

# STATE OF COLORADO

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## Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

John W. Hickenlooper  
Governor

FROM: Linda Bassi, Chief  
Stream & Lake Protection Section

Mike King  
DNR Executive Director

DATE: May 9, 2011

Jennifer L. Gimbel  
CWCB Director

SUBJECT: **Agenda Item 18, May 17-18, 2011 Board Meeting**  
Stream & Lake Protection Section – Proposed Lease of Water from Montezuma Valley Irrigation Company for Instream Flow Use

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### Introduction

The Montezuma Valley Irrigation Company (“MVIC”) has offered the Colorado Water Conservation Board (“CWCB”) the opportunity to enter into a temporary lease of 6,000 acre-feet per year of water for instream flow (“ISF”) use on the Dolores River from McPhee Reservoir down to the confluence with the San Miguel River. The lease would require State and Division Engineer approval under section 37-83-105(2), C.R.S. (2010). The price of the lease is \$79.50 per acre-foot. Staff of The Nature Conservancy (“TNC”) and the Walton Family Foundation (“Foundation”) intend to request authorization from their respective boards to fund a portion of the lease price. At this board meeting, CWCB staff will request the Board to accept and approve the lease, and to approve the expenditure of \$250,000 from the Construction Fund toward funding the lease. This proposal presents an opportunity to bring flows in the Dolores River up to the decreed ISF amount of 78 cfs more frequently, and to address a long-standing need for more water in the Dolores River to benefit both a trout fishery and habitat of the flannemouth sucker, bluehead sucker, and roundtail chub, which are considered sensitive species. Attached to this memo are a map showing the location of the subject water rights and reach of the Dolores River, an offer letter from MVIC and a draft Lease Agreement. Please note that the Lease Agreement is in draft form and that staff will provide the Board with an updated version at the Board meeting.

### Staff Recommendation

Staff recommends that the Board:

- (1) accept the temporary lease and authorize staff to work with MVIC to compile and submit the necessary information to the State and Division Engineers for approval under section 37-83-105(2), C.R.S. (2010);
- (2) authorize the Director to execute the lease provided that: (a) the terms of the lease have been negotiated to adequately address the CWCB’s interests; and (b) the State and Division Engineers have approved the lease; and

- (3) authorize the expenditure of \$250,000 from the Construction Fund as the CWCB's cost share of the lease price.

### **1. The Board's Water Acquisition Procedures**

Rule 6 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules") sets forth the Board's procedures for acquiring water for ISF use. Rule 6k. governs temporary loans and leases of water to the Board. The legislation authorizing this type of lease addressed the need for a mechanism to quickly accept temporary loans and leases of water in dry years. To implement that legislation, the Board adopted ISF Rules that established an expedited approval process that does not require two meetings. Section 37-83-105(2) provides that a water rights owner may lease water to the CWCB for ISF use pursuant to a decreed ISF water right for a period not to exceed 120 days, and to be exercised three years within a ten-year period. No water court approval is needed; rather, the State and Division Engineers must review the application and find that no injury will result as a condition of lease approval. The process for obtaining approval of a temporary lease from the Division of Water Resources is set forth later in this memo.

### **2. Partnerships on Lease Proposal**

MVIC and CWCB staff have been discussing the potential for this proposed lease for some time. Recently, TNC, Trout Unlimited and the Foundation have joined the discussion and jointly presented the lease proposal to the Dolores River Dialogue Steering Committee in April 2011. TNC and the Foundation intend to bring proposals to their respective boards to fund a portion of the lease price, and are seeking additional donors to help fund the lease. CWCB staff will request the Board to authorize the contribution of \$250,000 toward the lease price of approximately \$1.4 million. (See #11 below).

