.5.8. If the Colorado State Engineer or Division Engineer is requiring carry forward of "Paper-fill" storage from one Water Year to the next Water Year as described above, the Parties will apply good faith efforts to find a mutually acceptable permanent solution to ending this administrative practice.

10.5.9. Colorado Springs agrees that it will not divert or exchange any of the water released or bypassed by any party pursuant to the 2016 USBR ShOP Agreement or the ShOP provisions of the Busk Ivanhoe Agreement, as the same exist on the date of this Agreement, or otherwise operate its system or water rights in a manner that will diminish the stream flows that result from implementation of the 2016 USBR ShOP Agreement and the ShOP provisions of the Busk Ivanhoe Agreement up to 1,250 c.f.s. at the Dotsero Gauge.

10.5.10. Colorado Springs will give its consent to and agree to be bound by (1) future amendments to, or extensions of the 2016 USBR ShOP Agreement or the ShOP provisions of the Busk Ivanhoe Agreement; and (2) any future ShOP agreements with other parties or other parties' agreements to bypass water, provided that such agreements do not impose any greater curtailment on Colorado Springs' water rights than the limitations imposed on Colorado Springs' water rights by the Colorado Springs ShOP provisions of paragraphs 10.5.1 to 10.5.9 of this Agreement. Such consent must be in writing signed by Colorado Springs and by the CRWCD.

10.6. Shoshone Permanency. The West Slope Parties seek to achieve permanent protection of the stream flow conditions that result from the exercise of the SPP Water Rights when the SPP is in operation, regardless of whether the SPP continues to operate in the future ("Shoshone Permanency"). Colorado Springs agrees to not oppose Shoshone Permanency as follows:

10.6.1. Colorado Springs will not oppose a sale or other form of transfer of interest by PSCo of its SPP and/or SPP Water Rights, including any contractual interest therein, to the CRWCD or any other west slope entity or consortium containing west slope entities for the purpose of achieving Shoshone Permanency.

10.6.2. Colorado Springs will not seek to acquire or participate with others in the acquisition of the SPP and/or the SPP Water Rights.

10.6.3. The Parties recognize the existence of that certain 2007 Agreement Concerning Shoshone Call between the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water") and PSCo (the "2007 Call Reduction Agreement"). The 2007 Call Reduction Agreement provides that

under certain defined drought conditions, Denver Water is entitled to pay PSCo to reduce (or “relax”) the call of the SPP Water Rights. The Parties further recognize that Article VI.E.2 of the 2012 Colorado River Cooperative Agreement (“CRCA”) provides that Denver Water, with the support of the west slope signatories, may request PSCo to amend the 2007 Call Reduction Agreement to “relax” the call of the SPP Water Rights to 704 c.f.s., during extreme drought conditions, for an expanded period during the winter months subject to certain terms and conditions described in CRCA Article VI.E.2.a-e (“CRCA Winter Call Reduction”). Colorado Springs agrees that it will not seek or support any additional “relaxation” of the SPP Water Rights, except as expressly provided for in paragraph 10.6.4.1 below.

10.6.4. Colorado Springs will not oppose an agreement between a west slope entity or entities, the Colorado Water Conservation Board (“CWCB”), and any other entity entered into for the purpose of adding instream flow as an additional use of the Senior Hydropower Right (“CWCB Agreement”). In addition, Colorado Springs may become a party to any water court application seeking such instream flows (“ISF Application”) but will not oppose the entry of a final water court decree for the purpose of adding instream flow as an additional use of the Senior Hydropower Right. Colorado Springs’ non-opposition to any such CWCB Agreement and ISF decree shall be contingent on inclusion of the following terms in the CWCB Agreement, ISF Application, and any resulting ISF Decree:

10.6.4.1. In the event of a curtailment of Colorado water rights, or an imminent threat thereof, resulting from the State of Colorado’s obligations under the Colorado River Compact and/or the Upper Colorado River Basin Compact, the Parties will work cooperatively to implement this Agreement consistent with any duly adopted final rules or regulations of the State Engineer adopted for purposes of fulfillment of Colorado’s commitments under either or both compacts, and that are in force, any appeal notwithstanding.

10.6.5. Colorado Springs recognizes that the West Slope Parties, upon acquiring any interest in the SPP Water Rights, may also request that instream flow uses be added as an additional use to the Junior SPP Water Right. Colorado Springs agrees to participate in good faith discussions and negotiations with the West Slope Parties, the CWCB, and any other parties regarding the addition of instream flow uses to the Junior Hydropower Right. Any agreement with the CWCB and any water court decree adding instream flow uses to the Junior Hydropower Right will at a minimum be subject to the terms identified in paragraph 10.6.4.1, above. Additionally, the West Slope Parties agree to diligently meet and negotiate in good faith with Colorado Springs regarding the inclusion of Colorado Springs’ drought exceptions described in paragraph 10.5.6 above, into

any final agreement with the CWCB for any instream uses of the SPP Water Rights in excess of 1,250 c.f.s.

10.6.5.1. After instream flow use has been added as an alternate use of the Senior Hydropower Right, the CRWCD agrees that, during a drought period that meets the drought conditions described in paragraph 10.5.6, above, Colorado Springs may choose to lease from any west slope supplier or the CRWCD's Wolford Mountain Reservoir water marketing pool, on a one-year spot-market basis (i.e., if available), up to the amount of any shortage in fill for the then current storage season for replacement purposes by Colorado Springs. The CRWCD agrees that, due to the unique nature of this Agreement and the mutual compromises included herein, the rate of any such lease shall not be greater than two times the CRWCD's then-current spot-market lease rate for in-basin municipal use. The form of such lease will be generally consistent with the CRWCD's then-current standard form contract, the current version of which is attached for example purposes only as Exhibit 6. The Parties agree not to oppose Colorado Springs' efforts to use water leased pursuant to this paragraph by exchange for replacement purposes in accordance with the priority system. The lack of water available for lease by the CRWCD to Colorado Springs on a spot-market basis pursuant to this paragraph shall not excuse operation of Colorado Springs' water rights in accordance with the priority system as junior to, and subject to, the call of the SPP Water Right being exercised for instream flow purposes.

10.6.6. If the West Slope Parties provide written notice to Colorado Springs that they do not intend to acquire an interest in the SPP Water Rights and do not intend to pursue a change of use of the SPP Water Rights for instream flow purposes as contemplated in paragraph 10.6 (inclusive of subparagraphs) of this Agreement, then Colorado Springs will agree to enter an amended ShOP Agreement with the same terms and conditions provided in paragraph 10.5 (inclusive of subparagraphs) of this Agreement, except as follows:

10.6.6.1. The term of an amended ShOP Agreement will be perpetual.

10.6.6.2. In the event of a curtailment of Colorado water rights, or imminent threat thereof, resulting from the State of Colorado's obligations under the Colorado River Compact and/or the Upper Colorado River Basin Compact, the Parties agree that implementation of an Amended Perpetual ShOP Agreement must be consistent with any duly adopted final rules or regulations of the State Engineer that are in force, any appeal notwithstanding.

10.7. Other Provisions.

10.7.1. Colorado Springs, the CRWCD, and Summit County are among the numerous entities that comprise the Upper Colorado River Wild and Scenic Alternative Management Plan Stakeholder Group (“UPCO SG”). The Parties agree to support the recognition of the ShOP and Shoshone Permanency provisions of this Agreement as a cooperative measure and/or long-term protective measure submitted by the Parties that are members of the UPCO SG for the benefit of river Segment 7 (immediately downstream of the confluence of the Eagle and Colorado Rivers to one-half mile east of No Name Creek).

10.7.2. The Parties will not seek, as a condition of any Eagle River MOU⁶ permitting process or any permitting process for the development of storage for the Continental-Hoosier System, minimum base flows in the Colorado River at the current location of the Dotsero Gauge in excess of the SPP Water Rights.

10.7.3. This Agreement does not modify or amend any provisions of the Eagle River MOU as among the parties thereto.

11. Non-opposition to re-purposing the use of water previously diverted by the Bunte-Highline Ditch.

The Parties agree not to assert injury or adverse impact to water rights for which replacement water or other offset is necessary that may be attributable to the Colorado-Big Thompson Project’s diversion or storage of water previously diverted by the Bunte-Highline Ditch, provided such water is subsequently released or bypassed from the Colorado-Big Thompson Project for non-consumptive purposes in Water Division 5 upstream of the Dotsero Gauge (any consumptive use would occur downstream of the Dotsero Gauge).

12. Colorado Springs’ amount, timing, and location of use of Blue River water

12.1. For purposes of application of the terms of the Blue River Decree to Colorado Springs’ place of use of its 1948 Blue River Water Rights, and because the Continental-Hoosier System is supply limited and insufficient to meet more than a small percentage of the water supply need within Colorado Springs’ current municipal boundaries, and further in consideration of the terms of this Agreement, the Parties agree that, for purposes of Colorado Springs’ compliance with the terms of the Blue

⁶ The 1998 Memorandum of Understanding among Colorado Springs, the City of Aurora, the Colorado River Water Conservation District, Cypress Climax Metals Company, and the Vail Consortium consisting of the Eagle River Water and Sanitation District, the Upper Eagle Regional Water Authority and Vail Associates, Inc., and any amendments thereto.

River Decree, “the metropolitan area that is reasonably integrated with the development of Colorado Springs” referred to in subparagraph 4.g. on page 34 of the 1955 Decree in the Consolidated Cases includes the Colorado Springs’ municipal boundary as it may exist from time to time, and such other service areas as may now or hereafter be interconnected with and integrated into the City’s municipal treated water and non-potable water systems.

12.2. Diversions of water (regardless of decreed source) through the Hoosier Tunnel in any calendar year will not exceed the lesser of 21,000 acre-feet or 10% of the natural flow of the Blue River near Dillon below the confluence with the Snake River and Ten Mile Creek. The computation of the 10% limitation of the natural flow of the Blue River includes water provided by Colorado Springs to the CRWCD and the Lower Blue Parties under Colorado Springs’ 1948 Blue River rights pursuant to the terms of the Substitution Agreement or this Agreement. However, except as provided above for the calculation of the 10% limit, the calculation of the maximum annual volumetric limit does not include the amount of water delivered to the Lower Blue Parties at the combined flume on Monte Cristo Creek by means of substitution or exchange, or by book-over, of water previously diverted and stored by Colorado Springs in Montgomery Reservoir in accordance with paragraph 7.1.1 of this Agreement.

12.3. No more than 195,000 acre-feet of water may be delivered through the Hoosier Tunnel (regardless of decreed source) in any continuous running fifteen-year period (an average of 13,000 acre-feet per calendar year). The calculation of this continuous fifteen-year limitation does not include the amount of water delivered to the Lower Blue Parties at the combined flume on Monte Cristo Creek by means of substitution or exchange of water previously diverted and stored by Colorado Springs in Montgomery Reservoir in accordance with paragraph 7.1.1 of this Agreement.

12.4. The West Slope Parties will not assert, now or at any time in the future, that it is unlawful for Colorado Springs to deliver or serve water yielded under its 1929 or 1948 Blue River Water Rights to the areas described in paragraph 12.1 above, or seek to place any additional limitations, beyond those addressed in this Agreement, on the location of east slope storage, use, or volume of diversions under those water rights that are used in the City’s municipal treated water and non-potable water systems.

13. Schedule /tiering

13.1. Upon execution of this Agreement and receipt of the approvals required in paragraphs 15.25 through 15.27:

13.1.1. The Parties will enter into stipulations in Colorado Springs’ and Summit County’s diligence cases in accordance with paragraphs 8.1 and 8.2 above;

13.1.2. Colorado Springs will file the application for change of water rights described in paragraphs 7.1 and 7.3 above substantially in the form of Exhibit 7 attached hereto;

13.1.3. The volumetric limits on Colorado Springs' diversion through the Hoosier Tunnel in paragraphs 12.2 and 12.3 go into effect;

13.1.4. The West Slope Parties' agreements described in paragraphs 3.1, 12.1 and 12.4 related to the place of storage and place of use of Colorado Springs' 1948 Blue River Water Rights for purposes of application of the terms of the Blue River Decree goes into effect;

13.1.5. Colorado Springs' agreement described in paragraph 10 for participation in ShOP goes into effect;

13.1.6. Colorado Springs' obligation in paragraph 10.6 related to non-opposition to west slope Shoshone Permanency including, but not limited to, acquisition of SPP and or SPP Water Rights ("Shoshone assets"), contractual arrangement with owner of Shoshone assets, change of the SPP Water Rights to include CWCB instream flow water rights when the SPP Water Rights are not being used for hydro-power generation goes into effect;

13.1.7. Colorado Springs' and the Lower Blue Parties' obligation described in paragraph 11 related to its non-opposition to the repurposing of Bunte-Highline Ditch water goes into effect; and

13.1.8. The West Slope Parties' agreement not to oppose, and not take any action, or encourage any Adverse Action that would impair or impede, any Federal, state, or local permitting for Colorado Springs' enlargement of Montgomery Reservoir described in paragraph 3.3 goes into effect.

13.2. Upon the occurrence of all of the following: (a) Colorado Springs' acceptance of a Summit County 1041 permit for Montgomery Reservoir enlargement or permitted alternative, (b) issuance of permits and authorizations for Lower Blue Reservoir or an Acceptable Alternative, or upon receipt of a final determination by one or more permitting authorities that a required permit cannot be issued for the construction of the proposed Lower Blue Reservoir or an Acceptable Alternative, and after resolution of any appeals, (c) issuance of all final permits and authorizations, and after resolution of any appeals, needed for construction of an enlarged Montgomery Reservoir or permitted alternative, and (d) required confirmation that Colorado Springs' Lower Blue River Reservoir Water Right may be used on the west slope in accordance with paragraph 7.1.4:

13.2.1. Colorado Springs' obligation to maintain a flow of 5 c.f.s. immediately upstream of the inlet to Goose Pasture Tarn described in paragraph 3.5 goes into effect.

13.2.2. Colorado Springs' obligation to convey the land for Lower Blue Reservoir to the Lower Blue Parties described in paragraphs 4.1.2 goes into effect.

13.2.3. Colorado Springs' obligation to convey a portion of the Lower Blue Reservoir Water Right to the Lower Blue Parties described in paragraphs 4.1.2 and 4.1.3 or 4.15 goes into effect

13.2.4. Colorado Springs' and the Lower Blue Parties' obligation to share costs for permitting, design, and construction of Lower Blue Reservoir specified in paragraph 4.5 goes into effect.

13.3. Upon Substantial Completion of Lower Blue Reservoir or upon receipt of a final determination by one or more permitting authorities that a required permit cannot be issued for the construction of the proposed Lower Blue Reservoir or an Acceptable Alternative, and after resolution of any appeals, Summit County's obligation to abandon its conditional water right for Lower Mohawk Reservoir described in paragraph 8.5.1 goes into effect.

13.4. Upon Substantial Completion of an Enlarged Montgomery Reservoir, Colorado Springs' following obligations go into effect:

13.4.1. abandonment of its conditional water rights for Mayflower Lake and Spruce Lake Reservoirs described in paragraph 8.5.2.1;

13.4.2. conveyance of the lands owned by Colorado Springs for Spruce Lake Reservoir and Mayflower Lake Reservoir to Summit County described in paragraph 8.5.2.2.; and

13.4.3. withdraw its requests for exclusion of certain lands from around Spruce Lake Reservoir and Mayflower Lake Reservoir in the proposed Ten Mile Wilderness Area described in paragraph 8.5.2.3.

14. Rights of Termination.

14.1. The Parties sharing the cost of construction of the west slope Lower Blue Reservoir may terminate this Agreement if the estimated total cost to permit and construct the facility exceed \$15,000,000 or such greater amount as the Parties may agree, and there is no other less costly and Acceptable Alternative.

14.2. Colorado Springs may terminate this Agreement if the terms and conditions of Summit County's 1041 permit for the enlargement of Montgomery Reservoir are, in Colorado Springs' sole discretion, unacceptable.

14.3. The West Slope Parties may terminate this Agreement if Colorado Springs does not apply for a Summit County 1041 permit for the enlargement of Montgomery Reservoir in accordance with the County's 1041 regulations or does not accept the terms and conditions of a permit issued by Summit County.

14.4. The Town of Breckenridge and/or Summit County may terminate this Agreement if Colorado Springs and the Lower Blue Parties are unable to secure the required judicial and administrative approvals contained in paragraphs 7.1, 7.2, and 7.3 concerning west slope use of Colorado Springs' 1948 Blue River Water Rights for Lower Blue Reservoir.

14.5. If, after the issuance of all permits and authorizations needed for the enlarged Montgomery Reservoir, the Lower Blue Parties are unable to secure all permits and authorizations required for the construction of Lower Blue Reservoir or an Acceptable Alternative, then Colorado Springs shall provide water to the Lower Blue Parties in accordance with paragraphs 4.16, 4.17, and 4.18, as applicable.

14.6. Colorado Springs may terminate this Agreement if it is unable to secure all permits and authorizations required to enlarge Montgomery Reservoir, or it decides not to pursue enlargement of the Reservoir or other less environmentally damaging preferred alternative that provides substantially the same benefits to Colorado Springs.

14.7. If the federal environmental regulatory review of the proposed enlargement of Montgomery Reservoir determines that the LEDPA is a project located in the Colorado River Basin, then Colorado Springs will promptly notify the West Slope Parties of such decision. Within 45 days of notice by Colorado Springs, the Parties will begin meeting to discuss what amendments to this Agreement are needed to allow the Colorado River Basin LEDPA project to replace the enlargement of Montgomery Reservoir under this Agreement. If within 180 days after such notice, or such longer time as the Parties may agree upon in writing, the Parties are unable to agree upon amendments to allow the Colorado River Basin LEDPA to replace the enlargement of Montgomery Reservoir under this Agreement, then any Party may terminate this Agreement.

14.8. Notice of Intent to Terminate. Any Party that intends to exercise its right of termination under the Agreement must give all other Parties 120 days written notice of its termination and a complete statement of the basis for the exercise of its right of termination.

14.9. If this Agreement is terminated, the provisions of paragraphs 13.1.1 through 13.1.7 will survive termination. Further, no Party will be required to reimburse any other Party for any costs, expenses or fees of any kind incurred under this Agreement

prior to termination. Upon termination the Parties will voluntarily dismiss with prejudice any application filed to change the Lower Blue Reservoir Water Right for use by the Lower Blue Parties. If a decree permitting such use has been entered prior to termination, the Parties agree that it will be unenforceable as between them, and that Colorado Springs use of its Blue River water rights are unaffected thereby. The Parties will not oppose an application by Colorado Springs to vacate any such decree.

15. General Provisions

15.1. Notice. All notices required under this Agreement must be provided by U.S. Mail or hand delivery to the U.S. Postal Service address or physical addresses listed below. Written notice is effective immediately when hand delivered at the addresses noted below. If notice is sent by U.S. Mail, notice is effective two days after mailing. Any notice given under this Agreement will be copied to all Parties. If any Party wishes to modify the contact information contained below, notice must be provided to all Parties.

If to Utilities:

- i. Chief Systems Planning and Projects Officer
Courier Service Address:
Colorado Springs Utilities
ATTN: Chief Systems Planning and Projects Officer
121 S. Tejon St., 5th Floor
Colorado Springs, CO 80903

United States Postal Service Address:
Colorado Springs Utilities
ATTN: Chief Systems Planning and Projects Officer
P.O. Box 1103
Colorado Springs, CO 80947-0950
Fax: (719) 668-4158.

- ii. City Attorney's Office - Utilities Division
Courier Service Address:
Colorado Springs Utilities
City Attorney's Office ATTN: Utilities Division
30 S. Nevada Ave.
Colorado Springs, CO 80903

United States Postal Service Address:

Colorado Springs Utilities

City Attorney's Office
ATTN: Utilities Division
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575

If to Colorado River Water Conservation District:

General Manager
Colorado River Water Conservation District
201 Centennial Street, Suite 200
Glenwood Springs, CO 81601

If to Summit County:

Summit County Manager
P.O. Box 68
208 Lincoln Ave., 3rd Floor
Breckenridge, CO 80424

If to the Town of Breckenridge:

James Phelps Director Public Works
1095 Airport Road
PO Box 168
Breckenridge, CO 80424

If to Grand Valley Water Users Association:

General Manager
Grand Valley Water Users Association
1147 24 Rd.
Grand Junction, CO 81505

If to Orchard Mesa Irrigation District:

Manager
Orchard Mesa Irrigation District
668 38 Rd.
Palisade, CO 81526

If to Ute Water Conservancy District:

Courier Service Address:
General Manager
Ute Water Conservancy District
2190 H ¼ Road
Grand Junction, CO 81505

United States Postal Service Address:
General Manager
Ute Water Conservancy District
P.O. Box 460
Grand Junction, CO 81502

With copy by courier service or U.S. Mail to:
Balcomb & Green, P.C.
818 Colorado Ave.
Glenwood Springs, CO 81601

15.2. Each Party hereby warrants and represents that it has the full right and lawful authority to enter into this Agreement and, except as expressly provided herein, to perform its obligations herein.

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

15.4. No Liability for Failure of Supply. The Parties agree that Colorado Springs is not in breach of this Agreement and no liability in tort or contract attaches to Colorado Springs under this Agreement on account of (a) an actual failure to supply water due to inadequate physical water supply for diversion or storage, or (b) any event of force majeure. The Town of Breckenridge and Summit County accept the risk that lack of physical supply in the Blue River may prevent Colorado Springs from being able to deliver water, including delivery by substitution from the enlarged Montgomery Reservoir.

15.5. No Third-party Beneficiaries. The Parties understand and agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any claim to a right of action by any third person. It is the expressed intention of the Parties that any person other than a

signatory receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15.6. No Precedent. The Parties specifically understand and agreed that this Agreement is based on the specific factual and legal circumstances of this contested matter and upon the numerous and interrelated compromises reached by the parties, and therefore shall never be the basis for any (1) argument, claim, defense, or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, laches, or otherwise, or (2) administrative or judicial practice or precedent, by or against any of the Parties hereto in any other matter, case or dispute. This Agreement shall not be evidence in any matter, case, or dispute not involving the rights and obligations of the Parties under this Agreement. All Parties agree that they do not intend for this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any matter involving the rights or obligations of the Parties under this Agreement.

15.7. Preservation of Governmental Powers. Except as specifically provided herein, nothing in this Agreement shall be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action taken thereunder, by any governmental or quasi-municipal entity including, without limitation, the legislative or quasi-judicial power or authority of Summit County, the Town of Breckenridge and the City of Colorado Springs, acting through its enterprise, Colorado Springs Utilities.

15.8. No Property Interest Created. Any rights created by this Agreement are contractual rights. This Agreement does not create and shall not be construed to create or convey any property interest, including any covenant, easement, or servitude, in the real property of any Party. Any real property interest to be conveyed from one Party to one or more other Parties will be conveyed by separate written instrument and that written instrument will control the nature and extent of the property interest so conveyed.

15.9. Appropriation of Funds.

15.9.1. Colorado Springs: Performance of Colorado Springs' obligations under this Agreement is expressly subject to the appropriation of funds by its City Council. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by Colorado Springs contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The funds for the current year's activities related to this Agreement have been fully appropriated by Colorado Springs. Colorado Springs agrees to use good faith efforts to seek the

appropriation of sufficient funds to allow Colorado Springs to fully and timely perform its obligations under this Agreement for each fiscal year that occurs during the term of this Agreement. Colorado Springs acknowledges that its commitments under this Agreement are not contrary to any debt or appropriation limitations of the Colorado Constitution, the Charter of the City of Colorado Springs, statutes or other law. Colorado Springs shall notify the other Parties as soon as reasonably possible in the event of a non-appropriation that impacts Colorado Springs' ability to perform its obligations under this Agreement.

15.9.2. Town of Breckenridge: Performance of the Town of Breckenridge's obligations under this Agreement is expressly subject to appropriation of funds by its Town Council. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the Town of Breckenridge contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The funds for the current year's activities related to this Agreement have been fully appropriated by the Town of Breckenridge. The Town of Breckenridge agrees to use good faith efforts to seek the appropriation of sufficient funds to allow the Town of Breckenridge to fully and timely perform its obligations under this Agreement for each fiscal year that occurs during the term of this Agreement. In the event funds are not appropriated in whole or in part sufficient for performance of all of the Town of Breckenridge's obligations under this Agreement which are to be performed in the next calendar year, or appropriated funds may not be expended due to applicable spending limitations, then all rights and obligations of the Town of Breckenridge under this Agreement will terminate, and the Town of Breckenridge will thereafter have no liability for compensation or damages to the other Parties in excess of the Town of Breckenridge's authorized appropriation for this Agreement or the applicable spending limit, whichever is less. The Town of Breckenridge shall notify the other Parties as soon as reasonably possible in the event of a non-appropriation or in the event a spending limit becomes applicable that impacts the Town of Breckenridge's ability to perform its obligations under this Agreement.

15.9.3. Summit County: Performance of Summit County's obligations under this Agreement is expressly subject to appropriation of funds by its Board of County Commissioners. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by Summit County contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The funds for the current year's activities related to this Agreement have been fully appropriated by Summit County. Summit County agrees to use good faith efforts

to seek the appropriation of sufficient funds to allow Summit County to fully and timely perform its obligations under this Agreement for each fiscal year that occurs during the term of this Agreement. In the event funds are not appropriated in whole or in part sufficient for performance of all of Summit County's obligations under this Agreement which are to be performed in the next calendar year, or appropriated funds may not be expended due to applicable spending limitations, then all rights and obligations of Summit County under this Agreement will terminate, and Summit County will thereafter have no liability for compensation or damages to the other Parties in excess of Summit County's authorized appropriation for this Agreement or the applicable spending limit, whichever is less. Summit County shall notify the other Parties as soon as reasonably possible in the event of a non-appropriation or in the event a spending limit becomes applicable that impacts Summit County's ability to perform its obligations under this Agreement.

15.10. Severability or Reform of Invalid Provisions. Wherever possible each provision of this Agreement shall be interpreted and implemented in such manner as to be effective and valid under applicable law. If any provision or portion of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect unless the remaining provision's effectiveness is explicitly dependent upon the invalid or unenforceable provision. The 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.

