

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT among the members of the Old Dillon Reservoir Water Authority is made and entered into this 12<sup>th</sup> day of MAY, 2010 by and among the Town of Dillon ("Dillon"), the Town of Silverthorne ("Silverthorne") and the Board of County Commissioners of Summit County, Colorado ("County"), all of which are political subdivisions of the State of Colorado and shall hereinafter be referred to as "Contracting Parties."

## WITNESSETH

WHEREAS, each of the Contracting Parties is authorized and empowered to finance, construct, own, operate, maintain, repair and replace water storage facilities and diversion works, equipment and appurtenances incident thereto pursuant to C.R.S. § 31-15-708 (*i.e.*, Dillon and Silverthorne) and C.R.S. § 30-20-402 (*i.e.*, the County); and

WHEREAS, pursuant to the provisions of the Colorado Constitution, Article XIV, §§ 18.2(a) and 2(b), and C.R.S., § 29-1-204.2, known as the "Water Authority Act," the Contracting Parties have by agreement of even date herewith (the "Establishing Agreement") established the Old Dillon Reservoir Water Authority (the "Authority") as a separate governmental entity to construct, own, operate, maintain, repair and replace water storage facilities, diversion works, and inlet and outlet structures for Old Dillon Reservoir and the Dillon Ditch for the purpose of supplying water to the Contracting Parties; and

WHEREAS, the Old Dillon Reservoir Project (the "Project") is defined as the existing storage capacity of Old Dillon Reservoir in the amount of 46.14 acre-feet (the "Original Storage Capacity"), the proposed enlargement of the storage capacity of Old Dillon Reservoir in the additional amount of 240 acre-feet (the "Enlargement Storage Capacity") for a total storage capacity of 286.14 acre-feet (the "Project Storage Capacity"), and the Dillon Ditch capacity of 10.0 c.f.s. ("Project Ditch Capacity"); and

WHEREAS, the physical facilities associated with the Project will be owned by the Authority and operated by the Authority for the benefit of the Contracting Parties, subject to the terms of the Establishing Agreement and this Operating Agreement; and

WHEREAS, the water rights associated with the Project are retained by the individual Contracting Parties and, at the direction of the individual Contracting Parties who own the water rights, will be diverted through, stored in, and released from the Project facilities by the Authority; and

WHEREAS, this Operating Agreement is intended to provide terms, conditions, and criteria for the operation of the Project and the water rights of the Contracting Parties.

NOW, THEREFORE, in consideration of the mutual performance of the covenants, agreements and promises set forth hereinafter, the Contracting Parties hereby agree as follows:

1. Water Rights Owned By the Contracting Parties.

1.1 The Contracting Parties are tenants in common with the following undivided percentage interests in the water rights described in this paragraph 1.1: County, 68.75%; Dillon, 26.25 %; and Silverthorne, 5%.

1.1.1 Old Dillon Reservoir First Enlargement, in the amount of 150 acre-feet, as confirmed by decree in Case No. 93CW288.

1.1.2 Old Dillon Reservoir Second Enlargement, in the amount of 60 acre-feet, pending in Case No. 07CW223.

1.1.3 Old Dillon Reservoir Third Enlargement, in the amount of 30 acre-feet, pending in Case No. 08CW201.

1.2 Dillon retains sole ownership of the following water rights:

1.2.1 The original water storage right for Old Dillon Reservoir, in the amount of 46.14 acre-feet with a filling rate of 10.0 c.f.s., as confirmed by decree in C.A. 1806 (the "Original Decree").

1.2.2 The right of exchange of up to 20 acre-feet per year of Clinton Reservoir water to Old Dillon Reservoir, as confirmed by decree in Case No. 95CW077.

1.2.3 The right of exchange of up to 32.6 acre-feet per year of water from Dillon Reservoir to Old Dillon Reservoir, pending in Case No. 07CW232.

