



**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:** March 16-17, 2016 Board Meeting

**AGENDA ITEM:** 10a - Change to Existing Loans  
Pagosa Area Water and Sanitation District - Loan Restructuring

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## Introduction

At the January, 2015 CWCB Board meeting, the Board approved a loan restructuring proposal with the Pagosa Area Water and Sanitation District (PAWSD), for CWCB loan contract C150261. CWCB loan contract C150261 was for the purchase of land at the site of the proposed Dry Gulch Reservoir (Project), located near the Town of Pagosa Springs, Colorado. The proposal approved by the Board allowed for the San Juan Water Conservation District (SJWCD) to manage the Project, with participation from PAWSD, while providing PAWSD sufficient debt relief to address its immediate water infrastructure and distribution needs. The intent of the proposal was to provide all entities with the necessary financial flexibility, security, and oversight to allow the Project the necessary time to develop.

## Discussion

Since the November 2015 Board meeting, the “Agreement to Restructure Colorado Water Conservation Board Dry Gulch Reservoir, Loan Contract Number C150261” (Restructure Agreement) was formally executed on July 22, 2015. Since that time and during the CWCB loan amendment process, however, it was determined that the collateral requirement specified within the Restructure Agreement would not be allowed by Article XI, Section 6 of the Colorado Constitution and should not have been included in the Restructure Agreement, *i.e.*, Section 2.2.8.2 and Section 2.4.5.2, which sections both provide that the Amended Loan Contracts will grant CWCB a lien on the entire Running Iron Ranch.

In an attempt to resolve the collateral issues associated with the lien, staff has met with PAWSD and SJWCD staff and legal counsel, and the Attorney General Office to research various options in providing additional security to the CWCB either through stronger remedy language and specific performance language in the Restructure Agreement and/or through a recorded notice. After careful consideration of the long term solvency of PAWSD, the security that will remain in-place (revenue assessments/rate covenant) and the goal of the Restructure Agreement to allow sufficient time for the Project to be successful, staff believes that the following documents address CWCB’s concerns sufficiently:

- 1) “Amendment to Agreement to Restructure Colorado Water Conservation Board Dry Gulch Reservoir Loan Contract C150261”. This Amendment would:



- a. Section 2.2.8.2 of the Restructure Agreement is stricken in its entirety. (See Attached Restructure Agreement)
  - b. Section 2.4.5.2 of the Restructure Agreement is stricken in its entirety. (See Attached Restructure Agreement).
  - c. Adds new Section 8.14 to the Restructure Agreement. Remedies. The Amended Loan Contracts shall contain an acknowledgment by the parties thereto that the Amended Loan Contracts may be enforced in law or in equity by a decree of specific performance, damages, or other such legal and equitable relief as may be available under the laws and statutes of the State of Colorado.
  - d. Adds a new Section 8.15 to the Restructure Agreement. Specific Performance. In addition to any of the remedies the Parties may have under the Amended Loan Contracts, upon a sale of the Running Iron Ranch and a failure by PAWSD and SJWCD to pay all amounts then due under the terms of this agreement, the Amended Loan Contracts shall provide that CWCB shall have a right to request a court of proper jurisdiction to enter a mandatory injunction against the PAWSD and SJWCD requiring specific performance of the terms contained in the Amended Loan Contracts, including payment of all amounts due under the terms thereof.
  - e. No Other Changes. Except as expressly set forth herein, there would be no further changes to the Restructure Agreement and the Restructure Agreement would remain in full force and effect. The Parties would recognize and agree that this amendment to the Restructure Agreement is necessary.
- 2) “Memorandum Giving Notice of Agreement Affecting Real Property”. The Memorandum would :
- a. The Amended Loan Contracts, with all of their terms, covenants, and other provisions, would be referred to and incorporated into this Memorandum for all purposes. The Memorandum would be placed into record for the purpose of giving notice of the Amended Loan Contracts and the Agreement to Restructure.
  - b. This Memorandum is not intended to, and does not, add to, enlarge, reduce or otherwise modify the rights, obligations and duties granted and imposed by the terms of the Amended Loan Contracts.
  - c. The Memorandum could be executed in counterparts.

### **Staff Recommendation**

The Board authorizes the Director of the Colorado Water Conservation Board to work with the Pagosa Area Water and Sanitation District, and the San Juan Water Conservancy District, to execute the following documents described below and as attached:

- 1) “Amendment to Agreement to Restructure Colorado Water Conservation Board Dry Gulch Reservoir Loan Contract C150261”.
- 2) “Memorandum Giving Notice of Agreement Affecting Real Property”.