15.11. Venue. This Agreement is governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Venue for resolution of any dispute of water matters under this Agreement resulting in litigation shall be the District Court, Colorado, for the appropriate Water Division or federal district court, as appropriate under the Blue River Decree. If venue for a water matter is proper both in Water Division No. 5 and another Water Division, venue shall be in Water Division No. 5 unless the parties to the dispute agree otherwise. Venue for all other matters under this Agreement resulting in litigation shall be the Colorado District Court for the county in which any defendant resides.

15.12. Conflict Resolution. The Parties agree that if a dispute arises between Colorado Springs and a West Slope Party, the affected Parties will confer in good faith and endeavor to resolve the concern. If the affected Parties reach an impasse, they will select a neutral third-party mediator who would seek an acceptable voluntary solution to the conflict. For conflicts that involve a technical or scientific matter, the neutral

third-party mediator may select an independent technical or scientific expert, acceptable to the Parties involved in the mediation, to review and make a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, then the affected Parties may pursue any available legal or administrative recourse.

15.13. Information Sharing. The Parties shall maintain records in accordance with their normal procedures with regard to their respective obligations under this Agreement and shall make such records available to each other upon reasonable request. This obligation to share records does not include records that are subject to the attorney-client privilege, the deliberative process privilege, the attorney work product doctrine, other applicable privilege, limitation on disclosure in the Colorado Open Records Act, or other applicable laws or regulations restricting disclosure of records.

15.14. Governmental Immunity. No term or condition of this Agreement is to be construed or interpreted as a waiver, express or implied, by any Party of any of the applicable immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as applicable now or hereafter amended.

15.15. Entire Agreement. This Agreement and its Exhibits constitute the entire agreement between the Parties with respect to the subject matter and supersede all prior agreements and understandings, written or oral, with respect to the subject matter.

15.16. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by all Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. The Exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

15.17. Waiver. The failure of a Party to insist in one or more cases upon the strict observation of any of the terms of this Agreement is not a waiver or relinquishment in any future case of any of the terms of this Agreement.

15.18. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns. No Party may assign its rights and obligations under this Agreement to another Party without the written consent of the other Parties, which consent shall not be unreasonably withheld,

delayed, or denied. Any request for consent to an assignment shall be given in writing at least 60 days before said assignment would take effect and shall include the identity of the assignee and documentation evidencing that the assignee agrees to be bound by the terms and conditions of this Agreement and has the ability to fulfill the assigning Party's obligations under this Agreement. The other Parties shall have 30 days to either consent or object to the assignment. If a non-assigning Party does not provide notice of an approval within such time period, its consent to the assignment will be presumed to have been denied. Any dispute related to a non-assigning Party's objection shall be resolved in accordance with the provisions of paragraph 15.12 above.

15.19. Time. Time is of the essence in this Agreement.

15.20. Remedies. In the event any Party defaults in the performance of any of its obligations under this Agreement, in addition to any and all other remedies provided in this Agreement or by law or equity, each Party shall have the right specific performance against the defaulting Party. In the event of litigation arising out of or related to this Agreement, each Party shall be responsible for its litigation costs, including expert and attorney's fees.

15.21. Legal Counsel. Each Party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it is not to be construed against any Party on the basis of authorship.

15.22. Signatures – Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. In the event that any signature is delivered by facsimile transmission or PDF, such signature shall create a valid and binding obligation of the Party executing the same (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or PDF signature page were an original itself.

15.23. Force Majeure. No Party to this Agreement will be liable for any delay or failure to perform due solely to conditions or events of force majeure, as that term is defined in this paragraph, provided that: (i) the non-performing Party gives the other Parties prompt written notice describing the particulars of the force majeure event; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform. As used herein, "force majeure" means any delay or failure of performance under this Agreement caused by events beyond a Party's reasonable control and without the fault of the Party including, without limitation: (a) acts of God; (b) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; (c) sabotage; (d)

vandalism beyond that which can be reasonably prevented by the Party; (e) terrorism; (f) war; (g) riots; (h) fire; (i) explosion; (j) insurrection; (k) strike, slow down or labor disruptions; (l) the lawful order of any governmental entity clothed with authority to regulate matters pertaining to water, public utilities, public health, public safety, or pollution control; (m) enemy or hostile governmental action, (n) civil commotion or insurrection; (o) regulatory restrictions on travel, movement, or provisions of services; or (p) any actual or threatened health emergency, epidemic, pandemic, quarantine, or other health risk, including, without limitation, health risks declared or recognized by the Centers for Disease Control, the World Health Organization, or any public health department. To the extent that a Party's performance is postponed or excused by an event of force majeure, the other Party's corresponding obligation to perform is likewise postponed or excused.

15.24. Representations and Warranties of the Parties

15.24.1. Each Party has carefully read this Agreement and knows the contents thereof and has signed the same as its free and voluntary act and after having the opportunity to have the same explained by counsel. Each Party expressly states that it has been advised of its right to consult additional professionals of its choice, including lawyers, engineers, and accountants, regarding any and all known and unknown, foreseen and unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims, and the consequences thereof, of whatever kind and nature, which the Party may have or will incur, whether suspected or unsuspected. Each Party further expressly understands and agrees that the signing of this Agreement shall be forever binding and no rescission, modification, or release of a Party from the terms of this Agreement will be made for any mistake of fact that could have been discovered with the exercise of reasonable diligence prior to the execution of this Agreement, or with the mutual agreement of all Parties.

15.24.2. Each Party understands and agrees that it is solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this Agreement and the monetary consideration provided hereunder. Each Party agrees that no other Party has provided representation or advice as to how this consideration is to be characterized or allocated or as to the tax treatment or its tax reporting or payment obligations for the monetary consideration set out herein.

15.24.3. Each Party further warrants that it fully realizes that it may have sustained unknown and unforeseen losses; fees; costs; or expenses and the consequences thereof which may be at this time, heretofore, and hereafter unknown, unrecognized, unawarded, and not contemplated by the Parties, which

resulted or may or will result from Case Nos. 15CW3019, 16CW3015, and 18CW3048, District Court, Water Division 5, and each Parties' representative who executes this Agreement is legally competent to execute this Agreement. Each Party accepts full responsibility and assumes the risk of any mistake of fact or law as to any damages, losses, or injuries, whether disclosed or undisclosed, known or unknown, sustained as a result of Case Nos. 15CW3019, 16CW3015, and 18CW3048.

15.25. Approval by Colorado Springs City Council. If the City of Colorado Springs City Council fails to adopt an ordinance or a resolution approving this Agreement by March 31, 2024, then this Agreement will be void and of no force and effect and all Parties will have all rights and duties that they had prior to execution of the Agreement.

15.26. Approval by Summit County Commissioners. If the Board of County Commissioners of Summit County fails to adopt an ordinance approving this Agreement by March 31, 2024, then this Agreement will be void and of no force and effect and all Parties will have all rights and duties that they had prior to execution of the Agreement.

15.27. Approval by the Town of Breckenridge. If City Council of the Town of Breckenridge fails to adopt an ordinance or resolution approving this Agreement by March 31, 2024, then this Agreement will be void and of no force and effect and all Parties will have all rights and duties that they had prior to execution of the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth opposite their respective signatures, said Agreement to be effective as of the date of the last signature below.

(Signatures on following pages)

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

By: _____
Chairman

ATTEST:

By: _____
Summit County Manager

**COLORADO RIVER WATER
CONSERVATION DISTRICT**

By: _____
Kathy Chandler-Henry, President

AND ITS ATTORNEY

By: _____
Peter C. Fleming
General Counsel

**TOWN OF BRECKENRIDGE,
A COLORADO MUNICIPAL CORPORATION**

By: _____
Shannon Haynes, Town Manager

ATTEST:

Helen Cospolich, CMC,
Town Clerk

Approved as to form:

CITY ATTORNEY

COLORADO SPRINGS UTILITIES

By: _____
Travas Deal
Chief Executive Officer

Approved as to form:

Michael J. Gustafson
City Attorney's Office – Utilities Division

**GRAND VALLEY WATER USERS
ASSOCIATION**

By: _____
Joseph C. Bernal, Board President

Approved as to form:

By: _____
Kirsten M. Kurath
General Counsel

**ORCHARD MESA IRRIGATION
DISTRICT**

By: _____
Roblee L. Talbott, Board President

Approved as to form:

By: _____
Kirsten M. Kurath
General Counsel

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

By: _____
Gregory L. Green, Board
President

Attest:

By: _____
Briana L. Board, Board Secretary

Approved as to form:

By: _____
Christopher L. Geiger,
General Counsel

LIST OF EXHIBITS

1. Operating Agreement (paragraph 4.1.5)
2. Proposed Decree 15CW3019 (paragraph 8.1.1)
3. Proposed Decree 18CW3041
4. Proposed Decree 16CW3015 (paragraph 8.2)
5. Motion for Confirmation Decree is in Effect, 03CW320 (paragraph 9.1)
6. CRWCD Standard Water Lease Form (paragraphs 10.5.5, 10.5.7, 10.6.5.1)
7. Application for Change of Water Rights (paragraph 13.1.2)
8. Outline of planned Lower Blue Reservoir Construction Agreement (paragraphs 1.8, 4.1.2, 4.1.3, 4.2,.4.6, 4.8, 8.5.2.2)

EXHIBIT 1

Lower Blue Lake Reservoir and Montgomery Reservoir Water Storage Operating Agreement

This Agreement is made among the City of Colorado Springs on behalf of its enterprise Colorado Springs Utilities (“Colorado Springs”), the County of Summit, and the Town of Breckenridge (“Lower Blue Parties”), collectively referred to as the Parties.

RECITALS

The Parties and the Colorado River Water Conservation District (“River District”), the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, and the Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise, entered into a Settlement Agreement Concerning Water Rights (“Settlement Agreement”) dated _____, 2023.

Subject to the terms of the Settlement Agreement, Colorado Springs and the Lower Blue Parties plan to construct a Lower Blue Lake Reservoir (“Lower Blue Reservoir”) at or near the location shown on Exhibit A, which reservoir will be owned and operated by the Lower Blue Parties.

Subject to the terms of the Settlement Agreement, Colorado Springs has agreed to provide a water supply for the Lower Blue Reservoir, which will require the coordinated operation of Colorado Springs’ 1948 Blue River water rights and the storage of a portion of the 1948 Lower Blue Reservoir water right (“Lower Blue Reservoir water right”) in an enlarged Montgomery Reservoir.

The purpose of this Operating Agreement is to establish the operating principles under which Colorado Springs and the Lower Blue Parties will coordinate and cooperate to provide a water supply to the Lower Blue Reservoir in accordance with the Settlement Agreement.

This Operating Agreement assumes that Lower Blue Reservoir or an Acceptable Alternative can be permitted and constructed by the Lower Blue Parties. If the Lower Blue Parties are unable to obtain one or more of the permits or authorizations necessary to construct Lower Blue Reservoir or an Acceptable Alternative, then Colorado Springs will provide water to the Lower Blue Parties as provided in paragraphs 4.16-4.18 of the Settlement Agreement.

AGREEMENT

In consideration of the foregoing recitals, the keeping and performance of the promises contained herein, and other valid consideration to each of the Parties, the receipt of which is hereby acknowledged and confirmed, Colorado Springs and the Lower Blue Parties agree as follows:

1. Implementation Principles.

1.1. This Operating Agreement implements a portion of the Settlement Agreement. If any provision(s) contained in this Operating Agreement conflicts with any provision(s) in the Settlement Agreement regarding the Lower Blue Reservoir, the provision(s) contained in the Settlement Agreement govern and control.

1.2. Any term defined in the Settlement Agreement has the same meaning in this Operating Agreement unless otherwise expressly stated.

1.3. This Operating Agreement is subject to and will be implemented in a manner consistent with the terms of the May 15, 2003 Memorandum of Agreement Regarding Colorado Springs Substitution Operations (“Substitution Agreement”) attached as Exhibit B hereto. Except where expressly modified by the Settlement Agreement or this Operating Agreement, if any provision(s) contained in this Operating Agreement conflicts with any provision(s) in the Substitution Agreement, the provision(s) contained in the Substitution Agreement govern and control.

1.4. For the purposes of their respective obligations under this Operating Agreement, the Parties have assumed that the proposed Lower Blue Reservoir when constructed will have an active storage capacity of 600 acre-feet (“AF”). Active storage capacity means the volume of water that can be drained by gravity through the outlet works of the Lower Blue Reservoir.

1.5. Colorado Springs’ contractual obligation to provide water under the Settlement Agreement, this Operating Agreement, and the 100 AF for the West Slope account under the Substitution Agreement will have operating priority over diversions and storage by Colorado Springs under any of its 1948 Blue River water rights available at or upstream from the as-built Lower Blue Reservoir, except during Substitution Years. During Substitution Years Colorado Springs’ storage in Upper Blue Reservoir is governed by part 4 of this Operating Agreement.

1.6. The Lower Blue Parties will own, operate, and maintain the Lower Blue Reservoir and up to 600 acre-feet of the changed Lower Blue Reservoir water right to be stored at the Lower Blue Reservoir. The Lower Blue Parties will be responsible for all required measurement, accounting, and reporting for the Lower Blue Reservoir

water right. The operation of Lower Blue Reservoir is subject to the terms of this Operating Agreement and the applicable provisions of the Settlement Agreement.

1.7. During the period when the Lower Blue Parties can safely access Lower Blue Reservoir and physically operate its outlet works, the Lower Blue Parties agree to physically operate the Lower Blue Reservoir outlet works in a timely manner (daily or more often if the Parties agree is necessary) so as to comply with water rights river administration and to effectuate the terms of this Operating Agreement.

1.8. Colorado Springs owns and will physically operate the Upper Blue Reservoir and the planned enlarged Montgomery Reservoir and associated water rights stored in those reservoirs. Such operations shall comply with the terms of the Settlement Agreement, this Operating Agreement and the applicable provisions of the Substitution Agreement.

1.9. This Operating Agreement creates a contractual right for the Lower Blue Parties to receive, and for Colorado Springs to provide water by exchange or substitution, against water stored in an enlarged Montgomery Reservoir in accordance with the terms of this Operating Agreement. This Operating Agreement does not confer on the Lower Blue Parties any ownership of water stored in Montgomery Reservoir or its enlargement or any ownership interest in that reservoir itself.

1.10. During the period when Colorado Springs can safely access Upper Blue Reservoir and physically operate its outlet works (typically after April 1st and ending by Nov. 15th) Colorado Springs will operate the Upper Blue Reservoir outlet works in a timely manner (daily or more often if the Parties agree is necessary) to comply with water rights administration and to effectuate the terms of this Operating Agreement.

1.11. Colorado Springs and the Lower Blue Parties will cooperate to obtain assurances from the Parties to the Substitution Agreement that the use of the Lower Blue Reservoir water right by the Lower Blue Parties pursuant to the terms of the Settlement Agreement and this Operating Agreement is consistent with rights and obligations of the parties to that agreement. Colorado Springs and the Lower Blue Parties will cooperate to obtain assurances from the United States that the use of the Lower Blue Reservoir water right by the Lower Blue Parties pursuant to the terms of the Settlement Agreement and this Operating Agreement is consistent with (1) Colorado Springs' February 22, 2010, Memorandum of Agreement between the United States of America and Colorado Springs Utilities Establishing Principles for Substitution of Water to Green Mountain Reservoir, and (2) the concurrently executed Power Interference Agreement. However, nothing herein requires consent of anyone not a party to this Agreement.

1.12. Colorado Springs will be responsible for filing and prosecuting an application for a change of water rights to allow the Lower Blue Reservoir water right to be used by the Lower Blue Parties and allow an alternate place of storage of 600 AF of that water right in an enlarged Montgomery Reservoir.

2. Basic Annual Operating Principles.

2.1. This part 2 contains generally applicable provisions that are intended to apply during both Substitution Years and Non-Substitution Years.

2.2. The diversion season is April 1 – September 30. Colorado Springs will not provide water to the Lower Blue Parties outside these dates, unless the 1948 Blue River water rights are in priority, or by separate agreement.

2.3. The Lower Blue Parties will install, operate, and maintain all measuring devices reasonably necessary to determine the quantity of water stored in and the amount of water released from or flowing out of the Lower Blue Reservoir. To the extent not already installed, Colorado Springs will install, and will operate and maintain all measuring devices reasonably necessary to determine the quantity of water delivered to the Lower Blue Parties under this Operating Agreement from inflow to or water stored in Upper Blue Reservoir and the enlarged Montgomery Reservoir. The Parties will maintain accurate accounting records of their water operations and will preserve these records for a minimum of twenty years.

2.4. Every year, Colorado Springs shall first store in Upper Blue Reservoir up to 100 AF for subsequent delivery to the River District as water made available to the West Slope under the terms of the Substitution Agreement. This water shall be released from Upper Blue Reservoir at the request of the River District in accordance with the Substitution Agreement. Such releases shall be to and then through the Lower Blue Reservoir to Monte Cristo Creek for use by the River District or its contractees, unless other operations are authorized by separate agreement.

2.5. Following storage of the 100 AF in Upper Blue Reservoir for delivery to the River District, in Non-Substitution Years Colorado Springs shall provide for storage in Lower Blue Reservoir up to the next 475 AF to the Lower Blue Parties, and in Substitution Years Colorado Springs shall provide up to 300 AF to the Lower Blue Parties, according to the terms of the Settlement Agreement and as specified in part 4 below.

2.6. Unless otherwise agreed to between Colorado Springs and the Lower Blue Parties, the Lower Blue Parties will not exercise any exchanges or substitutions junior to Colorado Springs' Monte Cristo (a.k.a. Blue River Ditch) diversion's 1948 water right (decreed or administrative) that (a) would materially impact Colorado Springs' diversions under its Monte Cristo diversion's 1948 water right; or (b) would materially

impact Colorado Springs' ability to divert its Monte Cristo diversion's 1948 water right under the terms of the Green Mountain Reservoir Administrative Protocol.

2.6.1. Prior to operation of Lower Blue Reservoir, the Parties will develop an accounting and notification protocol to be attached to this Operating Agreement.

2.7. Except for releases to the Lower Blue Reservoir provided for in the Settlement Agreement or this Operating Agreement, all releases by Colorado Springs from Upper Blue Reservoir will be contemporaneously passed through Lower Blue Reservoir. Such releases may include, but are not limited to, delivery of water to the River District, to Colorado Springs for delivery through the Hoosier Tunnel, or for Green Mountain Reservoir Substitution.

2.8. Accounting for all water operations at Lower Blue Reservoir, Upper Blue Reservoir, and Montgomery Reservoir will be shared between Colorado Springs and the Lower Blue Parties upon request and to the extent and at a frequency required to manage the physical system and the accounting set forth in this Operating Agreement.

2.9. For purposes of this Operating Agreement the "unfilled active storage capacity" of Lower Blue Reservoir means and is calculated as the total reservoir active storage capacity minus the amount of water physically in the active storage capacity on April 1st each year.

2.10. The map attached as Exhibit D to this agreement shows the location of the structures in the Blue River Basin referred to in this Operating Agreement.

2.11. Within one year from the signing of the Operating Agreement, Colorado Springs and the Lower Blue Parties will develop a set of technical scenarios that work through and outline basic accounting principles and notification protocols. There will be six scenarios that outline non-substitution years and substitution years under Paragraphs 2.3, 2.4, 4.14, and 4.16. These technical scenarios will then be attached to the Operating Agreement as Exhibit C.

3. Lower Blue Reservoir Operations During Non-Substitution Years.

3.1. The provisions of this part 3 describe operations during Non-Substitution Years.

3.2. The lesser of 475 AF, or a quantity of water equal to the unfilled active storage capacity of the Lower Blue Reservoir as of April 1, shall be made available to the Lower Blue Parties for storage in Lower Blue Reservoir accordance with the terms of both the Settlement Agreement and this Operating Agreement.

3.3. Storage in Lower Blue Reservoir by the Lower Blue Parties, up to the quantity of water calculated under paragraph 3.2 above, will have an operating priority equal to the diversion by Colorado Springs in Upper Blue Reservoir. Following storage of the 100 AF for the West Slope account into Upper Blue Reservoir, Colorado Springs will bypass inflow to Upper Blue Reservoir in an amount that, when combined with inflow to Lower Blue Reservoir from locations below Upper Blue Reservoir that can be lawfully stored by the Lower Blue Parties, will equal the quantity of water required to be provided to the Lower Blue Parties under paragraph 3.2 above.

3.4. The contractual operating priority described in paragraph 3.3 above shall not be construed as any type of subordination of Colorado Springs 1948 Blue River water rights to any other water rights. Nothing in this part 3 precludes the simultaneous exercise of storage in both Upper Blue Reservoir and Lower Blue Reservoir by mutual agreement of Colorado Springs and the Lower Blue Parties if hydrologic conditions are sufficient to satisfy both.

3.5. Colorado Springs will cooperate as necessary to allow the Lower Blue Parties to store water in Lower Blue Reservoir by exchange when the 1948 Blue River water rights at the Monte Cristo diversion structure are out of priority, or when such water rights are in-priority but Colorado Springs is bypassing water back to Monte Cristo Creek at the Monte Cristo Creek flume.

4. Lower Blue Reservoir Operations During Substitution Years.

4.1. The provisions of this part 4 describe operations during Substitution Years.

4.2. The lesser of 300 AF, or a quantity of water equal to the unfilled active storage capacity of the Lower Blue Reservoir as of April 1, shall be made available by Colorado Springs to the Lower Blue Parties according to the terms of the Settlement Agreement and this Operating Agreement.

4.3. Following storage of the 100 AF for the West Slope account in Upper Blue Reservoir, Colorado Springs will next provide to the Lower Blue Parties up to 150 AF of inflow to Upper Blue Reservoir or such lesser amount as is required to fill the remaining unfilled active storage capacity of Lower Blue Reservoir.

4.4. After providing up to 150 AF to the Lower Blue Parties under paragraph 4.3, Colorado Springs shall store in Upper Blue Reservoir all water legally and physically available to the Upper Blue Reservoir in compliance with the Substitution Agreement and the USBR Substitution Agreement.

4.5. The remainder of the amount of water required to be provided to the Lower Blue Parties in Substitution Years shall be made available from the Upper Blue Reservoir or from the Lower Blue Reservoir water right changed to allow for West

Slope use: (a) that is physically available in Monte Cristo Creek at Lower Blue Reservoir (excluding releases from Upper Blue Reservoir made for substitution delivery pursuant to the Substitution Agreement and the Plan of Substitution Decree, or delivery of 100 AF to the River District); and then, either (b) water stored in Upper Blue Reservoir that is not required for substitution operations; and/or, (c) releases of water by Colorado Springs at the Combination Flume, or one or more other points of diversion of the 1948 Blue River water rights located upstream of Goose Pasture Tarn, as determined by Colorado Springs.

4.5.1. If any water stored in Upper Blue Reservoir is determined not to be needed to satisfy Colorado Springs' substitution obligations under the Substitution Agreement, such volume up to the amount required to be provided in Substitution Years under paragraph 4.2 above (less any water stored under paragraph 4.5(a)) shall be released to the Lower Blue Parties.

4.5.2. If the above operations are insufficient (or there is a reasonable expectation that they will be insufficient) to satisfy the amount of water required to be made available to the Lower Blue Parties in Substitution Years, then Colorado Springs and the Lower Blue Parties will operate the Montgomery Reservoir Substitution (Trade/Bookover) Operation described in part 6 below.

4.6. In the event that more than 300 acre-feet was delivered to Lower Blue Reservoir prior to the determination that a given year is a Substitution Year, then Colorado Springs may regain and use the difference between the actual delivery to Lower Blue Reservoir that year and 300 acre-feet. For example, if Colorado Springs had delivered 475 acre-feet to Lower Blue Reservoir prior to declaration of a Substitution Year, then Colorado Springs would be entitled to use 175 acre-feet ($475 - 300 = 175$) stored in Lower Blue Reservoir for substitution purposes or for delivery through the Hoosier Tunnel to Montgomery Reservoir.

5. Montgomery Reservoir Storage Operations for 1948 Lower Blue Reservoir Water Right.

5.1. This part 5 addresses the storage of part of the Lower Blue Reservoir water right in an enlarged Montgomery Reservoir.

5.2. Colorado Springs shall divert and store in an enlarged Montgomery Reservoir an amount of the Lower Blue Reservoir water right, not to exceed 600 AF, that will be utilized to provide to the Lower Blue Parties by exchange or substitution (including trade or book-over) the Lower Blue Reservoir water right stored in an enlarged Montgomery Reservoir. This water will be provided by exchange or substitution from water available in priority to Colorado Springs at the Combination Flume, or one or

more other points of diversion of the 1948 Blue River water rights located upstream of Goose Pasture Tarn, as determined by Colorado Springs.

5.3. Colorado Springs is responsible for filing and prosecuting an application for change of water rights to allow up to 600 AF of the Lower Blue Reservoir water right to be diverted annually at its Monte Cristo Creek diversion and held in an enlarged Montgomery Reservoir for the purposes of effectuating a water exchange or substitution to permit the delivery of this water to the Lower Blue Parties. The Lower Blue Parties shall not oppose the application but may file a statement of opposition and participate therein to the extent necessary to ensure the application and decree entered therein are consistent with the Settlement Agreement and this Operating Agreement.

5.4. Colorado Springs retains ownership of the remainder of the Lower Blue Reservoir water right not conveyed to the Lower Blue Parties. The 600 acre-feet changed for storage in an enlarged Montgomery Reservoir will retain all currently decreed uses of that water right by Colorado Springs and may be used by Colorado Springs in accordance with this Operating Agreement.

5.5. The Lower Blue Reservoir water right held in an enlarged Montgomery Reservoir will be tracked separately from Colorado Springs' other 1948 Blue River water rights in the Montgomery Reservoir accounting.

5.6. Evaporation losses from Montgomery Reservoir associated with water stored under the Lower Blue Reservoir water right will be assessed pro rata based on the amount of Lower Blue Reservoir water stored in the enlarged Montgomery Reservoir.

5.7. The combined amount of water stored in Lower Blue Reservoir under the Lower Blue Reservoir water right and stored under the Lower Blue Reservoir water right in Montgomery Reservoir, shall not exceed 1,006 AF at any one time.

5.7.1. No more than 1,006 AF shall be diverted and stored in Lower Blue Reservoir and/or an enlarged Montgomery Reservoir under the Lower Blue Reservoir water right in any one year (April 1 to March 31), including carry-over storage from the prior year as determined on April 1.

