

Feasibility of Construction of the North Sterling Irrigation District Automation Project Phase II

Sponsored by:

North Sterling Irrigation District

in conjunction with the

Colorado Water Conservation Board

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Feasibility Study North Sterling Irrigation District Automation Project Phase II

Introduction (Need for the Project)

The North Sterling Irrigation District (District) is the owner of the North Sterling Reservoir (aka Point of Rocks Dam), which is located in Logan County. The District operates the North Sterling Reservoir and its associated structures for the benefit of the landowners within the District by providing stored and direct flow water which, except for a few small wells, is the sole source of irrigation water. The North Sterling Inlet Ditch diverts from the South Platte River, approximately 8 miles upstream of the Morgan/Washington County line. The water is stored in the 74,590 acre-foot reservoir and deliveries are made to the North Sterling Outlet Canal for use by landowners within the District.

With the scarcity of water in Colorado and particularly in the South Platte Basin, the North Sterling Board of Directors (Board) and management are continually investigating ways to improve the District's diversion, delivery, and use of water. For a few years now, management, with the support of the Board, has been studying options to decrease losses in the Outlet Canal along with creating a steady delivery of water to its farmers. Over the past 30 years, the farmland served by the North Sterling Reservoir has transitioned from approximately 10% sprinkler irrigation to over 85% sprinkler irrigation. Along with this transition, is the need for a steady, reliable delivery of water at the farm headgate. When the land was flood irrigated, fluctuations in delivery was easier to for farmers to accommodate since the water was applied through siphon tubes or cuts in the ditch bank. With sprinkler irrigation, a steady delivery is crucial in order to avoid shut down of irrigation equipment due to low flow and subsequent waste of water through overflow pipelines in the on farm sprinkler pond. Increased sprinkler irrigation throughout the District has resulted in more efficient use of the District's water, decreased labor costs, and improved crop yields. To enhance these benefits of sprinkler irrigation, the District desires to automate each outlet headgate which will allow for even lower labor costs and even greater efficiency. The Board and management have engaged Hydrologik LLC to begin Phase I of the Automation Project using District funds but would like to roll into Phase II of the automation project by beginning installation in the early spring of 2021. The Phase I Automation Project is the installation of automation equipment on 25 of the District's headgates. Four of these 25 have been automated to date. Phase II is the automation of 42 additional headgates.

Project Sponsor

The North Sterling Irrigation District is an irrigation district formed under the Irrigation District Law of 1905. Appendix A contains the order creating the District. The District encompasses 40,916.94 acres and services 122 landowners. As with all irrigation districts, the Board of Directors certifies the levy each October to the Logan County Commissioners and the levy is collected by the county treasurer with property taxes. Failure to pay the levy sends the land into a tax sale. The Board also has the power to limit the use of water until taxes are paid.

Project Service Area and Facilities

The District predominately provides water for irrigation to a 40,916.94 acre service area in Logan County. The actual irrigated acreage varies depending on water supply, however the average irrigated acreage is approximately 35,000 acres. The District boundary begins just east of the North Sterling Reservoir approximately 15 miles northwest of Sterling, Colorado and extends east to just northeast of Crook, Colorado. Figure 1 presents a picture of the North Sterling Reservoir System including the River Diversion, Inlet Canal, Reservoir, Outlet Canal, and a shaded outline of the North Sterling Irrigation District boundaries. The irrigated acreage within the service area is primarily used to grow corn, alfalfa, sugar beets, pinto beans, small grains, and feed crops.

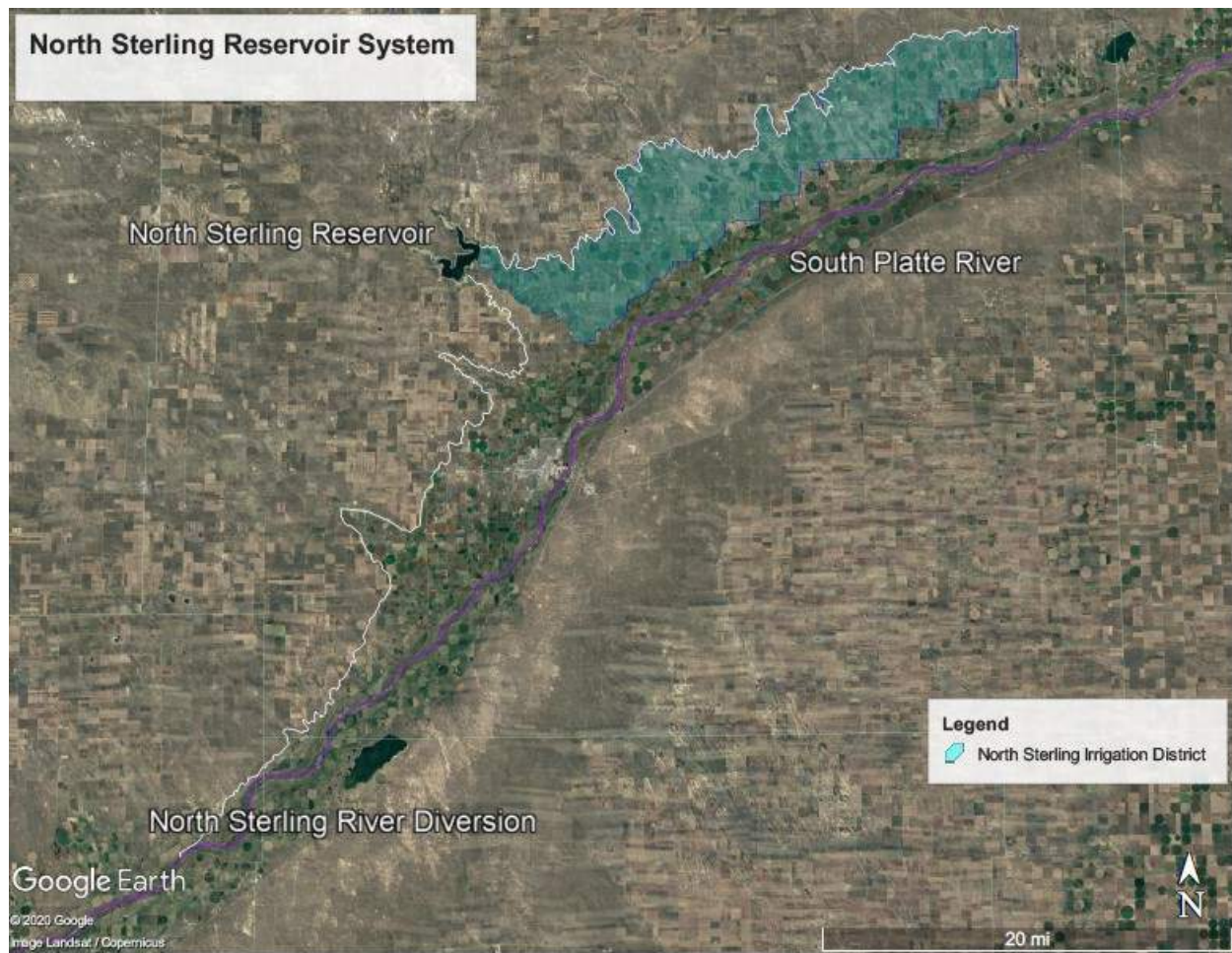


Figure 1. North Sterling Reservoir System

The District also has an augmentation plan which provides water for 30 irrigation wells and 3 commercial cattle feeding operations within the District and 13 residential wells in the Sterling area. As part of the augmentation plan, the District changed 15,000 acre feet of its stored water right for uses other than irrigation. This change of use was to done to allow stored water to be

used as an augmentation source to offset depletions resulting from well pumping and to facilitate a deal with Xcel Energy. Through the use of the District's augmentation plan, water can be provided to Xcel Energy for use at its Pawnee Power Plant in Brush, Colorado on an as needed basis according to a 2005 agreement. The water provided to Xcel Energy can be either North Sterling stored water or water generated by recharge activities. Recharge water can also be used as an augmentation source to offset historic return flow obligations when stored is used for a changed purpose.

To facilitate the agreement with Xcel Energy, the Point of Rocks Water Company, LLC (PORWC) was created. Membership in the PORWC was completely voluntary and only landowners willing to use a portion of their pro rata share of water for Xcel's benefit joined the water company. The lease agreement allows Xcel to request up to 3,000 acre feet of fully consumable water annually during the months November through March. Landowners representing eighty four percent or 34,403.16 of the District's 40,916.94 acres joined the PORWC. The PORWC receives a base payment in November of each year, whether or not a delivery of water is made to Xcel, however, if water delivered to Xcel, the PORWC additionally receives a delivery payment. The 2020 base payment was \$202,914, which is based on 3,000 acre feet at \$67.64/acre foot. The District receives one-third of this base payment for managing and operating the Xcel agreement. The remaining two-thirds is distributed to PORWC members on a pro rata basis. If water had been delivered to Xcel Energy in November 2020 through March of 2021 the PORWC would have received a delivery payment equal to the amount of water requested times \$574.92/acre foot. The entire delivery payment is distributed to PORWC membership. The base payment and delivery payment both increase annually with the consumer price index. The lease between the PORWC and Xcel Energy is for 25 years and is presented in Appendix B.

A similar agreement was made with BNN Energy (BNN) in 2016. This agreement delivers water on demand through a 37 mile pipeline and 4 pumping stations to Northern Weld County for use by BNN in the production of oil and gas. The agreement with BNN is for the term of 10 years. Once again, participation in this temporary agreement was voluntary with participants and the District being compensated when water is used. The District formed Point of Rocks Water Company II, LLC (PORWC II) to facilitate the agreement with 99% participation from the landowners. For any water that is pumped from the North Sterling Reservoir and subsequently used by BNN, PORWC II is paid a minimum \$1,551/acre foot pumped. So far PORWC II has leased nearly \$3.3 million worth of water to BNN Energy, with 5% of this income returning to the District and 95% paid directly to PORWC II members. The Purchase Agreement between the PORWC II and BNN is presented in Appendix C.

Hydrology and Water Rights

The North Sterling Reservoir is an off stream reservoir, which diverts water from the South Platte River, approximately 8 miles upstream of the Morgan/Washington County line. The North Sterling receives water under Priority 53A for storage of 69,446 acre feet of water at a rate of 300 cfs with an appropriation date of June 15, 1908, Priority 79A for storage of an additional 11,954 acre feet of water at a rate of 711 cfs with an appropriation date of August 1, 1915, and a May 27, 1914 direct flow right with a diversion rate of 460 cfs measured at the outlet canal. The North Sterling also has two recharge rights the first is May 8, 1996 recharge right with an absolute diversion rate of 294 cfs and a conditional rate of 306 cfs, the second is December 31, 2002 with an absolute diversion rate of 510 cfs and a conditional diversion rate of 90 cfs. A

summary of the District's water rights along with specifications of the reservoir is presented in Appendix D.

Project Description and Alternatives

The purpose of this project is to automate an additional 42 of the District's on farm headgates to provide a steady, uninterrupted flow of water. For the water user, this will minimize the loss of water due to reductions in headgate flow from outlet canal fluctuations as well as reductions from debris such as tumbleweeds and algae being caught in the headgate. For the District, automation will reduce staff time at each headgate and ensure fair and equitable distribution of water throughout the day.

Currently the North Sterling Outlet Canal is adjusted up to two times per day based on the demand of the farmers and their location along the 65 mile outlet canal. These adjustments are, at times, significant and therefore affect the head pressure available and, in turn, flow rate at the farm headgates. This results in either too much or too little water being delivered to each farmer. Too little water often times results in the sprinkler shutting off due to low pressure. The farmer must then adjust the headgate and restart his sprinkler. Too much water results in more water delivered to all upstream headgates and not enough water for farmers at the end of the ditch. In this instance, the extra water delivered through the upstream headgates is wasted through the on farm sprinkler pond overflow. Both situations increase losses in the North Sterling system and increases time and effort for District employees and farmers.

Floating debris in the outlet canal, which at times is substantial in a 65 mile long canal, creates inefficiencies as well. When debris lodges in a headgate opening, the flow to the farmer is reduced and, in turn, the sprinkler system shuts down due to low pressure. Once the sprinkler shuts off the sprinkler pond fills up and overflows until the sprinkler system can be restarted. Also, the water not being delivered to the farm creates excess water in the ditch which is wasted out the end of the canal. All of this requires constant monitoring and, at times, several trips for the farmer to the sprinkler and ditch headgate.

While it is difficult to determine how much water will be saved, the Board and management are convinced the labor saving alone makes automation worthwhile. The District is also considering the construction of a small regulating reservoir near the end of the outlet canal to capture canal fluctuations and increase the efficiency of the North Sterling system. The automation of the headgates will not only save time and water for each farmer but will help reduce the size of a future regulating reservoir by removing some of the fluctuations inherent in operating a long canal system.

Automation also affords the opportunity to control deliveries and headgate adjustments remotely. It can provide District employees with ability to monitor all headgates throughout the day and they can be alerted to changes or problems. Many District farmers have installed technology to monitor their sprinkler systems remotely which has saved them time, effort, and water. Use of this type of technology on sprinklers as well as the current technology used on tractors and implements have made farmers open to new technology and has given them the confidence needed to use, understand, and embrace changes such as automation.

The District had HydroLogik install its first automated headgate in May of 2018 to allow the operation of a headgate that not only serves several farmers but has the potential to deliver

water as part of the District's augmentation plan. The farmers and District staff have commented on the ease of operation, time savings, and constant flow since its installation. This past year the District had HydroLogik install three additional automated headgates to test an actuator previously used on headgates up to 18 inches in diameter to determine if the actuator had the capability to operate larger (up to 30 inch diameter) headgates. The test was deemed a success, operating the larger headgates easily. This actuator is less than half the price (5K compared to 12K) of the one used on the first headgate in 2018, which will be a significant cost savings since 38 of the 42 headgates proposed for the Phase II Automation Project are 30 inches in diameter or less. This successful test was part of the impetus for pursuing automation for the entire outlet canal. As part of the decision, the Board and management considered three alternatives:

1. The no-action alternative.
2. Automation spread out over a 3-5 year period.
3. Automation completed immediately, prior to the next irrigation season.

Alternative No. 1 was considered unacceptable since it doesn't improve the delivery or saving of water and means the outlet canal would continue to be time consuming to operate for both farmers and District staff. It also is not in line with the desire of both the Board and management to continue to improve the District.

Alternative No. 2 was ruled out because the cost of such a project will continue to rise and cost savings can be realized with the purchase of larger quantities of necessary components. Spreading out the construction over a longer period of time also becomes a bit unfair as some farmers will receive automation before others.

Alternative No. 3 was selected to begin enjoying the labor and water savings throughout the District immediately. The Board and management are committed to the project and it was the consensus of the group to pursue the entire project as soon as possible for three reasons: 1) construction cost savings, 2) current low interest rates, and 3) fairness to all landowners.

