



COLORADO WATER CONSERVATION BOARD



WATER SUPPLY RESERVE ACCOUNT APPLICATION FORM

Today's Date: Nov. 20,2013

East Mesa Water Company Tunnel Bypass Pipeline

Name of Water Activity/Project

East Mesa Water Company, Carbondale Colorado

Name of Applicant

Colorado Basin

Amount from Statewide Account:

000.00

Amount from Basin Account(s):

\$60,000.00

Total WSRA Funds Requested:

\$60,000.00

Approving Basin Roundtable(s)

(If multiple basins specify amounts in parentheses.)

FEIN 84-1612324

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Required Exhibits

- A. Statement of Work, Budget, and Schedule
- B. NRCS Feasibility Study and Detailed Project Maps
- C. Corporation Documents

Appendices – Reference Material

- 1. Program Information
- 2. Insurance Requirements
- 3. WSRA Standard Contract Information (Required for Projects Over \$100,000)
- 4. W-9 Form (Required for All Projects Prior to Contracting)

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Instructions

To receive funding from the Water Supply Reserve Account (WSRA), a proposed water activity must be approved by the local Basin Roundtable **AND** the Colorado Water Conservation Board (CWCBC). The process for Basin Roundtable consideration and approval is outlined in materials in Appendix 1.

Once approved by the local Basin Roundtable, the applicant should submit this application **with a detailed statement of work including budget and schedule as Exhibit A** to CWCBC staff by the application deadline.

WSRA applications are due with the roundtable letter of support 60 calendar days prior to the bi-monthly Board meeting at which it will be considered. Board meetings are held in January, March, May, July, September, and November. Meeting details, including scheduled dates, agendas, etc. are posted on the CWCBC website at: <http://cwcb.state.co.us> Applications to the WSRA Basin Account are considered at every board meeting, while applications to the WSRA Statewide Account are only considered at the March and September board meetings.

When completing this application, the applicant should refer to the WSRA Criteria and Guidelines available at:

<http://cwcb.state.co.us/LoansGrants/water-supply-reserve-account-grants/Documents/WSRACriteriaGuidelines.pdf>

The application, statement of work, budget, and schedule **must be submitted in electronic format** (Microsoft Word or text-enabled PDF are preferred) and can be emailed or mailed on a disk to:

Craig Godbout - WSRA Application
Colorado Water Conservation Board
1580 Logan Street, Suite 200
Denver, CO 80203
Craig.godbout@state.co.us

If you have questions or need additional assistance, please contact Craig Godbout at: 303-866-3441 x3210 or craig.godbout@state.co.us.

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Part I. - Description of the Applicant (Project Sponsor or Owner);

1.	Applicant Name(s):	East Mesa Water Company		
	Mailing address:	East Mesa Water Company Marty Nieslanik 977 County Road 101 Carbondale, CO 81623		
	FEIN #:	84-1612324		
	Primary Contact:	Marty Nieslanik	Position/Title:	President
	Email:	nieslanikbeef@gmail.com		
	Phone Numbers:	Cell: 970 948 2102	Office:	970 963 6822
	Alternate Contact:	Richard McIntyre	Position/Title:	
	Email:	Richard@flyingdogales.com		
	Phone Numbers:	Cell: 970 948 9628	Office:	970 963 1923

2. Eligible entities for WSRA funds include the following. What type of entity is the Applicant?

- ☐ Public (Government) – municipalities, enterprises, counties, and State of Colorado agencies. Federal agencies are encouraged to work with local entities and the local entity should be the grant recipient. Federal agencies are eligible, but only if they can make a compelling case for why a local partner cannot be the grant recipient.
- ☐ Public (Districts) – authorities, Title 32/special districts, (conservancy, conservation, and irrigation districts), and water activity enterprises.
- ☒ Private Incorporated – mutual ditch companies, homeowners associations, corporations.
- ☐ Private individuals, partnerships, and sole proprietors are eligible for funding from the Basin Accounts but not for funding from the Statewide Account.
- ☐ Non-governmental organizations – broadly defined as any organization that is not part of the government.

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3. Provide a brief description of your organization

The East Mesa Water Company is an incorporated ditch company in the State of Colorado. The Company has an elected board of directors that manage the day-to-day business and operations of the ditch. The Ditch has a hired “ditch walker” to manage flows of water to the users of the ditch and to do some maintenance work. The East Mesa Water Company articles of incorporation and by-laws are included in Exhibit C.

4. If the Contracting Entity is different then the Applicant (Project Sponsor or Owner) please describe the Contracting Entity here.

The ditch company will sign contracts and will hire a construction company to install the pipeline.

5. Successful applicants will have to execute a contract with the CWCB prior to beginning work on the portion of the project funded by the WSRA grant. In order to expedite the contracting process the CWCB has established a standard contract with provisions the applicant must adhere to. A link to this standard contract is included in Appendix 3. Please review this contract and check the appropriate box.

☒ The Applicant will be able to contract with the CWCB using the Standard Contract

☐ The Applicant has reviewed the standard contract and has some questions/issues/concerns. Please be aware that any deviation from the standard contract could result in a significant delay between grant approval and the funds being available.

6. The Tax Payer Bill of Rights (TABOR) may limit the amount of grant money an entity can receive. Please describe any relevant TABOR issues that may affect the applicant.

This is not a taxing entity.

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Part II. - Description of the Water Activity/Project

1. What is the primary purpose of this grant application? (Please check only one)

☐ Nonconsumptive (Environmental or Recreational)

☒ Agricultural

☐ Municipal/Industrial

☐ Needs Assessment

☐ Education

☐ Other

Explain:

2. If you feel this project addresses multiple purposes please explain.

The piped section will conserve water by reducing seepage, thus conserving irrigation water for this pre 1922 water right.

3. Is this project primarily a study or implementation of a water activity/project? (Please check only one)

☐ Study

☒ Implementation

4. To catalog measurable results achieved with WSRA funds can you provide any of the following numbers?

New Storage Created (acre-feet)

New Annual Water Supplies Developed, Consumptive or Nonconsumptive (acre-feet)

Existing Storage Preserved or Enhanced (acre-feet)

Length of Stream Restored or Protected (linear feet)

Length of Pipe/Canal Built or Improved (linear feet)

Efficiency Savings (acre-feet/year OR dollars/year – **circle one**)

Area of Restored or Preserved Habitat (acres)

Other -- Explain:

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4. To help us map WSRA projects please include a map (Exhibit B) and provide the general coordinates below:

Latitude: 39° 18' 20.00"N

Longitude: 107° 12' 40.30"W

5. Please provide an overview/summary of the proposed water activity (no more than one page). Include a description of the overall water activity and specifically what the WSRA funding will be used for. A full **Statement of Work** with a detailed budget and schedule is required as **Exhibit A** of this application. General location of the project. (Please include county, and approximate distance and direction from nearest town, as well as legal description, if known.

Pitkin County, Colorado. Section 3, R 88 W, T 9 S. Approximately 5-7 miles South of Carbondale, Colorado, on the east side of Crystal River along Highway 133.

This project lies in the Crystal River Valley in the northern portion of Pitkin County and the southern portion of Garfield County, Colorado. The East Mesa Water Company operates the ditch for the benefit of the shareholders by providing irrigation water from the Crystal River. It should be noted that over $\frac{3}{4}$ of the water rights of this ditch (31.8 CFS of 41.8 CFS total allocation) from the Crystal river were appropriated in 1894 and therefore protects pre-1922 Water Rights. Additionally, this protects the continual use of pre-1922 water rights therefore protecting Upper Basin water through that continued use and within Compact compliance. There should be no injury to other water rights holders.

The East Mesa Ditch has a tunnel that is about 700 feet long that is collapsing as well as a section of ditch that is on a very steep hillside which slides and therefore the ditch catches much debris and rock creating water quality issues. The East Mesa Water Company wants to install a HDPE plastic pipeline to permanently fix this section. Proposed work will take place in the fall and winter of 2013 while the ditch is not in use. The proposal is to pipe the 1450 ft. to bypass the existing tunnel. The new route will provide a stable base and prevent future lose of use of the water due to ditch and tunnel failure. It should be noted that because of the steep terrain and narrow opportunity of the old railroad base, other design options were considered but are economically unfeasible.

This project and service area lies in the Crystal River Valley in the western portion of Pitkin County and serves an area in the southeastern portion of Garfield County, Colorado. The Ditch Company has approximately 8.5 miles of distribution ditch starting at the Diversion 9 miles south of the intersection of Highway 82 and 133 at Carbondale, Colorado. The service area is 740 acres in size and is known locally as East Mesa of the Crystal River and lies approximately one to five miles south of Carbondale, Colorado. Numerous conversations and meetings with local landowners, water users, various Pitkin county authorities, and Town of Carbondale engineers and staff have generated sustainable support and input into this project. These can be substantiated by the approval of their permits. It should be noted the only opposition to this project came from one landowner who was concerned about protecting his private property rights. These would not be affected and his concern has been alleviated. It should also be noted that much of this acreage is in numerous conservation easements held by Aspen Valley Land Trust. Therefore, the inherent continued irrigation of this ground protects the open space and agricultural natural setting.

The diversion is specifically located at: 39°17' 37.05" N 107 ° 12' 59.81" W. The elevation at the diversion is 6530 feet.

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The ditch company services the 740 total acres with 12 users including private landowners and homeowners associations. The users are approximately 100% agricultural. Irrigated acreage within the service area is primarily used for cattle ranching, nursery trees, and to grow hay and forage crops. The hay crop is used as cattle and horse feed, or is sold.

The Crystal River Valley area, Pitkin County and Garfield County, all have seen rapid population growth and development. This growth puts additional demands on the water in the Crystal River and Roaring Fork River for agriculture irrigation, recreation, municipal and industrial uses. Matching this trend, the East Mesa Water Company has increased its number of shareholders of 6 in 1977 to 12 shareholders currently.

The area is greatly influenced by recreation, tourism and increased population, creating major changes in agriculture uses of the land and water. The water resources are having additional demands from domestic uses and industrial uses, specifically in the Town of Carbondale, as a result of this continued growth. Additionally, the increased efficiency of this delivery system should ensure not only cleaner water (from the reduced debris) but also additional water into the Colorado River Basin where 4 endangered fish species are in critical habitat in Garfield County.

The economic impact of the agricultural production of the acreage affected, even assuming a small economic leverage factor, far exceeds total project cost within months if this ditch were to fail, if not weeks. A quick economic value of the hay produced would be: 740 ac. X 4 ton per acre X \$170.00 per ton = \$503,200.00 per year. Greater than this however, is the economic value created within the Roaring Fork valley closely related to recreation and tourism. The effect on overall commerce would be even more affected if one of the most scenic views in the valley, that approaching Mt Sopris, were to be brown and dry rather than green and lush if this ditch were to fail. These economic and recreational effects would be impossible to calculate and the risk factor would be immense. Related to this, appropriate press coverage and one-on-one meetings will educate local landowners about the improved processes and opportunities to protect this valleys valuable water resource. This project may be involved in local conservation tours sponsored by the Mt. Sopris Conservation District.

