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A Law Partnership of Professional Corporations

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John D. Walker, P.C.
Of Counsel

December 22, 2016

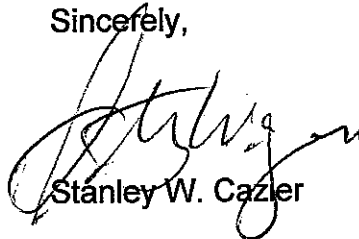
Reclamation Ridge, LLC
P.O. Box 204
Granby, CO 80446

RE: Middle Park Water Conservancy District Contract - Reclamation Ridge.

Dear Sir or Madam:

Please find enclosed the executed original of the contract between Middle Park Water Conservancy District and Reclamation Ridge.

Sincerely,



Stanley W. Cazier

SWC:ic
Enclosure
pc: Jeff Culberton
Jeff Houtp

MIDDLE PARK WATER CONSERVANCY DISTRICT

Water Allotment Contract

(Mixed Windy Gap/Wolford Mountain)

THIS CONTRACT is made and entered into this by and between the **BOARD OF DIRECTORS OF MIDDLE PARK WATER CONSERVANCY DISTRICT**, hereinafter referred to as "Middle Park", and Reclamation Ridge, LLC, hereinafter referred to as "Applicant";

WITNESSETH:

WHEREAS, Middle Park is one of the signatories to an agreement dated the 30th day of April, 1980, with Municipal Subdistrict, Northern Colorado Water Conservancy District which is denoted AGREEMENT CONCERNING THE WINDY GAP PROJECT AND THE AZURE RESERVOIR AND POWER PROJECT, and Supplement thereto dated March 29, 1985, which Agreements are fully incorporated herein (collectively referred to herein as the "Windy Gap Agreement"); and

WHEREAS, Middle Park is also one of the signatories to an agreements dated the 17th day of December, 1992, with the Colorado River Water Conservation District and Board of County Commissioners, Grand County, which Agreement is fully incorporated herein (hereinafter referred to as the "Wolford Mountain Agreement"); and

WHEREAS, Middle Park receives certain benefits and obligations under said Windy Gap and Wolford Mountain Agreements; and

WHEREAS, the Windy Gap Agreement provides Middle Park 3,000 acre-feet of water by allowing it to be placed in either Granby Reservoir and/or an alternate reservoir, as more particularly set forth in said Windy Gap Agreement ("Windy Gap Water"); and

WHEREAS, the Wolford Mountain Agreement provides Middle Park an interest in 3,000 acre-feet of water by allowing it to be placed in Wolford Mountain Reservoir, as more particularly set forth in said Wolford Mountain Agreement ("Wolford Mountain Water"); and

WHEREAS, Applicant is the owner of property located in Grand County, Colorado upstream from the point where the outflow from the Windy Gap Reservoir meets the Colorado River; and

WHEREAS, due to the location of said property and the requirements placed on the Applicant by the Division and State Engineer, Applicant requests the ability to contract for a mix of both Windy Gap Water and Wolford Mountain Water; and

WHEREAS, Applicant is interested in purchasing from Middle Park a certain portion of the water that is designated to be stored in EITHER Granby Reservoir or Wolford Mountain Reservoir, subject to the terms and conditions of said Windy Gap Agreement and Wolford Mountain Agreement, respectively, and this Contract; and

WHEREAS, Applicant has, prior to execution of this Contract, performed whatever studies it deems necessary to determine that the engineering assumptions, and legal effect of said Windy Gap and Wolford Mountain Agreements will result in usable water to said Applicant from a combination of both Granby Reservoir and Wolford Mountain Reservoir, which water will be adequate for the purposes and uses contemplated by Applicant.

NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements, as well as the sum of money to be paid by Applicant to Middle Park, it is agreed as follows:

(1) The water specifically subject to this Contract is that stated and described in the Windy Gap Agreement and the Wolford Mountain Agreement, as well as any subsequent modifications to said agreements.

(2) Middle Park makes no warranties or representations regarding the suitability of either Windy Gap Water or Wolford Mountain Water for the purposes of Applicant, and it shall be Applicant's duty to perform whatever engineering and legal studies that are necessary to ascertain whether or not the combination of Windy Gap Water and Wolford Mountain Water is adequate for its purposes. This Contract is subject to existing water law, and it shall be the obligation of Applicant to initiate and pay for whatever water court proceedings that are necessary to exchange these water rights to the location and use necessary for the Applicant. The point of delivery shall be the outlet works of Granby Reservoir and/or the outlet works of Wolford Mountain, or the combination thereof. Applicant, its permitted heirs, successors and assigns, agree to indemnify and hold harmless Middle Park from any costs or loss incurred by Middle Park as a result of any litigation arising out of said Water Court proceedings or arising out of execution and performance of this Contract. Attached hereto as Exhibit "A" and Exhibit "B" are Middle Park's current fees and policies and said Exhibit is incorporated herein by this reference. Middle Park reserves the right to modify said fees and policies at any regular or special meeting of Middle Park called for that purpose.