**AMENDMENT TO  
AGREEMENT TO RESTRUCTURE COLORADO WATER  
CONSERVATION BOARD DRY GULCH RESERVOIR  
LOAN CONTRACT NUMBER C150261**

**THIS AMENDMENT TO AGREEMENT TO RESTRUCTURE COLORADO WATER CONSERVATION BOARD DRY GULCH RESERVOIR LOAN CONTRACT NUMBER C150261** ("Amendment") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the State of Colorado, acting by and through the Department of Natural Resources, Colorado Water Conservation Board ("CWCB"), the Pagosa Area Water And Sanitation District, acting by and through its Water Activity Enterprise ("PAWSD"), and the San Juan Water Conservancy District ("SJWCD"). PAWSD and SJWCD are each quasi-municipal corporations and political subdivisions of the State of Colorado.

**WHEREAS**, the Parties entered into the Agreement To Restructure Colorado Water Conservation Board Dry Gulch Reservoir Loan Contract Number C150261 (the "Restructure Agreement") on July 22, 2015, which Restructure Agreement contemplates certain amendments to be made to said Loan Contract Number C150261 (such amendments being referred to herein as the "Amended Loan Contracts"); and

**WHEREAS**, the Parties have concluded that certain provisions of the Amended Loan Contracts contemplated by the Restructure Agreement would not be allowed by Article XI, Section 6 of the Colorado Constitution and should not have been included in the Restructure Agreement, *i.e.*, Section 2.2.8.2 and Section 2.4.5.2, which sections both provide that the Amended Loan Contracts will grant a "lien on the entire Running Iron Ranch" in favor of the CWCB; and

**WHEREAS**, the Parties desire to amend the Restructure Agreement as described below.

**NOW, THEREFORE**, in consideration of the promises of the Parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed that the Restructure Agreement be amended as follows:

1. Section 2.2.8.2 is stricken in its entirety.
2. Section 2.4.5.2 is stricken in its entirety.
3. Add new Section 8.14. Remedies. The Amended Loan Contracts shall contain an acknowledgment by the parties thereto that the Amended Loan Contracts may be enforced in law or in equity by a decree of specific performance, damages, or other such legal and equitable relief as may be available under the laws and statutes of the State of Colorado.
4. Add a new Section 8.15. Specific Performance. In addition to any of the remedies the Parties may have under the Amended Loan Contracts, upon a sale of the Running Iron Ranch and a failure by PAWSD and SJWCD to pay all amounts

then due under the terms of this agreement, the Amended Loan Contracts shall provide that CWCB shall have a right to request a court of proper jurisdiction to enter a mandatory injunction against the PAWSD and SJWCD requiring specific performance of the terms contained in the Amended Loan Contracts, including payment of all amounts due under the terms thereof.

5. No Other Changes. Except as expressly set forth herein, there are no further changes to the Restructure Agreement and the Restructure Agreement remains in full force and effect. The Parties do recognize and agree that this amendment to the Restructure Agreement is necessary.

IN WITNESS WHEREOF the Parties hereto have caused this Amendment to be executed and effective as of the date first above written.

**Colorado Water Conservation Board  
Improvement District**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**Pagosa Area Water and Sanitation  
District**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**San Juan Water Conservation District**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**MEMORANDUM GIVING NOTICE  
OF AGREEMENT AFFECTING REAL PROPERTY**

State: Colorado  
County: Archuleta  
Parcel Nos.: 570105400016; 570105400019; 570108100001; and 570108100014  
Effective Date: June 29, 2015

WHEREAS, the Pagosa Area Water and Sanitation District, a political subdivision of the State of Colorado and a quasi-municipal corporation, acting by and through its Water Activity Enterprise ("PAWSD"), and the San Juan Water Conservancy District ("SJWCD"), a political subdivision of the State of Colorado and a quasi-municipal corporation are the co-owners of the above-listed parcels of real property located in Archuleta County, Colorado, commonly referred to as the Dry Gulch location, which property was purchased for the purpose of developing a water storage facility (the "Project"); and

WHEREAS, the State of Colorado, acting by and through the Colorado Water Conservation Board ("CWCB"), approved a grant (Contract No C150408) to SJWCD for one million dollars (\$1,000,000.00) (the "Grant") to be used in connection with the purchase of the land for the Project. The CWCB also approved a loan to PAWSD for eleven million, two hundred and seventeen thousand dollars (\$11,217,000.00) (the "Loan") as financing for the purchase of the land for the Project pursuant to a Loan Contract (Contract No. C150261) dated as of July 21, 2008 (the "Original Contract") between CWCB and PAWSD; and

