



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Tim Feehan, Deputy Director, Resource Management

DATE: July 2, 2014

AGENDA ITEM: Agenda Item 26, July 16-17, 2014 Board Meeting
Finance/Interstate, Federal and Water Information Section

Recommendation:

Staff recommends the CWCB proceed with the sale of water to the La Plata Archuleta Water District of up to 2,500 AF from the State's water depletion allocation in the Animas-La Plata Project and authorize the Director of CWCB to sign and execute the attached Agreement, entitled "Agreement for Acquisition of Municipal and Industrial Water Supply from the State of Colorado Depletion Allocation in the Animas-La Plata Project, Colorado."

Discussion:

For the past 9 months, CWCB staff and the Attorney General's Office (AGO) have been working with the La Plata Archuleta Water District (District) to develop and finalize an Agreement for Acquisition of Municipal and Industrial Water Supply from the State of Colorado Depletion Allocation in the Animas-La Plata Project, Colorado (Agreement) for the District to acquire up to 2,500 AF of the State's water allocation in the A-LP project.

By this Agreement, the State shall provide the District the option to acquire up to 1,250 AF (depletion) of the State's 5,230 AF water allocation (depletion) by an initial acquisition of 50 AF and subsequent acquisitions of no less than 30 AF over a 40-year period. The base water charge for a particular portion of the State's water depletion allocation was determined by dividing the number of acre-feet of the State's depletion allocation to be acquired by the State's final cost for its total water purchase from the Bureau of Reclamation (\$36,214,474). Therefore, the cost of the District's initial 50 AF purchase is \$314,219 or approximately \$6,924 per acre-foot. However, the final cost of the water will be adjusted accordingly, based on the final cost allocation for the project, as determined by the Bureau of Reclamation by the summer of 2015.

The District has also agreed to cover the State's operation, maintenance and replacement (OM&R) cost for the total 2,500 AF. Currently, OM&R costs for A-LP are approximately \$12 /AF. Therefore, the State's long-term OM&R costs will be reduced by 25 percent, which equates to approximately \$32,000 in annual savings.



In 25 years, the District and the State will determine the market value of the water by looking at comparable sales during the preceding five-year period. The purchase price of the water will be adjusted accordingly. Please refer to Page 8, Section 2.3.2 of the Agreement for a detailed overview of how this evaluation will be handled.

Other A-LP Discussion Items:

Additional A-LP update items will be discussed at the Board meeting.



**AGREEMENT FOR ACQUISITION OF
MUNICIPAL AND INDUSTRIAL WATER SUPPLY FROM THE
STATE OF COLORADO
DEPLETION ALLOCATION IN THE ANIMAS-LA PLATA PROJECT, COLORADO**

THIS AGREEMENT is entered into as of the last date any party signs this Agreement, by and between the La Plata Archuleta Water District, a political subdivision and quasi municipal corporation of the State of Colorado established pursuant to section 32-1-101 *et seq.*, C.R.S. (“Purchaser”), and the State of Colorado, acting by and through the Colorado Water Conservation Board (“State”).

1. Recitals.

1.1 Pursuant to statutory enactments, including the Colorado River Storage Project Act of 1956, the Colorado River Basin Project Act of 1968, the Colorado Ute Indian Water Rights Settlement Act of 1988, the Colorado Ute Settlement Act Amendments of 2000, and the Consolidated Appropriations Act of 2005 (Dec. 8, 2004) (“P.L. 108-447”), the United States has investigated, planned, and completed construction of the Animas-La Plata Project (“Project”) for the storage, conversion, salvage, and distribution of waters of the Animas River for purposes, among others, of furnishing water for municipal, industrial, domestic, and other beneficial uses. As constructed, the Project comprises a reservoir, pumping plant, inlet conduit, and other appurtenant facilities with sufficient capacity to divert and store water from the Animas River for an average annual depletion of 57,100 acre-feet of water to be used for municipal and industrial water supply.

1.2 The Colorado Ute Settlement Act Amendments of 2000 provided for an allocation to the State of a portion of the water made available as a result of the Project, such allocation being equal to 5,230 acre-feet of average annual municipal and industrial depletion (the “State Depletion Allocation”), conditioned upon payment of the non-tribal water capital obligation for the Project attributable to the State Depletion Allocation.

1.3 Pursuant to the Repayment Contract No. 12-WC-40-456, between the State of Colorado and the United States dated June 18, 2012 (“Funding Agreement”), the State has contracted to secure the State Depletion Allocation in consideration of payment of the non-tribal capital obligation attributable to such State Depletion Allocation.