5.8. No more than 600 AF of the Lower Blue Reservoir water right shall be stored in an enlarged Montgomery Reservoir at any time.

5.9. Colorado Springs will share accounting of the Lower Blue Reservoir water right stored in an enlarged Montgomery Reservoir with the Lower Blue Parties upon request.

5.10. The Lower Blue Parties will notify Colorado Springs Operations Representative of the amount of water that can be delivered to and stored in an enlarged Montgomery

Reservoir under the Lower Blue Reservoir water right as necessary to implement this Operating Agreement and the Settlement Agreement.

5.11. Colorado Springs may use in its municipal water supply system water stored in an enlarged Montgomery Reservoir under the Lower Blue Reservoir water right to the extent necessary to accommodate increased storage of the Lower Blue Reservoir water right by the Lower Blue Parties in Lower Blue Reservoir to ensure that the annual storage under the Lower Blue Reservoir water right does not exceed 1,006 AF. This use can be done by either a release from an enlarged Montgomery Reservoir, or by book-over accounting to Colorado Springs 1948 Blue River direct flow rights stored in Montgomery Reservoir.

6. Montgomery Reservoir Substitution Operations.

6.1. If the Lower Blue Parties request Lower Blue Reservoir water be provided at the Combination Flume, or one or more other points of diversion of the 1948 Blue River water rights located upstream of Goose Pasture Tarn, as determined by Colorado Springs, from an enlarged Montgomery Reservoir by the substitution operation described in this part 6, then Colorado Springs will coordinate with them to determine a target volume for the substitution, the planned place of use, and set a schedule for the operation.

6.2. During Substitution Years the delivery by substitution of Lower Blue Reservoir water stored in the enlarged Montgomery Reservoir to the Combination Flume, or one or more other points of diversion of the 1948 Blue River water rights located upstream of Goose Pasture Tarn, as determined by Colorado Springs, will only occur while the Lower Blue Reservoir water right can lawfully be diverted or is diverting pursuant to the terms of the Green Mountain Reservoir Administrative Protocol.

6.2.1. The Lower Blue Parties will notify Colorado Springs Operations Representative when they wish to be provided water by substitution. Colorado Springs will implement the delivery by substitution to the extent that the stream flow conditions allow it to be accomplished, and if it is allowed under the priority system or other lawful administrative mechanism.

6.3. During the Substitution Operations, the quantity of the 1948 Blue River water rights released back to Monte Cristo Creek at the Combination Flume, or one or more other points of diversion of the 1948 Blue River water rights located upstream of Goose Pasture Tarn, as determined by Colorado Springs, will be measured daily and communicated to the Lower Blue Parties. A like amount will be transferred from the Lower Blue Reservoir water right stored in Montgomery Reservoir to Colorado Springs' 1948 Blue River water rights in the enlarged Montgomery Reservoir.

6.4. If Montgomery Reservoir needs to be drained for maintenance or other operating requirements, notice of such need will be given promptly in accordance with paragraph 8 below. Upon refilling of Montgomery Reservoir, water in the Lower Blue account will be returned to its previously stored amount with Colorado Springs' 1948 Blue River water rights, provided, however, that the combined storage under the Lower Blue Reservoir water right in an enlarged Montgomery Reservoir and Lower Blue Reservoir cannot exceed 1,006 AF.

6.5. In the event of a storage restriction at an enlarged Montgomery Reservoir, the Lower Blue Reservoir water stored (which cannot exceed 600 A.F.) in the enlarged Montgomery Reservoir will be reduced pro rata based on the percentage reduction in Montgomery Reservoir's allowed storage.

7. Parties' Operations Representatives. The Parties Operations Representatives are the individuals responsible for the day-to-day implementation of this Operating Agreement. The initial Operations Representatives and their contact information is as follows:

7.1. Colorado Springs:

Justin Zeisler
Planning Supervisor, Water Resource Planning
Colorado Springs Utilities
PO Box 1103, MC 1825
Colorado Springs, CO 80903
719-668-8758
kabbasi@csu.org

7.2. Summit County:

Summit County Manager
P.O. Box 68
208 Lincoln Ave., 3rd Floor
Breckenridge, CO 80424

7.3. Town of Breckenridge:

James Phelps
Director Public Works
1095 Airport Road
PO Box 168
Breckenridge, CO 80424

Laura Lynch
Water Division Manager
1095 Airport Road

PO Box 168
Breckenridge, CO 80424

A party may replace or designate a different Operations Representative by providing notice in accordance with paragraph 10 below.

8. Operational Reviews. The Parties Operations Representatives will regularly confer concerning the deliveries and administration of water rights necessary to implement this Operating Agreement. In the event the Operations Representatives cannot agree concerning the deliveries or administration of water rights under this Operating Agreement, the Parties must meet and attempt to resolve the disagreement. In addition, during the first three years following the first year of delivery of water by Colorado Springs to Lower Blue Reservoir, the Parties must meet annually to review operations under the Operating Agreement and make any operational modifications needed to properly implement it terms. Thereafter, the Parties must meet at least every five years, to review operations under the Operating Agreement and make any operational modifications needed to properly implement it terms. Meetings to discuss operational issues may be called upon reasonable advance notice given by one or more Parties to the remaining Parties. In the event a lawful change in administration of water rights located in Water Division No. 5 adversely impacts the operation of this Operating Agreement, the parties must promptly meet and diligently negotiate any necessary modification to this agreement to address the changed circumstances.

9. If the Lower Blue Parties are unable to obtain one or more of the permits or authorizations necessary to construct Lower Blue Reservoir or an Acceptable Alternative, then Colorado Springs will provide water to the Lower Blue Parties as provided in paragraphs 4.16-4.18 of the Settlement Agreement. The Parties Operational Representatives will confer concerning changes needed to implement the deliveries and administration of water rights necessary to implement paragraphs 4.16-4.18 of the Settlement Agreement. In the event the Operations Representatives cannot agree concerning the needed changes to this Operating Agreement, the Parties must meet and attempt to resolve the disagreement. If the Parties are unable to resolve the disagreement, then the provision of paragraph 21 will apply.

10. Notice. All notices required under this Operating Agreement must be provided by U.S. Mail or hand delivery to the physical addresses listed below. Written notice is effective immediately when hand delivered at the addresses noted below. If notice is sent by U.S. Mail, notice is effective two days after mailing. Any notice given under this Operating Agreement will be copied to all Parties. If any Party wishes to modify the contact information contained below, notice must be provided to all Parties.

If to Utilities:

- i. Chief System Planning and Projects Officer
Courier Service Address:
Colorado Springs Utilities
ATTN: Chief System Planning and Projects Officer
121 S. Tejon St., 5th Floor
Colorado Springs, CO 80903

United States Postal Service Address:
Colorado Springs Utilities
ATTN: Chief System Planning and Projects Officer
P.O. Box 1105
Colorado Springs, CO 80947-0950
Fax: (719) 668-4158.

- ii. City Attorney's Office - Utilities Division
Courier Service Address:
City Attorney's Office
ATTN: Utilities Division
30 S. Nevada Ave. Colorado Springs, CO 80903

United States Postal Service Address:
Colorado Springs Utilities
ATTN: Utilities Division
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575

If to Summit County:

Summit County Manager
P.O. Box 68
208 Lincoln Ave., 3rd Floor
Breckenridge, CO 80424

If to Breckenridge:

James Phelps
Director of Public Works
150 Ski Hill Road
PO Box 168
Breckenridge, CO 80424

11. Term. This Operating Agreement shall become effective on the date of the last signature below and shall remain in effect until modified or terminated by the Parties.

12. No Liability for Failure of Supply. The Parties agree that Colorado Springs is not in breach of this Operating Agreement and no liability in tort or contract attaches to Colorado Springs under this agreement on account of (a) an actual failure to supply water due to inadequate physical water supply for diversion or storage that is otherwise required to be made available under this agreement, or (b) any event of force majeure as defined in paragraph 23 below. The Lower Blue Parties accept the risk that lack of physical supply in the Blue River may prevent Colorado Springs from being able to deliver water that is otherwise required to be made available under this Operating Agreement, including delivery by substitution from the enlarged Montgomery Reservoir.

13. Compliance with Laws. All activities carried out by any Party under this Operating Agreement shall be conducted in accordance with all applicable local, state, or federal requirements, specifications, laws and regulations.

14. No Partnership or Agency. Notwithstanding any language in this Operating Agreement or any representation or warranty to the contrary, no Party shall be deemed to be or to constitute a partner, joint venturer, contractor, or agent of another Party.

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

16. Governmental Immunity. No term or condition of this Operating Agreement is to be construed or interpreted as a waiver, express or implied, by Colorado Springs, Summit County, and the Town of Breckenridge of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as applicable now or hereafter amended.

17. Indemnification: Each Party agrees to be responsible for its own liability incurred as a result of its participation in this Operating Agreement.

18. Entire Agreement. This Operating Agreement and its Exhibits, in conjunction with the Settlement Agreement, constitute the entire agreement between the Parties with respect to the subject matter and supersede all prior agreements and understandings, written or oral, with respect to the subject matter.

19. Amendment - Interpretation. This Operating Agreement cannot be modified orally, but only by an amendment in writing signed by all Parties. The captions of this Operating Agreement are for convenience of reference only, are not a part of this agreement, and do not define or limit any of the terms of this agreement. The Exhibits to this agreement are incorporated into the agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

20. Waiver. The failure of a Party to insist in one or more cases upon the strict observation of any of the terms of this Operating Agreement is not a waiver or relinquishment in any future case of any of the terms of this agreement.

21. Dispute Resolution: In the event of a dispute between the Parties regarding a Party's performance under this Operating Agreement, the Parties agree that they will use their best efforts to resolve the dispute in an informal fashion through consultation and communication between the Parties. If the dispute is not resolved through informal consultation and communication, written notice stating the general nature of each dispute or other matter shall be delivered to the other Party promptly (but in no event later than thirty (30) days) after the start of the event giving rise to the dispute. In such instance, the Parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from receiving an initial written notice of the dispute or such other date as agreed to by the Parties, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, any Party may request non-binding mediation and in such case the Parties will bear equally the costs of the mediation.

If any Party requests to mediate the dispute, the Parties will jointly select a mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint, within ten (10) calendar days of their selection, a third mediator who shall, as the sole mediator, conduct mediation for the Parties. The Parties agree to participate in good faith in the mediation until the dispute is resolved, until the Parties mutually agree that they cannot resolve the dispute through mediation, or the expiration of thirty (30) days after the mediator is selected, whichever comes first. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to litigate the matter or to pursue any and all other remedies provided in this Operating Agreement or the Settlement Agreement or by law or equity.

The Parties acknowledge that time is important in resolving any dispute that may arise during the course of pursuing the purposes of this Operating Agreement, and hereby pledge to make their best efforts to resolve any dispute in a timely and efficient manner.

22. Attorney Fees and Cost. If any claim arising as a result of this Operating Agreement is litigated, each Party will be responsible for its own costs and expenses of litigation, including attorney fees.

23. Binding Effect and Assignability. This Operating Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns. No Party may assign its rights and obligations under this Operating Agreement to another Party without the written consent of the other Party, which consent shall not be unreasonably withheld or denied. Any request for consent to an assignment shall be given in writing at least 60 days before said assignment would take effect and shall include the identity of the assignee, documentation evidencing that the assignee agrees to be bound by the terms and conditions of this Operating Agreement, and has the ability to fulfill the assigning Party's obligations under this agreement. The other Parties shall have 30 days to provide notice of either its consent to or objection to the assignment. If a non-assigning Party does not provide notice of an approval within such time period, its consent to the assignment will be presumed to have been denied. Any dispute related to a non-assigning Party's objection shall be resolved in accordance with the dispute resolution provisions hereof.

24. Severability. The invalidity or unenforceability of any portion or previous version of this Operating Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Operating Agreement and in such event the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Operating Agreement.

25. Time. Time is of the essence in this Operating Agreement.

26. Legal Counsel. Each Party to this Operating Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this agreement. Therefore, in the construction and interpretation of this Operating Agreement, the Parties acknowledge and agree that it is not to be construed against any Party on the basis of authorship.

27. Signatures – Counterparts. This Operating Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. In the event that any signature is delivered by facsimile transmission or PDF, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile or PDF signature page were an original itself.

28. Force Majeure. No Party to this Operating Agreement will be liable for any delay or failure to perform due solely to conditions or events of force majeure, as that term is

defined in this paragraph, provided that: (i) the non-performing Party gives the other Parties prompt written notice describing the particulars of the force majeure event or condition; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform. As used herein, “force majeure” means any delay or failure of performance under this Operating Agreement caused by events beyond a Party’s reasonable control and without the fault of the Party including, without limitation: (a) acts of God; (b) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; (c) sabotage; (d) vandalism beyond that which can be reasonably prevented by the Party; (e) terrorism; (f) war; (g) riots; (h) fire; (i) explosion; (j) insurrection; (k) strike, slow down or labor disruptions; (l) the lawful order of any governmental entity clothed with authority to regulate matters pertaining to water, public utilities, public health, public safety, or pollution control; (m) enemy or hostile governmental action, (n) civil commotion or insurrection; (o) regulatory restrictions on travel, movement, or provision of services; or (p) any actual or threatened health emergency, epidemic, pandemic, quarantine, or other health risk, including, without limitation, health risks declared or recognized by the Centers for Disease Control, the World Health Organization, or any public health department. To the extent that a Party’s performance is postponed or excused by an event of force majeure, the other Party’s corresponding obligation to perform is likewise postponed or excused.

29. Representations and Warranties of the Parties. Each Party hereby warrants and represents that it has the full right and lawful authority to enter into this Operating Agreement.

30. Appropriation of Funds.

30.1. Colorado Springs: Performance of Colorado Springs’ obligations under this Operating Agreement is expressly subject to the appropriation of funds by its City Council. This Operating Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by Colorado Springs contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The funds for the current year’s activities related to this Operating Agreement have been fully appropriated by Colorado Springs. Colorado Springs agrees to use good faith efforts to seek the appropriation of sufficient funds to allow Colorado Springs to fully and timely perform its obligations under this Operating Agreement for each fiscal year that occurs during the term of this agreement. Colorado Springs acknowledges that its commitments under this Operating Agreement are not contrary to any debt or appropriation

limitations of the Colorado Constitution, the Charter of the City of Colorado Springs, statutes or other law. Colorado Springs shall notify the other Parties as soon as reasonably possible in the event of a non-appropriation that impacts Colorado Springs' ability to perform its obligations under this Operating Agreement.

30.2. Breckenridge: Performance of Breckenridge's obligations under this Operating Agreement is expressly subject to appropriation of funds by its Town Council. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by Breckenridge contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The funds for the current year's activities related to this Operating Agreement have been fully appropriated by Breckenridge. Breckenridge agrees to use good faith efforts to seek the appropriation of sufficient funds to allow Breckenridge to fully and timely perform its obligations under this agreement for each fiscal year that occurs during the term of this agreement. In the event funds are not appropriated in whole or in part sufficient for performance of all of Breckenridge's obligations under this Operating Agreement which are to be performed in the next calendar year, or appropriated funds may not be expended due to applicable spending limitations, then all rights and obligations of Breckenridge under this agreement will terminate, and Breckenridge will thereafter have no liability for compensation or damages to the other Parties in excess of Breckenridge's authorized appropriation for this agreement or the applicable spending limit, whichever is less. Breckenridge shall notify the other Parties as soon as reasonably possible in the event of a non-appropriation or in the event a spending limit becomes applicable that impacts Breckenridge's ability to perform its obligations under this Operating Agreement.

30.3. Summit County: Performance of Summit County's obligations under this Operating Agreement is expressly subject to appropriation of funds by its Board of County Commissioners. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by Summit County contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The funds for the current year's activities related to this Operating Agreement have been fully appropriated by Summit County. Summit County agrees to use good faith efforts to seek the appropriation of sufficient funds to allow Summit County to fully and timely perform its obligations under this Operating Agreement for each fiscal year that occurs during the term of this agreement. In the event funds are not appropriated in whole or in part sufficient for performance of all of Summit County's obligations under this Operating Agreement which are to be performed in the next calendar year, or appropriated funds may not be expended due to applicable spending limitations, then

all rights and obligations of Summit County under this agreement will terminate, and Summit County will thereafter have no liability for compensation or damages to the other Parties in excess of Summit County's authorized appropriation for this agreement or the applicable spending limit, whichever is less. Summit County shall notify the other Parties as soon as reasonably possible in the event of a non-appropriation or in the event a spending limit becomes applicable that impacts Summit County's ability to perform its obligations under this Operating Agreement.

31. Governing Law, Jurisdiction and Venue: This Operating Agreement shall be construed in accordance with the laws of the State of Colorado without reference to conflicts of laws. In the event of any dispute over the Operating Agreement's terms and conditions, venue for resolution of any dispute of water matters under this agreement resulting in litigation shall be the District Court, Colorado, for the appropriate Water Division or federal district court, as appropriate under the Blue River Decree. If venue for a water matter is proper both in Water Division No. 5 and another Water Division, venue shall be in Water Division No. 5 unless the parties to the dispute agree otherwise. Venue for all other matters under this Operating Agreement resulting in litigation shall be the Colorado District Court for the county in which any defendant resides.

IN WITNESS WHEREOF, the Parties have executed this Operating Agreement on the date set forth opposite their respective signatures, said agreement to be effective as of the date of the last signature below.

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

By: _____
Chairman

Date: _____

ATTEST:

By: _____
Summit County Manager

Approved as to form:

By: _____

General Counsel

**TOWN OF BRECKENRIDGE,
A COLORADO MUNICIPAL CORPORATION**

By: _____
Shannon Haynes, Town Manager

Date: _____

ATTEST:

Helen Cospolich, CMC,
Town Clerk

Approved as to form:

By: _____
Town Attorney

COLORADO SPRINGS UTILITIES

By: _____
Travas Deal Chief Executive Officer

Date: _____

Approved as to form:

Michael J. Gustafson
City Attorney's Office – Utilities Division

LIST OF EXHIBITS

Exhibit A: Location of Lower Blue Reservoir

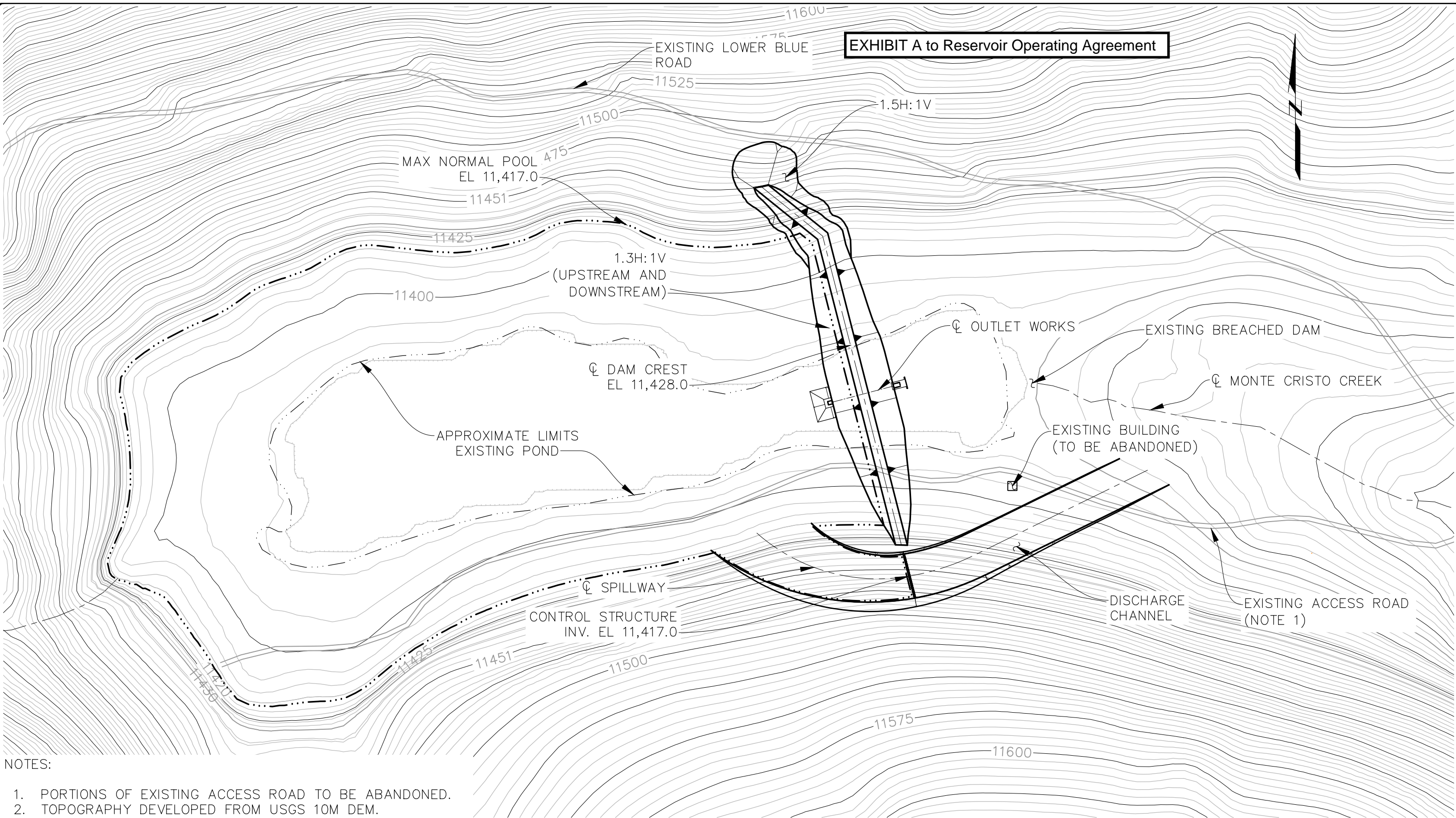
Exhibit B: Substitution Agreement

Exhibit C: Outline of accounting and notification protocol (to be prepared subsequent to execution of the agreement).

Exhibit D: Map of Structure Locations

P:\21121 - LOWER BLUE DAM AND RESERVOIR\CAD\NEWALIGNMENT\UPDATEDDRAWINGS\REPORT FIGURES\21121_SPILLWAY_LAYOUT.DWG 11/11/2021 8:39 AM

EXHIBIT A to Reservoir Operating Agreement



- NOTES:
1. PORTIONS OF EXISTING ACCESS ROAD TO BE ABANDONED.
 2. TOPOGRAPHY DEVELOPED FROM USGS 10M DEM.



DRAFT
 PRELIMINARY
 NOT FOR CONSTRUCTION



 TOWN OF BRECKENRIDGE	 RJH CONSULTANTS, INC.	LOWER BLUE DAM AND RESERVOIR CONCEPT DESIGN ADDENDUM	PLAN OF MODIFICATIONS
		PROJECT NO. 21121	November 2021

Figure 3.1

**MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

This Agreement is made among the Colorado River Water Conservation District acting by and through its Colorado River Water Projects Enterprise (“River District”), the City of Colorado Springs acting through its Utilities Enterprise (“CSU”), the City and County of Denver acting by and through its Board of Water Commissioners (“DWB”), the Northern Colorado Water Conservancy District (“Northern”), the County of Summit, acting by its Board of County Commissioners (“Summit County”), Vail Summit Resorts, Inc. (“Vail”), and the Town of Breckenridge (“Breckenridge”). This Agreement is effective as of May 15, 2003 (the “date of this Agreement.”)

Recitals

A. Green Mountain Reservoir was constructed as part of the Colorado-Big Thompson Project (the “C-BT Project”) to provide water for use in western Colorado as compensation for construction and operation of the C-BT Project and to provide replacement water for diversions by C-BT Project collection facilities for the use and benefit of Northern. The United States Bureau of Reclamation (“Reclamation”) operates Green Mountain Reservoir, located on the Blue River, pursuant to Senate Document 80 and the October 12, 1955 and April 16, 1964 Decrees entered in the Consolidated Cases Nos. 2782, 5016 and 5017, U.S. District Court for the District of Colorado, including all supplemental orders, stipulations, and decrees (“the Blue River Decrees”).

B. CSU diverts water from the headwaters of the Blue River through its Continental/Hoosier transmountain diversion system facilities (the “CSU Blue River System”), located upstream of Green

**MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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Mountain Reservoir. CSU operates the CSU Blue River System subject to separate decrees generally referred to as CSU's 1929 Rights and CSU's 1948 Blue River Decree rights, some of which remain conditional rights at the date of this Agreement.

C. DWB owns and operates the Roberts Tunnel and Dillon Reservoir, both located on the Blue River and its tributaries, upstream of Green Mountain Reservoir. DWB's Blue River diversions are subject to the terms of the Blue River Decrees.

D. Reclamation's right to fill Green Mountain Reservoir is senior in administrative priority to CSU's 1948 Blue River Decree rights and DWB's Roberts Tunnel and Dillon Reservoir.

E. DWB is a party to two separate agreements both dated December 30, 1991 (the "DWB Substitution Agreements"), and the joint substitution decree dated March 5, 1996, in U.S. District Court, District of Colorado C.A. 2782, 5016 and 5017 and in Case No. 91CW252, Water Division 5 (the "DWB Substitution Decree"). The DWB Substitution Agreements and DWB Substitution Decree set forth procedures to allow DWB to provide sources of water in substitution for water diverted by DWB from the Blue River during years in which Reclamation determines that Green Mountain Reservoir did not fill as described in the Blue River Decrees.

F. CSU desires to establish procedures to enable it to provide sources of water in substitution for water diverted by CSU from the Blue River during years in which Reclamation determines that

**MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

Page 3

Green Mountain Reservoir will not fill as described in the Blue River Decrees.

G. The River District owns and operates Wolford Mountain Reservoir, located on Muddy Creek.

The River District desires to obtain an annual right to the use of water (free of replacement obligation to DWB and others) physically stored by CSU in its Upper Blue Reservoir in order to provide for the water needs of individuals and entities (including, but not limited to Summit County, Vail, and Breckenridge) in the Blue River Basin and its tributaries.

H. Summit County, Vail, and Breckenridge use or provide water in the Blue River basin and are interested in contracting for the use of water made available to the River District in the West Slope Account pursuant to this Agreement.