### **3. Water Right to be Leased**

MVIC has offered to lease up to 6,000 acre-feet ("AF") of Groundhog Reservoir water, decreed by the District Court in and for Montezuma County on December 18, 1933 in Civil Action No. 967 for 21,709 AF out of the Groundhog Creek, Clear Creek, Little Fish Creek and Beaver Creek, tributary to the Dolores River, with an appropriation date of August 1, 1905 ("Leased Right"). The decreed uses of the Leased Right are irrigation, domestic, stockwater and "other beneficial uses." Historically, MVIC water delivered from Groundhog Reservoir has been used in the McElmo Creek basin, and therefore has been operated as a transbasin diversion. Consequently, the temporary change of this water to ISF use on the Dolores River will not affect other existing water rights in the Dolores River Basin, including those held by the Dolores Water Conservancy District.

### **4. ISF Water Right That Will Benefit From the Lease**

The Leased Right would be used pursuant to the CWCB's ISF water right decreed in Case No. W-1346-75 for 78 c.f.s, in the reach of the Dolores River from the McPhee Dam site to its confluence with San Miguel River ("Dolores River ISF"). This reach of the Dolores River is considered a cold-water fishery in the upper 16 miles, supporting a brown trout fishery. The remainder of the reach down to the San Miguel River is considered a cool- to warm-water fishery and historically has provided habitat for the roundtail chub, flannelmouth sucker and bluehead sucker, which are the subject of a Range-wide Conservation Agreement and Strategy between the wildlife agencies of six western states, including the Colorado Division of Wildlife ("CDOW").

The leased water will enable the Dolores River ISF water right to be met more frequently. John Sanderson of TNC conducted an analysis that compares actual flow data in the Dolores River against the 78 cfs ISF water right on the Dolores River. The analysis used gage data from the gage on the Dolores River below McPhee Reservoir. The period of record analyzed included sixteen years of data (1991-2006).

The TNC analysis shows that there are 278 days with an ISF shortage, on average. The average shortage over these days is 37 cfs and the total volume of water that would be needed to meet this average shortage is 20,617 acre-feet. The analysis also looked at shortages during and outside the irrigation season, and during wet, average, and dry periods. There is a substantial shortage during the irrigation season (May-Oct), and a greater shortage outside the irrigation season (Nov-Apr). As would be expected, shortage during dry years is greatest, with only a few days during such a year when the ISF was met and with an average daily shortage of 45 cfs. Details of this analysis are available for review.

## **5. Proposed use of the leased water right**

Under the lease, MVIC will release the water from Groundhog Reservoir for delivery to and through McPhee Reservoir for ISF use starting below McPhee Dam. McPhee Reservoir is the principal storage vessel of the Dolores Project, which is operated by the Dolores Water Conservancy District as directed by the U.S. Bureau of Reclamation ("Reclamation"). Because the leased water will not be stored in McPhee Reservoir, Reclamation has concluded that a carriage contract with Reclamation will not be required.

The Leased Right would be used to bring flows in the Dolores River up to the decreed ISF amount of 78 cfs to preserve the natural environment to a reasonable degree. The Leased Right only may be provided during the irrigation season, which generally commences in mid-May (following the peak of the Dolores River) and ends on October 15. The lease agreement provides that each year the lease is in effect, MVIC and CWCB shall consult prior to April 15 as to whether the lease may be exercised; the amount of water projected to be available under certain calculations set forth in the lease agreement; and the projected schedule of releases of the Leased Right. CWCB staff will consult with the CDOW, TNC and the Foundation to determine the desired schedule of releases, and anticipates working with CDOW and the U.S. Bureau of Reclamation to coordinate the use of the Leased Right with McPhee Reservoir fish pool releases to maximize benefits to the River.

