



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

John W. Hickenlooper
Governor

Mike King
Executive Director

Dick Wolfe, P.E.
Director/State Engineer

February 3, 2014

Mr. Jared Dains, E.I.
Applegate Group, Inc.
1499 West 120th Ave., Suite 200
Denver, CO 80234-2759

Re: **Loloff Substitute Water Supply Plan (WDID 0302524)**
Loloff Pit, DRMS Permit No. M-1985-112 (WDID 0303012)
Section 4, T5N, R65W, 6th P.M.
Water Division 1, Water District 3, Weld County

RECEIVED

FEB 05 2014

Approval Period: January 1, 2014 through December 31, 2014
Contact Phone Number for Mr. Dains: 303-452-6611

Division of Reclamation,
Mining & Safety

Dear Mr. Dains:

We have reviewed your letter dated November 27, 2013 requesting approval of a substitute water supply plan ("SWSP") on behalf of Loloff Construction, Inc. ("Loloff" or "Applicant") to cover depletions caused by an existing gravel pit operation. This site was previously covered under the combined SWSP for Aggregate Industries ("AI"); however a separate SWSP was obtained by Loloff for the site in 2008. The required renewal fee of \$257 (receipt no. 3662674) has been received.

SWSP Operations

The Loloff Pit is a gravel pit operation located in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 4, Township 5 North, Range 65 West of the 6th P.M., in Weld County. This SWSP will make replacements to the Cache La Poudre River for depletions resulting from mining operations during the 2014 plan year, and for lagged depletions from past operations at the Loloff Pit. Consumptive uses at the Loloff Pit site include evaporative losses from exposed ground water within the permit boundaries, and operational uses. Well permit no. 77467-F has been issued for the site. The replacement sources proposed to be utilized in this SWSP are the Loloff Section 4 Ditch and leases with the Platte River Power Authority and the Graham Drainage Ditch Company.

In accordance with the letter dated April 30, 2010 (copy attached) from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), all sand and gravel mining operators must comply with the requirements of the Colorado Reclamation Act and the Mineral Rules and Regulations for the protection of water resources. The April 30, 2010 letter from DRMS requires that you provide information to DRMS to demonstrate you can replace long term injurious stream depletions that result from mining related exposure of ground water. Currently, Loloff Pit is not in compliance with this requirement. However, the Applicant is currently in the process of obtaining a technical revision to its mining permit from the DRMS (Technical Revision 01). As part of the revision, the DRMS is requiring Loloff to comply with the requirements of its April 30, 2010 letter. At this time, Loloff's efforts to achieve compliance are ongoing; Loloff is currently negotiating a contract to acquire Greeley Irrigation Company ("GIC") shares which will be

Office of the State Engineer

1313 Sherman Street, Suite 818 • Denver, CO 80203 • Phone: 303-866-3581 • Fax: 303-866-3589

<http://water.state.co.us>

dedicated to the SWSP. To allow replacements to be made while the operator comes into compliance with DRMS requirements this SWSP will be renewed for 2014. The operator shall not expand the exposed surface area of groundwater under this SWSP until the site has been brought into compliance with DRMS requirements. Additionally, at the time this SWSP expires, if there is no progress made on the operators behalf to bring this site into compliance, the SWSP may not be renewed which would result in Cease and Desist Orders against the mine site.

Depletions

Consumptive use at the Loloff Pit site consists of evaporative and operational losses. The pit is being actively dewatered to allow dry mining. Evaporative losses are calculated based on exposed ground water surface area of 2.0 acres due to the dewatering activities. Net evaporative depletions were calculated using a gross annual evaporation of 45 inches from the exposed water surface, with a credit of 9.97 inches for effective precipitation. No credit was claimed for ice cover periods. The net depletion of ground water due to evaporation of exposed ground water surface was calculated to be 5.84 acre-feet for this plan year.

Operational losses associated with mining activities will include water removed with the mined product and water used for dust control. Approximately 200,000 tons of material is projected to be mined in 2014. A 2% water loss is assessed as the material will be mined in a dewatered state and will not be washed. The water removed with the mined product is therefore estimated to be 2.94 acre-feet. This water lost to dust control is estimated to be 3.60 acre-feet. The estimated monthly depletions due to evaporation and operational losses for 2014 are shown on the attached Table 1.

Depletions at the Loloff Pit do not instantaneously accrue to the Cache La Poudre River, but instead result in a lagged depletion. A stream depletion model based on the Stream Depletion Factor (SDF) technique was used to calculate the lagged depletions to the Cache La Poudre River. An SDF of 60 days was used for the Loloff Pit site. The total lagged depletions for this plan period due to both projected and past consumptive use at the site are estimated to be 17.42 acre-feet, as shown on Table 1.