1.4 The payment obligation for the State Depletion Allocation under the Funding Agreement is based upon the costs of Project construction. Estimates for those costs were set forth in the Funding Agreement, but costs increased substantially after execution of that agreement. Pursuant to Division C, Title II, Section 207 of P.L. 108-447, the reimbursable cost of the non-tribal repayment obligation shall not exceed \$43,000,000 of the first \$500,000,000 (January 2003 price level) of Project costs, and the Secretary of Interior is authorized to forgive the obligation of non-Indian sponsors relative to the \$163,000,000 increase in estimated Project costs that occurred in 2003. The Funding Agreement set forth the Estimated Repayment

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Obligation of the State in Article 7. Article 7 of the Funding Agreement also requires payment of an Additional Repayment Obligation as part of the State's Final Repayment Obligation following the end of Project construction. The United States has not yet computed the Additional Repayment Obligation in accordance with Reclamation Law and the Funding Agreement.

1.5 The State Depletion Allocation of 5,230 acre-feet of average annual depletion corresponds to 10,440 acre-feet of storage in Lake Nighthorse to supplement the amount of direct flow diversions as necessary to fulfill the State's Statutory Water Allocation ("State Supply Allocation") for municipal and industrial purposes available through direct diversion at the Durango Pumping Plant, releases of stored water from Ridges Basin Reservoir (now known as, and herein also referred to as "Lake Nighthorse"), and direct pumping from Lake Nighthorse.

1.6 The Purchaser wishes to acquire long-term municipal and industrial water supply for the present and future inhabitants of the Purchaser's service area.

1.7 On March 4, 2009, the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Colorado Water Resources and Power Development Authority, San Juan Water Commission, La Plata Water Conservancy District, and the Navajo Nation entered into an intergovernmental agreement ("OM&R Agreement") establishing the Animas-La Plata Operation, Maintenance and Replacement Association ("OM&R Association") to which Project depletions have been allocated for future operation and maintenance of the Project, and to enter agreements with the United States for such operation and maintenance of the Project. The State was not a signatory to the OM&R Agreement since it had not executed a purchase agreement with the United States Bureau of Reclamation ("BOR") at that time. Subsequently, the State executed the Funding Agreement with BOR which, under paragraph 2.3.1 of the OM&R Agreement, makes the State a member of the OM&R Association and a party to the OM&R Agreement. The OM&R Agreement addresses membership in the OM&R Association and allocation of operation and maintenance costs of the Project. The OM&R Agreement contemplates that OM&R Association members may transfer interests in Project depletion allocations and sets forth terms and conditions for transfers of membership and voting rights in the OM&R Association in connection with transfers of Project depletion allocations. The OM&R Agreement also contemplates an allocation of operation, maintenance, and replacement costs among the OM&R Association members.

1.8 By this Agreement, the parties provide for the Purchaser's option to acquire up to 1,250 acre-feet of State Depletion Allocation, which corresponds to 2,495 acre-feet of State Supply Allocation (the "Optioned Allocation"), by means of an initial acquisition of 50 acre-feet of State Depletion Allocation, which corresponds to 99.8 acre-feet of State Supply Allocation, and subsequent acquisitions of additional increments of no less than the lesser of 30 acre-feet, or the difference between 1,250 acre-feet and the quantity, in acre-feet, of State Depletion Allocation previously acquired by Purchaser, which corresponds to 1.996 acre-feet of State Supply Allocation for each acre-foot of State Depletion Allocation acquired pursuant to this Agreement.

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2. Agreement.

For and in consideration of the premises and the mutual covenants, conditions, and promises herein, the parties agree as follows:

2.1 Definitions.

2.1.1 *State Allocation* means the volume of average annual water allocated to the State by the Colorado Ute Settlement Act Amendments of 2000 from the Project (“Project Water Supply”) for municipal and industrial use, which may be supplied by direct diversion at the Durango Pumping Plant, releases of stored water from Lake Nighthorse, and direct pumping from Lake Nighthorse. The State Allocation consists of the State Depletion Allocation and the corresponding State Supply Allocation as described below:

2.1.1.1 *State Depletion Allocation* means the 5,230 acre-feet of average annual municipal and industrial depletion allocated to the State from the Project Water Supply.

2.1.1.2 *State Supply Allocation* means the 10,440 acre-feet of Project Water Supply that is stored in Lake Nighthorse to supplement the amount of direct flow diversions as necessary to fulfill the State’s Statutory Water Allocation.

2.1.2 *Additional Repayment Obligation* means the additional repayment obligation described in Article 7 of the Funding Agreement that will be prepared by the Secretary of Interior upon completion of construction of the Animas-La Plata Project, to quantify reasonable and unforeseen costs associated with Animas-La Plata Project construction that warrant additional repayment for the State Allocation as part of the State’s Final Repayment Obligation. The Additional Repayment Obligation will include interest during construction charges.