The Selected Alternative

The selected alternative is to proceed with the Phase II Automation Project immediately upon completion of Phase I. The project involves the automation of 42 headgates by installing either a Venture Manufacturing 800 series screw actuator, used on headgates 30 inches in diameter or smaller, or a Watch Technology smart gate actuator, used on all headgates larger than 30 inches in diameter. Both types of actuators will be part of a system which will include solar power and controller. Additionally, a radar sensor will be installed at each existing Parshall flume and values relayed to the controller by hard wire or radio depending on the distance between the headgate and Parshall flume. Telemetry will be installed to access data and remotely control each headgate. The telemetry will include either a cell phone modem or radio system depending on topography and proximity to other headgates.

Hydrologik LLC of Golden, Colorado (Hydrologik) designed the systems and have installed them on 4 of the District's headgates and in other areas of the State. Bruce Bacon with Hydrologik also spent a considerable amount of time looking at the topography of the North Sterling Outlet Canal and terrain surrounding each headgate location for the purpose of determining the viability of radio networking. He also looked at the makeup of the fleet of gates and which

actuator is appropriate for each size. Photos of the Venture Manufacturing gates already installed on the North Sterling Outlet are provided in Appendix E. North Sterling Irrigation District has been provided a detailed cost estimate from Hydrologik, which is presented in Table 1. All costs presented are installed price.

**Table 1. North Sterling Automation Project Phase II
Cost Estimate**

Item	Quantity	Unit	Unit Price \$	Amount \$
Venture Manufacturing Screw Actuator	38	Each	5,000	\$190,000
Watch Technology Smart Gate Actuator	4	Each	12,000	\$48,000
Radar Sensor	42	Each	1,200	\$50,400
Telemetry	42	Each	1,250	\$52,500
Contingency (15%)	1	Job	51,135	\$51,135
Total				\$392,035

Implementation Schedule

Construction is expected to begin Spring 2021 and to be completed within 45 days.

Permitting

All construction will be done on land within the North Sterling Irrigation District Outlet Canal prescriptive easement, therefore no other easements or rights of way will be needed.

Institutional Considerations

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

North Sterling Irrigation District; financing, project management, and oversight.
Hydrologik LLC; design and construction.
Colorado Water Conservation Board (CWCB); financing and construction.

The North Sterling Irrigation District will be the lead for the financing, design, and construction of the project and will be the entity entering into any contracts and/or agreements.

Financial Analysis

The District is applying for a loan from the Colorado Water Conservation Board (CWCB) in maximum amount of \$395,955 (this includes the 1% CWCB service fee) to accommodate 100% of the estimated total cost of the project. The District will cover any costs that exceed the estimated project cost.

The District is requesting a 20-year loan from the CWCB. The current ownership of the District is 100% agricultural, resulting in a lending rate of 0.90%. At this rate annual payments would be \$21,722. To this would be added \$2,172 per year for the first 10 years to fund the emergency reserve account. This would make the District responsible for a total annual cost of \$23,894. The above figures are included in the summary of the financial aspects of the project presented in Table 2. The District has a \$146,000 contingent expense in the 2021 budget for any unforeseen costs. The District is looking at two additional projects in the near future: a river diversion replacement and a small regulating reservoir. Therefore the Board approved a \$5.00 per acre increase in the 2020 levy to be collected with the 2021 property tax. The 2019 levy was \$17.00 per acre or \$10.24/acre foot based on the average delivery of 1.66 acre feet per district acre. With the increase of \$5.00 per district acre enacted by the Board in October 2020 the resultant District levy is \$22.00 per acre or \$13.25/acre foot.

Table 2. Financial Summary

Project Cost	\$392,035
Loan Amount (Including 1% service fee)	\$395,955
CWCB Loan Payment Amount, including 10% loan reserve	\$23,894
Number of Landowners	122
Number of Acres in the District	40,916.94
Current Assessment per acre	\$17.00
Future Assessment per acre	\$22.00
Annual Project Cost per acre-foot (Average annual delivery: 1.66 acre-feet/acre)	\$0.35

Since 100% of the funding for the project is from the CWCB and the District has sufficient reserves for any overages, no other debt service is required for this project. The annual end of year financial statements for the years 2017, 2018, and 2019 for the North Sterling Irrigation District are provided in Appendix F.

Credit worthiness

The District is currently in its 9th year of repayment on a 20 year loan with CWCB which was taken to enlarge the North Sterling Reservoir Spillway to comply with Colorado Dam Safety requirements. The annual payment to CWCB for the current loan is \$68,583. Table 3 shows the Financial Ratios for the District and indicates _____ to _____ ability to repay with the project in place.

Table 3. Financial Ratios

Financial Ratio	Without the project	With the project
Operating Ratio (revenue/expense)	%* ()	%** ()
Debit Service Coverage Ratio (revenues-expenses)/debt service	()	%** ()
Cash Reserves to Current Expense	% ()	%** ()
Annual Cost per acre-foot (1.66 acre-feet per acre)	\$0.35 (strong)	\$0.35 (strong)

*revenue and expense

**revenue with project is 20__ revenue with a \$5.00/acre increase in district levy

Alternative Financing Considerations

The District has not investigated any alternative financing sources.

Collateral

As security for the CWCB loan the District can pledge assessment income, water rights, and land.

Economic Analysis

The economic benefit of the project is difficult to estimate. The value of the water rights available in the North Sterling Reservoir for irrigation and augmentation based on the difference in value of irrigated land at \$5,000 per acre and dry farm land at \$1,000 per acre is \$4,000 per acre. With 40,916.94 district acres, the total value of the water is estimated to be \$163,667,760. As stated above, the average delivery is 1.66 acre feet/acre, therefore, the water has a value of \$2,454/acre foot. In 2015 the District installed a measurement device at the end of the outlet canal in order to determine the water lost at the end of the canal. Over the last 6 years the District's average loss measured at the end of the outlet has been slightly over 3,000 acre feet. Some of the water measured at the end of the ditch is from the initial flushing of the ditch at the beginning of the season and a portion is water resulting from rain events upstream of the canal. However, the bulk of the water measured at the end of the North Sterling Outlet Canal is the result of day to day operations of a 65 mile long ditch. Much of this loss could be averted with the help of better management tools. Automation is one of these tools. The Board and management of the District believes that capturing 2/3 of the water currently lost from the outlet canal or 2,000 acre feet of loss is a conservative estimate. This savings could be accomplished by automating the headgates and the construction of a small regulating reservoir near the end of the canal. Automating the headgates is the first step in fully utilizing our water right through improved management techniques.

Though it is very difficult to estimate, for the purposes of this economic analysis it is assumed that only 500 acre feet would be saved by automation. Using the value stated of \$2,454 per acre foot calculated above and the 500 acre foot savings results in a benefit of \$1,227,000 for a total investment of approximately \$600,000 (total of Phase I and Phase II automation cost). This benefit measures only the water savings at the end of the outlet and does not include the

benefit of saving water lost at the farm or the time savings for both farmers and District employees.

Social and Physical Impacts

The project will have no significant social impacts, since it will assure the continued operation of a currently existing reservoir system. The project will have minor physical impacts during construction however these will be contained to the current North Sterling right of way.

Conclusions

1. The North Sterling Irrigation District is an irrigation district formed under the Irrigation District Law of 1905 with the ability to enter into a contract with the CWCB for the purpose of obtaining a Construction Fund loan.
2. Rights-of Way easements are adequate for the construction of this project.
3. The project would provide for the uninterrupted delivery of irrigation water to landowners and will improve the efficiency of the North Sterling system and will save time for both farmers and District staff.
4. The total estimated cost of the Phase II Automation Project is \$392,035. The District is applying for a loan in the maximum of 100% of the total project cost or \$395,955, with the 1% service fee included, from the CWCB Construction Fund.
5. The project is technically and financially feasible.

Appendix A

Order Creating North Sterling Irrigation District

Order of the Board of County Commissioners
creating the THE NORTH STERLING IRRIGATION
DISTRICT - February 25th, 1907.

The North Sterling Irrigation District bounded and comprised
as follows, to-wit:

Commencing at a point to-wit: The northwest corner
of the southwest quarter of the northwest quarter of section 2,
township 9 north, range 53 west in said Logan County; thence
east one mile, thence south to the southeast corner of said
section, thence east 80 rods, thence south 160 rods, thence east
to the center of section 7, thence north to the north quarter
corner of said section, thence east to the northeast corner of
section 8, thence south 80 rods, thence east 160 rods, thence
north one mile, thence east 160 rods, thence north to the northeast
corner of section 4, all in township 9, north, range 52 west, thence
east to the north quarter corner section 3, thence north 80 rods,
thence east 160 rods, thence south to the northeast corner of
section 3, thence east 80 rods, thence north 80 rods, thence east
240 rods, thence north to the northeast corner of section 35,
thence east 160 rods, thence south 160 rods, thence east 160 rods,
thence north one mile, thence west 80 rods, thence north 1 mile,
thence west 80 rods, thence north 160 rods, thence east to the
northeast corner of section 24, all in township 10 north, range
52 west, thence east 160 rods, thence north to the center of
section 7, thence east to east quarter corner section 8, thence
south 1 mile, thence east to the east quarter corner of section
16, thence south 160 rods, thence east 160 rods, thence north to
the center of section 15, thence north 160 rods, thence east to
the northeast corner of section 13, thence north to the east

quarter corner of section 12, all in township 10 north, range 51 west, thence east 160 rods, thence north to the north quarter corner of section 7, thence east to the northeast corner section 8, thence north to the northeast corner section 5, all in township 10 north, range 50 west, thence north 80 rods, thence east 80 rods, thence north 80 rods, thence east to center of section 34, thence north to north quarter corner section 27, thence east 160 rods, thence north 160 rods, thence east to east quarter corner of section 24, all in township 11 north, range 50 west, thence east to the east quarter corner section 19, thence north to the west quarter corner section 17, thence east to the center of Section 15, thence north to center of section 10, thence east to the east quarter corner section 12, all in township 11 north, range 49 west, thence east to the east quarter corner section 7, thence south to the northeast corner of section 30, thence east to the northeast corner section 29, thence south to the east quarter corner section 32, thence west 240 rods, thence south to the south line of section 32, all in township 11 north, range 48 west, thence south 160 rods, thence west to the west quarter corner of section 6, thence north to the northwest corner of section 6, all in township 10 north, range 48 west, thence west to the southwest corner of section 35, all in township 11 north, range 49 west, thence south 80 rods, thence west 1 mile, thence south to west quarter corner section 3, thence west to center of section 4, thence south 160 rods, thence west to the southquarter corner of section 5, thence south 240 rods, thence west 160 rods, thence south to the southeast corner of section 7, thence west to the northwest corner of section 18, all in township 10 north, range 49 west, thence south 80 rods, thence west 160 rods, thence

south 160 rods, thence west 160 rods, thence south to the northwest corner section 24, thence west to the northwest corner of section 22, thence south 80 rods, thence west 80 rods, thence south 160 rods, thence west 160 rods, thence south 160 rods, thence west to the northwest corner of the southwest quarter of the northeast quarter of section 30, thence south 160 rods, thence west 160 rods, thence south to the northwest corner section 31, all in township 10 north, range 50 west, thence west 80 rods, thence south 240 rods, thence west to the northwest corner of southeast quarter of southeast quarter of section 35, thence north 160 rods, thence west 160 rods, thence south to southwest corner of the southeast quarter of the southwest quarter section 35, thence west to southwest corner of the southeast quarter of southwest quarter section 34, all in township 10 north, range 51 west, thence south 160 rods, thence west to the west quarter corner of section 3, thence south 80 rods, thence west 160 rods, thence south to north quarter corner, section 9, thence west 240 rods, thence south 240 rods, thence west 80 rods, thence south to the south quarter corner of section 8, thence south 80 rods, thence west 240 rods, thence south 80 rods, thence west to center section 18, thence south 80 rods, thence west 80 rods, thence south 80 rods, thence west to the northwest corner section 19, all in township 9, north, range 51 west, thence west 160 rods, thence south to the center of section 24, thence west to the west quarter corner, section 22, thence west 240 rods, thence north 80 rods, ~~thence north 80 rods~~, thence west 240 rods, thence north to the north quarter corner of section 20, thence west 160 rods, thence south to the southeast corner section 19, thence west to the northwest

corner section 30, all in township 9 north, range 52 west, thence west 160 rods, thence north to the south quarter corner section 13, thence west 160 rods, thence north to the west quarter corner section 13, thence west to the center of section 14, thence north 160 rods, thence west to the northwest corner section 14, thence north to place of beginning, all in township 9 north, range 53 west, provided however, that the following described lands, to-wit: The southwest quarter section 30, township 11, north, range 48 west, east half southeast quarter section 24, township 11 north, range 49 west, west half section 11, southeast quarter section 10, northwest quarter section 14, and northeast quarter section 15, all in township 10 north, range 50 west, the southeast quarter section 24, township 10 north, range 51 west, west half section 7, township 9 north, range 51 west, south half of northeast quarter, northwest quarter of northeast quarter, southeast quarter of northwest quarter, and southwest quarter section 34, and southeast quarter, section 33, all in township 10 north, range 51 west, are excluded from said district and shall form no part thereof for reasons hereinbefore shown and the said lands are hereby exempted from any and all liability on account of participation in said proposed irrigation district.

Appendix B

Agreement Between Point of Rocks Water Company and Xcel Energy

LEASE AGREEMENT

This Lease Agreement is entered into this 30th day of Sept., 2005 between Point of Rocks Water Company, LLC ("Water Company"), a Colorado Limited Liability Company, and Public Service Company of Colorado d/b/a Xcel Energy ("PSCo"), a Colorado Corporation (the Water Company and PSCo are also referred to collectively, as the "Parties").

RECITALS

A. PSCo is the owner and operator of the Pawnee Steam Electric Generating Station ("Pawnee Station"), located near Brush, Colorado.

B. The Water Company is a Colorado Limited Liability Company consisting of members who are landowners within the North Sterling Irrigation District ("North Sterling"), with such members being entitled to deliveries of water from North Sterling, and said members have entered into Subscription Agreements with the Water Company committing their water deliveries from North Sterling to the Water Company so that PSCo may use said water deliveries pursuant to the terms and conditions provided herein.

C. Subject to the terms and conditions below, the Parties desire to enter into a lease agreement under which the Water Company will supply to PSCo up to 3,000 acre-feet annually of fully-consumable water for industrial use at the Pawnee Station from November through March of each year during the term of this Lease Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Definitions.

1.1 "North Sterling" means the North Sterling Irrigation District.

1.2 "North Sterling Reservoir Water Rights" means the following water rights that are owned by North Sterling. Water diverted under said water rights is delivered by North Sterling to North Sterling landowners:

1.2.1 Priority 53-A with an appropriation date of June 15, 1908 for a storage amount of 69,446 acre-feet in the North Sterling Reservoir, at a diversion rate of 300 cubic-feet-per-second ("cfs") from the South Platte River, as decreed by the District Court in and for Water Division No. 1 in Case No. 2142.