Replacement Sources

The replacement sources proposed for this operation include the Loloff Section 4 Ditch and leased water from Platte River Power Authority ("PRPA") during the non-irrigation season and a lease of augmentation water from the Graham Drainage Ditch Company will supply replacement water during the 2014 irrigation season.

Loloff Section 4 Ditch

The applicant proposes to use the Loloff Section 4 Ditch (WDID 0300754) conditional water right for replacement purposes, if available. The Loloff Section 4 Ditch collects seepage and waste water in the vicinity of the Loloff Pit in the SW1/4 of the NW1/4 of Section 4, Township 5 North, Range 65 West. The Division 1 Water Court adjudicated a conditional water right for the Loloff Section 4 Ditch in case no. 87CW153 for up to 4 cfs of water with an appropriation date of March 15, 1987 (administration no. 50112.00000). The decreed uses for the Loloff Section 4 Ditch include irrigation and augmentation. According to the SWSP request, there is a flume and recorder to measure this water right, which has been approved by the water commissioner. The applicant proposes to use this water right first, if available, since it is a junior water right.

Platte River Power Authority Lease

A lease of 9.9 acre-feet of PRPA's water stored in Fossil Creek Reservoir (WDID 0303774) will be used to make replacements from January through March and November, December 2014 according to the schedule in the attached Table 1. PRPA has an "Agreement for the Reuse of Water for Energy Generation", dated August 10, 1978, with the City of Fort Collins ("Fort Collins") and Water Supply and Storage Company ("WSSC") that provides PRPA with the right to receive reusable water delivered by Fort Collins. PRPA, Fort Collins, and WSSC also obtained approval of a plan for augmentation including reuse of water in Division 1 Water Court Case no. W-9332-78. In case no. W-9332-78, the Court found that 4,200 acre-feet or more per year will be available from Fort Collins to the PRPA to be used primarily for cooling purposes in connection with its Rawhide Energy Facility. Pursuant to the decree, if PRPA does not require the water for its own purposes, PRPA, Fort Collins, or other water users may utilize the water for any other beneficial purpose including augmentation. In addition, PRPA has entered into an Agreement with the North Poudre Irrigation Company ("North Poudre") dated November 15, 1979, which grants PRPA the right to store surplus water (beyond the needs of the Rawhide Energy Facility) in Fossil Creek Reservoir and lease such water to other users who can use it. The releases are made to the Cache La Poudre River approximately 30.3 miles upstream of the estimated point of depletion from the Loloff Pit. A transit loss of 7.58% (or 0.25% per mile) is assessed to all releases, resulting in 9.15 acre-feet of water available for replacement purposes.

Graham Ditch Company

The Applicant has also obtained a lease from the Graham Ditch Company for 13.4 acre-feet of replacement water from the Graham Seepage & Drainage Canal (WDID 0301321) water right. This water right was decreed in case no. W-7818 as developed water, not tributary to the South Platte River to be used for irrigation or domestic purposes. The court found that 2,800 acre-feet of water was developed by the construction, development, and operation of the Graham Seepage & Drainage Canal; however, historically only 1,330 acre-feet were consumptively used, with 1,470 acre-feet discharged as waste water to the Cache la Poudre River and its tributaries. The current lease for the Graham Seepage & Drainage Canal water, executed on October 22, 2013 is for the months of April 2014 through October 2014 and a copy is attached to this letter. The fully consumable portion of the water delivered is determined by multiplying measured deliveries by 47.5%. The lease amounts are for fully consumable water, therefore actual deliveries will include additional water to account for the 47.5% factor. Deliveries to the Cache La Poudre are measured at a flume (Graham Seep Ditch Return, WDID 0302906) located approximately 380 feet from the mouth of the ditch. The Graham Seep Ditch deliveries are made approximately 4.3 river miles upstream of the estimated point of depletion of the Loloff Pit, therefore a 1.08% (or 0.25% per mile) transit loss is assessed resulting in 13.26 acre-feet of water available for replacement purposes.

On October 29, 2013, the SEO received a comment letter on behalf of the Greeley Irrigation Company ("GIC") stating that the nontributary determination and actual historical consumptive use of the Graham Ditch water is subject to scrutiny per the applicant's efforts to change the use of the water to include augmentation purposes. For this year's SWSP request, the SEO is administratively approving the change of water right for augmentation purposes. However, due to questions regarding the nontributary nature of the water and the need for a change of water right from irrigation and domestic to augmentation, the SEO will not approve such a change in future SWSPs unless the

use of the Graham Ditch water for augmentation purposes is approved by the water court.