2.1.3 *Additional Water Charge* means a part of the Water Charge payable to acquire a portion of the State Allocation, comprising a pro rata share of the Additional Repayment Obligation. The *Additional Water Charge* for a particular portion of the State Allocation is determined by dividing the number of acre-feet of State Depletion Allocation purchased by 5,230, and multiplying the result by the Additional Repayment Obligation payable pursuant to Article 7 of the Funding Agreement.

2.1.4 *Base Water Charge* means a part of the Water Charge payable to acquire a portion of the State Allocation. The *Base Water Charge* for a particular portion of the State Allocation is determined by dividing the number of acre-feet of State Depletion Allocation purchased by 5,230, and multiplying the result by \$36,214,474.

2.1.5 *Durango Pumping Plant* means the pumping plant and appurtenant facilities located adjacent to the Animas River that pump water from the Animas River through the Ridges Basin Inlet Conduit into Lake Nighthorse and/or directly to facilities of the City of Durango.

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2.1.6 *Funding Agreement* means the Repayment Contract between the United States and the State of Colorado, Contract No. 12-WC-40-456, executed June 18, 2012.

2.1.7 *Optioned Allocation* means the 1,250 acre-feet of State Depletion Allocation, which corresponds to 2,495 acre-feet of State Supply Allocation that is the subject of this Agreement.

2.1.7.1 Article 6(a) of the Funding Agreement requires State or its assignee to protect and defend the State Allocation in case a dispute arises as to the character, extent, priority, or validity of the Project water rights. Upon execution of this Agreement, State and Purchaser are responsible for their obligations of Article 6(a) of the Funding Agreement and will cooperate to address any dispute related to the obligations of the Funding Agreement.

2.1.7.2 If the water rights related to the Project Water Supply become the subject of an application in Colorado Water Court, the Purchaser and State shall cooperate to address the legal issues, challenges, or objections to the uses sought by such application. Each entity shall be responsible for its own legal fees and costs expended in any such defense. Purchaser may not benefit from any application in Colorado Water Court to change the State Allocation that it does not participate in.

2.1.8 *Water Charge* means the amount payable to purchase portions of the State Allocation, comprising the Base Water Charge and any Additional Water Charge.

2.2 Acquisition. Purchaser will acquire the Optioned Allocation as follows:

2.2.1 Initial Acquisition. In accordance with the further terms and conditions of this Agreement, the State will execute, and Purchaser will assume and accept, a partial assignment of the State's rights and obligations pursuant to the Funding Agreement corresponding to 50 acre-feet of State Depletion Allocation, which corresponds to 99.8 acre-feet of State Supply Allocation in Lake Nighthorse out of the State Allocation (the "Initial Acquisition") at the Initial Closing, as set forth in Paragraph 2.2.1.2, below.

2.2.1.1 Initial Payment Amount. The total cost of the Initial Acquisition as of the date of this Agreement is \$346,219, comprising the Base Water Charge for the Initial Acquisition. The parties recognize that the United States has not determined the Additional Repayment Obligation due for the State Allocation under Article 7 of the Funding Agreement, and therefore the total cost set forth in this paragraph does not include the Additional Water Charge. The parties agree that the Additional Repayment Obligation owed by the Purchaser shall not exceed \$165 per acre-foot of State Depletion Allocation. The parties agree that if the Additional Repayment Obligation for the State Allocation is determined prior to the Initial Closing herein, then the total cost of the Initial Acquisition will be increased prior to closing to reflect any Additional Repayment Obligation required for the Initial Acquisition. If the Additional Repayment Obligation is not determined before closing, then after closing the Purchaser will be responsible, in accordance with Articles 7, 14, and 32 of the Funding

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Agreement, to pay to the United States any Additional Repayment Obligation attributable to the Initial Acquisition as and when such Additional Repayment Obligation is quantified and becomes due.

2.2.1.2 Initial Closing. The Initial Closing of the Initial Acquisition will be held ten business days after the satisfaction of the Condition Precedent set forth in Paragraph 2.8.1 herein.