1.2.2 Priority 79 with an appropriation date of August 1, 1915 for a storage amount of 11,954 acre-feet in the North Sterling Reservoir, at a diversion rate of 411 cfs from the South Platte River, as decreed by the District Court in and for Water Division No. 1 in Case No. 2142.



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The foregoing water rights are the subject of an application for change of water right and plan for augmentation pending before the Water Court in and for Water Division No. 1 in Case No. 96CW1034. For purposes of this Lease Agreement, the North Sterling Reservoir Water Rights shall also include fully consumable water delivered to the South Platte River including, but not limited to: (1) fully consumable recharge water delivered to the South Platte River from the use of the North Sterling Recharge Water Right described in the application pending before the District Court in and for Water Division No. 1 in Case No. 96CW1034; and (2) fully consumable water delivered to the South Platte River from delivery of the North Sterling Reservoir Water Rights described above, into recharge facilities described in the application pending before the District Court in and for Water Division No. 1 in Case No. 96CW1034; and (3) other fully consumable water that is delivered to the South Platte River on behalf of PSCo pursuant to this Lease Agreement.

1.3 "Pawnee Wells" means the following wells (or any replacement wells in Section 29 for the Pawnee Wells) owned by PSCo near the Pawnee Station:

<u>Well</u>	<u>Permit No.</u>	<u>Legal Description</u>
Pawnee Well A	24258-F	SW1/4, NW1/4, S29, T4N, R56W
Pawnee Well B	24259-F	NW1/4, NW1/4, S29, T4N, R56W
Pawnee Well C	24260	NE1/4, NW1/4, S29, T4N, R56W
Pawnee Well D	24261-F	NW1/4, NE1/4, S29, T4N, R56W
Pawnee Well E	24262-F	NE1/4, NE1/4, S29, T4N, R56W

1.4 "Subscription Agreement" means an agreement between the Water Company and land owners within the North Sterling Irrigation District committing said landowners' pro rata portion of the North Sterling Reservoir Water Rights to satisfy the water delivery obligation of the Water Company pursuant to this Lease Agreement.

2. Conditions Precedent. Both Parties' obligations to perform pursuant to this Lease Agreement are contingent upon full satisfaction of all of the following conditions:

2.1 The Water Company shall work with North Sterling to obtain a final decree (including any and all appeals) in its change of water right and plan for augmentation pending in Case No. 96CW1034 ("Final Decree"). The Final Decree must contain adequate terms and conditions, as determined by PSCo, to enable the Water Company to deliver up to 3,000 acre-feet of fully consumable water for industrial use at the Pawnee Station from November through March for each year of the term of this Lease Agreement and in accordance with the terms and conditions of this Lease Agreement.



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2.2 A sufficient number of North Sterling landowners shall enter into Subscription Agreements with the Water Company so that no less than 22,000 acres of land included within North Sterling shall be subject to such Subscription Agreements.

2.3 The Subscription Agreements described above shall be recorded with the Logan County Clerk and County Recorder.

2.4 North Sterling and the Water Company shall enter into a Management Agreement for the administration of this Lease Agreement that is acceptable to PSCo.

2.5 A structure shall be constructed at or below the headgate of the North Sterling Reservoir Inlet Ditch to allow for the measurement and delivery to the South Platte River of water diverted at or below the headgate of the North Sterling Inlet Ditch for the use of PSCo under this Lease Agreement. The headgate of the North Sterling Reservoir Inlet Ditch is located at a point whence the corner common to Sections 28, 29, 32, and 33, in Township 5 North, Range 55 West of the 6th P.M. bears north 4077 feet, in Morgan County, Colorado. Repairs to and/or replacement of this structure as required will be the responsibility of the Water Company, which shall pay any and all costs of such repairs or replacement.

2.6 If the foregoing conditions have not been fully satisfied by December 31, 2006, then either Party may, at its sole discretion, elect to terminate this Lease Agreement. Any such termination shall be in accordance with the notice provisions provided herein.

3. The Lease. Subject to the satisfaction of the foregoing conditions, and pursuant to the terms and conditions contained below, the Water Company will annually make available for lease and delivery to PSCo 3,000 acre-feet of fully consumable water from the North Sterling Reservoir Water Rights. Such water will be used by substitution, replacement, or exchange for industrial purposes at the Pawnee Station from November through March of each year of the term of this Lease Agreement.

4. Deliveries. The Parties acknowledge and agree that, at various times, the water to be delivered to PSCo by the Water Company will be available at the headgate of the North Sterling Canal or other locations below the headgate of the North Sterling Canal, and that, at various times, PSCo's ability to exchange water from water delivery locations at or below the headgate of the North Sterling Canal to the Pawnee Wells will be limited. The Parties have agreed to the following terms and conditions for the delivery of water to PSCo:

4.1 Delivery Amounts. The Water Company shall make available for delivery to PSCo 3,000 acre-feet of fully consumable water annually in accordance with the following schedule:

January	600	July	0
February	600	August	0
March	600	September	0

April	0	October	0
May	0	November	600
June	0	December	600

Subject to the notice requirements by PSCo under the Notice of Delivery Amounts section of this Lease Agreement, PSCo, in its sole discretion, will determine whether it will divert all, none, or a portion of the water made available to PSCo by the Water Company.

4.2 Carry Over Allowance. In the event that the Water Company is unable to deliver the full amount of water shown on the foregoing schedule during the month in which the water is to be delivered, or PSCo is unable to divert the full amount of water shown in the foregoing schedule during the month in which the water is to be delivered, the difference between the amount of water shown on the foregoing schedule and the amount of water actually made available and diverted may be added to the amount of water to be made available to PSCo by the Water Company during the following month. Any modification of the monthly amounts shown in the foregoing schedule based on this subsection shall not reduce the Water Company's obligation to make available for delivery 3,000 acre-feet of fully consumable water to PSCo from November 1 to March 31 of any year that this Lease Agreement remains in effect.

4.3 Variance of Delivery Amounts. Because actual pumping may vary, actual monthly delivery amounts shall be agreed to by PSCo and the Water Company on a month-to-month basis and upon verbal agreement between PSCo's water resources department and the manager of the Water Company. Such deliveries may vary between 80% of the amount described above for the subject month, to 120% of the amount described above for the subject month. Changes in deliveries of water from the Water Company to PSCo pursuant to this Lease Agreement that are less than 80% of the monthly amounts described above, or that exceed 120% of the monthly amounts described above are allowed, provided both PSCo's water resources department and the Water Company secretary-manager agree in writing to such modification of the monthly delivery amounts described above. Modifications to the delivery schedule shall not reduce the Water Company's annual obligation to make available for delivery 3,000 acre-feet of fully consumable water to PSCo.

4.4 Notice of Delivery Amounts. PSCo shall provide any written notice to the Water Company of the amount of water that is to be delivered to PSCo pursuant to Paragraph 4.3 of this Lease Agreement, on or before the 21st day of the month prior to the month in which such water is to be delivered to PSCo by the Water Company. The written notice from PSCo to the Water Company may pertain to more than one month, and may pertain to multiple months. If PSCo provides notice of the amount of water to be delivered by the Water Company to PSCo, and that amount of water is delivered by the Water Company to the South Platte River or another water right holder pursuant to this Lease Agreement, PSCo shall be obligated to pay the Water Company for the amount of water so delivered, without regard to whether PSCo actually diverted an amount of water equal to the amount of water delivered by the Water Company.



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4.5 Delivery Locations. The water to be delivered to the South Platte River for the benefit of PSCo shall be delivered to the following locations:

4.5.1 In the event that the North Sterling Reservoir Water Rights are in priority under Colorado law and water is available pursuant to the North Sterling Reservoir Water Rights at the headgate of the North Sterling Inlet Canal, the Water Company will deliver the water to the South Platte River at a location at or below the headgate of the North Sterling Inlet Canal.

4.5.2 In the event that the North Sterling Reservoir Water Rights are not in priority under Colorado law and the water right calling for delivery of water under Colorado law is the Julesburg Reservoir water right, which is diverted at the headgate of the Harmony Ditch and has an appropriation date of February 12, 1904, the Water Company shall either (1) deliver water through the North Sterling Outlet Canal to a location that the owner of the Julesburg Reservoir water right may divert the water, or (2) deliver other fully consumable water to a location upstream of the headgate of the Harmony Ditch, and PSCo may divert an amount of water equal to the amount of water delivered by the Water Company to the owner of the Julesburg Reservoir water right.

4.5.3 In the event that the North Sterling Reservoir Water Rights are not in priority under Colorado law and there is another water right located downstream of the headgate of the North Sterling Inlet Canal that is in priority and calling for water, the Water Company shall deliver fully consumable water to a location downstream of the headgate of the North Sterling Inlet Canal to satisfy the calling water right, and PSCo may divert the amount of water equal to the amount of water delivered to the calling water right.

4.5.4 In the event the Prewitt Reservoir water right in the amount of 32,300 acre-feet, with an appropriation date of May 25, 1910, and an adjudication date of January 15, 1914, as granted pursuant to the decree entered by the District Court in and for Weld County, Colorado in Case No. 2142 ("Prewitt Reservoir Water Right") is in priority and is calling for water, it is expressly agreed that, absent a separate agreement between the Water Company and one or more owners of interests in the Prewitt Reservoir Water Right for exchange of water provided by the Water Company water in lieu of water that would otherwise be diverted into Prewitt Reservoir, the Water Company shall not be required to deliver water to the South Platte River for diversion by PSCo. However, the inability of the Water Company to deliver water to the South Platte River for diversion by PSCo during such times as the Prewitt Reservoir Water Right is in priority and is calling for water shall not reduce the Water Company's obligation to make available for delivery 3,000 acre-feet of fully consumable water to PSCo from November 1 to March 1 of any year this Lease Agreement remains in effect.

4.5.5 In order to ensure that PSCo will be able to divert water at such times as PSCo has a need for the water, and the Water Company is not otherwise able to deliver water to the South Platte because the Prewitt Reservoir Water Right is in priority and is calling, the Water Company agrees to exercise good faith efforts to secure agreements with one or both types of the following types of agreements on or before March 1, 2006:

4.5.5.1 Agreements with one or more owners of interests in the Prewitt Reservoir Water Right for an exchange of water between the owners of such interests and the Water Company at alternate times and locations; and or

4.5.5.2 An agreement with North Sterling for delivery of recharge water into recharge facilities at such locations as will provide recharge water to the South Platte River upstream of the headgate of the Prewitt Reservoir, in accordance with the application pending before the Water Court in and For Water Division No. 1 in Case No. 96CW1034, so that such recharge may be used by PSCo as a replacement for out-priority depletions affecting the Prewitt Reservoir Water Right pursuant to the terms of this Lease Agreement.

4.5.6 If by March 1, 2006, the Water Company is unable to secure agreements with owners of interests in the Prewitt Reservoir Water Rights and/or an agreement with North Sterling for delivery of recharge water to the South Platte River, sufficient to enable PSCo to divert water in accordance with the schedule set for in Section 4.1 above, at times when the Prewitt Reservoir Water Rights are in Priority and is calling, then PSCo shall be entitled to a twenty percent (20%) reduction in the amount of the Base Payment, beginning with the November 1, 2006 Base Payment, and for each year thereafter that the Water Company fails to secure such agreement(s) by March 1 of that same year.

4.5.7 The Parties may mutually agree upon other locations to which the Water Company will deliver fully consumable water to enable PSCo to divert an amount of water at the Pawnee Well Field that is equal to the amount of water delivered to any calling water right.

4.5.8 Rate of Diversion. Water delivered by the Water Company to PSCo pursuant to this Lease Agreement may be diverted from the South Platte River by PSCo at a diversion rate not to exceed 35 c.f.s.

5. Measurement. The Water Company shall measure and maintain monthly records of its deliveries to the South Platte River under this Lease Agreement. PSCo shall measure and maintain monthly records of its diversions of water delivered by the Water Company. Each Party shall provide the other Party with copies of such records on a monthly basis.

6. Payments.

6.1 Calculation of Payments. Payments under this Lease Agreement shall consist of a Base Payment and a Delivery Payment.

6.1.1 Base Payments. PSCo shall annually pay to the Water Company a base payment regardless of whether PSCo elects to divert any water made available for delivery by the Water Company pursuant to this Lease Agreement ("Base Payment"). The first Base Payment, for water made available by the Water Company for the period from November 2005 through March 2006 shall be in the amount of \$150,000, and shall be paid by PSCo to the Water Company on or before January 10, 2006. Thereafter, the Water Company shall submit an invoice to PSCo by October 1st of each year for the Base Payment. The invoice shall be paid by PSCo within thirty days of receipt of said invoice, or by November 1st, whichever is later. If PSCo does not pay the invoice by the required date, it shall be assessed a carrying charge of 1.5% per month on the unpaid balance.

6.1.2 Delivery Payments. PSCo shall also pay to the Water Company an additional \$425 for each acre-foot of water that is delivered by the Water Company to the South Platte River pursuant to this Lease Agreement ("Delivery Payments"). Such Delivery Payments shall be billed by the Water Company in the first week following the month in which the deliveries occur, and shall be paid by PSCo within 30 days of receipt of the billing from the Water Company. If PSCo does not pay the invoice within the required thirty days, it shall be assessed a carrying charge of 1.5% per month on the unpaid balance.

6.2 Rate Adjustments. The initial rate for the Base Payment shall be \$50 per acre-foot. The initial rate for Delivery Payments shall be \$425 per acre-foot. Every year thereafter, these rates shall be increased in accordance with the following formula:

$$AP = BP(LI/LB)$$

Where: AP is the adjusted price per acre-foot of water

BP is the base price of \$50 per acre-foot for the Base Payments and \$425 per acre-foot for Delivery Payments.

LI is the Consumer Price Index for all urban consumers, all items, U.S. City Average as published for January of the year of adjustment. If the Consumer Price Index is changed, the Index shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics. Should the Index be discontinued, the Parties agree to substitute another index generally recognized to be authoritative.

LB is the base value of the above described index, which shall be the published value for January 2005.

6.2.1 Should the Consumer Price Index for all urban consumers, all items, U.S. City Average (LI in the above formula) decrease in any year, the adjusted price for the Base Payments and the Delivery Payments shall not be decreased and shall remain the same as the previous year.

6.3 Effective Date of Rate Adjustment. The Effective Date for adjusting the Base Payments and the Delivery Payments shall be April 1 of each year.

7. Term.

7.1 Unless previously terminated, as described in this section or the Force Majeure section of this Lease Agreement, this Lease Agreement shall terminate on January 21, 2031, and shall be of no force and effect thereafter. Upon termination of this Lease Agreement, the Water Company shall have no obligation to supply water to PSCo. PSCo waives any claim to continued water supply by the Water Company after termination, and PSCo shall no longer have any obligation to make payments hereunder to the Water Company.