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Part III. – Threshold and Evaluation Criteria

1. Describe how the water activity meets these **Threshold Criteria**. (Detailed in Part 3 of the Water Supply Reserve Account Criteria and Guidelines.)

- a) The water activity is consistent with Section 37-75-102 Colorado Revised Statutes.¹

The proposed project does not conflict with State water law and appropriation system. The project is following the Company's water rights.

- b) The water activity underwent an evaluation and approval process and was approved by the Basin Roundtable (BRT) and the application includes a description of the results of the BRT's evaluation and approval of the activity. At a minimum, the description must include the level of agreement reached by the roundtable, including any minority opinion(s) if there was not general agreement for the activity. The description must also include reasons why general agreement was not reached (if it was not), including who opposed the activity and why they opposed it. Note- If this information is included in the letter from the roundtable chair simply reference that letter.

This application will be completed once evaluation and approval is given by the Colorado River Basin Roundtable.

¹ 37-75-102. Water rights - protections. (1) It is the policy of the General Assembly that the current system of allocating water within Colorado shall not be superseded, abrogated, or otherwise impaired by this article. Nothing in this article shall be interpreted to repeal or in any manner amend the existing water rights adjudication system. The General Assembly affirms the state constitution's recognition of water rights as a private usufructuary property right, and this article is not intended to restrict the ability of the holder of a water right to use or to dispose of that water right in any manner permitted under Colorado law. (2) The General Assembly affirms the protections for contractual and property rights recognized by the contract and takings protections under the state constitution and related statutes. This article shall not be implemented in any way that would diminish, impair, or cause injury to any property or contractual right created by intergovernmental agreements, contracts, stipulations among parties to water cases, terms and conditions in water decrees, or any other similar document related to the allocation or use of water. This article shall not be construed to supersede, abrogate, or cause injury to vested water rights or decreed conditional water rights. The General Assembly affirms that this article does not impair, limit, or otherwise affect the rights of persons or entities to enter into agreements, contracts, or memoranda of understanding with other persons or entities relating to the appropriation, movement, or use of water under other provisions of law.

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- c) The water activity meets the provisions of Section 37-75-104(2), Colorado Revised Statutes.² The Basin Roundtable Chairs shall include in their approval letters for particular WSRA grant applications a description of how the water activity will assist in meeting the water supply needs identified in the basin roundtable's consumptive and/or non-consumptive needs assessments.

To be determined at Colorado River Basin Roundtable meeting.

- d) Matching Requirement: For requests from the **Statewide Fund**, the applicants will be required to demonstrate a 25 percent (or greater) match of the total grant request from the other sources, including by not limited to Basin Funds. A minimum match of 5% of the total grant amount shall be from Basin funds. A minimum match of 5% of the total grant amount must come from the applicant or 3rd party sources. Sources of matching funds include but are not limited to Basin Funds, in-kind services, funding from other sources, and/or direct cash match. Past expenditures directly related to the project may be considered as matching funds if the expenditures occurred within 9 months of the date the application was submitted to the CWCB. Please describe the source(s) of matching funds. (NOTE: These matching funds should also be reflected in your Detailed Budget in **Exhibit A** of this application)

Sources of Funding (Assumes all grants, when applied for, are approved at requested amounts)

Ditch Company funds	\$ 50,000.00
USDA - NRCS Environmental Quality Incentive Program	\$250,000.00
Colorado River Water Conservation District - Grant Program	\$ 50,000.00
Colorado River Water Roundtable Funds	\$ 60,000.00
Colorado Water Conservation Board Revolving Loan	\$140,000.00
Total	\$550,000.00

(Also see Exhibit A - Budget)

² 37-75-104 (2)(c). Using data and information from the Statewide Water Supply Initiative and other appropriate sources and in cooperation with the on-going Statewide Water Supply Initiative, develop a basin-wide consumptive and nonconsumptive water supply needs assessment, conduct an analysis of available unappropriated waters within the basin, and propose projects or methods, both structural and nonstructural, for meeting those needs and utilizing those unappropriated waters where appropriate. Basin Roundtables shall actively seek the input and advice of affected local governments, water providers, and other interested stakeholders and persons in establishing its needs assessment, and shall propose projects or methods for meeting those needs. Recommendations from this assessment shall be forwarded to the Interbasin Compact Committee and other basin roundtables for analysis and consideration after the General Assembly has approved the Interbasin Compact Charter.

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2. For Applications that include a request for funds from the **Statewide Account**, describe how the water activity/project meets all applicable **Evaluation Criteria**. (Detailed in Part 3 of the Water Supply Reserve Account Criteria and Guidelines and repeated below.) Projects will be assessed on how well they meet the Evaluation Criteria. **Please attach additional pages as necessary.**

Evaluation Criteria – the following criteria will be utilized to further evaluate the merits of the water activity proposed for funding from the Statewide Account. In evaluation of proposed water activities, preference will be given to projects that meet one or more criteria from each of the three “tiers” or categories. Each “tier” is grouped in level of importance. For instance, projects that meet Tier 1 criteria will outweigh projects that only meet Tier 3 criteria. WSRA grant requests for projects that may qualify for loans through the CWCB loan program will receive preference in the Statewide Evaluation Criteria if the grant request is part of a CWCB loan/WSRA grant package. For these CWCB loan/WSRA grant packages, the applicant must have a CWCB loan/WSRA grant ratio of 1:1 or higher. Preference will be given to those with a higher loan/grant ratio.

Tier 1: Promoting Collaboration/Cooperation and Meeting Water Management Goals and Identified Water Needs

The applicant is not applying for Statewide account funds.

- a. The water activity addresses multiple needs or issues, including consumptive and/or non-consumptive needs, or the needs and issues of multiple interests or multiple basins. This can be demonstrated by obtaining letters of support from other basin roundtables (in addition to an approval letter from the sponsoring basin).
- b. The number and types of entities represented in the application and the degree to which the activity will promote cooperation and collaboration among traditional consumptive water interests and/or non-consumptive interests, and if applicable, the degree to which the water activity is effective in addressing intrabasin or interbasin needs or issues.
- c. The water activity helps implement projects and processes identified as helping meet Colorado’s future water needs, and/or addresses the gap areas between available water supply and future need as identified in SWSI or a roundtable’s basin-wide water needs assessment.

Tier 2: Facilitating Water Activity Implementation

The applicant is not applying for Statewide account funds.

- d. Funding from this Account will reduce the uncertainty that the water activity will be implemented. For this criterion the applicant should discuss how receiving funding from the Account will make a significant difference in the implementation of the water activity (i.e., how will receiving funding enable the water activity to move forward or the inability obtaining funding elsewhere).
- e. The amount of matching funds provided by the applicant via direct contributions, demonstrable in-kind contributions, and/or other sources demonstrates a significant & appropriate commitment to the project.

Tier 3: The Water Activity Addresses Other Issues of Statewide Value and Maximizes Benefits

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The applicant is not applying for Statewide account funds.

- f. The water activity helps sustain agriculture & open space, or meets environmental or recreational needs.
- g. The water activity assists in the administration of compact-entitled waters or addresses problems related to compact entitled waters and compact compliance and the degree to which the activity promotes maximum utilization of state waters.
- h. The water activity assists in the recovery of threatened and endangered wildlife species or Colorado State species of concern.
- i. The water activity provides a high level of benefit to Colorado in relationship to the amount of funds requested.
- j. The water activity is complimentary to or assists in the implementation of other CWCB programs.

Continued: Explanation of how the water activity/project meets all applicable **Evaluation Criteria**.

Please attach additional pages as necessary.

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Part IV. – Required Supporting Material

1. **Water Rights, Availability, and Sustainability** – This information is needed to assess the viability of the water project or activity. Please provide a description of the water supply source to be utilized, or the water body to be affected by, the water activity. This should include a description of applicable water rights, and water rights issues, and the name/location of water bodies affected by the water activity.

Water for the East Mesa Water Company is supplied by a direct diversion from the Crystal River delivered through an open ditch to shareholders of the East Mesa Water Company. The diversion from the river is located 9 miles south of the intersection of highway 82 and 133 on the east side of the River. The Ditch is usually turned on in the first two weeks of May and runs until about the middle of October.

Total Water Rights are 41.8 CFS. 10.0 CFS direct flow irrigation, domestic and other beneficial use water right in the East Mesa Ditch on the Crystal River, decreed in Civil Action No. 4033, District Court, Garfield County, with an adjudication date of October 24, 1952, and an appropriation date of May 1, 1942.

The remaining 31.8 CFS direct flow irrigation right in the East Mesa Ditch on the Crystal River, decreed in Civil Action No. 990, District Court, Garfield County, with an adjudication date of December 12, 1902, and an appropriation date of August 10, 1894.

2. Please provide a brief narrative of any related studies or permitting issues.

The NRCS has completed a feasibility study of this project (attached as Exhibit B). Additionally, Pitkin permits are being obtained for Pitkin County Earthmoving Permit, Pitkin County Floodplain, Pitkin County Drainage and Erosion Control Plan, and a Pitkin County Construction Management Plan. Army Corp of Engineers will be notified however the project is outside of the flood plain per Pitkin County Flood Plain Maps. Since the project involves also moving a treated water supply line for the Town of Carbondale, proper notifications and approvals are being developed by a separate private contractor and will be in place prior to project origination. It is noted that the simultaneous completion of these 2 projects will create economies of scale for both and therefore cost efficiency.

3. Statement of Work, Detailed Budget, and Project Schedule

The statement of work will form the basis for the contract between the Applicant and the State of Colorado. In short, the Applicant is agreeing to undertake the work for the compensation outlined in the statement of work and budget, and in return, the State of Colorado is receiving the deliverables/products specified. **Please note that costs incurred prior to execution of a contract or purchase order are not subject to reimbursement.** All WSRA funds are disbursed on a reimbursement basis after review invoices and appropriate backup material.

Please provide a detailed statement of work using the template in Exhibit A. Additional sections or modifications may be included as necessary. Please define all acronyms and include page numbers.

REPORTING AND FINAL DELIVERABLE

Reporting: The applicant shall provide the CWCB a progress report every 6 months, beginning from the date of the executed contract. The progress report shall describe the completion or partial completion of the tasks identified in the statement of work including a description of any major issues that have occurred and any corrective action taken to address these issues.

Final Deliverable: At completion of the project, the applicant shall provide the CWCB a final report that summarizes the project and documents how the project was completed. This report may contain photographs, summaries of meetings and engineering reports/designs.