WHEREAS, the Grant and the Loan structure were modified pursuant to the CWCB approved Amendment No. 1 dated April 30, 2013 ("Amendment No. 1") between CWCB and PAWSD, which Amendment No. 1 reduced the principal amount of the Loan to \$9,219,363.70, being an amount equal to the total amount drawn on the Loan; and

WHEREAS, PAWSD, SJWCD and CWCB have entered into an Agreement To Restructure Colorado Water Conservation Board Dry Gulch Reservoir Loan Contract Number C150261 dated July 22, 2015, which contemplated a restructuring of the Loan into two separate Loans ("Loan A" and "Loan B"), and which has subsequently been amended by an Amendment To Agreement To Restructure Colorado Water Conservation Board Dry Gulch Reservoir Loan Contract Number C150261 dated as of [\_\_\_\_\_, 2016 by and among CWCB, PAWSD and SJWCD ("as so amended, the "Agreement to Restructure"); and

WHEREAS, as contemplated by the Agreement to Restructure, PAWSD and CWCB have entered into (a) an Amendment No. 2 to the Original Contract dated as of [\_\_\_\_\_, 2016 ("Amendment No. 2") to provide for the terms and provisions applicable to Loan A, and (b) the Loan Contract (Contract No. CT2016-1697) dated as of [\_\_\_\_\_, 2016 (the "Loan B Contract" and, together with the Original Contract, as amended by Amendment No. 1 and Amendment No. 2, the "Amended Loan Contracts") to provide for the terms and provisions applicable to Loan B; and

WHEREAS, the Amended Loan Contracts contain specific obligations of and restrictions upon PAWSD should PAWSD elect to sell the Project property; and

WHEREAS, as additional security to CWCB concerning the repayment obligations of PAWSD and SJWCD, the Parties desire to memorialize the obligations of the parties pursuant to the Amended Loan Contracts, which include a right of first refusal granted to CWCB should PAWSD desire to sell the Project property to any person or entity not a party to the agreements described herein; and

NOW, THEREFORE, in consideration of the promises of the Parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

The Amended Loan Contracts, with all of their terms, covenants, and other provisions, are referred to and incorporated into this Memorandum for all purposes. This Memorandum is placed of record for the purpose of giving notice of the Amended Loan Contracts and the Agreement To Restructure.

This Memorandum is not intended to, and does not, add to, enlarge, reduce or otherwise modify the rights, obligations and duties granted and imposed by the terms of the Amended Loan Contracts.

This Memorandum may be executed in counterparts.

This Memorandum is signed by the parties as of the date of acknowledgement of their signatures, but is effective for all purposes as of the Effective Date stated above.

**CWCB**

\_\_\_\_\_  
Director, James Eklund

\_\_\_\_\_  
Date

**PAWSD**

\_\_\_\_\_  
Director, Renee Lewis

\_\_\_\_\_  
Date

**SJWCD**

\_\_\_\_\_  
President, Rodney Proffitt

\_\_\_\_\_  
Date

**AGREEMENT TO RESTRUCTURE COLORADO WATER CONSERVATION  
BOARD DRY GULCH RESERVOIR LOAN CONTRACT NUMBER C150261**

THIS AGREEMENT is entered into as of the last date any party signs this Agreement, by and between the State of Colorado, acting by and through the Department of Natural Resources, Colorado Water Conservation Board ("CWCB"), and the Pagosa Area Water and Sanitation District acting by and through its Water Activity Enterprise ("PAWSD"), a political subdivision of the State of Colorado and a quasi-municipal corporation, and the San Juan Water Conservancy District ("SJWCD"), a political subdivision of the State of Colorado and a quasi-municipal corporation. CWCB, PAWSD, and SJWCD shall collectively be referred to herein as "Parties".

