

# APPLICATION

## Water Project Loan Program



**Colorado Water Conservation Board**

**Attn: Anna Mauss, P.E.**

**Finance Section**

**1313 Sherman Street; #718**

**Denver, CO 80203**

**FEASIBILITY STUDY APPROVAL**  
Pursuant to Colorado Revised Statutes 37-60-121 & 122, and  
in accordance with policies adopted by the Board, the  
CWCB staff has determined this Feasibility Study meets all  
applicable requirements for approval.

Signed

 5/5/2017  
Date

March 25, 2017



46 Eaton Drive, Suite 5  
Pagosa Springs CO 81147  
(970) 731-9857  
[www.sjwcd.org](http://www.sjwcd.org)

Colorado Water Conservation Board  
Attn: Anna Mauss, P.E.  
1313 Sherman Street, Room 718  
Denver, CO 80203

Re: **CWCB Loan Application**  
***Dry Gulch Pre-Construction Expenses***

Dear Anna:

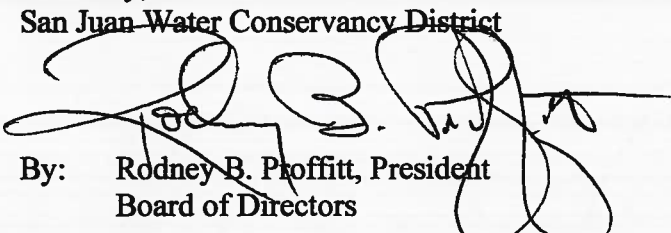
San Juan Water Conservancy District ("the District") is moving forward with the Dry Gulch Project ("the Project") for much of the populated areas within Archuleta County Colorado. Completion of this Project is intended to meet projected community water demands through 2070. This loan request is for pre-construction expenses to complete the pool basin, supply a secondary access, and cover various professional and permitting expenses. All of this is set out fully in the accompanying Feasibility Study.

This Project is being planned in keeping with the objectives outlined in the State Water Plan for new water storage, and the State criteria for funding new water storage projects. Not only will the Project off-set the expected water supply gap of concern to the State, but will also provide water resources for non-consumptive uses to enhance environmental and recreational opportunities of State and local economic benefit.

The District would be incapable of paying the debt service on a loan of this size given its present annual revenue stream. Therefore, the District is asking that the loan be contingent upon passage of a mill levy increase on the November 2017 ballot to increase the mill levy from 0.316, which raises approximately \$67,000 a year, to 1.0 mill, which is expected to raise slightly more than \$213,000 a year in revenue. The increase in the mill levy actually returns the District to the initial mill levy set at the time the District was formed in 1987. The additional revenue will assure the District will be able to continue with its mission to the community for the foreseeable future.

Please contact me or the District's engineer, Steve Harris, ([steve@durangowater.com](mailto:steve@durangowater.com), 970-259-5322) if you have any questions concerning the loan request and feasibility study.

Sincerely,  
San Juan Water Conservancy District

By:  Rodney B. Proffitt, President  
Board of Directors

Attachments:  
Loan Application  
Feasibility Study

The mission of the San Juan Water Conservancy District to conserve, develop, utilize, and plan storage for current and future water needs, and that the water resources of the San Juan River and its tributaries, and the property and residents within the District will be benefited by the activities of the District.

# Water Project Loan Program

Application Type					
<input type="checkbox"/> Prequalification ( <i>Attach 3 years of financial statements</i> ) <input type="checkbox"/> Loan Approval ( <i>Attach Loan Feasibility Study</i> )					
Agency/Company Information					
Company / Borrower Name:					
Authorized Agent &Title:					
Address:					
Phone: (     )			Email:		
Organization Type: <input type="checkbox"/> Ditch Co, <input type="checkbox"/> District, <input type="checkbox"/> Municipality <input type="checkbox"/> other: _____				Incorporated? <input type="checkbox"/> YES  <input type="checkbox"/> NO	
County:			Number of Shares/Taps:		
Water District:			Avg. Water Diverted/Yr_____ acre-feet		
Number of Shareholders/Customers Served:			Current Assessment per Share \$ _____ (Ditch Co)		
Federal ID Number:			Average monthly water bill \$ _____ (Municipality)		
Contact Information					
Project Representative:					
Phone: (     )			Email:		
Engineer:					
Phone: (     )			Email:		
Attorney:					
Phone: (     )			Email:		
Project Information					
Project Name:					
Brief Description of Project: (Attach separate sheets if needed)					
General Location: (Attach Map of Area)					
Estimated Engineering Costs:			Estimated Construction Costs:		
Other Costs (Describe Above):			Estimated Total Project Costs:		
Requested Loan Amount:			Requested Loan Term (10, 20, or 30 years): _____ Years		
Project Start Date(s) Design: _____ Construction: _____					
Signature					
_____ Signature / Title			Return to: Finance Section Attn: Anna Mauss 1313 Sherman St #718 Denver, CO 80203 Ph. 303/866.3449 e-mail: anna.mauss@state.co.us		
Date					

# **DRY GULCH WATER STORAGE PROJECT LOAN FEASIBILITY STUDY FOR CWCB 2017 LOAN APPLICATION**

## **1.0 BACKGROUND**

### **1.1 Purpose**

The Dry Gulch Water Storage Project (Project) involves eventual development of an 11,000 acre-foot (AF) reservoir and a 50 cfs diversion from the San Juan River to fill the reservoir. The Project has been under consideration since the late 1980's and significant work has been performed. The permitting, design and construction of the dam and diversion facilities is expected to occur by 2030.

The purpose of this feasibility study is to provide technical support for a loan application to the Colorado Water Conservation Board (CWCB) for land acquisition, fencing of the reservoir area, and other activities necessary and appropriate to secure and develop the reservoir land area. The loan proceeds will be used to complete ownership of the land under the reservoir pool. This feasibility study will provide detailed information on the land acquisition, fencing and other activities and preliminary information on the overall Project.

### **1.2 Project Sponsor**

The project sponsor is the San Juan Water Conservancy District (SJWCD) that was formed in 1987 as a political subdivision of the State of Colorado and a body corporate with all the powers of a public or municipal corporation as authorized by the statutes of the State of Colorado. The SJWCD includes approximately 100 square-miles of the 1,365 square-miles of Archuleta County, including the majority (approximately 90 percent) of the municipal and industrial (M&I) demand within the County.

The purpose of the SJWCD is to conserve, maximize and utilize the water resources of the San Juan River and its tributaries, and that property within the District will be benefited by this purpose. To carry out the purpose, SJWCD addresses future water supply needs within its boundaries. The highest priority of the SJWCD is to provide water for the health, safety and welfare of its constituents.

After the 2002 drought and devastating forest fires in Colorado, SJWCD contributed its conditional water rights and rights to the Dry Gulch site to a partnership with the largest water provider in Archuleta County; Pagosa Area Water & Sanitation District ("PAWSD"). Together, they worked to develop the Dry Gulch Water Storage Facility ("the Project"). To that end, PAWSD negotiated an \$11.2 Million loan from CWCB, and SJWCD negotiated a \$1 Million grant/loan, which they used to purchase the 660 acre Running Iron Ranch at the Dry Gulch site.

After the purchase, several intervening circumstances caused PAWSD to seek withdrawal from the Project. It was not just the Great Recession, but an adverse decision from the Colorado Supreme Court on the water rights for the Project. SJWCD had an incentive to keep the Project going forward to avoid paying a grant that would convert to a loan in the event the Project failed to get built. As a result of a multi-year effort, a new three-way agreement was reached by and between CWCB, PAWSD and SJWCD, which allowed SJWCD to spearhead efforts to move the Project forward, and required PAWSD to buy water from the Project should they need additional water in the future. The new agreement also provided that CWCB would seek payment of the \$1 Million from the equity interest SJWCD has in the Running Iron Ranch rather than forcing it to repay the loan in cash. Finally, PAWSD agreed to use the savings from the debt payments owed CWCB to repair its extensive water line system to stem treated water losses approaching forty percent (40%), which would cut treatment costs and conserve raw water.

There is also an agreement between CWCB and SJWCD that sets aside the \$1 million grant/loan. In its place, CWCB forgives cash payment and commits to obtaining repayment if the SJWCD sells its share of the ranch, which is about 11%.

The new agreements were a win-win for all parties. CWCB was able to protect its investment and assure repayment of the loan with PAWSD. PAWSD was able to free up the cash resources to address its water loss issues. SJWCD was able to assume sponsorship of efforts to fulfill its mission to secure a future water supply for the community it serves.

### **1.3 Study Area Description**

The SJWCD boundaries includes the Town of Pagosa Springs and unincorporated land surrounding the Town. The PAWSD is also within the SJWCD and provides potable water and wastewater treatment to most of the population within SJWCD.

SJWCD is entirely within Archuleta County (County) which has a 2015 population of approximately 12,000 people according to the Colorado State Demographer. Of the County population, 90% are estimated to be within SJWCD.

### **1.4 Previous Studies**

The Dry Gulch Reservoir site has been considered since the 1960's when the Southwestern Water Conservation District (SWCD) originally filed for a water right for a 6,300 AF reservoir. With the formation of the SJWCD in 1987 there have been continuous formal and informal studies of reservoir sites to meet the future water demands of the SJWCD.

The SJWCD understood that additional storage capacity would be required to meet the communities long term water demands. The 1989 Report (see title below) evaluated different reservoir sites that are listed on Table IV-1 (page 13) of the 1989 Report. The evaluation of these sites showed that the Hidden Valley Reservoir was the best site to store Fourmile Creek diversions and Dry Gulch Reservoir was the best site for San Juan River diversions. The Hidden Valley Reservoir site was purchased and developed by a private entity and is no longer available. The Dry Gulch Reservoir site is the best remaining site; a 4,000 AF reservoir was evaluated in the 1989 Report.

The 2003 Report (see title below) re-evaluated the reservoir options and again concluded that the Dry Gulch Reservoir was the best site (refer to cost per AF of yield shown in Table W, page 46). This report evaluated a 4,000 AF reservoir and a 12,500 AF reservoir both of which had essentially the same cost per AF of yield. The Dry Gulch site has a maximum potential capacity of 35,000 AF but that size is not necessary to meet the 2070 demand.

The Project has been reviewed by the Southwest Basin Roundtable on several occasions and was an Identified Project and Process ("IPP") through the first Statewide Water Strategies Initiative. It was reviewed again when funding was sought to purchase land for the pool basin. The latest review came as part of the process to adopt the State Water Plan and is included in the Southwest Roundtable Basin Implementation Plan and the Colorado Water Plan as being necessary to meet the future water demands of Archuleta County.

The best storage alternatives have been evaluated numerous times, formally in the 1989 and 2003 Reports and informally. In each evaluation, the Dry Gulch site was determined to be the best based on cost per AF of storage and location near the expected demand. Also, the San Juan River is the best water source in the County. The other major rivers in the County - Navajo, Little Navajo, Blanco - have been substantially diminished by the Bureau of Reclamation San Juan Chama Project that diverts water into the Rio Grande drainage, to the point there is no available flow for meeting the District's water needs.

The following are the major studies conducted since the 1960's which are available upon request:

*Alternative Reservoir Site Evaluation Appraisal Level Study.* Harris Water Engineering, Inc. 1989 (1989 Report).

*Appraisal Report to Evaluate Future Raw Water Demands and Water Supply Alternatives.* Harris Water Engineering, Inc. and Davis Engineering, Inc. 2003 (2003 Report).

*Expert Opinion in Support of Water Court Case No. 04CW85, Water Division 7.* Steven C. Harris. 2005 (2005 Expert Report).

*Feasibility Study in Support of a CWCB Loan to Purchase land for the Project.* 2008.

## **2.0 WATER RIGHTS**

The SJWCD has a portfolio of conditional water rights that are listed below. The two Dry Gulch Reservoir decrees are being used for the Project. The settlement in Decree 04CW85 included restrictions to most of the other water rights listed below; the restrictions are not described herein.

- Dry Gulch Reservoir - Original decree CA0308-D (6,300 AF storage)
- Dry Gulch Reservoir - Decree 04CW85 (4,700 AF storage 50 cfs diversion)
- Dutton Ditch Second Enlargement - Original decree CA0308-D (40 cfs)
- West Fork Reservoir - Original decree CA0308-D (24,000 AF storage)
- West Fork Canal - Original decree CA0308-D (50 cfs)
- In addition to the above water rights, SJWCD also has shares in the Park Ditch that could be converted from irrigation to municipal and/or storage in Dry Gulch Reservoir.



The decree in case 04CW85 is included in Attachment 1 and is the primary water right to be used for the Project.

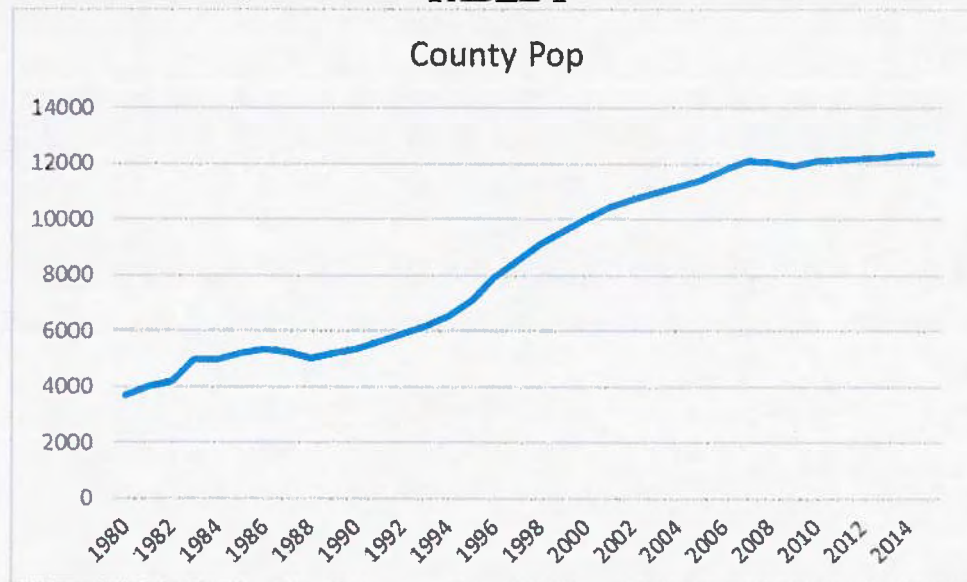
## 2.1 Water Availability

Daily modeling has been performed to estimate the water availability from an 11,000 AF Dry Gulch Reservoir with a 50 cfs diversion from the San Juan River to fill the reservoir. The modeling used the USGS gage at Pagosa Springs and the bypass requirements described in Section 3.6. The modeling is available on request. The results showed that the Project could provide 6,500 AF during the 2002/2003 drought with a one year storage “safety supply margin” of 6,500 AF.