2.2.1.2.1 At the Initial Closing, the Purchaser will deliver to the State: (1) the Initial Payment Amount in cash, certified funds, or by electronic transfer; (2) a duly executed written assumption, by which the Purchaser expressly assumes the rights and obligations of the State pursuant to the Funding Agreement corresponding to the Initial Acquisition and effects a partial novation of such Funding Agreement; (3) a duly executed written acceptance and assumption of the terms and conditions of the OM&R Agreement and Exhibit A thereto, the Concepts and Principles for the Operation and Allocation of the OM&R Costs of the Animas-La Plata Project ("IGA Exhibit A"); and (4) a written specific undertaking and acceptance of responsibility to pay to the State all operation, maintenance, and replacement costs attributable to the Optioned Allocation in accordance with the OM&R Agreement and IGA Exhibit A as and when such costs are quantified and become due.

2.2.1.2.2 At the Initial Closing, the State will deliver to the Purchaser: (1) a duly executed partial assignment assigning to Purchaser the State's rights and obligations pursuant to the Funding Agreement corresponding to the Initial Acquisition; and (2) a written acknowledgement and undertaking to comply with the provisions of Paragraph 2.7 herein.

2.2.1.2.3 Prior to or at the Initial Closing, the parties shall secure the written approval of the United States to the partial assignment to be effected at such Initial Closing, as required by Articles 7, 14, and 32 of the Funding Agreement and Paragraph 2.8.1 herein, as a condition precedent to the closing.

2.2.2 Installment Option. For and in consideration of the sum of \$10.00 in hand paid and other good and valuable consideration, including the specific undertaking and acceptance of responsibility to pay to the State all operation, maintenance, and replacement costs attributable to the Optioned Allocation in accordance with the OM&R Agreement and IGA Exhibit A, as and when such costs are quantified and become due, the receipt of which the State acknowledges, the Purchaser shall have an option to purchase additional increments of the Optioned Allocation, up to a cumulative total of 1,250 acre-feet of State Depletion Allocation, which corresponds to 2,495 acre-feet of State Supply Allocation in Lake Nighthorse, as follows:

2.2.2.1 Exercise. Beginning in 2015, and thereafter at least once in each calendar year until the earlier of the expiration of the Term of the Installment Option herein, or termination of this Agreement in accordance with Paragraph 2.3 herein, the Purchaser may exercise its option to purchase additional increments of the Optioned Allocation, as follows:

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2.2.2.1.1 Notice of Intent to Exercise. Purchaser shall notify the State in writing, as provided in Paragraph 2.8.2 herein, on or before September 15 of each year during the option term: (a) if it intends to exercise an Installment Option during that calendar year; and (b) if so, the amount of State Allocation it will acquire in that year. Provided that the increment of State Depletion Allocation to be acquired shall be no less than the lesser of 30 acre-feet, or the difference between 1,250 acre-feet and the quantity, in acre-feet, of State Depletion Allocation previously acquired by Purchaser pursuant to this Agreement.

2.2.2.1.2 Installment Acquisition Payment Amount. The amount to be paid by Purchaser to the State for each Installment Acquisition (“Installment Acquisition Payment Amount”) shall be: (1) the Base Water Charge for the State Allocation to be acquired; plus (2) if the Additional Repayment Obligation has been determined prior to the Installment Closing, any amount due for the Additional Repayment Obligation for the portion of State Allocation to be acquired, which shall not exceed \$165 per acre-foot of State Depletion Allocation.

2.2.2.1.2.1 The parties agree that if the Additional Repayment Obligation is not determined prior to the Installment Acquisition Closing, then Purchaser will be responsible, in accordance with Articles 7, 14, and 32 of the Funding Agreement, to pay to the United States any Additional Repayment Obligation attributable to that portion of the State Allocation acquired at each Installment Acquisition Closing.

2.2.2.2 Installment Acquisition Closing. Each Installment Acquisition Closing will be held on or before December 31 of the calendar year in which Purchaser has provided the State with its Notice of Intent to Exercise.

2.2.2.2.1 At each Installment Acquisition Closing, Purchaser will deliver to the State: (1) the Installment Acquisition Payment Amount in cash, certified funds, or by electronic transfer; (2) a duly executed written assumption, by which Purchaser expressly assumes the rights and obligations of the State pursuant to the Funding Agreement corresponding to that portion of the State Allocation to be acquired at that Installment Acquisition Closing, and effects a partial novation of such Funding Agreement; and (3) a duly executed written undertaking and acceptance of responsibility to continue to pay to the State all operation, maintenance, and replacement costs attributable to the remainder of the Optioned Allocation in accordance with the OM&R Agreement and IGA Exhibit A as and when such costs are quantified and become due.

2.2.2.2.2 At each Installment Acquisition Closing, the State will deliver to the Purchaser: (1) a duly executed partial assignment assigning to Purchaser the State’s rights and obligations pursuant to the Funding Agreement corresponding to that portion of the State Allocation acquired at that Installment Acquisition Closing; and (2) a written acknowledgement and undertaking to comply with the provisions of Paragraph 2.7 herein.