1. Recitals.

WHEREAS, substantial time and effort was done to evaluate the long term water needs of southwest Colorado, and in particular, Archuleta County, by Southwestern Water Conservation District initially, and then by PAWSD and SJWCD. A 1989 supply and demand study concluded water storage for approximately 12,000 acre feet of water was needed for future growth through 2040. Of the potential sites reviewed, the Dry Gulch location was determined to be the best prospect; and

WHEREAS, in 2002, after a severe drought, coupled with massive wildfires, PAWSD and SJWCD started working toward developing a water storage facility at the Dry Gulch location, including acquisition of the site, permitting, cost estimates, engineering, etc. ("the Project"); and

WHEREAS, the CWCB approved a grant (Contract No. C150408) to SJWCD for one million dollars (\$1,000,000.00) ("the Grant") to be used in the purchase of land for the Project. The CWCB later approved a loan (Contract No. C150261) to PAWSD for \$11,217,000 ("the Loan") to finance the purchase of land for the Project; and

WHEREAS, PAWSD and SJWCD purchased the Running Iron Ranch for the sum of \$10,219,363, which utilized the full amount of the Grant and \$9,219,363 of the Loan. Running Iron Ranch consists of approximately 660 acres along with water rights represented by shares of stock in the Park Ditch Company and encumbered by leases, including as described in the documents recorded at reception numbers: 20800088, 20800089, 20800090, 20800091, 20800092, 20800093, 20800094, 20800097, 20800101, 20800102 in Archuleta County, Colorado (hereinafter collectively referred to as "Running Iron Ranch"). No further purchases of land were made for the Project; and

WHEREAS, PAWSD elected to close out the Loan in September 2012. On April 30, 2013, the CWCB approved Amendment No. 1 to the Loan, which modified the principal amount due from \$11,217,000 to \$9,219,363 to be repaid over thirty (30) years with 3.5% interest per annum. Since that date, PAWSD has made two annual payments of \$501,269.08 each, leaving a current balance due of \$8,855,930.32. The Parties acknowledge the Loan and Grant Contract are not in default or breach of any kind; and

WHEREAS, the Parties have agreed, one to the other, to restructure the outstanding Grant and the Loan, on terms and conditions which will allow the Project to go forward, provide debt relief to PAWSD, will protect the CWCB's financial commitment to the Project, support PAWSD's efforts at conservation and best practices allowing it to carry out its mission to ratepayers, and support SJWCD in its mission to provide for the future water needs within its jurisdiction; and

WHEREAS, the Parties recognize the importance of holding on to the land already purchased as a whole, that partitioning the property or selling-off parts of the property would severely hamper and impede completion of the Project; and

WHEREAS, the CWCB has an interest in water supply and water storage for the basin and the success of the Project given the CWCB's substantial investments to date. While the CWCB cannot obligate future boards, it supports continued discussions between and amongst the Parties as well as continued steady application of effort in a reasonable expedient and efficient manner; and

WHEREAS, PAWSD and SJWCD supported a concept proposal submitted to CWCB for this restructuring of both the Loan and the Grant, which was approved at the January 2015 CWCB meeting; and

WHEREAS, the CWCB has been provided with a certified appraisal of the land purchased for the Project ("the Appraisal"), and is satisfied said Appraisal fully and fairly represents the current fair market value of the property at \$4,565,000 – which value includes both the fee simple estate of the land and shares in the Park Ditch (water rights) that were purchased with proceeds from the Loan and Grant; and

WHEREAS, there are additional conditional water rights associated with the Project, which represent a claim to approximately 11,000 acre-feet of water decreed in Case Nos. CA 308-D and 04CW85, Water Court, Water Division 7 which are currently subject to due diligence actions in water court. The Parties intend to support due diligence efforts as provided hereinafter and acknowledge the conditional water rights associated with the Project are important to the success of the Project; and



WHEREAS, the terms and conditions to restructure the Loan and the Grant are intended to provide the Parties with necessary financial flexibility, security and oversight appropriate to assure development of the Project is carried out in a timeframe and with sufficient resources to give the Project the best opportunity to mature and be successful.

THEREFORE, for and in consideration of the premises and the mutual covenants, conditions, and promises herein, the Parties agree as follows:

2. CWCB Loan Restructure Plan.

2.1. This Agreement to restructure the Loan is based upon the Appraisal. Following execution of this Agreement by all Parties, the CWCB will restructure the Loan into two separate loans: Loan A and Loan B.

2.2. Loan A:

2.2.1. The principal balance of Loan A will be ascertained by reducing the remaining principal balance of the Loan by the amount of the approved Appraisal. Therefore, the remaining principal balance will be reduced by the Appraised value (\$8,855,930.32 - \$4,565,000 = \$4,290,930.32)

2.2.2. The CWCB agrees to reduce the interest rate for Loan A from 3.5% for the Loan to 1.75%. The new principal balance of Loan A will be amortized over twenty (20) years so based on the example above, the new annual payment for Loan A will be \$256,130.89.