I. Northern is a beneficiary of the replacement pool in Green Mountain Reservoir, is a water user in the upper Colorado River basin, and desires to protect the ability of Green Mountain Reservoir to obtain water to which it is entitled under the Blue River Decrees.

J. The parties desire to meet the requirements of Green Mountain Reservoir under the Blue River Decrees and promote the maximum utilization of existing water supplies.

WHEREFORE, in consideration of the mutual promises and covenants provided for herein, the parties agree as follows:

**MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

Page 4

Agreement

1. Definitions. Wherever capitalized throughout this Agreement, the following terms shall have the meaning set forth below:

a. “GMR Fill Deficit” means the amount of water quantified by Reclamation that is required to fill Green Mountain Reservoir as described in the Blue River Decrees. The GMR Fill Deficit includes amounts of water that may be required to fill Green Mountain Reservoir as a result of diversions or storage by DWB, CSU and others. This Agreement does not address how the GMR Fill Deficit is quantified by Reclamation and does not affect or alter the manner in which Reclamation accounts for depletions caused by DWB, CSU or others in the quantification of the GMR Fill Deficit.

b. “Replacement Obligation” means the total amount of water required from DWB and CSU to meet the GMR Fill Deficit. Replacement Obligation does not include water that may be owed by entities other than DWB and CSU to meet the GMR Fill Deficit, and this Agreement does not create or alter any obligation that CSU or DWB may have to provide replacement water to Green Mountain Reservoir for depletions caused by others.

c. “DWB Replacement Obligation” means DWB’s pro rata share of the Replacement Obligation determined under the provisions of paragraph 8 of this Agreement.

d. “CSU Replacement Obligation” means CSU’s pro rata share of the Replacement Obligation determined under the provisions of paragraph 8 of this Agreement. The CSU Replacement Obligation includes replacement for the 250 acre feet of Upper Blue Reservoir water

**MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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that will be booked over each year into the West Slope Account for the use of the River District under the terms and conditions of this Agreement.

e. “Replacement Water” means stored water that is used to meet the CSU Replacement Obligation by means of direct release and/or by Substitution as provided in this Agreement.

f. “Substitution” means the procedures whereby CSU may use stored water to reduce the amount of water CSU would otherwise be obligated to bypass from diversion or to release from upstream storage to complete the annual fill of Green Mountain Reservoir under the terms and conditions provided in this Agreement.

g. “Substitution Year” occurs when there is a GMR Fill Deficit.

h. “CSU Substitution Account” means the storage account maintained by the River District in Wolford Mountain Reservoir not to exceed 1,750 acre feet to manage CSU’s Upper Blue Reservoir water booked into Wolford Mountain Reservoir and the water purchased by CSU from the River District under paragraph 6 of this Agreement for use by CSU under the terms and conditions of this Agreement.

i. “GMR Water Year” means the period between the “start of fill date” of a calendar year set by Reclamation pursuant to the Blue River Decrees up to the “start of fill date” set by Reclamation for the following calendar year.

j. “West Slope Account” means the storage account maintained by CSU in Upper Blue Reservoir for 250 acre feet of Wolford Mountain Reservoir water (or such lesser amount as may be requested by the River District) booked into Upper Blue Reservoir each year for use by the River District and its contractees under the terms and conditions of this Agreement.

**MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

Page 6

2. CSU Diversions.

a. Diversions by CSU pursuant to its 1929 Rights are not subject to this Agreement and shall not be counted in determining CSU's total diversions from the Blue River or in calculating the CSU Replacement Obligation in a Substitution Year.

b. Annual diversions by CSU from the Blue River and its tributaries in any given calendar year shall not exceed ten (10) percent of the natural flow of the Blue River near Dillon below its confluence with the Snake River and Ten Mile Creek as described in the Blue River Decrees.

c. In any year in which Reclamation notifies CSU of a forecast of a Substitution Year, CSU agrees to store and reserve in its Upper Blue Reservoir, the first 2,100 acre feet of water available to Upper Blue Reservoir for storage, such water to be allocated in a manner consistent with the remaining provisions of this Agreement.

d. CSU may divert water through CSU's Blue River System notwithstanding a call placed by GMR, so long as (i) the terms of this Agreement are in effect, (ii) sufficient Replacement Water to meet the reasonably anticipated CSU Replacement Obligation is on hand in storage in reservoirs described in paragraph 9 of this Agreement to meet the replacement schedule to be established by Reclamation, (iii) the plan of Substitution provided for hereunder is consistent with the terms and conditions of this Agreement, the Blue River Decrees and has been approved by Reclamation, and (iv) prior notification has been provided by CSU to the Colorado State Engineer or the designated representative of the Colorado State Engineer.

**MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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3. Upper Blue Reservoir Bookover With Wolford Mountain Reservoir.

a. Each year CSU will hold 250 acre feet of water (or such lesser amount as is requested by the River District) in the West Slope Account. The 250 acre feet shall be the first 250 acre feet of water stored and held in Upper Blue Reservoir in Substitution Years in accordance with subparagraph 2.c. The 250 acre feet of water stored in the West Slope Account each year (or such lesser amount as may be requested by the River District or its contractees) will be available annually, at the request of the River District, for a reservoir bookover with a like-amount of water stored by the River District in Wolford Mountain Reservoir as provided in this Agreement (the "Reservoir Bookover").

b. The intent of the Reservoir Bookover is:

i. To provide the River District and its contractees with an annual supply not to exceed 250 acre feet of Wolford Mountain Reservoir water physically stored in CSU's Upper Blue Reservoir; and

ii. To provide a storage account of not to exceed 1,750 acre feet at Wolford Mountain Reservoir to store Upper Blue Reservoir water booked into Wolford Mountain Reservoir to assist CSU in meeting the CSU Replacement Obligation.

c. The Reservoir Bookover described in this paragraph 3 does not involve an appropriative right and does not require the adjudication of an exchange; however, CSU and the River District will include the Reservoir Bookover in the CSU Substitution Decree application contemplated in paragraph 11. below.

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d. The parties consent to the annual operation of the Reservoir Bookover. Subject to the provisions of subparagraph 18.c., the parties agree to support any water rights application filed by CSU and the River District that includes the Reservoir Bookover to the extent such application is consistent with this Agreement.

4. Wolford Mountain Reservoir Water Stored in Upper Blue Reservoir.

a. The River District intends to enter into contracts with Summit County in the amount of 100 acre feet, Vail in the amount of 100 acre feet, and Breckenridge in the amount of 50 acre feet, on terms agreed upon by the River District and each respective entity for the delivery and use of water stored in the West Slope Account each year. In the event that Summit County, Vail or Breckenridge does not enter into a contract with the River District for water to be released from the West Slope Account, any such entity may withdraw its consent to the terms and conditions of this Agreement and may withdraw as a party from this Agreement by giving written notice to the other parties to the Agreement.

b. All of the water stored in the West Slope Account shall be available for release every year, including Substitution Years, at the request of the River District or its contractees, as provided in subparagraph 4.i, for all beneficial uses, including fully consumptive uses, free of any replacement requirement by the River District or its contractees to DWB, Green Mountain Reservoir or others. Any replacement owed to Green Mountain Reservoir for the water stored in or used from the West Slope Account will be provided as part of the CSU Replacement Obligation.

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c. Each year the West Slope Account shall be available for release at the request of the River District and its contractees at any time between June 15th and November 15th of that year. Subject to CSU's determination of operational and safety constraints such as downstream calls, icing, and avalanche danger, CSU will cooperate with the River District and its contractees with respect to any requests the River District or its contractees may make for releases of the West Slope Account at times other than the period of June 15th through November 15th of each year. Provided, however, that the River District and its contractees acknowledge and agree that any water remaining in the West Slope Account after November 15th of each year is at risk and may not be capable of delivery as requested by the River District or its contractees.

d. Subject to water accounting procedures approved by the State Engineer's Office as provided in subparagraph 4.f., the River District and its contractees shall be entitled to reuse and successively use all return flows, if any, following the initial use of water released from the West Slope Account without a change of water right. The accounting will track the use, reuse or successive use of water from the West Slope Account in order to demonstrate that the associated depletions do not exceed the accumulated total amount of water released from the West Slope Account in the then-current GMR Water Year plus all prior GMR Water Years.

e. Any use, reuse or successive use by exchange of water released from the West Slope Account shall be in priority, subject to the approval of the State Engineer or his designee, and without injury to (i) Denver's exchange operations from Williams Fork Reservoir to Dillon Reservoir/Roberts Tunnel, as confirmed in the Blue River Decrees and Case No. 88CW382, Water Division No. 5; (ii) CSU's unadjudicated exchanges shown on Attachment A, and (iii) other rights

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of exchange decreed at any time to be in existence as of the date of this Agreement. The parties' agreement in this subparagraph 4.(e.) applies only to the administration of the use, reuse or successive use by exchange of water released from the West Slope Account. With respect to the exchanges identified in Attachment A, nothing herein shall prevent any party from objecting to the adjudication of those exchanges by CSU on any grounds. If and when those exchanges are adjudicated, the decreed amount and priority thereof will govern the administration of those exchanges as against the use, reuse or successive use by exchange of water released from the West Slope Account, notwithstanding the terms of subparagraph 4.(e.)(ii.) and Attachment A.

f. The River District shall be responsible for the required accounting of water depletions resulting from the use, reuse and successive use of water from the West Slope Account, and shall provide personnel and equipment reasonably necessary to perform such accounting. The River District's accounting shall be available to the parties upon request. All costs associated with the required water accounting shall be borne by the River District and its contractees.

g. The parties to this Agreement consent to use of 250 acre feet of water from the West Slope Account each year by the River District and its contractees. Subject to the provisions of subparagraph 18.c., the parties shall support the ability of the River District and its contractees to reuse and successively use all return flows from the use of water released from the West Slope Account consistent with the terms and conditions of this Agreement. In the event a judicial, regulatory or other administrative order is entered finding the River District or its contractees do not have the legal right to reuse and successively use the return flow of Wolford Mountain Reservoir water booked into the West Slope Account under the existing decrees for Wolford Mountain

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Reservoir, then the parties to this Agreement shall cooperate in good faith to find (i) an acceptable alternative that would provide the River District and its contractees with full rights of reuse and successive use of the 250 acre feet of water available annually for release from the West Slope Account or (ii) some other form of mitigation to the River District that is acceptable to the parties to this Agreement. If no acceptable alternative or other form of mitigation is found, the River District, at its option, may terminate this Agreement by giving written notice to the other parties.

h. The water booked into the West Slope Account shall not be used to meet the CSU Replacement Obligation.

i. The storage, release, and use of the Wolford Mountain Reservoir water in the West Slope Account shall not be deemed to be an exercise of the exchange rights defined and granted by the agreement between Summit County and DWB, dated September 18, 1985, as amended as of the date of this Agreement (the "Summit County Agreement"); consequently, there shall be no deductions against the volume limits set forth in the Summit County Agreement for such exchanges, and DWB shall not be entitled to any replacement water for the storage, release and use of water from the West Slope Account. Further, the storage, release, and use of the Wolford Mountain Reservoir water from the West Slope Account shall not be credited against the volumes of allowable depletions with respect to minimum stream flow rights under either the Upper Blue River Basin Memorandum of Agreement or the Lower Blue River Basin Memorandum of Agreement between Summit County and the Colorado Water Conservation Board, both dated October 25, 1988 and recorded at Reception Nos. 447107 and 447108 respectively of the Summit County real property records. If the Colorado Water Conservation Board disagrees with the terms of this subparagraph

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4.i., Summit County may at its option terminate its participation in, and consent to the terms of, this Agreement by giving written notice to the other parties. However, if Summit County terminates its participation in this Agreement, the remaining parties nevertheless shall remain bound to the terms and conditions of this Agreement.

j. In order to ensure efficient operations under this Agreement, the River District and its contractees shall designate a contact person who shall be authorized to coordinate with CSU all operational matters, including without limitation scheduling for storage, bookover and release of water from the West Slope Account. The River District and its contractees shall provide written notice to CSU of the identity of the authorized contact person. Designation and use of an authorized contact person by the River District and its contractees is a prerequisite to CSU's obligation to provide releases from Upper Blue Reservoir under this Agreement. The River District and its contractees shall be limited to one flow change per day with twenty four hour advanced notification to CSU for releases from the West Slope Account. The authorized contact person shall coordinate releases among the River District and its contractees in such a manner as to minimize the number of required flow changes from the West Slope Account.

5. CSU Substitution Account in Wolford Mountain Reservoir.

The River District will maintain the CSU Substitution Account in Wolford Mountain Reservoir, which shall be used for the sole purpose of assisting CSU to meet the CSU Replacement Obligation. Water stored in the CSU Substitution Account will therefore be available for release only in Substitution Years, except as otherwise expressly agreed by the River District. CSU's

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obligation to book over 250 acre feet (or such lesser amount requested by the River District) of water to the West Slope Account shall continue even if the amount of water held in the CSU Substitution Account reaches and stays at the 1,750 acre foot maximum. This means that Upper Blue Reservoir water will not be credited to the CSU Substitution Account under the Reservoir Bookover to the extent the amount of water in storage in the CSU Substitution Account exceeds 1,750 acre feet as calculated at the end of a GMR Water Year. In order to determine the amount of water in the CSU Substitution Account at the end of the current GMR Water Year, all releases from the CSU Substitution Account during the current GMR Water Year shall be deducted from the amount of water stored in the CSU Substitution Account at the end of the preceding GMR Water Year prior to adding amounts for accruals to the CSU Substitution Account during the current GMR Water Year. The amount available for release from the CSU Substitution Account in any given GMR Water Year shall be the amount of water in storage in such account calculated in accordance with this Agreement for the end of the preceding GMR Water Year.

6. Initial Fill of the CSU Substitution Account.

In addition to Upper Blue Reservoir water booked into the CSU Substitution Account, CSU agrees to purchase up to 1,250 acre feet of water from the River District in an annual amount of 250 acre feet following execution of this Agreement. For the first three years this Agreement is in effect, CSU shall purchase 250 acre feet annually, and all such purchases shall be credited towards the total of up to 1,250 acre feet provided above. If this Agreement is not approved by the Secretary of the Interior by the end of 2005, CSU, by written notice to the River District and the other parties to this

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Agreement, may suspend its obligation to purchase the balance of the water until the approval of the Secretary of the Interior is obtained. Upon approval of this Agreement by the Secretary of the Interior, CSU thereafter shall be obligated to purchase 250 acre feet per year until either a total of 1,250 acre feet has been purchased or until the CSU Substitution Account is filled to 1,750 acre feet at the end of a GMR Water Year, whichever occurs first. All Wolford Mountain Reservoir water purchased by CSU will accrue in the CSU Substitution Account, subject to the overall account cap of 1,750 acre feet. This means that CSU will not be required to purchase and the River District will not be required to sell water pursuant to this paragraph once the total water in storage in the CSU Substitution Account reaches 1,750 acre feet by means of purchases and Reservoir Bookovers at the end of a GMR Water Year. The price for purchases made by CSU pursuant to this paragraph shall be in accordance with the River District's water marketing policy at the then-prevailing rate for transmountain users.

7. Change in Use of Water Rights.

Subject to the provisions of subparagraph 18.c., the parties will support any change applications that are reasonably necessary to implement this Agreement and that are consistent with this Agreement. Any change application will be the responsibility of the respective water right owner, and will be filed at the sole discretion of the water right owner.

8. Allocation of CSU and DWB Replacement Obligations.

Whenever Reclamation determines that the then-current year is a Substitution Year, the

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allocation of the Replacement Obligation between CSU and DWB shall be determined as follows:

a. In each year in which the total amount of water diverted by CSU and DWB exceeds the GMR Fill Deficit, the allocation of the Replacement Obligation between CSU and DWB shall be calculated using the following formulas:

$$\text{CSU Replacement Obligation} = \frac{(\text{CSU diversions}) \times (\text{Replacement Obligation})}{(\text{CSU diversions} + \text{DWB diversions})}$$

$$\text{DWB Replacement Obligation} = \frac{(\text{DWB diversions}) \times (\text{Replacement Obligation})}{(\text{CSU diversions} + \text{DWB diversions})}$$

CSU diversions in the above formulas include water stored in the West Slope Account.

b. In each year in which the total amount of water diverted by DWB, CSU and others does not exceed the GMR Fill Deficit, DWB and CSU shall owe to GMR the respective amounts diverted by DWB and CSU during that year.

9. CSU's Replacement Water Operations. The CSU Replacement Obligation shall be met in the manner provided for below:

a. The initial source of Replacement Water shall be from CSU's Upper Blue Reservoir.

Subject to availability, the first 2,100 acre feet of Replacement Water will be released from Upper Blue Reservoir to DWB's Dillon Reservoir (any water in the West Slope Account will not be available for release as Replacement Water). The timing of releases to DWB's Dillon Reservoir will be coordinated between the River District, CSU, and DWB, with releases made in the late summer and early fall to provide environmental benefits:

b. If CSU's Replacement Obligation exceeds the amount of water available for release

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under subparagraph 9.a, the next incremental source of CSU's Replacement Water shall be from water obtained by CSU from DWB's account in Wolford Mountain Reservoir, DWB's Williams Fork Reservoir, or DWB's Dillon Reservoir, provided that the total amount of Replacement Water from sources identified in subparagraphs 9.a. and 9.b used to repay CSU's Replacement Obligation shall not exceed 2,100 acre feet. In repayment to DWB, CSU will release water from CSU's Montgomery Reservoir to DWB or by mutual agreement of CSU and DWB from other sources that CSU can deliver to DWB in the South Platte River above Strontia Springs in an amount equal to the amount obtained by CSU from DWB pursuant to this subparagraph 9.b. In making such repayment to DWB, CSU will also add an additional amount of water to replace the increased transit losses incurred in conveying water in natural streams to DWB from Montgomery Reservoir or from the point of delivery of the other CSU sources in the South Platte River above Strontia Springs. The increased transit losses are a result of the reduction in the amount of water delivered by CSU to the confluence of the North Fork of the South Platte River with the South Platte River as compared with the delivery of the same amount of water to the same location from the East Portal of the Roberts Tunnel. As between CSU and DWB, it is agreed that such transit loss shall be equal to six percent of the amount of water to be released from Montgomery Reservoir for the benefit of DWB or such greater or lesser amount as determined appropriate by the Division 1 Engineer's Office. Deliveries to DWB shall be made in accordance with a schedule mutually agreed between DWB and CSU in the same calendar year as water is obtained by CSU from DWB under this subparagraph 9.b. and shall be at a location and at a rate usable by Denver.

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c. The next increment of the CSU Replacement Obligation will be made by Substitution from the CSU Substitution Account in Wolford Mountain Reservoir consistent with the Replacement Obligation schedule of releases set by Reclamation.

d. If the water available under subparagraphs 9.a., 9.b., and 9.c. is inadequate to meet the CSU Replacement Obligation to Green Mountain Reservoir, the remainder of the CSU Replacement Obligation shall be made by Substitution from CSU's Homestake Reservoir in the Eagle River Basin. Any Substitution releases from Homestake Reservoir shall be coordinated with the River District and Vail and made in the late summer and early fall to provide environmental benefits, subject to meeting the Replacement Obligation schedule set by Reclamation.

e. The amount released by CSU pursuant to subparagraph 9.a. and diverted or stored by DWB and the amount obtained by CSU from DWB pursuant to subparagraph 9.b. shall be added to the DWB Replacement Obligation, and shall be released by DWB in accordance with the DWB Substitution Agreements and DWB Substitution Decree. DWB may, at its discretion, simply pass through Dillon Reservoir the water released by CSU from Upper Blue Reservoir. In such circumstance, CSU shall make such releases at times consistent with the Replacement Obligation schedule of releases set by Reclamation; the DWB Replacement Obligation shall not include any CSU releases passed through Dillon Reservoir; and such CSU releases shall be counted as part of the CSU Replacement Obligation.

f. Attachment B provides illustrative examples of how the parties to this Agreement intend that CSU's Replacement Obligation will be paid.

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g. Subject to the provisions of subparagraph 18.c., all parties to the Agreement will support DWB's ability to use stored water in Williams Fork, Dillon, or Wolford Mountain Reservoirs to meet the CSU Replacement Obligation as provided in this Agreement. In the event DWB, due to a judicial, regulatory or other administrative order, is unable to use stored water in Williams Fork, Dillon, or Wolford Mountain Reservoirs to meet the CSU Replacement Obligation under subparagraphs 9.b. and 9.e., the parties will cooperate in good faith to find an alternative to the operation described in subparagraph 9.b., which alternative is subject to the following principle:

DWB will be allowed to perform a substitution on or otherwise be able to receive water at Dillon Reservoir or on the South Platte above Strontia Springs in the amount of the CSU Replacement Obligation, up to a maximum of 2,100 acre feet in any year, minus the amount of Replacement Water that is released by CSU from Upper Blue Reservoir under subparagraph 9.a. to meet the CSU Replacement Obligation.

If CSU and DWB cannot agree on an alternative that meets the above principle, then either CSU or DWB may terminate this Agreement by giving written notice to the other parties.

10. Transit and Evaporation Losses.

The parties to this Agreement agree that the assessment of transit losses are not necessary or appropriate in any reservoir release contemplated by this Agreement, with the exception of the transit losses to be paid by CSU pursuant to subparagraph 9.b., above. The River District shall bear any evaporation losses assessed to the CSU Substitution Account. CSU shall bear any evaporation losses assessed to the West Slope Account.

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11. CSU Substitution Decrees.

a. Following the resolution, if any, of the issue described in the following subparagraph 11.(b.), CSU and the River District shall file a joint request with the Federal District Court for the District of Colorado in its retained jurisdiction under the Blue River Decrees, and with the Division 5 Water Court to enter a supplemental decree, determining and declaring that CSU may fulfill the CSU Replacement Obligation in the manner contemplated by this Agreement (the “CSU Substitution Decrees”).

b. Summit County, Vail and Breckenridge have concerns that the diversions and storage of water and Substitutions by CSU permitted under this Agreement in a Substitution Year may decrease the opportunity for replacement operations and exchange to points on the Blue River or its tributaries upstream of Dillon Reservoir that are exercised pursuant to the Summit County Agreement and the Clinton Reservoir-Fraser River Water Agreement dated July 21, 1992 (the “Clinton Agreement”). CSU believes that its diversion and storage of water and its Substitutions under this Agreement will not decrease the opportunity for replacement operations and exchanges above Dillon Reservoir on the Blue River or its tributaries that are exercised pursuant to the Summit County Agreement or the Clinton Agreement in a Substitution Year. CSU, Summit County, Vail and Breckenridge shall cooperate in good faith to arrive at mutually agreeable terms and conditions to be included in the CSU Substitution Decrees that in a Substitution Year will allow the full amounts of diversion and storage of water and Substitutions by CSU described in this Agreement without decreasing the amounts of water that can be exchanged or replaced above Green Mountain Reservoir pursuant to the Summit County Agreement and the Clinton Agreement, as such

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agreements are now in effect, in a Substitution Year. If the parties have not agreed to such mutually agreeable terms and conditions prior to September 15, 2003, any of Summit County, Vail, Breckenridge, or CSU may terminate this Agreement prior to October 15, 2003, by giving written notice to the other parties.

c. Subject to the provisions of subparagraph 18.c., the parties hereto agree to support the efforts of CSU and the River District to secure the CSU Substitution Decrees. CSU shall bear the primary responsibility of prosecuting the CSU Substitution Decrees. The River District will be a co-applicant entitled, along with CSU to approve stipulations and any proposed decrees. The parties agree that entry of a final and non-appealable decision of either the Federal District Court or the Division 5 Water Court that does not determine that CSU may fulfill its Replacement Obligation in substantial conformity with this Agreement, will be cause for termination of this Agreement. In such event, any party to this Agreement by written notice to the other parties may terminate this Agreement.

12. Power Replacement.

CSU shall tender power replacement to Reclamation for power interference to the GMR powerplant resulting from Substitution operations contemplated by this Agreement. Power replacement obligations of DWB are addressed in the DWB Substitution Agreements. CSU and DWB shall cooperate to assure that power replacement obligations to Reclamation are not duplicated and are equitably paid by CSU and DWB respectively. CSU shall be responsible for

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any power replacement required to be made for water stored in or used from the West Slope Account.

13. No Additional CSU Substitutions.

CSU shall not seek approval of additional or different Substitutions or additional or different points of delivery for the CSU Replacement Obligation, absent the approval of the other parties to this Agreement. Nothing in this Agreement is intended to prevent CSU from developing its remaining conditional 1948 Blue River Decree rights consistent with the Blue River Decrees and applicable Colorado law.

14. Priority of Denver's Exchanges.

As between CSU and DWB, CSU acknowledges that DWB has the senior right to exchange water on the Blue River.

15. Consistency With Blue River Decrees.

All water diverted by CSU by Substitution hereunder and all water made available to DWB from Montgomery Reservoir or other CSU sources as contemplated in subparagraphs 9.b. and 9.g. hereunder shall be subject to all terms, conditions, and limitations of the Blue River Decrees. It is not the intent of the parties to this Agreement or the purpose of this Agreement to alter the terms of Senate Document 80, the Blue River Decrees, the Summit County Agreement, the Clinton Agreement, or the rights of any of the beneficiaries thereof. The Substitution operations

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contemplated by this Agreement shall not impair the right of any beneficiary, present or future, of Senate Document 80, including any contractors for GMR water service to realize the full benefits of releases of stored water from GMR to the extent that they would have been entitled to such benefits if the Substitution had not been made.

16. Operational Limitations.

To the extent there may arise unforeseen operational constraints in the nature of force majeure conditions, which conditions are beyond the control of the parties, appropriate adjustments shall be made, upon consultation with and concurrence of the parties in the manner of timing and location of the CSU Replacement Obligation.