## 2.2 Water Supply Demands

The population of Archuleta County (County) over the past 35 years has been a story of contrasts. Table 1 below shows the County population from 1980 to 2015. As can be seen there was little population growth in the 1980’s with a fairly constant population of 4,000 and 5,000. There was significant growth in the 1990’s as the population doubled in the decade from 5,000 to 10,000. The population continued to increase in the early 2000’s to 12,000 people in 2006. The “Great Recession” began in 2007 and affected the County significantly with no increase in population for the past decade. From 1990 to 2006, the County was one of the two or three fastest growing counties in Colorado (by annual percent increase).

**TABLE 1**



The Colorado State Demographer has projected the County population through 2050 to be 27,500 people. The percentage growth from 2045 to 2050 is 1.6% per year. The water supply demand from the Project is estimated for the next 50 years to the year 2070. Extrapolating the 2045 to 2050 growth rate of 1.6% to 2070, the population in 2070 would be 37,400. Table 2 below shows the annual growth rate and the estimated water demand for the County population through 2070. The current water usage rate in the County is estimate to be 200 gallons per capita, this amount is reduced 10% for conservation between 2020 and 2040 to 180 gallons per capita between 2040 and 2070.

Table 2 shows the estimated 2070 SJWCD water demand of 6,800 AF which is 90% of the water demand for the entire County. PAWSD has facilities estimated to provide up to 2,500 to 3,000 AF in a drought such as occurred in 2002. The agreement reached with PAWSD and CWCB in 2016 provides that if PAWSD needs additional water in the future, it is required to obtain water from the Project if that is available rather than building new water storage facilities. PAWSD serves the Town of Pagosa Springs and most of the major subdivisions in the County which includes the most populated areas with almost 10,000 population but the area is only half built out. Therefore, SJWCD must plan to provide at least 4,300 AF in 2070 from the Project. As described in Section 2.1 the Project can provide 6,500 AF which is adequate to meet the demand.

**TABLE 2**  
**ESTIMATED SJWCD FUTURE RAW WATER DEMANDS**

<b>Year (1)</b>	<b>Annual Growth Rate (2)</b>	<b>SJWCD Permanent Population (3)</b>	<b>Per Capita Daily Usage (g/per/day) (4)</b>	<b>Total Annual Demand (acre-feet) (5)</b>	<b>Total Annual Demand (million gallons) (6)</b>
2020		12,346	200	2,766	901
2025	3.0%	14,313	195	3,126	1,019
2030	2.9%	16,512	190	3,514	1,145
2035	2.5%	18,682	185	3,871	1,261
2040	2.1%	20,727	180	4,179	1,362
2045	1.8%	22,661	180	4,569	1,489
2050	1.6%	24,533	180	4,947	1,612
2055	1.6%	26,560	180	5,355	1,745
2060	1.6%	28,753	180	5,797	1,889
2065	1.6%	31,128	180	6,276	2,045
2070	1.6%	33,700	180	6,800	2,214

Growth from 2020 to 2050 from Colorado Department of Local Affairs.  
 Growth after 2050 assumed to be the same as DOLA from 2045 to 2050.  
 The per capita use includes a 10% reduction from 2020.  
 The 2020 SJWCD population is 90% of the State Demographer 2020 estimate.

When constructed the Project will provide a firm raw water supply and a safety supply margin to meet the water needs within the SJWCD through at least the year 2070. Based on current growth projections, an 11,000 AF reservoir and associated 50 cfs diversion facilities are required to accomplish this goal. This feasibility study is to support acquisition of the land necessary for the 11,000 AF reservoir; the overall Project is generally described but the reservoir land acquisition is the primary focus.



### **3.0 PROJECT DESCRIPTION – ANALYSIS OF ALTERNATIVES AND SELECTED PLAN**

The Project has been through numerous alternative analysis as referenced above in the previous studies. The Dry Gulch Reservoir site has been selected to be 11,000 AF in size based on the studies performed for the water rights decree in Case No. 04CW85. Most of the land area for the Project reservoir has been purchased except for the parcels described in this section.

#### **3.1 Analysis of Alternatives**

There are no alternatives to be evaluated associated with the acquisition of the land parcels in the reservoir basin. The previous reports describe the evaluation factors and basis for selection of the Dry Gulch Reservoir site.

#### **3.2 Selected Alternative**

The 2003 Report referenced above included an extensive review of potential reservoir sites in the San Juan Basin that are situated to meet the SJWCD demands. Of these, only the Dry Gulch site is feasible due to its location and economically favorable ratio of embankment size to storage as described on Table W, page 46, of the 2003 Report. The extensive inventory and review of more than 13 potential sites revealed that there were two sites within the County which were best technically, economically, and environmentally. The other site has since been purchased for residential development. The 2003 Report adequately addressed alternative reservoir sites and no additional alternative analysis is included herein.

The 11,000 AF Dry Gulch Reservoir site and 50 cfs diversion from the San Juan River is the selected alternative as decreed in Water Court Case No. 04CW85. The size, 11,000 AF, and location of the Dry Gulch Reservoir have been thoroughly evaluated over the past 30 years. There are two options for the location of the 50 cfs diversion to fill the reservoir which are: (1) the headgate of the Park Ditch; or (2) a pump from the San Juan River immediately west of the reservoir.

A gravity pipeline from the Park Ditch headgate is the selected diversion location. The dam height for an 11,000 AF reservoir allows a 50 cfs gravity siphon from the Park Ditch headgate to fill the reservoir. The siphon from the Park Ditch headgate is proposed because it is gravity flow compared to the power cost of using the pumping plant location. The latest cost for these facilities is included in the following section though not part of the loan request.

Maps of the Dry Gulch dam and reservoir basin and the siphon alignment are included in Attachment 4.

The selected alternative for this loan application is to proceed with land acquisition necessary to eventually construct the 11,000 AF Dry Gulch Reservoir and install fencing around some of the acquired land. The cost estimate for the selected alternative is described in the following section.

### **3.3 Cost Estimate for this Loan Application**

As stated above, this loan application is for three land transactions to acquire the remaining portion of the land needed for the 11,000 AF Dry Gulch Reservoir basin as summarized below.

- The first transaction involves 190.7 acres of U.S. Forest Service (USFS) San Juan National Forest (SJNF) land contiguous to land already purchased for the Project. A map of the required USFS land is shown in Attachment 2. The actual acquisition will entail the purchase of property off-site, which will then be exchanged for the 190.7 acres. The USFS land exchange is a complicated and time consuming process. In this case, SJWCD has hired Western Land Group, which specializes in federal land exchange transactions. Appraised cost of \$915,000 (increased to \$1,000,000 in the cost estimate below).
- The second transaction involves the purchase of private range land, which is now part of a much larger ranch. The transaction is for 23.4 acres contiguous to either SJWCD property or property being acquired through the USFS land exchange. A map of the private land to be acquired is shown in Attachment 2. The purchase will not create County subdivision issues. A letter agreement has already been worked out on most of the issues pertinent to the transaction, except the purchase price. Appraised cost of \$145,000.
- The third transaction involves the purchase of an access easement on and over the larger ranch from which the 23.4 acres is being acquired. A map of the easement route is included in Attachment 2. The easement will allow access from U.S. Highway 160 as an alternative to the seasonal access over the dam. Appraised cost of \$27,500.

The estimated cost for each of the land transactions is included in an appraisal report by Ace Appraisal, LLC on January 23, 2017. The summary letter of the report is included in Attachment 3 and the 100 page full report is available on request.

SJWCD also has other expenses necessary for the acquisition of the land as described below.

- The new boundary between the private land and the reservoir pool will be fenced. The approximate length of fence is 7,000 feet. The fence will be 4 wire fence with steel posts estimated to cost \$15 per foot for a total cost of \$105,000.
- The road easement from Highway 160 to the reservoir pool will also be fenced in the same manner as the reservoir pool. The road length is 6,450 feet at a cost of \$15 per foot with fence on both sides of the road for a total of \$193,500.
- SJWCD will pay for the environmental assessment (EA) that the Forest Service will require for the land exchange. The EA will include cultural resources, endangered species inventory, wetlands, etc. The cost is estimated to be \$50,000.

- The land exchange with the USFS is a complicated process requiring SJWCD to pay all of the USFS costs associated with the exchange. The estimated cost to the USFS and other payments to the USFS are estimated to be \$50,000.
- Costs will be required for professional services to manage the land acquisitions including title work, boundary surveying, insurance, legal, engineering, land agent fees, and other expenses. The total cost for this work is estimated to be \$250,000.
- The CWCB has a loan initiation fee of \$19,800.
- Contingency costs of \$179,200 are also added to the total cost which is approximately 10% of identified costs.

Summary of costs for the requested \$2 million loan.

Forest Service Land Exchange	\$1,000,000
Private Land Purchase	\$145,000
Road Easement Purchase	\$27,500
Boundary Fence	\$105,000
Road Easement Fence	\$193,500
NEPA Compliance	\$50,000
USFS Agreement	\$30,000
Professional Services	\$250,000
Loan Servicing Costs	\$19,800
Contingencies	\$179,200
<b>Total Loan Request</b>	<b>\$2,000,000</b>

### **3.4 Current Construction Cost Estimate for Entire Project**

The estimated construction cost for the Dry Gulch dam is based on the Long Hollow Dam that was completed in 2015 near the Colorado/New Mexico stateline in the La Plata River basin. Both dams are 110 feet high and have embankment volumes of 900,000 cubic yards. The constructed Long Hollow Dam and the Dry Gulch Dam are essentially the same size. The base cost of Long Hollow dam is \$25,000,000 and provides a very reliable and reasonable up-to-date estimated cost for Dry Gulch. A map of the dam and reservoir basin is included in Attachment 4.

The \$25,000,000 for Long Hollow is increased for additional costs at Dry Gulch such as land costs, access roads, contingencies, and other costs that increase the cost estimate to \$33,200,000 as shown in Table 3. The cost per acre-foot of storage at the 11,000 AF Dry Gulch Reservoir is half the cost of the 5,200 acre-foot Long Hollow Reservoir.

The SJWCD water right for the Dry Gulch Reservoir allows a 50 cfs inflow at the Park Ditch headgate on the San Juan River about 4 miles upstream of Dry Gulch Reservoir. The elevation of the Park Ditch headgate is approximately 7360 feet and the maximum water level for 11,000 AF is 15 feet lower at 7345 feet. The elevation difference would allow a large diameter pipeline siphon that has very little friction loss when flowing at 50 cfs in the 22,000 foot pipeline from

the Park Ditch headgate to the reservoir. The pipeline would follow a combination of the Park Ditch, private roads, and Highway 160 for the distance between the headgate and the reservoir (See map in Attachment 4). Approximately a 5 foot diameter pipe would provide adequate hydraulics. Careful surveys of the entrance and exit elevations will be required verify the hydraulics. A new diversion structure will be required at the Park Ditch headgate to divert water into both the Park Ditch and the siphon to the reservoir. Table 3 total siphon cost is estimated to be \$27,400,000.

**TABLE 3**

<b>11,000 AF DRY GULCH RESERVOIR AND 50 CFS INFLOW PIPELINE</b>				
(Note: The storage and inflow capacity are the amounts included in the project water rights.)				
<u>Item Description</u>	<u>Units</u>	<u>Quantity</u>	<u>Cost/Unit</u>	<u>Total Cost</u>
<b><u>Dry Gulch Reservoir</u></b>				
Embankment and Outlet Works	cubic yards	900000	lump sum	\$25,000,000
30 inch Pipeline Park Ditch Siphon	feet	1200	\$200	\$200,000
Contingencies			20.0%	\$5,000,000
				-----
Total Field Construction Cost				\$30,200,000
Overhead and Miscellaneous Costs			10%	\$3,000,000
				-----
TOTAL ESTIMATED RESERVOIR COST				\$33,200,000
<b><u>Park Ditch Inflow Siphon</u></b>				
River Diversion	lump sum	1	\$2,000,000	\$2,000,000
60" Pipeline from Park Ditch Headgate	feet	22000	\$800	\$17,600,000
Air Release and Valves	lump sum	4	\$50,000	\$200,000
Drain, 18" Pipeline Back to the River	lump sum	1000	\$125	\$100,000
Contingency			25.0%	\$5,000,000
				-----
Total Field Construction Cost				\$24,900,000
Overhead and Miscellaneous Costs			10%	\$2,500,000
				-----
TOTAL ESTIMATED SIPHON COST				\$27,400,000
TOTAL ESTIMATED COST FOR SIPHON AND RESERVOIR				\$60,600,000

The total estimated cost to construct the dam and a pipeline to fill an 11,000 AF Dry Gulch Reservoir is approximately \$60,600,000 as shown on Table 3.

### **3.5 Implementation Schedule**

The implementation schedule to acquire the land necessary for the reservoir basin and install fencing around a portion of the acquired land is described below.

1. USFS Land Exchange - Exchange of land in the reservoir basin with an equivalent parcel of land that the USFS will accept. The land exchange is difficult because another parcel must be identified that has an equivalent value. The reservoir land has been appraised as described in Attachment 3. The USFS also requires NEPA compliance which is likely an environmental assessment. Working with the USFS takes a considerable amount of time possibly being completed in late 2018.
2. Private Land Purchase - The purchase of the private land and road easement to the reservoir are owned by the same party. The purchase could proceed immediately if funds are available and the Federal land exchange receives approval were available and be completed by the end of 2017.
3. Fencing – The fencing of the purchased private land could begin immediately after acquisition of the land and require three to four months to complete.

The tasks associated with the \$2,000,000 loan request are expected to be completed by the end of 2018.

Permitting, design and construction of the entire project will probably require 10 years or more with the earliest potential date to begin that process being early in the 2020's.

### **3.6 Impacts**

The USFS land acquisition will involve a trade of SJNF land for land elsewhere in the SJNF of equal value. The environmental and social impacts will be addressed in the trade by the USFS through an environmental assessment.

The private land acquisition and easement will not involve an environmental assessment because there will be no impacts from purchase of a small, 23.4 acres, of rangeland.

Prior to construction of the entire Project an Environmental Impact Statement (EIS) will be prepared to obtain one or more Federal and State permits. One component of the eventual EIS is a requirement in the Dry Gulch water right to bypass double the CWCB instream flow amount as shown in Table 4. This requirement, agreed to by SJWCD, will provide significant additional protection to the aquatic resources in the San Juan River below the diversion.



**TABLE 4**

<b>Month</b>	<b>CWCB Instream Flow - cfs</b>	<b>Decreed Bypass - cfs</b>
January	30	60
February	30	60
March	30	60
April	50	100
May	50	100
June	50	100
July	50	100
August	50	100
September	30	60
October	30	60
November	30	60
December	30	60

The SJWCD has also approached the Healthy Forest Partnership headed up by Mountain Studies Institute to submit an application to prepare a stream management plan for the San Juan River above Navajo Reservoir. The District has developed a concept plan for the application. The Partnership took a formal vote to support the development of the stream management plan.