PAYMENT

Payment will be made based on actual expenditures and invoicing by the applicant. Invoices from any other entity (i.e. subcontractors) cannot be processed by the State. The request for payment must include a description of the work accomplished by major task, and estimate of the percent completion for individual tasks and the entire water activity in relation to the percentage of budget spent, identification of any major issues and proposed or implemented corrective actions. The last 5 percent of the entire water activity budget will be withheld until final project/water activity documentation is completed. All products, data and information developed as a result of this grant must be provided to the CWCB in hard copy and electronic format as part of the project documentation. This information will in turn be made widely available to Basin Roundtables and the general public and help promote the development of a common technical platform.

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The above statements are true to the best of my knowledge:

Signature of Applicant:

Print Applicant's Name:

Project Title:

Return an electronic version (hardcopy may also be submitted) of this application to:

Craig Godbout – WSRA Application
Colorado Water Conservation Board
1580 Logan Street, Suite 200
Denver, CO 80203
craig.godbout@state.co.us

ACTION BY UNANIMOUS WRITTEN CONSENT OF THE STOCKHOLDERS OF EAST MESA WATER COMPANY

The undersigned stockholders of East Mesa Water Company, a Colorado mutual ditch company (the "Company"), hereby consent to, vote in favor of and adopt the following resolutions without a meeting:

I. ARTICLES OF REINSTATEMENT

WHEREAS, the Company was administratively dissolved by the Colorado Secretary of State on March 19, 1955; and

WHEREAS, the Company has filed Articles of Reinstatement with the Colorado Secretary of State on October 11, 2010;

NOW THEREFORE, BE IT RESOLVED, that the Company's Articles of Reinstatement as filed with the Colorado Secretary of State on October 11, 2010, be and hereby are adopted and approved in all respects.

II. ELECTION OF BOARD OF DIRECTORS

WHEREAS, the stockholders believe it to be in the best interests of the Company and its stockholders to elect a new board of directors;

NOW THEREFORE, BE IT RESOLVED, that each of the persons named below is elected to serve as a director of the Company, whose term shall expire at the next annual meeting of stockholders until his or her successor is duly elected and qualified:

MARTY Nieslanik

TOM Turnbull

PAUL Nieslanik

III. AMENDMENT OF ARTICLES OF INCORPORATION

WHEREAS, the Board of Directors of the Company (the "Board") believes it to be in the best interest of the Company to adopt Amended and Restated Articles of Incorporation substantially in the form attached hereto as Exhibit A and has recommended the approval thereof to the stockholders;

NOW, THEREFORE BE IT RESOLVED, that the Amended and Restated Articles of Incorporation of the Company attached hereto as Exhibit A be, and hereby are, adopted by the Company; and

RESOLVED FURTHER, that the Secretary of the Company be, and hereby is, authorized and directed to cause the Amended and Restated Articles of Incorporation to be filed in the office of the Colorado Secretary of State and to effect the filing of any other documents required by the Colorado Secretary of State in connection therewith.

IV. APPROVAL OF MERGER

WHEREAS, the Board believes it to be in the best interest of the Company to merge with an into Crystal River East Mesa Ditch Company pursuant to the terms and conditions set forth in a plan of merger (the "Merger"), and

WHEREAS, the Board has approved and adopted a plan of merger in substantially the form attached hereto as **Exhibit B**, (the "Plan of Merger") and has submitted the Plan of Merger to the stockholders for approval;

NOW, THEREFORE BE IT RESOLVED, that the Merger and Plan of Merger, as approved and adopted by the Board be, and the same hereby are, approved and adopted;

RESOLVED FURTHER, that the appropriate officers of the Company be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Company, to execute and deliver the Plan of Merger and are hereby authorized and directed to take all such further action and/or execute and deliver all such instruments and documents in the name of and on behalf of the Company as are necessary, proper or advisable in order to fully carry out the intent and to accomplish the purposes of the foregoing resolutions.

V. ADOPTION OF BYLAWS

RESOLVED, that the Bylaws attached hereto as **Exhibit B** be, and they hereby are, adopted as the Bylaws of and for the Company; and

RESOLVED FURTHER, that the Secretary of the Company be, and he hereby is, authorized and directed to certify the Bylaws and insert them in the Company's Minute Book, and to see that a copy of the Bylaws is kept at the Company's principal office, as required by law.

VI. RATIFICATION OF PAST ACTION

BE IT RESOLVED, that all actions taken by the stockholders and persons acting as officers or directors of the Company prior to the date hereof be, and they hereby are, approved, adopted, authorized, ratified, and confirmed in all respects.

This Consent may be executed in one or more counterparts and transmitted via facsimile or other electronic means, and each such counterpart shall be deemed an original, and all such counterparts, taken together, shall constitute one document.

This Written Consent of the Stockholders of East Mesa Water Company. is executed to be effective as of October 22, 2010.

STOCKHOLDERS:

[Signature] For MTN

Thomas H. Biny see Leon Ross Ranch

Elizabeth Cordiner for Carbonado Corp

Richard McIntyre

Thomas Hal Harvey - P.O.A by Richard McIntyre

Norma Barr - for Mountain Meadows H&H

John Nisland

Paul Huns

Dard Madsen

Michael H.

Thomas D. Neely
for Prince Creek H&H

Thomas R. J. [Signature]

ARTICLES OF INCORPORATION
OF
CRYSTAL RIVER EAST MESA DITCH COMPANY
(A COLORADO NONPROFIT CORPORATION)

The undersigned adult natural persons, acting as incorporators, hereby establish a nonprofit corporation under the Colorado Nonprofit Corporation Act and Article 42 of Chapter 7, Colorado Revised Statutes, as amended, pertaining to ditch and reservoir companies, and adopt the following Articles of Incorporation.

ARTICLE I
Name

The name of the Corporation is the CRYSTAL RIVER EAST MESA DITCH COMPANY.

ARTICLE II
Members

The Corporation shall have voting members (who may be referred to hereinafter as "members" or "shareholders"). Membership in the Corporation shall not be recognized until the person or entity desiring membership has executed a membership agreement with the Corporation and delivered a quit claim deed regarding the Water System (as described below) to the Corporation. The said agreement and quit claim deed will be in a form approved by the Corporation. Upon execution of the quit claim deed, the shareholder will retain beneficial ownership of a proportional interest in the Water System and will be entitled to use the Water System in accordance with Colorado law and the Articles and the Bylaws of the Corporation. Membership shall be memorialized by issuance of a stock certificate from the Corporation to the shareholders.

ARTICLE III
Purposes and Powers

A. **Purposes.** The purposes for which the Corporation is organized are as follows:

1. To own, hold title to, operate and maintain the Corporation's water system (hereinafter "Water System") which includes, but not exclusively, the following real property interest and water rights which are used for irrigation, domestic, stockwater and other beneficial purposes:

a. That portion of Sections 3 and 10, Township 9 South, Range 88 West, Pitkin and Garfield Counties, Colorado, and Sections 2, 11, 14, 22, 23, 27, 34, Township 8 South, Range 88 West, Pitkin and Garfield Counties, Colorado (the "Land") comprising the East Mesa Ditch (the "Ditch"), which shall include but not be limited to

easement for headgates, ditch structure, embankment, access easements, measuring devices and all of such structures actually used or reasonably necessary to be used in conjunction with operation of the Ditch;

b. 31.8 c.f.s. direct flow irrigation water right in the East Mesa Ditch on the Crystal River, decreed in Civil Action No. 990, District Court, Garfield County, with an adjudication date of December 12, 1902, and an appropriation date of August 10, 1894.

c. 10.0 c.f.s. direct flow irrigation, domestic and other beneficial use water right in the East Mesa Ditch on the Crystal River, decreed in Civil Action No. 4033, District Court, Garfield County, with an adjudication date of October 24, 1952, and an appropriation date of May 1, 1942.

d. All other water and water rights associated with, appurtenant to or historically used in connection with the Ditch;

e. All easements (whether arising by statute, express grant, implication or prescription) related to the Water System, including, but without limitation, all easements for the diversion, storage, carriage and delivery of water to the Corporation's shareholders.

f. The personalty, which includes the headgate works, gate shaft, valve chamber, bypass spillway, service outlet piping and all other personal property appurtenant to the Ditch; and

g. Such other property, including ditches, reservoirs and water rights, together with any rights-of-way, easements and personalty acquired therewith or appurtenant thereto, as may be appropriated or otherwise acquired by the Corporation.

2. To take all steps necessary to legalize, adjudicate and/or protect a water supply for the Corporation's shareholders in accordance with the decrees for the Water System and the Articles and Bylaws of the Corporation.

3. To operate, maintain, repair, improve, extend, replace and enlarge the Ditch and all other property acquired by the Corporation.

4. To use its best efforts to operate the Water System and to adopt such rules and regulations as may be helpful or necessary to provide for the administration of the Water System and distribution of water to the shareholders.

5. To appropriate and adjudicate such additional water rights as may be required to fully utilize the Ditch.

6. To take all action necessary to defend the Corporation's property, including without limitation, the Land, Ditch and water, water rights and contract rights of the Corporation.

7. Pursuant to the terms hereof, or any other terms or conditions imposed by the Corporation on the use of water from the Ditch, to deliver to or for the benefit of its shareholders water from the Ditch, in amounts proportionate to the amount of stock held by such shareholders, for irrigation, domestic and other beneficial uses required by the shareholders.

8. To contract with and borrow money from the United States of America; any federal agency, entity or corporation; any public or private corporation; the State of Colorado, or any agency of the State of Colorado, any individual; or, without limitation, from any other source; and, without limitation, to execute bonds, notes and other evidences of indebtedness and secure the same by mortgages, deeds of trust or instruments constituting a lien upon all or any part of the Corporation's real or personal property.

9. To acquire by purchase, lease, contract, assignment, exchange, appropriation or otherwise water and water rights, rights-of-way, easements, use permits, franchises, privileges, priorities, irrigation works, appliances, equipment and machinery, and other real property and personal property and interests therein; and to sell, lease, mortgage, encumber, assign, pledge or otherwise convey or dispose of any part or all of such property.

10. To do or perform any act or thing permitted or authorized by the provisions of the Colorado Nonprofit Corporation Act, Articles 121 to 137 of Title 7 (Colorado Revised Statutes), as the same may be amended, and the provisions of Article 42 of Title 7 (Colorado Revised Statutes), as the same may be amended, and not prohibited by these Articles of Incorporation.

B. **Powers.** In furtherance of the foregoing purposes and objectives, the Corporation shall have and may exercise all of the rights, powers and privileges now or hereafter conferred upon nonprofit corporations organized under the laws of the state of Colorado, and may do everything necessary or convenient for the accomplishment of any of the corporate purposes, subject to the limitations as may be prescribed by law.