17. Approval by the Secretary of the Interior.

a. This Agreement is binding on all the parties but the parties recognize that implementation of the CSU Substitution and Replacement Obligation operations on a permanent basis will require the formal approval of the Secretary of the Interior and that such approval may require review under the National Environmental Policy Act of 1969, as amended ("NEPA") or other applicable federal law.

b. Promptly following the resolution, if any, of the issue described in subparagraph 11.(b.), Colorado Springs shall initiate the process for obtaining the approval of the Secretary of the Interior, and shall be responsible for carrying out that process.

c. Pending NEPA review by the Secretary of the Interior, the Reservoir Bookover, sales

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and deliveries of water described in this Agreement will be implemented. Further, if a Substitution Year occurs prior to formal approval by the Secretary of the Interior, the CSU Replacement Water Operations described in this Agreement may be implemented for that year to meet the CSU Replacement Obligation, subject to the consent of Reclamation.

d. Any required federal actions by the Secretary of the Interior to consider formal approval of this Agreement herein on a permanent basis shall be carried out in compliance with the provisions of NEPA or other applicable federal law. If the Secretary of the Interior's decision requires any mitigation as a condition of the approval of this Agreement and such required mitigation would affect any party's system or operations to such a significant extent that such party determines is not in its best interest to continue its participation in this Agreement, then the parties shall cooperate in good faith either (i) to provide for an alternative operation that would not result in the mitigation requirement or (ii) to provide alternative mitigation that would not significantly affect any party's system or operation to such a significant extent that such party would determine it would not be in that party's best interest to continue participation in this Agreement. If no such alternative operation or alternative mitigation is identified by the parties, Colorado Springs, at its option, may provide for the mitigation required by the Secretary of the Interior. If the Secretary of the Interior does not approve this Agreement with the alternative operation or alternative mitigation identified by the parties, or with CSU providing the mitigation required by the Secretary of the Interior, any party may withdraw from this Agreement by giving written notice of the withdrawal to the other parties to this Agreement. If DWB, CSU or the River District withdraws from this Agreement, then this Agreement shall terminate.

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e. Subject to the provisions of subparagraph 18.c., all parties to this Agreement will cooperate in good faith with the intent that all required federal approvals are obtained and that all required federal actions for implementation of this Agreement are carried out in an expeditious manner.

f. If a Substitution Year occurs prior to the time when formal approval of the Secretary of the Interior is obtained, all parties will cooperate in good faith to assure that consent of Reclamation is obtained in a timely manner for implementation of CSU's Replacement Water Operations described in this Agreement to meet the CSU Replacement Obligation during any such Substitution Year.

g. In the event of the entry of a final and non-reviewable decision by the Secretary of the Interior that fails to approve the operations in substantial conformity with this Agreement, any party to this Agreement by written notice to the other parties may terminate this Agreement.

18. Miscellaneous Provisions.

a. Notice. All notices required or appropriate under or pursuant to this Agreement shall be given in writing mailed or delivered to the parties at the following addresses:

River District: Colorado River Water Conservation District
201 Centennial Street, Suite 200
P. O. Box 1120
Glenwood Springs, Colorado 81602
Attention: Secretary/General Manager

CSU: Colorado Springs Utilities
Attention: Chief Executive Officer
121 S. Tejon, 5th Floor

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Colorado Springs, CO 80903

DWB: Denver Board of Water Commissioners
1600 W. 12th Avenue
Denver, CO 80204-3412
Attention: Secretary/Manager

Northern: Northern Colorado Water Conservancy District
Attention: General Manager
1250 North Wilson Avenue
P. O. Box 679
Loveland, CO 80539

Summit County: Summit County Commissioners
Attention: County Manager
P.O. Box 68
208 E. Lincoln Avenue
Breckenridge, Colorado 80424

Vail: Roger McCarthy
Breckenridge Ski Resort
P.O. Box 1058
Breckenridge, CO 80424

Breckenridge: Tim Gagen, Town Manager
Town of Breckenridge
150 Ski Hill Road
P.O. Box 1058
Breckenridge, CO 80424

Any party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.

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b. Amendments. No amendment, modification, or novation of this Agreement or its provisions and implementation shall be effective unless in writing approved and executed by all parties with the same formality as they have approved and executed this Agreement.

c. Obligation of Parties to Cooperate or Support Certain Actions. The obligations in this Agreement for parties to cooperate in good faith or to support certain actions or activities as more fully described in paragraphs 3, 4, 7, 9, 11, and 17 of this Agreement shall not preclude participation of any party in any proceedings or activities to assure the ultimate results are consistent with this Agreement, the Blue River Decrees and Senate Document 80. Parties may file statements of objection in any water court proceedings initiated as a result of this Agreement and may participate in any Federal Court proceedings regarding the Blue River Decrees to assure that the ultimate results are consistent with this Agreement, the Blue River Decrees and Senate Document 80.

d. Previous Agreements and Decrees. Nothing contained in this Agreement shall modify, alter or supercede the Blue River Decrees, Senate Document 80, the DWB Substitution Agreements, the Summit County Agreement, the Clinton Agreement, and the DWB Substitution Decree.

e. Successors and Assigns. This Agreement shall be binding upon all successors of any party to the Agreement. A party's rights and obligations under this Agreement may only be assigned to another entity with the prior written consent of the other parties to this Agreement, which written consent shall not be unreasonably withheld.

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f. Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the parties relating to the matters herein provided. Any prior agreements regarding these matters, whether written or oral, have been merged and integrated into this Agreement. No subsequent modification or amendment of this Agreement shall be valid or binding upon the parties, or enforceable against any party, unless such modification or amendment is in writing and has been signed by all parties. The parties acknowledge that this Agreement may need to be amended to add additional parties.

g. Authorizations. Each party represents that it has taken all necessary actions to authorize execution and performance of this Agreement and that the Agreement has been executed by duly authorized representatives of that party.

h. Counterparts. This Agreement may be executed in separate counterparts, and shall be binding once a counterpart has been executed by all parties.

i. Miscellaneous. The Recitals are incorporated as part of this Agreement.

This Agreement has been executed by each of the parties on the dates shown below and shall be effective as of May 15, 2003 (the "date of this Agreement.").

ATTEST:

COLORADO RIVER WATER CONSERVATION
DISTRICT, acting by and through its Colorado River Projects
Enterprise

By David H. Merritt
Assistant Secretary, David H. Merritt

By Paul J. Ohri
President, Paul J. Ohri

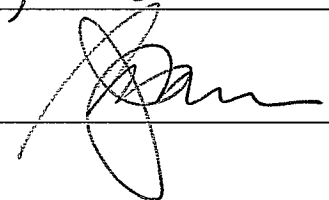
Dated: 6-17-03

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THE CITY OF COLORADO SPRINGS

By Phillip H. Tollefson
Phillip H. Tollefson, P.E.
Chief Executive Officer, Colorado Springs Utilities

Dated: June 15, 2003

Approved as to Form: 

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

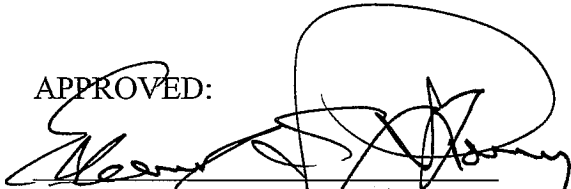
ATTEST:

By: 
Secretary

By: 
President

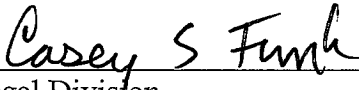
DATE: 6-25-03

REGISTERED AND COUNTERSIGNED:
~~Donald J. Mares~~, Auditor
CITY AND COUNTY OF DENVER

APPROVED: 
Director of Planning

By: 

APPROVED AS TO FORM:


Legal Division

THE NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

ATTEST:

By *Eric W. Wickham*
Secretary

By *Milee Appleto*
President

Dated: *6/13/2003*

MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS

Page 31

ATTEST:

VAIL SUMMIT RESORTS, INC.

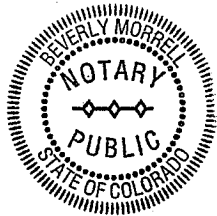
By Beverly Morrell

By [Signature]

Seal

Title: Coop. SVP

Dated: 16 Jun 03



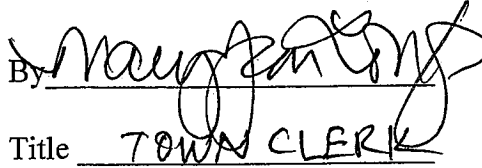
Commission Expires
11-1-05

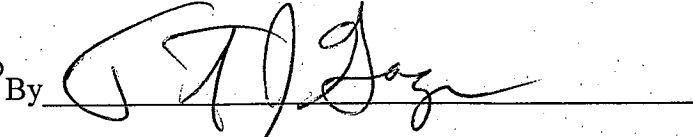
MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS

Page 32

ATTEST:

TOWN OF BRECKENRIDGE

By 

By 

Title TOWN CLERK

Title: Town Manager

Dated: 7/24/03

Seal

**MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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THE COUNTY OF SUMMIT, acting through its Board of County
Commissioners

By Ron Holliday

Title: Ron Holliday, County Manager

Dated: 6-25-03

**MEMORANDUM OF AGREEMENT REGARDING
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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ATTACHMENT A

CSU's Unadjudicated Exchanges

Unadjudicated Exchanges into Colorado Springs Continental-Hoosier System

From Williams Fork Reservoir to Continental-Hoosier System

Dates: July and August 1964

Maximum rate of exchange: 30 c.f.s.

From Homestake Reservoir to Continental-Hoosier System

Dates: July and August 1987

Maximum rate of exchange: 65.5 c.f.s.

ATTACHMENT B

Colorado Springs (CS) Substitution Payback Scenarios

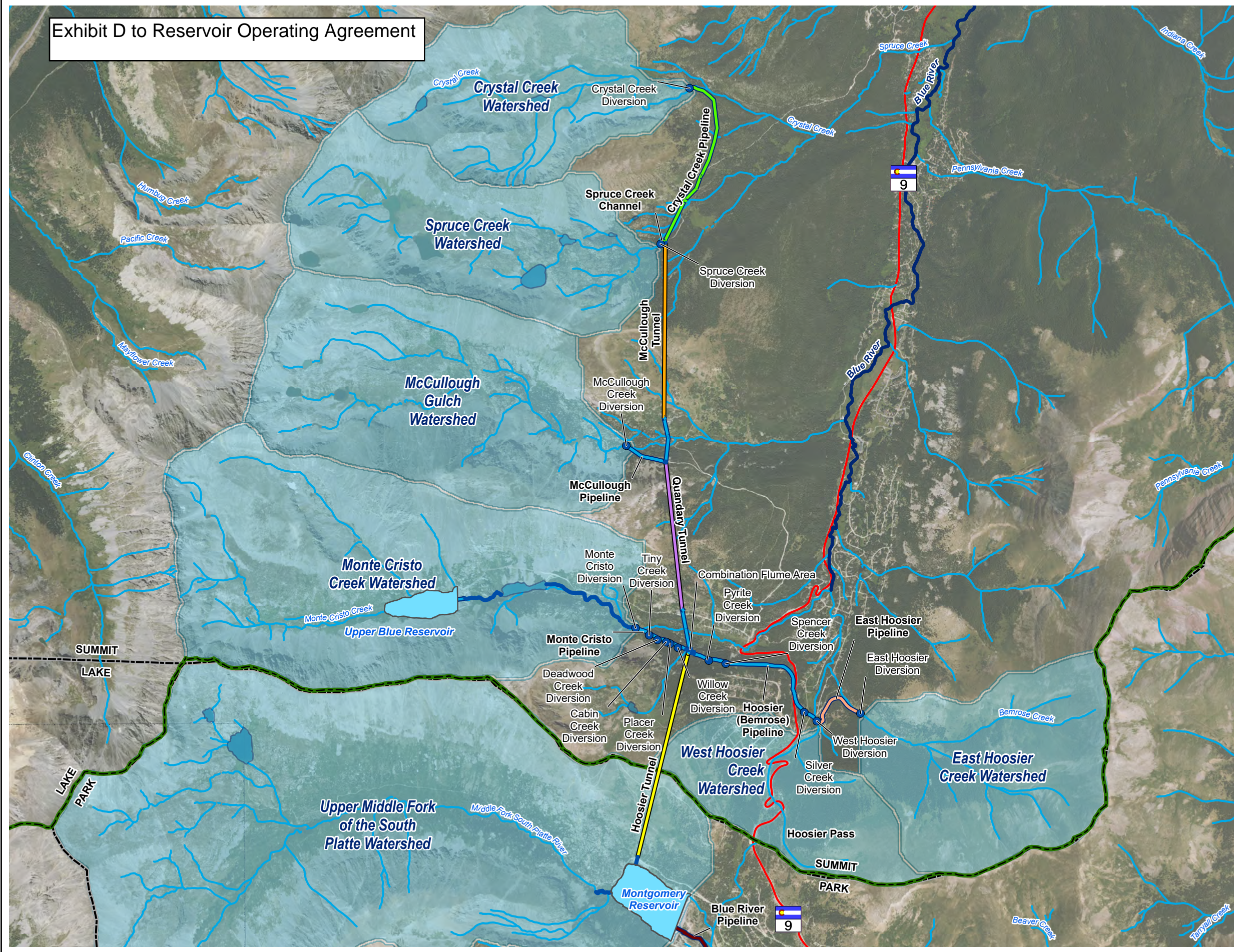
Scenario	1	2	3	4	5	6	7	8
	(acre-feet)	(acre-feet)	(acre-feet)	(acre-feet)	(acre-feet)	(acre-feet)	(acre-feet)	(acre-feet)
CS pro rata Owed to GM	400	400	2500	3000	3000	3000	1850	4500
Total Upper Blue Storage	2100	2100	2100	2100	1000	1000	1500	1000
Upper Blue Released For CRD	250	250	250	250	250	250	250	250
Upper Blue Released to GM (DWB)	400	400	1850	1850	750	750	1250	750
CS Platte Released to DWB (DWB Replace to GM)	0	0	250	250	1350	1350	600	1350
CS Wolford Acct (Start of Season)	500	1750	500	500	1750	250	250	1750
Credit to Wolford (CS)	250	250	250	250	250	250	250	250
Wolford Released for Substitution (CS)	0	0	400	500	900	250	0	1750
CS Wolford Acct (End of Season)	750	1750	350	250	1100	250	500	250
Homestake Res. Release for Substitution	0	0	0	400	0	650	0	650
Total Substitution Release	400	400	2500	3000	3000	3000	1850	4500

Colorado River District (CRD)
 Colorado Springs (CS)
 Green Mountain Reservoir (GM)
 Denver Water Board (DWB)

4/30/2003

Exhibit D to Reservoir Operating Agreement

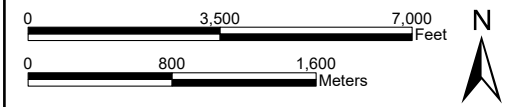
**CONTINENTAL-HOOSIER
SYSTEM PROJECT**



- Legend**
- Existing Conveyance Features
 - Crystal Creek Pipeline
 - East Hoosier Pipeline
 - Blue River Pipeline
 - Other Raw Water Pipeline
 - River/Creek/Flume
 - Hoosier Tunnel
 - McCullough Tunnel
 - Quandary Tunnel
 - Diversion
 - Watershed
 - Existing Reservoir
 - Other Lake/Pond/Reservoir
 - Stream/River
 - Continental Divide
 - State/US Highway
 - County

Data Sources: CSU, AECOM
Aerial Photo: 2019 NAIP, USDA
Last Updated: 3/8/2022

DRAFT



**FIGURE X
Existing CHS Facilities**

C:\GIS\Projects\60587972_MONTPermit\MapAlternatives_Working\CHS_Existing_Facilities_Reference.aprx

Exhibit 2

<p>DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601-3303</p>	<p>Draft of Nov. 15, 2023 Subject to CRE 408</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF COLORADO SPRINGS, COLORADO, IN SUMMIT COUNTY, COLORADO</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Colorado Springs Utilities: William A. Paddock, Reg. No. 9478 Karl D. Ohlsen, Reg. No. 32497 Sarah B. Wiedemann, Reg. No. 46383 Carlson, Hammond & Paddock, L.L.C. 1900 Grant Street, Suite 1200 Denver, Colorado 80203 Phone: (303) 861-9000, Fax: (303) 861-9026 e-mail: bpaddock@chp-law.com kohlsen@chp-law.com swiedemann@chp-law.com</p> <p>Michael Gustafson, Reg. No. 37364 City Attorney's Office-Utilities Division P. O. Box 1575 Mail Code 510 30 S. Nevada Avenue Suite 501 Colorado Springs, Colorado 80901 Phone: (719) 385-5909 Fax: (719) 385-5535 e-mail: michael.gustafson@coloradosprings.gov</p>	<p>Case Number: 15CW3019 (Former Case No. 06CW132)</p> <p>Division 5 Ctrm:</p>
<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RULING OF THE REFEREE, JUDGMENT AND DECREE</p>	

This matter comes before the Water Referee on the Application to For a Finding of Reasonable Diligence for the conditional water storage rights of the City of Colorado Springs, by and through its enterprise Colorado Springs Utilities, (“Colorado Springs”). The Water Referee, having reviewed the Application and other pleadings on file and having made such investigations

as are necessary to determine whether or not the statements in the Application are true and being fully advised on this matter, makes the following findings of fact, conclusions of law, and ruling in this matter:

FINDINGS OF FACT

1. Applicant. The name and address of the Applicant:

City of Colorado Springs
Colorado Springs Utilities
c/o Abigail Ortega, PE, Water Supply Resources Manager
1521 Hancock Expressway, MC 1825
Colorado Springs, CO 80903
Phone: (719) 668-8748
Colorado Springs, CO 80947-1825

Colorado Springs is a home rule city and municipal corporation of the State of Colorado. It owns and operates a municipal water and sewer utility system for the benefit of its citizens, and for the provision of water and sewer service to such extra-territorial customers as it may serve from time to time pursuant to its City Charter and contracts.

2. Filing of Application. The Application was filed with the Water Clerk for Water Division No. 5 on March 30, 2015 and was published in the April 2015 Resume for Water Division No. 5.

3. Referral and Publication. The Application was referred to the Referee by Order dated April 1, 2015. The Water Referee has caused publication of the Application as provided by statute, and proof of publication for the Application was filed with the Court on May 20, 2015. All publication costs have been paid, and all notices of the Application have been given in the manner provided by law.

4. Notice to Landowners. Pursuant to C.R.S. §37-92-302(2)(b), Colorado Springs provided notice of the Application to the landowners upon which any new diversion or storage structure or any modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored. A certification that such notice was provided was filed with the Court on April 6, 2015. On July 20, 2022, Colorado Springs filed a Supplemental Notice to Landowners.

5. Statements of Opposition. Timely statements of opposition were filed by the Town of Breckenridge, the Ute Water Activity Enterprise, the Lower Arkansas Valley Water Conservancy District, the Colorado River Water Conservation District, and the Board of County Commissioners of the County of Summit. The time for filing statements of opposition has expired. On July 16, 2018, the Lower Arkansas Valley Water Conservancy District withdrew its statement of opposition. On September 8, 2022, the Water Referee granted the Unopposed

Motion to Intervene of Jeff Pope and accepted his statement of opposition. No other statements of opposition were filed in this case.

6. Stipulations. Colorado Springs has entered into the following stipulations in this case;

A. Stipulation with Jeff Pope was approved by the Court on March 29, 2023. Pursuant to that stipulation Colorado Springs acknowledged that it does not currently have permission to construct any of the structures involving the Subject Rights on any portion of the land known as the H.A.W. Tabor Mineral Survey No. 4393, consisting of 5.16 acres in Section 2, Township 8 South, Range 78 West of the 6th P.M. (the “Tabor Land”), or to inundate any portion of the Tabor Land. Prior to any construction on or inundation of the Tabor Land caused by any structures involving the Subject Rights, Colorado Springs shall either reach an agreement compensating of the owners the Tabor Land or otherwise acquire the necessary property interests in the Pope Land in accordance with the City of Colorado Springs policies and procedures for the acquisition of real property interests.

B. Stipulations with the Town of Breckenridge, the Ute Water Activity Enterprise, the Colorado River Water Conservation District, and the Board of County Commissioners of the County of Summit and those stipulations were approved by the Court on _____, 202_.

7. Summary of Consultation. A consultation report was filed on June 23, 2015. The Referee has considered the consultation report in making this ruling.

8. Jurisdiction. Colorado Springs timely and appropriately filed its Diligence Application, and proper and adequate notice of the filing and contents of the Application was given in the manner required by law. The Court has jurisdiction over the subject matter of this proceeding and over all persons who have standing to appear as parties herein, whether they have appeared or not. None of the lands or water rights involved in the Application are located within the boundaries of a designated groundwater basin.

9. Summary of Application. This case involves an application for a Sexennial Finding of Reasonable Diligence for the conditional water storage rights decreed on May 10, 1952 in Civil Action No. 1806 (Summit County District Court), and on October 12, 1955 in Consolidated Cases No. 2782, 5016, and 5017 (United States District Court) (the “Subject Rights”). Colorado Springs requests a finding that it has exercised reasonable diligence in the development of the Subject Rights.

10. Structures Involved in the Subject Rights. The structures involved in the Subject Rights and their decreed legal descriptions of the are as follows:

A. Lower Blue Lake Reservoir (also known as Lower Quandary Lake): the initial point of survey is located at a point whence the Northeast Corner of Section 3, Township 8 South, Range 78 West of the 6th P.M., bears North 54° East 503 feet.

B. Spruce Lake Reservoir: the initial point of survey is located at a point whence the

Northeast Corner of Section 22, Township 7 South, Range 78 West of the 6th P.M bears North 12° 44' East 5,780 feet.

C. Mayflower Reservoir: the initial point of survey is located at a point whence the Northeast Corner of Section 22, Township 7 South, Range 78 West of the 6th P.M. bears North 3° 44' East 4,770 feet.

11. Information Applicable to Subject Rights:

A. Date of Original Decree: Civil Action No. 1806, (Summit County District Court), dated May 10, 1952, and Consolidated Cases No. 2782, 5016, and 5017 (United States District Court) dated October 5, 1955.

Subsequent decrees awarding diligence: The conditional water rights described herein have been continued as required by law, with the last diligence application filed in Case No. 06CW132, Water Division No. 5, in which a decree was entered on March 24, 2009.

B. Source of water:

- i. Lower Blue Lake Reservoir: Blue River, tributary to the Colorado River.
- ii. Spruce Lake Reservoir: Spruce Creek, tributary to the Blue River, tributary to the Colorado River.
- iii. Mayflower Reservoir: Spruce Creek, tributary to the Blue River, tributary to the Colorado River.

C. Appropriation Date: May 13, 1948.

Amounts:	Lower Blue Lake Reservoir:	1,006 AF
	Spruce Lake Reservoir:	1,542 AF
	Mayflower Reservoir:	618 AF
	Total:	3,166 AF

D. Decreed Use:

- i. From CA 1806 Decree: to be used by and for the benefit of the inhabitants of the City of Colorado Springs and adjacent areas for domestic uses, fire protection, sewage disposal, manufacturing and industrial uses, street sprinkling and flushing, irrigation of lawns, trees, gardens, flowers and parks, and other municipal purposes.

- ii. From 10/12/1955 Final Decree, Consolidated Cases No. 2782, 5016, and 5017 (hereafter the “Consolidated Blue River Cases”): for municipal purposes as defined in the Stipulation dated October 5, 1955, filed in the United States District Court for the District of Colorado and set forth in full in the Findings of Fact and Conclusions of Law and incorporated into the Final Decree by reference.

12. Diligence in the Development of Conditional Amounts of the Subject Rights. Colorado Springs requests a finding that it has exercised reasonable diligence in the development of the Subject Rights. The Court finds that the work, actions and expenditures described in the Application for this case constitute reasonable diligence in the development of the Subject Rights. The Court finds that Colorado Springs has demonstrated that they can and will operate the Subject Rights in the future. Accordingly, the Court finds that Colorado Springs has demonstrated reasonable diligence towards completion of the Subject Rights. Based upon the foregoing, the Water Referee finds that the 3,166 acre-feet conditional amount of the Subject Rights, shall remain in full force and effect.

13. Terms and Conditions for the Right. Colorado Springs’ operation of the Subject Rights shall be in accordance with all terms and conditions set forth in the Decrees entered in Civil Action No. 1806 (Summit County District Court), and in Cases No. 2782, 5016, and 5017 (United States District Court), and in compliance with the agreements described therein.

CONCLUSIONS OF LAW

14. Statutory Authority and Jurisdiction. The Application in this matter was filed with the Water Clerk, Water Division No. 5, pursuant to C.R.S. §37-92-302(1)(a). The Court has exclusive jurisdiction over the subject matter of the Application pursuant to C.R.S. §37-92-203, and over all persons or entities affected hereby, whether they have appeared or not. Pursuant to the Order entered on March 22, 2017, by the United States District Court in the Consolidated Blue River Cases No. 5016, and 5017, that Court no longer acts as the Water Division 5 Water Judge in matters relating to the filing of applications for showings of due diligence pursuant to the 1969 Water Right Determination and Administration Act (“1969 Act”). All proceedings in this matter are committed to the exclusive jurisdiction of the District Court in and for Water Division No. 5, State of Colorado

15. Notice. Timely and adequate notice of this proceeding was given in the manner required by law.

16. Authorized by Law. Colorado Springs’ request for findings of reasonable diligence in the development of conditional water storage rights is contemplated and authorized by law. C.R.S. §§37-87-101 and 37-92-302.

17. Standard for Finding Reasonable Diligence, C.R.S. §37-92-301(4)(b). To establish diligence, an applicant must show “the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. *See* C.R.S.

§37-92-301(4)(b); *Municipal Subdistrict v. Oxy USA, Inc.*, 990 P.2d 701 (Colo. 1999); *Municipal Subdistrict v. Chevron Shale Oil Co.*, 986 P.2d 918 (Colo. 1999). The water court's determination of reasonable diligence is a case by case determination, considering all the relevant evidence, and the following nonexclusive list of factors: 1) economic feasibility; 2) the status of required permits and governmental approvals; 3) expenditures made to develop the appropriation; 4) the ongoing conduct of engineering and environmental studies; 5) the design and construction of facilities; and 6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Oxy USA*, 990 P.2d at 706; *Chevron Shale Oil*, 986 P.2d at 921. "When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system." C.R.S. §37-92-301 (4)(b). The Subject Rights are a part of the Applicant's integrated municipal water system comprising all water rights decreed and used in connection with the Applicant's municipal water supply system. This case involves the Continental-Hoosier System or Blue River Project, which is an integral part of the Applicant's water supply system that includes the conditional water storage rights subject to the application herein. Applicant exercised reasonable diligence in its efforts during this diligence period to perfect its decreed conditional water storage rights in the manner required by Colorado law.