### **3.7 Institutional Feasibility**

The primary institutional issue associated with the land acquisition is an agreement with the USFS for a land exchange. The private land and easement acquisition will not require permitting from Archuleta County or any other entity.

There are many institutional issues to be resolved prior to construction of the entire Project but those tasks are not part of this loan application.

## **4.0 FINANCIAL FEASIBILITY ANALYSIS**

The SJWCD bylaws are included in Attachment 5 and the last three years (2013, 2014, 2015) of audited financial statements are included Attachment 6.

### **4.1 Loan Amount**

The loan amount being requested in this application is \$2,000,000 which includes the 1% CWCB loan service fee of \$19,800. The loan request is for 30 years and using the current "middle income municipal" interest rate of 2.75%, the annual payment is \$98,769.

As a comparison the 20 year payback has a loan rate of 2.5% which would have an annual payment of \$128,294.

### **4.2 Financing Sources**

The CWCB is the preferred and possibly only source of financing.

#### **4.3 Revenue and Expenditure Projections**

The requested \$2 million loan is planned to be repaid by the SJWCD over 30 years at the current CWCB domestic rate of 2.75%. The annual payment is \$98,769. A spreadsheet of SJWCD projected income and loan payment is included in Attachment 7.

#### **4.4 Loan Repayment Sources**

The SJWCD will be seeking a mill levy increase to be included on the November, 2017 ballot to fund debt service. The mill levy ballot issue will return the SJWCD to the original levy of one mill from the current level of 0.31 mills. The 2016 Assessed value for San Juan Water Conservancy District is \$213,853,700. The tax revenue in 2016 with a 1 mill tax would have been \$213,854 compared to revenue from the current 0.31 mills of \$67,578. The assessed valuation changes each year but 2016 is a reasonable estimate of future revenue from a 1 mill tax.

The approval of this loan by CWCB is contingent on voter approval of a 1 mill tax.

#### **4.5 Financial Impacts**

The CWCB loan requested herein, will be the only outstanding significant debt of any kind.

#### **4.6 TABOR Issues**

SJWCD is subject to Article X, Section 20 of the Colorado Constitution, commonly known as the Taxpayers Bill of Rights or "TABOR." TABOR limits the amount of funds SJWCD can collect and retain from taxpayers, and subjects increases to SJWCD's taxation levels to voter approval. When SJWCD was formed, its revenues were derived from a property tax one mill levy within the District. Due to the "ratchet-down effect" of TABOR, combined with the economic recession of 2001-2003, the SJWCD mill levy was reduced to .31 mill during the time period.

In an election held November 7, 2006, constituents living within the SJWCD approved removing revenue and spending increase limitations found in TABOR from the SJWCD. This process is commonly known as "de-Brucing." The approval allowed SJWCD to retain excess funds in any given year, rather than refunding such funds to the taxpayers. The approved ballot language contained the important provision stating the "property tax mill levy shall not be increased without voter approval." Therefore, SJWCD will need to seek voter approval for any future increase to the mill levy rate.

#### **4.7 Collateral**

The SJWCD is not providing collateral for the loan other than allocation of a portion of the mill levy to repay the loan.

#### **4.8 SJWCD Creditworthiness**

The SJWCD has been frugal in its efforts to carry out its mission. The SJWCD has no existing debt and has reserves in excess of \$200,000.00. It has completed two restoration projects (Stolsteimer and Upper Blanco) utilizing grants and loans. It has also borrowed funds previously and worked out a repayment plan mutually agreeable to the SJWCD and CWCB. Finally, the SJWCD is collaborating with several other entities to do an Upper San Juan River Stream Management plan to further the Colorado Water Plan recommendations, and mitigate possible adverse impacts brought about by this Project.

#### **4.9 SJWCD Resolution**

The SJWCD resolution by the Board of Directors authorizing this application will be submitted after the April Board of Directors meeting.

#### **5.0 Conclusions and Recommendations**

The land acquisition and fencing to be performed with the \$2,000,000 loan request is essential to the eventual construction of the Dry Gulch Water Storage Project. With a successful TABOR election approving a 1 mill levy the District will have the financial ability to repay the loan over 30 years at 2.75%. The Project is the best storage site in the San Juan River Basin and is well located upstream and adjacent to the Town of Pagosa Springs to provide water to the area with the growing population. The Project is feasible and these loan funds are necessary.

Prepared For: San Juan Water Conservancy District  
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# **ATTACHMENT 1**

## **SJWCD WATER COURT DECREE FOR THE PROJECT CASE 04CW85**

**OTHER DECREES  
AVAILABLE ON  
REQUEST**

<b>DISTRICT COURT, WATER DIVISION 7, STATE OF COLORADO</b>  Court Address: LaPlata County Courthouse 1060 E. 2nd Avenue Durango, CO 81302	<div style="text-align: right;">           OCT 1 11:53 AM '11            FILED Document            CO La Plata County District Court 6th JD            Filing Date: Oct 31 2011 1:53PM MDT            Filing ID: 40712309            Review Clerk: Danene M Etz         </div>
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE PAGOSA AREA WATER AND SANITATION DISTRICT AND THE SAN JUAN WATER CONSERVANCY DISTRICT</b>  <b>IN THE SAN JUAN RIVER AND ITS TRIBUTARIES</b>  <b>IN ARCHULETA COUNTY</b>	<div style="text-align: center;"> <b>▲ COURT USE ONLY ▲</b> </div> Case No.: 2004CW085, On Second Remand  Div.: 7                      Ctrm.:
<b>STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE</b>	

THE COURT, having considered the pleadings of the parties and the evidence presented, does hereby find and conclude as follows:

### **FINDINGS OF FACT**

1. Pagosa Area Water and Sanitation District ("PAWSD") and San Juan Water Conservancy District ("SJWCD") (together hereinafter referred to as the "Districts" or "Co-Applicants") filed the subject Application for Water Rights on December 20, 2004. The Districts' addresses are:

Pagosa Area Water and Sanitation District  
 P.O. Box 4610  
 Pagosa Springs, Colorado 81157

San Juan Water Conservancy District  
 P.O. Box 4632  
 Pagosa Springs, Colorado 81157

2. All notices of the application were given in the manner required by law and this Court has jurisdiction over the subject matter of this proceeding and over all persons and property affected hereby, irrespective of whether those persons or owners of property have appeared.



3. Statements of Opposition were filed by Koinonia, LLC, Trout Unlimited, the Park Ditch Company, Inc. and the "Weber Entities" (a collective name for the separate entities of Donald L. Weber, Kathryn L. Weber, Donald Andrew Weber, J.I. Hathaway Family Trust, Running Iron Ranch, LLC, and Weber Ranches of Pagosa, LLC; all listed on one Statement of Opposition c/o Kathryn L. Weber). The time for filing Statements of Opposition has now expired. No other party has made an appearance in this matter.

3.1 Koinonia, LLC, stipulated to a draft of a final decree on April 28, 2006, and said stipulation was approved by this Court on April 28, 2006. Bootjack Ranch, LLC, successor in interest to Koinonia, was substituted as a party by Order of this Court dated September 24, 2010 and is bound by the Koinonia stipulation.

3.2 The Park Ditch Company, Inc., stipulated to a draft of a final decree on December 8, 2005, and said stipulation was approved by this Court on April 5, 2006.

3.3 The Weber Entities stipulated to a draft of a final decree on September 16, 2005, and said stipulation was approved by this Court on September 22, 2005.

3.4 The Colorado Water Conservation Board informally participated in this matter through drafting and stipulation to the language contained in paragraph 14.1.6 herein.

3.5 This Decree is more restrictive on the Co-Applicants than prior drafts of the final decree, to which each of the parties above have stipulated.

4. The Division Engineer for Water Division 7 filed a Summary of Consultation with this Court on December 20, 2005, based upon publication of the Application in the December 2004 Water Court Resume for Water Division 7. A copy of the Summary of Consultation was properly served on all parties to this case. The Court has duly considered the Summary of Consultation.

5. Trial to this Court was held on May 3, 4 and 5, 2006, at which evidence was presented by Co-Applicants and Objector, Trout Unlimited.

6. On July 15, 2006, this Court issued a final decree. Trout Unlimited filed a post-trial motion seeking modification of the final decree, to which the Applicants submitted a response along with a modified final decree, to which Trout Unlimited replied. On September 15, 2006, this Court partially granted Trout Unlimited's motion and issued a final decree.

7. Trout Unlimited appealed the final decree to the Colorado Supreme Court in accordance with C.A.R. 1(e). After briefing and oral argument, the Supreme Court issued an opinion further articulating the elements of proof required and remanded the case, by Mandate issued November 15, 2007, back to this Court for further proceedings as this Court deemed necessary to determine additional findings of fact on topics specified by the Supreme Court.

8. Following a status conference held on December 14, 2007, this Court requested briefs from the Co-Applicants and Trout Unlimited by Order dated January 4, 2008. After considering the briefs, this Court issued a Final Decree on Remand on September 11, 2008.

9. Trout Unlimited appealed the Final Decree on Remand to the Colorado Supreme Court in accordance with C.A.R. 1(e). After briefing and oral argument, the Supreme Court issued an opinion further articulating the elements of proof required and remanded the case, by Mandate issued November 25, 2009, back to this Court for additional trial proceedings consistent with the Supreme Court's opinion.

10. While preparing for additional trial, Co-Applicants and Trout Unlimited have conducted settlement negotiations and agreed on the terms and conditions necessary for concluding litigation. Such terms have been incorporated into this Stipulated Findings of Fact, Conclusions of Law, Judgment and Decree. Co-Applicants and Trout Unlimited stipulate and consent to entry of this Stipulated Findings of Fact, Conclusions of Law, Judgment and Decree, and agree not to seek any appeal of, or from, its entry by the Court.

11. PAWSD is a quasi-municipal corporation of the State of Colorado organized under §32-1-101 *et seq.*, C.R.S. PAWSD owns and operates a municipal water system that provides treated and raw water for multiple beneficial uses within its service area, including the Town of Pagosa Springs, Colorado, and the majority of residential development within Archuleta County, Colorado. PAWSD has the statutory authority to appropriate water rights, to have and exercise the power of eminent domain and dominant eminent domain, to plan and construct water development projects, and to appropriate recreational in-channel diversion water rights, among other powers.

12. SJWCD is a quasi-municipal corporation of the State of Colorado organized under §37-45-101 *et seq.*, C.R.S. SJWCD provides water conservation, water resources planning, stream improvement, water rights protection and development services within its service area. SJWCD has the statutory authority to appropriate water rights, to have and exercise the power of eminent domain and dominant eminent domain, to sponsor water resources projects, to construct water development projects, to develop and operate augmentation plans and to appropriate recreational in-channel diversion water rights, among other powers.

13. The Districts filed this application in order to adjudicate conditional water rights for a joint water resources development project (the "Dry Gulch Project") that will provide for the future water demands of customers served by the Districts.

14. This decree confirms conditional direct flow and water storage appropriations from the San Juan River and Dry Gulch for the structures and locations described below (the "Subject Water Rights"):

#### **14.1 Dry Gulch Reservoir**

**14.1.1 Legal description of dam and reservoir:** An off-channel reservoir located on Dry Gulch, an ephemeral tributary to the San Juan River. The center point on the dam axis is located on the section line separating Sections 5 and 8, Township 35 North, Range 1 West, of the N.M.P.M., at a point 1,300 feet west from the Southeast corner of said Section 5. Dry Gulch Reservoir will occupy all or portions of the following quarter-sections, all located in Township 35 North, Range 1 West, of the N.M.P.M.: the SW/4, the S/2 of the NW/4, the SW/4 of the NE/4, and the S/2 and NW/4 of the SE/4 of Section 4; the SE/4 of the SE/4 of Section 5; the N/2 and SE/4 of the NE/4 of Section 8; and the NW/4, the NE/4, the N/2 of the SW/4, and the NW/4 of the SE/4 of Section 9.

**14.1.2 Dry Gulch Reservoir shall be filled by collecting native runoff and streamflow occurring within the Dry Gulch watershed, and by diversions from the San Juan River at either, or both, the Dry Gulch Pumping Station and Park Ditch river headgate. Legal description of filling structures:**

**14.1.2.1 Dry Gulch Pumping Station.** The point of diversion will be located in the San Juan River as it flows through the SE/4 of the SW/4 of Section 5, Township 35 North, Range 1 West, of the N.M.P.M., at a point approximately 3,100 feet from the east section line and 750 feet from the south section line of said Section 5.

**14.1.2.2 Park Ditch.** The point of diversion is located on the east bank of the San Juan River at a point 11 chains and 10 feet east and 8 chains and 43 feet north of the quarter corner between Sections 27 and 22, Township 36 North, Range 1 West, of the N.M.P.M., from which point the ditch extends in a generally southwesterly direction.

**14.1.3 Sources:** Dry Gulch, an ephemeral tributary to the San Juan River, and the San Juan River.

**14.1.4 Date of Appropriation:** December 20, 2004, established by the filing of the Application in this case. Water has not yet been applied to beneficial use by exercise of the water storage rights.

**14.1.5 Amounts claimed:**

**14.1.5.1 First Fill.** 4,700 ac-ft, CONDITIONAL, at a combined diversion rate of up to 50 cfs through the Park Ditch and/or Dry Gulch Pump Station in addition to native inflow to the reservoir from the Dry Gulch watershed. This first fill right may be used in combination with SJWCD's existing 6,300 ac-ft conditional storage right (previously decreed in Case No. 308-73D, Archuleta County District Court with a

priority date of December 19, 1968; hereinafter the "existing 6,300 ac-ft storage right") for Dry Gulch Reservoir from the same points of diversion to achieve a first fill of the reservoir of 11,000 ac-ft.

14.1.5.2 Successive Refill. 11,000 ac-ft, CONDITIONAL, at a combined diversion rate of up to 50 cfs from Park Ditch and/or Dry Gulch Pump Station in addition to native inflow to the reservoir from the Dry Gulch watershed, to refill successively whenever in priority after the first fill is deemed achieved each water year by the Division Engineer for Water Division No. 7.

14.1.5.3 Total Storage. The first fill and successive refill water storage rights granted herein may be used in conjunction with SJWCD's existing 6,300 ac-ft storage right to store no more than 11,000 ac-ft of water in any one water year (defined as the 12-month period commencing on November 1<sup>st</sup> and extending through the following October 31<sup>st</sup>). The Districts may exercise the first fill right, successive refill right and the SJWCD existing 6,300 ac-ft storage right together in any water year to provide the flexibility necessary to benefit from varying hydrologic conditions and meet seasonal demands. The water rights granted herein shall be further limited by the overall project limits described in paragraph 29.1 herein below.