C. **User Fee.** The Corporation is organized exclusively for the purposes above set forth, whereby at least 85% of its income shall be derived from user fees assessed to the shareholders for the sole purpose of meeting the expenses and losses of the Corporation in full compliance with the applicable requirements of Section 501 of the Internal Revenue code, as amended.

ARTICLE IV
Initial Registered Office and Agent

The address of the initial registered office of the Corporation and the name of the initial registered agent at that address is:

Robert Nieslanik
0828 County Road 165
Carbondale, CO 81623

ARTICLE V
Initial Principal Office

The address of the initial principal office of the Corporation is:

c/o Robert Nieslanik
0828 County Road 165
Carbondale, CO 81623

ARTICLE VI
Period of Duration

The Corporation shall have perpetual existence.

ARTICLE VII
Nonprofit Status

A. **Net Earnings.** No part of the income or net earnings of the Corporation shall inure to the benefit or be distributable to any shareholder, director or officer of the Corporation or any other corporation or private individual; however, reasonable compensation may be paid for services actually rendered to or for the Corporation and any officer, director, agent or employee or any other person or corporation may be reimbursed for expenses advanced or incurred for the Corporation's benefit upon authorization of the board of Directors. No shareholder, director or officer of the Corporation, nor any other corporation or private individual, shall be entitled to share in any distribution of any of the corporate assets upon dissolution of the corporation or otherwise except as hereinafter expressly set forth.

B. **Prohibited Activities.** No substantial part of the activities of the Corporation shall consist of carrying on lobbying activities, propaganda campaigns or other activities designed to influence legislation. The Corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office.

C. **Prohibited Income.** Notwithstanding any other provision hereof, this corporation shall not conduct or carry on any activities nor permit to receive any income which is prohibited under the applicable provisions of Section 501 of the Internal Revenue Code as amended.

ARTICLE VIII

Shareholders

A. **Authorized Shares.** There shall be 1003 shares of authorized capital stock, and the ownership thereof shall entitle the shareholder(s) to a proportional share of water made available by the Corporation's operation of the Water System, as provided in the Bylaws and any rules and regulations adopted by the Corporation. The Corporation intends to issue up to a total of 1003 shares, upon the shareholders' execution and delivery of the membership agreements and quit claim deeds pursuant to Article II hereof.

B. **Voting of Shares.** Each share of stock issued by the Corporation and fully paid as to assessments shall have the right to one (1) vote at any shareholders' meeting.

C. **Election of Directors.** Directors of the Corporation shall be elected by a majority vote of the shareholders. Cumulative voting is not authorized.

ARTICLE IX

Assessments

A. **Assessments.** The Corporation shall have the power to make assessments on its capital stock, to be levied as set out in the Bylaws hereinafter provided for, which assessments shall be payable in money. Assessments may be levied for any corporation purpose described in these Articles or in the Bylaws of the Corporation.

B. **Remedies.** In the event any shareholder fails to pay any assessment on his stock, this Corporation shall have the power to pursue any remedy described in the Bylaws or allowed under Colorado law, including without limitation, to withdraw or terminate the delivery of water to the shareholder until such assessment is paid; or, in addition thereto, or in lieu thereof, to file a lien against the property associated with the delinquent shareholder's stock or any number of shares of said stock; or in addition thereto, or in lieu thereof, to commence a civil action against such delinquent shareholder to recover the amount of any assessment which many remain unpaid, together with interest, court costs and reasonable attorney fees; or in addition thereto, or in lieu thereof, to declare a forfeiture or sale of the delinquent shareholder's stock or any number of shares of said stock. The Corporation shall be entitled to recover from a delinquent shareholder all its attorney's fees and other costs incurred to recover unpaid assessments.

ARTICLE X

Initial Directors

A. **Number of Directors.** The number of directors of the Corporation shall be determined by the Bylaws. The initial Board of Directors of the Corporation shall consist of three (3) directors.

B. **Initial Directors.** The names and addresses of the persons who are to serve as the initial directors and until their successor or successors are elected and qualified are:

John Nieslanik 0979 County Road 101
Carbondale, CO 81623

Robert Nieslanik 0828 County Road 165
Carbondale, CO 81623

Thomas Turnbull 1634 Prince Creek Road
Carbondale, CO 81623

C. **Increase or Decrease of Directors.** Commencing with the election of the Board of Directors by the shareholders of the Corporation, the number of directors may be increased or decreased by the adoption of an amendment to the Bylaws, but no decrease shall have the effect of shortening the term of any incumbent director.

ARTICLE XI

Indemnification of Officers and Directors

The Corporation shall indemnify its officers and directors to the full extent permitted by Colorado law.

ARTICLE XII

Limitation of Liability

A. **Breach of Fiduciary Duty.** The personal liability of a director to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director is limited to the full extent provided by Colorado law.

B. **Obligations of Corporation.** The directors, officers, employees and shareholders of the Corporation shall not, as such, be liable on its obligations.

C. **Wanton and Willful Acts.** Directors shall not be liable for actions taken or omissions made in the performance of corporate duties except for wanton and willful acts or omissions.

ARTICLE XIII

Bylaws

The initial Bylaws of the Corporation shall be adopted by the unanimous vote of the shareholders. The Bylaws may thereafter be altered, amended or repealed, and additional bylaws may be adopted, only by a vote of the shareholders representing two thirds (2/3) of all the shares issued and outstanding. Such vote may be taken at any annual shareholders' meeting or at any special shareholders' meeting when the proposed alteration, change, amendment, repeal and/or addition has been set out in the notice of such meeting. Notwithstanding anything herein to the contrary, no alteration, change, amendment, repeal and/or addition to the Bylaws respecting restrictions on transfers of stock, including (without limitation) transfers or changes of water rights associated with such stock, or restrictions on ditch modifications, shall be binding upon a shareholder unless specifically approved in writing by such affected shareholder. The last two sentences in this Article XIII shall not be repealed or amended without the unanimous written consent and approval of all the shareholders.

ARTICLE XIV

Amendment of Articles

Except for any amendments requiring unanimous consent of the shareholders, as provided in Article XIII, amendments to these Articles of Incorporation shall only be by the affirmative vote of the shareholders representing seventy-five percent (75%) of all the shares issued and outstanding, by shareholders present or represented by proxy, at any meeting called for the purpose of amending these Articles.

ARTICLE XV

Dissolution

In the event of the dissolution of the Corporation, the assets of the Corporation shall be distributed to all shareholders and all lienholders as their interest may appear as provided by section 501(c)(12) of the Internal Revenue Code of 1986 and Colorado law then in effect. The proceedings for dissolution shall be conducted in accordance with Article 134, Title 7 of the Colorado Revised Statutes, as the same may be amended.

ARTICLE XVI

Incorporators

The names and addresses of the incorporators are:

John Nieslanik 0979 County Road 101
Carbondale, CO 81623

Robert Nieslanik 0828 County Road 165
Carbondale, CO 81623

Thomas Turnbull

1634 Prince Creek Road
Carbondale, CO 81623

IN WITNESS WHEREOF, the undersigned have executed these Articles of Incorporation and acknowledged them to be their act this 7th day of April, 2006.

Robert Nieslanik
Robert Nieslanik

John Nieslanik
John Nieslanik

Thomas R. J. all
Thomas Turnbull

WRITTEN CONSENT TO ACT AS REGISTERED AGENT OF THE CORPORATION:

I hereby consent to act as registered agent of the Corporation.

Dated the 7th day of April, 2006.

Robert Nieslanik
Robert Nieslanik

**ACTION BY WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF
CRYSTAL RIVER EAST MESA DITCH COMPANY**

The undersigned, being all of the directors of Crystal River East Mesa Ditch Company, a Colorado nonprofit corporation (the "Company"), hereby consent to, vote in favor of and adopt the following resolution:

I. APPROVAL OF MERGER AND PLAN OF MERGER

WHEREAS, the Board believes it to be in the best interest of the Company and its stockholders to merge with and into East Mesa Water Company pursuant to the terms and conditions set forth in a plan of merger.

NOW THEREFORE, BE IT RESOLVED, that the merger (the "Merger") and the plan of merger, in substantially the form attached hereto as Exhibit A (the "Plan of Merger"), be and hereby are adopted and approved;

RESOLVED FURTHER, with such changes, modifications and amendments as the appropriate officers of the Company may approve, the execution and delivery of the Plan of Merger by any such officer on behalf of and in the name of the Company shall be conclusive evidence of the approval thereof by such officer and the authorization, approval and adoption thereof by the Board;

RESOLVED FURTHER, that the appropriate officers of the Company be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Company, to execute and deliver the Plan of Merger;

RESOLVED FURTHER, that all of the transactions contemplated by the Plan of Merger are hereby approved and adopted and the Company is authorized to perform each of the transactions contemplated by the Plan of Merger;

RESOLVED FURTHER, that the appropriate officers of the Company be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Company to take such further actions and to cause the Company to enter into, execute and deliver such further agreements, instruments and certificates as may be necessary or appropriate in the judgment of such officer, to consummate the transactions contemplated by the Plan of Merger, including the execution and delivery of any such agreements, instruments and certificates as may be required;

RESOLVED FURTHER, that the Plan of Merger shall be submitted to the stockholders of the Company for approval and adoption;

RESOLVED FURTHER, that the Board unanimously recommends to the stockholders that they approve and adopt the Merger and the Plan of Merger;

RESOLVED FURTHER, that the appropriate officers of the Corporation be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Company to

submit the Plan of Merger to the stockholders for adoption and approval;

RESOLVED FURTHER, that the Statement of Merger ("Statement of Merger") in substantially the form attached hereto as Exhibit B be, and it hereby is, approved and adopted in all respects;

RESOLVED FURTHER, that, upon receipt of the approval and adoption of the Merger and the Plan of Merger by the Stockholders, the appropriate officers of the Company be, and each of them hereby is, authorized, directed and empowered, for and on behalf of the Company, to submit the Statement Merger for filing with the Colorado Secretary of State; and

RESOLVED FURTHER that the appropriate officers of the Company be, and each of them hereby is, authorized, directed and empowered, for and on behalf of the Company, to take such actions and to execute such documents as they may deem necessary, appropriate or advisable to effect the filing of the Statement of Merger with the Colorado Secretary of State, and to effect the filing of any other documents required by the Colorado Secretary of State.

II. ADOPTION OF BYLAWS

RESOLVED, that the Bylaws attached hereto as Exhibit C be, and they hereby are, adopted as the Bylaws of and for the Company; and

RESOLVED FURTHER, that the Secretary of the Company be, and he hereby is, authorized and directed to certify the Bylaws and insert them in the Company's Minute Book, and to see that a copy of the Bylaws is kept at the Company's principal office, as required by law.

This Action may be signed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one instrument.

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In Witness Whereof, the undersigned have executed this Action by Unanimous Written Consent to be effective as of November 5, 2010.