Conditions of Approval

I approve the proposed substitute water supply plan in accordance with Section 37-90-137(11), C.R.S., subject to the following conditions:

1. This SWSP shall be valid for the period of January 1, 2014 through December 31, 2014, unless otherwise revoked, modified, or superseded by decree. If this plan will not be made absolute by a water court action by the plan's expiration date, a renewal request must be submitted to this office with the statutory fee (currently \$257) no later than November 15, 2014.
2. A well permit was obtained for the current use and exposed pond surface area of the gravel pit in accordance with §37-90-137(2) and (11), C.R.S., permit no. 77467-F.
3. The total surface area of the groundwater exposed at the site must not exceed 2.0 acres, resulting in 5.84 acre-feet of evaporative loss.
4. The annual amount of water used at the Loloff Pit for dust control shall not exceed 3.60 acre-feet and total product mined at the site shall not exceed 200,000 tons resulting in 2.94 acre-feet of water lost with the mined aggregate.
5. Total consumption at the Loloff Pit must not exceed these aforementioned amounts unless an amendment is made to this plan.
6. Approval of this plan is for the purposes as stated herein. Any additional uses for which the water may be used will be allowed only if a new SWSP is approved for those additional uses.
7. All releases of replacement water must be sufficient to cover all out-of-priority depletions in time, place, and amount and must be made under the direction and/or the approval of the water commissioner. The release of replacement water may be aggregated to maximize beneficial use. The water commissioner and/or the division engineer shall determine the rate and timing of an aggregated release. The Applicant is required to coordinate with the water commissioner the delivery location of replacement water to ensure out-of-priority depletions are adequately replaced to prevent injury to other water rights. Conveyance loss for delivery of augmentation water is subject to assessment and modification as determined by the water commissioner or division engineer.
8. The replacement water that is the subject of this plan cannot be sold or leased to any other entity. As a condition of subsequent renewals of this substitute water supply plan, the replacement water must be appurtenant to this site until a plan for augmentation is obtained. A copy of this approval letter should be recorded with the county clerk and recorder. All replacement water must be concurrent with depletions in quantity, timing, and location.
9. The name, address, and phone number of the contact person who will be responsible for the operation and accounting of this plan must be provided on the accounting forms submitted to the division engineer and the water commissioner.
10. Adequate accounting of depletions and replacements must be provided to the division engineer in Greeley (Div1Accounting@state.co.us) and the water commissioner (Mark.Simpson@state.co.us) on a monthly basis. Submitted accounting shall conform to

the Administration Protocol *"Augmentation Plan Accounting, Division One – South Platte River"* (attached).

In addition, the Applicant shall verify that entities providing replacement water for this plan have included such use on their respective accounting submitted to the Division Engineer. For the duration of this SWSP, those entities are the Platte River Power Authority and the Graham Drainage Ditch Irrigation Company.

11. All pumping for dust control purposes shall be measured in a manner acceptable to the division engineer. Permanent records of all diversions must be maintained by the well owner (recorded at least monthly) and submitted to the division engineer on submitted accounting forms.
12. If reclamation of the mine site produces a permanent water surface exposing groundwater to evaporation, an application for a plan for augmentation must be filed with the Division 1 Water Court at least three (3) years prior to the completion of mining to include, but not be limited to, long-term evaporation losses. If a lined pond results after reclamation, replacement of lagged depletions shall continue until there is no longer an effect on stream flow. Granting of this plan does not imply approval by this office of any such court application(s).
13. Dewatering at this site will produce delayed depletions to the stream system. As long as the pit is continuously dewatered, the water returned to the stream system should be adequate to offset the depletions, thus dewatering is required to continue during the term of this plan. Once dewatering at this site ceases, the river will experience a net depletion as the pit gradually fills. At least three years prior to completion of dewatering, a plan must be submitted that specifies how the post pumping dewatering depletions (including refilling the pit) will be replaced, in time, place and amount. Should dewatering cease, this SWSP will automatically become void until an amendment covering such action is sought and approved.
14. The monthly volume of water pumped for dewatering operations must be recorded through a totalizing flow meter and shown on the submitted accounting sheets.
15. In accordance with the letter dated April 30, 2010 (copy attached) from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), all sand and gravel mining operators must comply with the requirements of the Colorado Reclamation Act and the Mineral Rules and Regulations for the protection of water resources. The April 30, 2010 letter from DRMS requires that you provide information to DRMS to demonstrate you can replace long term injurious stream depletions that result from mining related exposure of ground water. The Loloff Pit is not in compliance with this requirement.

To allow replacements to be made while the operator comes into compliance with DRMS requirements this SWSP will be renewed for 2014. The operator shall not expand the exposed surface area of groundwater under this SWSP until the site has been brought into compliance with DRMS requirements. Additionally, at the time this SWSP expires, if there is no progress made on the operators behalf to bring this site into compliance, the SWSP may not be renewed which would result in Cease and Desist Orders against the mine site.

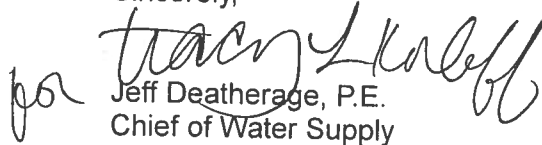
16. This SWSP may be revoked or modified at any time should it be determined that injury to other vested water rights has or will occur as a result of this SWSP. Should this

SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of ground water must cease immediately.