18. The "Can and Will" standard, C.R.S. § 37-92-305(9)(b). The "can and will" standard must be met by an applicant for a finding of reasonable diligence. *Municipal Subdistrict, Northern Colorado Water Conservancy Dist. v. Getty Oil Exploration Co.*, 997 P.2d 557, 564 n.6 (Colo. 2000); *Oxy USA*, 990 P.2d at 707-08. The legislative intent implied in C.R.S. §37-92-305(9)(b), in diligence proceedings, is to require that the applicant demonstrate:

... that the decreed conditional appropriation is being pursued in a manner which affirms that capture, possession, control, and beneficial use of water can and will occur in the state, thereby justifying continued reservation of the antedated priority pending perfection of a water right.

Dallas Creek Water Co. v. Huey, 933 P.2d 27, 37 (Colo. 1997) (footnote omitted).

Colorado Springs has established that the conditional portion of the Subject Rights can and will be diverted, stored, or otherwise captured, possessed, and controlled, and that the water will be beneficially used. Colorado Springs has also demonstrated that said conditional water right can and will be completed with diligence and within a reasonable time.

19. Compliance with Legal Requirements and Burdens of Proof. Colorado Springs has complied with all requirements and met all standards and burdens of proof and is therefore entitled to a ruling and decree making a finding of diligence in development of the conditional portions of the Subject Rights.

RULING

IT IS THEREFORE ORDERED AS FOLLOWS:

- 20. Findings of Fact Incorporated. The foregoing Findings of Fact and Conclusions of Law are incorporated by this reference as if fully set forth herein.
- 21. Approval of Application. The Application for a finding of reasonable diligence in the development of the conditional rights for the Subject Rights is granted, and said conditional water storage rights are continued in force.
- 22. Future Applications for Diligence. Colorado Springs shall file an application for sexennial finding of reasonable diligence for the Subject Rights continued herein, six years after the date on which the Water Judge enters a decree in this case, and in the same month in which the decree was entered, and thereafter as provided by law, for so long as Colorado Springs desires to maintain such conditional portions of the Subject Rights or until a determination has been made that the Subject Rights have become absolute.
- 23. Notice of Transfer. Upon sale or transfer of the conditional storage rights, the transferee shall file with the Water Court a Notice of Transfer containing the title and case number of the conditional storage rights transferred, the name of the transferor, the name and mailing address of the transferee, and a copy of the recorded deed.
- 24. Mailing of Decree. Copies of this ruling, and the final decree when entered by the Court, shall be mailed as provided by statute.

Dated: _____.

BY THE REFEREE:

Holly Strablizky, Water Referee
Water Division No. 5, State of Colorado

JUDGMENT AND DECREE

THIS MATTER having come before the Court, pursuant to C.R.S. §§37-92-303 and 37-92-304, and the Court having reviewed the Ruling of the Water Referee, and being fully apprised of this matter,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Referee's Ruling is hereby adopted as the Judgment and Decree of this Court.

Dated: _____.

BY THE COURT

Hon. Christopher Seldin, Water Judge
Water Division 5

Exhibit 3

<p>DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO 501 N. Elizabeth Street, Suite 116 Pueblo, CO 81003</p> <hr/> <p>IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF COLORADO SPRINGS, COLORADO</p> <p>IN THE ARKANSAS RIVER AND ITS TRIBUTARIES, INCLUDING FOUNTAIN CREEK</p> <p>IN LAKE, CHAFFEE, FREMONT, PUEBLO, TELLER AND EL PASO COUNTY, COLORADO</p>	<p>Draft 11-15-2023</p> <p>▲ COURT USE ONLY ▲</p>
<p>Counsel for the City of Colorado Springs: Michael J. Gustafson, Senior Attorney, Reg. No. 37364 City Attorney’s Office – Utilities Division 30 South Nevada Avenue, MC 510 Colorado Springs, CO 80903 Phone: (719) 385-5909 Fax: (719) 385-5535 Email: mgustafson@springsgov.com</p>	<p>Case No: 18CW3041</p> <p>Original Case No: 03CW314</p>
<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RULING OF THE REFEREE, JUDGMENT AND DECREE</p>	

This matter comes before the Water Referee on the Application to For a Finding of Reasonable Diligence for the conditional appropriative rights of exchange of the City of Colorado Springs, by and through its enterprise Colorado Springs Utilities, (“Colorado Springs”). The Water Referee, having reviewed the Application and other pleadings on file and having made such investigations as are necessary to determine whether or not the statements in the Application are true and being fully advised on this matter, makes the following findings of fact, conclusions of law, and ruling in this matter:

FINDINGS OF FACT

1. Applicant. The name and address of the Applicant:

City of Colorado Springs
Colorado Springs Utilities

c/o Abigail Ortega, PE, Water Supply Resources Manager
1521 Hancock Expressway, MC 1825
Colorado Springs, CO 80903
Phone: (719) 668-8748
Colorado Springs, CO 80947-1825

Colorado Springs is a home rule city and municipal corporation of the State of Colorado. It owns and operates a municipal water and sewer utility system for the benefit of its citizens, and for the provision of water and sewer service to such extra-territorial customers as it may serve from time to time pursuant to its City Charter and contracts.

2. Filing of Application. The Application was filed with the Water Clerk for Water Division No. 5 on March 30, 2018 and was published in the March Resume for Water Division No. 5.

3. Referral and Publication. The Application was referred to the Referee by Order dated March 30, 2018. The Water Referee has caused publication of the Application as provided by statute, and proofs of publication for the Application were filed with the Court on July 19, 2018 and July 23, 2018. All publication costs have been paid, and all notices of the Application have been given in the manner provided by law.

4. Notice to Landowners. Pursuant to C.R.S. §37-92-302(2)(b), Colorado Springs provided notice of the Application to the landowners upon which any new diversion or storage structure or any modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored. A certification that such notice was provided was filed with the Court on May 7, 2018.

5. Statements of Opposition. Timely statements of opposition were filed by Eagle River Water & Sanitation District, Upper Eagle Regional Water Authority, and the Board of County Commissioners of the County of Summit. No other statements of opposition were filed in this case. The time for filing statements of opposition has expired.

6. Stipulations. Colorado Springs has entered into stipulations in this case with Eagle River Water & Sanitation District, Upper Eagle Regional Water Authority and _____.

7. Summary of Consultation. A consultation report was filed on June 29, 2018. The Referee has considered the consultation report in making this ruling.

8. Jurisdiction. Colorado Springs has timely and appropriately filed its Application, and proper and adequate notice of the filing and contents of the Application was given in the manner required by law. The Court has jurisdiction over the subject matter of this proceeding and over all persons who have standing to appear as parties herein, whether they have appeared or not. None of the lands or water rights involved in the Application are located within the boundaries of a designated groundwater basin.

9. Summary of Application. This case involves an application for a Sexennial Finding of Reasonable Diligence for the conditional appropriative rights of exchange known as the CSU 2003 Homestake-Blue River Exchange, decreed on March 14, 2012, in Case No. 03CW314 (the "Subject Exchange"). Colorado Springs requests a finding that it has exercised reasonable diligence in the development of the Subject Exchange.

10. Structures Involved in the Subject Exchange. The structures involved in the Subject Exchange and their decreed legal descriptions of the are as follows:

A. Homestake Reservoir. Homestake Reservoir, also known as Elliott-Weers Reservoir, has a capacity of 83,338.98 acre feet CONDITIONAL, and is located on Homestake Creek with a dam whence Homestake Peak bears South 73° 26' East 10,477 feet from the easterly end thereof and South 74° 57' East 13,347 feet from the westerly end thereof, said dam having a maximum height of 411.5 feet and a length of 3,380 feet. The sources of supply of said reservoir are Homestake Conduit, East Fork Conduit, the Middle Fork of Homestake Creek, and Homestake Creek and said reservoir has appropriated for storage 83,338.98 acre feet annually from said sources. Homestake Reservoir also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel. Existing Homestake Reservoir has a storage capacity of 43,504.7 acre feet ABSOLUTE and is located on Homestake Creek with a dam whence the NW Corner of Section 31, T7S, R80W of the 6th P.M. bears North 58° 30.6' East 24,659 feet from the East dam abutment and North 62° 25.8' East 25,746 feet from the West dam abutment; said dam has a maximum height of 265.0 feet and a length of 1,996 feet. The sources of supply of said existing Homestake Reservoir are Homestake Conduit, East Fork Conduit, the Middle Fork of Homestake Creek, and Homestake Creek. Existing Homestake Reservoir has appropriated 43,504.7 acre feet annually from said sources and also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel.

B. Continental-Hoosier Diversion System:

a. Diversion Structures.

i. Blue River Ditch: The headgate and point of diversion of said Blue River Ditch is located at a point on the South bank of the Blue River, a natural stream, in said Water District No. 36, tributary to the Colorado River, from whence the East quarter corner of Section 2, Township 8 South, Range 78 West of the 6th P.M. is S. 80° 44' E. a distance of 2,096 feet.

ii. Crystal Ditch: The headgate and point of diversion of said Crystal Ditch is located at a point on the South bank of Crystal Creek, a natural stream in said Water District No. 36, a tributary to the

Colorado River, from whence the Northwest corner of Section 2, Township 8 South, Range 78 West of the 6th P.M. is S. 19° 34' W. a distance of 18,245 feet.

- iii. Spruce Ditch: The headgate and point of diversion of said Spruce Ditch is located at a point on the South bank of Spruce Creek, a natural stream in said Water District No. 36, a tributary to the Colorado River, from whence the Northwest corner of Section 2, Township 8 South, Range 78 West of the 6th P.M. is S. 23° 56' W. a distance of 12,810 feet.
- iv. McCullough Ditch: The headgate and point of diversion of said McCullough Ditch is located at a point on the South bank of McCullough Gulch Creek, a natural stream in said Water District No. 36, a tributary to the Colorado River, at a point from whence the Northwest corner of Section 2, Township 8 South, Range 78 West of the 6th P.M. is S. 28° 23' W. a distance of 6,085 feet.
- v. East Hoosier Ditch: The headgate and point of diversion of said East Hoosier Ditch is located at a point on the West bank of East Hoosier Creek, a natural stream in said Water District No. 36, a tributary to the Colorado River, at a point from whence the Southwest corner of Section 6, Township 8 South, Range 77 West of the 6th P.M. is S. 57° 36' W. a distance of 388.8 feet.
- vi. Hoosier Ditch (Hoosier Creek): The Hoosier Creek headgate and point of diversion of said Hoosier Ditch (No. 1) is located at a point on the West bank of Hoosier Creek, a natural stream in said Water District No. 36, a tributary to the Colorado River, at a point from whence the Northeast corner of Section 12, Township 8 South, Range 78 West of the 6th P.M. is N. 64° 35' E. a distance of 877.8 feet.
- vii. Hoosier Ditch (Silver Creek): The Silver Creek headgate and point of diversion of said Hoosier Ditch (No. 2) is located at a point on the West bank of Silver Creek, a natural stream in said Water District No. 36, a tributary to the Colorado River, where said ditch crosses Silver Creek at a point from whence the West quarter corner of Section 1, Township 8 South, Range 78 West of the 6th P.M. is N. 48° 35' W. a distance of 1,375.8 feet.
- viii. Hoosier Ditch (Interception): The above-named ditches are also entitled to a priority for 50 cubic feet of water per second of time as of the date of May 13, 1948, intercepted by the above-named ditches between the respective points of diversion thereof and delivery to the

Hoosier Tunnel provided, however, that the amount of water intercepted by any of the above enumerated ditches shall be in diminution of the amount of water awarded to each of said ditches and the total maximum amount of diversion for the above-named ditches shall not exceed the maximum amounts herein awarded to each of said ditches.

- ix. Hoosier Tunnel: The entrance or place of beginning of said tunnel is located at a point in Water District No. 36, from whence the East quarter corner of Section 2, Township 8 South, Range 78 West of the 6th P.M. is N. 34° 33' E. a distance of 510.6 feet.

b. Storage Structures.

- i. Upper Blue Lake Reservoir (Also known as Upper Blue Reservoir): The dam of the above reservoir is located across the channel of the Blue River, a natural stream, tributary to the Colorado River in said Water District No. 36. The initial point of survey is located at a point whence the Northeast corner of Section 3, Township 8 South, Range 78 West of the 6th P.M. bears N. 66° 30' E. 3,728 feet.
- ii. Lower Blue Lake Reservoir (Also known as Lower Quandary Lake) (Conditional): The dam of the above reservoir is located across the channel of the Blue River, a natural stream, tributary to the Colorado River in said Water District No. 36. The initial point of survey is located at a point whence the Northeast corner of Section 3, Township 8 South, Range 78 West of the 6th P.M. bears N. 54° E. 503 feet.
- iii. Spruce Lake Reservoir (Conditional): The dam of said Spruce Lake is located across the channel of Spruce Creek, a natural stream, tributary to the Colorado River in said Water District No. 36. The initial point of survey is located at a point whence the Northeast corner of Section 22, Township 7 South, Range 78 West of the 6th P.M. bears N. 12° 44' E. 5,780 feet.
- iv. Mayflower Lake Reservoir (Conditional): The dam of said Mayflower Lake is located across the channel of Spruce Creek, a natural stream, tributary to the Colorado River in said Water District No. 36. The initial point of survey is located at a point whence the Northeast corner of Section 22, Township 7 South, Range 78 West of the 6th P.M. bears N. 3° 44' E. 4,770 feet.

11. Information Applicable to Subject Exchange:

- A. Name of Exchange. CSU 2003 Homestake-Blue River Exchange.
- B. Date of Original Decree. March 14, 2012, Cases No. 03CW314, District Court, Water Division No. 5 (the "Decree").
- C. Use. In the Colorado Springs' municipal water works for all municipal uses including, without limitation, domestic use, irrigation, mechanical use, manufacturing use, generation of electrical power, power generally, fire protection, sewage treatment, street sprinkling, watering of parks, lawns, and grounds, maintenance of adequate storage reserve, replacement, exchange, augmentation, reuse and successive use to extinction.
- D. Source of Water for Subject Exchange. Water lawfully stored by Colorado Springs in Homestake Reservoir.
- E. Structures Involved. The structures utilized in the Subject Exchange are described in paragraph 10 above.
- F. Description of Exchanges. Colorado Springs' water will be released from Homestake Reservoir for delivery to the Colorado River to satisfy requirements of downstream water rights, and water will be diverted in exchange by the Continental-Hoosier Diversion System, and thence through the Hoosier Tunnel for storage in Montgomery Reservoir and subsequent delivery through Colorado Springs' Blue River Pipeline facilities to the Colorado Springs' local storage, treatment, and distribution system for beneficial use by customers of the Colorado Springs' municipal water system.
- G. Exchange Reaches.
 - a. Release Point: Homestake Reservoir, described in subparagraph 10.A, above.
 - b. Exchange from Point: The confluence of the Eagle River and the Colorado River.
 - c. Exchange to Point: Continental-Hoosier Diversion System, described in subparagraph 10.B, above.
 - d. Stream Reaches: Release from Homestake Reservoir on Homestake Creek down to its confluence with the Eagle River; also down the Eagle River to its confluence with the Colorado River; thence the exchange reach is from the confluence of the Eagle River and the Colorado River up the Colorado River to the Blue River, and thence up the Blue River to the Continental-Hoosier Diversion System.

- H. Rates of Flow. The original conditional amounts of the Subject Exchange decreed in Case No. 03CW314 are 16.9 c.f.s., all of which remains conditional.
- I. Priority Date. The priority date for the Subject Exchange under Case No. 03CW314 is December 31, 2003.

12. Diligence in the Development of Conditional Amounts of the Subject Exchange. Colorado Springs requests a finding that it has exercised reasonable diligence in the development of the Subject Exchange. The Court finds that the work, actions and expenditures described in the Application for this case constitute reasonable diligence in the development of the Subject Exchange. The Court further finds that the infrastructure necessary to operate the Subject Exchange has been constructed, is in place, and is available for use in the Subject Exchange, or is the subject of pending applications for reasonable diligence. Nothing herein shall constitute a finding of reasonable diligence in the development of structures that are the subject of pending diligence applications. Despite the fact that the conditions under which the Subject Exchange would be operated did not occur during this diligence period, the Court finds that Colorado Springs has demonstrated that they can and will operate the Subject Exchange in the future. Accordingly, the Court finds that Colorado Springs has demonstrated reasonable diligence towards completion of the Subject Exchange. Based upon the foregoing, the Water Referee finds that the 16.9 c.f.s. conditional amount of the Subject Exchange, shall remain in full force and effect.

13. Exchanges Occurring Between the Filing of the Application and Entry of Decree. Nothing herein shall preclude Colorado Springs in the future from seeking an absolute water right based on exchanges and substitutions it has carried out after the Application in this case was filed and on or before the date of entry of the decree in this case. Likewise, nothing herein shall preclude Colorado Springs from relying upon said exchanges and substitutions to demonstrate reasonable diligence in the perfection of conditional water rights.

14. Terms and Conditions for the Subject Exchange. Colorado Springs' operation of the Subject Exchange shall be in accordance with all terms and conditions set forth in the Decree entered in Case No. 03CW314 and in compliance with the agreements described therein.

CONCLUSIONS OF LAW

15. Statutory Authority and Jurisdiction. The Application in this matter was filed with the Water Clerk, Water Division No. 5, pursuant to C.R.S. §37-92-302(1)(a). The Court has exclusive jurisdiction over the subject matter of the Application pursuant to C.R.S. §37-92-203, and over all persons or entities affected hereby, whether they have appeared or not.

16. Notice. Timely and adequate notice of this proceeding was given in the manner required by law.

17. Authorized by Law. Colorado Springs' request for findings of reasonable diligence in the development of conditional exchange rights is contemplated and authorized by law. C.R.S. §§37-80-120, 37-83-104, and 37-92-302.

18. Standard for Finding Reasonable Diligence, C.R.S. §37-92-301(4)(b). To establish diligence, an applicant must show "the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. See C.R.S. §37-92-301(4)(b); *Municipal Subdistrict v. Oxy USA, Inc.*, 990 P.2d 701 (Colo. 1999); *Municipal Subdistrict v. Chevron Shale Oil Co.*, 986 P.2d 918 (Colo. 1999). The water court's determination of reasonable diligence is a case by case determination, considering all the relevant evidence, and the following nonexclusive list of factors: 1) economic feasibility; 2) the status of required permits and governmental approvals; 3) expenditures made to develop the appropriation; 4) the ongoing conduct of engineering and environmental studies; 5) the design and construction of facilities; and 6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Oxy USA*, 990 P.2d at 706; *Chevron Shale Oil*, 986 P.2d at 921. "When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system." C.R.S. §37-92-301 (4)(b). The Subject Exchange is a part of an integrated water system comprising all water rights decreed and used in connection with the City of Colorado Springs' Continental-Hoosier Diversion System and Homestake Project, and all diligence efforts apply to all features of the system. Colorado Springs exercised reasonable diligence in its efforts during this diligence period to put its decreed conditional water rights to beneficial use in the manner required by Colorado law.

19. The "Can and Will" Test, C.R.S. § 37-92-305(9)(b). The "can and will" test must be met by an applicant for a finding of reasonable diligence. *Municipal Subdistrict., Northern Colorado Water Conservancy Dist. v. Getty Oil Exploration Co.*, 997 P.2d 557, 564 n.6 (Colo. 2000); *Oxy USA*, 990 P.2d at 707-08. The legislative intent implied in C.R.S. §37-92-305(9)(b), in diligence proceedings, is to require that the applicant demonstrate:

... that the decreed conditional appropriation is being pursued in a manner which affirms that capture, possession, control, and beneficial use of water can and will occur in the state, thereby justifying continued reservation of the antedated priority pending perfection of a water right.

Dallas Creek Water Co. v. Huey, 933 P.2d 27, 37 (Colo. 1997)
(footnote omitted).

Colorado Springs has established that the conditional portion of the Subject Exchange can and will be diverted, stored, or otherwise captured, possessed, and controlled, and that the water will be beneficially used. Colorado Springs has also demonstrated that said conditional water right can and will be completed with diligence and within a reasonable time.

20. Quality and Continuity. The water to be substituted under the Subject Exchange is and shall be of a quality and continuity to meet the requirements of use to which the water of a senior appropriator has normally been put.

21. Compliance with Legal Requirements and Burdens of Proof. Colorado Springs has complied with all requirements and met all standards and burdens of proof and is therefore entitled to a ruling and decree making a finding of diligence in development of the conditional portions of the Subject Exchange.

RULING

IT IS THEREFORE ORDERED AS FOLLOWS:

22. Findings of Fact Incorporated. The foregoing Findings of Fact and Conclusions of Law are incorporated by this reference as if fully set forth herein.

23. Approval of Application. The Application for a finding of reasonable diligence in the development of the conditional rights for the Subject Exchange is granted, and said conditional exchange rights are continued in force.

24. Future Applications for Diligence. Colorado Springs shall file an application for sexennial finding of reasonable diligence for the Subject Exchange continued herein, in _____ of _____, and thereafter as provided by law, for so long as Colorado Springs desires to maintain such conditional portions of the Subject Exchange or until a determination has been made that the Subject Exchange has become absolute.

25. Notice of Transfer. Upon sale or transfer of the conditional exchange rights, the transferee shall file with the Water Court a Notice of Transfer containing the title and case number of the conditional exchange rights transferred, the name of the transferor, the name and mailing address of the transferee, and a copy of the recorded deed.

26. Mailing of Decree. Copies of this ruling, and the final decree when entered by the Court, shall be mailed as provided by statute.

Entered this ___ day of _____, 20__.

BY THE REFEREE:

Holly Strablizky, Water Referee
Water Division No. 5

JUDGMENT AND DECREE

THIS MATTER having come before the Court, pursuant to C.R.S. §§37-92-303 and 37-92-304, and the Court having reviewed the Ruling of the Water Referee, and being fully apprised of this matter,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Referee's Ruling is hereby adopted as the Judgment and Decree of this Court.

Dated this _____ day of _____ 20__.

BY THE COURT

Hon. Christopher Seldin, Water Judge
Water Division 5

EXHIBIT 4

DISTRICT COURT, WATER DIVISION 5, COLORADO GARFIELD COUNTY COMBINED COURTS 109 8 TH STREET, SUITE 104 GLENWOOD SPRINGS, CO 81601-3303	DRAFT 11.14.2023
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY IN SUMMIT COUNTY, COLORADO	Δ COURT USE ONLY Δ
	Case No.: 16CW3015 (82CW386, 93CW287, 00CW74, 06CW222)
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE WATER REFEREE AND DECREE OF THE WATER COURT	

THIS MATTER has come before the Water Referee on an Application for Finding of Reasonable Diligence (the “Application”) filed by the Applicant, the Board of County Commissioners of Summit County on January 29, 2016 and was referred by the Water Judge for the District Court in and for Water Division No. 5, State of Colorado to the Referee of the Water Court in accordance with Article 92 of Chapter 37, Colorado Revised Statutes, known as the Water Right Determination and Administration Act of 1969.

The Referee, having reviewed the Application and the other pleadings in this case, having considered the comments of the Division Engineer, and now being fully advised with respect to this matter, enters the following Findings of Fact, Conclusions of Law, and Ruling and Decree:

I. FINDINGS OF FACT

1. The Applicant filed a properly verified Application in this matter on January 29, 2016. Timely and adequate notice of the Application was given in the manner provided by statute. C.R.S. § 37-92-302 (2015). All notices required by law for the filing of the Application have been given, and the Court has jurisdiction over the Application.

2. The name and address of the Applicant is:
Board of County Commissioners of Summit County (“Summit County”)
c/o David Rossi, Interim County Manager
Post Office Box 68
Breckenridge, Colorado 80424

copies of all pleadings to:
Thomas W. Korver, No. 36924
Hayes Poznanovic Korver LLC
700 17th Street, Suite 1800
Denver, CO 80202
(303) 825-1980

3. Statements of opposition were timely filed by the Town of Breckenridge, the City of Colorado Springs, Rock Island Land Company LLC, Holt Investments Family Limited Partnership, and Everist Materials, LLC. Kilgore Companies, LLC dba Peak Materials was substituted for Everist Materials by order dated June 15, 2017. The time period for filing statements of opposition has expired.

4. The Applicant has entered into the following stipulations with the Opposers:

A. Town of Breckenridge, by stipulation dated August 16, 2016 and approved by the Court on August 16, 2016. Pursuant to this stipulation, the Town of Breckenridge withdrew its statement of opposition in this case.

B. Rock Island Land Company LLC, Holt Investments Family Limited Partnership, and Kilgore Companies, LLC dba Peak Materials, by stipulation dated April 13, 2020 and approved by the Court on April 19, 2020. The terms of said stipulation are incorporated into this Ruling and Decree.

C. City of Colorado Springs, by stipulation dated _____ and approved by the Court on _____.

5. All persons affected by the Application, whether appearing or not, are parties hereto and are bound by this Ruling and Decree, all notices required by law having been given and the Water Court having jurisdiction over the subject matter of this proceeding. C.R.S. § 37-92-203 (2015).

6. This Court has given due consideration to the Division Engineer's summary of consultation dated May 6, 2016 and the Applicant's May 17, 2016 response thereto.

7. Name of water rights:

A. Swan River Reservoir.

B. Lower Mohawk Reservoir.

8. Description of the conditional water rights (“Conditional Water Rights”):

A. Date of original decree: December 28, 1987 in Case No. 82CW386, Water Division No. 5.

B. Subsequent decrees awarding findings of diligence: May 24, 1994 in Case No. 93CW287; October 11, 2000 in Case No. 00CW74; and January 11, 2010 in Case No. 06CW222, Water Division No. 5.

C. Legal Description:

i. Swan River Reservoir: The point of intersection of the Swan River Dam axis with the right abutment is located in the SE1/4 NW1/4 of Section 24, T. 6 S., R. 77 W. of the 6th P.M., at a point whence Corner No. 9 of Mineral Survey No. 7083 (B.L.M. brass cap, 1972) bears North 55°18'0" East a distance of 182.35 feet.

ii. Lower Mohawk Reservoir: The point of intersection of the centerline of the Lower Mohawk Dam axis with the right abutment is located in an unsurveyed portion of T. 7 S., R. 78 W. of the 6th P.M., at a point whence U.S. Land Monument No. 5297 “Continental” bears South 21°40'0" East a distance of 196.61 feet.