Paul H. H.

Mark J. J.

James R. J.

**ACTION BY WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF
EAST MESA WATER COMPANY**

The undersigned, being all of the directors of East Mesa Water Company, a Colorado mutual ditch company (the "Company"), hereby consent to, vote in favor of and adopt the following resolutions:

I. ARTICLES OF REINSTATEMENT

RESOLVED, that the Articles of Reinstatement of the Company filed with the Colorado Secretary of State on October 11, 2010, be, and they hereby are, ratified and adopted.

II. ELECTION OF OFFICERS

RESOLVED, that the following persons be, and hereby are, elected as officers of the Company, to serve until the next annual meeting or until their successor or successors are duly elected and have qualified:

<u>NAME</u>	<u>OFFICE</u>
<u>Marty Nieslanik</u>	President
<u>Math Nieslanik</u>	Secretary
<u>Math Nieslanik</u>	Treasurer

III. AMENDMENT OF ARTICLES OF INCORPORATION

RESOLVED, that the Amended and Restated Articles of Incorporation of the Company attached hereto as Exhibit A be, and hereby are, approved and adopted by the Board; and

RESOLVED FURTHER, that the Amended and Restated Articles of Incorporation shall be submitted to the stockholders of the Company for approval and adoption;

RESOLVED FURTHER, that the Board unanimously recommends to the stockholders that they approve and adopt the Amended and Restated Articles of Incorporation;

RESOLVED FURTHER, that the appropriate officers of the Corporation be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Company to submit the Amended and Restated Articles of Incorporation to the stockholders for adoption and approval;

RESOLVED FURTHER, that, upon receipt of the requisite stockholder approval, the Secretary of the Company be, and hereby is, authorized and directed to cause the Amended and Restated Articles of Incorporation to be filed in the office of the Colorado Secretary of State and to effect the filing of any other documents required by the Colorado Secretary of State in connection

therewith.

IV. ADOPTION OF BYLAWS

RESOLVED, that the Bylaws attached hereto as Exhibit B be, and they hereby are, adopted as the Bylaws of and for the Company; and

RESOLVED FURTHER, that the Secretary of the Company be, and he hereby is, authorized and directed to certify the Bylaws and insert them in the Company's Minute Book, and to see that a copy of the Bylaws is kept at the Company's principal office, as required by law.

V. REINSTATEMENT EXPENSES

RESOLVED, that the appropriate officers of the Company be, and they hereby are, authorized and directed to pay the expenses of the reinstatement of the Company.

VI. ADDITIONAL FILINGS

RESOLVED, that the appropriate officers of the Company be, and they hereby are, authorized and directed, for and on behalf of the Company, to make such filings and applications, to execute and deliver such documents and instruments, and to do such acts and things as such officers deem necessary or advisable in order to obtain such licenses, authorizations and permits as are necessary or desirable for the Company's business, and to fulfill such legal requirements as are applicable to the Company and its business and to complete the organization of the Company.

VII. APPROVAL OF MERGER AND PLAN OF MERGER

WHEREAS, the Board believes it to be in the best interest of the Company and its stockholders to merge with and into Crystal River East Mesa Ditch Company pursuant to the terms and conditions set forth in a plan of merger.

NOW THEREFORE, BE IT RESOLVED, that the merger (the "Merger") and the plan of merger, in substantially the form attached hereto as Exhibit C (the "Plan of Merger"), be and hereby are adopted and approved;

RESOLVED FURTHER, with such changes, modifications and amendments as the appropriate officers of the Company may approve, the execution and delivery of the Plan of Merger by any such officer on behalf of and in the name of the Company shall be conclusive evidence of the approval thereof by such officer and the authorization, approval and adoption thereof by the Board;

RESOLVED FURTHER, that the appropriate officers of the Company be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Company, to execute and deliver the Plan of Merger;

RESOLVED FURTHER, that all of the transactions contemplated by the Plan of Merger are hereby approved and adopted and the Company is authorized to perform each of the transactions contemplated by the Plan of Merger;

RESOLVED FURTHER, that the appropriate officers of the Company be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Company to take such further actions and to cause the Company to enter into, execute and deliver such further agreements, instruments and certificates as may be necessary or appropriate in the judgment of such officer, to consummate the transactions contemplated by the Plan of Merger, including the execution and delivery of any such agreements, instruments and certificates as may be required;

RESOLVED FURTHER, that the Plan of Merger shall be submitted to the stockholders of the Company for approval and adoption;

RESOLVED FURTHER, that the Board unanimously recommends to the stockholders that they approve and adopt the Merger and the Plan of Merger;

RESOLVED FURTHER, that the appropriate officers of the Corporation be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Company to submit the Plan of Merger to the stockholders for adoption and approval;

RESOLVED FURTHER, that the Statement of Merger ("Statement of Merger") in substantially the form attached hereto as Exhibit D be, and it hereby is, approved and adopted in all respects;

RESOLVED FURTHER, that, upon receipt of the approval and adoption of the Merger and the Plan of Merger by the Stockholders, the appropriate officers of the Company be, and each of them hereby is, authorized, directed and empowered, for and on behalf of the Company, to submit the Statement Merger for filing with the Colorado Secretary of State; and

RESOLVED FURTHER that the appropriate officers of the Company be, and each of them hereby is, authorized, directed and empowered, for and on behalf of the Company, to take such actions and to execute such documents as they may deem necessary, appropriate or advisable to effect the filing of the Statement of Merger with the Colorado Secretary of State, and to effect the filing of any other documents required by the Colorado Secretary of State.

VIII. GENERAL AUTHORIZING RESOLUTION

RESOLVED, that the appropriate officers of this Company be, and they hereby are, authorized for and in the name and on behalf of this Company, to do any and all things and take any and all steps deemed by them necessary or appropriate to carry out the purposes of the foregoing resolutions and the transactions contemplated thereby.



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III. RATIFICATION OF PAST ACTION

BE IT RESOLVED, that all actions taken by persons acting as officers or directors of the Company prior to the date hereof be, and they hereby are, approved, adopted, authorized, ratified, and confirmed in all respects.

This Action may be signed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one instrument.

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In Witness Whereof, the undersigned have executed this Action by Unanimous Written Consent to be effective as of November 5, 2010.

Matt D. Kirk

Paul H. H.

James P. J. H.



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EXHIBIT A

AMENDED AND RESTATED ARTICLES OF INCORPORATION

(ATTACHED HERETO)

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EXHIBIT B

BYLAWS

(ATTACHED HERETO)



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EXHIBIT C

PLAN OF MERGER

(ATTACHED HERETO)

Exhibit C

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EXHIBIT D

STATEMENT OF MERGER

(ATTACHED HERETO)

Exhibit D

East Mesa Water Company
Exhibit B – NRCS Feasibility Study and Detailed
Maps

Feasibility of Piping a Section Of the East Mesa Water Company Ditch

Sponsored by the
East Mesa Water Company
In conjunction with the
Colorado Water Conservation Board

August 2013

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List of Appendices

Appendix A:	Articles of Incorporation and By-Laws.
Appendix B:	Water Rights Summary State Engineer Diversion Reports
Back pocket:	Preliminary Plan Drawings, (When Completed will be submitted)

East Mesa Water Company

Marty Nieslanik, President

Richard McIntyre, Vice President

Mark Nieslanik, Secretary - Treasurer

Attorney for the East Mesa Water Company

Arthur B Ferguson Jr.
Holland Hart
600 East Main Street Suite 104
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970-925 3476
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Engineering and Technical Support

Mike Kishimoto Engineering Tech
NRCS
258 Center Drive
Glenwood Springs, CO 81601
(970) 945-5494 x 105

Dennis Davidson, Irrigation Water Management Specialist
(970) 309 4075

Gabe Lucero
Area Engineer
NRCS
Grand Junction, Colorado

Acknowledgement of those who assisted in the preparation of this report:

Marty Nieslanik, President, East Mesa Water Company

Richard McIntyre, Vice President, East Mesa Water Company

Mark Nieslanik, Secretary -Treasurer, East Mesa Water Company

Paul Nieslanik, Member

Dennis Davidson
Consultant

Mike Kishimoto
Engineering Tech, NRCS

Kirk Russel, P.E.
Colorado Water Conservation Board

Anna Mauss, P. E.
Colorado Water Conservation Board

Feasibility Study

East Mesa Water Company

Ditch Lining Project

Introduction (Need for the Project)

This project lies in the Crystal River Valley in the western portion of Pitkin County, Colorado. The East Mesa Water Company operates the East Mesa Water Company system for the benefit of the shareholders by providing irrigation water from water rights out of the Crystal River.

About, one mile down ditch from the diversion the water flows through a 650 foot long rock tunnel that is collapsing. The owners of the ditch want to avoid the chance of losing the water delivery system due to complete failure of the tunnel. Also, the earthen ditch loses as much as 35% of the water in the ditch due to seepage through the course and rocky soil in the 9 mile length of the ditch. The East Mesa Water Company wants to install a lining or pipeline to make a permanent fix of this section. Proposed work will take place in the fall and winter of 2013 while the ditch is not in use.

The proposal is to pipe 1450 ft. around the collapsing tunnel. The pipeline will be rerouted to avoid the tunnel and will prevent water loss due to ditch seepage.

The project consists of a concrete water inlet structure, and 1450 feet of HDPE plastic pipe.

Without controlling or avoiding the collapsing of the tunnel the ditch will become inoperable. Seepage and water loss will continue through this section until the ditch is piped.

Project Sponsor

The East Mesa Water Company is an incorporated ditch company in the State of Colorado. The Company has an elected board of directors that manage the day-to-day business and operation of the ditch. The Ditch has a hired "ditch walker" to manage flows of water to the users of the ditch and to do some maintenance work. The East Mesa Water Company articles of incorporation and by-laws are included in Appendix A.

Project Service Area and Facilities

This project and service area lies in the Crystal River Valley in the western portion of Pitkin County and serves an area in the southeastern portion of Garfield County, Colorado. The Ditch Company has approximately 8.5 miles of distribution ditch starting at the Diversion 9 miles south of the intersection of Highway 82 and 133 at Carbondale, Colorado. The service area is 740 acres in size and is known locally as East Mesa of the Crystal River and lies 1 to 5 miles south of Carbondale, Colorado.

The diversion is specifically located at: 39 degrees 17' 37.05" N 107 degrees 12' 59.81" W.
The elevation at the diversion is 6530 feet.

The ditch company serves 12 users including private landowners and homeowners associations. The users are approximately 100% agricultural. The East Mesa Water Company provides water to irrigate about 740 acres of land. Irrigated acreage within the service area is primarily used for cattle

ranching, nursery trees, and to grow hay and forage crops. The hay crop is used as cattle and horse feed, or is sold.