7.2 This Lease Agreement may also be terminated as provided below in the event that PSCo discontinues electrical power generation at Pawnee Station; provided, however, that such right to terminate may not be exercised at any time prior to 10 years from the Effective Date of this Lease Agreement.

7.2.1 PSCo shall give the Water Company written notice of its intent to terminate this Lease Agreement ("Notice of Termination"). PSCo shall make all payments required by this Lease Agreement for the year in which the Notice of Termination is given. In addition, at PSCo's request, the Water Company shall deliver to PSCo all the water that is required to be delivered under this Lease Agreement for the year in which the Notice of Termination is given.

7.2.2 During the calendar years that follow the year in which PSCo gives the Notice of Termination, the Water Company shall have no obligation to deliver any water pursuant to this Lease Agreement. However, PSCo shall pay the following percentage of the Base Payment to the Water Company on November 1 of such years:

<u>Year Following Termination Notice</u>	<u>% of Base Payment Made</u>
1	100%
2	80%
3	60%
4	40%
5	20%
Subsequent years	0%

7.2.3 During the calendar years that follow the year in which PSCo delivers the Notice of Termination, there shall be no rate adjustment for the Base Payments, which payments shall be paid at the rate that existed as of the date of the Notice of Termination.

8. Force Majeure. If at any time during the term of this Lease Agreement, either PSCo is rendered unable to operate the Pawnee Station, or the Water Company is rendered unable to deliver water pursuant to the terms of this Lease Agreement as a result of actions by federal, state or local governments, or their agencies, the affected Party shall give notice to the other Party within thirty (30) days from the date the affected Party has notice or knowledge of the governmental action or proposed action. The notice shall specify: (1) the nature of the governmental action or proposed action, (2) the impact on the affected Party, (3) the projected date on which the governmental action or proposed action will preclude the affected Party from operating pursuant to this Lease Agreement, and (4) a description of the actions that the affected Party will take with respect to the governmental action or proposed action. The Parties shall continue to perform under this Lease Agreement until the date that the affected Party is precluded from continued operations by the governmental action or proposed action. If PSCo is the affected Party, PSCo shall only pay the Water Company for water delivered as of the date of discontinuance of operations at the then-existing per acre-foot rate. If the Water Company is the affected Party, it shall deliver water hereunder until such date as it is precluded from operating pursuant to this Lease Agreement, and PSCo shall only pay the Water Company for water actually delivered during the calendar year in which the discontinuance of operations occurs. Payment shall be at the then-existing per acre-foot rate, and if PSCo has paid for more water than is actually delivered, the Water Company shall refund to PSCo any amounts paid for water that was not actually delivered by the Water Company. This Lease Agreement shall terminate on the date of discontinuance of operations, subject to the payment and delivery obligations described in this section of the Lease Agreement. If at any time during the term of this Lease Agreement the affected Party is able to continue or restart operations in compliance with federal, state or local law, the unaffected Party shall have the option of reinstating this Lease Agreement by providing written notice to the affected Party. The unaffected Party shall specify in the written notice the date on which this Lease Agreement shall be reinstated, and obligations under this Lease Agreement shall remain in full force and effect from the date of such reinstatement.

9. Water Court Proceedings. The Parties agree to fully cooperate in any Water Court proceedings that are necessary to implement performance under this Lease Agreement. Each Party shall bear its own costs and attorneys fees associated with such proceedings.

10. Inclusion in Substitute Water Supply Plan. The Water Company will work with North Sterling to include the Pawnee Wells in the 2005 Substitute Water Supply Plan and subsequent substitute water supply plans pertaining to the augmentation plan that is currently pending before the District Court in and for Water Division No. 1 in Case No. 96CW1034.

11. Priority of Delivery. It is expressly understood between the Parties, that should the Water Company contract with other entities or individuals for delivery of water, that such deliveries shall not interfere with, and shall be subordinate to, the delivery obligations imposed on the Water Company by this Lease Agreement.



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12. Changes in Quantity or Timing of Delivery. The Parties may, by separate, written agreement: (1) increase or decrease the total annual amount and/or the monthly amount of fully consumable water from the North Sterling Water Rights that will be delivered to the South Platte River by the Water Company on behalf of PSCo; and/or (2) change or modify the months in which fully consumable water from the North Sterling Water Rights will be delivered to the South Platte River by the Water Company on behalf of PSCo; and/or (3) change the timing of any delivery of fully consumable water delivered to the South Platte River by the Water Company on behalf of PSCo to include delivery of all or any portion of fully consumable water available pursuant to the North Sterling Water Rights at any and all times, without limitation.

13. Indemnification. The Parties agree to save and hold each other harmless from and against all liability from damage to property, or death of any person, or liability arising from claims arising out of or specifically related to actions of the Parties and their agents, employees, and contractors and pursuant to the terms and conditions of this Lease Agreement.

14. Audits. The Water Company agrees to maintain accurate records in accordance with sound accounting principles to evidence compliance with this Lease Agreement. Said accounting records shall present a fair and accurate accounting of all charges to PSCo under this Lease Agreement. Upon 30 days written notice, the Water Company shall provide PSCo with access to such accounting records, so that PSCo can determine whether the Water Company is in compliance with the provisions of this Lease Agreement. These accounting records shall be made available to PSCo during the term of this Lease Agreement and for a period of twenty-four (24) months thereafter.

15. Default; Remedies. In the event of default hereunder by any Party, the remedies upon default are as set forth below unless otherwise provided in this Lease Agreement. The remedies of the Parties shall survive termination of this Lease Agreement.

15.1 A default shall be deemed to have occurred if any Party breaches its obligations hereunder and fails to cure such breach within 30 days of receipt of written notice specifying the breach.

15.2 Upon any default by any Party, the non-defaulting Party shall be entitled to seek any available remedies under law or equity (including, without limitation, specific performance and/or damages) and the prevailing Party shall also be entitled to recovery of its reasonable attorneys' fees, expert witness fees, and court costs. The Parties acknowledge that due to the unique subject matter of this Lease Agreement, legal remedies may be inadequate, damages may be difficult to determine, and it may be impossible to return the non-defaulting Party to the status quo as it existed at the time of default. As a result, the non-breaching Party shall have the right to specific performance under terms and conditions of this Lease Agreement.

16. Notice. All notices and other communications under this Lease Agreement shall be in writing and shall be deemed to have been received on the date of service, if served personally or via facsimile on the person to whom notice is given, or on the third day after

mailing, if mailed to the Party to whom notice is to be given by certified, first class mail, postage prepaid, return receipt requested and properly addressed as follows:

PSCo: Xcel Energy
4653 Table Mountain Drive
Golden, CO 80403
ATTN: Water Resources

Water Company: Point of Rocks Water Company, L.L.C.
112 North 8th Avenue
Sterling, CO 80751

Any Party may change its address by giving notice in the manner provided hereunder.

17. Additional Provisions.

17.1 Survival of Terms. The representations, warranties, and covenants given by each Party hereunder, and the Parties' remedies and obligations set forth herein, shall be deemed to be continuing in nature.

17.2 Negotiation. This Lease Agreement has been submitted to the scrutiny of, and has been negotiated by all Parties hereto and their counsel. It shall be given fair and reasonable interpretation in accordance with its terms, without consideration or weight being given to its having been drafted by any Party or its counsel.

17.3 Waiver. This Lease Agreement may not be amended, nor any rights hereunder waived except by an instrument in writing signed by the Party to be charged with such amendment or waiver. The waiver by any Party of any term or condition of this Lease Agreement shall not be deemed to constitute a continuing waiver thereof, nor of any additional right that such Party may have under this Lease Agreement.

17.4 Binding Effect. This Lease Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors.

17.5 No Third Party Beneficiaries. This Lease Agreement is entered into between the Parties for the purposes set forth herein. No other person or entity is a beneficiary of this Lease Agreement, nor shall any other person or entity be considered a beneficiary, third party or otherwise, of this Lease Agreement.

17.6 Colorado Law. This Lease Agreement shall be governed by the laws of the State of Colorado, insofar as any matter is not regulated by applicable laws of the United States. Wherever possible, each provision of this Lease Agreement shall be interpreted in such manner as to be effective and valid under the laws of the State of Colorado, or, as applicable, under the laws of the United States, but if any provision of this Lease Agreement shall be prohibited or invalidated thereby, such provision shall be ineffective to the extent of such

prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease Agreement.

17.7 Paragraph Headings. The paragraph headings of this Lease Agreement are inserted for convenience and reference only and shall not alter, define, or be used in construing the text of the paragraphs.

17.8 Additional Documents. The Parties agree to execute such additional documents and give such further assurances as may be reasonably necessary to complete the transactions contemplated herein.

17.9 Counterparts. This Lease Agreement may be executed in any number of counterparts, each of which shall be considered to be an original, but all of which together shall constitute one and the same instrument.

17.10 Entire Agreement. This document constitutes the entire agreement between the Parties concerning the subject matter hereof. It supersedes any prior agreements or understandings between the Parties concerning the subject matter hereof.

17.11 Full Authority. The undersigned represent that they have full authority to enter this Lease Agreement on behalf of the respective Parties. The Parties have taken all actions required and secured the necessary approvals to enter this Lease Agreement.

17.12 Effective Date. This Agreement shall be effective on the last date it is signed by the Parties.

IN WITNESS WHEREOF, the Water Company and PSCo have caused these presents to be executed in their respective behalf by their proper officers.

Point of Rocks Water Company, LLC

By: James S. Yahn

Manager

ATTEST:

James S. Yahn
Secretary

Public Service Company of Colorado

By: David Wilks

David Wilks, Vice-President

Appendix C

Agreement Between Point of Rocks Water Company II and BNN Energy

WATER SALE AND PURCHASE AGREEMENT

This Water Sale and Purchase Agreement (“**Agreement**”) is entered into as of the 31st day of March, 2017 (“**Effective Date**”) by and between Point of Rocks Water Company II, LLC, a Colorado limited liability company, and its successors and assigns (“**Seller**” or the “**Water Company**”), and BNN Western, LLC, a Delaware limited liability company authorized to transact business within Colorado (“**Purchaser**”) (each referred to herein, individually, as a “**Party**” or, collectively, the “**Parties**”).

RECITALS

A. Seller has or will enter into various subscription agreements (the “**Subscription Agreements**”) with its members (the “**Members**” or “**Seller’s Members**”) which, among other things, commit and pledge the Members’ rights to delivery of water from North Sterling Irrigation District (“**District**”) to Seller, subject to certain terms and conditions. The Subscription Agreements provide, in part, as follows:

The North Sterling Irrigation District is a Colorado irrigation district that distributes water to land owners within boundaries of the North Sterling Irrigation District. By virtue of ownership of the Property, the Member has the right to receive pro-rata water deliveries based on the number of acres of the Property within North Sterling Irrigation District, including, but not limited to, water storage rights decreed to the North Sterling Reservoir by the decree entered in Case No. 2142 by the District Court in and for Water Division No. 1 on January 5, 1922 including:

a. Priority No. 53 A for 69,446 acre-feet, diverted at a rate of 300 cfs cubic feet per second of time, from the South Platte River, with an appropriation date of June 15, 1908;

b. Priority No. 79 for 11,954 acre-feet, diverted at an additional rate of 411 cfs, from the South Platte River, with an appropriation date of August 1, 1915.

The foregoing water rights are described collectively hereinafter as the “North Sterling Reservoir Water Rights.” A change of use for the North Sterling Reservoir Water Rights to include domestic, industrial, commercial, municipal, irrigation, stockwatering, recreation, fish and wildlife purposes, fire protection and all other beneficial uses, including augmentation, in addition to previously decreed uses for irrigation, recreation, wildlife and piscatorial purposes has been decreed in Case No. 96CW1034 in the Water Court in and for Water Division No. 1. The Members’ rights to receive a pro-rata portion of the North Sterling Reservoir Water Rights shall be limited by and subject to the Water Company’s Operating Agreement, and shall be irrevocably pledged and leased to the Water Company pursuant to the terms of the Operating Agreement.

Sellers’ Members will receive copies of Seller’s Operating Agreement prior to their entering into Subscription Agreements with Seller. The reference to “Property” in the Subscription Agreements pertains to the land owned by the Member of Seller located within the District. The definition of

“North Sterling Reservoir Water Rights” specified in the Subscription Agreements, including the change of North Sterling Reservoir Water Rights and water rights decreed by the District Court in and for Water Division No. 1 in Case 96CW1034 by *Findings Of Fact, Conclusions Of Law, Judgment And Decree Of The Water Court* dated July 21, 2006 (the “**Change Decree**”), shall also apply to this Agreement.

B. Pursuant to the provisions of the Change Decree, the right to withdraw water from the Reservoir for commercial and/or industrial uses was authorized.

C. Purchaser intends to install a pipeline system to transport the water from North Sterling Reservoir, which will require construction of a diversion facility to divert water from the North Sterling reservoir outlet channel into the pipeline system for commercial and industrial uses within the State of Colorado.

D. Seller’s obligation to sell the water to Purchaser, and Purchaser’s obligation to purchase the water from Seller, as well as the applicable terms and conditions for such sale and purchase, are set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DELIVERY AND RECEIPT; PRICE AND PAYMENT

1.1 **Water Deliveries.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser certain volumes of water per calendar year on the following terms and conditions:

(a) **Water Supplies.** The water that will be sold by Seller to Purchaser constitutes water that is diverted pursuant to the North Sterling Water Rights, as changed pursuant to the terms of the Change Decree. The North Sterling Water Rights are primarily diverted out of the South Platte River and delivered to North Sterling Reservoir. The water delivered to North Sterling Reservoir is stored for later release and application to beneficial uses.

(b) **Base Water Deliveries.** On or before December 15 of each year during the Term of this Agreement (subject to Section 1.1(d) below with respect to requests for the 2017 calendar year), Purchaser shall send a request by Notice to Seller specifying the projected total volume of water to be delivered to Purchaser during the following calendar year (“**Projected Base Volume**”), provided that such volume shall not exceed 4,000 acre feet. Subject to Section 1.1(d) below with respect to requests for the 2017 calendar year, the Purchaser may request an increase to the Projected Base Volume amount at any time prior to March 15 of the calendar year in question by Notice to Seller; provided that such requested amount shall not cause the total requested amount for such calendar year to exceed 6,800 total acre feet). On or before April 1 of the calendar year in question, Seller shall provide Purchaser with Notice of the extent to which Seller has the requested increased volume available for purchase. The Projected Base Volume plus the requested increase, to the extent such requested increase is available for purchase as set forth in Seller’s Notice, shall be the “**Base Annual Volume**” for the calendar year in question. Seller shall make the Base Annual Volume available for delivery to Purchaser during the applicable calendar year, and Purchaser

shall pay for all water actually delivered to Purchaser during the applicable calendar year, up to the Base Annual Volume, at the “Base Purchase Price” (as defined in Section 1.2(a)).