17. In accordance with amendments to §25-8-202(7), C.R.S., and "Senate Bill 89-181 Rules and Regulations" adopted on February 4, 1992, the State Engineer shall determine whether the substitute supply is of a quality to meet requirements of use to senior appropriators. As such, water quality data or analysis may be requested at any time to determine if the water quality is appropriate for downstream water users.
18. The decision of the state engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning this plan. This decision shall not bind the state engineer to act in a similar manner in any other applications involving other plans, or in any proposed renewal of this plan, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant.

If you have any questions concerning this approval, please contact Ioana Comaniciu in Denver at (303) 866-3581 or Michael Hein in Greeley at (970) 352-8712.

Sincerely,


Jeff Deatherage, P.E.
Chief of Water Supply

Attachments: Table 1
Water Lease Agreement (Graham Ditch)
Water Lease (Platte River Power Authority)
Augmentation Plan Accounting Protocol

cc: Michael Hein, Assistant Division Engineer, Mike.Hein@state.co.us
810 9th Street, Suite 200, Greeley, CO 80631; (970) 352-8712

Mark Simpson, Water Commissioner District 3, mark.simpson@state.co.us
951 Wheatridge Cir., Loveland, CO 80537; (970) 420-9568

Division of Reclamation Mining and Safety

JD/TLK/idc: Loloff Pit 2014 SWSP.docx

Table 1

2014 Water Balance

Loloff Pit Substitute Water Supply Plan

Date Revised: 11/27/2013

AG Job #: 07-154

All values in ac-ft unless noted

Month	Depletions										Replacements				
	Monthly Net Evap (ft) (A)	Exposed Water Surface Area (acres) (B)	Evaporative Losses (C)	On-site Aggregate Production (tons) (D)	Water Retained in Product (E)	Intermittent Fill of Pit (F)	Water used for Dust Control (G)	Total GU (H)	Lagged Depletions (I)	PRPA Lease Amount (J)	PRPA Lease Credit (K)	Graham Ditch Company Lease Amount (L)	Graham Ditch Company Lease Credit (M)	Greeley Lease (N)	Water Balance (O)
Jan-14	0.08	2.0	0.16	12,000	0.18	0.00	0.30	0.64	1.53	2.2	2.03				0.50
Feb-14	0.11	2.0	0.22	12,000	0.18	0.00	0.30	0.70	1.44	2.1	1.94				0.50
Mar-14	0.14	2.0	0.28	12,000	0.18	0.00	0.30	0.76	1.38	2.1	1.94				0.56
Apr-14	0.23	2.0	0.46	16,000	0.24	0.00	0.30	1.00	1.37			1.7	1.68		0.31
May-14	0.30	2.0	0.60	18,000	0.26	0.00	0.30	1.16	1.41			1.8	1.78		0.37
Jun-14	0.44	2.0	0.88	24,000	0.35	0.00	0.30	1.53	1.50			1.9	1.88		0.38
Jul-14	0.48	2.0	0.96	24,000	0.35	0.00	0.30	1.61	1.60			2.0	1.98		0.38
Aug-14	0.44	2.0	0.88	24,000	0.35	0.00	0.30	1.53	1.64			2.1	2.08		0.43
Sep-14	0.31	2.0	0.62	18,000	0.26	0.00	0.30	1.18	1.59			2.0	1.98		0.39
Oct-14	0.20	2.0	0.40	16,000	0.24	0.00	0.30	0.94	1.46	1.8	1.66	1.9	1.88		0.42
Nov-14	0.10	2.0	0.20	12,000	0.18	0.00	0.30	0.68	1.31	1.7	1.57				0.35
Dec-14	0.09	2.0	0.18	12,000	0.18	0.00	0.30	0.66	1.19						0.39
Total	2.92		5.84	200,000	2.94	0.00	3.60	12.38	17.42	9.9	9.15	13.4	13.26	0.00	4.99

Notes:

- (A) Monthly Evaporation rates from previous approvals.
 (B) Estimated exposed acreage
 (C) Monthly Evap rate (Col A) multiplied by current monthly exposed surface area (Col B).
 (D) Estimated production rate.
 (E) Assuming 2% of water retained in product.
 (F) No intermittent fill of pit because the pit is mined in a dewatered state
 (G) Estimated water needed for dust control on-site.
 (H) Total Consumptive Use (CU) is Col C + Col E + Col F + Col G.
 (I) CU amount is lagged back to river using a 60 day SDF factor. Lagged estimate includes past consumptive use at the Loloff Pit
 (J) Lease from the Platte River Power Authority
 (K) Credit from the Platte River Power Authority lease after transit loss is assessed
 (L) Lease from Graham Ditch Company
 (M) Credit from Graham Ditch Company lease after transit loss is assessed
 (N) Lease from City of Greeley to provide effluent from Wastewater treatment plant which is right in the vicinity of Loloff therefore no transit loss is assessed.
 (O) Water Balance = (I) + (K) + (M) - (H)