2.2.3. As a condition of the interest rate reduction, PAWSD agrees to use no less than fifty percent (50%) of the annual payment savings for the repair and replacement of its current aging water distribution system to address leakage. The annual payment saving to PAWSD will be \$245,138.19.

2.2.4. All of PAWSD's leakage reduction efforts shall be consistent with the American Water Works Association Water, Audits and Loss Control Program, M36 Manual of Water Supply Practice.

2.2.5. PAWSD's leakage reduction efforts shall continue until the delivered supply to metered usage ratio for PAWSD's water distribution system reaches a level determined acceptable by the American Water Works Association Water, Audits and Loss Control Program, M36 Manual of Water Supply Practice.

2.2.6. Once an acceptable delivered supply to metered usage ratio for its water distribution system has been achieved pursuant to Paragraph 2.2.5 herein, PAWSD will be allowed to apply the entire annual payment reduction amount to debt reduction.

2.2.7. PAWSD shall provide the CWCB with an annual report regarding leakage reduction and prevention measures that have been accomplished that year no later than September 1 of each year.

2.2.8. Loan A Security: The security for Loan A shall consist of:

2.2.8.1. A Pledge of Revenues backed by a Rate Covenant from the PAWSD; and

~~2.2.8.2. A lien on the entire Running Iron Ranch.~~

2.3. The remaining outstanding principal balance of the Loan equals the approved appraised value of the Running Iron Ranch and will be converted into a separate Loan B.

2.4. Loan B:

2.4.1. The principal balance of Loan B will equal the approved appraised value of the Running Iron Ranch (\$4,565,000).

2.4.2. Loan B will have a forty (40) year term.

2.4.3. The first twenty (20) years of Loan B's term will incur no interest and no payment.

2.4.4. Beginning on the twentieth (20<sup>th</sup>) anniversary of the Loan B contract, Loan B will be amortized for twenty (20) years at an interest rate of 3.5%. The annual payment for Loan B will be \$321,198.32.

2.4.5. Loan B Security: The security for Loan B shall consist of:

2.4.5.1. A Pledge of Revenues backed by a Rate Covenant from the PAWSD; and

~~2.4.5.2. A lien on the entire Running Iron Ranch.~~

### 3. SJWCD Grant Amendment.

3.1. Concurrent with restructuring the Loan as described in Paragraph 2, the CWCB shall complete an amendment to the Grant. If the Project is not constructed, the Grant amendment will require PAWSD and SJWCD to return the \$1,000,000 grant funds Running Iron Ranch and compensate the CWCB for interest at the rate of 3.5% pursuant to the provisions of Paragraph 5. If the Project is constructed, the Grant shall remain a grant, and principal and interest shall not be repaid to CWCB, and the funds from the Grant shall remain as the SJWCD's vested interest in the Project.

4. Project Planning Period.

4.1. The twenty (20) year repayment term for Loan A will become the planning period for PAWSD and SJWCD to develop the Project (“Planning Period”).

4.2. At the end of the twenty (20) year Planning Period, or twenty (20) years from the date that the contract for Loan B is signed, the PAWSD, after consultation with the CWCB and the SJWCD, may elect to extend the Project planning period an additional one (1) to twenty (20) years (“Extended Planning Period”) or may elect to abandon the Project.

4.2.1. If the PAWSD elects to extend the Planning Period, it shall begin annual payments on the principal and interest for Loan B pursuant to the terms of the contract for Loan B.

4.2.2. The PAWSD may decide to abandon the Project and sell the Running Iron Ranch pursuant to the terms of Paragraph 5 below.

4.3. At the end of the Planning Period, if the Project is not constructed, the PAWSD must provide the CWCB and SJWCD with written notice pursuant to the provisions herein of the PAWSD’s decision either to extend the Planning Period or abandon the Project and sell the Running Iron Ranch.

4.4. Use of Project water and water court diligence proceedings:

4.4.1. The Parties agree that it is in all Parties’ best interests to protect the conditional water rights associated with the Project and each Party agrees to cooperate with the others to accomplish this goal.