## **6. Terms of the Lease Agreement:**

- A. The term of the lease will be five years, with the intent that the lease will be exercised in three of those five years. The lease will terminate after the third year of delivery of the Leased Right or upon expiration of the five-year period, whichever occurs first. If both parties agree, the parties may extend the Lease Agreement for no more than five years if the Leased Right is not used for three years during the original five-year period.
- B. The Lease Agreement provides that delivery of the Leased Right:
  - 1) shall be based upon a percentage of water available to MVIC, calculated according to MVIC's projected direct flow deliveries and Groundhog Reservoir storage projections, and shall be subject to shortages in MVIC's supply;
  - 2) shall be measured at the outlet structure of Groundhog Reservoir;
  - 3) shall be made so long as water in Groundhog Reservoir is available after MVIC has met its contractual storage and delivery obligations that existed prior to the lease.

These contractual storage and delivery obligations include a 3,900 af easement with the CDOW and a 2,900 af Upstream Users Agreement with the Dolores Water Conservancy District;

- 4) shall be limited to the amount of water that will not impair MVIC's ability to physically transport water rights to its shareholders and contractual users; and
  - 5) will take into consideration the operating criteria of the Dolores Project by the Reclamation and the Dolores Water Conservancy District.
- C. Prior to using the Leased Right in a given year, the CWCB and MVIC shall notify the Division Engineer of the date the CWCB intends to begin using the Leased Right for ISF purposes, and other details as necessary, such as the release schedule for the Leased Right.
- D. The CWCB shall bear any transportation losses assessed as a result of delivery of the Leased Right to the Dolores River ISF water right.
- E. CWCB and MVIC will cooperate on taking the necessary steps to obtain State and Division Engineer approval of the lease.

**7. Other Water Rights in Proposed Reach and Potential Injury to Those Rights**

Because water provided under the Leased Right historically was diverted out of the basin and only will be present in the Dolores River ISF reach because of the lease, exercising the lease will not injury other water rights in the ISF reach. When necessary, the water commissioner will protect the leased water from diversion by those water rights. The Division Engineers in Water Divisions 7 and 4 will assess transit losses on the water delivered under the Lease Agreement.

**8. Effect of Proposed Acquisition on Any Relevant Interstate Compact Issue**

This water right is a pre-1922 water right and is senior to a compact call. It is anticipated that this water will be diverted and used by other water users downstream of the confluence with the San Miguel River. Consequently, it does not appear that this lease will raise any compact issues.

**9. Availability of the Acquired Water for Subsequent Use Downstream**

Water provided under the Lease Agreement will be available for diversion and use downstream on the Dolores River below its confluence with the San Miguel River.

**10. Compensation for the Lease**

The Lease Agreement provides that MVIC will be paid for water delivered at a rate of \$79.50 per acre-foot, and that MVIC will receive payment in the amount of \$100,000 upon execution of the Water Rights Lease Agreement. If the full 18,000 acre-feet of water is provided under the lease, the lease price would total \$1.4 million. The parties still are negotiating terms on the payment mechanism for the lease, which staff will present to the Board at the Board meeting.