1.3 Silverthorne retains sole ownership of the following water rights:

1.3.1 11.87 acre-feet of annual consumptive use attributable to the Valaer Ditch water rights that were changed to allow storage in the Old Dillon Reservoir First Enlargement by decree in Case No. 93CW288.

1.3.2 The right of exchange of up to 55 acre-feet per year of Clinton Reservoir water and up to 300 acre-feet per year of Dillon Reservoir water to Old Dillon Reservoir, pending in Case No. 08CW16.

1.4 The County retains sole ownership of the following water rights:

1.4.1 The right of exchange of 53.4 acre-feet per year of Windy Gap water, as confirmed by decree in Case No. 93CW288.

1.4.2 The right of exchange of up to 155 acre-feet per year of Clinton Reservoir water, up to 133.45 acre-feet per year of Dillon Reservoir water, and up to 100 acre-feet per year of Upper Blue Reservoir water to Old Dillon Reservoir, pending in Case No. 07CW226.

1.4.3 The right of exchange of up to 300 acre-feet per year of Wolford Mountain Reservoir water to the headgate of the Dillon Ditch on Salt Lick Gulch, or to a pump station in the Blue River at Dillon Reservoir for storage in Old Dillon Reservoir, pending in Case No. 08CW202.

1.5 The Contracting Parties are tenants in common with undivided interests in the water right for a refill of 45 acre-feet to account for gross evaporation from the Reservoir, pending in Case No. 08CW201. This water right shall be allocated in the manner described in paragraph 3.6.

1.6 Dillon and the County own the following direct-flow rights decreed to the Dillon Ditch:

1.6.1 Dillon retains sole ownership of 2.0 c.f.s. of the water right for the Dillon Ditch, adjudicated in the amount of 10.0 c.f.s. in the Original Decree.

1.6.2 The County retains sole ownership of 8.0 c.f.s. of the water right for the Dillon Ditch, adjudicated in the amount of 10.0 c.f.s. in the Original Decree.

1.6.3 In the event there is insufficient water to provide the full 10 c.f.s. decreed to the Dillon Ditch, the County shall be entitled to 4/5ths and Dillon shall be entitled to 1/5th of any available water.

## 2. Ownership and Allocation of Project Storage Capacity.

2.1 The dams, embankments, outlet works, ditches, headgates, flumes, and other physical facilities associated with the Project will be owned by the Authority and operated and maintained for the benefit of the Contracting Parties pursuant to the Establishing Agreement.

2.2 Dillon is entitled to the exclusive use of 46.14 acre-feet of the Project Storage Capacity to replace the Original Storage Capacity.

2.3 Upon authorization of participation in the Project by the respective governing councils and boards of the Contracting Parties, and the completion of construction of the Project, the Contracting Parties will be entitled to the use of the following undivided percentage interests in the Enlargement Storage Capacity:

2.3.1 County: 63.8%

2.3.2 Dillon: 26.25%

2.3.3 Silverthorne: 9.95%

2.4 Based upon the completion of construction of the Project with an estimated storage capacity of 286.14 acre-feet, the Contracting Parties will be entitled to the use of the following percentages of the Project Storage Capacity:

2.4.1 County: 53.52%.

2.4.2 Dillon: 38.14%.

2.4.3 Silverthorne: 8.34%.

2.5 If, after completion of the construction of the Project there is more or less than 286.14 acre-feet of Project Storage Capacity, the ownership of the as-built Enlargement Storage Capacity shall be determined by reference to Section 2.3, and ownership of the as-built Project Storage Capacity as currently stated in Section 2.4 shall be revised accordingly to describe the final percentage of participation in the Project Storage Capacity by each party.

3. Use of Project Storage Capacity.

3.1 Each Contracting Party may use its interest in the Original Storage Capacity and/or Enlargement Storage Capacity in Old Dillon Reservoir to store, regulate, and release water under water rights and appropriations owned or controlled by that Contracting Party that may lawfully be diverted into or through, stored in, or released from the Project facilities.