4.4.2. The Parties’ cooperation includes, but is not limited to:

4.4.2.1. PAWSD agrees to acknowledge the Project and its attendant conditional water rights as a preferred option for its long term planning;

4.4.2.2. PAWSD agrees to include the Project and its attendant conditional water rights in the PAWSD’s planning documents as a principal storage option for future water demand growth that cannot be met by existing reservoirs;

4.4.2.3. PAWSD commits to an ongoing evaluation of future water purchases from the Project based on long-term demand projections, an evaluation of costs, and viable alternative sources of existing water;

4.4.2.4. PAWSD commits that any future water demands will first be met by the Project, unless those demands can be met with existing sources;

4.4.2.5. PAWSD further commits to making no infrastructure changes which would convey water appropriated under the set of West Fork water rights known as Pagosa Pipeline 3, 8 and 10 to any District 1 ditches, pipelines or reservoirs; and

4.4.2.6. PAWSD and SJWCD agree to file joint applications for finding of reasonable diligence for the Project's conditional water rights when required by the Water Court.

4.5. Project leadership.

4.5.1. The SJWCD shall lead the long-term management of the Project.

4.5.2. As Project leader, the SJWCD, in consultation with the CWCB and PAWSD, shall:

4.5.2.1. have the authority to use its best efforts, given the resources available, to take steps and actions to move the Project forward, including to attempt to acquire land necessary for the Project pool basin or to facilitate a land exchange with the U.S. Forest Service or others, pursuant to Paragraph 4.5.3 below; and

4.5.2.2. promote and develop additional Project stakeholders; and

4.5.2.3. take the lead on future water court proceedings in applications for reasonable diligence and other measures reasonable and appropriate to proceed with the Project; and

4.5.2.4. provide day-to-day management and Project facilitation as needed.

4.5.3. Given that the value of the Running Iron Ranch directly affects the CWCB's future reimbursement of its investment with the PAWSD, the SJWCD shall consult with and obtain written approval from the CWCB and the PAWSD before proceeding with any future land exchanges with the U.S. Forest Service or any other entities.

5. Sale of Running Iron Ranch.

5.1. The CWCB shall have the right of first refusal on the purchase of the Running Iron Ranch at any time PAWSD offers it for sale.

5.1.1. If PAWSD decides to sell the Running Iron Ranch, it will provide notice to the CWCB and SJWCD pursuant to this Agreement's notice provisions. PAWSD shall also provide CWCB and SJWCD a current appraisal of the Running Iron Ranch to establish the current market value of a fee simple interest in the property. The CWCB will have ninety (90) days within which to reject its right of first refusal or agree to exercise its right of first refusal. The CWCB shall provide notice to PAWSD and SJWCD of the CWCB's decision regarding this right of first refusal. If it elects to agree to exercise its right of first refusal, the CWCB will either accept the value of the tendered appraisal or provide a second appraisal, in which case the fair market value of the property shall be the average value of the two appraisals. All appraisals shall be conducted by State of Colorado certified appraisers. Closing on the property shall occur within six (6) months of the submittal of PAWSD's initial notice to the CWCB and SJWCD under this paragraph. The CWCB may use the remaining principal and interest balance of Loan A and principal balance of Loan B to fund all or part of any purchase under this right of first refusal. At closing, CWCB shall mark both Loan A and Loan B as paid in full.

5.2. Sale of Running Iron Ranch during the Planning Period:

5.2.1. PAWSD agrees to make every effort to retain the Running Iron Ranch during the Planning Period made possible by this Agreement. In the event that PAWSD, in its sole discretion but after consultation with SJWCD and CWCB, does sell the Running Iron Ranch during the Planning Period, the following terms shall take effect:

5.2.1.1. All terms and conditions of Loan A and Loan B shall be considered terminated and the loans shall become due in full pursuant to the terms of the loans and this Agreement.

5.2.1.2. The collateral which secures Loan A and Loan B shall not be disposed of until the loans are repaid in full pursuant to the terms of the loans and this Agreement.

5.2.1.3. The CWCB shall be immediately entitled to full payment of the following from the PAWSD:

5.2.1.3.1. all outstanding principal for Loan A (unpaid principal balance) and Loan B (full amount of appraised value of Running Iron Ranch); plus

5.2.1.3.2. the difference in interest charges for Loan A between the restructured 1.75% and the original 3.5% during the years annual payments for Loan A were made; plus

5.2.1.3.3. interest charges at a rate of 3.5% for Loan B over the years that Loan B was held; plus

5.2.1.3.4. the \$1,000,000 Grant; plus

5.2.1.3.5. interest charges at a rate of 3.5% for the Grant over the years that Loans A and B were held.

5.2.1.3.6. The lost interest calculations required by Paragraphs 5.2.1.3.2 and 5.2.1.3.3, are detailed in the attached Exhibit A which is incorporated herein by reference. The lost interest calculation required by Paragraph 5.2.1.3.5 is detailed in the attached Exhibit B which is incorporated herein by reference.