Unit Transit Loss =	0.25%	per mile
PRPA Transit Distance =	30.3	miles
PRPA Total Transit Loss =	7.58%	
Graham Ditch Transit Distance =	4.3	miles
Graham Ditch Total Transit Loss =	1.08%	

**WATER LEASE AGREEMENT
(GRAHAM DITCH)**

This Water Lease Agreement ("Agreement") is entered into this 22 day of Oct., 2013 by and between Loloff Construction, Inc., "Lessee" and GRAHAM DRAINAGE DITCH COMPANY ("Ditch Company"), "Lessor".

RECITALS

A. The Ditch Company owns and operates, for the benefit of its shareholders, the Graham Seepage and Drainage Canal and the water right decreed to that Structure in Case No. W-7818-74, District Court, Water Division No. 1 ("Graham Ditch"). The Graham Ditch is decreed as a developed water right for up to 2800 acre feet per year. The Graham Ditch originates in Section 27 of Township 7 North, Range 66 West of the 6th P.M., Weld County, Colorado and is capable of delivering water to the Cache La Poudre River at two points in Section 36 of Township 6 North, Range 66 West of the 6th P.M., Weld County, Colorado.

B. Lessee intends to operate and administer a Substitute Water Supply Plan ("SWSP"). Lessee desires to lease water temporarily from Lessor until its permanent sources of augmentation water are in place.

C. Lessor is willing to lease to Lessee water delivered from the Graham Ditch to the Cache La Poudre River, and Lessee desires to lease such water, in accordance with the terms and conditions of this agreement.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, and mutual covenants and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Lease.** Lessor hereby leases and agrees to provide to Lessee up to 13.4 acre feet of fully consumable water from the Graham Ditch (the "Graham Ditch Water") according to the monthly schedule below, subject to the limitations, terms and conditions stated herein.

All values in ac-ft

2014							Total
Apr	May	Jun	Jul	Aug	Sep	Oct	
1.7	1.8	1.9	2.0	2.1	2.0	1.9	13.4

2. **Rent.** Lessee shall pay Lessor \$50 for each acre foot of fully consumable Graham Ditch Water that is made available to Lessee in accordance with the measurement and delivery terms set forth in Paragraph 3 of this Agreement and approved by the State Engineer for consumptive use in the SWSP. Within five (5) days following the end of each calendar month, Lessor shall provide Lessee with a written statement indicating the total number of acre feet of Graham Ditch Water made available to Lessee for replacement and augmentation use during that month. Lessee's payment shall be due no later than twenty (20) days following submission of the bill. Lessee shall make all rental payments to the Lessor in care of the Ditch Company, and the Ditch Company shall be responsible for distributing such payments amongst its shareholders according to their pro rata share.

3. **Measurement and Delivery.** The point of delivery for the Graham Ditch water leased pursuant to this agreement shall be to the Cache La Poudre River at the point where the East Lateral of the Graham Ditch is capable of delivering to the Cache La Poudre River in Section 36 of Township 6 North, Range 66 West of the 6th P.M., Weld County Colorado. Lessor shall make daily metered measurements of deliveries of the Graham Ditch Water and shall provide reports of such deliveries to Lessee on a weekly

or, if required by Lessee, daily basis. Lessee shall have the right, upon prior reasonable notice, to verify the accuracy of the measuring devices utilized by Lessors. The fully consumable portion of said deliveries shall be determined by multiplying the measured deliveries by 47.5%, or by some other factor as required by the State Engineer.

4. Term. The term of this agreement shall be from the date of execution of this Agreement until October 31, 2014. Upon expiration of this Agreement, Lessee shall have the right to negotiate terms for extending the lease for another year.

5. Use. Lessee shall be entitled to use the Graham Ditch Water Leased pursuant to this agreement for any and all beneficial uses, including, but not limited to, fully consumable augmentation and replacement.

6. Approval. Lessee shall have the right, at its sole cost and expense, to seek and obtain State Engineer approval of a SWSP, using the Graham Ditch Water as a source of augmentation or replacement water, during the term of this Agreement. Lessor shall not oppose Lessee's SWSP and shall fully cooperate with Lessee in connection with the request(s) by providing such information and assistance as is reasonable requested by Lessee, its water rights counsel, its engineering consultants or the Division Engineer.