14.1.6 Uses: Water derived from the Subject Water Rights may be used for all municipal uses, including, but not limited to, domestic, industrial, commercial, mechanical, fire protection, sewage treatment, watering of parks, lawns, gardens and other public spaces, irrigation, agriculture, recreation, piscatorial and incidental wildlife uses, lake and reservoir evaporation, and for replacement, adjustment and regulation of the Co-Applicants' respective storage and delivery systems, and those of its users, among themselves and with others. Water derived from the Subject Water Rights may also be used to provide raw water by contract to certain customers within the Districts' service areas for irrigation. Co-Applicants may divert, store and use the water directly, by and for exchange or augmentation, as may be appropriate to maximize its lawful use within the Districts' respective service areas. Prior to use for augmentation purposes, the Districts shall obtain a separate decree from the water court authorizing an augmentation plan. The water may be placed to use only within the PAWSD or SJWCD service areas as such now exist or may exist in the future.

#### 14.1.7 Dimensions of Reservoir for Claimed Amount:

14.1.7.1 Surface area. Approximately 319 acres.

14.1.7.2 Height of the dam. Approximately 105 feet.

14.1.7.3 Length of the dam. Approximately 1,500 feet.

14.1.7.4 Active capacity. Approximately 11,000 ac-ft

14.2 Dry Gulch Pumping Station

14.2.1 Legal description of point of diversion: same as described in paragraph 14.1.2.1 herein.

14.2.2 Source: San Juan River.

14.2.3 Date of Appropriation: December 20, 2004, established by the filing of the Application in this case. Water has not yet been applied to beneficial use by exercise of the water rights.

14.2.4 Amount claimed: 50 cfs, CONDITIONAL, from the San Juan River for direct use and/or for storage in Dry Gulch Reservoir or other reservoirs currently owned or controlled by the Districts in District 78 (Piedra River watershed). The diversion rights granted herein shall be further limited by the overall project limits described in paragraph 29.1 herein below.

14.2.5 Uses: same as described in paragraph 14.1.6 herein.

15. The Districts have met all the factual and legal requirements for a conditional appropriation of water to meet projected demands through 2055. This decree includes terms and conditions to assure that the water rights are not speculative and to allow adjustment of the size of the water rights if warranted in the future.

16. The Districts may divert or store water, under the priority awarded herein and in the amounts and rates of flow decreed, from the San Juan River and Dry Gulch, a tributary of the San Juan River, at the specified diversion points, subject to the terms and conditions specified herein. However, the Districts have acknowledged that, in light of the terms and conditions below requiring them to bypass available flows at the Dry Gulch Pumping Station point of diversion, the Districts may not place a call for water as against junior water rights located upstream from the stream gage known as San Juan River at Pagosa Springs (as further described in Para. 29.6 herein), or replacement gage, under the Dry Gulch Project conditional water rights herein granted or under SJWCD's existing 6,300 ac-ft storage right. Such bypass conditions shall not effect the administrative enforcement of the Districts' priorities against calls made by water rights junior to the Districts' priorities that are located downstream from the San Juan River at Pagosa Springs gage, or replacement gage. If the San Juan River is under administration at the diversion points authorized herein and State water officials determine to curtail water rights upstream of the Districts' diversion points to satisfy a downstream call for water by water rights that are senior to such curtailed upstream rights, the Districts will honor the State water officials' conveyance of such water and refrain from diverting any additional water resulting from such conveyance.



17. This decree has been reviewed and deemed administrable by the Division Engineer for Water Division No. 7 on behalf of the Division of Water Resources.

### **CONCLUSIONS OF LAW**

18. The foregoing Findings of Fact are incorporated herein, and made a part of these Conclusions of Law as if fully set forth.

19. The application herein is one contemplated by law, and this Court has exclusive jurisdiction over the subject matter of this proceeding. §37-92-203, C.R.S.

20. The application herein was filed with the Water Clerk in accordance with the provisions of §37-92-302(1)(a), C.R.S.

21. Timely and adequate notice of this application was given in the manner required by law and the Court has jurisdiction over the subject matter of this proceeding and over all persons and water rights affected thereby, irrespective of whether those persons or owners of water rights have appeared in accordance with §§ 37-92-203 and 37-92-302, C.R.S.

22. The Districts have entered into Stipulations with Koinonia, LLC (now Bootjack Ranch, LLC), the Park Ditch Company, Inc., and the Weber Entities as described in paragraph 3 herein. The terms of said Stipulations are incorporated herein as enforceable terms of the decree granted herein.

23. The Districts have complied with all requirements and have met all standards and burdens of proof applicable to awarding the claims requested herein

24. The Districts have properly initiated the appropriation of the Subject Water Rights as of December 20, 2004, have proceeded with reasonable diligence in the development of the Subject Water Rights from the date of initiation, have demonstrated that water can and will be diverted and beneficially used, and that completion of the appropriations can be accomplished with diligence and within a reasonable time. The Districts have otherwise complied with all requirements and have met all standards and burdens of proof applicable to awarding the claims requested herein. Therefore the Districts are entitled to a decree confirming and approving the Subject Water Rights within the meaning of §§ 37-92-103(3)(a) and 37-92-305, C.R.S.

25. Due to the bypass flow requirements set forth in Para. 29.6 below, the Districts are precluded from placing a call to curtail junior water uses located upstream from the San Juan River at Pagosa Springs gage, or replacement gage, to make flows available under the Dry Gulch Project conditional water rights herein granted or under SJWCD's existing 6,300 ac-ft storage right.

26. In the interest of settlement and avoiding additional litigation on this matter, the Districts and Trout Unlimited have stipulated to the entry of this decree. Neither the Districts nor Trout Unlimited shall prosecute any further appeal of this decree.

## **JUDGMENT AND DECREE**

27. The foregoing Findings of Fact and Conclusions of Law are hereby adopted and incorporated into this Judgment and Decree as if fully set forth herein.

28. The Districts are hereby decreed conditional water rights for the Dry Gulch Project as further described in paragraph 14 herein subject to the terms and conditions described herein below.

29. The following terms and conditions shall apply to the Districts' use and perfection of the Dry Gulch Project conditional water rights herein granted and SJWCD's existing 6,300 ac-ft storage right for Dry Gulch Reservoir:

29.1 **Overall Dry Gulch Project Volumetric and Diversion Limits.** The Districts may exercise the storage and diversion rights confirmed by this decree together with SJWCD's existing 6,300 ac-ft storage right independently or in any combination so long as all accumulated diversions (to direct use, storage, refill and successive refill) and capture of native inflow to the reservoir from the Dry Gulch watershed do not exceed 11,000 ac-ft in any 12-month water accounting year (defined as the 12-month period commencing on November 1st and extending through the following October 31st), nor exceed 93,000 ac-ft over any ten successive water years. In addition to these volumetric limits, total combined diversions for direct use, into storage, or in part for both purposes through Dry Gulch Project facilities under the water rights confirmed herein and SJWCD's existing 6,300 ac-ft storage right shall never exceed a maximum combined diversion rate of 50 cfs in addition to native inflow to the reservoir from the Dry Gulch watershed. The annual and multi-year limits described herein shall not include water flows or volumes available and divertible in priority under this decree, but which are voluntarily (including the limitations specified in paragraph 29.6 herein) or involuntarily bypassed, or otherwise not diverted or captured. Such non-diverted, non-captured and bypassed streamflow shall not be accounted against the Dry Gulch Project water rights by the Division Engineer for Water Division No. 7 or other State water officials with jurisdiction.

29.2 **Reality Check.** As part of the hexennial diligence proceedings and proceedings to make absolute the conditional portions of the water rights decreed herein, the Districts are required to make showings that the volumetric yield of the conditional water rights has been or will be needed by the Districts' projected growth. In assessing such need, this Court may consider the Districts' service demand at that time, the Districts' projected demand growth at that time, and the Districts' use or disposition of the portfolio of water rights the Districts own at the time of this decree. All or part of the water rights confirmed in this decree shall be cancelled if this Court finds, based on subsequent events, that the Districts do not actually need the volume of water appropriated in this case for the uses provided in this decree.

29.3 Measurement. The Districts shall install and maintain meters, gages, measuring devices and other structures as required by the Division Engineer for Water Division No. 7 to properly account for the water diverted and beneficially used pursuant to this remand decree and to demonstrate compliance with the terms and conditions of this decree, including paragraph 29.6. In keeping with the terms decreed herein, inflow to the reservoir from the Dry Gulch watershed shall be measured by accounting for volumetric changes occurring to the storage volume within the reservoir after taking into account all other sources of inflow and outflow.

29.4 Accounting. The Districts shall develop accounting forms that accurately account for the diversion, storage and use of the Subject Water Rights separately from other water rights owned and exercised by the Districts. Such accounting forms shall be submitted to the Division Engineer prior to the diversion, storage and use of water by exercise of the Subject Water Rights, and the forms may be revised from time to time thereafter as deemed appropriate, or as may be required by the Division Engineer.

29.5 Use of the Park Ditch. The Park Ditch Company, a *pro se* Objector in this matter, operates the Park Ditch, which traverses through the Dry Gulch Reservoir site and the headgate for which has been designated as a point of diversion for filling Dry Gulch Reservoir by exercise of the Subject Water Rights. The Districts' diversions in the Park Ditch could be used to fill Dry Gulch Reservoir by gravity or by pumping depending on the constructed size of the reservoir. The Districts have adopted the following terms and conditions and have entered into a Stipulation with the Park Ditch Company to address the Districts' obligations to protect the water rights and other assets of the Park Ditch shareholders in connection with the Districts' construction of the Dry Gulch Project and the use of the Park Ditch as a filling structure for Dry Gulch Reservoir.

29.5.1 As a condition precedent to diverting water in the Park Ditch by exercise of the Subject Water Rights, the Co-Applicants will enter into an operations and maintenance agreement with the Park Ditch Company addressing the impacts to the Park Ditch Company caused by the Districts' use of the Park Ditch.

29.5.2 As a condition precedent to modifying the Park Ditch where it crosses the Dry Gulch Project site, the Co-Applicants will consult with the Park Ditch Company concerning the design standards for modified ditch structures through the site, the schedule that will be followed during construction of such modifications and the methods to ensure continued water deliveries to Park Ditch shareholders located down-ditch.

29.5.3 The Districts will be responsible for obtaining and bearing the cost of any U.S. Forest Service special use permits, if required by the Districts' use of the Park Ditch for other than strictly irrigation purposes.

**29.6 Streamflow Limitations.** The Districts shall not divert water from the San Juan River at the Dry Gulch Pumping Station and/or Park Ditch pursuant to the Subject Water Rights or SJWCD's existing 6,300 ac-ft storage right if the streamflow in the San Juan River, as measured at the U.S. Geological Survey stream gage known as San Juan River at Pagosa Springs (gage identification no. 09342500), is at or below 100 cfs during the period March 1<sup>st</sup> through August 31<sup>st</sup>, or at or below 60 cfs during the period September 1<sup>st</sup> through February 29<sup>th</sup>. Exercise of the Subject Water Rights and SJWCD's existing 6,300 ac-ft storage right shall be limited so as not to cause flows in the San Juan River to fall below such streamflow thresholds. If the U.S. Geological Survey San Juan River at Pagosa Springs gage ceases to exist at any point in the future, an alternative gage will be installed and maintained to demonstrate the Districts' compliance with this paragraph.

**29.7 Abandonment of Unperfected Water Rights.** By way of compromise, and as a condition of settlement of this matter without further trial or appeal, the Districts have agreed with Objector Trout Unlimited to abandon all portions of following conditional water rights held by the Districts that have not been used or perfected as of the date that the Dry Gulch Project facilities, including direct diversion and storage facilities, have been constructed:

29.7.1 The West Fork Canal conditional water right, 70 cfs, originally decreed in Case No. 73-308D, of which all is owned by SJWCD;

29.7.2 The West Fork Reservoir conditional water right, 35,797 ac-ft, originally decreed in Case No. 73-308D, of which 10,000 ac-ft is owned by PAWSD and 25,797 ac-ft is owned by SJWCD;

29.7.3 The Dutton Ditch Second Enlargement conditional water right, 40 cfs, originally decreed in Case No. 73-308D, of which 20 cfs is owned by each District;

29.7.4 The Martinez Dam conditional water right, 2,900 ac-ft, originally decreed in Case No. W-304, of which all is owned by PAWSD;

29.7.5 The San Juan River Intake conditional water right, 7.0 cfs of the 16.58 cfs remaining portion, originally decreed in Case No. 83CW145, of which all is owned by PAWSD; and

29.7.6 Those portions of the Subject Water Rights (the Dry Gulch Project water rights decreed herein) not needed for the final constructed configuration of the Dry Gulch Project.

**29.8 Subordination.** Koinonia (now Bootjack Ranch, LLC), an Objector in this matter, and the Co-Applicants entered into a Stipulation dated April 26, 2006, which subordinated the priorities granted herein to up to 500 ac-ft of diversions made by

Bootjack Ranch under its water rights junior to such priorities. Bootjack Ranch, LLC and Co-Applicants have agreed that the conditions imposed in paragraph 31 of this Decree are more broad than the stipulated no-call agreement between them, and that Bootjack Ranch is a beneficiary of paragraph 31 in addition to the April 26, 2006 Stipulation. The parties have agreed that this paragraph 29.8 meets all requirements of the April 26, 2006 Stipulation concerning inclusion of terms in this Decree.

30. The Subject Water Rights are part of the PAWSD integrated municipal water system, and diligence on any feature of this system, including on other PAWSD water rights if such diligence activity is complimentary to the Subject Water Rights, may be considered in determining diligence as to the conditional Subject Water Rights. Likewise, the Subject Water Rights are part of the SJWCD integrated plans for water resources development, and diligence on any other SJWCD project may be considered in determining diligence as to the conditional Subject Water Rights if such diligence activity is complimentary to the Subject Water Rights.

31. The conditional water rights priorities awarded herein were filed in the water court in the year 2004, shall be administered as having been filed in that year and shall be administered as junior to priorities filed in previous years. As between competing rights filed in 2004, priority shall be determined by historical dates of appropriation and not affected by the date of entry of this Judgment and Decree. However, the Districts are precluded from placing, and the State and Division Engineers will not enforce, a call to curtail junior water users located upstream from the San Juan River at Pagosa Springs gage, or replacement gage, to make flows available under the Dry Gulch Project conditional water rights herein granted or under SJWCD's existing 6,300 ac-ft storage right. This condition is made necessary by the bypass flow requirements in Para. 29.6, in order to, *inter alia*, protect upstream water rights junior to the priorities awarded herein from being curtailed to provide more water than the water rights decreed herein are entitled to divert for beneficial use, and to prevent such upstream juniors from being curtailed earlier than they would have been had this decree not contained the bypass flow requirements. Such bypass conditions shall not effect the administrative enforcement of the Districts' priorities against calls made by water rights junior to the Districts' priorities that are located downstream from the San Juan River at Pagosa Springs gage, or replacement gage. If the San Juan River is under administration at the diversion points authorized herein and State water officials determine to curtail water rights upstream of the Districts' diversion points to satisfy a downstream call for water by water rights that are senior to such curtailed upstream rights, the Districts will honor the State water officials' conveyance of such water and refrain from diverting any additional water resulting from such conveyance.