5.3. Sale of Running Iron Ranch at the twenty (20) year expiration of the Planning Period:

5.3.1. When the Planning Period expires, twenty (20) years from the date that the contract for Loan A is signed, the PAWSD in its sole discretion, after consultation with the CWCB and SJWCD, shall have the option to abandon the Project and sell the Running Iron Ranch to repay the remaining PAWSD and SJWCD debt.

5.3.2. At the end of twenty (20) years, Loan A will be paid off in full and the only remaining PAWSD debt to the CWCB will be the principal amount of Loan B, which is the approved appraised value of Running Iron Ranch.

5.3.3. If the PAWSD elects to sell Running Iron Ranch and abandon the Project, the CWCB shall be entitled to:

5.3.3.1. the principal of Loan B, the appraised value of Running Iron Ranch under this Agreement (\$4,565,000); plus

5.3.3.2. the total reduced interest which accrued when this debt was restructured in the amount of \$2,774,638.16; plus

5.3.3.3. the \$1,000,000 Grant; plus

5.3.3.4. interest charges on the Grant funds calculated at a rate of 3.5% annually for twenty (20) years, \$407,221.54.

5.3.3.5. Including the \$4,565,000 principal balance, the total amount due to the CWCB immediately upon the sale of the Running Iron Ranch at the end of the initial twenty (20) year Planning Period will be \$8,746,859.70.

5.3.4. Actual payment to the CWCB to satisfy the amount the CWCB is entitled to as described in Paragraph 5.3.3 herein shall be based on the actual sale price of the Running Iron Ranch, as further described below:

5.3.4.1. If the sale price of Running Iron Ranch is less than to the principal amount of Loan B (\$4,565,000), the PAWSD shall pay to the CWCB all monies received from the Running Iron Ranch sale. The PAWSD shall also immediately pay to the CWCB the difference between the sale price and the principal due on Loan B.

5.3.4.2. If the sale price of the Running Iron Ranch is equal to the principal amount of Loan B (\$4,565,000), the PAWSD shall pay to the CWCB all monies received from the Running Iron Ranch sale.

5.3.4.3. If the sale price is between the principal amount of Loan B (\$4,565,000) and \$8,746,859.70 (which amount is derived from the explanation of Paragraph 5.3.3), then the PAWSD shall pay to the CWCB all monies received from the sale of the Running Iron Ranch to cover all amounts described in Paragraphs 5.3.3.1 through 5.3.3.4 above, inclusive.

5.3.4.4. If the sale price of the Running Iron Ranch is greater than the total amount described in Paragraphs 5.3.3.1 through 5.3.3.4 above, inclusive (\$8,746,859.70), then the PAWSD shall pay to the CWCB this total amount. In addition, any amount in excess of the amount owed to the CWCB shall be split between the CWCB and PAWSD as follows: 50% to the CWCB and 50% to the PAWSD.

#### 5.4. Sale of Running Iron Ranch during any Extended Planning Period:

5.4.1. At any time after the Planning Period expires, twenty (20) years from the date that the contract for Loan A is signed, the PAWSD in its sole discretion, after consultation with the CWCB and SJWCD, shall have the option to abandon the Project and sell the Running Iron Ranch to repay the PAWSD and SJWCD debt.

5.4.2. Loan A will be paid off in full and the only remaining PAWSD debt to the CWCB will be the remaining principal balance of Loan B, the appraised value of Running Iron Ranch less any principal payments.

5.4.3. If the PAWSD elects to sell Running Iron Ranch and abandon the Project, the CWCB shall be entitled to:

5.4.3.1. the principal of Loan B, the appraised value of Running Iron Ranch under this Agreement (\$4,565,000) less any principal payments up to the date of the sale; plus

5.4.3.2. the total reduced interest which accrued when this debt was restructured described in Paragraph 5.3.3.2 (\$2,774,638.16); plus

5.4.3.3. the \$1,000,000 Grant; plus

5.4.3.4. interest charges on the Grant funds calculated at a rate of 3.5% annually amortized for twenty (20) years plus the Extended Planning Period for Loan B.

5.4.4. Actual payment to the CWCB to satisfy the amount the CWCB is entitled to as described in Paragraph 5.4.3 herein shall be based on the actual sale price of the Running Iron Ranch, as further described below:

5.4.4.1. If the sale price of Running Iron Ranch is less than the remaining principal amount of Loan B (\$4,565,000 less principal payments), the PAWSD shall pay to the CWCB all monies received from the Running Iron Ranch sale. The PAWSD shall also immediately pay to the CWCB the difference between the sale price and the principal due on Loan B.