7. Warranties and Representations.

7.1 Independent Investigation and Review. Lessee acknowledges that it has investigated, obtained and reviewed to its satisfaction whatever information or documents it deemed necessary which relate to or affect the yield and operation of the Graham Ditch and its use of Graham Ditch Water, and it enters into this Agreement based solely in reliance upon its own investigation as to the yield and suitability of the Graham Ditch Water for its purposes. Lessor makes no representations, warranties, agreements or promises with respect to the yield to lessee or suitability of the Graham Ditch Water for Lessee's purposes.

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

8. Assignability. This Agreement shall be binding upon and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all other prior and contemporaneous agreements, representations, and understandings of the parties regarding the subject matter of this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties. No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement or in an instrument delivered pursuant to this Agreement.

10. Default Remedies. A default shall be deemed to have occurred if either party breaches its obligations hereunder and fails to cure such breach within 30 days of written notice from the non-breaching party specifying the breach. Waiver or failure to give notice of a particular default or defaults shall not be construed as condoning or acquiescing to any continuing or subsequent default. In addition to other legal remedies available to it, including specific performance and damages, the non-breaching party shall also have the right to cancel the Agreement for noncompliance with any provision hereunder by giving written notice of cancellation; provided that such party has previously given the other party written notice of such noncompliance and the other party has not cured such noncompliance.

11. Enforcement. This Agreement shall be construed and governed in accordance with the laws of the State of Colorado, and shall be deemed performable in Weld County, Colorado. This Agreement may

be enforced in an action for specific performance, injunctive relief or damages in the District Court, Weld County, Colorado.

12. Headings. All paragraph headings used are for the convenience of the parties and shall have no meaning in the interpretation or effect of this Agreement

13. Notices. All notices and other communications under this Agreement shall be in writing. All such notices and communications and all payments shall be deemed to have been duly given on the date of service, if delivered and served personally, or served via facsimile (with respect to notices and communications only) on the person to whom notice is given, or on the third day after mailing, if mailed to the party to whom payment and notice is to be given by first class mail, postage prepaid, and properly addressed as follows:

Lessee

Loloff Construction, Inc.
P.O. Box 518
Kersey, CO 80644
(970) 396-1994

Lessor

Graham Drainage Ditch Company
2313 17 Street
Greeley, CO 80634
970-352-4980
970-352-0038, fax

Executed to be effective as of the date set forth above.

LOLOFF CONSTRUCTION, INC.

By:

STATE OF COLORADO)
) SS.
County of Weld)

The foregoing Agreement was acknowledged before me this 22nd day of Oct, 20 13
by Elvi Dutton

WITNESS my hand and official seal.

GRAHAM DRAINAGE DITCH COMPANY

By:

STATE OF COLORADO)
) SS.
County of Weld)

The foregoing Agreement was acknowledged before me this 22 day of October, 20 13
by Julia S. [Signature]

WITNESS my hand and official seal.

JULIE STONE
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires April 4, 2016

WATER LEASE

THIS WATER LEASE is by and between Loloff Construction, Inc. ("Loloff") and the Platte River Power Authority ("Platte River") sometimes collectively referred to as "the Parties".

WITNESSETH

WHEREAS, Platte River is a party to an "Agreement for the Reuse of Water for Energy Generation", ("Reuse Agreement") among the City of Fort Collins ("the City"), Water Supply and Storage Company, and Platte River dated August 10, 1978; and

WHEREAS, the Reuse Agreement, among other things, conveys to Platte River the right to receive reusable water delivered by the City; and

WHEREAS, Platte River is a party to an Agreement ("North Poudre Agreement") with the North Poudre Irrigation Company ("North Poudre") dated November 15, 1979 and amended on September 10, 2009, which grants Platte River the right to convey waters through North Poudre's Fossil Creek Inlet and to temporarily store waters to which Platte River is entitled in North Poudre's Fossil Creek Reservoir; and

WHEREAS, reusable water available to Platte River is used primarily for cooling water for the Rawhide Energy Station, but Platte River may have, from time to time, surplus reusable water temporarily available in Fossil Creek Reservoir; and

WHEREAS, the Platte River Board of Directors, in Resolution No. 13-12, has authorized the "lease or rent, for a term up to one year, any unused water which Platte River may receive through the Reuse Agreement to entities within Colorado Water Court Division 1:

- (a) First, with equal priority, to the municipalities of Estes Park, Fort Collins, Longmont and Loveland for their use or use in their water lease programs;
- (b) Second, to other entities within Colorado Water Court Division 1."; and

WHEREAS, Loloff wishes to lease such water for delivery January 2014 to December 2014; and

WHEREAS, the water department staffs of Estes Park, Fort Collins, Longmont, and Loveland have consented pursuant to Resolution No. 13-12.