The Crystal River Valley area, Pitkin County and Garfield County, is seeing rapid population growth and development. This growth puts demands on the water in the Crystal River and Roaring Fork River for agriculture irrigation, recreation, municipal and industrial uses. The East Mesa Water Company has increased its number of shareholders of 6 in 1977 to 12 shareholders currently.

The area is greatly influenced by recreation, tourism and increased population, creating major changes in agriculture uses of the land and water. The water resources are having additional demands from domestic uses and industrial uses because of this growth.

Hydrology and Water Rights

Water for the East Mesa Water Company is supplied by a direct diversion from the Crystal River delivered through an open ditch to shareholders of the East Mesa Water Company. The diversion from the river is located 9 miles south of the intersection of highway 82 and 133 on the east side of the River.

Total Water Rights are 41.8 CFS.

31.8 CFS direct flow irrigation right in the East Mesa Ditch on the Crystal River, decreed in Civil Action No. 990, District Court, Garfield County, with an adjudication date of December 12, 1902, and an appropriation date of August 10, 1894.

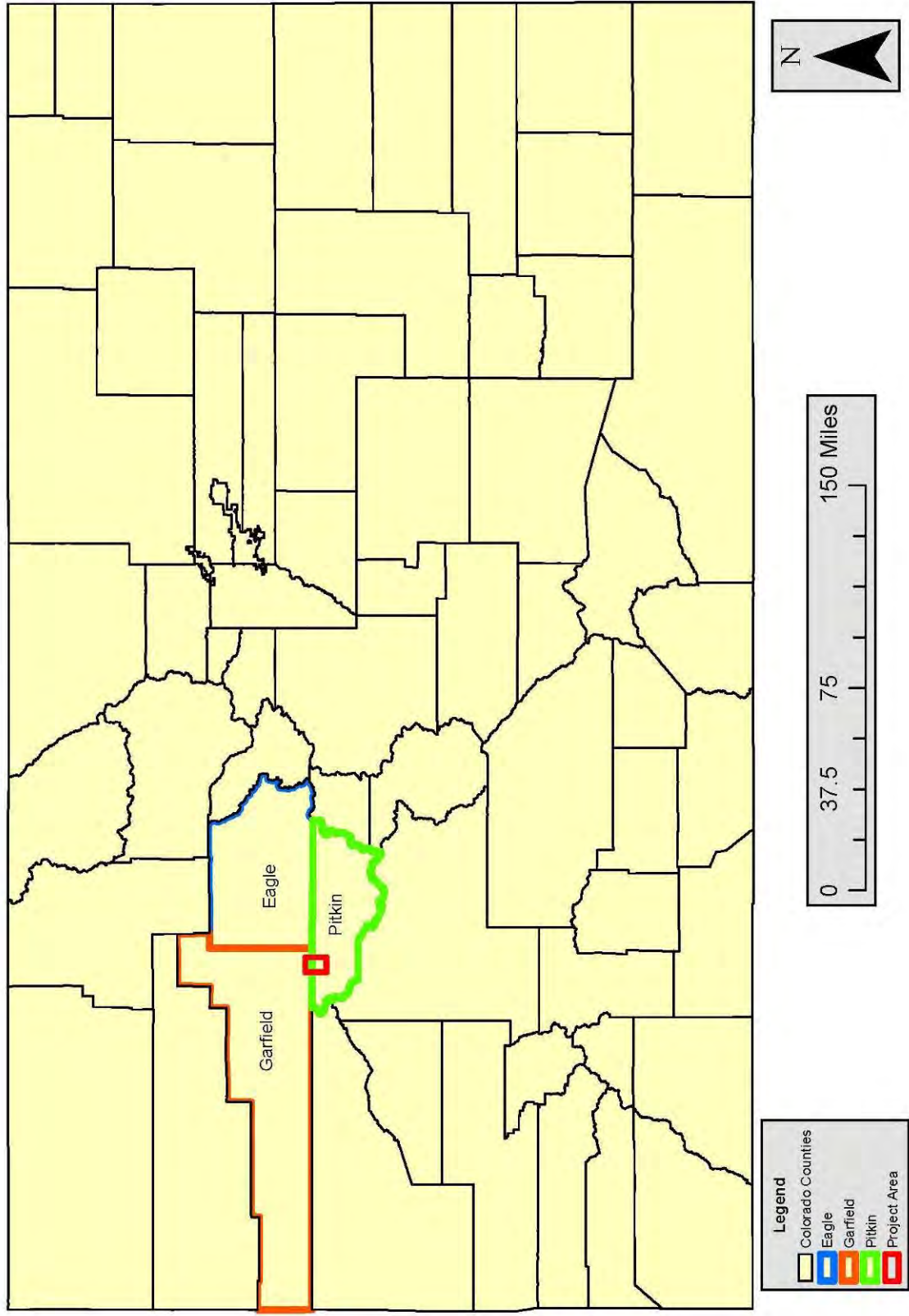
10.0 CFS direct flow irrigation, domestic and other beneficial use water right in the East Mesa Ditch on the Crystal River, decreed in Civil Action No. 4033, District Court, Garfield County, with an adjudication date of October 24, 1952, and an appropriation date of May 1, 1942.

The Ditch is usually turned on in the first two weeks of May and runs until about the middle of October.

General Location Map

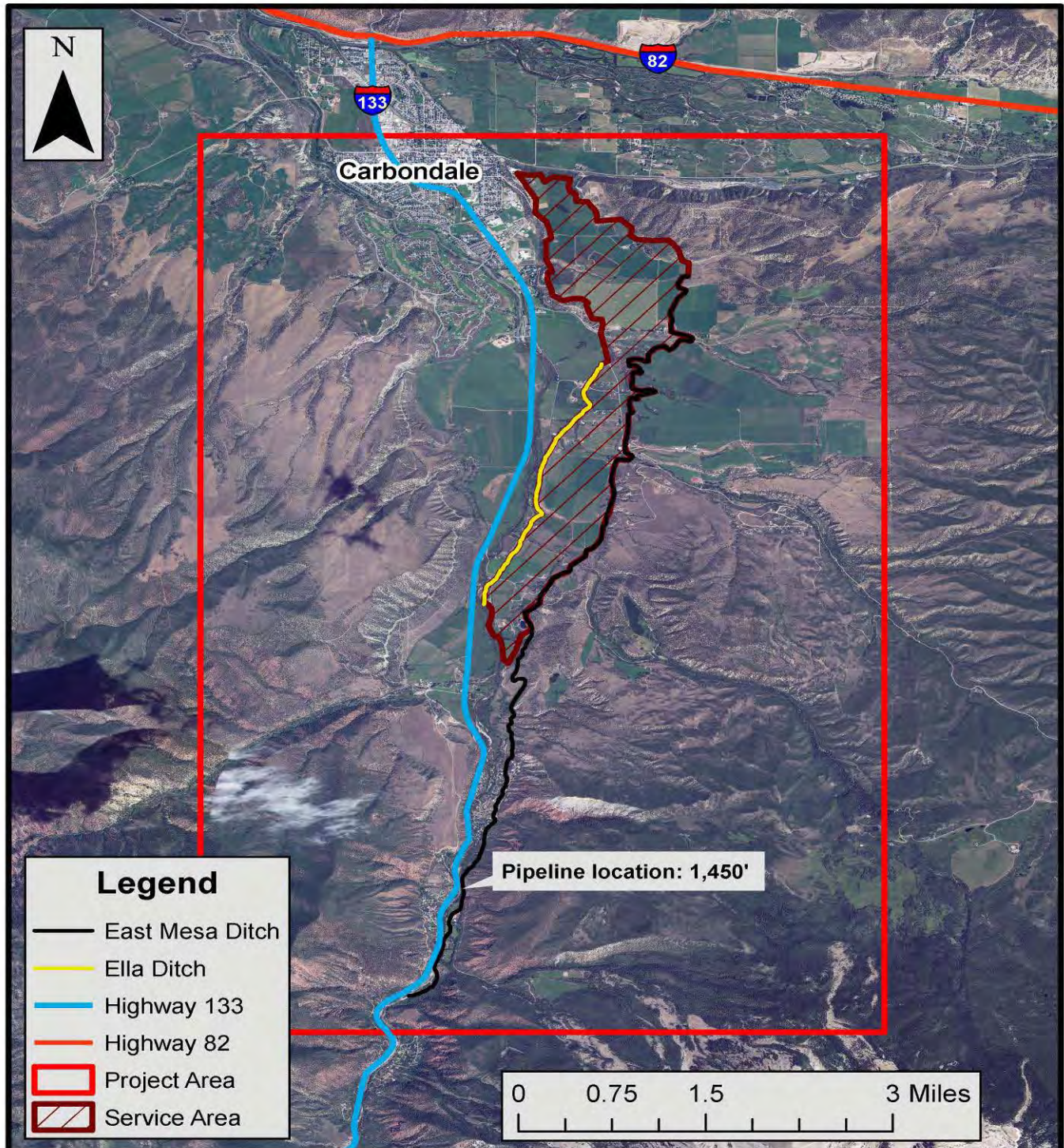
East Mesa Water Company Pipeline Project