5.4.4.2. If the sale price of the Running Iron Ranch is equal to the principal amount of Loan B (\$4,565,000 less principal payments), the PAWSD shall pay to the CWCB all monies received from the Running Iron Ranch sale.

5.4.4.3. If the sale price is between the principal amount of Loan B (\$4,565,000 less principal payments) and the amount derived from the explanation of Paragraph 5.4.3, then the PAWSD shall pay to the CWCB all monies received from the sale of the Running Iron Ranch to cover all amounts described in Paragraphs 5.4.3.1 through 5.4.3.4 above, inclusive.

5.4.4.4. If the sale price of the Running Iron Ranch is greater than the total amount described in Paragraphs 5.4.3.1 through 5.4.3.4 above inclusive, then the PAWSD shall pay to the CWCB this total amount. In addition, any amount in excess of the amount owed to the CWCB shall be split between the CWCB and PAWSD as follows: 50% to the CWCB and 50% to the PAWSD.



6. Project Completion.

6.1. If the Project is constructed, the PAWSD shall repay both Loan A and Loan B pursuant to the terms of each loan contract.

6.2. If the Project is constructed, the \$1,000,000 Grant shall remain a grant, and principal and interest shall not be repaid to CWCB, and the funds from the Grant shall remain as the SJWCD's vested interest in the Project.

6.3. If the Project is constructed, the CWCB will forgive the interest rate reduction of Loan A.

7. Termination.

7.1. This Agreement may not be terminated but may be amended by written agreement of the Parties.

8. General Provisions.

8.1. Notice. Any notice required by this Agreement shall be made in writing to the Parties to this Agreement as listed below.

Colorado Water Conservation Board  
(CWCB)

Attention: Director  
1313 Sherman Street  
Denver, Colorado 80203  
Telephone: 303-866-3441  
Fax: 303-294-8954

E-mail: [james.eklund@state.co.us](mailto:james.eklund@state.co.us)

With copy to:

Tim Feehan, P.E.

Deputy Director

E-mail: [tim.feehan@state.co.us](mailto:tim.feehan@state.co.us)

Pagosa Area Water and Sanitation  
District

P.O. Box 4610  
100 Lyn Avenue  
Pagosa Springs, Colorado 81147  
Telephone: 970-731-2691  
Fax: 970-731-2693

With copy to:

Jeffery P. Robbins, Esq.

Goldman, Robbins, Nicholson &  
Mack, P.C.

679 E. 2<sup>nd</sup> Ave., Suite C

P. O. Box 2270

Durango, Colorado 81301

San Juan Water Conservancy District

P.O. Box 4632

46 Eaton Drive, Suite 5

Pagosa Springs, Colorado 81147

With copy to:

Kent Holsinger, Esq.

Holsinger Law, LLC

1800 Glenarm Pl., Suite 500

Denver, CO 80202

8.2. 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.

8.3. 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.

8.3.1. To the extent this Agreement explains the restructured Loan A and Loan B, the contracts for those loans as executed control the terms of the actual loans and are not superseded by this Agreement.

8.4. Future Documents. Each Party, at any time before or after execution of this Agreement, shall execute, acknowledge, and deliver any further loan documents, deeds, assignments, conveyances, and other assurances, documents and instruments of transfer, reasonably requested by the other as is contemplated by this Agreement and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by a Party hereto to carry out the terms of this Agreement.

8.5. Amendment. Modification of this Agreement by the Parties may be made only by a writing duly authorized and executed by every Party hereto.

8.6. 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.

8.7. Assignment. No 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 prior written approval of the other Parties, which approval may be granted or withheld by such Party in its sole and absolute discretion. Any assignee under an assignment approved by all Parties 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 shall be void.

8.8. 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.

8.9. 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.

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

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

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

8.13. Effective Date. This Agreement shall not be effective or enforceable until it is approved and signed by every Party, but shall be effective and enforceable thereafter in accordance with its provisions.

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**Colorado Water Conservation Board**

\_\_\_\_\_  
Director, James Eklund

\_\_\_\_\_  
Date

**Pagosa Area Water and Sanitation District, acting by and through its Water Activity Enterprise**

\_\_\_\_\_  
President, Michael W. Church

\_\_\_\_\_  
Date

**San Juan County Water Conservancy District**

\_\_\_\_\_  
President, Rodney Proffitt

\_\_\_\_\_  
Date