**11. Costs to CWCB of the Lease**

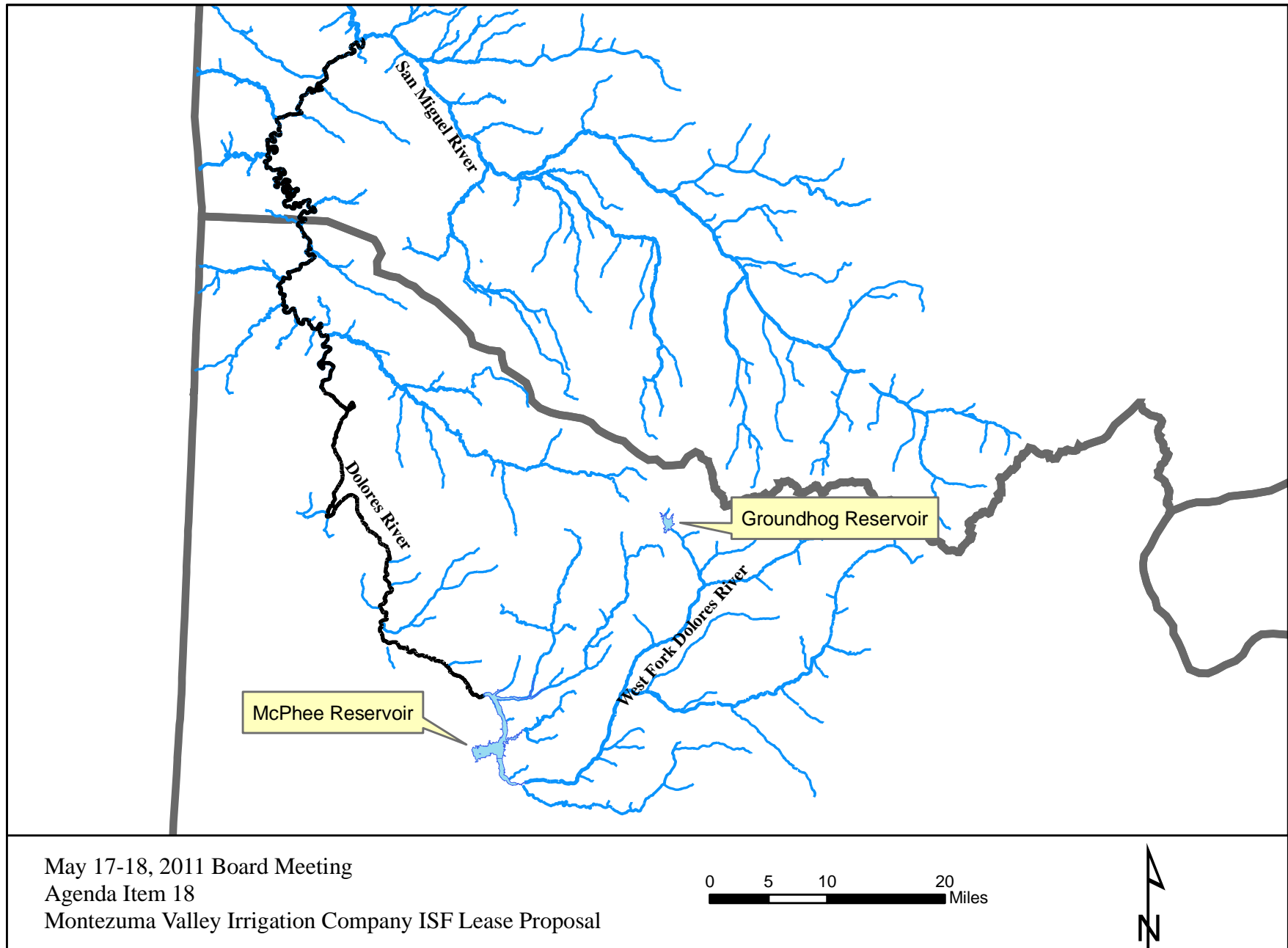
As discussed above, the total price of the lease will be approximately \$1.4 million, and funding will be provided by TNC, the Foundation, and other partners. The lease price is backed by an opinion of value prepared by Wright Water Engineers, Inc. that staff will discuss with the Board in Executive Session. Staff is requesting the Board to approve the expenditure of \$250,000 of the Construction Fund money authorized under section 37-60-123.7, C.R.S. (2010) toward the lease price. Financial Policy 19 established temporary water acquisitions that supplement existing ISF water rights that are not always met as one of the top priorities for expenditures of those funds. Also, this lease will benefit habitat of the three warm-water species that are the

subject of the Range-wide Conservation Agreement and Strategy discussed above. Based upon the foregoing, staff believes that this lease is a worthy candidate for funding.

## **12. Procedure for Obtaining Approval of a Temporary Lease of Water Rights**

The following outlines the steps that CWCB staff and MVIC must take to obtain approval of this temporary lease under section 37-83-105(2), C.R.S. (2010) and ISF Rule 6k.