(c) **Additional Water Deliveries.** At any time after April 1 and from time-to-time thereafter during any calendar year, Purchaser may provide Notice to Seller of Purchaser’s desire to purchase more water than the Base Annual Volume, and the Notice shall specify the total amount of additional water Purchaser wishes to purchase during the remaining portion of the calendar year (the “**Requested Additional Volume**”). Seller may, but shall not be obligated to, make any Requested Additional Volume of water available to Purchaser. Within 15 days following the receipt of the Notice of Requested Additional Volume, Seller shall provide Notice of the extent to which Seller will deliver the Requested Additional Volume during the remainder of the calendar year in question (the “**Confirmed Additional Volume**”). Seller shall make the Confirmed Additional Volume available for delivery to Purchaser during the applicable calendar year, and Purchaser shall pay for the amount of the Confirmed Additional Volume actually delivered to Purchaser during the applicable calendar year, at the “Additional Purchase Price” (as defined in Section 1.2(b)).

(d) **Request for Deliveries in Calendar Year 2017.** With respect to water to be purchased during the calendar year 2017, Purchaser may request a total of up to 6,800 acre feet of water by Notice to Seller on or before April 1, 2017. Such requested volume shall be the Base Annual Volume applicable to the calendar year 2017. Any subsequent requests for water to be purchased during the calendar year 2017 shall be considered as Requested Additional Volume as set forth in Section 1.1(c) above.

(e) **Diversion Facilities.** In order for the water to be delivered from Seller to Purchaser, Purchaser shall construct water diversion facilities to divert the water from North Sterling Reservoir (as further described and depicted on the attached Exhibit A, the “**Diversion Facilities**”). The Diversion Facilities shall be constructed at the location specified on Exhibit A and shall include, at a minimum, the requirements specified on the attached Exhibit A. As specified on Exhibit A and in this Agreement, the Diversion Facilities shall include a continuous recording flowmeter that records all diversions of water from North Sterling Reservoir by Purchaser through the Diversion Facilities. Purchaser acknowledges that the water levels at North Sterling Reservoir vary widely during each year and from year to year. Accordingly, the Diversion Facilities shall be designed and constructed to account for fluctuations in the levels of water in the North Sterling Reservoir. Further, the Diversion Facilities shall be designed and constructed so that Purchaser’s use of the Diversion Facilities will not interfere with the North Sterling Irrigation District’s use of any outlet pipe not directly connected to the Diversion Facilities or the outlet canal. As used herein, the term “Diversion Facilities” includes any temporary water diversion facilities constructed by Purchaser prior to completion of the Purchaser’s permanent Diversion Facilities, and other temporary facilities as provided herein. Purchaser acknowledges that the supply of water to the Diversion Facilities may be temporarily interrupted in connection with the District’s operation, maintenance, or repair of the District’s facilities including, without limitation, the North Sterling Reservoir’s outlet channel and related structures. The Parties agree that if the supply of water to the main or permanent Diversion Facilities is temporarily interrupted as set forth above in this section or in Article VII, Purchaser may construct temporary Diversion Facilities to facilitate continued supply of water to Purchaser’s Pipelines (as defined in Section 2.1 below), subject to Seller’s reasonable approval of such construction as set forth herein. Prior to construction or

material modification of any temporary or permanent Diversion Facilities, Purchaser shall provide Seller proposed construction plans for Seller's review and approval, such approval not to be unreasonably withheld, conditioned, or delayed. Seller's approval of the Diversion Facilities or any plans in connection therewith shall not be a representation or warranty by Seller as to the adequacy or sufficiency of the Diversion Facilities or plans for any use, purpose or condition. Plans for the Diversion Facilities shall be subject to further approval by the District as provided in Section 4.2 below. Purchaser shall construct the Diversion Facilities in accordance with the plans as approved by Seller and the District. Title, custody, control, risk of loss, and possession of the water shall transfer from Seller to Purchaser at the point the water enters the Diversion Facilities.

(f) **Diversion Records.** Purchaser shall record and provide to Seller: (i) within ten (10) days following the end of each month, the volume of water diverted by Purchaser, including the beginning of the month flowmeter reading and the end of month flowmeter reading; and (ii) within ten (10) days of the end of each calendar quarter, a copy of the electric power records for the preceding calendar quarter from the power company supplying the water pumps associated with the Diversion Facilities. To the extent such power company records are not available within ten (10) days following the end of the applicable calendar quarter, the power company records shall be provided within ten (10) days after Purchaser's receipt of the records from the power company. In the event that Purchaser installs a flowmeter that permits an electronic recording and transmitting rate of flow and volume of flows of water through the flowmeter by use of cellular or other electronic methods, Purchaser shall provide Seller with the information and passwords to allow the Seller to access the flow records electronically and if Seller has access to such flow records electronically, Purchaser shall not be required to submit the end of month flow records to Seller. All information provided to Seller under this section is subject to Seller's reasonable verification and audit, and Purchaser shall reasonably cooperate with such verification and audit, including, without limitation, by providing further information as reasonably requested by Seller in connection therewith.

(g) **Use of Water and Replacement of Depletions.** The Parties acknowledge and agree that all water diverted by Purchaser shall be applied to commercial and industrial purposes within the State of Colorado and shall be considered fully consumed. Pursuant to the Change Decree, up to 15,000 acre feet of water diverted pursuant to the North Sterling Storage Water Rights measured at the North Sterling Inlet Ditch Headgate Flume per year may be used for commercial, industrial and other non-irrigation purposes with no limitation on the place of use except as set forth above. The water diverted by Purchaser shall consist of the water usable for commercial, industrial and other non-irrigation purposes as defined by the Change Decree. To the extent the Change Decree requires the replacement of return flows, ditch losses or other deliveries of water to the South Platte River or its tributaries associated with the delivery of water to Purchaser, Seller shall be solely responsible for timely completing the deliveries of water at the sole cost and expense of Seller and Purchaser shall not be required to pay for any of the water delivered to the South Platte River or its tributaries associated with the requirements of the Change Decree.

(h) **Force Majeure Event.** Seller shall not be required to deliver water to Purchaser to the extent Seller is unable to do so as a result of the occurrence of a Force Majeure event.

(i) **Time and Manner of Construction.** The Parties acknowledge and agree that Purchaser intends to begin construction of Diversion Facilities and Pipelines as soon as practicable after the Effective Date. The Parties further acknowledge and agree that the District intends to begin delivering water to third parties through the North Sterling Reservoir outlet canal on or about April 15, 2017, and that after that date (and until the District suspends such water deliveries) it will not be feasible to perform construction work to connect the Diversion Facilities to the outlet canal or to perform boring or other earthwork underneath or in the vicinity of the outlet canal. Therefore, to the extent that construction and earthwork at, under, or in the vicinity of the outlet canal is required to facilitate Purchaser's purchase of water during the calendar year 2017, Purchaser shall complete such work prior to April 15, 2017. Purchaser shall perform all construction (including boring and other earthwork), modification, maintenance, repairs and operation required or permitted under this Agreement only at such times and in such manner as will not interfere with the District's delivery of water through the outlet canal.

1.2 **Purchase Price.** The payments for the water provided by Seller and diverted by Purchaser shall be determined pursuant to the following paragraphs:

(a) **Base Purchase Price.** With respect to all Base Annual Volume actually diverted by Purchaser through December 31, 2021, Purchaser shall pay Seller \$1,551.67 per acre foot (for reference only, \$0.20 per forty-two gallon barrel) (the "**Base Purchase Price**"). After December 31, 2021, the Base Purchase Price shall be escalated as set forth in Section 1.2(c) below.

(b) **Additional Purchase Price.** With respect to all Confirmed Additional Volume actually diverted by Purchaser through December 31, 2021, Purchaser shall pay Seller \$1,706.84 (for reference only, \$0.22 per forty-two gallon barrel) (the "**Additional Purchase Price**"). After December 31, 2021, the Additional Purchase Price shall be escalated as set forth in Section 1.2(c) below.

(c) **Price Escalation.** All prices set forth in this Agreement shall be constant through December 31, 2021. Beginning on January 1, 2022, and on the first day of each calendar year thereafter for the remainder of the Term ("**Adjustment Date**"), all purchase prices set forth in this Agreement shall be increased (but not decreased) by the annual percentage increase over the prior year, if any, in the Consumer Price Index for All Urban Consumers (CPI-U), published by the U.S. Department of Labor, Bureau of Labor Statistics, for the Denver-Boulder-Greeley area (1982-1984 = 100; not seasonally adjusted) ("**Index**") from November of the calendar year two years prior to the Adjustment Date to November of the calendar year prior to the Adjustment Date. No price shall be adjusted to a lower amount. The Base Purchase Price, Additional Purchase Price, and all other prices as adjusted herein shall be the applicable price for the year commencing on January 1, and such adjusted price shall be the Base Purchase Price, Additional Purchase Price, or other price, as applicable, for future calculations of adjustments of that price. If the adjusted price calculation results in fractional cents, the fractional cent amount shall be rounded to the nearest full cent (\$0.01). If the Index is no longer available, the adjustment to the Base Purchase Price, Additional Purchase Price, and all other prices as set forth in this paragraph shall be made on the basis of changes in the most comparable and recognized cost-of-living index then issued and available as agreed to by the Parties.

1.3 Minimum Payments. The Parties acknowledge and agree (1) that the water requirements of Purchaser will be variable, (2) that Seller must reserve water supplies that would otherwise be applied to other purposes in order to meet the requirements of this Agreement, and (3) that if Seller reserves water supplies that Purchaser does not purchase, Seller may not have a use for the reserved water supplies and will suffer damages in connection therewith. In order to ensure water supplies for Purchaser and to minimize the impact on Seller associated with reservation of the water supplies, the Parties have agreed to the following minimum payments:

(a) **Growing Season Allocation.** For clarity, this paragraph applies to the timing of water deliveries during a designated portion of each calendar year, and not the total volume of water to be delivered during the full calendar year. As used herein, the “**Growing Season**” means the period of April 1 through October 31 of each year. Prior to April 1 of each year Purchaser shall notify Seller of the volume of water (out of the Base Annual Volume) that Purchaser will require during that year’s Growing Season and Seller shall make such amount available to Purchaser during such Growing Season. Similarly, at the time of any Additional Request, Purchaser shall notify Seller of the volume of water (out of the Requested Additional Volume) that Purchaser will require during that year’s Growing Season and Seller shall make such amount available to Purchaser during such Growing Season. During any Growing Season, Seller shall not be obligated to deliver any water in excess of the volume allocated by Purchaser to that Growing Season. Any volume of water Purchaser allocates to a Growing Season but does not purchase during the applicable Growing Season is referred to herein as the “**Unused Allocation.**” Purchaser shall pay Seller for the Unused Allocation at the price of \$775.84 per acre foot (for reference only, \$0.10 per forty-two gallon barrel), which price shall be escalated as set forth in Section 1.2(c) above. Any amounts due to Seller with respect to an Unused Allocation shall be liquidated damages and not a penalty, and shall be in addition to all other amounts payable with respect to water actually purchased during the applicable full calendar year. Purchaser and Seller agree that proving actual damages with respect to allocated but unpurchased water would be costly, impractical, and extremely difficult, and that the amount of liquidated damages set forth herein is a reasonable amount considering all of the circumstances existing on the Effective Date.

(b) **Minimum Purchase.** As used herein, the “**First Purchase Period**” means the period beginning on the effective date of this Agreement and continuing through December 31, 2021, and the “**Second Purchase Period**” means the period beginning January 1, 2022 and continuing through December 31, 2026. During the First Purchase Period, Purchaser shall purchase at least 6,000 acre feet of water, or shall pay Seller for the difference between the amount of water actually purchased during the First Purchase Period and 6,000 acre feet (at the price Base Purchase Price). During the Second Purchase Period, Purchaser shall purchase at least 4,000 acre feet of water, or deliver additional payment to Seller for the difference between the amount of water actually purchased during the Second Purchase Period and 4,000 acre feet (at the Base Purchase Price in effect at the end of the Second Purchase Period, escalated as set forth in Section 1.2(c) above). Within a reasonable time following the end of the First Purchase Period and Second Purchase Period, as applicable, Seller shall determine the amounts due from Purchaser pursuant to this section. Such amounts shall be included in the next regular monthly invoice pursuant to Section 1.5 below, and shall be due and payable as set forth therein. For clarity, the minimum purchase requirements set forth in this section are in addition to any Unused Allocation (as defined in Section 1.3(a) above) and Purchaser shall have no minimum purchase obligation during any Renewal Term. No requirement under this paragraph shall be offset, reduced, or otherwise

affected by the volume of any Unused Allocation or any payment with respect to any Unused Allocation.

1.4 Water Quality. The water diverted into North Sterling Reservoir and delivered to Purchaser is primarily diverted from the South Platte River and Seller has no control over the chemical or biological constituents within the water diverted from the South Platte River or chemical and biological processes that may occur while the water is stored in North Sterling Reservoir. The water stored in North Sterling Reservoir is further used for public recreational uses and such uses of the water are administered by the Colorado Division of Parks and Wildlife, and the water quality may be affected by such public uses. Purchaser has had an opportunity to inspect and evaluate the quality of the water for the purposes that Purchaser intends to use the water delivered to Purchaser. Purchaser has determined that the quality of the water in North Sterling Reservoir is suitable for Purchaser's commercial and industrial uses. Seller agrees to not knowingly take any action to impair or adversely affect the quality of the water stored in North Sterling Reservoir. Seller does not agree to provide any treatment of the water stored in North Sterling or the water delivered to Purchaser. Purchaser takes all water diverted by Purchaser "as-is" and Seller does not represent or warrant the suitability of the water diverted by Purchaser for any specific purpose.

1.5 Billing. Following the end of each calendar month (and following receipt, verification, and audit of information provided to Seller under Section 1.1(f) above), Seller shall furnish Purchaser with a statement of water purchases by Purchaser during the preceding month and any other amounts owed to Seller as specified in this Agreement. Purchaser shall pay Seller within forty-five (45) days following the date of each statement at Seller's address specified in this Agreement. To the extent Purchaser desires to pay Seller by wire transfer or other electronic method, Seller shall provide Purchaser with information to permit the electronic funds transfer or other electronic method, and Purchaser shall deliver payments in accordance therewith.