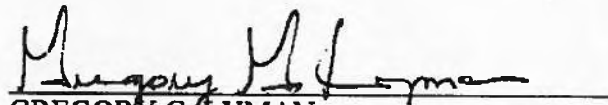
32. If paper-fill accounting of the conditional storage rights granted herein and/or of SJWCD's existing 6,300 ac-ft storage right is deemed necessary by the Division Engineer in the future, the bypass flows required by Para. 29.6 herein will not be accounted for as "storable inflow" against such storage rights. This condition has been approved by the Division Engineer based upon his conclusion that the other terms and conditions in this decree make such accounting unnecessary to prevent injury.



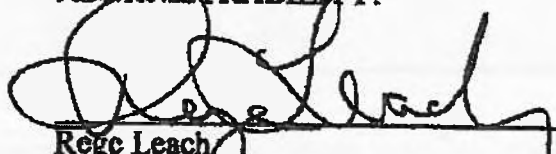
33. No Precedent: The agreement of the undersigned parties to this proposed decree shall not be construed as concurrence beyond the decree stipulated hereto with any findings of fact, conclusions of law, or terms and conditions contained therein, and nothing contained in said proposed decree shall be binding upon these parties in any proceeding other than the current proceeding. The agreement of the Division Engineer that this decree is administrable is based upon the unique facts and circumstances of this case and the combined terms and conditions in this decree, and shall not be precedent for administrative decisions of the State or Division Engineers in any other context or proceeding.

34. The Court finds and orders that if the Districts' desire to maintain the conditional Subject Water Rights, an application for a finding of reasonable diligence shall be made on or before the last day of October, 2017, or a showing made on or before such date that the conditional water rights have been made absolute by reason of completion of the appropriation.

DATED this 31st day of October, 2011.

  
GREGORY G. CYMAN  
Water Judge  
Water Division No. 7

REVIEWED AND APPROVED AS TO  
ADMINISTRABILITY:

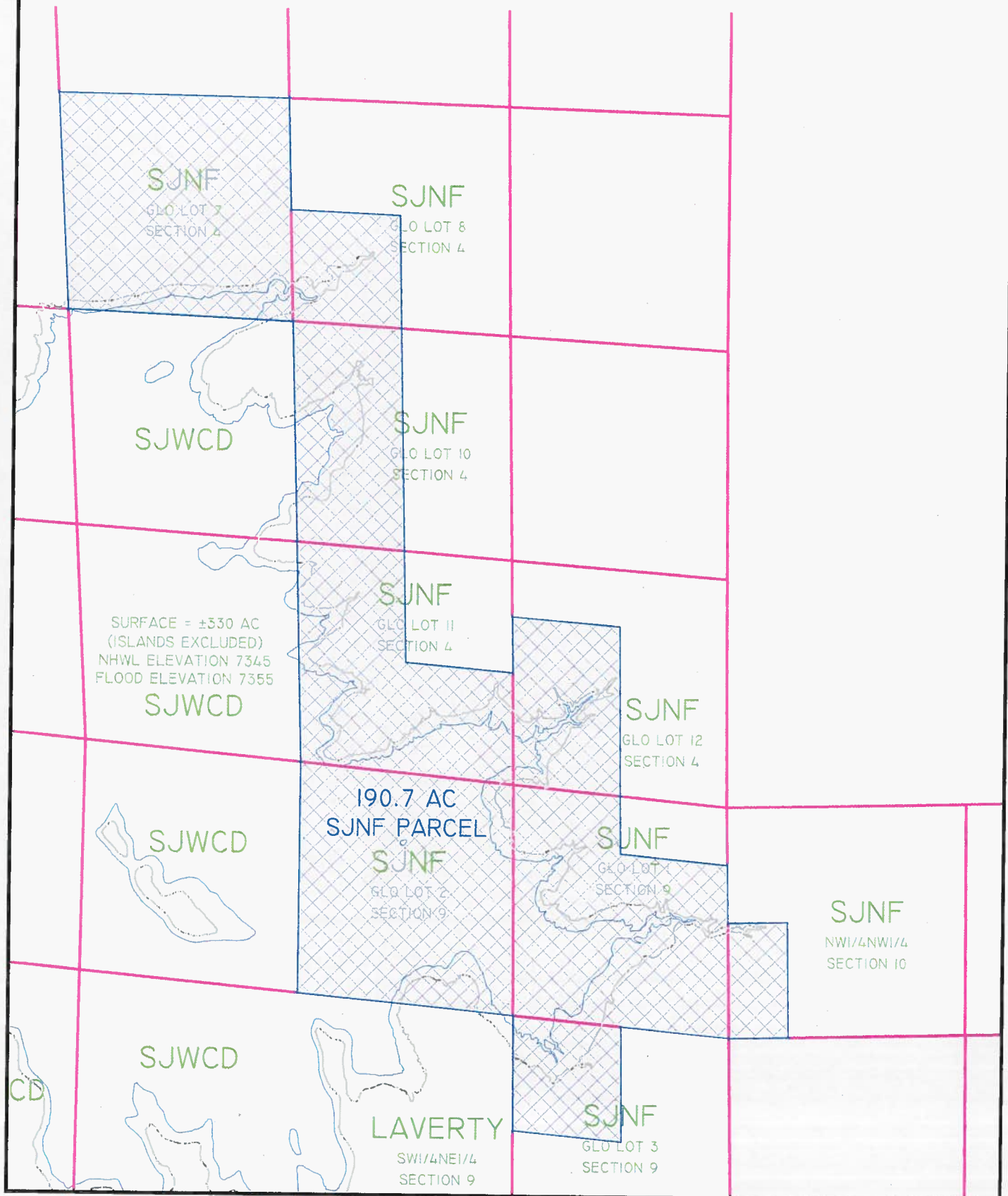
 10-13-2011  
Rega Leach  
Division Engineer  
Water Division No. 7

## **ATTACHMENT 2**

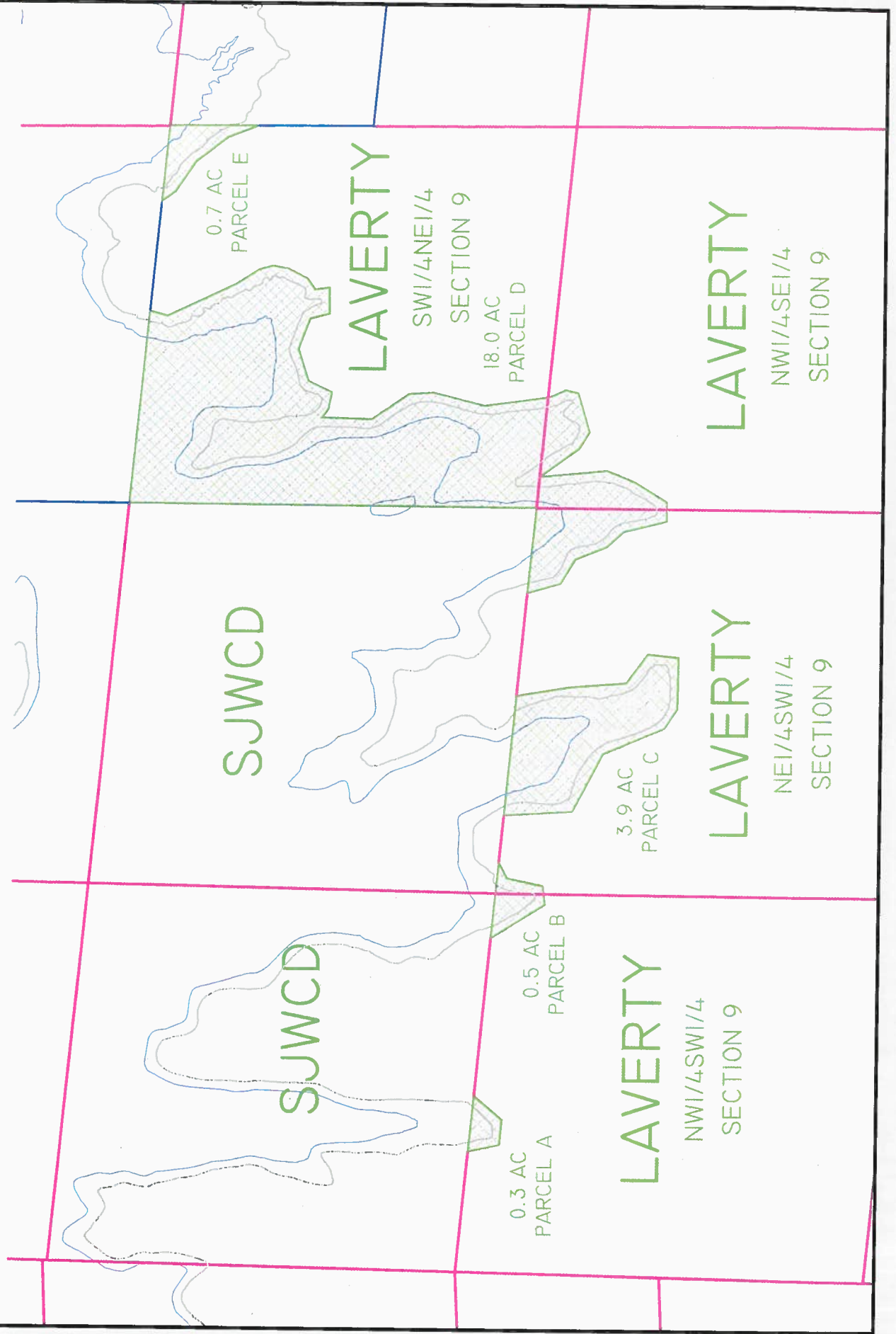
### **Maps of:**

- USFS Land to be Exchanged**
- Private Land to be Purchased**
- Private Road Easement to be Purchased**

# USFS - SJNF LAND EXCHANGE



# PRIVATE LAND EXCHANGE





# Aerial View of Roadway Easement



The blue line represents the roadway easement with an assumed total length of 6,450 ft.

# **ATTACHMENT 3**

## **LAND APPRAISAL Ace Appraisal, LLC January 23, 2017**

**Included herein is the summary letter for the appraisal report.  
The entire report is nearly 100 pages long and will be  
provided electronically on request.**



# Ace Appraisal, LLC

PO Box 4462; 80 CR 600 Suite 201  
Pagosa Springs, CO 81147  
Phone: 970-731-1986 Fax: 970-208-8353  
[ace@aceappraisal.info](mailto:ace@aceappraisal.info) / [www.aceappraisal.info](http://www.aceappraisal.info)

January 23, 2017

Mr. Rod Proffitt  
San Juan Water Conservancy District  
P.O. Box 4632  
46 Eaton Drive  
Pagosa Springs, CO 81147

Dear Mr. Proffitt,

As you requested, Ace Appraisal has completed a narrative appraisal report for two separate parcels adjacent to the Dry Gulch Reservoir Project and an access easement. The first parcel is property owned by the San Juan National Forest Service and encompasses 190.7 acres. Throughout the remainder of this report, this property is referred to as the "National Forest Parcel". The second parcel is several smaller irregular shaped parcels totaling 23.4 acres. This property is part of a larger ranch owned by the Lavery family. Throughout the remainder of this report, this property is referred to as the "Lavery Parcel". The last analysis will be to determine market value of an access easement across the Lavery Ranch to the Dry Gulch Reservoir Project. Throughout the remainder of the report, this analysis is referred to as the "Lavery Easement".

Per the intended use of the client, the fee simple value of the National Forest Parcel and the Lavery Parcel (as total acreage) as separate values is determined. In addition, the value of the access easement as a separate value will also be determined. The purpose and intended use of the National Forest Parcel value is to make a "like-kind" trade for the land. The purpose and intended use of the Lavery Parcel value is to establish a price for a direct purchase of the land. Likewise, the purpose and intended use of the Lavery Easement value is also for establishing a price for direct purchase. The three values are subject to the stated Scope of Work, purpose of the appraisal, reporting requirements of this appraisal report form, and Definition of Market Value.

The intended user of this appraisal report is the San Juan Water Conservancy District (SJWCD), and Colorado Water Conservation Board (CWCB).

The purpose of this appraisal is to determine the market value. The estimated market value indicated in the body of the appraisal report is of the effective date, December 23, 2016.

*Ace Appraisal LLC*

The most widely accepted components of market value are incorporated in the following definition: The most probable price that the specified property interest should sell for in a competitive market after a reasonable exposure time, as of a specified date, in cash, or in terms equivalent to cash, under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, for self-interest, and assuming that neither is under duress. Source: Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5th ed. (Chicago: Appraisal Institute, 2010).


The appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice, and any additional standards of my clients, Mr. Rod Proffitt and the San Juan Water Conservancy District. In addition, this report has been written in accordance with the Code of Ethics and the Standards of Professional Practice of the Appraisal Institute. This appraisal is not to be relied on in- part but only as a complete report that is 101 pages long including the letter of transmittal and addenda.

My findings were conscientiously prepared on the basis of available information and individual research within the market area of the subject property. The opinion of market value based upon the sales comparison approach to value is the following:

Certification of Value		
Real Property	Overall Value	Price/Acre
National Forest Property	\$ 915,000	\$ 4,800
Laverty Property	\$ 145,000	\$ 6,200
Laverty Easement	\$ 27,500	\$ 3,100

If there are any questions after your review please do not hesitate to call Jess Ketchum at (970) 731-1986 or email [jess@aceappraisal.info](mailto:jess@aceappraisal.info).