1. CWCB staff coordinates with MVIC on preparing and submitting to the State Engineer and Division 7 Engineer the information and documentation required by sections 37-87-105(2)(a)(I) and (2)(b)(I), which includes:
  - a. Evidence of MVIC's legal right to use the subject water rights;
  - b. A statement of the duration of the proposed lease;
  - c. A description of the original points of diversion, the return flow pattern, the stream reach, and the time, place, and types of use of the leased water rights;
  - d. A description of the stream reaches, and the timing and amounts of the proposed ISF use of the leased water rights;
  - e. A reasonable estimate of the historic consumptive use of the leased water rights; and
  - f. Any other relevant information sufficient for the State and Division Engineers to determine that the lease will not injure existing decreed water rights.
2. CWCB staff and MVIC coordinate on providing the public notice required by section 37-87-105(2)(b)(II), which is written notice of the request for approval of the lease by first-class mail or electronic mail to all parties on the substitute water supply plan notification list established pursuant to section 37-92-308 (6) for Water Division 4 and 7. Staff and MVIC must file proof of such notice with the Division Engineers.
3. Owners of water rights and decreed conditional water rights have 15 days after the date of mailing of notice to file comments on the proposed lease. Such comments shall include any claim of injury or any terms and conditions that should be imposed upon the proposed lease to prevent injury to a party's water right and any other information the commenting party wishes the Division 7 Engineer to consider in reviewing the proposed loan.
4. The Division 7 Engineer shall approve or deny the proposed lease within twenty days after the date of mailing of notice. The lease period shall begin when the State Engineer approves the lease.
5. In approving the proposed lease, the Division 7 Engineer must:
  - a. Consider any comments received;
  - b. Determine that the operation and administration of the proposed lease will not injure other decreed water rights and will not affect Colorado's compact entitlements; and
  - c. Impose such terms and conditions necessary to ensure that these standards are met.
6. In making the above determinations, the Division 7 Engineer is not required to hold a formal hearing or conduct any other formal proceeding, but may do so if the Division Engineer finds it necessary to address the issues.



May 17-18, 2011 Board Meeting  
Agenda Item 18  
Montezuma Valley Irrigation Company ISF Lease Proposal

May 9, 2011

Linda J. Bassi, Esq.  
Chief, Stream and Lake Protection Section  
Colorado Water Conservation Board  
Department of Natural Resources  
1313 Sherman Street, Room 721  
Denver, CO 80203

Dear Linda:

On behalf of our clients, the Montezuma Valley Irrigation Company (MVIC), please allow this letter to serve as MVIC's offer to lease water to the Colorado Water Conservation Board (CWCBC) for instream flow use on the Dolores River.

Attached please find the most recent draft Lease Agreement between MVIC and the CWCBC which outlines the agreements in principle between the parties. This includes the following:

- Pursuant to C.R.S. § 37-83-105(2) MVIC offers to lease up to 6,000 acre feet (af) per year for not more than three years in a successive five-year period for the CWCBC's existing instream flow water right on the Dolores River decreed in Case No. W-1346-75 for 78 c.f.s.
- MVIC will be paid for water delivered at \$79.50 per af.
- Funding is anticipated to be provided by, among others, the Walton Family Foundation and The Nature Conservancy--pending their respective boards' approval.
- MVIC and CWCBC shall jointly file a request for approval with the Division Engineer for Water Division 7.

MVIC has discussed the proposed lease with: the Bureau of Reclamation, Division Engineer, Dolores Water Conservancy District and the Dolores River Dialogue, among others. The lease is contingent upon the approval of: MVIC's shareholders, the CWCBC Board and the Division Engineer. MVIC's shareholders will meet on May 14, 2011 to vote on the proposed lease.

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**Holsinger Law, LLC**

MVIC looks forward to working with CWCB on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Holsinger', with a stylized flourish at the end.

Kent Holsinger

Encl.



**DRAFT**  
**WATER RIGHTS LEASE AGREEMENT**

This Water Rights Lease Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011 by and between the Colorado Water Conservation Board ("the CWCB"), an agency of the State of Colorado, and Montezuma Valley Irrigation Company ("Lessor").