1.6 Other Use of Water; Right of First Refusal. The parties acknowledge and agree that some or all of Seller's Members and others have leased their water rights to Point of Rocks, L.L.C., a Colorado limited liability company, in connection with an agreement by Point of Rocks, L.L.C. to sell water to Public Service Company of Colorado d/b/a Xcel Energy (the "**Xcel Agreement**"). Purchaser acknowledges that the Xcel Agreement was recorded in the records of the Logan County Clerk and Recorded on April 26, 2006, at Reception No. 676390. Purchaser further acknowledges that the leases of water rights by Seller's Members to Seller in connection with this Agreement are subordinate to the Members' leases of water in connection with the Xcel Agreement. Notwithstanding anything to the contrary in this Agreement, Seller's obligations under this Agreement are subject to fulfillment of Seller's Members' preexisting lease obligations in connection with the Xcel Agreement and all other applicable legal requirements with respect to the water that is the subject of this Agreement. At least fifteen (15) days prior to Seller entering into any new agreement to sell water to third parties for commercial or industrial purposes in an amount greater than 500 acre feet per calendar year, Seller shall provide Notice to Purchaser of the proposed agreement and a copy of the proposed agreement. Purchaser shall have twenty (20) days from the date of the Notice from Seller to provide Notice to Seller that Purchaser will enter into an agreement with Seller on the same terms and conditions as were specified in the proposed agreement provided to Purchaser. In the event Purchaser does not timely provide Notice to Seller, Purchaser shall be deemed to have rejected the right to enter into the agreement. In the event

Purchaser does provide Notice to Seller to accept the agreement, the Parties shall enter into a substantially similar agreement within thirty (30) days following the Notice from Purchaser. Purchaser's acceptance or non-acceptance of the preceding right of first refusal does not in any way limit Seller's obligation to make available and deliver water to Purchaser pursuant to this Article I.

ARTICLE II PURCHASER'S PIPELINES

2.1 Pipeline Construction. Purchaser intends to construct pipelines for the transportation of the water that is the subject of this Agreement ("**Pipelines**"). Except with respect to the Diversion Facilities, Seller shall have no participation in or involvement in the construction or operation of the Pipelines.

2.2 Lease Of Pipeline Capacity. Seller may send Notice to Purchaser of Seller's desire to use the Pipelines to transport water for Seller's own non-energy-related purposes during times in which Purchaser is not using any of the Pipelines' capacity. If Purchaser approves of Seller's use of the Pipelines (which approval may be withheld in Purchaser's reasonable discretion), Purchaser and Seller shall enter into a mutually agreeable letter agreement governing such use, which may include reasonable provisions related to sharing of costs, notice requirements, and other applicable terms.

2.3 Right of First Refusal. If, at any time during the Term of this Agreement, Purchaser desires to offer to sell or lease all or any portion of the Pipeline or shall receive from a third party a bona fide offer to purchase or lease all or any portion of the Pipeline (in each case, except in connection with Purchaser's sale of all or substantially all of Purchaser's assets), which Purchaser desires to accept, at least fifteen (15) business days before making or accepting the offer, as the case may be, Purchaser shall send to Seller a proposal for sale or lease of the Pipeline embodying the terms of the offer to Seller. Seller shall have the right, which right must be exercised within twenty (20) business days of the receipt of the proposal and the written notice, to purchase the Pipeline or such part of the Pipeline on the terms and conditions set forth in the Notice. If Seller does not provide the Notice to Purchaser within the twenty (20) business day period, Purchaser shall be free to sell or offer to sell the Pipeline or such part of the Pipelines to third parties on terms not less favorable than those set forth in the Notice. If Seller provides Notice to Purchaser that Seller intends to purchase the Pipeline, or the portion of the Pipeline described in the Notice, on the terms and conditions specified in the Notice, the Parties shall negotiate a final agreement with respect to the sale and purchase of the Pipeline within thirty (30) days following the date that Seller provides the Notice, and upon consummation thereof, neither Party shall have any further obligations under this Agreement.

ARTICLE III FACILITIES AND MEASUREMENT

3.1 Purchaser shall, at its sole expense, and subject to applicable laws, rules and regulations for the withdrawal of water, install or cause to be developed, installed and maintained and repaired all pumps, electrical extensions, and other equipment, facilities, and improvements, necessary to divert the water at the Diversion Facilities. In addition to the Easement Agreement (defined

below), Purchaser shall obtain and maintain all rights, consents, easements, government authorizations, permits, licenses, or other authorizations necessary to divert and deliver the water to Purchaser. Purchaser shall be responsible for all costs of operations, maintenance, and repairs and replacements of all such equipment, facilities, and improvements necessary to receive the water. In the event Purchaser fails to reasonably maintain or repair the Diversion Facilities, or any component thereof, and subject to the following provisions in this section regarding Notice, Seller may access the Diversion Facilities and perform such reasonable maintenance and repairs as are reasonably necessary, and shall be entitled to collect from Purchaser the reasonable and actual costs thereof. Seller's rights under the preceding sentence shall only be exercised after sixty (60) days' Notice to Purchaser, plus such additional time as reasonably required for Purchaser to complete required maintenance or repairs provided Purchaser has commenced such performance within the 60-day period. Notwithstanding the preceding sentence, in an emergency or other situation that directly impacts the Diversion Facilities and the District's facilities that are connected to or used in connection with the Diversion Facilities, and that reasonably requires immediate repairs, Seller's rights under this section may be exercised beginning five days after Seller has Notified Purchaser of such required repairs if Purchaser has not begun to make repairs by such time.

3.2 Purchaser, at its sole expense, shall furnish, install, operate, and maintain totalizing flow measurement equipment for accurate measurement of the volume of water diverted by Purchaser at the Diversion Facilities as required by the Change Decree, the State Engineer's Office or other governmental entity. Purchaser shall provide such measurement data showing the daily quantity of the water received by Purchaser to Seller for each calendar month on or before the 15th day of the calendar month following the month to which the daily measurements relate. Purchaser shall operate, maintain, test, and calibrate the measurement equipment in accordance with the Change Decree and the *Measurement Rule Policy*, promulgated by the Colorado State Engineer with an effective date of February 1, 2015. Any meter installed hereunder shall be open to inspection by Seller or its designee, upon request, and the Colorado State Engineer, Division Engineer for Water Division No. 1, and their designees, at all reasonable times when a representative of Purchaser is available to be present for such inspection.

3.3 Purchaser shall give at least five days' advance notice to Seller of the time of any measurement equipment calibrations in order that Seller may be present for the calibrations. With respect to any test made hereunder, a registration within 2% of correct shall be considered correct. However, if a test shows any discrepancy in measurement, then as soon as possible thereafter, the meter or meters shall be adjusted to read as accurately as practicable. Settlement for any period during which the meter registration deviates by more than 2% shall be corrected at the rate of inaccuracy for any period of inaccuracy which is definitely known or agreed upon, but in case the period is not definitely known or agreed upon, then for a period of 15 days prior to the date of said test. The rate of the inaccuracy shall be estimated and agreed upon by the Parties on the basis of the best available data, using the first of the following methods that is feasible:

(a) by using the registration of Seller's measuring equipment, installed pursuant to this Agreement, if accurately registering; or, in the absence thereof,

(b) by using the registration of any check meter or meters if installed and accurately registering;

(c) by calibration, test, or mathematical calculation using historical volumes of water diverted through the Diversion Facilities and corresponding electric power records; or

(d) by estimation based on comparison of the quantity of deliveries with deliveries during preceding periods under similar conditions when the meter was registering accurately.

3.4 Seller may, at its sole expense, furnish, install, operate, and maintain measurement equipment for accurate measurement of the volume of water received at the Diversion Facilities.

ARTICLE IV EARLY TERMINATION RIGHTS

4.1 **Subscription Agreements of Seller's Members.** Seller shall enter into Subscription Agreements with a sufficient number of Members by March 31, 2017 (the "**Early Termination Deadline**"), so that no less than 25,000 acres of land included within the District are subject to such Subscription Agreements. If Seller does not enter into such Subscription Agreements on or before the Early Termination Deadline, this Agreement shall be terminable by Purchaser on or before April 3, 2017 (the "**Early Termination Date**"), and neither Party shall have any further liabilities or obligations hereunder, except for liabilities or obligations that accrued prior to Purchaser's delivery of such Notice.

4.2 **Easement Agreement With North Sterling Irrigation District.** In order for Purchaser to construct the Diversion Facilities, Purchaser must obtain an easement agreement from the District authorizing the construction and operation of the Diversion Facilities (which include, for the purpose of this Section 4.2, Pipelines and related facilities and equipment associated with the diversion of water under this Agreement). On or before the Early Termination Deadline, Purchaser shall, at Purchaser's sole cost and expense, prepare proposed construction plans for the Diversion Facilities, including, but not limited to, any and all facilities required to be constructed on land owned by the District or within easements owned by the District. Purchaser shall present the proposed construction plans for the Diversion Facilities to the District and work with the District to obtain an easement agreement with the District (the "**Easement Agreement**"). Seller shall assist with the preparation and negotiation of the Easement Agreement to the extent reasonably requested by Purchaser, but Seller shall have no right to stipulate the specific terms thereof. Seller shall pay any and all fees and costs assessed by the District associated with the Easement Agreement, and Purchaser shall pay any and all costs associated with (1) the construction of the Diversion Facilities, (2) easements, rights-of-way, licenses, and other agreement with property owners, but excluding the District, (3) all operating costs associated with the use and operation of the Diversion Facilities, and (4) all costs associated with maintenance, repair, insurance, power and other costs associated with the use and operation of the Diversion Facilities. The Parties acknowledge and agree that the term of the Easement Agreement shall be conterminous with this Agreement, and upon termination of this Agreement, the Easement Agreement shall also terminate. The District may direct, within thirty (30) days following the termination of the Easement Agreement, Purchaser to remove all or a portion of the Diversion Facilities. The terms and conditions associated with the use and removal of the Diversion Facilities shall be specified in the Easement Agreement. In addition to the allocation of costs and expenses described above, Seller shall be solely responsible for the costs incurred by Seller in conjunction with the Easement Agreement, including, but not limited to, attorneys' fees and costs and engineering fees and costs, and

Purchaser shall be solely responsible for the costs incurred by Purchaser in conjunction with the Easement Agreement, including, but not limited to, attorneys' fees and costs and engineering fees and costs, and governmental permitting fees and costs. In the event Purchaser and the District do not complete an Easement Agreement on or before the Early Termination Deadline, this Agreement shall be terminable by Purchaser by Notice to Seller on or before the Early Termination Date, and neither Party shall have any further liabilities or obligations hereunder, except for liabilities or obligations that accrued prior to Purchaser's delivery of such Notice.

4.3 Management Agreement With North Sterling Irrigation District. The District is responsible for the management and distribution of water supplies owned by the District, and Seller's Members are owners of the land within the District and entitled to water supplies distributed by the District. In order to ensure that the water supplies required to meet Seller's obligations pursuant to this Agreement are available, Seller shall enter into a management agreement with the District (the "**Management Agreement**") to provide for the delivery of the water supplies to be delivered to Purchaser pursuant to this Agreement. To the extent compensation is required to be paid to the District to effectuate the terms of this Agreement or in conjunction with entering into the Management Agreement or there are other costs and expenses associated therewith, Seller shall be solely responsible for the compensation, costs and expenses and Purchaser shall have no responsibility for the compensation, costs or expenses. On or before the Early Termination Deadline, Seller shall provide to Purchaser the executed and effective Management Agreement providing for the delivery of the water supplies to be delivered to Purchaser pursuant to this Agreement. If Seller does not deliver to Purchaser the executed and effective Management Agreement as contemplated by this paragraph on or prior to the Early Termination Deadline, this Agreement shall be terminable by Purchaser by Notice to Seller on or before the Early Termination Date, and neither Party shall have any further liabilities or obligations hereunder, except for liabilities or obligations that accrued prior to Purchaser's delivery of such Notice.

4.4 Diligent Efforts. Each Party shall use diligent efforts to complete its obligations under this Article IV. As long as a Party has used such diligent efforts, the termination right set forth in the applicable section of this Article IV shall be such Party's sole liability and the other Party's sole remedy for a Party's failure to complete its obligations under this Article IV.

ARTICLE V

REPRESENTATIONS, WARRANTIES, DISCLAIMERS AND COVENANTS

5.1 Seller makes the following representations, warranties and disclaimers to Purchaser, all of which shall be true, correct and complete as of the Effective Date.

(a) Seller has, or upon entry into the Subscription Agreements and the Management Agreement will have, the full authority and legal right to withdraw and use, lease or sell at least 6,800 acre feet annually from the North Sterling Reservoir.

(b) The water to be delivered to Purchaser has been changed pursuant to the Change Decree to allow the use of the water for commercial and industrial uses, as defined by and subject to applicable law. Seller does not have control over the actions of the State Engineer or any other

entity or person who may assert that additional judicial approvals may be or are required in order for Seller to perform under the terms and conditions of this Agreement.

(c) Seller and each person signing this Agreement on behalf of Seller has the full and unrestricted power and authority to execute and deliver this Agreement.

(d) The execution of this Agreement, and all of the terms and conditions and activities contemplated under this Agreement, have been duly approved by the Management Committee of Seller.

(e) Seller is not the subject of any: (i) legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature that could be reasonably expected to impact the North Sterling Water Rights; or (ii) bankruptcy or insolvency proceedings.

(f) Except as disclosed in this Agreement, there are no agreements with any third parties (including, but not limited to, any leases, use or occupancy agreements, licenses or other rights of possession or any option for any of the foregoing) that would interfere with, conflict with, prohibit or restrict Purchaser's use of the water under this Agreement.

5.2 No Claim to North Sterling Water Rights or Appropriative Rights. Purchaser acknowledges and agrees that this Agreement concerns the sale of volumes of water on an annual basis, as set forth herein, and not the sale or other transfer of any interest in underlying water rights. Purchaser agrees to not make any claim of any type or nature to the ownership of the North Sterling Water Rights. Purchaser further agrees (1) to not claim any appropriative rights to the water diverted pursuant to this Agreement or through the Diversion Facilities, (2) to not assert that the water was not water diverted under the North Sterling Water Rights, and (3) to not assert any appropriative rights as a result of diversion and application of the water diverted by Purchaser.

5.3 Purchaser Representations and Covenants. Purchaser represents and warrants that Purchaser and each person signing this Agreement on behalf of Purchaser has the full and unrestricted power and authority to execute, perform and deliver this Agreement. Purchaser further covenants: (i) to complete construction of permanent Diversion Facilities within eighteen (18) months of the Effective Date of this Agreement; (ii) not to release upon or bring on to or discharge to North Sterling Reservoir any Hazardous Materials, and (iii) not to use any water from the North Sterling Reservoir in violation of law or in any manner that may cause injury to Seller or to Seller's Members' appropriative water rights; provided, however, that Purchaser's use of water as permitted by this Agreement shall not be considered a breach of this clause (iii).