State Overview Map



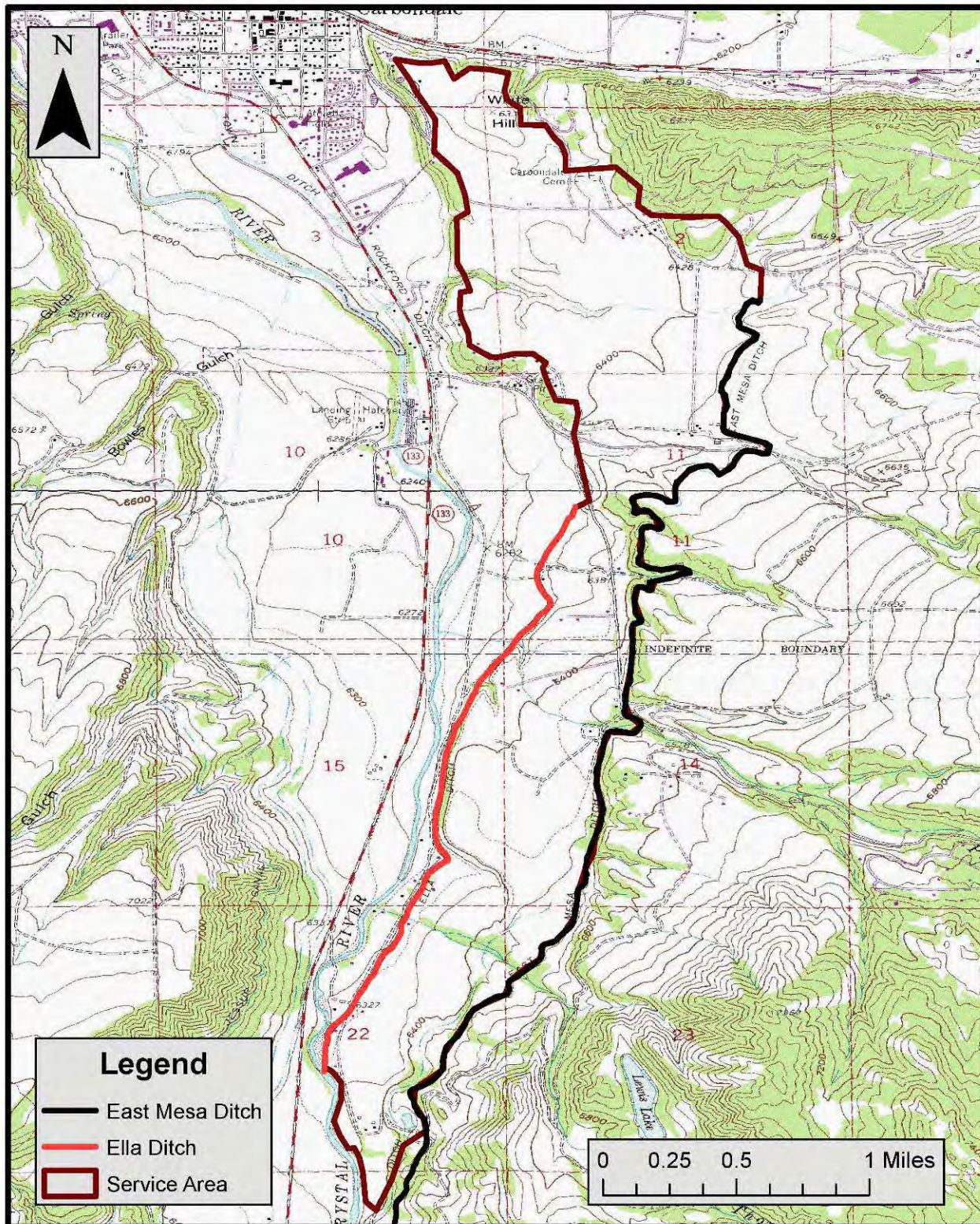
Detailed Location Map

East Mesa Water Company Pipeline Project Project Area Map

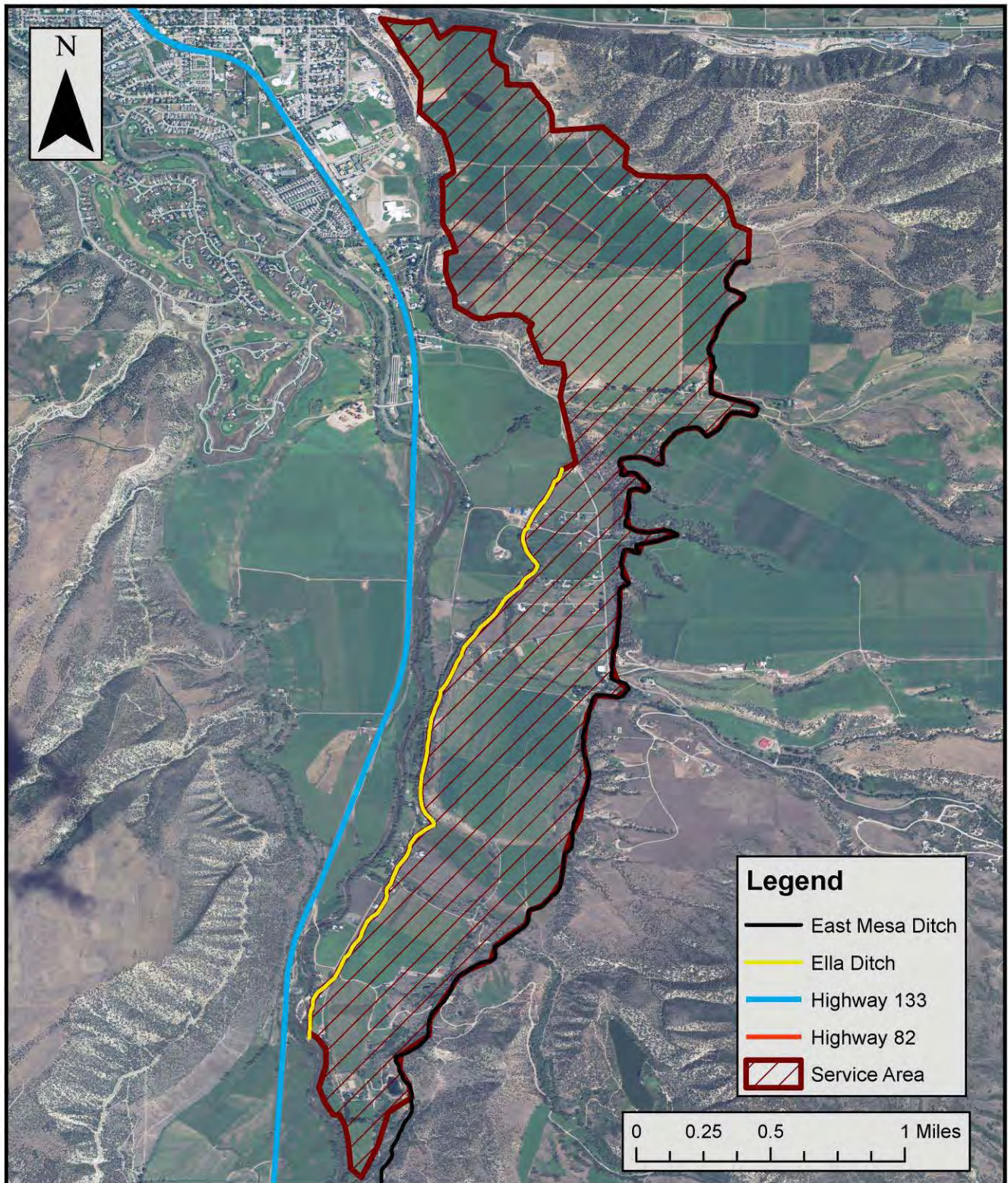


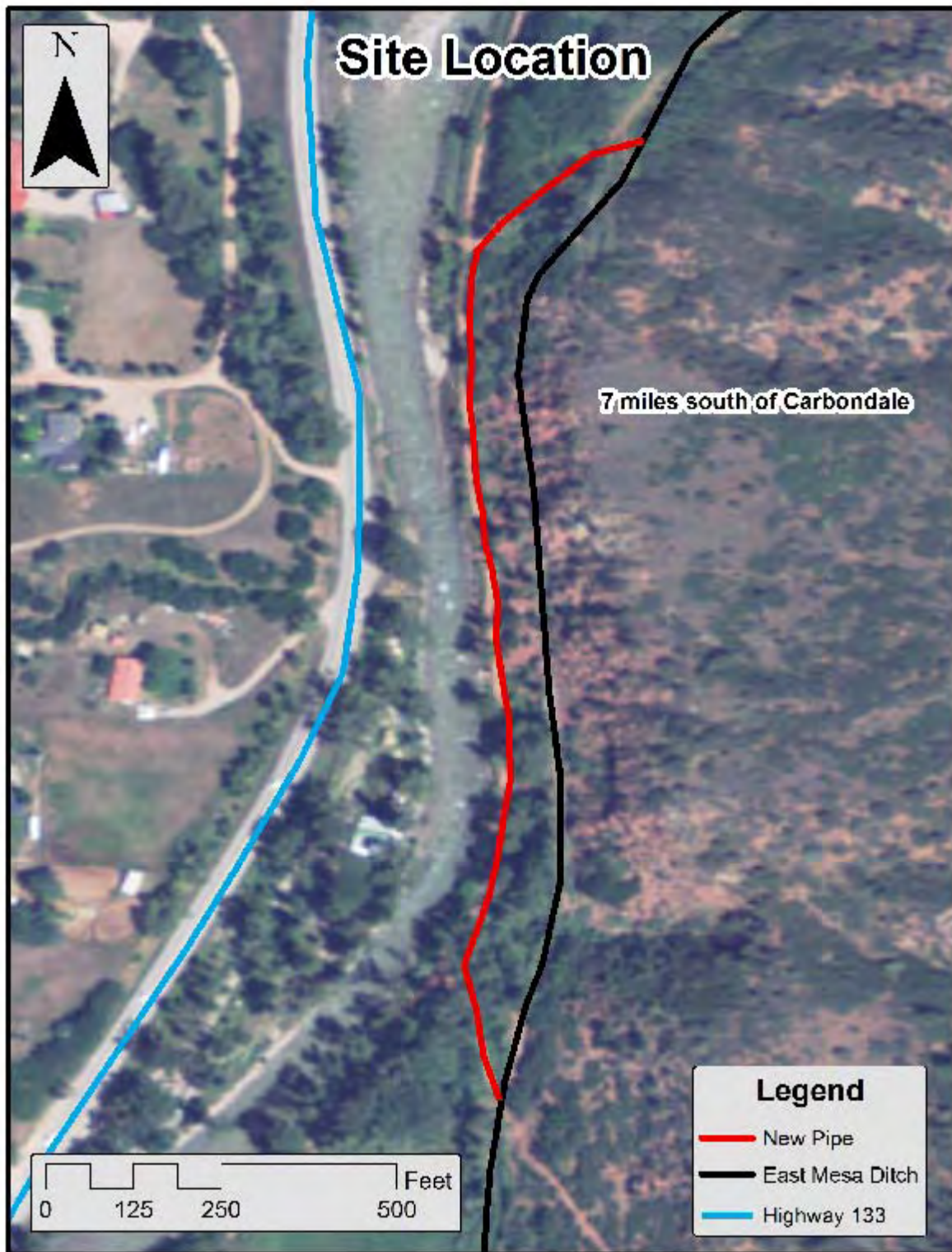
Topography Map of Project Area

East Mesa Water Company Pipeline Project



East Mesa Water Company Pipeline Project Service Area Map





Local Site Location

Photos of Project area



Town of Carbondale, CO waterline in area of proposed East Mesa Pipeline



Photo showing elevation difference between existing ditch and Crystal River



One of several rock slide and debris flow areas along proposed pipeline section



End of pipeline and start of Rock tunnel.



Repair of collapsing pipeline.



Existing pipeline to be replaced by new pipeline route



Typical Ditch just upstream from proposed beginning of new pipeline



Typical ditch downstream from outlet of existing tunnel and near location of new pipeline to outlet



Tunnel outlet looking out (downstream)



Tunnel outlet looking into tunnel (upstream)



Tunnel outlet overview



Proposed route to leave lower roadway and rise up to existing ditch below tunnel
Blue flags show Carbondale Town Water pipeline route



Proposed Pipeline route in old road way with phone line box and inlet to Bain Thomas Ditch



Photo showing steep rock cliff the existing tunnel and ditch traverse

Project Description and Alternatives

The purpose of this project is to provide a means for the East Mesa Water Company to continue providing irrigation water to shareholders while minimizing water loss and maintaining the operation of the existing delivery system. Three alternatives were considered:

1. The no-action alternative.
2. Bore a new tunnel and or rebores and support existing tunnel.
3. Piping the ditch with 42 inch diameter HDPE plastic pipe for 1450 feet.