D. Source of water:

i. Swan River Reservoir: Swan River, tributary to the Blue River, tributary to the Colorado River.

ii. Lower Mohawk Reservoir: Spruce Creek, tributary to the Blue River, tributary to the Colorado River.

E. Appropriation Date: July 22, 1982.

F. Amounts:

i. Swan River Reservoir: 11,560 acre feet, conditional.

ii. Lower Mohawk Reservoir: 1,530 acre feet, conditional.

G. Use: Irrigation, domestic, municipal, industrial, power, piscatorial, and recreational.

9. Modification of Swan River Reservoir and Partial Abandonment of Conditional Water Right.

A. Summit County complied with the October 28, 2009 stipulation in Case No. 06CW222 among Summit County and the Objectors in that case, Rock Island Land Company, LLC, Holt Investments Family Limited Partnership, and Everist Materials, LLC. Summit County affirmed that the water surface area of the Swan River Reservoir that would inundate those Objectors' properties shall be within the area of the Alternate Reservoir Configuration shown in Exhibit C to that stipulation as filed with the Court in Case No. 06CW222 on October 28, 2009 and approved by Order of the Court on November 4, 2009.

B. As a result of the foregoing reduction in the water surface area of the Swan River Reservoir, the storage volume of the Reservoir will be reduced from 11,560 acre-feet to 1,650 acre-feet. The Application requested the Court to include in any decree granting a finding of reasonable diligence for the Swan River Reservoir a term and condition abandoning the remaining 9,910 acre-feet of the conditional water right originally decreed in Case No. 82CW386.

C. The modified embankment of the Swan River Reservoir will be less than 500 feet from the decreed location of the dam embankment as described in paragraph 8.C above. Neither a natural surface stream that is tributary to the Swan River nor another surface water right is located between the decreed and modified dam embankments. In accordance with C.R.S. 37-92-305(3.6)(b)(I), the modified Reservoir shall be deemed to be diverted at its decreed location.

10. This Ruling and Decree does not make any portion of the Conditional Water Rights absolute.

11. The Application requests a finding that the Applicant has exercised reasonable diligence in the development of the Conditional Water Rights. The Swan River Reservoir and Lower Mohawk Reservoir are part of an integrated system for supplying water demands in Summit County. The Application included a summary of specific projects and work undertaken during the diligence period (from February, 2010 through January, 2016) in furtherance of the development of the Conditional Water Rights.

12. The work performed and the expenditures made during the diligence period has demonstrated adequate and diligent effort in developing the Conditional Water Rights. The Referee finds that the work and expenditures described in the Application constitute reasonable diligence in the development of the Conditional Water Rights and that the Application should be granted.

II. CONCLUSIONS OF LAW

13. The foregoing Findings of Fact are incorporated herein to the extent that they constitute or include conclusions of law.

14. Summit County's Application was timely and one contemplated by law. C.R.S. §§ 37-82-101, 37-87-101, 37-92-302 (2015).

15. The Water Court has jurisdiction over the subject matter of this proceeding and over all who may be affected hereby, whether they have appeared or not. C.R.S. § 37-92-203 (2015).

16. The Applicant is entitled to continuation of the Conditional Water Rights that are the subject of this Ruling and Decree in full force and effect based upon the exercise of reasonable diligence in the development of said water rights.

III. RULING OF THE WATER REFEREE

17. The Findings of Fact and Conclusions of Law set forth above are incorporated herein by reference.

18. Summit County has complied with the law in filing its Application for finding of reasonable diligence and under all of the facts and circumstances recited above, Summit County has demonstrated reasonable diligence in the development of the Conditional Water Rights described herein.

19. In accordance with the Application and as reflected in the preceding paragraph 9.B, 9,910 acre-feet of the conditional water right originally decreed to the Swan River Reservoir in Case No. 82CW386 is hereby abandoned. The remaining amount of said conditional water right decreed in Case No. 82CW386 is 1,650 acre-feet and is hereby continued in full force and effect.

20. The conditional water right decreed to the Lower Mohawk Reservoir in Case No. 82CW386 is hereby continued in full force and effect in the amount of 1,530 acre-feet.

21. An application for finding of reasonable diligence or to make the rights absolute shall be filed on or before the last day of _____, 20__ and thereafter as provided by law, for so long as the Applicant desires to maintain such conditional water rights or until a determination has been made that the exchanges have become absolute.

22. Pursuant to Rule 9 of the Uniform Local Rules for all State Water Court Divisions, upon the sale or transfer of the conditional water rights decreed herein, the transferee shall file with the Division No. 5 Water Court, a notice of transfer which shall state:

- A. The title and case number of this Case No. 16CW3015;
- B. The description of the conditional water right to be transferred;
- C. The name of the transferor;
- D. The name and mailing address of the transferee; and
- E. A copy of the recorded deed.

The owner of said conditional water rights shall also notify the Clerk of the Water Court for Water Division No. 5 of any change of mailing address. The Clerk shall place any Notice of Transfer or Change of Address in the case file of this Case No. 2016CW3015 in which the Court first made a Finding of Reasonable Diligence.

23. A copy of this Ruling shall be filed with the Division Engineer for Water Division No. 5 and with the State Engineer.

IT IS THEREFORE ORDERED that this Ruling shall be filed with the Water Clerk and will become effective upon filing.

Dated this __ day of _____, 20__.

BY THE REFEREE:

Holly Strablizky
Water Referee
Water Division No. 5

IV. DECREE OF THE WATER COURT

No protest was filed herein. This matter comes before the Court pursuant to C.R.S. §§ 37-92-303(1) and 304(7) (2015) and the Court having review the findings and determinations of the Water Referee and being fully apprised of the matter,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the Water Referee's Ruling is hereby confirmed and adopted as the Decree of this Court.

Dated this _____ day of _____, 20__.

BY THE COURT:

Hon. Christopher Seldin
Water Judge
Water Division No. 5
State of Colorado

EXHIBIT 5

<p>DISTRICT COURT, WATER DIVISION NO. 5, COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601</p>	
<p>CONCERNING THE APPLICATION OF THE CITY OF COLORADO SPRINGS, ACTING THROUGH ITS ENTERPRISE COLORADO SPRINGS UTILITIES AND THE COLORADO RIVER WATER CONSERVATION DISTRICT, ACTING THROUGH ITS COLORADO RIVER WATER PROJECTS ENTERPRISE</p> <p>IN SUMMIT, GRAND, AND EAGLE COUNTIES</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Colorado Springs: William A. Paddock, Reg. No. 9478 Karl D. Ohlsen, Reg. No. 32497 Sarah B. Wiedemann, Reg. No. 46383 Carlson, Hammond & Paddock, L.L.C. 1900 Grant Street, Suite 1200 Denver, CO 80233 Phone Number: (303) 861-9000 Fax Number: (303) 861-9026 E-mail: bpaddock@chp-law.com swiedemann@chp-law.com</p> <p>Michael J. Gustafson, Reg. No. 37364 Nathan Endersbee, Reg. No. 47426 City Attorney's Office – Utilities Division Colorado Springs Utilities P.O. Box 1575, Mail Code 510 Colorado Springs, CO 80901 Phone Number: (719) 385-5909 Fax Number: (719) 385-5535 E-mail: mgustafson@coloradospringsgov.com nathan.endersbee@coloradosprings.gov</p> <p>Attorneys for the Colorado River Water Conservation District:</p>	<p>Case Number: 2003CW320</p> <p>Division: Water Div. 5 Courtroom:</p>

Peter C. Fleming, Reg. No. 20805 Jason V. Turner, Reg. No. 35665 Colorado River Water Conservation District 201 Centennial Street, Suite 200 Glenwood Springs, CO 81601 Phone Number: (970) 945-8522 Fax Number: (970) 945-8799 E-mail: pffleming@crwcd.org jturner@crwcd.org	
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MOTION FOR CONFIRMATION THAT DECREE IS IN EFFECT

The Applicants, City of Colorado Springs, acting through its enterprise Colorado Springs Utilities (“Colorado Springs”), and the Colorado River Water Conservation District, acting through its Colorado River Water Projects Enterprise, (“River District”) by their attorneys, request the Court to enter an order confirming that the Findings of Fact, Conclusions of Law, Judgment and Decree (“Decree”) entered in this case on November 19, 2012, is in full force and effect, and that approval by the United States District Court as contemplated by paragraph 29 of the Decree likely is no longer available, and is not required for the Decree to be effective. The grounds for this motion are as follows:

1. Pursuant to C.R.C.P. 121, § 1-15(8), undersigned counsel certifies that they conferred with counsel for all Opposers by circulating a draft of this motion and proposed order via CCE on _____, 202_. At the time of this filing, none of the parties who responded to Applicants’ conferral indicated that they (do not) oppose the relief requested herein.

2. The Application in this case was filed on December 31, 2003. The purpose of the Application was to implement the terms of the Memorandum of Agreement Regarding Colorado Springs’ Substitution Operations entered into among the River District, Colorado Springs, the City and County of Denver, acting by and through its Board of Water Commissioners (“Denver Water”), the Northern Colorado Water Conservancy District, the County of Summit, acting by its Board of County Commissioners, Vail Summit Resorts, Inc., and the Town of Breckenridge, effective as of May 15, 2003 (hereinafter referred to as the “Colorado Springs Substitution MOA” or “MOA”). A copy of the MOA was attached as Exhibit A to the Application.

3. The Application sought approval of a Substitution Plan or Plan for Augmentation intended to implement, on a long-term basis, the Colorado Springs Substitution MOA. The Substitution Plan requested in the Application would allow Colorado Springs to fulfill its Replacement Obligation under the Blue River Decree for diversions and storage of water under its 1948 Blue River Water Rights in any "Substitution Year" as defined in the MOA.

4. Notice of the Application was published in the December 2003 Resume for Water Division No. 5. The published resume was a substantially verbatim publication of the Application (excluding exhibits). Full and complete notice of the Application and the pendency of parallel proceeding in the U.S. District Court were given in the manner required by law. The relief requested in this motion does not amend or alter any claim asserted in the Application. Thus, no further notice of the relief requested in this motion is required beyond service on the parties to Case No. 2003CW320.

5. At the time the Application was filed Colorado Springs' 1948 Blue River Water Rights were subject to the retained jurisdiction of the United States District Court for Colorado ("U.S. District Court") in Consolidated Civil Cases Nos. 2782, 5016 and 5017. Accordingly, the published notice contained the following statement not contained in the Application:

Pursuant to the Order of the United States District Court, District of Colorado, dated August 4, 1977 in the Consolidated Civil Case Nos. 2782 5016 and 5017, the United States District Court for the District of Colorado will act as the Water Judge provided for in the 1969 Act for Water Division No 5 insofar as proceedings in connection with Consolidated Civil Case Nos 2782 5016 and 5017 are concerned. The August 4, 1977 Order further states: "Any party interested in such proceedings will hereafter take such steps as desired by such party with respect to said cases in accordance with this Order and those procedural requirements of the Act of 1969 as are required for jurisdiction under the Act by making any necessary filing in the Office of the Water Clerk, Water Division No. 5. And also a filing of two copies of every paper filed in the Office of said Water Clerk in the Office of the United States District Court. District of Colorado, at Denver Colorado.

In compliance with the August 4, 1977 Order and the MOA, the Applicants filed the Application both in this Court and the U.S. District Court pursuant to its then retained jurisdiction in the Consolidated Cases.

6. The Application requested several claims for relief including the following:

1. That the Water Court, Water Division No. 5 enter a final decree approving this Substitution Plan, including the Reservoir Book-over as

described herein, in accordance with the Colorado Springs Substitution MOA, pursuant to Sections 37-30-120(1) and (2), 37-92-103(9), 37-92-302(1) and (2), and 37-92-305(8), C.R.S. and any other applicable provisions of Colorado law;

2, That the United States District Court, District of Colorado, under its continuing jurisdiction as set forth in the Blue River Decrees, enter a supplemental decree in Consolidated Civil Case Nos. 2782, 5016 and 5017 determining that Colorado Springs may fulfill the CSU Replacement Obligation under the Blue River Decrees in the manner set forth in the Colorado Springs Substitution MOA;

3. That the decrees entered by the Water Court and the United States District Court include verbatim the terms and conditions set forth in paragraph 1 of the Memorandum of Agreement Among the City of Colorado Springs acting through its Utilities Enterprise, the County of Summit, acting by its Board of County Commissioners, Vail Summit Resorts, Inc., and the Town of Breckenridge, effective as of October 15, 2003 (the "Summit County Entities MOA").

7. Statements of Opposition were filed by the Town of Breckenridge, Vail Associates, Inc., Vail Summit Resorts, Inc., Denver Water, City of Aurora, Colorado, Everist Materials, LLC, Ute Water Conservancy District, Orchard Mesa Irrigation District, Grand Valley Water Users Association, United States of America, the Municipal Subdistrict of the Northern Colorado Water Conservancy District (its statement of opposition was withdrawn on September 30, 2008), Northern Colorado Water Conservancy District, Colorado Water Conservation Board, and Board of County Commissioners of the County of Summit.

8. On September 23, 2004, the U.S. District Court held a hearing on the Substitution Application and denied the application as premature, but did so without prejudice to renewal of the application at an appropriate point. A copy of the Minute Order is attached hereto as **Exhibit A**.

9. After the filing of the Application, the Applicants conducted protracted negotiations with the Opposers for an acceptable form of decree granting the relief requested. The corrected stipulated Decree was entered in this case on November 19, 2012. Paragraph 29 of the Decree states "[t]his Judgment and Decree shall become effective upon entry by the District Court in and for Water Division No. 5 **and approval by the United States District Court for the District of Colorado.**" (Emphasis added).

10. While Colorado Springs was negotiating a resolution of the Application, it was also engaged in the protracted negotiations over the Green Mountain Reservoir Administrative Protocol (“GMR Protocol”) and the Green Mountain Reservoir Administrative Protocol Agreement. The GMR Protocol and the Green Mountain Reservoir Administrative Protocol Agreement were entered into effective February 22, 2013. The Colorado Springs Substitution MOA and the Substitution Decree in this case are part of the GMR Protocol, Art. IV, governing the Cities’ Replacement Obligations under the Blue River Decree.

11. An Application for approval of the GMR Protocol was filed with this Court on November 15, 2013, and assigned Case No. 2013CW3077. It sought a determination that Articles I, II, and III of the GMR Protocol were consistent with the Blue River Decree. In compliance with the August 4, 1977 Order the Co-Applicants in Case No. 2013CW3015 concurrently filed a petition in U.S. District Court seeking a similar determination from that Court, including a request that the Court determine that Section IV of the GMR Protocol is consistent with the Blue River Decree.

12. On December 2, 2013, the U.S. District Court held a hearing on the Application for Approval of the GMR Protocol. At that hearing the Court set a briefing schedule on the following questions:

What do the petitioners ask the federal court to do?

What is the federal court’s jurisdiction in this matter?

If there is overlapping jurisdiction with the Colorado Water Court, what court is best to address this matter?

If parties other than the named parties in the Consolidated Cases are to be bound, what kind of procedure is required to satisfy due process and afford an opportunity to object?

13. On February 14, 2014, Colorado Springs, the River District and other parties filed briefs addressing the questions raised by the Court. Because the U.S. District Court’s questions addressed both its jurisdiction and what forum was most appropriate to address the GMR Protocol, Applicants did not renew their request for approval of the Decree in Case No. 2003CW320. Rather, they elected to wait for the U.S. District Court to rule on the jurisdictional questions posed at the December 2, 2013 hearing.

14. The U.S. District Court did not rule on the questions posed at the December 2, 2013 hearing. Instead, on March 22, 2017, in response to an Unopposed Motion for Entry of [a diligence] Decree filed by Denver Water, the U.S. District Court vacated the August 4, 1977 Order, and bifurcated the “companion cases” Nos. 5016 and 5017 from the underlying Case No. 2782 and discontinued its exercise of jurisdiction over diligence

applications and applications to make decrees absolute. Instead, it directed such matter be pursued solely in the Water Court for Water Division No 5. March 22, 2017 Order at 5. (Copy attached as Exhibit B).

15. The U.S. District Court went on to rule:

Indeed, to the extent that the decree reserves exclusive federal jurisdiction to hear and resolve suits that arose among exclusively state and local entities concerning the decree's terms, this Court vacates such provision. The Water Court is certainly familiar with the decree, the circumstances that led to it, and its subsequent interpretations to effectively assume the mantle of interpreting and applying its terms as among state and local entities. The only future proceedings that this Court anticipates in this action would be those in which the United States asserts a claim such that this Court would exercise subject-matter jurisdiction over it pursuant to 28 U.S.C. § 1345.

March 22, 2017 Order at 5.

The U.S. District Court then directed the Clerk of the Court to administratively close the case, subject only to a motion by the United States to reopen it.

16. The requirement of Paragraph 29 of the Decree providing that it would be effective when entered by this Court and approved by the U.S. District Court was based solely on the requirements of the August 4, 1977 Order establishing the retained jurisdiction of the U.S. District Court. The U.S. District Court's order of March 22, 2017 terminated the August 4, 1977 Order and terminated any retained jurisdiction in the Consolidated Cases over suits that arise exclusively among state and local entities concerning the terms of the Blue River Decree. The Decree in Case No. 03CW320 involves appropriative rights of substitution under Colorado law. It does not involve a claim asserted by the United States. As such, the Application does not fall within the limited scope of any retained jurisdiction of the U.S. District Court in the Consolidated Cases as defined in the March 22, 2017 Order.

17. This Court has jurisdiction to review the Blue River Decree to ascertain whether the Application would interfere with the terms or objectives of the Blue River Decree. *City of Grand Junction v. City and County of Denver*, 960 P.2d 675, 683 (Colo. 1998). This Court has done so; paragraph 11.4 of the Decree expressly finds:

11.4 Blue River Decree. The use of Replacement Water by Direct Release or Substitution Release to meet the CS-U Replacement Obligation as provided by the Substitution Plan in this Decree is contemplated by the Blue River Decree, including the 1955 Stipulation and Paragraph 2 of the 1964 Decree, and is consistent with the requirement of the Blue River Decree that the

rights of the United States to fill Green Mountain Reservoir and to use Green Mountain Reservoir for decreed purposes not be impaired. Further, the Substitution operations in this Decree provide a means to assure that Replacement Water for Direct Release or Substitution Release is on hand at the time that Colorado Springs diverts or stores water under its 1948 Blue River Rights in a Substitution Year. The use of the Replacement Water described in this Substitution Plan is subject to the approval of the Secretary of the Interior as required by the Blue River Decree and the Colorado Springs Substitution MOA.

18. Because the U.S. District Court has terminated its retained jurisdiction in the Consolidated Cases over the types of claims contained in the Application, its approval of the Decree under the provisions of the Consolidated Cases is not available and is no longer required. This Court has jurisdiction to review the Blue River Decree to ascertain whether the relief requested in the Application would interfere with the terms or objectives of the Blue River Decree. This Court has determined that the Decree in this Case No. 03CW320 is consistent with and does not interfere with the Blue River Decree. Thus, nothing further is required for the Decree to be in full force and effect.

For the foregoing reasons, the Applicants request the Court to enter an order determining that approval of the Decree by the U.S. District Court, pursuant to its now terminated retained jurisdiction in the Consolidated Cases is no longer required and that the Decree in this case is in full force and effect as of its date of entry by this Court, November 19, 2012.

Dated _____, 202__

Colorado River Water Conservation District

*PURSUANT TO CRCP RULE 121. Section 1-26(9).
A DULY SIGNED COPY OF THIS DOCUMENT IS ON FILE*

By: _____
Peter C. Fleming, Reg. No. 20805
Jason V. Turner, Reg. No. 35665

Colorado River Water Conservation District
201 Centennial Street, Suite 200
Glenwood Springs, CO 81601
(970) 945-8522

Attorneys for Applicant Colorado River Water Conservation District

Carlson, Hammond & Paddock, L.L.C.

*PURSUANT TO CRCP RULE 121. Section 1-26(9).
A DULY SIGNED COPY OF THIS DOCUMENT IS ON FILE*

By: _____
William A. Paddock, Reg. No. 9478
Karl D. Ohlsen, Reg. No. 32497

Carlson, Hammond & Paddock, L.L.C.
1900 N. Grant Street, Suite 1200
Denver, CO 80233

Attorneys for Applicant City of Colorado Springs,
acting through its Enterprise, Colorado Springs Utilities

City of Colorado Springs, Colorado Springs Utilities

*PURSUANT TO CRCP RULE 121. Section 1-26(9).
A DULY SIGNED COPY OF THIS DOCUMENT IS ON FILE*

By: _____
Michael J. Gustafson, #37364

Office of the City Attorney
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901

Attorney for Applicant City of Colorado Springs,
acting through its enterprise Colorado Springs Utilities

Exhibit 6

CW_____

WATER SUPPLY CONTRACT

This Contract is made between the COLORADO RIVER WATER CONSERVATION DISTRICT (herein the "River District"), a political subdivision of the State of Colorado acting by and through its Colorado River Water Projects Enterprise, and _____ (herein "Contractor") effective as of the date of the River District's execution indicated below.

RECITALS

A. The River District is authorized to contract to deliver water for beneficial use from River District water projects pursuant to provisions of C.R.S. § 37-46-101, *et seq.* (herein "River District Organic Act").

B. The River District is the owner and operator of the Wolford Mountain Reservoir Project located on the Muddy Creek drainage near Kremmling, Colorado, having obtained necessary decrees from the District Court in and for Colorado Water Division No. 5 (herein "Water Court") and permits from governmental agencies, and the River District is entitled to deliveries of water from Ruedi Reservoir under its Contracts with the U.S. Bureau of Reclamation.

C. The River District's Board of Directors has adopted a Water Marketing Policy, as revised by the Board from time to time, to provide for the use of water available from the River District's sources of supply pursuant to contracts, and that Water Marketing Policy is to be implemented through the River District's Water Projects Enterprise.

D. Contractor has a need for wholesale water supply, demonstrated in its submittal to the River District pursuant to the Water Marketing Policy's contracting process, in the amount of _____ acre feet Colorado River Supply above the Roaring Fork Confluence annually for Municipal/Industrial purposes, which beneficial uses will be accomplished by Contractor generally in the vicinity of SECTION ____, TOWNSHIP ____, RANGE _____ of the 6th P.M. by surface water diversions from or within the Blue River drainage, which is a tributary to the Colorado River.

E. Contractor is aware of the "Hydrology Assumptions" which are part of the Water Marketing Policy and is satisfied that, based on its review and investigations, Contractor legally and physically can make use for its intended purposes of the Contracted Water, which are the subject of this Contract and that such use will comply with the Water Marketing Policy.

AGREEMENT

The foregoing Recitals are incorporated into this agreement between the River District and Contractor.

DEFINITIONS

In this Contract certain terms will have definitions as stated below:

- The “River District” means the Colorado River Water Conservation District created and existing pursuant to the River District Organic Act defined in Recital A and acting by and through its Colorado River Water Projects Enterprise which is currently described and memorialized in the Resolution of the Colorado River Water Conservation District’s Board of Directors dated April 20, 2005.
- The “Project” means the River District’s “Colorado River Supply” from: (1) Wolford Mountain Reservoir, for which storage water right decrees were obtained by the River District in Cases No. 87CW283, 95CW281 and 98CW237 in the District Court for Colorado Water Division No. 5, and for which additional storage water right decrees may be obtained in the future by the River District in other cases; (2) the River District’s contractual right to water deliveries from Ruedi Reservoir; and (3) other supplies that the River District may acquire suitable for use in its Water Marketing Program.
- “Agricultural” means the use of water for commercial production of agricultural crops and livestock and other uses consistent with any right decreed for irrigation purposes, which uses are made on a parcel of land of at least ten acres.
- “Municipal and Industrial” means the use of water by individuals, cities, towns, public or quasi-public districts, private corporations, homeowners associations, or other entities for domestic, municipal, and miscellaneous related purposes as those terms are traditionally and commonly construed, including the use of water for purposes of producing or processing a non-agricultural product or service for sale, including without limitation, such uses as manufacturing, mining, milling, land reclamation, golf course irrigation, snowmaking, and non-hydroelectric power generation; and including the use of water for environmental mitigation purposes associated with such uses; but excepting the agricultural use of water defined herein.
- “Contracted Water” means the water which is the subject of this Contract which is to be released and delivered by the River District and used by Contractor. The Contracted Water is _____ acre feet of Colorado River Supply above the Roaring Fork Confluence available during each Project Year during the term of this Contract, subject to the provisions hereof, for Contractor’s use without right of carryover of any amount not used in any Project Year.
- “Project Year” means a period of time from July 1 through and including the subsequent June 30.
- “Water Marketing Policy” means the River District’s policy statement as revised and readopted as of the execution date of this Contract and as the same may be amended in the future.
- “Project Hydrology Assumptions” or “Hydrology Assumptions” means the

document attached as Appendix “A” to the Water Marketing Policy adopted on October 17, 2006.

1. River District Water Delivery Obligations and Responsibilities.

- a. Delivery. The River District will deliver the Contracted Water at the outlet works of the Contracted Water’s sources of supply into the receiving natural streams in quantities provided herein. Unless otherwise agreed to by the River District’s General Manager based upon written request of Contractor, the River District will make releases or request that releases be made for Contractor, based upon Contractor’s written schedule of anticipated demand, adjusted as necessary by the ongoing status of river administration *vis-a-vis* the priority status of Contractor’s diversions, provided that the releases can be made within the operational limitations of the River District’s project facilities as determined by the River District in its sole discretion. Contractor shall be solely responsible after delivery for the legal and physical delivery and use of the Contracted Water.
- b. Delivery Contingencies. The River District’s delivery of Contracted Water shall be subject to Contractor’s payments pursuant to paragraph 3 below, and the provisions for curtailment of deliveries in paragraph 5 below.
- c. Water Measurements. The River District shall measure at the outlet works of the Contracted Water’s sources of supply all Contracted Water and shall notify the Division Engineer of Colorado Water Division No. 5 of the date, time and amount of Contracted Water released pursuant to this Contract. Copies of such records shall be provided to Contractor upon request.
- d. Water Quality. The River District shall have no obligation to Contractor or any other person regarding and makes no warranties or representations to Contractor concerning the quality of Contracted Water delivered pursuant to this Contract by releases of raw water to natural streams.
- e. Maintenance of Facilities. The River District, to the extent that it has ownership and maintenance control, shall use its best efforts to maintain in good working condition the water storage and release facilities of the Contracted Water.
- f. Withholding of Delivery. The River District may withhold deliveries of Contracted Water in the event of Contractor’s nonpayment for Contracted Water or any other breach of this Contract by Contractor. Such remedy shall not be the River District’s exclusive remedy in the event of any such breach.
- g. Delivery from Primary or Alternate Sources. The River District will deliver the Contracted Water from the sources of Colorado River Supply above the Roaring Fork Confluence described herein, which will meet the Contractor’s need to satisfy calls by senior water rights or the Contractor’s physical need for any direct delivery of Contracted Water to Contractor’s diversions. Subject to meeting those

objectives, the River District reserves the right to provide all or any of the Contracted Water to Contractor from alternate reservoirs for Contractor's use, provided that the alternate sources are suitable to physically satisfy calls by senior water rights or Contractor's need for direct delivery.