2.2.2.2.2.1 If the United States approves subsequent acquisitions of portions of the Optioned Allocation as a part of its initial approval of this

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Agreement pursuant to Paragraph 2.8.1 herein, then the parties shall provide written notice to the United States of the partial assignment to be effected prior to or at each Installment Acquisition Closing.

2.2.2.2.2 If, the United States declines to approve, in advance, all subsequent acquisitions of portions of the Optioned Allocation pursuant to Paragraph 2.8.1 herein, then prior to or at each Installment Acquisition Closing, the parties shall secure the written approval of the United States to the partial assignment to be effected at such Installment Acquisition Closing, as required by Articles 14 and 32 of the Funding Agreement and Paragraph 2.8.1 herein, as a condition precedent to such Installment Acquisition Closing.

2.2.3 Term of Installment Option. The Installment Option term shall expire on the earlier of the 40th anniversary of the effective date of this Agreement, or the date when Purchaser has acquired the right to a cumulative total of 1,250 acre-feet of the State Depletion Allocation, inclusive of the Initial Acquisition; unless earlier terminated pursuant to the terms of this Agreement.

2.2.4 Failure to Close. Purchaser's failure to close the Initial Acquisition, or any Installment Acquisition, shall not constitute a forfeiture or waiver of Purchaser's Installment Option pursuant to this Agreement to acquire the Optioned Allocation through a subsequent Installment Acquisition during the term of the Installment Option, subject to the State's right to terminate this Agreement pursuant to Paragraph 2.3 herein, or any other exercise of law or equity allowing for the termination of this Agreement.

2.3 Termination. This Agreement may be terminated under the conditions provided in this Paragraph.

2.3.1 Failure to Exercise/Close for Two Consecutive Years. If Purchaser fails to exercise its Installment Option, or fails to close an Installment Acquisition, for any period of two (2) consecutive years subsequent to the Initial Closing but prior to the expiration of the term of the Installment Option, then this Agreement may be terminated by the State at its sole discretion. If the State exercises its right to terminate pursuant to this Paragraph 2.3.1, the State shall retain any sum paid to it pursuant to this Agreement and this Agreement shall be terminated and of no further force and effect. Termination pursuant to this Paragraph 2.3.1 shall be effective as of the date written notice of the State's election to terminate is provided to Purchaser pursuant to Paragraph 2.8.2 herein.

2.3.1.1 If this Agreement is terminated pursuant to Paragraph 2.3.1 herein, the Purchaser shall retain all rights and interests it then holds to any portion of the State Allocation previously acquired, pursuant to the Initial Closing or any Installment Acquisition Closing, and the State shall retain its rights and interests in any proceeds paid to it by or on behalf of the Purchaser for the same.

2.3.2 Twenty-fifth Anniversary Review. No later than December 31 of the twenty-fifth (25) anniversary of the execution of this Agreement, the State and Purchaser shall

evaluate the market price of water from the ALP project as determined by any comparable sales during the preceding five year period. The price to be paid by Purchaser for future Installment Acquisitions shall be the market price as determined by sales of Project Water Supply, which both Parties acknowledge and agree may be higher or lower than the Installment Acquisition Payment Amount established in Paragraph 2.2.2.1.2 herein. If the price to be paid by Purchaser for future installment Acquisitions is determined to be higher than the amount established in Paragraph 2.2.2.1.2 herein, Purchaser may purchase the remainder of the Optioned Allocation at the Installment Acquisition Payment Amount established in Paragraph 2.2.2.1.2 herein in a single transaction. If Purchaser elects not to purchase the remainder of the Optioned Allocation at the higher price, the State may offer for sale any of the Optioned Allocation not acquired by Purchaser to third parties subject to the Right of First Refusal provided for in Paragraphs 2.5.1, 2.5.2, 2.5.3 and 2.5.4, but not Paragraph 2.5, herein, for the remainder of the Term of Installment Option provided for in Paragraph 2.2.3 herein. If Purchaser elects not to purchase any of the remainder of the Optioned Allocation at the higher price, thereafter Purchaser's obligation to pay operation, maintenance, and replacement costs for the remainder of the Optioned Allocation as provided in Paragraph 2.7.4 herein shall cease, unless and until Purchaser exercises its Right of First Refusal.

2.4 Rights to Portion of State Allocation Not Acquired by Purchaser. The State shall retain all interest and claim to any portion of the 1,250 acre-feet of State Depletion Allocation, which corresponds to 2,495 acre-feet of State Supply Allocation, that is the subject of this Agreement that is not acquired by the Purchaser on or before the expiration of the term of the Installment Option or of this Agreement, free and clear of any and all claims and interests of the Purchaser, except for the right of first refusal set forth in Paragraph 2.5 herein.