**FACTUAL RECITALS**

- A. Section 37-92-102(3), C.R.S. (2010) authorizes the CWCB to acquire by lease or other contractual agreement such water, water rights, or interests in water as the CWCB determines may be required for minimum stream flows to preserve and improve the natural environment to a reasonable degree.
- B. Section 37-83-105(2), C.R.S. (2010) authorizes water rights owners to lease water to the CWCB for instream flow use pursuant to a decreed instream flow water right held by the CWCB, subject to certain conditions and procedures.
- C. Lessor owns a water right in the Groundhog Reservoir, decreed in Case No. CA0967 for 21,709 acre-feet ("af"). Lessor wishes to lease up to 6000 acre feet of said water right to the CWCB for instream flow use on the Dolores River, pursuant to the procedures and subject to the conditions set forth herein.
- D. The CWCB holds an instream flow water right on the Dolores River, decreed in Case No. W-1346-75 for 78 c.f.s, in the reach of the Dolores River from the McPhee Dam site to its confluence with San Miguel River (the "Dolores ISF").
- E. Subject to the terms of this Agreement, Lessor will lease to the CWCB the water rights described in Recital C, above, and Paragraph 1, below, for instream flow purposes. The Board will use those water rights to maintain instream flows pursuant to the Dolores ISF for a period not to exceed one hundred twenty (120) days during any irrigation season. For purposes of this lease, the irrigation season is generally from the middle of May (following the peak in the Dolores River) to October 15th of each year.
- F. The water rights to be leased to the CWCB are currently decreed for irrigation and other purposes, but not for instream flow use. The use of the water rights by the CWCB for instream flow purposes will require State and Division Engineer approval pursuant to section 37-83-105(2), C.R.S. (2010)
- G. The amount of water to be leased to the CWCB by Lessor under this Agreement will not exceed the amount of water decreed to the Dolores ISF.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CWCB and Lessor agree as follows:

### **LEASE OF WATER RIGHTS**

1. Pursuant to the payment arrangement described in the attached **Appendix A**, and the keeping and performance of the covenants and agreements contained herein, Lessor shall lease to the CWCB the following described water right (the "Leased Right"):

Up to 6000 acre feet of Groundhog Reservoir water, decreed by the District Court in and for Montezuma County on December 18, 1933 in Civil Action No. 967 for 21,709 af out of the Groundhog Creek, Clear Creek, Little Fish Creek and Beaver Creek, tributary to the Dolores River, with an appropriation date of August 1, 1905.

2. The CWCB's acceptance of the Leased Right is contingent upon the State and Division Engineers' determination that the CWCB's temporary instream flow use will not injure existing water rights of others.

3. The use of the Leased Right shall not occur for more than three (3) years in a successive five-year period, for which only a single approval by the State Engineer is required. The five-year period shall begin when the State Engineer approves the use. The exercise of the lease must be limited to a period not to exceed one hundred twenty (120) days during any one irrigation season. The CWCB shall not be entitled to delivery of the Leased Right in the 2011 irrigation season unless it notifies the Lessor by July 1, 2011 of its intent to take the water in the 2011 irrigation season.

#### **4. Delivery of the Leased Right**

(a) The CWCB will use the Leased Right solely in conjunction with the Dolores ISF. All deliveries pursuant to the provisions of this lease shall be subject to availability and shortages hereinafter described. Delivery of the Leased Right shall be based upon a percentage of water available to Lessor, calculated according to Lessor's projected direct flow deliveries and Groundhog Reservoir storage projections. In years when Lessor's projected total water supply is equal to 153,400 af, the CWCB shall receive the lesser of 6,000 af or the amount of water necessary to meet the Dolores ISF. In years when the Lessor's projected total water supply is less than 153,400 af, CWCB will receive the lesser of a percentage of the 6,000 af equal to the percentage of the 153,400 af Lessor is projected to receive or the amount necessary to meet the Dolores ISF. For

example, if Lessor is projected to receive 148,500 af in the irrigation season, Lessor will receive 96.8% of its water supply. In that year, CWCB would receive the lesser of 6,000 af x 96.8% (5,808 af) or the amount necessary to meet the Dolores ISF. However, in the event MVIC determines that it could deliver the full 6,000 af late in the irrigation season, CWCB would receive the full 6,000 af so long as the CWCB determines the delivery of such water is needed to satisfy the ISF right.