3.2 Each Contracting Party may also utilize an interest in the Original Capacity and Enlargement Storage Capacity of Old Dillon Reservoir that is owned by another Contracting Party if agreed to by that Contracting Party.

3.3 Each Contracting Party may enter into agreements with other parties to use the Project Storage Capacity owned by that Contracting Party to store, regulate, and release water under other water and water rights that may lawfully be diverted into or through, stored in, or released from the Project facilities.

3.4 Water stored under the individual water rights of each Contracting Party is not subject to allocation to any other Contracting Party except by mutual agreement of the parties directly involved in such allocation.

3.5 A separate carryover storage account shall be maintained for the interest of each Contracting Party in each of the storage water rights associated with the Project. Water carried over in each of the Contracting Parties' storage accounts shall be allocated to the fill of that Party's interest in the water storage rights and shall not affect the amount of water that may be stored in the accounts of the other Contracting Parties.

3.6 Evaporation losses in the Old Dillon Reservoir shall be allocated to each storage account in the same proportion that the water stored in each account bears to the total amount of water stored in Old Dillon Reservoir during the same accounting period. Water available under the refill of 45 acre-feet pending in Case No. 08CW201 shall be allocated proportionally to replace calculated evaporation losses in the storage accounts of the Contracting Parties, to the extent that such losses can be replaced in priority.

4. Storage and Use of Water Rights of Contracting Parties.

4.1 Each Contracting Party has the right in its sole discretion to enter into leases and other contracts for the use of water derived from that Party's interest in the Project and its water rights stored therein, including leases and contracts with governmental and non-governmental entities for a limited term or in perpetuity. None of the other Contracting Parties shall have any prior right to lease or contract for such water or any interest in revenues derived from such lease or contract.

5. Allocation of Project Ditch Capacity.

5.1 The Dillon Ditch, the Project Ditch Capacity, and all appurtenances and easements are currently owned by Dillon and the County, some or all of which shall be conveyed to the Authority as described in Section 4 of the Establishing Agreement.

5.2 At the direction of the individual Contracting Parties who own the water rights, the Authority shall utilize the available Project Ditch Capacity and the flow of Salt Lick Gulch to divert water that is legally available at the headgate of the Dillon Ditch to satisfy the water rights of the individual Contracting Parties based upon the following order of priority:

5.2.1 Dillon's 2.0 c.f.s. Dillon Ditch direct flow water right under the Original Decree.

5.2.2 The original water storage right for Old Dillon Reservoir, in the amount of 46.14 acre-feet, at a rate up to 10.0 c.f.s., as confirmed by the Original Decree.

5.2.3 The Old Dillon Reservoir First Enlargement, in the amount of 150 acre-feet, the County's exchange of 53.4 acre-feet per year of Windy Gap water, and Silverthorne's change of 11.87 acre-feet of the water right for the Valaer Ditch, all as confirmed and approved by decree in Case No. 93CW288. These rights shall be deemed to have equal priority. If the County or Silverthorne elects to store under its individual priorities described in this subparagraph prior to satisfaction of the First Enlargement Right, such storage shall not reduce the rate of diversion or volume of water that may be stored by the other Contracting Parties under the First Enlargement Right during that same time period.

5.2.4 Dillon's exchange of its Clinton Gulch Reservoir water as confirmed by decree in Case No. 95CW077.

5.2.5 The Old Dillon Reservoir Second Enlargement, in the amount of 60 acre-feet, pending in Case No. 07CW223.

5.2.6 The Old Dillon Reservoir Third Enlargement, in the amount of 30 acre-feet, pending in Case No. 08CW201.

5.2.7 The exchanges of water claimed by the County, Dillon, and Silverthorne in Case Nos. 07CW226, 07CW232, and 08CW16, respectively, which shall have an equal priority.

5.2.8 The County's right of exchange of up to 300 acre-feet per year of Wolford Mountain Reservoir water to the headgate of the Dillon Ditch on Salt Lick Gulch, or to a pump station in the Blue River at Dillon Reservoir for storage in Old Dillon Reservoir, pending in Case No. 08CW202.