2.5 Right of First Refusal. If Purchaser has not acquired the entire 1,250 acre-feet of the Optioned Allocation from the State on or before the expiration of the term of the Installment Option or the termination of this Agreement, the State shall thereafter, for a period of 10 years from the date of expiration or termination, hold the portion of the Optioned Allocation not acquired by Purchaser subject to the following Right of First Refusal in the Purchaser:

2.5.1 If, during the term of the Right of First Refusal, the State: (1) receives an offer for the purchase of any Optioned Allocation not acquired by Purchaser from a party other than the Purchaser that the State determines to accept ("Purchase Offer"); or (2) makes an offer for the sale of any of the Optioned Allocation not acquired by Purchaser to a party other than the Purchaser that is accepted by the offeree ("Sale Offer"); then the State shall, within fifteen (15) business days of determining to accept a Purchase Offer or receiving an acceptance of a Sale Offer, whichever is applicable, provide written notice of the offer to Purchaser, pursuant to Paragraph 2.8.2 herein.

2.5.2 Purchaser shall have forty-five (45) days from the date of the written notice to exercise the Right of First Refusal by delivering written notice, pursuant to Paragraph 2.8.2 herein, of acceptance of the offer. If the Purchaser accepts the offer, then the Purchaser will be obligated to purchase that portion of the State Allocation covered by the offer strictly in

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accordance with the terms of the offer. If, after having accepted the offer, the Purchaser then fails to consummate the transaction, then the Right of First Refusal herein shall terminate.

2.5.3 If the Purchaser does not exercise the Right of First Refusal, then the State shall be free to consummate the sale of that portion of the State Allocation that is covered by the offer substantially in accordance with the terms of the offer disclosed to the Purchaser. If, however, the transaction is not consummated, then the Right of First Refusal herein shall continue to apply subject to its terms.

2.5.4 Any Purchase Offer or Sale Offer for any of the Optioned Allocation not acquired by Purchaser shall be expressly made subject to the Right of First Refusal herein.

2.6 Effect of Partial Assignment of Rights and Obligations – Funding Agreement. Upon acceptance of the State’s partial assignment of all rights and obligations under the Funding Agreement attributable to the portion of the State Allocation acquired pursuant to Paragraphs 2.2 or 2.4 herein, Purchaser shall succeed to all rights and all obligations of the State with respect to the portion of the State Allocation acquired by the Purchaser, including, without limitation, the rights and obligations provided under Articles 7 (Method of Payment for Project Construction Costs) and 9 (Payment of Operation, Maintenance, and Replacement Costs) of the Funding Agreement, and the State shall be relieved of all further liability under the Funding Agreement with respect to that portion of the State Allocation.

2.7 Operations, Maintenance & Replacement Association.

2.7.1 Project Water Delivery. The Purchaser agrees to take any portion of the State Allocation acquired pursuant to Paragraphs 2.2 or 2.4 herein, (“Project water” in IGA Exhibit A) in accordance with the provisions of the OM&R Agreement and IGA Exhibit A.

2.7.2 Transfer of Project Interest. As provided in paragraph 2.3.2 of the OM&R Agreement, within thirty (30) days of the Initial Closing, the State shall provide written notice to the OM&R Association of: (1) the partial assignment executed therein to Purchaser; and (2) Purchaser’s acceptance of the terms of the OM&R Agreement and IGA Exhibit A. Such notice shall include the status of the State’s and the Purchaser’s voting rights in the OM&R Association, which shall be as set forth in Paragraph 2.7.3 herein. Thereafter, within thirty (30) days of any Installment Acquisition Closing, the State shall provide written notice to the OM&R Association of the partial assignment of the State’s Allocation affected thereby, and of Purchaser’s acceptance of responsibility to pay all operations, maintenance, and replacement costs attributable to the portion of the State Allocation acquired in accordance with the OM&R Agreement and IGA Exhibit A.

2.7.2.1 Effect of Transfer of Interest – OM&R Agreement. Subject to Paragraphs 2.7.2.2 and 2.7.2.3 herein, and in accordance with paragraph 2.3.2 of the OM&R Agreement, upon partial assignment of a portion of the State Allocation to the Purchaser pursuant to Paragraphs 2.2 or 2.4 herein, the State shall be released from its duties and obligations under the OM&R Agreement with respect to operations, maintenance, and

replacement costs for the interest in the State Allocation assigned to Purchaser and Purchaser shall assume all those duties and obligations.