Sincerely,



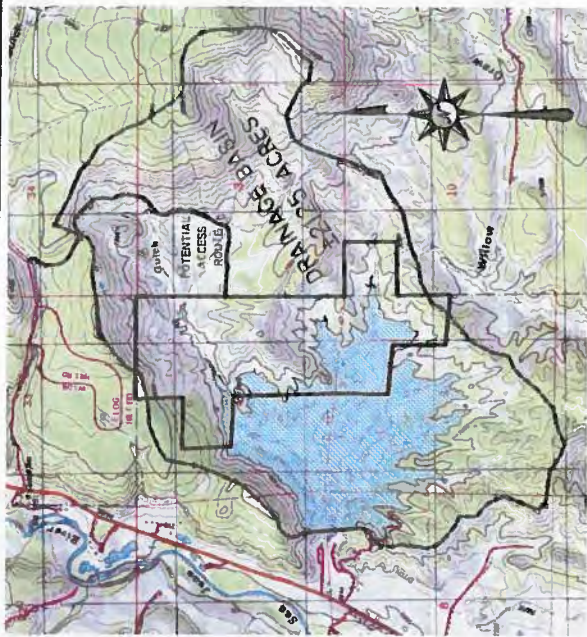
Jess E. Ketchum  
Colorado Certified General  
Real Estate Appraiser  
CG40041546

# **ATTACHMENT 4**

## **Maps of:**

- Dry Gulch Dam and Reservoir Basin**
- Pipeline Alignment from Park Ditch  
Headgate to the Reservoir**





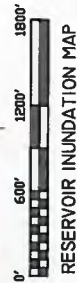
DRAINAGE BASIN MAP - SCALE: 1" = 2000'

#### TABULATIONS:

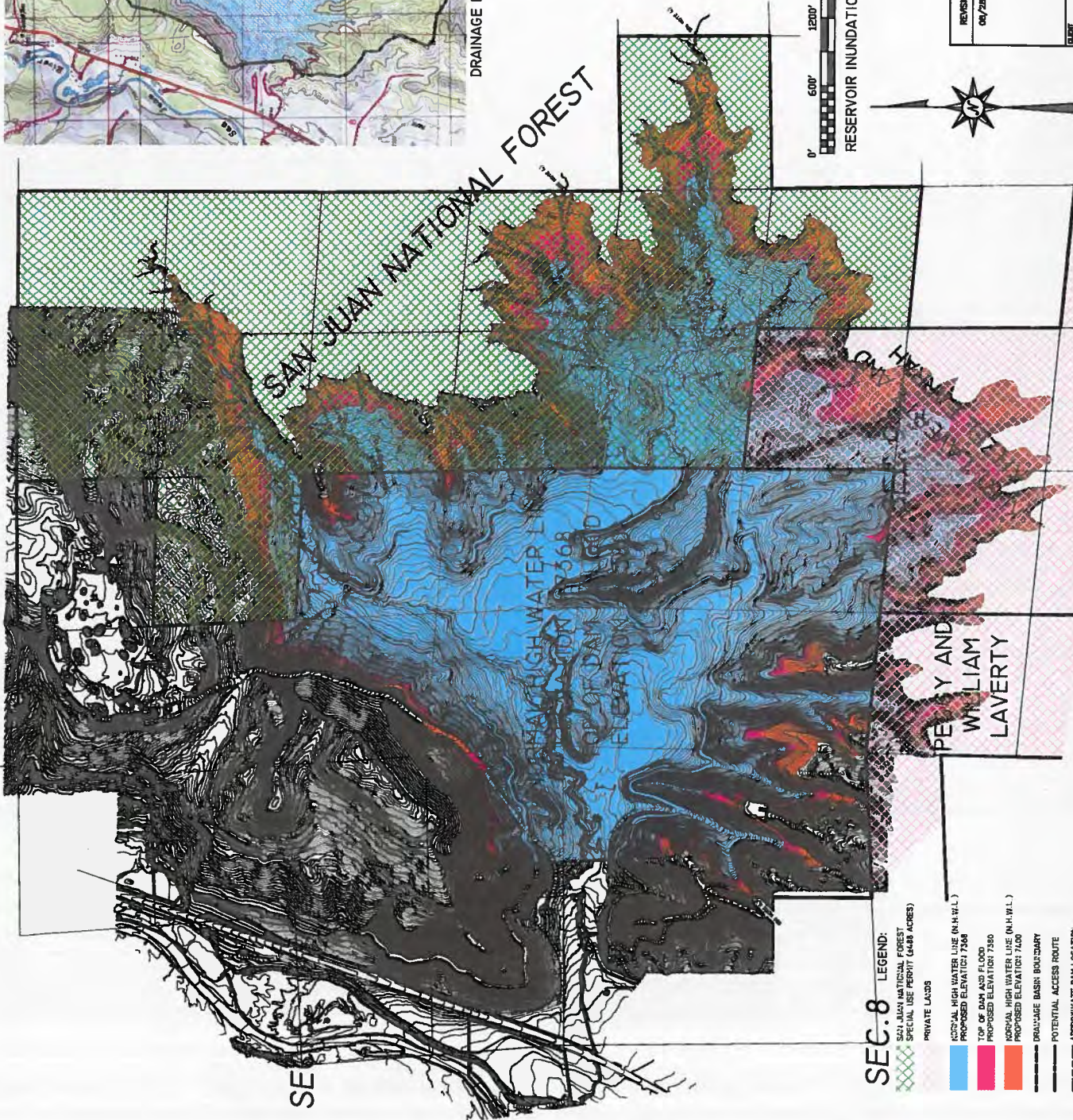
PERCY AND WILLIAM LAVERY  
 ACQUIRED AREA (N.H. ALL SURFACE) = 1.8 ACRES  
 FLOOD AREA (7368 TO 7380) = 2.8 ACRES  
 FLOOD AREA (7380 TO 7400) = 6.6 ACRES  
 KURT LAVERY AND KATEL PARDON  
 ACQUIRED AREA (N.H. ALL SURFACE) = 33.6 ACRES  
 FLOOD AREA (7368 TO 7380) = 16.8 ACRES  
 FLOOD AREA (7380 TO 7400) = 29.6 ACRES  
 SAN JUAN NAT. FOREST  
 ACQUIRED AREA (N.H. ALL SURFACE) = 10.8 ACRES  
 FLOOD AREA (7368 TO 7380) = 32.9 ACRES  
 FLOOD AREA (7380 TO 7400) = 60.5 ACRES  
 ACQUIRED LANDS AS OF SPRING OF 2009  
 FLOOD AREA (7368 TO 7380) = 11.4 ACRES  
 FLOOD AREA (7380 TO 7400) = 20.4 ACRES  
 TOTAL PROPOSED RESERVOIR  
 ACQUIRED AREA (N.H. ALL SURFACE) = 44.7 ACRES  
 FLOOD AREA (7368 TO 7380) = 60.9 ACRES  
 FLOOD AREA (7380 TO 7400) = 117.5 ACRES

#### NOTES:

- 1) DAM LOCATION IS APPROXIMATE
- 2) SECTION DESIGNATION NUMBERS ARE AT CENTER OF SECTIONS
- 3) RESERVOIR INUNDATION MAP CONTOURS INTERVAL = 2 FEET
- 4) ELEVATION 7400 EXTENDS BEYOND THE BOUNDARIES OF THE LANDS NOTED HEREON. TOTAL AREA IS LESS THAN 0.06 ACRES.



RESERVOIR INUNDATION MAP



#### SEC. 8 LEGEND:

- SAN JUAN NATIONAL FOREST
- SPECIAL USE FOREST (6448 ACRES)
- PRIVATE LANDS
- NORMAL HIGH WATER LINE (N.H. ALL)
- PROPOSED ELEVATION 7368
- TOP OF DAM AND FLOOD
- PROPOSED ELEVATION 7380
- NORMAL HIGH WATER LINE (N.H. ALL)
- PROPOSED ELEVATION 7400
- DRAINAGE BASIN BOUNDARY
- POTENTIAL ACCESS ROUTE
- APPROXIMATE DAM LOCATION

PERCY AND WILLIAM LAVERY

OP OF DAM FLOOD ELEVATION

7368

7380

7400

7420

7440

7460

7480

7500

7520

7540

7560

7580

7600

7620

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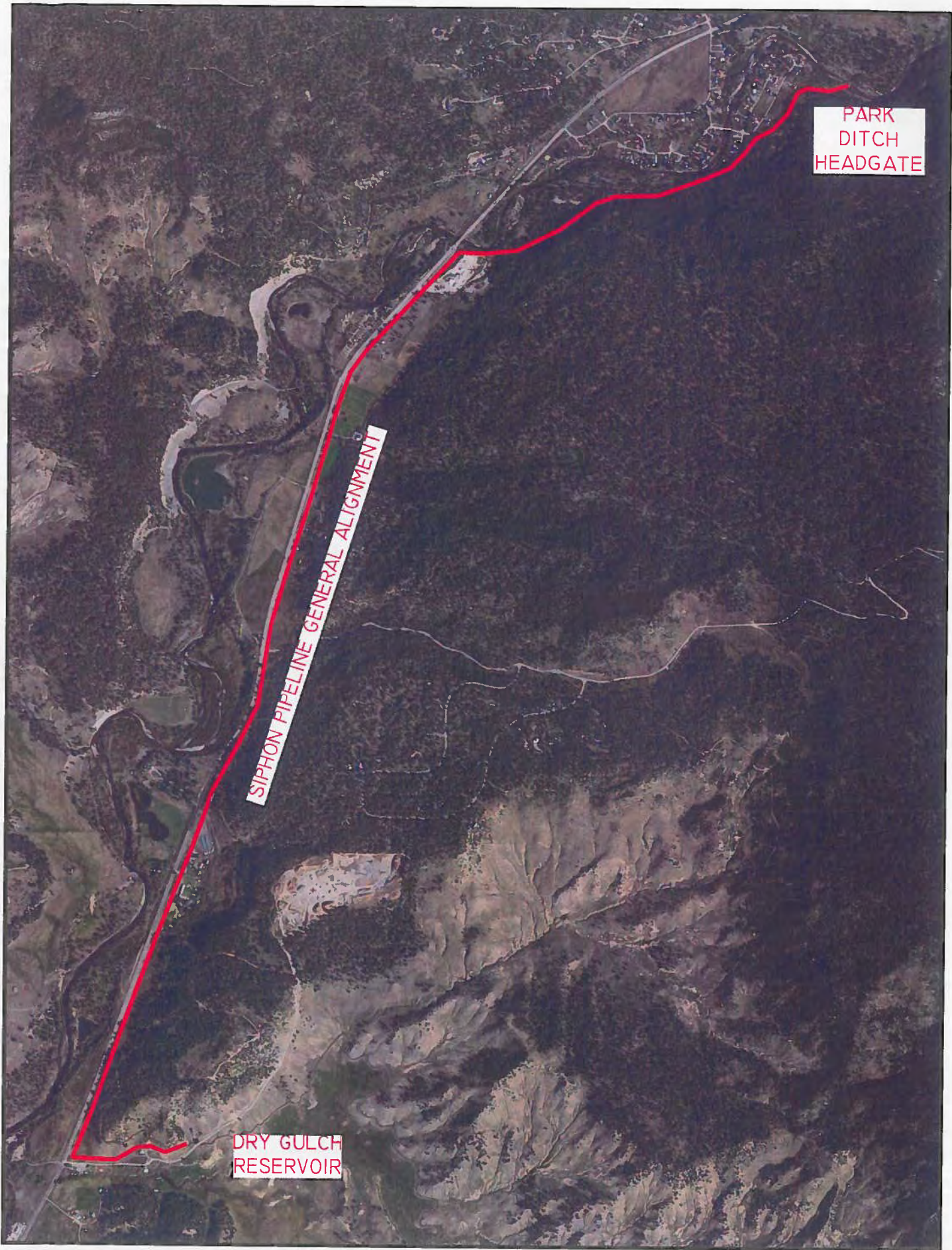
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PARK  
DITCH  
HEADGATE

SIPHON PIPELINE GENERAL ALIGNMENT

DRY GULCH  
RESERVOIR

# **ATTACHMENT 5**

## **SJWCD BYLAWS**



## **SAN JUAN WATER CONSERVANCY DISTRICT BYLAWS**

**Section 1. Authority.** San Juan Water Conservancy District ("District") is a governmental subdivision of the State of Colorado and a body corporate with those powers of a public or quasi municipal corporation which are specifically authorized by, and in compliance with, Section 37-45-101, et seq., C.R.S.

**Section 2. Purpose.** It is hereby declared that the Bylaws hereinafter set forth will serve a public purpose.

**Section 3. Policies of the Board.** It shall be the policy of the Board of Directors ("Board") of the District, consistent with the availability of revenues, personnel and equipment, to use its best efforts to provide quality District services as authorized by law.

**Section 4. Board of Directors.** All powers, privileges and duties vested in, or imposed upon, the District by law shall be exercised and performed by and through the Board, whether set forth specifically or impliedly in these Bylaws. The Board may delegate to officers, employees, and agents of the District any or all administrative and ministerial powers.

- a. **Number of Members.** By Order of the Archuleta County District Court dated October 22, 1987, the District was organized and the Board of Directors was specified to consist of no less than seven (7) and no more than eleven (11) members. By Order dated March 26, 2001, the District Court affirmed the District Board's February 13, 2001 expansion of its Board from 9 to 10 Directors. Section 6 of the organizational Court Decree was further amended by Order of the Archuleta County District Court on May 6, 2014, providing that the Board shall consist of no less than five nor more than nine Directors.
- b. **Geographical Representation.** The October 22, 1987 District Court Order organizing the District specified that initial composition of the Board include two (2) Directors who are residents within the incorporated town limits of Pagosa Springs, two (2) other Directors who are residents within the boundaries of the service area of the Pagosa Area Water and Sanitation District, three (3) other Directors whose residence is outside the town limits of Pagosa Springs and outside the service area of the Pagosa Area Water & Sanitation District, and with all other Directors selected at-large. All Directors must be residents within the boundaries of the San Juan Water Conservancy District. After the District was organized, in 1993 the Town of Pagosa Springs service area was wholly incorporated into the Pagosa

Area Water & Sanitation District, which may affect the ability to meet the original jurisdictional representation requirement. Therefore, all District recommendations to the District Court for Director appointments shall seek to generally maintain a balanced geographical and jurisdictional representation among the Board members even though strict adherence to the originally prescribed jurisdictional boundaries is no longer possible. Numerous Court appointment orders since the change in jurisdictional boundaries have acknowledged and affirmed this fact.

- c. **Powers.** Without restricting the general powers conferred by these Bylaws, it is hereby expressly declared that the Board shall have the following powers and duties:
1. To confer upon any appointed officer or employee of the District the power to choose, remove or suspend employees or agents upon such terms and conditions as may seem fair and just and in the best interests of the District.
  2. To determine and designate, except as otherwise provided by law or these Bylaws, who shall be authorized to make purchases, negotiate leases for office space, and sign receipts, endorsements, checks, releases and other documents. The Board may, on a limited basis and by resolution, give a District Manager or other appointed signatory the power to sign contracts and other official documents on behalf of District.
  3. To create standing or special committees and to delegate such power and authority thereto as the Board deems necessary and proper for the performance of such committee's functions and obligations.
  4. To prepare or cause to be prepared financial reports, other than the statutory audit, covering each year's fiscal activities; and such reports shall be available for inspection by the public as requested.

**Section 5. Office.**

- a. **Business Office.** The principal business office of District shall be at 46 Eaton Drive, Suite #5, Pagosa Springs, Colorado 81157, until otherwise designated by the Board.
- b. **Establishing Other Offices and Relocation.** The Board, by resolution, may from time to time, designate, locate and relocate its executive and business office and such other offices as, in its judgment, are necessary to conduct the business of the District.