5.2.9 The refill of 45 acre-feet to account for gross evaporation from the Reservoir, pending in Case No. 08CW201.

5.2.10 The County's 8.0 c.f.s. direct-flow right under the Original Decree.

5.2.11 Each Contracting Party may make new appropriations of water for storage in its portion of Project Storage Capacity or for direct diversion or exchange, provided that such diversion and/or storage does not interfere with the ability of the remaining Contracting Party to exercise their relative priorities described above. Any Contracting Party may file a statement of opposition to a water court application for such water rights, but shall not oppose the entry of a decree that is consistent with this Agreement.

5.3 To the extent that the Project Ditch Capacity is not adequate to meet the demands of all of the Contracting Parties for diversion or storage of water rights having equal priority under sections 5.2.3 and 5.2.7, the Project Ditch Capacity not being used by Dillon under Sections 5.2.1 and 5.2.2 shall be allocated for use by the Contracting Parties in the undivided percentage interests described in paragraph 2.3, unless the Contracting Parties agree to another sharing arrangement.

5.4 Nothing in this Agreement is intended to alter the relative priorities of or limitations of existing decreed water rights. In the event of a conflict between the terms of this paragraph 5 and any lawful requirements for the administration of water rights decreed to the Project, diversion and storage shall occur on the basis of the order of decreed priorities.

6. Funding of Project. The obligations of the individual Contracting Parties to fund the construction of the Project are set forth in a separate Funding Agreement.

7. Allocation of OM&R costs. Each Contracting Party shall participate in the cost of operation, maintenance, and repair of the entire Project in proportion to its total ownership of, Project Storage Capacity as described in Section 2.4, as may be revised pursuant to Section 2.5.

8. Assessments on Contracting Parties.

8.1 The Authority may levy assessments on the Contracting Parties for the payment of costs and expenses approved pursuant to the Establishing Agreement.

8.2 No water shall be stored in or used from the Project by any Contracting Party that has not fully paid its assessments by the due date for such payment and who has failed to pay that amount after receiving notice that such amount is delinquent. Unpaid assessments shall bear interest at the rate of 10% per annum compounded annually from the date due. The Authority shall be entitled to lease that portion of the Project Storage Capacity and Project Ditch Capacity allocated to any delinquent Contracting Party for the benefit of the remaining Contracting Parties that have fully paid their assessments, or to any other person to the extent allowed by this Agreement and the Establishing Agreement. The proceeds from such lease shall be used first to pay the delinquent Contracting Party's current assessments and then to pay any unpaid assessments of the delinquent Contracting Party. The proceeds of such lease, over and above the amount due, shall be paid to the delinquent Contracting Party. Failure of the Authority to lease such Project Storage Capacity or Project Ditch Capacity shall not preclude the Authority from enforcing the Authority's lien for assessments in any other manner allowed by the Establishing Agreement.

9. Accounting for Water Diversions, Storage and Releases. The Authority shall maintain records of diversions, storage, and release of water from all accounts in the Project and shall submit those records to the State and Division Engineers as required by law. The individual Contracting Parties shall provide to the Authority records of their use of Project water as reasonably required by the Authority.

10. Green Mountain Reservoir Contract.

10.1 The Parties agree to cooperate in applying for and securing a contract for Green Mountain water, a substitution agreement with the Bureau of Reclamation, and/or other arrangement to allow storage of water rights in the Enlargement as against Green Mountain's 1935 storage and direct-flow water rights and other senior calling water rights. The cost of such a contract, agreement, or arrangement shall be paid solely by the Contracting Parties participating in that contract.

10.2 If, after reasonable efforts, Dillon and the County are unsuccessful in securing a contract for Green Mountain water, a substitution agreement, and/or other arrangement as described in Section 10.1, Silverthorne may in its own discretion consider

a partial assignment of Silverthorne's Green Mountain contract on terms acceptable to the parties participating in that partial assignment.