NOW THEREFORE, in consideration of the mutual promises and covenants of the Parties hereto, it is agreed as follows:

1. Platte River will lease to Loloff a portion of its current balance in Fossil Creek Reservoir, a quantity of approximately 2.2 acre-feet in January 2014, 2.1 acre-feet in February 2014, 2.1 acre-feet in March 2014, 1.8 acre-feet in November 2014, and 1.7 acre-feet in December 2014 for a total of 9.9 acre-feet of reusable water ("Subject Water"), to be delivered from Fossil Creek Reservoir. This release will be coordinated by the Poudre River Water Commissioner with review and concurrence by North Poudre. The Poudre River Water Commissioner will determine the actual amount of Subject Water presently held by Platte River in the Fossil Creek Reservoir that is delivered to Loloff and payment will be made on the actual amount delivered or deliverable.
2. The water is subject to availability. Platte River will make reasonable efforts to provide Subject Water; however, Platte River shall only be required to make available to Loloff quantities of water which Platte River determines to be surplus to its own needs.
3. The Subject Water leased to Loloff is for the exclusive use by Loloff and shall not be leased or conveyed to others except by written permission from Platte River.
4. The cost of the Subject Water shall be \$300 (THREE HUNDRED DOLLARS) per acre-foot. Payment will be made by Loloff thirty (30) days from the date of billing, but in any event prior to the release of Subject Water. Payment shall be nonrefundable and not contingent upon whether the Subject Water is actually released or used by Loloff, so long as Platte River either delivered or was ready to deliver the Subject Water. Platte River shall provide written notification to Loloff of any variation to the amount of water available relative to the lease quantities listed in Paragraph 1 prior to each lease month. Platte River shall refund Loloff \$300 per acre-foot for any Subject Water that was not made available to Loloff during the term of the lease.
5. The Delivery Point of the Subject Water leased to Loloff shall be the outlet of Fossil Creek Reservoir. Loloff shall bear any losses associated with conveyance of the Subject Water from the Delivery Point to any location where Loloff may use the water. All releases from Fossil Creek Reservoir are subject to weather conditions.
6. Platte River makes no warranties concerning the quality of the Subject Water, nor the purposes for which the Subject Water is suitable.
7. This instrument represents the complete agreement of the Parties and no oral modification shall be recognized. Any amendments or additions shall be in writing.
8. The terms and provisions of this lease are binding upon the Parties, their successors and assigns.
9. The Water Lease shall be effective upon the date shown below.

DATED this 21st day of November, 2013.

PLATTE RIVER POWER AUTHORITY

LOLOFF CONSTRUCTION, INC

By: [Signature]
General Manager



[Signature]

ADMINISTRATION PROTOCOL

Augmentation Plan Accounting

Division One – South Platte River

This protocol establishes the accounting and reporting process required to enable the division engineer's office to confirm that depletions from all out-of-priority diversions are being replaced so as to prevent injury to vested water rights. The accounting must comport with established "cradle to grave" accounting standards, which allow an audit of the information to track exactly how the data is manipulated as it is translated from raw input data to the resultant impact on the river. While this protocol is subordinate to any decreed language addressing specific accounting requirements, it generally addresses the minimum requirements of such accounting.

The accounting must use the standard convention where a depletion is "negative" and an accretion or other replacement source is "positive". The sum of the impacts will then result in either a "negative" or "positive" impact on the stream.

Wells in plans that have a negative stream impact must provide additional replacement water, curtail pumping or both until the impact is no longer negative. Plans with a negative stream impact that fail to curtail pumping will be ordered to stop pumping until such time as the projected impact of the wells is no longer negative.

1. Accounting must be submitted electronically to the water commissioner (call 970-352-8712 to obtain email address) and division engineer at Div1Accounting@state.co.us within 30 days of the end of the month for which the accounting is being submitted.
2. The accounting must provide the **contact information** including name and address for:
 - a. the owner(s) of each well
 - b. the person responsible for submitting the accounting
 - c. the plan administrator and/or the plan attorney.
3. All **input data** must be in one location, such as an "Input" worksheet, etc. The accounting must show all pumping. Input data includes the information listed below.
 - a. The required input data for each **well** is:
 - i. the monthly meter reading for wells that use a **presumptive depletion factor** (PDF) to determine the associated consumptive use (CU); or
 - ii. the monthly CU in acre-feet (AF) for wells that have a decree or approved SWSP that allows the wells to use a **water balance methodology** to determine the CU of the well. The analysis used to determine the CU must be included with the accounting.
 - iii. Wells that are decreed as an **alternate point of diversion** (APOD) to a surface water right must report pumping on a daily basis if any of the diversion during the month is claimed as being "in priority". (See *Administration Protocol – APOD Wells* for more details.)