## **Section 6. Meetings.**

- a. **Regular Meetings.** Regular meetings of the Board shall be conducted on the second Monday of each even month at 7:00 p.m. and held at the business office, unless otherwise noticed and posted.
- b. **Meeting Public.** All meetings of the Board, other than executive sessions and social gatherings, shall be open to the public.
- c. **Notice of Meetings.** Section 6.a shall constitute formal notice of regular meetings to Board members, and no other notice shall be required to be given to the Board, other than the permanent posting. The Board shall adopt a resolution at the first meeting of every calendar year designating the public posting place of the 24-hour notice of meeting and agenda per the requirements of §24-6-402(2)(c), C.R.S. Written waivers of notice by Board members are not necessary.
- d. **Special Meetings.** Special meetings of the Board may be called by any officer of the Board (President, Vice President, Treasurer or Secretary) upon notice to all Board members and upon twenty-four (24) hours notice posted at the Business Office location designated in 5.a above.
- e. **No Informal Action by Directors/Executive Sessions.** All official business of the Board shall be conducted at regular or special meetings. Executive sessions may be called at regular or special meetings, and conducted according to the following guidelines:
  1. **Calling the Executive Session.** The topic for discussion in the executive session shall be announced in a motion, and the specific statute that authorizes the executive session shall be cited. The matter to be discussed shall be described in as much detail as possible without compromising the purpose of being in executive session. An affirmative vote of two-thirds (2/3) of the quorum present shall be required to go into executive session.
  2. **Conducting the Executive Session.** No adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall take place in an executive session. The discussion in executive session shall be limited to the reasons for which the executive session was called. An electronic record (such as an audio tape) of the actual contents of the discussion in the executive session shall be kept. No electronic or other record is necessary to be kept for any portions of the discussion which the District's attorney reasonably believes constitute attorney-client privileged communication. The

attorney shall state on the electronic record when any portion of the executive session is not recorded as an attorney-client privileged communication or sign a statement to the same effect.

3. Records of Executive Sessions. The electronic record of any executive session shall be retained by the District for ninety (90) days from the date of the executive session and then destroyed. Electronic recordings of the executive session, or transcripts or other reproduction of the same, shall not be released to the general public for review under any circumstances, except as required by law.
- f. Adjournment and Continuance of Meetings. When a regular or special meeting is for any reason continued to another time and place, notice need not be given of the continued meeting if the time and place of such meeting are announced at the meeting at which the continuance is taken, except as required by law. At the continued meeting, any business may be transacted which could have been transacted at the original meeting.
- g. Emergency Meetings. Notwithstanding any other provisions in this Section 6, emergency meetings may be called by the Chair or any two (2) Board members in the event of an emergency that requires the immediate action of the Board in order to protect the public health, safety and welfare of the property owners and electors of the District, without notice if notice is not practicable. If possible, notice of such emergency meeting may be given to the Board by telephone or whatever other means are reasonable to meet the circumstances of the emergency. At such emergency meeting, any action within the power of the Board that is necessary for the immediate protection of the public health, safety and welfare may be taken; provided, however, that any action taken at an emergency meeting shall be effective only until the first to occur of (a) the next regular meeting, or (b) the next special meeting of the Board at which the emergency issue is on the public notice of the meeting. At such subsequent meeting, the Board may ratify any emergency action taken. If any emergency action taken is not ratified, then it shall be deemed rescinded as of the date of such subsequent meeting.
- h. Email Meetings. Section 24-6-402, C.R.S., requires that certain e-mail between three (3) Directors (or, when two Directors constitutes a quorum, two (2) Directors) that discusses pending resolutions or other District business shall be considered a public meeting subject to the requirement of the Colorado Open Meetings Law.

**Section 7. Conduct of Business.**

- a. **Quorum.** All official business of the Board shall be transacted at a regular or special meeting at which a quorum (majority) of the Directors shall be present in person or telephonically, except as provided in Section 6.h above and Section 7.b.
- b. **Vote Requirements.** Any action of the Board shall require the affirmative vote of a majority of the Directors present and voting. When special or emergency circumstances affecting the affairs of the District and the health and safety of District residents so dictate, then those Directors available at the time may undertake whatever action is considered necessary and may so instruct the District's employees, agents and contractors. Such actions shall later be ratified by the Board.
- c. **Electronic Signatures.** In the event the signature(s) of one or more members of the Board or appointed signatories are required to execute a written document, contract, note, bond, deed, and/or other official papers of the District, and the appropriate individual(s) is unable to be physically present to sign said documentation, such individual or individuals are authorized to execute the documentation electronically via facsimile or e-mail signature, unless said documentation provides otherwise. Any electronic signature so affixed to a document shall carry the full legal force and effect of any original, handwritten signature. Except as approved herein, this provision of these Bylaws shall not be interpreted as establishing District's consent or authorization to bind District to any transaction by the use of electronic records or electronic means. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act.
- d. **Order of Business.** The business of all regular meetings of the Board shall be transacted, as far as is practicable, in the following order, and the agenda for such meetings shall describe in as much detail as is possible the topics planned for discussion within each category:
  - 1. Changes to Agenda;
  - 2. Approval (or approval as modified) of the Minutes of the previous meeting;
  - 3. Public input (for matters not otherwise on the Agenda/3 minute time limit/no disrupting, pursuant to §18-9-108, C.R.S.);
  - 4. Officers, Committees and professional consultants;

5. Unfinished business;
  6. New business and special orders;
  7. Executive session, if needed (may instead be scheduled at beginning of meeting); and
  8. Adjournment.
- e. **Public Conduct at Meetings.** Comments by members of the public shall be made only during the "Public Input" portion of the meeting unless additional opportunity is given at the Board's discretion. Disorderly conduct, harassment, or obstruction of or interference with meetings by physical action, verbal utterance, nuisance or any other means are hereby prohibited and constitute a violation of District rules. Such conduct may result in removal of person(s) responsible for such behavior from the meeting and/or criminal charges filed against such person(s). To the extent such occurrences arise and the person(s) responsible refuse to leave the premises, law enforcement authorities will be summoned. Prosecution will be pursued under all applicable laws, including without limitation Sections 18-9-108, C.R.S. (disrupting lawful assembly), 18-9-110, C.R.S. (public buildings – trespass, interference), and/or 18-9-117, C.R.S. (unlawful conduct on public property). Law enforcement may be requested to attend meetings at any time in which the Board believes their presence will be an asset to the keeping of peace and the conducting of public business. 9-1-1 will be called at any time that the Board or staff feels threatened or endangered during a public meeting.
- f. **Motions and Resolutions.** Each and every action of the Board necessary for the governance and management of the affairs of District, for the execution of the powers vested in District, and for carrying into effect the provisions of Article 45 of Title 37, C.R.S., shall be taken by the passage of motions or resolutions.
- g. **Minutes.** Within a reasonable time after passage, all resolutions, motions and minutes of Board meetings shall be recorded in a visual text format that may be transmitted electronically and kept for that purpose and shall be attested by the Recording Secretary. Minutes of regular sessions shall be available for public review as soon as practicable following acceptance of the minutes by adoption of a motion therefore by the Board. Executive sessions shall be electronically recorded on audio tape or other electronic media, and such electronic recording or reproduction of the same shall be kept separate from minutes of regular sessions as described in Section 6.e



of these Bylaws and shall not be open to the public except as required by law.

**Section 8. Directors, Officers and Personnel.**

- a. **Director Qualifications and Terms.** As required by §37-45-114(1)(a), C.R.S., Directors shall be electors of the District, residents of Archuleta County and the District, owners of real property within the District and knowledgeable in water matters. Candidates for appointment as Directors of the District shall have resided within the District for at least one year prior to appointment and shall own property within the District. The term of each Director shall be four (4) years, or less if appointed to fulfill an unexpired term, and each Director shall sign an oath of office and, at the expense of the District, furnish a faithful performance surety bond in a sum of not less than \$1,000 as required by §37-45-114(1)(b), C.R.S.
- b. **Director's Performance of Duties.** A Director of the District shall perform all duties of a Director, including duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner which the Director reasonably believes to be in the best interests of District, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing the Director's duties, the Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by persons and groups listed in subparagraphs 1, 2 and 3 of this subsection b. The Director shall not be considered to be acting in good faith if (s)he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs the Director's duties shall not have any liability by reason of being or having been a Director of the District. Those programs and groups upon whose information, opinions, reports, and statements a Director is entitled to rely are:
  1. One or more officers or employees of the District whom the Director reasonably believes to be reliable and competent in the matters presented;
  2. Counsel, public accountants, or other persons as to matters which the Director reasonably believes to be within such persons' professional knowledge or expertise; and
  3. A committee of the Board upon which the Director does not serve, duly designated in accordance with the provisions of the Bylaws, as



to matters within its designated authority, which committee the Director reasonably believes to merit confidence.

- c. Oath of Office. Each member of the Board, before assuming the responsibilities of his or her office, shall take and subscribe an oath of office in the form prescribed by law.
- d. Election of Officers. The Board of Directors shall elect from its membership a Chair and President, Secretary, Treasurer, and Vice Presidents and may also elect Assistant Secretaries and/or Assistant Treasurers who shall be the officers of the Board of Directors and of the District. The positions of Secretary and Treasurer may be combined into one (1) position if the Board so chooses. The Vice Presidents and Assistant Secretaries and/or Assistant Treasurers shall have all powers of the offices of Secretary and/or Treasurer as applicable, in the absence of such officers. The officers shall be elected by a majority of the Directors voting at such election. The Board may, from time to time, appoint an acting officer in the absence of any individual officer. The election of the officers shall be conducted biennially at the first regular meeting of the Board held in even numbered years. Each officer so elected shall serve for a term of two (2) years, or as otherwise directed by the Board. Under any circumstance, the term shall continue until the election of his or her successor.
- e. Vacancies.
  - 1. Any vacancy occurring on the Board as a result of the expiration of the Board member's term of office shall be filled by the notice and appointment procedure as specified by §37-45-114(1)(a), C.R.S., as amended by the Colorado legislature from time to time. In general, unless changed by the legislature, the District must publish a notice during the period 60 to 45 days prior to the expiration of any Board member's term directing qualified candidates to submit a resume to the District Court no later than 30 days prior to the term expiration date. If requested by the Court, the District shall obtain copies of all submitted resumes, review and prepare pleadings for the Court recommending specific candidates. The District Court shall, in its discretion, appoint directors by choosing from among the qualified candidates that have timely submitted resumes to the Court.
  - 2. Any vacancy occurring on the Board for any other reason shall be appointed by the District Court as specified in §37-45-114(1)(b), C.R.S. The statutes do not specify a notice and selection process in such situations, and therefore the District shall follow the process specified herein. Upon the occurrence of such a Board vacancy, the

Board shall determine whether it will recommend appointment of individuals already known to the Board or publish a notice seeking all qualified individuals. If a notice is published, such notice shall state the necessary qualifications per §37-45-114(1)(a), C.R.S., and direct qualified candidates to submit a resume to the District. The District Board shall review the resumes of qualified candidates and shall make a recommendation for appointment to the District Court, but such recommendation shall also include resumes and inform the Court of all qualified candidates that have requested appointment. The District Court shall, in its discretion, appoint director(s) by choosing from among the qualified candidates that have timely submitted resumes to the District requesting appointment to fill such existing vacant Board position(s).

- f. Resignation and Removal. Any Director may resign at any time by giving written notice to the Board, and acceptance of such resignation shall not be necessary to make it effective, unless the notice so provides. Any Director may be removed by the Archuleta County District Court upon petition submitted to the Court by the District or upon the Court's own motion in accordance with procedures specified in §37-45-114(1)(e), C.R.S.
- g. Chair and President. The Chair shall preside at all meetings. The Chair shall also be the President of the District. The President is authorized to sign all contracts, deeds, notes, debentures, warrants and other instruments on behalf of the District. The Chair may fully participate in deliberations and actions of the Board by making and seconding motions, providing opinions and voting on all matters. Prior to any absence from any meeting, the Chair shall designate another Director as Chair of such meeting.
- h. Vice President. In absence of the Chair, the Vice President shall preside at all meetings. The Vice President shall have the authority to make all management or administrative decisions regarding District matters. The Vice President is also authorized to sign all contracts, deeds, notes, debentures, warrants, checks, and other instruments on behalf of the District.
- i. Secretary/Treasurer. The Secretary/Treasurer shall be responsible for the records of the District; may act as Secretary at meetings of the Board and record all votes; shall be responsible for composing a record of the proceedings of the Board in a visual text format that may be transmitted electronically, which shall be an official record of the Board; shall be authorized to invest or cause to be invested all surplus funds or other available funds of the District in permitted investments authorized by law or as specified by the Board; shall keep or cause to be kept strict and

accurate accounts of all money received by and disbursed for and on behalf of District in permanent records; and shall perform all other duties incident to that office. The Secretary/Treasurer shall be the designated election official of the District, unless otherwise determined by the Board, and the custodian of records and of the seal of District. The Secretary/Treasurer shall have the authority to affix such seal to and attest all contracts and instruments authorized to be executed by the Board. The Secretary/Treasurer shall file with the Clerk of the Court, at the expense of the District, a corporate fidelity bond in an amount determined by the Board of not less than \$5,000, conditioned on the faithful performance of the duties of the Treasurer's office. The Secretary/Treasurer shall be chairman of the Budget Committee and of the Audit Committee. In addition to the duties above described, in the absence of the Chair, the Secretary/Treasurer shall preside at meetings and shall have all authority of the Chair to make management or administrative decisions regarding District matters and to sign contracts, deeds, notes, debentures, warrants, checks, and other instruments on behalf of the District.

- j. Assistant Secretary/Treasurer(s). At least one (1), and more if desired by the Board, Assistant Secretary/Treasurer(s) may be designated by the Board to assist the Secretary/Treasurer in the performance of the duties of the Secretary/Treasurer. Assistant Secretary/Treasurer(s) shall have all necessary powers of the office of Secretary/Treasurer as are delegated by the Board or Secretary/Treasurer. In the event that dual signatures of District officers are required on any instrument, then two of the three or more officers designated as President, Secretary/Treasurer and Assistant Secretary/Treasurer shall sign such instrument.
- k. Recording Secretary. The Board shall have the authority to appoint a recording secretary who need not be a member of the Board of Directors, and who shall be responsible for recording all votes and composing a record of the proceedings of the Board in a visual text format that may be transmitted electronically and kept for that purpose, which shall be the official record of the Board. The recording secretary shall not be required to take an oath of office nor shall the recording secretary be required to post a performance bond.
- l. Additional Duties. The officers of the Board shall perform such other duties and functions as may from time to time be required by the Board, by the Bylaws or rules and regulations of the District, by law, or by special exigencies, which shall later be ratified by the Board.
- m. Manager or Administrator. The Board may appoint a manager or contract with an administrator to serve for such term and upon such conditions,

including compensation, as the Board may establish. Such manager or administrator shall have general supervision over the administration of the affairs, employees and business of the District and shall be charged with the hiring and discharging of employees and the management of District properties. Such manager or administrator shall have the care and custody of the general funds of the District and shall deposit or cause to be deposited the same in the name of District in such banks or savings associations as the Board may select. Such manager or administrator will approve all vouchers, orders and checks for payment, and shall keep or cause to be kept regular books of account of all District transactions and shall obtain, at the District's expense, such bond for the faithful performance of its duties as the Board may designate. The Board may delegate such powers and duties to the manager or administrator as it deems appropriate. The Board may contract with one or more members of the Board to perform duties of the manager or administrator as independent contractors. Prior to such contract, the Board shall publish the position vacancy and the terms of employment or contract related to performing duties of the manager or administrator, and contract with sitting members of the Board only if qualified non-members cannot be found. Any Board member entering into such contract shall file a conflict of interest notice pursuant to Section 11 herein. Rates of compensation and reimbursement to such Board-member contractors, and periodic amounts of compensation and reimbursement, must be reviewed and approved by other members of the Board, and with non-participation in such approval by the contracting Board member.