Alternative No. 1 was considered unacceptable since it means the East Mesa Water Company will be subject to failure of the ditch due to collapse of the tunnel and continue to lose water due to seepage.

Alternative No. 2 this alternative is not feasible because of accessibility and cost.

Alternative No. 3 was selected, since it is considered to be the least costly reliable approach.

The selected alternative, Alternative No. 3, involves purchase and installation of 1450 ft. of HDPE plastic pipe to construct an inverted siphon to bypass the existing collapsing tunnel. Design will be completed by the suppliers Glenwood Springs NRCS office Colorado State NRCS Engineer and Staff. . This also includes needed concrete and other structural needs and rock riprap designed by the Glenwood Springs Office of the Natural Resources Conservation Service (NRCS). NRCS is preparing any additional engineering designs and cost estimates for the project. Engineering design and plans as prepared by the NRCS will be provided. .

The estimated cost of the completed project is \$550,000. The cost breakdown is summarized in Table 1. The NRCS Preliminary Design report and detailed cost estimate are included in Appendix D.

**Table 1. East Mesa Water Company
Irrigation Ditch Lining Project - Cost Estimate**

Estimated Budget:

Mobilization	\$5,000.00
Earthwork	\$10,000.00
Concrete inlet Structure 5 CY	\$10,000.00
HDPE plastic pipe 1450 ft of 42 diameter	\$200,000.00
Installation	\$275,000.00
10% engineering and contingencies permits	\$50,000.00
Total	\$550,000.00

Implementation Schedule

The NRCS is expected to complete the final design by mid-October 2013. Construction is expected to begin November 2013 and to be completed before water is turned on in May 2014.

Permitting

All easements and rights of way are being arranged. The Company expects to be exempt from 404 permitting by statutory exemption, 33 CFR Section 323.4(a) 3. This will be confirmed with the Army Corps of Engineers. And the preferred option will not be within the flood plain of the Crystal River.

Some permits may be required by Pitkin County.

Institutional Considerations

Entities that are, or may be, involved in the design, construction, and financing of the project include:

East Mesa Water Company;--financing and project management
Natural Resources Conservation Service (NRCS); -- design, and construction.
Colorado Water Conservation Board (CWCB); -- financing and construction,

The Ditch Company will be applying for additional grants to assist in the funding of this project. Some of the sources of fund to be applied for are:

USDA - NRCS Environmental Quality Incentive Program has be approved for \$300,000.00
Colorado River Water Conservation District - Grant Program (may apply in Jan 2014)

The East Mesa Water Company will be the lead for the financing, design, and construction of the project and will be the entity entering into contracts and agreements with the various entities for the services provided by each.

Entities that are, or may be, involved in the design, construction, and financing of the project include:

1. East Mesa Water Company; financing and project management.
2. Natural Resources Conservation Service (NRCS); design, and construction.
3. Colorado Water Conservation Board (CWCB); financing and construction,

Several entities will be involved in financing the estimated total project cost of \$550,000. The East Mesa Water Company is applying for a loan from the CWCB in maximum amount of \$550,000.00. The actual or estimated amounts by entity are given in Table 2.

**Table 2. Sources of Funding
(actual as of 1-31-2013)**

Funding Sources:

NRCS EQIP cost share	\$300,000.00
Colorado Water Conservation Board Revolving Loan	\$250,000.00
Total	\$550,000.00

The East Mesa Water Company will cover any costs that exceed the estimated project cost.

The East Mesa Water Company is requesting \$550,000.00 loan for 30-year from the CWCB. The standard agricultural lending rate would be 3%, resulting in annual payments of \$24,458. To this would be added \$2,446 per year for the first 10 years to fund the emergency reserve account, for a total annual cost of \$26,903. **estimated**

Table 3 is a summary of the financial aspects of the project. Annual assessments are \$15.00 per share. With project future assessments will be \$35.00 to \$45.00 per share.

**The increase in annual assessments is to be determined.

Table 3. Financial Summary

Project Cost	\$550,000
Loan Amount (75% of Project Cost)	\$250,000
CWCB Loan Payment Amount, including 10% loan reserve	\$15,903
Number of Shareholders	12
Number of Shares of Stock	1003
Current Assessment per Share	\$15.00
Future Assessment per Share	**see above
Annual Project Cost per acre-foot (Average annual diversions: 4,480 acre-feet)	

Since all other funding for the project is in the form of grants, the Company would have no other debt service on this project. Operation and maintenance costs are expected to decrease with the new diversion structure, and can be accommodated by the Company's existing budget.

Potential Funding

The Ditch Company will be applying for additional grants to assist in the funding of this project. Some of the sources of fund to be applied for are:

USDA - NRCS Environmental Quality Incentive Program
Colorado River Water Conservation District - Grant Program

A Grant application may be submitted requesting additional help to the Colorado River Water Conservation District in January of 2014. The amount requested will be determined at the time of application. Any Funding received will be used to pay off the loan from the Colorado Water Conservation Board revolving Loan.

Funds received will vary from requested amount because of program limits as actual funds are approved.

East Mesa Water Company employer id number is 84-1612324.

East Mesa Water Company

The ditch assessment is normally \$15.00 to \$18.00 per share. 1003 Shares in Company

2012 Assessed income	\$15120.00
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Expenses for 2012 were:

Insurance	\$ 2309.00
Transportation	\$380.00
Fuel	\$545.50
Repairs and Main	\$2781.00
Professional fees	\$2951.00
Engineering cost	\$250.00
Bank fees	\$75.00
Depreciation	\$2709.00

Total expenses	\$12000.50
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If all Grants were approved at requested amounts

Sources of Funding

Ditch Company funds	\$0.00
USDA - NRCS Environmental Quality Incentive Program	\$300,000.00
Colorado River Water Conservation District - Grant Program	????
Colorado Water Conservation Board Revolving Loan	\$250,000.00
Total	\$550,000.00

Credit worthiness: East Mesa Water Company has no existing debt. Table 4 shows the Financial Ratios for the East Mesa Water Company and indicates average to strong ability to repay with the project in place.

The East Mesa Water Company operates on assessments of the water users. For many years the Ditch Company has kept the assessments as low as possible as many of the users are just getting by. A major project like this could cause the failure of the ditch company and leave the water unused if loans and grants are not obtained.

Table 4. Financial Ratios

<i>Financial Ratio</i>	<i>Without the project</i>	<i>With the project</i>
Operating Ratio (revenue/expense)		
Debit Service Coverage Ratio (revenues-expenses)/debt service		
Cash Reserves to Current Expense		
Annual Cost per acre-foot (15,000 acre-feet diverted.)		

Annual income at \$15.00 per (1003 Shares) \$15,045.00. Expenses run an average of \$15,000.00per year.

Alternative financing considerations: The East Mesa Water Company has investigated alternative financing sources. They have obtained an in-kind grant from the NRCS for engineering design and construction inspection.

The Ditch Company has requested and are tentatively approved for a grants from Natural Resources Conservation Service, USDA, EQIP (Environmental Quality Incentive Program)

Collateral: As security for the CWCB loan the East Mesa Water Company can pledge assessment income, water rights and the structure and pipeline itself.

Economic Analysis

The economic benefit of the project is considerable. The Mount Sopris Conservation District estimates the value of property affected to be \$7.8 million (780 ac.X \$10,000.00), within the 780 - acre service area. The short-term damage in the event of ditch failure to this area is loss of hay and pasture production and physical and environmental effects. Hay production loss alone would be almost \$500,000 (780 ac. At 3 ton per acre times \$200 per ton = \$468,000.00 per year) the loss in land value and water value is unknown and may be incalculable.

Social and Physical Impacts

This project lies in the Crystal River Valley in the northern portion of Pitkin County and in the southern portion of Garfield County, Colorado. The Ditch is approximately 8 miles long, starting at diversion out of the Crystal River about 9 Miles south of Carbondale Colorado. The area is known locally as East Mesa and is located south of Carbondale, Colorado. Increased population, recreation and tourism are causing increased demands on water resources in the valley for both domestic uses and recreation uses. The water resources are having additional demands and uses put on them because of this growth.

The project will have no significant *social impacts*, since it will assure the continued operation of a currently existing irrigation system. The project will have minor physical impacts, once construction is complete.

The East Mesa Water Company is experiencing changes in Agriculture use of water. The Agricultural use is changing to smaller land owners growing hay and pasture, some nursery and tree farms and conventional agriculture crops.

Conclusions

1. The East Mesa Water Company is an incorporated entity in the State of Colorado with the ability to enter into a contract with the CWCB for the purpose of obtaining a Construction Fund loan.
2. Rights-of Way easements are adequate for the construction of this project.
3. The project would provide for the continued delivery of irrigation water to share holders.
4. The total estimated cost of the project is \$550,000.00 and this will be financed, in part, by in-house financing, in-kind services, and various grants that are being applied for. The East Mesa Water Company is applying for a \$550,000 loan from the CWCB Construction Fund for the amount not covered by other grants.
5. East Mesa Water Company is eligible for a loan from the CWCB Emergency Infrastructure Repair Account because the project is necessary to avoid unreasonable risk of injury or damage to human health or well-being or to property or crops, and because the emergency condition is not the result of negligence in the operation or maintenance of the infrastructure.
6. The project is technically and financially feasible.

Appendix A

Articles of Incorporation

**See attached pdf File named
East Mesa Water Company Articles of Incorp**

By-Laws

**See attached pdf File named
East Mesa Water Company Bylaws**

Appendix B

Water Rights Summary And State Engineer Diversion Reports

**See Attached pdf file named
State Engineer record reports**

**NRCS Preliminary Design Report
And
Cost Estimate**

This information included throughout this report.

Appendix C

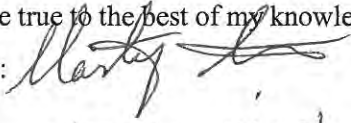
CWCB Loan Application CWCB Memorandum of Loan Approval

Water Supply Reserve Account – Application Form

Revised October 2013

The above statements are true to the best of my knowledge:

Signature of Applicant:



Print Applicant's Name: MARTY NIESLANIK - EAST MESA WATER COMPANY

Project Title:

Return an electronic version (hardcopy may also be submitted) of this application to:

Craig Godbout – WSRA Application
Colorado Water Conservation Board
1580 Logan Street, Suite 200
Denver, CO 80203
craig.godbout@state.co.us