11. Operations Committee. The Contracting Parties shall each appoint a person to serve on the Operations Committee to undertake certain actions and responsibilities under this agreement. At the beginning of each water year used for operation of the Project, the Operations Committee shall determine the amount of water in each account of the Contracting Parties and develop an initial plan for operating the Project through the end of the water year for the Project. Such plan shall take into account anticipated releases from storage, projected stream flow and anticipated diversions for direct flow, exchange and storage, releases of water from storage, and the location of such release, based on estimated demand by the Contracting Parties. All Contracting Parties shall advise the Operating Committee promptly of any changes in their estimated demand from the Project to allow for timely adjustment to the plan. The plan shall be updated periodically as new information becomes available. The initial plan and all updated plans shall be provided to the Authority directors on a monthly basis or more frequently based on changes to the plan.

12. Water Trading. The loan, exchange, substitution, and trading of water, to the extent permitted by law, shall be encouraged between the Contracting Parties in order to improve the yield of the Project water rights, under conditions acceptable to the Contracting Parties.

13. Notices. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made and received if delivered in person or sent by registered or certified mail, postage prepaid to the Contracting Parties at the addresses as set forth in the Establishing Agreement, unless another address is certified to the Authority.

14. Effective Date. This Agreement shall become effective when it has been duly executed on behalf of all of the Contracting Parties.

15. Amendments. This Agreement may be amended only by written document approved by formal authority of the governing bodies of all of the Contracting Parties; provided, however, that such amendment will not affect other outstanding obligations of the Authority unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to such obligations.

16. Interpretation. In the event of a conflict between the provisions of this Agreement and the Establishing Agreement, the terms of the Establishing Agreement shall control.

17. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors, assigns and legal representatives of the parties hereto. Upon the admission of new Contracting Parties to the Authority pursuant to the Establishing Agreement, the new parties shall be deemed to be Contracting Parties



for all purposes under this Agreement and the rights and obligations of the Contracting Parties shall be determined based on their respective interests in the Original Storage Capacity and the Enlargement Storage Capacity and their ownership of water rights that may be diverted and/or stored in or through Project facilities.

18. Severability. In the event that any of the terms, covenants or conditions of this Agreement or their application shall be held invalid as to any person, corporation or circumstance by any court having competent jurisdiction, the entire Agreement shall be deemed terminated, unless amended pursuant to Section 16.

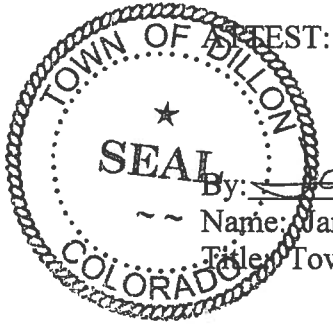
19. Original Counterparts. This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Contracting Parties have caused this Agreement to be executed effective the date first above written.

*[Signature Pages Follow]*

TOWN OF DILLON, COLORADO:


By: Ronald J. Holland  
Name: Ronald J. Holland  
Title: Mayor



TEST:

By: Jan Thomas  
Name: Jan Thomas  
Title: Town Clerk

SUMMIT COUNTY, COLORADO

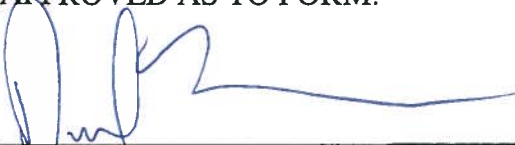
By:   
Name: Gary Martinez  
Title: Manager

ATTEST:

By:   
Name: Kathleen Neel  
Title: Clerk & Recorder



APPROVED AS TO FORM:

  
Daniel Teodoru, Assistant County Attorney

COLORADO

TOWN OF SILVERTHORNE,

By: Dave Koop  
Name: Dave Koop  
Title: Mayor

ATTEST:

By: Michele Karlin  
Name: Michele Karlin  
Title: Town Clerk