5.4 Insurance.

(a) Each Party (the "**Insured Party**") shall procure and thereafter maintain through the Term of this Agreement, at its own expense, insurance coverage required by this Agreement, or greater coverage if required by law. At a minimum, the types of insurance and minimum policy limits specified in this Agreement shall be maintained in a form and from insurers that have at least an A- (excellent) rating by A.M. Best and are qualified to do business in the state of Colorado. Proof of the insurance required herein shall be provided by the Insured Party to the other Party (the "**Insurance Beneficiary**") before the commencement

of any construction activity with respect to the Diversion Facilities (as set forth below), upon renewal of the applicable insurance policy, and otherwise from time to time as reasonably requested by the Insurance Beneficiary. To the extent that the Insured Party contracts with any other entity or individual to perform any of its obligations hereunder, the Insured Party shall require such contractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the contractor. In no event shall the failure by the Insured Party to provide proof of insurance be deemed a waiver by the Insurance Beneficiary of any of the insurance obligations set forth herein.

(b) The minimum insurance coverages and policy limits required hereunder are as follows, provided that Seller shall not be required to carry coverage for: (i) Business or Commercial Automobile Liability for any period during which Seller does not own any automobiles; or (ii) Worker's Compensation and Employer's liability, during any period in which Seller is not required by applicable law to maintain such coverage:

Commercial General Liability	\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage)
	\$2,000,000 General Aggregate per Project
	\$2,000,000 Products & Completed Operations Aggregate
	\$1,000,000 Personal and Advertising Injury Limit
Business or Commercial Automobile Liability	\$1,000,000 combined single limit per accident
Workers' Compensation and Employers' Liability	\$100,000 Each Accident
	\$100,000 Each Employee for Injury by Disease
	\$500,000 Aggregate for Injury by Disease
Excess or Umbrella Liability	\$1,000,000 occurrence/aggregate

(c) The Insurance Beneficiary (and in the case of Seller as Insurance Beneficiary, the District), along with its Affiliates (as defined in Section 9.14 below), its and their managers, officers, directors, employees, agents and representatives, and the successors and assigns of all of the foregoing, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on the Commercial General Liability, Automobile Liability, and Excess or Umbrella Liability Policies of the Insured Party and any contractor of the

Insured Party performing its obligations under this Agreement, which policies must be primary and noncontributory with respect to the additional insureds. To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the Commercial General Liability, Automobile and Excess or Umbrella Policies of the Insured Party in favor of the Insurance Beneficiary (and in the case of Purchaser's policies, the District) and the other additional insureds.

(d) Prior to commencement of any construction activities with respect to the Diversion Facilities, the Insured Party shall submit a Certificate of Insurance in favor of the Insurance Beneficiary (and in the case of Seller as the Insurance Beneficiary, the District) and an Additional Insured Endorsement (in a form acceptable to the Insurance Beneficiary) as required hereunder. The Insured Party shall provide the Insurance Beneficiary with at least (30) days' notice of any cancellation or change in coverage. To the extent that the Insured Party has added the Insurance Beneficiary (and in the case of Seller as the Insurance Beneficiary, the District) as an additional insured on a blanket basis (in a form acceptable to the Insurance Beneficiary), the Insured Party shall submit a Certificate of Insurance in favor of the Insurance Beneficiary (and in the case of Seller as the Insurance Beneficiary, the District) on an annual basis. Copies of insurance policies shall promptly be made available to the Insurance Beneficiary upon request.

ARTICLE VI INDEMNIFICATION

6.1 Seller Indemnification. Seller agrees to release, protect, defend, indemnify and hold harmless Purchaser, its Affiliates, its and their managers, officers, directors, employees, agents, and representatives, and the successors and assigns of all of the foregoing from all damages, losses, costs, liabilities, penalties, expenses, demands or claims, including but not limited to those arising from personal injury, violation of any laws, rules or regulations or any other type of claim, and including any and all costs and fees (including reasonable attorneys' and experts' fees, and discovery costs) arising out of litigation or settlement, (collectively, "**Losses**"), to the extent the Losses are caused by, arise from or relate to, directly or indirectly, (a) Seller's breach of this Agreement, (b) the negligent or wrongful acts or omissions of Seller or each of its respective agents, employees (including leased employees) or subcontractors in connection with this Agreement and Seller's obligations hereunder, (c) the presence or existence in, on, at, or under the lands on which the Diversion Facilities are built, or the environment beyond the physical boundaries of such lands, of any Hazardous Materials placed on such lands by Seller or its agents, employees, subcontractors, or predecessors, (d) any act or omission of Seller related to Hazardous Materials, including but not limited to manufacturing, storage, disposal, treatment, remediation, or any actual or threatened release, spill, or emission, occurring in any manner in connection with the lands on which the Diversion Facilities are built. If such Losses were also caused in part by the negligent or wrongful acts or omissions of Purchaser, its agents, employees or subcontractors, then Seller shall only be liable to the extent and for such portion that such Losses were not caused by the negligent or wrongful acts or omissions of Purchaser, its agents, employees or subcontractors.

6.2 Purchaser Indemnification. Purchaser agrees to release, protect, defend, indemnify and hold harmless Seller, its Affiliates, its and their managers, officers, directors, employees, agents and representatives, and the successors and assigns of all of the foregoing from all Losses to the

extent the Losses are caused by, arise from or relate to, directly or indirectly, (a) Purchaser's breach of this Agreement, (b) the negligent or wrongful acts or omissions of Purchaser, its agents, employees or subcontractors in connection with this Agreement and Purchaser's obligations hereunder, (c) the presence or existence in, on, at, or under the of any Hazardous Materials placed on the lands constituting the Diversion Facilities by Purchaser, its agents, subcontractors or employees; (d) any act or omission of Purchaser related to Hazardous Materials, including but not limited to manufacturing, storage, disposal, treatment, remediation, or any actual or threatened release, spill, or emission, occurring in any manner in connection with the Lands, (e) any injury, damages, or death caused by or associated with the failure of any equipment installed, owned by, used by Purchaser related to diversion, transportation and use of the water sold to Purchaser to the extent caused by Purchaser's negligence or willful misconduct. If such Losses were also caused in part by the negligent or wrongful acts or omissions of Seller, its Affiliates or either of their respective agents, employees, subcontractors or predecessors, then Purchaser shall only be liable to the extent and for such portion that such Losses were caused by, arise from or relate to, directly or indirectly, (i) Purchaser's breach of this Agreement, or (ii) the negligent or wrongful acts or omissions of Purchaser, its agents, employees or subcontractors.

6.3 Hazardous Materials. As used herein, "**Hazardous Materials**" means: (a) any substance which is or contains any "hazardous substance" as now or hereafter defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") (42 U.S.C. § 9601, *et seq.*), or any regulations promulgated under CERCLA; (b) oil, gas, gasoline, diesel fuel, or other petroleum hydrocarbons, or additives or by-products associated with such petroleum products or with oil and gas exploration, production, and transmission; and (c) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under environmental requirements of the common law, or any other applicable laws.

ARTICLE VII FORCE MAJEURE

7.1 Excuse for Non-Performance. If either Party fails to observe or perform any of the covenants or obligations imposed upon it by this Agreement other than failure to timely deliver any payment due under this Agreement, then, to the extent that such failure is occasioned by or results from an event of Force Majeure, such failure is excused and deemed not to be a breach of the covenants or obligations by that Party (the "**Affected Party**").

7.2 Notice of Force Majeure Event. The Affected Party shall orally Notify the other Party as promptly as reasonably practicable after the occurrence of an event of Force Majeure. Oral Notice under this section shall be provided as specified in this Agreement, and shall be followed by written confirmation pursuant to Section 9.5 below.

7.3 Force Majeure Resolution.

(a) Upon the occurrence of a Force Majeure event, the Affected Party shall use commercially reasonable efforts to remedy such Force Majeure event and shall resume performance of its obligations hereunder as promptly as reasonably practicable after the Force Majeure event has been remedied. The Affected Party shall provide prompt Notice to the other

Party when the relevant Force Majeure event has been remedied. Notwithstanding anything in this Agreement to the contrary, if despite the Affected Party's commercially reasonable efforts to remedy a Force Majeure Event, such Force Majeure Event continues for longer than four (4) calendar months after the date of the written confirmation delivered pursuant to Section 7.2 above, then at any time before the Affected Party provides Notice that the Force Majeure event has been remedied as set forth in Section 7.2, either Party may terminate this Agreement by written Notice to the other Party.

7.4 Definition of Force Majeure. "Force Majeure" means, in relation to a Party, any occurrence, condition, situation, or threat thereof that (directly or indirectly) renders that Party unable to perform its obligations under this Agreement; provided that:

(a) such occurrence, condition, situation or threat thereof is not under or within the reasonable control of the Party claiming such inability; and

(b) such Party could not have prevented or avoided such occurrence, condition, situation or threat thereof by the exercise of reasonable and good industry practice, and, provided that the foregoing requirements have been met, shall include the following:

(i) acts of God, including epidemics, landslides, dam failure or ditch failure, hurricanes, floods, washouts, drought, lightning, earthquakes, storm warnings, perils of the sea, extreme heat or extreme cold, and other adverse weather conditions and threats of any of the foregoing, and whether preceded by, concurrent with, or followed by acts or omissions of any human agency, whether foreseeable or not;

(ii) acts or omissions of governmental authorities not related to any wrongdoing by the Party claiming such inability (or by such Party's Affiliates);

(iii) acts of civil disorder, including acts of sabotage, acts of the public enemy, acts of war (declared or undeclared), blockades, insurrections, riots, mass protests, terrorism or demonstrations or threats of any of the foregoing, and police action in connection with or in reaction to any such act of civil disorder; and

(iv) acts of industrial disorder, including strikes, lockouts, picketing, and threats of any of the foregoing.

ARTICLE VIII

TERM; DEFAULT AND REMEDIES

8.1 Commencement Date and Term. This Agreement shall be effective and the Parties shall be bound to the terms of this Agreement from and after the Effective Date; provided, however, that the rights and obligations of the Parties under Sections 1.1(b), 1.1(c), 1.1 (f), 1.2, 1.3, 1.5, 2.2, 2.3 and 3.3 shall not be effective until Purchaser notifies Seller in writing of the date on which the Diversion Facilities and Pipelines are commissioned and ready for service ("Commencement Date"). The term of this Agreement shall commence on the Effective Date and continue in full force and effect until December 31, 2026, unless earlier terminated as provided herein ("the Primary Term"). At the conclusion of the Primary Term, this Agreement shall renew automatically year to year thereafter (each a "Renewal Term") unless either Party elects to

terminate this Agreement by Notice to the other Party at least sixty (60) days prior to the expiration of the Primary Term or any Renewal Term. The Primary Term and any Renewal Terms are collectively referred to herein as the “**Term**”.

8.2 Default; Remedies. In the event of default hereunder by any Party, the remedies upon default are as set forth below unless otherwise provided in this Agreement. The remedies of the Parties shall survive termination of this Agreement.

(a) **Payment Default by Purchaser.** In the event Purchaser fails to timely pay to Seller any amount specified in this Agreement (“**Payment Default**”), Purchaser shall not be entitled to divert any of the water that is subject to this Agreement and Seller shall be entitled to take any reasonable actions to prevent Purchaser from so doing. Any payment not received by Seller within five (5) days of its due date shall be subject to a late charge of five percent (5%) of the then-outstanding payment, and shall bear interest from the due date at the rate of twelve percent (12%) per annum. Purchaser shall have the right to cure the Payment Default by payment to Seller within twenty (20) days of the due date of the payment an amount equal to the full amount of the then-outstanding payment, plus the late fee and all interest then due.

(b) **Other Default.** A default other than a Payment Default as described in the foregoing paragraph shall be deemed to have occurred if any Party breaches its obligations hereunder and fails to cure such breach within 30 days of receipt of notice specifying the breach; provided that so long as a defaulting Party has initiated and is diligently attempting to effect a cure, the defaulting Party’s cure period shall extend for an additional 60 days.

(c) **Remedies.** Upon any default described above by any Party (not cured within the applicable cure period), the non-defaulting Party shall be entitled to terminate this Agreement and/or seek any available remedies under law or equity (including, without limitation, specific performance and/or damages) and the substantially prevailing Party shall also be entitled to recovery of its reasonable attorneys’ fees, expert witness fees, and court costs. The Parties acknowledge that due to the unique subject matter of this Agreement, legal remedies may be inadequate, damages may be difficult to determine, and it may be impossible to return the non-defaulting Party to the status quo as it existed at the time of default. As a result, the non-breaching Party shall have the right to specific performance under the terms and conditions of this Agreement.

ARTICLE IX GENERAL PROVISIONS

9.1 Memorandum of Agreement. On the Effective Date, the Parties shall execute, acknowledge, deliver, and record a memorandum of this Agreement in the form attached hereto as Exhibit B, which shall be filed at the office of the Clerk and Recorder of Logan County, Colorado. Seller hereby authorizes Purchaser to record such executed memorandum.

9.2 Representations and Warranties. All statements contained in this Agreement, including recitals, or any other instrument delivered by Purchaser, Seller, or both, as provided in this Agreement shall be deemed representations and warranties by Purchaser, Seller, or both as provided in this Agreement.

9.3 **Survival.** All representations, warranties, indemnities, payment obligations, and other provisions of this Agreement that by their nature extend beyond the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement for any reason.

9.4 **Transaction Expenses.** Except as otherwise provided herein and regardless of whether the transactions contemplated hereby are consummated, each Party shall pay its own expenses incident to this Agreement and all action taken in preparation for carrying this Agreement into effect.

9.5 **Notice.** To the extent the words “notice” or “notify” (collectively referred to as “**Notice**”) are used in this Agreement, the words shall be construed to include (a) oral communication, but only if such communication is confirmed within three days of the oral communication by electronic mail, with delivery receipt, or letter mailed pursuant to the national postage system of the party providing the notice, postage prepaid, or letter delivered by a delivery service, with delivery receipt, or (b) communication by electronic mail, with delivery receipt, or (c) communication by letter mailed pursuant to the national postage system of the party providing the notice, postage prepaid, or (d) letter delivered by a delivery service, with delivery receipt. Notice shall be effective upon delivery to or rejection by the other party. For purposes of this Agreement, the parties agree to provide to each other party (1) electronic mail addresses, including additional electronic mail addresses that shall be included in the notice, and (2) a mailing and delivery address, including additional addresses that shall be included in the notice. The parties may change the electronic mail addresses and mailing and delivery addresses from time-to-time or anytime by notice to the other party. The initial addresses of the parties shall be the following:

If to Purchaser, addressed to:

BNN Western, LLC
370 Van Gordon Street
Lakewood, CO 80228
Attn: Jeff Nelson
Tel: (303) 957-6069
Facsimile: (303) 763-3195
Email: jeff.nelson@bnn-energy.com

If to Seller, addressed to:

Point of Rocks Water Company II, LLC
Attn: Management Committee
112 North 8th Avenue
P.O. Box 103
Sterling, Colorado 80751
Tel: (970) 522-2025
Facsimile: (970) 522-2025
Email: jim@northsterling.org

9.6 **Governing Law; Venue; Waiver of Jury Trial.** This Agreement shall be subject to and governed by the laws of the State of Colorado, regardless of the laws that might otherwise govern under conflict of law principles. Any legal suit, action, or proceeding arising out of or related to

this Agreement or the transactions contemplated hereby shall be instituted in the United States federal courts located in Denver, Colorado, or in the state courts of the State of Colorado located in Logan County, Colorado. Each of the Parties irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement.