(b) The measurement of the delivery of the Leased Right shall be at the outlet structure of Groundhog Reservoir. Such deliveries shall be made so long as water in Groundhog Reservoir is available after Lessor has met its contractual storage and delivery obligations which existed prior to this lease. These contractual storage and delivery obligations include a 3,900 af easement with the Colorado Division of Wildlife recorded at \_\_\_\_\_ and a 2,900 af Upstream Users Agreement as decreed in Case No. 95CW104, District Court, Water Division 7.

(c) Such deliveries shall be limited to the amount of water that will not impair Lessor's ability to physically transport water rights to its shareholders as described above on a pro-rata basis and to the contractual users enumerated above.

(d) Such deliveries will take into consideration the operating criteria of the Dolores Project by the Bureau of Reclamation and the Dolores Water Conservancy District.

5. Consultations During the Irrigation Season. Each year that the lease is in effect, the CWCB and Lessor shall consult prior to April 15 as to whether the lease may be exercised; the amount of water projected to be available under the calculations in Paragraph 4, above; and the projected schedule of releases of the water (the "Preliminary Consultation"). The CWCB and Lessor acknowledge that conditions may change during the course of the irrigation season. Thus, the CWCB and Lessor will confer on a regular basis throughout the irrigation season regarding the schedule of releases developed in conjunction with the Preliminary Consultation to ensure that the releases reflect actual hydrologic conditions. The CWCB will consult with interested stakeholders, including, but not limited to: the Colorado Division of Wildlife, U.S. Bureau of Reclamation, The Nature Conservancy and the Walton Family Foundation, to determine the schedule of releases.

6. Prior to using the Leased Right in a given year, the CWCB and Lessor shall notify the Division Engineer of the approximate date the CWCB intends to begin using the Leased Right for instream flow purposes and other details as necessary, such as the release schedule to be reasonably agreed upon under Paragraph 5, above.

7. Any transportation losses assessed as a result of delivery of the Leased Right to the Dolores ISF shall be borne by the CWCB.

## **STATE AND DIVISION ENGINEER APPROVAL OF USE**

8. Upon accepting the lease, the CWCB shall compile a statement about the duration of the lease, a description of the original points of diversion, and other relevant information sufficient for the State Engineer to determine that such use will not injure decreed water rights. Lessor shall use its best efforts to assist the CWCB in compiling said statement and in obtaining State and Division Engineer approval of the use as described below.

9. The CWCB and Lessor shall jointly file a request for approval of the use with the Division Engineer for Water Division 7, which shall include the following information:

(A) Evidence of Lessor's legal right to use the Leased Right;

(B) A statement of the duration of the proposed lease;

(C) A description of the original points of diversion, the stream reach, and the time, place, and types of use of the Leased Right for its decreed purposes; and

(D) A description of the stream reach, and the time, place, and types of use of the Leased Right under the terms of this Agreement.

10. The CWCB and Lessor shall provide written notice of the request for approval of this Agreement to all parties on the Divisions 4 and 7 substitute water supply plan notification lists established pursuant to section 37-92-308(6), and shall file proof of such notice with the Division Engineers for both Water Divisions.

11. The CWCB and Lessor shall comply with all the requirements of section 37-83-105(2) to obtain approval of this Agreement and shall use their best efforts to comply with all the requirements of section 37-83-105(2)(a)(V) to address any comments submitted by any party concerning potential injury to that party's water rights, either as part of the initial approval process or after each year in which the lease has been exercised.