2. Contractor's Water Use Obligations and Responsibilities.

- a. Scheduling of Use. Contractor SHALL PROVIDE OR HAS PROVIDED the River District a preliminary written schedule of its anticipated monthly demands for the Contracted Water during the current Project Year (July _____ - June _____). The schedule provided by Contractor for this Contract shall serve as the schedule to be used until it is modified in a written notice given by Contractor to the River District, or as necessary in response to river administration of the Contractor's diversions. The schedule shall identify the volume of any Contracted Water anticipated by Contractor not to be needed by it during any particular Project Year. Contractor shall update said schedule periodically during the Project Year as conditions require and give the River District written notice of all such revisions.
- b. Carriage Losses. Contractor shall bear carriage losses in such amount as is determined by the Division Engineer for Colorado Water Division No. 5, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.
- c. Use per Contract and Law. Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of the Project, the Water Marketing Policy, as it may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Contractor is not authorized to apply for or secure any change in the water rights for or associated with any of the sources of supply of the Contracted Water.
- d. Legal Approvals. If Contractor intends to make any application(s) for any augmentation or exchange plan(s) or substitute supply plan(s) needed for Contractor to use its Contracted Water, Contractor shall submit the proposed application(s) to the River District within a reasonable time before Contractor proposes to file such application(s). The River District shall grant written approval of such applications before they are submitted or filed, and the River District's approval shall not be unreasonably withheld. The River District may in its discretion become a co-applicant in the prosecution of any such applications for the purpose of protecting its water rights and related policies. Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of a River District contract.
- e. Limitation on Disposition.

- i. Contractor shall not sublet, sell, donate, loan, assign or otherwise dispose of any of its rights to this Contract or to Contracted Water without prior written notice to, and the written approval of, the River District and the payment of a transfer fee at the prevailing rate set forth in the Water Marketing Policy. The River District's approval of such disposition shall be granted in all instances in which the Contractor is transferring the water system which supplies the Contracted Water, or a permanent transfer of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted Water, or where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the River District to be served with the Contracted Water.
 - ii. The assignment of a Contract is subject to the Water Marketing Policy as revised as of the effective date of the assignment. In accordance with this subparagraph (ii), any assignee must pay for the Contracted Water at the then-current price determined by the River District Board of Directors.
- f. Contractor's Water Rates. Contractor may charge its water customers who are supplied with Contracted Water such rates and charges as are permitted by Colorado law.
- g. Nondiscrimination. Contractor shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, or national origin or any other criteria prohibited under state or federal law.
- h. Accounting of Use. Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to the River District specifically for the purpose of enabling the River District to prove the use of River District Project water rights and to administer and operate the Project and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to the River District promptly upon request and shall assist the River District as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.
- i. Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, *et seq.*) if Contractor proposes physical alterations to the

designated critical habitat of the Colorado River endangered fish species. As of March 1, 2007, designated critical habitat exists from the Garfield County 320 Road Bridge Crossing of the Colorado River in Rifle downstream to the Colorado State line.

3. Contractor's Payments.

- a. In addition to the application fee already paid by Contractor, in order for the River District's delivery obligation to become effective, Contractor shall pay to the River District on the execution of this Contract the total sum of \$_____, being \$_____ for each acre foot of _____ acre feet of Contracted Water for the current Project Year (July _____ -June _____).
- b. Contractor also shall pay any special assessment levied by the River District on Contractor to recoup all or a portion of costs attributable to extraordinary maintenance incurred by the River District or assessed upon the River District by its third party water suppliers.

4. Contract Term.

- a. The term of this Contract shall be for a period of one (1) year.

5. Water Shortage. In the event that the River District is unable, because of either legal or physical reasons (including, but not limited to, hydrologic shortages and operational restrictions), to deliver any or all of the full amount of water contracted from the Project, including the Contracted Water, the River District reserves the right to apportion the Project's available water among its several contractors, including Contractor, in the manner provided in paragraph 6 of the Water Marketing Policy.

6. Contract Termination.

a. Termination by River District.

- i. The River District may terminate this Contract for any violation or breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any sum or amount due under this Contract within thirty (30) days after receiving written notice from the River District of such breach.
- ii. The River District also may terminate this Contract if, in its discretion, any judicial or administrative proceedings initiated by Contractor as contemplated in subparagraph 2.d above, threaten the River District's authority to contract for delivery of Project Water or the River District's water rights, permits, or other interests associated with the Project.

- iii. The River District may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.
 - b. Termination by Contractor.
 - i. Contractor may terminate this Contract in its entirety for any reason by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment.
 - ii. Every fifth year after the year in which this Contract is executed, Contractor may partially terminate this Contract as to the amount of Contracted Water by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment. Partial termination by Contractor shall not exceed more than fifty percent (50%) of the amount of Contracted Water which is then under contract.
 - iii. Within thirty (30) days of final approval of the Water Court application contemplated by subparagraph 2.d. above, Contractor may by written notice to the River District partially terminate this Contract as to the amount of Contracted Water which is not needed under that approval.
 - c. Notice of Termination to Affected Officials. The River District will notify the Division Engineer and any other appropriate governmental officials of any full or partial contract termination except for any partial termination under subparagraph 6.b.(iii).
7. Force Majeure. The River District shall not be responsible for any losses or damages incurred as a result of the River District's inability to perform pursuant to this Agreement due to the following causes if beyond the River District's control and when occurring through no direct or indirect fault of the River District, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to the River District's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.
8. Miscellaneous/Standard Provisions.
 - a. Notices.
 - i. All notices required or appropriate under or pursuant to this Contract shall be given in writing mailed or delivered to the parties at the following addresses:

River District:

Colorado River Water Conservation District
Attention: General Manager / Secretary
201 Centennial Street, Suite 200
Glenwood Springs, Colorado 81601
Phone: (970) 945-8522
Fax: (970) 945-8799

Contractor:

with copy to:

Phone: _____
Email: _____

Phone: _____
Email: _____

- ii. Either party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.
- b. Amendments. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.
- c. This Contract is subject to the River District's Water Marketing Policy, as it may be revised from time to time by the River District's Board.

COLORADO RIVER WATER CONSERVATION
DISTRICT acting by and through its Colorado River
Water Projects Enterprise

DATE: _____

By: _____
Andrew A. Mueller
General Manager/Secretary

CONTRACTOR:

Company Name

By: _____
Name:
Title:

DRAFT

Exhibit 7

DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601-3303	Draft: Nov. 28, 2023
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF COLORADO SPRINGS, COLORADO, IN SUMMIT COUNTY, COLORADO	▲ COURT USE ONLY ▲
Attorneys for Colorado Springs Utilities: William A. Paddock, Reg. No. 9478 Karl D. Ohlsen, Reg. No. 32497 Carlson, Hammond & Paddock, L.L.C. 1900 Grant Street, Suite 1200 Denver, Colorado 80203 Phone: (303) 861-9000 Fax: (303) 861-9026 e-mail: bpaddock@chp-law.com kohlsen@chp-law.com Michael Gustafson, Reg. No. 37364 City Attorney's Office-Utilities Division P. O. Box 1575 Mail Code 510 30 S. Nevada Avenue Suite 501 Colorado Springs, Colorado 80901 Phone: (719) 385-5909 Fax: (719) 385-5535 e-mail: michael.gustafson@coloradosprings.gov	Case Number: 2022CW_____ Division 5 Ctrm:
APPLICATION FOR CHANGE OF CONDITIONAL WATER RIGHT	

1. Name, address and telephone number(s) of Applicant:

City of Colorado Springs
Colorado Springs Utilities
c/o Abigail Ortega
1521 Hancock Expressway, Mail Code 1825
Colorado Springs, Colorado 80903

Phone: (719) 668-8748

Pleadings and all other filings with the court should be served on the undersigned counsel for the Applicant.

2. Applicant has entered into Settlement Agreement Concerning Water Rights (“Settlement Agreement”) among Colorado River Water Conservation District, the County of Summit (“Summit County”), the Town of Breckenridge (“Breckenridge”), the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, and the Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise. This change of water right claim is filed in furtherance of and subject to the terms of that Settlement Agreement.

3. Decreed Water Right for which change is sought:

A. Lower Blue Lake Reservoir (“Lower Blue Reservoir”).

B. Date of original and all subsequent relevant decrees

1). Original Decrees: May 10, 1952, CA Nos. 1805 and 1806, Summit County District Court, and October 12, 1955, Consolidated Cases No. 2782, 5016, and 5017, United States District Court, Colorado.

2) Subsequent decree awarding diligence: The conditional water right for Lower Blue Reservoir has been continued as required by law, with the last diligence decree entered on March 24, 2009, Case No. 06CW132, Water Division No. 5. An application for a further finding of reasonable diligence is pending in this Court’s Case No. 2015CW3019.

C. Legal Description of Structure: Lower Blue Reservoir (also known as Lower Quandary Lake): the initial point of survey is located at a point whence the Northeast Corner of Section 3, Township 8 South, Range 78 West of the 6th P.M., bears North 54° East 503 feet.

D. Decree Source of water: Blue River, tributary to the Colorado River.

E. Date of Appropriation: May 13, 1948.

F. Total Amount Decreed to Structure: 1006 acre-feet, conditional.

G. Decreed Use:

1) From the May 10, 1952 Decree in Cases No. CA 1805 and 1806: to be used by and for the benefit of the inhabitants of the City of Colorado

Springs and adjacent areas for domestic uses, fire protection, sewage disposal, manufacturing and industrial uses, street sprinkling and flushing, irrigation of lawns, trees, gardens, flowers and parks, and other municipal purposes.

2) From the October 10, 1955 Final Decree, Consolidated Cases No. 2782, 5016, and 5017 (hereafter the “Consolidated Blue River Cases”): for municipal purposes as defined in the Stipulation dated October 5, 1955, filed in the United States District Court for the District of Colorado, and set forth in full in the Findings of Fact and Conclusions of Law and incorporated into the Final Decree by reference.

H. Amount of Water Applicant Intends to Change: 1006 acre-feet.

4. Detailed description of proposed change:

A. Applicant seeks the following alternate places of storage:

1). Change of up to 600 acre-feet to an alternate place of storage in a relocated smaller Lower Blue Reservoir. The location of the approximate center of the axis of the dam at the proposed new location is:

UTM coordinates: Easting 406079.52 Northing 4360297.49 Zone 13
--

Source of UTM's : GIS Desktop Analysis;

2) Change up to 600 acre-feet to an alternate place of storage in Montgomery Reservoir located in Water Division No. 1. The location of Montgomery Reservoir, as decreed on March 24, 1953, in Case No. CA 3286, by the Park County District Court, is in sections 13 and 14, T8S, R789W of the 6th P.M. The location of the approximate center of the axis of the dam is:

UTM coordinates: Easting 407,643.284 Northing 4,356,589.024 Zone 13

Source of UTM's: GIS Desktop Analysis

3). To effect the change in place of storage to an enlarged Montgomery Reservoir, the water legally and physically available at the original point of diversion of Lower Blue Reservoir will be conveyed down Monte Cristo Creek, diverted into Colorado Springs's Monte Cristo Creek Diversion structure (a.k.a. Blue River Ditch), and then delivered to Montgomery Reservoir. The location of Monte Cristo Creek diversion as decreed in Cases No. 1805 and

1806 is located at a point from whence the East quarter corner of Section 2, T8S, R78W of the 6th PM is South 80° 44'1" East a distance of 2096 feet.

UTM coordinates : Easting 407,213.403, Northing 4,359,812.486 Zone 13
Source of UTM's: GIS Desktop Analysis

4) Total combined storage under the Lower Blue Reservoir water right at the alternate places of storage in the new Lower Blue Reservoir location and Montgomery Reservoir will not exceed 1006 acre-feet in any one year, April 1 to March 31, including any water carried over in storage from the prior April 1 to March 31.

B. Pursuant to the Settlement Agreement, Applicant will provide a water supply for use by Breckenridge and Summit County principally in the smaller Lower Blue Reservoir. To implement that agreement, Applicant seeks to change the use of 1006 acre-feet of the Lower Blue Reservoir water right to include, in addition to the currently decreed uses, the following new uses to be made on the West Slope:

1) Breckenridge and Summit County will use water from Lower Blue Reservoir for municipal, domestic, commercial, industrial, irrigation, firefighting, snowmaking, augmentation and replacement, exchange, recreation, piscatorial, and wildlife watering, with the right of reuse, successive use, and disposition to extinction, and use as water for repayment to Denver Water for Dillon Reservoir water provided under the Colorado River Cooperative Agreement.

C. But for this change of water rights, water stored under the Lower Blue Reservoir water right would have been available under Colorado Springs' water rights for export from the Blue River Basin by Colorado Springs and would have represented a 100% depletion to the Blue River Basin. Accordingly, the application seeks the right for Breckenridge and Summit County to fully consume the water stored under the Lower Blue Reservoir water right by first use and by successive use pursuant to subsequent decrees entered by this court.

D. Because the Lower Blue Reservoir water made available by Applicant to Breckenridge and Summit County will no longer be applied to beneficial use outside of the Colorado River Basin, the Applicant further requests a determination by the court that Breckenridge's and Summit County's use of

that water will not be subject to the following requirements of the Blue River Decree that apply to Applicant's beneficial use of its 1948 Blue River Water Rights:

- 1) Submission to the Secretary of the Interior, on or before December 31 of each calendar year, beginning with the year water is first stored in Lower Blue Reservoir, a report showing by months for the water year ended September 30th last past, the quantities of water diverted from the Blue River System.
- 2) The quantities of return flow (unconsumed water) resulting from the use of such water.
- 3) What steps, by legal action or otherwise, have been taken to utilize such return flow by exchange or otherwise reduce or minimize the demand on Blue River water.
- 4) Exercise due diligence in taking, with respect to their return flow of water, all steps that, in view of legal limitations and economic feasibility, might reasonably be required of such entity in establishing, enforcing, utilizing, and operating a plan designed to minimize or reduce the demands on Blue River water.

E. Redelivery of Water to Breckenridge and Summit County by substitution: Applicant also seeks the right to provide Breckenridge and Summit County with water stored under the Lower Blue Reservoir water right in an enlarged Montgomery Reservoir. This right will be implemented by Applicant releasing water diverted in priority under its 1948 Blue River direct flow water rights at the combination flume, or any one or more of the decreed points of diversion for its 1948 Blue River direct flow water rights (locations shown on the attached map). The water so released will be credited as a delivery of water under the changed Lower Blue Reservoir water right to Breckenridge and Summit County. An equal amount of water previously stored in an enlarged Montgomery Reservoir under the Lower Blue Reservoir water right will be booked over to Applicant as water diverted under its 1948 Blue River direct flow water rights.

F. Applicant's 1948 Blue River direct flow water rights are the water rights with a May 13, 1948, appropriation date for the Crystal Ditch, Spruce Ditch, McCullough Ditch, East Hoosier Ditch, Hoosier Ditch, and Hoosier Tunnel adjudicated in CA Nos. 1805 and 1806 by the Summit County District Court on March 10, 1952, and confirmed by the Blue River Decree.

G. For all water from the Lower Blue Reservoir water right provided to Breckenridge and Summit County, Applicant will provide any “Substitution Water” required to satisfy Green Mountain Reservoir under the Blue River Decree, the Memorandum of Agreement Regarding Colorado Springs Substitution Operations dated May 15, 2003 and the Memorandum of Agreement dated as of October 15, 2003 among the Applicant and the County of Summit, Vail Summit Resorts, Inc., and the Town of Breckenridge (collectively the “2003 MOA”), the February 22, 2010 Memorandum of Agreement with the United States, and the Green Mountain Reservoir Administrative Protocol.

H. Names and addresses of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:

- 1) United States Forest Service
c/o District Ranger
P. O. Box 620
Silverthorne, Colorado 80498-0620
(White River National Forest)
- 2) Summit County
Box 68
Breckenridge, Colorado, 80424-0068
(U.S. Mineral Survey No. 2625 Antarctic Lode; U.S. Mineral Survey No. 4144A Mountain King Lode; U.S. Mineral Survey No. 4373A Silver Star Lode; U.S. Mineral Survey No. 5107 Robinson Millsite; U.S. Mineral Survey No. 6265 Dickson & Spot Cash Lodes; U.S. Mineral Survey No. 6632A Polaris, Western Star, Arctic & Arctic Extension Lodes; U.S. Mineral Survey No. 6632B Arctic Millsite)
- 3) City of Colorado Springs
30 So. Nevada Ave. Suite 601
Colorado Springs, Colorado 80903
(Mt. Gilead Placer, U.S. Mineral Survey No. 13160; Mayflower, U.S. Mineral Survey No. 11725; Bronson, U.S. Mineral Survey No. 11725; Garrison, U.S. Mineral Survey No. 11725; L.T. Frost, U.S. Mineral Survey No. 11389; Mt. Gilead, U.S. Mineral Survey No. 11389; E.J. Shaw, U.S. Mineral Survey No. 11389; Salt Lake, U.S. Mineral Survey No. 11389; Chicago Pl. LS, 1454 Blue Lakes Road)

- 4) Carolyn M. Holm
c/o Janet C. McDermott
P.O. Box 3716
Breckenridge, CO 80424-3716
(Star Mountain Lode, U.S. Mineral Survey No. 4145)
- 5) Eileen M. Sesson
6142 So. Marion Way
Littleton, Colorado 80121
(A.W. Tabor, U.S. Mineral Survey No. 4393)
- 6) Jeffrey Pope
P.O. Box 702
Pullman, Washington 99163
(A.W. Tabor, U.S. Mineral Survey No. 4393)
7. Pamela Begal
5240 S. Joilet Way
Englewood, CO 80111
U.S. Mineral Survey No. 6632B Arctic Millsite)

Wherefore, Applicant requests the court enter a decree granting the changes of water right described herein.

Dated this ____ day of _____, 202__.

Carlson, Hammond & Paddock, LLC.

By: _____
William A. Paddock, Reg. No 9478
Karl D. Ohlsen, Reg. No. 32497

Office of the City Attorney

By: _____
Michael Gustafson, Reg No. 37364

Attorneys for Applicant City of Colorado Springs

EXHIBIT 8
Outline of planned Lower Blue Reservoir
Construction Agreement

1. Parties
 - a. Summit County
 - b. Town of Breckenridge
 - c. City of Colorado Springs acting through its Utilities Enterprise
2. Recitals
 - a. Settlement Agreement Concerning Water Rights (“MOA”) executed on _____.
 - b. MOA includes a separate Lower Blue Reservoir and Montgomery Reservoir Water Storage Operating Agreement (Operating Agreement”).
 - c. MOA contemplates construction of 600 a.f. active capacity Lower Blue Reservoir at a location just downstream from Upper Blue Reservoir.
 - d. The MOA contemplates that the Parties will share in the costs of the design, permitting and construction of the proposed Lower Blue Reservoir pursuant to a separate agreement between the Parties.
 - e. The purpose of this agreement is to memorialize the Parties agreements regarding the design, permitting, and construction of Lower Blue Reservoir in accordance with the MOA.
3. Type of Agreement
 - a. This agreement falls within the scope of sections 18(2)(a) and 2(b) of Article XIV of the Colorado Constitution and CRS Section 29-1-201. This agreement does not establish a separate governmental entity.
4. Term of Agreement.
 - a. Effective upon execution by all parties
5. Definitions
 - a. Terms defined in MOA have the same meaning when used in this agreement.
 - b. Construction Agreement Specific Terms.
 - i. Project : 600 A.F. activity capacity reservoir as generally described in the report titled “Revised Draft Conceptual Design Report – Lower Blue Dam and Reservoir” prepared by RJH Consultants, Inc. dated May 2019 (“RHJ Phase II Study”).

- ii. Annual Project Costs
 - iii. Cost of Project
 - 1. Pro Rata sharing 50%-25%-25%
 - iv. Decision making process re: annual budget and costs.
6. Principals of interpretation
- a. Construed to be consistent with MOA and Operating Agreement.
 - b. In the event of a conflict, the terms of the MOA and Operating Agreement control.
7. Project Management
- a. Managing Parties: Summit County and Breckenridge.
 - b. Responsibilities of Managing Parties.
 - i. All activities related to permitting, design, and construction of reservoir.
 - ii. Regularly advise Colorado Springs of status of permitting, design and construction of reservoir.
 - iii. To consult with Colorado Springs on matters that impact access to and operation of Upper Blue Reservoir and other components of Colorado Springs water supply system in the drainage.
 - c. Rights of Colorado Springs Utilities.
 - i. Have representative participate in meeting where decisions are to be made concerning Utilities financial obligations, including, but not limited to preparation of bid packages, selection of firms to design and build Lower Blue Reservoir, decision to proceed with construction, and other decision that impact the cost of the reservoir.
 - 1. If voting process is needed for making decisions, then each party has one vote.
 - ii. Approval of final design of dam and reservoir to ensure:
 - 1. No impairment of Colorado Springs access to Upper Blue Reservoir.
 - 2. No Impairment of safety or operation of Upper Blue Reservoir.
 - 3. No increase in cost of operation or maintenance of Upper Blue Reservoir other than the change in operations contemplated by the MOA and Operating Agreement.

4. Reservoir can be operated to measure, release, and bypass water in the manner contemplated by the MOA and Operating Agreement.
 5. No impairment of any other Colorado Springs water diversion and conveyance facilities downstream of Lower Blue Reservoir.
 - iii. Rights provided in MOA and Operating Agreement.
8. Final Reservoir Design.
 - a. Selection and approval of final design.
 - i. Requires agreement of all three parties.
 - ii. Colorado Springs will approve the final design if it meets the requirements of paragraph 7.c.ii above.
 - b. Cost of selected design.
 - c. Decision to proceed with reservoir construction (upon completion of permitting and land acquisition).
 - i. Decisions to proceed must be made by all parties. After final design approval, Colorado Springs decision not to proceed limited to disapproval based on the total cost exceeding the amount agreed upon in the MOA.
9. Permitting of Construction of Final Reservoir Design
 - a. Lower Blue Parties are responsible for permitting.
10. Acquisition of property needed for Reservoir Construction.
 - a. Identification of lands needed for reservoir construction, operation and maintenance based on approved final design.
 - b. Identification of owners of needed lands.
 - c. Conveyance of land by Colorado Springs for final reservoir site.
 - i. Identification of permanently needed lands.
 - ii. Identification of lands for which temporary construction easement is needed.
 - iii. Identification of lands for which permanent easements are needed.
 - iv. Procedure and timeline for conveyance.
 - d. Acquisition of any other land need is responsibility of Lower Blue Parties.

- e. Lower Blue Parties can use Eminent Domain to acquire additional lands but Utilities will not. Given the amount of land being provided by Utilities, this should not be a shared cost.
11. Construction Contracts
- a. Lower Blue Parties will be the contracting entities.
 - b. Colorado Springs will not be a party to the contracts.
12. Construction Coordination
- a. Parties Representatives
 - b. On-going co-ordination process
 - c. Decision making process. .
13. Ownership and Operation.
- a. Owned and Operated solely by Lower Blue Parties in accordance with MOA and Operations Agreement.
14. Cost Sharing
- a. Eligible Costs
 - i. “Out-of-pocket expenses” of Lower Blue Parties for reservoir design, permitting and construction.
 - b. Does not include time of employees of Parties, cost of a party use of its own vehicles, equipment, supplies, materials, and attorney fees.
 - c. Allocation of Costs
 - i. 25%-25%-50% per MOA
 - d. Annual Budgets and appropriations.
 - i. Managing Parties must annually prepare an estimate of Annual Project costs for the coming year. Estimate to be prepared and provided to all parties by _____ annually.
 - 1. Components of annual budget: Anticipated costs for all approved design, permitting and construction costs for upcoming year based upon approved bids and schedule for work
 - ii. Approval of annual budget by majority vote
 - iii. Parties must seek appropriation in amount of their pro rata share of the annual budget.
 - e. Participants Financial Covenants.
 - i. Lower Blue Parties:

1. Will timely fund their share of expenses and do so in the manner they deem most appropriate.
 - ii. Colorado Springs:
 1. Colorado Springs will establish, maintain and collect reasonable rates and charges that must produce revenues that are sufficient, when added to other funds legally available, to enable Colorado Springs to pay its pro rata share of costs and all other amounts, if any, due under this Agreement.
 2. Colorado Springs reserves the right to provide for the payment of its pro rata share of costs through the issuance of indebtedness, on such terms as Colorado Springs deems appropriate.
 3. All payments by the Colorado Springs under this Agreement shall be made only from funds lawfully available for such purposes.
 - f. Documenting Costs.
 - i. Project Managers must record and report all eligible project costs.
 - g. Any party may review all records of costs incurred.
 - h. Procedure for determining and billing participants' share of costs.
 - i. Time for billing and payment of pro rata share of costs.
15. Due date for payment and delinquencies.
- a. Billing date
 - b. Payment date
 - c. No set-offs in payment
16. Reconciliation of over/under payments
17. Withdrawal of Party
- a. If either Breckenridge or Summit County withdraws, the remaining Lower Blue Party is responsible for the withdrawing party's share of the project costs.
18. Maintaining Records and access thereto.
19. Default/Remedies
20. Insurance during construction
21. Rights of Termination

22. Dispute Resolution.

23. General Provisions

- a. Notice
- b. Severability
- c. Governing Law, Jurisdiction/Venue
- d. Counterparts
- e. Amendments
- f. Assignment
- g. Enforcement
- h. Entire Agreement

24. Such other provisions as the parties may mutually agree upon.