9.7 Limitation on Liability.

(A) EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO RECEIVE DAMAGES FROM ANY OTHER PARTY BASED ON ANY THEORY OF LIABILITY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL (INCLUDING LOST PROFITS), EXEMPLARY OR PUNITIVE DAMAGES (EXCEPT TO THE EXTENT THAT ANY SUCH DAMAGES ARE INCLUDED IN INDEMNIFIABLE LOSSES RESULTING FROM A THIRD PARTY CLAIM IN ACCORDANCE WITH ARTICLE VI).

(B) EXCEPT FOR LIABILITY FOR INDEMNIFICATION FOR THIRD-PARTY CLAIMS IN ACCORDANCE WITH ARTICLE VI, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO SELLER PURSUANT TO THIS AGREEMENT IN THE YEAR PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

9.8 Entire Agreement; Amendment and Waiver. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. Each Party agrees that no other party (including its agents and representatives) has made any representation, warranty, covenant, or agreement to or with such Party relating to this Agreement or the transactions contemplated hereby, other than those expressly set forth herein. No supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by each Party to be bound thereby. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provisions hereof (regardless of whether similar), nor shall any waiver constitute a continuing waiver unless otherwise expressly provided.

9.9 Assignment; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Neither Party may assign or transfer this Agreement or any of its rights, benefits or obligations hereunder, without the prior written consent of the other Party, which shall not be unreasonably withheld, except that Purchaser shall have the right to assign all of its rights, benefits, and obligations hereunder to any Affiliate of Purchaser or to the purchaser of the assets to which this Agreement relates without Seller's consent. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity other than the Parties hereto and their respective permitted successors and assigns, any rights, benefits or obligations hereunder.

9.10 Severability. If any provision of the Agreement is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted legislation or by decree of a court

of last resort, Purchaser and Seller shall promptly meet and negotiate substitute provisions for those rendered or declared illegal or unenforceable, but all of the remaining provisions of this Agreement shall remain in full force and effect.

9.11 Interpretation. It is expressly agreed by the Parties that this Agreement shall not be construed against any Party, and no consideration shall be given or presumption made, on the basis of who drafted this Agreement or any provision hereof or who supplied the form of this Agreement. Each Party agrees that this Agreement has been purposefully drawn and correctly reflects its understanding of the transactions contemplated by this Agreement and, therefore, waives the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document. Unless the context requires otherwise, (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation,” regardless of whether “without limitation” is actually used in the provision, (b) the word “or” is not exclusive, regardless of whether “and/or” is used in the applicable provision, and (c) the words “shall,” “will,” and “agree” have the same meaning, force, and effect.

9.12 Headings. Titles and subtitles of sections or articles contained herein are for convenience only and have no legal or other effect on the terms of this Agreement.

9.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.14 Definition of Affiliate. As used in this Agreement with respect to a Party, the term “Affiliate” means only an entity owing a controlling interest in, under common control with, or controlled by the applicable Party.

(signature page follows)

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

BNN Western, LLC

By: _____

Jeff C. Nelson

Vice President

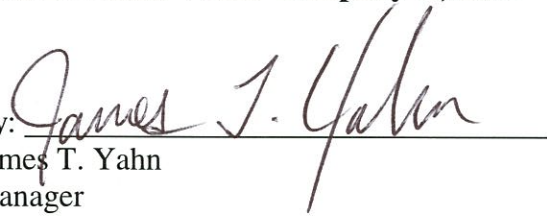


Point of Rocks Water Company II, LLC

By: _____

James T. Yahn

Manager



(Water Sale and Purchase Agreement)

Exhibit A
to
Water Sale and Purchase Agreement
between
BNN Western, LLC
and
Point of Rocks Water Company II, LLC
Diversion Facilities
(see attached)

Exhibit B
to
Water Sale and Purchase Agreement
between
BNN Western, LLC
and
Point of Rocks Water Company II, LLC
Executable Memorandum of Agreement

(see attached)

AFTER RECORDING RETURN TO:
Spierer, Woodward, Corbalis & Goldberg, P.C.
5619 DTC Parkway, Suite 525
Greenwood Village, CO 80111

(Space Above For Recorder's Use)

MEMORANDUM OF PURCHASE AGREEMENT

THIS MEMORANDUM OF WATER SALE AND PURCHASE AGREEMENT (this "**Memorandum**") is made and entered into as of March 31, 2017 by and between Point of Rocks Water Company II, LLC, a Colorado limited liability company ("**Seller**") and BNN Western, LLC, a Delaware limited liability company authorized to transact business within Colorado ("**Purchaser**")

RECITALS

A. Seller's Members own real property, and appurtenant water rights, within the North Sterling Irrigation District ("**District**") in Logan County, Colorado. Seller has entered into various Subscription Agreements with its Members which, among other things, commit and pledge the Members' rights to delivery of water from the District to Seller, subject to certain terms and conditions.

B. Seller and Purchaser have entered into that certain Water Sale and Purchase Agreement dated as of March 31, 2017, as it has been or may hereafter be further amended (as so amended the "**Purchase Agreement**"), pursuant to which Seller has granted to Purchaser a right to purchase volumes of water on an annual basis, as more particularly described in the Purchase Agreement. The "**Water**" means the volumes of water to be purchased on an annual basis pursuant to the Purchase Agreement. For clarity, the Purchase Agreement does not affect ownership of any appropriative rights underlying the Water.

C. Seller and Purchaser desire to record this Memorandum to provide constructive notice of the Purchase Agreement and rights granted thereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Purchase Agreement. Seller hereby grants to Purchaser and Purchaser accepts the rights and options to and agrees to purchase the Water, subject to and in accordance with the terms and conditions of the Purchase Agreement. The Purchase Agreement sets forth more particularly the terms and conditions of the purchase of the Water.

2. Seller's Right of First Refusal. The Purchase Agreement grants to Seller a right of first refusal with regard to the sale or lease of Purchaser's pipelines used for the transportation of the Water, subject to and in accordance with the terms and conditions of the Purchase Agreement.

3. Recordation. This Memorandum is to be recorded in the Real Property records of Logan County, Colorado to provide notice of the Purchase Agreement.

4. Termination. This Memorandum shall remain in effect until the earlier of: (i) December 31, 2026, or (ii) the termination of this Memorandum by a written instrument, executed, delivered and recorded in the Real Property records of Logan County, Colorado.

(signature page follows)

IN WITNESS WHEREOF, this Memorandum of Purchase Agreement has been executed as of the date first set forth above.

BNN Western, LLC,
a Delaware limited liability company

By: [Signature]
Jeff C. Nelson
Vice President

Point of Rocks Water Company II, LLC,
a Colorado limited liability company

By: [Signature]
James T. Yahn
Manager

STATE OF COLORADO)
) ss.
COUNTY OF Jefferson)

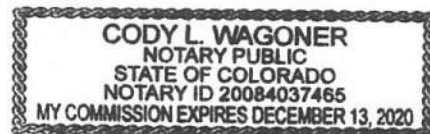
The foregoing instrument was acknowledged before me this 30 day of March, 2017, by Jeff C. Nelson, as Vice President of BNN Western, LLC.

Witness my hand and official seal.

My commission expires: 12-13-20

[Signature]
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF Logan)

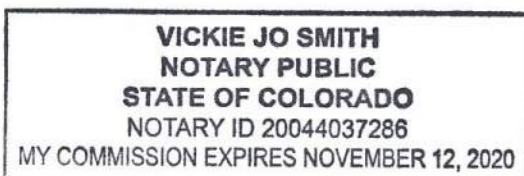


The foregoing instrument was acknowledged before me this 31st day of March, 2017, by James T. Yahn as Manager of Point of Rocks Water Company II, LLC.

Witness my hand and official seal.

My commission expires: 11-12-2020

[Signature]
Notary Public



(Memorandum of Water Sale and Purchase Agreement)

Appendix D

Water Rights Summary & System Specifications

North Sterling Irrigation District

Water Rights Summary

Decree	Appropriation Date	Adjudication Date	Amount	Supply Sources	Decree Uses
2142	June 15, 1908	Jan 1, 1922	300 cfs 69,446 af	So. Platte River Springdale Cr. Pawnee Cr. Cedar Cr.	Storage for Irrigation
2142	June 15, 1908	Jan 1, 1922	2,000 af	Cedar Cr.	Storage for Irrigation
2142	June 15, 1908	Jan 1, 1922	540 cfs 5,000 af	Pawnee Cr.	Storage for Irrigation
2142	Aug 1, 1915	Jan 1, 1922	411 cfs 11,954	So. Platte River	Storage for Irrigation
8492	May 27, 1914	Jan 13, 1936	460 cfs	So. Platte River	Direct Flow for Irrigation
88CW234	Dec 1988	Jun 29, 1989	69,446 af 11,954 af	So. Platte River	Recreation, Wildlife, Piscatorial
96CW1034	May 8, 1996	Jul 21, 2006	294 cfs (abs) 306 cfs (cond) 7,800 af	So. Platte River	Recharge, Exchange, Augmentation
96CW1034	Dec 31, 2002	Jul 21, 2006	510 cfs (abs) 90 cfs (cond) 24,000 af	So. Platte River	Recharge, Exchange, Augmentation
96CW1034	Dec 31, 2002	Jul 21, 2006	15,0000 af	So. Platte River	Industrial, Commercial, Fire Protection, Recharge, Exchange, Augmentation, Municipal, Domestic

The North Sterling Irrigation District

Introduction

The North Sterling Irrigation District is a Public Municipal Instrumentality of the State of Colorado and was organized by order of the Board of County Commissioners under the Irrigation District Law of 1905 on February 25, 1907.

Facts:

District Boundaries: The North Sterling Irrigation District encompasses 40,916.94 acres stretching from the North Sterling Reservoir, approximately 12 miles northwest of Sterling, Colorado to the end of the North Sterling Outlet Canal about 8 miles northeast of Crook, Colorado.

Water Source: The North Sterling Irrigation District receives its water from the South Platte River with its diversion near Snyder, Colorado. The water is carried 61 miles through the North Sterling Inlet Canal where it flows into the North Sterling Reservoir. The water in the reservoir is then released for delivery to North Sterling landowners via the 65 mile North Sterling Outlet Canal.

Water Rights:

- 1908 storage right for 69,446 acre-feet measured at the reservoir diverted at a rate of 300 cfs
- 1915 storage right for 11, 954 acre-feet measured at the reservoir diverted at a rate of 411 cfs
- 1914 direct flow right for 460 cfs measured from reservoir
- 1996 recharge right for 294 cfs absolute and 306 cfs conditional
- 2002 recharge right for 510 cfs absolute and 90 cfs conditional

Reservoir Capacity: 74,590 acre-feet

Total Diversion from South Platte River: 130,023 acre-feet

Delivery: Over the past 20 years the average delivery has been 1.66 acre-feet per district acre

Ownership: 122 landowners

Cost: The District levy is \$22 per district acre and is collected by Logan County Treasurer along with property tax.

Board of Directors: David A. Hernandez, President
Dave Breidenbach, Vice President
Jim Aranci, Director

Manager: Jim Yahn

Office: 112 North 8th Avenue
P.O. Box 103
Sterling, CO 80751
970-522-2025

North Sterling Reservoir

Capacity
74,590 ac-ft

Service Area
40,916.94 acres

Canal Length
126 miles

Owners
122 Land Owners



Constructed: 1909 - 1911

Appendix E

Pictures of Example Automation Installation









Appendix F

Financial Statements for 2017, 2018, and 2019

Appendix G

CWCB Loan Application



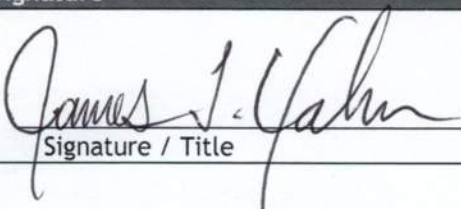
COLORADO

Colorado Water Conservation Board

Department of Natural Resources

Water Project Loan Program

Projects financed by the Water Project Loan Program must align with the goals identified in Colorado's Water Plan and its measurable objectives.

Application Type	
<input type="checkbox"/> Prequalification (Attach 3 years of financial statements) <input checked="" type="checkbox"/> Loan Approval (Attach Loan Feasibility Study)	
Agency/Company Information	
Company / Borrower Name: North Sterling Irrigation District	
Authorized Agent & Title: James T. Yahn, P.E., Manager	
Address: 112 North 8th Avenue - P.O. Box 103, Sterling, CO 80751	
Phone: (970) 522-2025	Email: jim@northsterling.org
Organization Type: <input type="checkbox"/> Ditch Co. <input checked="" type="checkbox"/> District, <input type="checkbox"/> Municipality	
<input type="checkbox"/> other: _____	
Incorporated? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
County: Logan	Number of Shares/Taps: 40,916.94 acres
Water District: North Sterling	Avg. Water Diverted/Yr <u>130,023</u> acre-feet
Number of Shareholders/Customers Served: 122	Current Assessment per Share \$ <u>22</u> (Ditch Co)
Federal ID Number: 84-0815082	Average monthly water bill \$ _____ (Municipality)
Contact Information	
Project Representative: Jim Yahn	
Phone: () 970-520-0170	Email: jim@northsterling.org
Engineer: Bruce Bacon	
Phone: () 720-480-6639	Email: BBacon@Hydrologik.com
Attorney: Levi Williamson	
Phone: () 970-522-2341	Email: levi@wlflawfirm.com
Project Information	
Project Name: North Sterling Outlet Canal Automation Project Phase II	
Brief Description of Project: (Attach separate sheets if needed)	
The installation of automation on 42 existing headgates.	
Project Start Date(s) Design: <u>Complete</u> Construction: <u>March 2021</u>	
General Location: (Attach Map of Area)	
See Feasibility Study	
Project Costs - Round to the nearest thousand	
Estimated Engineering Costs: Included in Construction	Estimated Construction Costs: 392,035
Other Costs (Describe Above):	Estimated Total Project Costs: 392,035
Requested Loan Amount: <u>392,035</u>	Requested Loan Term (10, 20, or 30 years): <u>20</u> Years
Signature	
 Signature / Title	Return to: Finance Section Attn: Matt Stearns 1313 Sherman St #718 Denver, CO 80203 Ph. 303/866.3441 e-mail: matthew.stearns@state.co.us
11/27/2020 Date	