12. If the request for approval is denied in whole or in part by the Division Engineer, or if the approval is conditioned by the Division Engineer in such manner as to prevent this Agreement from being completely fulfilled, then this Agreement may be terminated upon thirty (30) days written notice by either party so long as such written notice is provided within thirty (30) days of the date of the Division Engineer's decision.

## **MISCELLANEOUS PROVISIONS**

13. The CWCB shall take such action as, in its sole discretion, is necessary or desirable to protect the use of the Leased Right for instream flow

purposes, including requesting the Division Engineer to protect the Leased Right from diversions by other water users.

14. This Agreement shall not be assignable by either party without the prior written consent of the other party.

15. This Agreement shall be a covenant that runs with the Leased Right and shall be binding upon the parties hereto, their successors, and assigns. The CWCB shall record this Agreement with the Clerk and Recorder of Montezuma County, Colorado, with a copy of the recorded Agreement provided by the CWCB to the Lessor.

16. No Adverse Legal Position. CWCB agrees that, during the term of this Agreement, it will not take a legal position adverse to Lessor in connection with the operation or administration of Lessor's Leased Right, except as may be necessary to enforce the terms of this Agreement.

17. Condemnation. In the event the Leased Right is taken by condemnation or other eminent domain proceedings, all awards shall be the property of the Lessor and CWCB shall have no interest therein.

18. Compliance with Laws. CWCB shall comply with any and all applicable federal, state or agency laws, regulations, rules and ordinances or directives and shall obtain all approvals, releases, licenses, permits or other authorizations as may be required by any governmental body or authority.

19. No Warranties. Lessor makes no warranty, express or implied, concerning the quality of the leased water and expressly disclaims any implied warranty of fitness for a particular use or otherwise.

20. Force Majeure. Each party shall be relieved from performance under this Agreement while and to the extent that it is unable to perform, for any cause beyond its reasonable control.

21. Notices. Notices and other communications required by this Agreement shall be made in writing and sent via email, United States Postal Service, or express mail, as follows:

Lessor: Montezuma Valley Irrigation Company  
c/o Don Magnuson, Manager  
11501 Highway 491  
P.O. Box 1056  
Cortez, CO 81321  
(970) 565-6414  
dmagnuson@mVIC.info

Kent Holsinger  
Holsinger Law, LLC

104 Broadway, Third Floor  
Denver, CO 80203  
(303) 722-2828  
kholinger@holsingerlaw.com

Lessee:

CWCB

22. No Waiver. Either party's failure in one or more instances to insist upon strict performance of any other terms and conditions of the Agreement or in exercise of any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term or condition of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.

23. Amendments. This Agreement may not be amended except in writing properly executed by all the parties.

24. Entire Agreement. These terms and conditions constitute the entire agreement between the parties.

25. No Partnership. It is expressly understood and agreed that no partnership or venture is being formed hereby and neither party is liable for the debts, liabilities and obligations of the other.

26. Termination. The lease will terminate after the third year of delivery of the Leased Right or upon expiration of the five-year period, whichever occurs first. Upon mutual agreement of the Parties, this Agreement may be extended for no more than five (5) years if the Lease Right is not used for three years during the original five (5) year period.

#### **ENFORCEMENT OF THIS AGREEMENT**

27. Pursuant to section 37-92-102(3), C.R.S., the terms of this Agreement shall be enforceable by each party as a water matter in a court of competent jurisdiction; provided, however, that before commencing any action for enforcement of this Agreement, the party alleging violation shall notify the other party in writing of the alleged violation and the parties shall make a good faith effort to resolve their differences through informal consultation.

28. Specific performance of this Agreement shall be the exclusive remedy for the failure of either party to comply with any provision of this Agreement.



[illegible]

Witness my hand and official seal.

Notary Public

My commission expires: \_\_\_\_\_