- iv. The well meter serial readings for each meter shall be included if there is more than one meter on a well.
- b. Each **recharge site** must comply with the *Administration Protocol - Recharge* and must report the:
 - i. daily volume in AF diverted into the site;
 - ii. monthly volume in AF released from the site;
 - iii. monthly net evaporative loss in AF;
 - iv. volume of water in AF remaining at the end of the month.
- c. The accounting must identify each source of **fully consumable replacement water** actually delivered to the location impacted by the depletions. To demonstrate the water was actually delivered to the required location will require the following information:
 - i. the originating source of the water, date released and volume of water released;
 - ii. transportation losses to point of diversion or use, if any, using stream loss factors approved by the water commissioner;
 - iii. the volume of water actually delivered on a daily basis past any surface water diversion that was sweeping the river as corroborated by the water commissioner.

(See *Administration Protocol – Delivery of Water* for more details on delivering water.)
- d. For each source of **replacement water that has been “changed”** for use as a source of augmentation, such as changed reservoir shares, ditch bypass credits or credits from dry-up, etc., the following input information must be reported:
 - i. the basis and volume of the return flow obligation;
 - ii. the location the changed water was historically used; this will be the location used to determine the timing of the return flow impact on the river.
- 4. The accounting must include a monthly **projection** of the plan’s operation at least through March 31 of the next calendar year.
- 5. The accounting must include all input and output files associated with **modeling the delayed impact** of diversions. The output from the modeling must report to a summary table that shows, by month, the ongoing depletions associated with pumping, return flow obligations, etc. and accretions from recharge operations.
- 6. A **net impact** summary must show the out-of-priority depletions, accretions from each recharge site, volume of replacement water actually delivered to the location of the depletions and the resultant net impact on **a daily basis**. If necessary, the net impact must be done by river reach.

While **modeling** may use a **monthly step function** to determine the depletions from pumping and accretions from recharge, the monthly result must then be **divided by the number of days in the month** in order to **simulate a daily impact**, as water rights are administered on a daily and not monthly basis.

Replacement water must be provided such that the **daily net impact** (using the simulated daily numbers from the modeling) **is not negative**. If a well is out-of-priority for 15 days during a month, replacement must be made only for the 15 days the well is out-of-priority. The replacement must be made, however, on a daily basis as opposed to, for instance, making an aggregated release equal to the volume of the out-of-priority depletions. Likewise, the simulated daily accretion will only count toward replacing the depletion on the days the well is out-of-priority. The accretions that report to the river when the well is in priority cannot be used to replace the out-of-priority depletions.

The **accretions that impact the river when the well is in priority** are not considered "excess" unless the cumulative net impact of the well is not negative for the entire irrigation year to date. (The irrigation year for this purpose is April 1 thru the following March 31.) Until such time as the cumulative net impact is not negative, the accretions must simply be released to the river and cannot be leased to other plans or recaptured. Plans that show a positive cumulative net impact are still required to make replacements on a daily basis; the cumulative analysis only effects whether or not accretions reporting to the river when the well is in priority are considered "excess" and are, therefore, able to be recaptured.

7. The basis for determining that the depletions are **out-of-priority** must be clearly established and all steps in the calculation included in the accounting. The analysis may be done, unless otherwise limited by decree, for each well or groups of wells, provided the most junior water right associated with the group of wells is used as the reference water right for the group's out-of-priority status.
8. Accounting must include **actual information** for the irrigation year through the month for which the accounting is being submitted **AND projections** of the plan operation through March 31 of the next calendar year.
9. The following **naming convention** must be used for all files submitted pursuant to item 1:

"PlanWDID_YYMMDD"

where: PlanWDID is the WDID assigned by the division engineer's office
YYMMDD corresponds to the date the accounting is submitted.

As an example, the assigned WDID for the former GASP plan was 0103333. If accounting using Excel® was submitted for that plan on May 15, 2004, the file name would be:

"0103333_040515.xls"

The name of the file must be in the subject line of the email.

10. All accounting must be reported using the **WDID** for the structure, at a minimum. Other information such as well name, permit number, etc. may also be included as desired. All wells must be decreed by the water court, permitted by the state engineer or included in a decreed plan for augmentation. Unregistered and undecead wells cannot, in the opinion of the division engineer, be effectively administered because of the need to know the location, allowable diversion rate and use of the well - information that is only available from the decree or permitting process.

11. If a well is covered in multiple SWSP's or augmentation plans, the monthly meter readings must be the same in the accounting for each plan covering the subject well. The accounting for every plan covering the well shall state the proportionate pumping amount covered by each plan to assure all out-of-priority depletions are replaced.
12. The following additional accounting is required for sources of replacement water used for more than one plan. The water right owner of the replacement water is responsible for accounting for the total replacement amount and how much each plan is using of that total amount. The accounting for portions of the replacement water by other users must match the accounting of the water right owner. The amount of replacement water used by the water right owner and other users together shall not exceed the total replacement amount available.

(See *Administration Protocol – Use Of Unnamed Sources For Replacement* for additional requirements concerning required notice and approval of sources of replacement not specifically described in a SWSP or augmentation plan)