2.7.2.2 OM&R Fixed Cost Allocation. Upon partial assignment of a portion of the State Allocation to the Purchaser pursuant to Paragraphs 2.2 or 2.4 herein, the State shall be released from its obligation to pay the OM&R Fixed Cost Allocation under the OM&R Agreement and IGA Exhibit A for such interest in the State Allocation assigned to Purchaser and Purchaser shall assume that obligation. The State is assigned 10.5% of annual fixed operations, maintenance, and replacement costs in paragraph 6.02 of IGA Exhibit A. The OM&R Association will assign a pro rata portion of the State's 10.5% fixed cost allocation to Purchaser based on the portion of State Allocation assigned to Purchaser.

2.7.2.3 OM&R Variable Cost Allocation. Upon partial assignment of a portion of the State Allocation to the Purchaser pursuant to Paragraphs 2.2 or 2.4 herein, the State shall be released from its obligation to pay the OM&R variable cost allocation under the OM&R Agreement and IGA Exhibit A for such interest in the State Allocation assigned to Purchaser and Purchaser shall assume that obligation. Pursuant to paragraph 7.04 of IGA Exhibit A, the Purchaser's variable operations, maintenance, and replacement costs for the portion of the State Allocation acquired will be covered, to the extent of available funds therein, by the Variable OM&R Fund established pursuant to IGA Exhibit A.

2.7.3 OM&R Association Representation. The OM&R Agreement provides for the OM&R Association member representing the State Allocation to designate one representative and one alternate to serve on the OM&R Association Management Committee, and to have one vote through its representative or alternate on all matters coming before such Management Committee. Upon completion of the Initial Acquisition, the State shall assign and delegate to the Purchaser its right to serve as an alternate on the OM&R Association Management Committee representing the State Allocation. The State shall consult with the Purchaser on matters of voting importance before votes are taken among the members of the OM&R Association Management Committee.

2.7.4 Operation, maintenance, and replacement costs for Optioned Allocation. Upon partial assignment of a portion of the State Allocation to the Purchaser pursuant to Paragraphs 2.2 or 2.4 herein, the Purchaser agrees to accept responsibility to pay to the State all operation, maintenance, and replacement costs attributable to the remainder of the Optioned Allocation in accordance with the OM&R Agreement and IGA Exhibit A as and when such costs are quantified and become due.

2.7.4.1 Variable OM&R Costs. Pursuant to paragraph 7.04 of IGA Exhibit A, the variable operations, maintenance, and replacement costs for the remainder of the Optioned Allocation will be covered, to the extent of available funds therein, by the Variable OM&R Fund established pursuant to IGA Exhibit A. To the extent such funds are not available, Purchaser shall pay to the State the variable operations, maintenance, and replacement costs for the remainder of the Optioned Allocation when such costs are quantified and become due. The proportion of such variable costs shall be determined by dividing the complete variable cost

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assigned to the State by 10,440 less any State Supply Allocation assigned to Purchaser and multiplying the result by the remaining State Supply Allocation available under the Optioned Allocation.

2.7.4.2 Fixed OM&R Costs. Pursuant to paragraph 6.02 of IGA Exhibit A, the State is assigned 10.5% of annual fixed operations, maintenance, and replacement costs for the Project. Purchaser shall pay to the State the annual fixed operations, maintenance, and replacement costs for the remainder of the Optioned Allocation when such costs are quantified and become due. The proportion of such fixed costs shall be determined by dividing 10.5 by 10,440 and multiplying the result by the remaining State Supply Allocation available under the Optioned Allocation.

2.8 Other.

2.8.1 Condition Precedent. The written approval of the United States of America to the terms and conditions of this Agreement shall be a condition precedent to its effectiveness. The parties agree that upon execution of this Agreement they shall submit the same to the United States for approval in accordance with Articles 14 and 32 of the Funding Agreement. In that submission, the State shall request that the United States' approval incorporate and comprise approval of: (1) this Agreement overall; (2) the Initial Acquisition; and (3) all subsequent acquisitions of portions of the Optioned Allocation that are consummated in accordance with the terms of this Agreement.