- n. **Personnel Selection and Tenure.** The selection of agents, employees, engineers, accountants, special consultants and attorneys of the District by the Board will be based upon the relative qualifications and capabilities of the applicants and shall not be based on political services or affiliations. Agents and employees shall hold their offices at the pleasure of the Board. Contracts for professional services of engineers, accountants, special consultants and attorneys may be entered into on such terms and conditions as may seem reasonable and proper to the Board.

## **Section 9. Financial Administration.**

- a. **Fiscal Year.** The fiscal year of the District shall commence on January 1<sup>st</sup> of each year and end on December 31<sup>st</sup>.
- b. **Budget Committee.** There shall be a permanent Budget Committee composed of the Treasurer or Secretary/Treasurer, a member of the Board appointed by the President, and any manager, contractual or otherwise, which shall be responsible for preparation of the annual budget of the



District and such other matters as may be assigned to it by the President or the Board.

- c. Budget. On or before October 15th of each year, the Budget Committee shall prepare and submit to the Board a proposed budget for the ensuing fiscal year. Such proposed budget shall be accompanied by a statement which shall describe the important features of the budget plan and by a general summary wherein shall be set forth the aggregate features of the budget in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated income or other means of financing the proposed budget for the ensuing fiscal year, as contrasted with the corresponding figures for the last completed fiscal year and the current fiscal year. It shall be supported by explanatory schedules or statements classifying the expenditures contained therein by services, subjects and funds. The anticipated income of the District shall be classified according to the nature of receipts.
- d. Notice of Budget. Upon receipt of the proposed budget, the Board shall cause to be published a notice that the proposed budget is open for inspection by the public at the business office; that the Board will consider the adoption of the proposed budget at a public hearing on a certain date; and that any interested elector may inspect the proposed budget and file or register any objections thereto at any time prior to its final adoption. Notice shall be posted or published in substantial compliance with law.
- e. Adoption of Budget. On the day set for consideration of such proposed budget, the Board shall review the proposed budget and revise, alter, increase or decrease the items as it deems necessary in view of the needs of the District and the probable income of the District. The Board shall then adopt a budget, either immediately following the budget hearing or at a later date and time to be set by the Board, setting forth the expenditures to be made in the ensuing fiscal year. The Board shall provide for sufficient revenues to finance budgeted expenditures with special consideration given to the proposed ad valorem property tax levy.
- f. Levy and Collection of Taxes. On or before December 15th of each year, the Board shall certify to the Board of County Commissioners of the County or Counties in which the District is located the mill levy established for the ensuing fiscal year, in order that, at the time and in the manner required by law for the levying of taxes, such Commissioners shall levy such tax upon the assessed valuation of all taxable property within District.

- g. Filing of Budget. On or before January 30th of each year, the Board shall cause a certified copy of such budget to be filed with the Division of Local Government in the Colorado Department of Local Affairs.
- h. Appropriating Resolution.
  - 1. At the time of adoption of the budget, the Board shall enact a resolution making appropriations for the ensuing fiscal year. The amounts appropriated thereunder shall not exceed the amounts fixed therefor in the adopted budget.
  - 2. The income of the District, as estimated in the budget and as provided for in the tax levy resolution and other revenue and borrowing resolutions, shall be allocated in the amounts and according to the funds specified in the budget for the purpose of meeting the expenditures authorized by the appropriation resolution.
  - 3. The Board may make an appropriation to and for a contingent fund to be used in cases of emergency or other unforeseen contingencies.
- i. No Contract to Exceed Appropriation. The Board shall have no authority to enter into any contract, or otherwise bind or obligate the District to any liability for payment of money for any purposes, for which provision is not made in an appropriation resolution, including any legally authorized amendment thereto, in excess of the amounts of such appropriation for that fiscal year. Any contract, verbal or written, contrary to the terms of this Section shall be void *ab initio*, and no District funds shall be expended in payment of such contracts.
- j. Contingencies.
  - 1. In cases of emergency caused by a natural disaster, public enemy, or other contingency which could not reasonably have been foreseen at the time of the adoption of the budget, the Board may authorize the expenditure of funds in excess of the budget by resolution duly adopted by a two-thirds (2/3<sup>rd</sup>) vote of the Board. Such resolution shall set forth in full the facts concerning the emergency and shall be included in the minutes of such meeting.
  - 2. If so enacted, a copy of the resolution authorizing additional expenditures shall be filed with the Division of Local Government in the Colorado Department of Local Affairs and shall be published in compliance with statutory requirements.
- k. Payment of Contingencies.

1. If there is unexpended or uncommitted money in funds other than those to which the emergency relates, the Board shall transfer such available money to the fund from which the emergency expenditure is to be paid.
2. To the extent that transferable funds are insufficient to meet the emergency appropriation, the Board may borrow money through (a) the issuance of tax anticipation warrants, to the extent that the mill levy authority of the District is available as provided by law, or (b) the issuance of bond anticipation notes payable from future bond proceeds or operating revenue, or (c) any other lawful and approved method.

1. Annual Audit.

1. The Board shall cause an annual audit to be made at the end of each fiscal year of all financial affairs of the District through December 31st of such fiscal year. In all events, the audit report must be submitted to the Board within six (6) months of the close of such fiscal year, or as otherwise provided by law. Such audit shall be conducted in accordance with generally accepted auditing standards by a registered or certified public accountant, who has not maintained the books, records and accounts of District during the fiscal year. The auditor shall prepare, and certify as to its accuracy, an audit report, including a financial statement and balance sheet based on such audit, an unqualified opinion or qualified opinion with explanations, and a full disclosure of any violation of Colorado law pursuant to statutory requirements.
2. There shall be a permanent Audit Committee composed of the Treasurer or Secretary/Treasurer and one other member of the Board appointed by the President. The Audit Committee shall be responsible for the appointment, compensation, selection (to be approved by the Board), retention, and oversight of the work of any independent accountants engaged for the purpose of preparing or issuing an independent audit report or performing other independent audit, review or attest services for the District. The Audit Committee may, as necessary and to the extent of its ability, provide independent review and oversight of the District's financial reporting processes, internal controls and independent auditors. All accountants thus engaged shall report directly to the Audit Committee.



3. A copy of the audit report shall be maintained by the District as a public record for public inspection at all reasonable times.
4. A copy of the audit report shall be forwarded to the State Auditor or other appropriate State official pursuant to statutory requirements.
5. Notwithstanding the foregoing audit requirement, the Board may file an application for "Exemption from Audit" if the statutory criteria for such exemption are met.

**Section 10. Corporate Seal.** The seal of the District shall be a circle containing the name of the District and shall be used on all documents and in such manner as seals generally are used by public and private corporations. The Secretary or Secretary/Treasurer shall keep, or cause to be kept, the seal and shall be responsible for its safe keeping and care.

**Section 11. Disclosure of Conflict of Interest.** A potential conflict of interest of any Director shall be disclosed in accordance with State law, particularly Article 18 of Title 24, C.R.S., and Section 18-8-308, C.R.S.

**Section 12. Compensation.** Each Director shall receive the maximum compensation authorized by statute, unless otherwise determined by the Board. No Director shall receive compensation as an employee of the District, except as may be provided by statute.

**Section 13. Indemnification of Directors and Employees.** The District shall defend, hold harmless and indemnify any Director, officer, agent, or employee, whether elective or appointive, against any tort or liability, claim or demand, without limitation, arising out of any alleged act or omission occurring during the performance of official duty, as more fully defined by law or by an indemnification resolution, if any. The provisions of this Section shall be supplemental and subject to, and to the extent of any inconsistency therewith shall be modified by, the provisions of the Colorado Governmental Immunity Act, 24-10-101, *et seq.*, C.R.S.

**Section 14. Bidding and Contracting Procedures.** Except in cases in which the District will receive aid from a government agency, a notice shall be published for bids on all construction contracts as may be directed by the Board. The Board shall comply with any statutory procedures governing bidding, contracting and design-build project delivery as apply to water conservancy districts organized under Title 37, C.R.S.

**Section 15. Records Management.** The District shall comply with, and adopt and maintain policies as necessary for compliance with, applicable records retention, destruction, and disclosure requirements, including the Colorado Open Records Act, State Archives and Public Records law, and various consumer privacy legislation. The

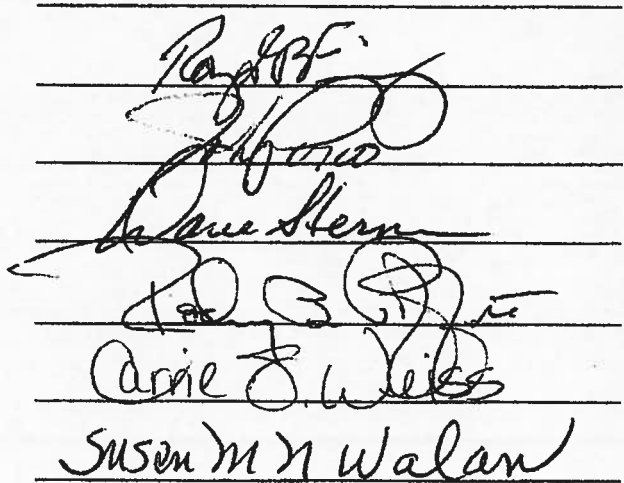
Secretary, or Secretary/Treasurer, is hereby designated as the Official Custodian of Records pursuant to the Open Records Act. In the event there is any question as to whether the District is permitted or required to comply with an Open Records Act request, the Custodian of Records shall forward such request to the District's legal counsel. Copies of records furnished to requestors shall be at a cost of \$.25 per standard page plus a nominal fee that covers costs incurred by responses that require more than one hour of time for retrieval and/or review, including the costs of legal involvement.

**Section 16. Modification of Bylaws.** These Bylaws may be altered, amended or repealed at any regular or special meeting of the Board to become effective immediately or at a subsequent date.

**Section 17. Severability.** If any part or provision of these Bylaws is adjudged to be unenforceable or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of these Bylaws, it being the Board's intention that the various provisions hereof are severable.

**Section 18. Termination of Prior Bylaws.** These Bylaws amend, supersede and replace in its entirety all prior Bylaws, and any amendments thereto, previously adopted by the Board of Directors.

**REVISED AND RE-ADOPTED** this 16<sup>th</sup> day of June, 2014, by the Board of Directors of San Juan Water Conservancy District.

  
Susan M. N. Walaan

# **ATTACHMENT 8**

## **SJWCD RESOLUTION**

**The resolution will be provided after the April  
Board meeting.**

April 11, 2017



46 Eaton Drive, Suite 5  
Pagosa Springs CO 81147  
(970) 731-9857  
www.sjwcd.org

Colorado Water Conservation Board  
Attn: Anna Mauss, P.E.  
1313 Sherman Street, Room 718  
Denver, CO 80203

Re: **CWCB Loan Application**  
**Resolution**

Dear Anna:

The board of directors for the San Juan Water Conservancy District ("the District") met for the regular bi-monthly meeting yesterday, April 10<sup>th</sup>. Unfortunately, two (2) of the directors attended by telephone and one director was absent. A quorum was present, and the loan application to the Colorado Water Conservation Board ("CWCB") was an agenda item.

As a result of two (2) directors being available only by telephone, I was asked to read the Resolution for the loan application in its entirety. After it was read, a motion was made and seconded to approve the Resolution, and that motion passed without objection. I will be happy to supply the minutes of the meeting once they are approved at the next regular meeting of the board of directors.

I have signed the Resolution on behalf of the District – the original accompanies this letter. I ask that you enter it as Attachment 8 to the application filed with CWCB on or before April 1, 2017.

Thank you!

Sincerely,  
**San Juan Water Conservancy District**

By:   
Rodney B. Proffitt, President  
Board of Directors

Attachments:  
Resolution

## RESOLUTION

WHEREAS, the San Juan Water Conservancy District ("District") has assumed the lead in development of the Dry Gulch Water Storage Project according to the Three-Way Agreement reached between and among the Colorado Water Conservation Board, the Pagosa Area Water & Sanitation District, and the District in 2016; and

WHEREAS, the District presently owns or controls most of the land necessary for the construction of the dam and the reservoir basin, but still requires land from the US Forest Service and private land owner; and

WHEREAS, the costs to acquire the rest of the land needed for the reservoir basin and pre-construction expenses are expected to be \$2,000,000; and

WHEREAS, the District does not have the resources to pay these costs without a loan for \$2,000,000; and

WHEREAS, a feasibility study has been prepared to support a loan application to the Colorado Water Conservation Board has confirmed the cost estimates, and has provided an outline of the debt service requirements for repayment of the loan; and

WHEREAS, the board has reviewed the documents submitted for the April 1, 2017 deadline, including the loan application, the feasibility study and the repayment schedule, and are satisfied this application was made on terms and conditions in the best interests of the District.

NOW THEREFORE;

Be it Resolved, the District Board of Directors authorizes a loan application to the Colorado Water Conservation Board for the sum of \$2,000,000 on terms and conditions contained in the application form presented the board and described in the feasibility study; and

Be if Further Resolved, the District Board of Directors authorizes the Board President, Rodney Proffitt, to take such action, including signing documents in the name of the District, necessary to obtain the loan.

ADOPTED and approved by the Board of Directors for San Juan Water Conservancy District this 10th day of April, 2017.

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

Rodney B. Proffitt, President  
San Juan Water Conservancy District



**DRAFT**

**RESOLUTION**

**DRAFT**

WHEREAS, the San Juan Water Conservancy District ("District") has assumed the lead in development of the Dry Gulch Water Storage Project according to the Three-Way Agreement reached between and among the Colorado Water Conservation Board, the Pagosa Area Water & Sanitation District, and the District in 2016; and

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WHEREAS, the board has reviewed the documents submitted for the April 1, 2017 deadline, including the loan application, the feasibility study and the repayment schedule, and are satisfied this application was made on terms and conditions in the best interests of the District.

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Be if Further Resolved, the District Board of Directors authorizes the Board President, Rodney Proffitt, to take such action, including signing documents in the name of the District, necessary to obtain the loan.

ADOPTED and approved by the Board of Directors for San Juan Water Conservancy District this 10th day of April, 2017.

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Rodney B. Proffitt, President

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Ray Finney, Treasurer

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Al Pfister, Secretary

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John Porco, P.E., Director

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Susan Nossaman, Director

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Doug Secrist, Director