2.8.2 Notice. Whenever any notice is required to be provided under this Agreement, such notice shall be provided to the parties in writing, by facsimile transmission, or by electronic mail, with a copy to the United States, at the following addresses, or such other addresses as may be designated by a party through written notice. Notices shall be deemed received when personally delivered, when transmitted by facsimile or electronic mail, three (3) days after being deposited in a U. S. Postal Service depository, to be sent by certified mail, return receipt requested by the addressee, with all required postage prepaid, or one (1) business day after having been sent by overnight courier. Initial addresses for notices are as follows:

Purchaser:

La Plata Archuleta Water District
P.O. Box 1377
255 Ute Street
Ignacio, Colorado 81137
Telephone: 970-563-0320
E-mail: etolen@laplawd.org

with copy to:

Collins Cockrel & Cole PC
ATTN: David A. Greher

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390 Union Blvd., Suite 400
Denver, Colorado 80228-1556
Telephone: 303-986-1551
Fax: 303-986-1755
E-mail: dgreher@cccfirm.com

State:

Colorado Water Conservation Board
Attention: Director
1313 Sherman Street
Denver, CO 80203
Telephone: 303-866-3441
Fax: 303-294-8954
E-mail: james.eklund@state.co.us

United States:

Regional Director
Upper Colorado Region
Bureau of Reclamation
125 South State Street, Room 6107
Salt Lake City, UT 84138-1102
Telephone: 801-524-3600
Fax: 801-524-5499
E-mail: lwarner@usbr.gov

2.8.3 Effect of Funding Agreement. The parties recognize and agree that this Agreement is made pursuant to and in reference to the Funding Agreement, and is subject to its terms. In case of any conflict between the terms of this Agreement and the Funding Agreement, the Funding Agreement shall control.

2.8.4 Authorization. The individuals executing this Agreement on behalf of their respective entities are authorized by those entities to execute this Agreement and, by their signatures, certify that all steps or actions required to ensure such authorization have been taken.

2.8.5 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties as to the subject matter hereof, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to its subject matter unless expressly set forth in this Agreement.

2.8.6 Amendment. Modification of this Agreement by the parties may be made only by a writing duly authorized and executed by the State and the Purchaser, and approved in writing by the United States.

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2.8.7 No Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement, except by a signed written instrument of the party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated as such in its terms. Each such waiver shall operate only as to the specific term or condition waived, and shall not constitute a waiver of such term or condition for the future as to any act other than that specifically waived.

2.8.8 Assignment. Neither party may assign this Agreement or the rights, benefits, burdens, or obligations hereunder to any other person or entity, unless such assignment is of the entirety of this Agreement, and is made with the prior written approval of the other party, which approval may be granted or withheld by such party in its sole and absolute discretion, and the prior written approval of the United States. Any assignee under an assignment approved by both parties and the United States shall assume in writing all obligations and burdens imposed by this Agreement upon the assigning party. Any purported assignments not approved in advance in writing by the non-assigning party and the United States shall be void.

2.8.9 No Merger. The rights and obligations of the parties hereunder shall not be merged into any deeds of conveyance, and shall be fully enforceable until such time as any and all terms and conditions of this Agreement are completely fulfilled.

2.8.10 Third Party Beneficiaries. There are no third party beneficiaries of this Agreement. The parties hereto state and agree that they do not intend that any other person or entity shall have any interest in, or rights or duties under, this Agreement.

2.8.11 Counterparts. This Agreement may be executed in counterparts and all counterparts so executed shall constitute one agreement binding upon both parties, notwithstanding that both parties are not signatories to the original or to the same counterpart.

2.8.12 Controlling Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

2.8.13 Binding Effect. The terms of this Agreement shall be binding upon the respective parties hereto, their successors, and permitted assigns.

2.8.14 Further Assurances. The parties acknowledge and agree that they shall execute and deliver such further agreements and/or assurances as may be required to effectuate the intent of this Agreement, and, without limiting the generality of the foregoing, specifically the approval of the United States that is a condition precedent to the effectiveness of this Agreement.

2.8.15 Effective Date. Recognizing that, pursuant to the Funding Agreement and Paragraph 2.8.1 herein, approval of the United States is required for this Agreement, the parties

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agree that the Effective Date of this Agreement as between the parties hereto shall be the date when the Agreement has been executed by both parties.

State:

COLORADO WATER CONSERVATION BOARD

By: _____
Director, James Eklund

Date: _____

LEGAL REVIEW

By: _____
Attorney General, John W. Suthers

Date: _____

Purchaser:

LA PLATA ARCHULETA WATER DISTRICT

By: _____
President

Date: _____

Attest: _____
Secretary

Date: _____

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Approved:

- ☐ This Agreement overall and the Initial Acquisition
- ☐ All subsequent acquisitions of portions of the Optioned Allocation that are consummated in accordance with the terms of this Agreement

THE UNITED STATES OF AMERICA

By: _____ Date: _____
Upper Colorado Regional Director, Larry Walkoviak
Upper Colorado Region
Bureau of Reclamation

By: _____ Date: _____
Solicitors Office, Carter Brown