(3) Windy Gap Water: Middle Park hereby allots Applicant 2 acre-feet of Windy Gap Water at the price of \$3,000.00 per acre-foot. Said water shall be a portion of that water as mentioned in said Windy Gap Agreement to be placed in Granby Reservoir and/or alternate reservoir as provided in said Windy Gap Agreement. Additionally, Applicant shall pay to Middle Park a yearly sum of \$464.33 multiplied by the number of acre-feet that Applicant is contracting for (minimum charge of \$ 232.16 for up to 0.5 acre-feet) (2017 water delivery). This will represent a service charge for the delivery of said water and shall be paid on or before September 1, in advance, every year. Applicant, at the same time, shall provide Middle Park with an estimate of the amount of water that Applicant, out of its allotted contractual amount

will be utilizing, such that Middle Park can certify to the Municipal Subdistrict as provided in the Windy Gap Agreement as to the usage for the coming year. The estimate shall be realistic and the only amount Middle Park will ask the Municipal Subdistrict to pump. Applicant is encouraged by Middle Park to find supplemental water rights because of problems with Windy Gap water in drought years as well as spill problems. As of January, 2013, Middle Park is seeking to modify its Windy Gap Agreement which could result in less water, but firmer water to Middle Park. If such an agreement is entered into, Applicant hereby agrees to any such modification. The service charge shall increase at a rate of 5% per year beginning in 2017, or cost of living increase, whichever is greater.

(4) Wolford Mountain Water: Middle Park hereby allots Applicant 3 acre-feet of Wolford Mountain Water at the price of \$3,000.00 per acre-foot. Said water shall be a portion of that water as mentioned in said Wolford Mountain Agreement to be placed in Wolford Mountain Reservoir as provided in said Agreement. Additionally, applicant shall pay to Middle Park a yearly sum of \$518.71 multiplied by the number of acre-feet that Applicant is contracting for (minimum charge of \$259.35 for up to 0.5 acre-feet). This will represent a service charge for the delivery of said water and shall be paid on or before September 1, in advance, every year. Applicant, at the same time, shall provide Middle Park with an estimate of the amount of water that Applicant, out of its allotted contractual amount, will be utilizing such that Middle Park can certify to the Colorado River Water Conservation District as to the usage for the coming year. The estimate shall be realistic. The service charge shall increase at a rate of 5% per year beginning in 2017, or cost of living increase, whichever is greater. Applicant will pay the annual operation and maintenance charge charged Middle Park by the Colorado River Water Conservation District, which is presently \$31.00 per acre-foot per year in 2017.

(5) As security to Middle Park, the Applicant agrees that the foregoing covenant to make annual payments in advance of water delivery will be fully met by annual budget and appropriation of funds from such sources of revenues as may be legally available to said Applicant. As additional security to Middle Park, the Applicants will hold-harmless any person, corporation, quasi-governmental entity including Middle Park and its Board of Directors, or other governmental entity, for discontinuance of service due to the failure of the Applicant to maintain the payments herein required on a current basis.

(6) The water provided hereunder shall have equal priority (as limited hereafter) with Middle Park's water stored annually in Granby Reservoir and Wolford Mountain Reservoir, respectively, and in case of shortage shall be prorated in a ratio that Applicant's contracted water bears to the total number of acre-feet available to Middle Park in Granby Reservoir or Wolford Mountain Reservoir as provided by said agreements as well as any subsequent modifications to said agreements.

(7) All terms and conditions of the Windy Gap Agreement and the Wolford Mountain Agreement are expressly incorporated in this Contract and Applicant agrees to abide by the terms and conditions set out therein as well as the District Bylaws as they are amended

from time to time in so far as they relate to the water herein conveyed, as well as covenanting and agreeing not to advance a legal position contrary to the interests of Middle Park in the event of litigation regarding either the Windy Gap or Wolford Mountain Agreement.

(8) This Contract shall be perpetual and shall bind the future Boards of Middle Park as well as Applicant. The water allotted hereunder will be beneficially used for the purposes and in the manner specified herein and this Contract is for the exclusive benefit of the Applicant and shall not inure to the benefit of any successor, assign, or lessee, of said Applicant without the prior written approval of the Board of Directors of Middle Park. As a condition of Middle Park approving conveyance of an interest in the property served by this Contract and in order for Middle Park to continue to serve said property, the new property owner must agree to Middle Park's then existing annual service charges as well as any future amendments thereto.

(9) Applicant shall have no right to sell, lease, transfer encumber, or otherwise deal in the water rights conveyed to it pursuant to this Contract except to the normal extent of providing said water to and through its domestic or municipal water supply system or for augmentation of depletions resulting from the exercise of Applicant's water rights as described in the plan for augmentation approved in Case No. 07CW217, District Court in and for Water Division No. 5, as the same may be amended in the future.

(10) Additionally, in recognition of the fact that Middle Park by conveying this water to Applicant is providing a preference to said Applicant over other future qualified users, and the intent is not to create a surplus of water but to satisfy the future reasonable requirements of Applicant, it is hereby stipulated and agreed by Applicant that it shall not have the right to sell, lease, transfer, encumber or otherwise deal in or with its other existing decreed water rights or any water rights that it may have a contract to purchase as of November 1, 1983, by any sale or conveyance of water rights which would result in transbasin diversion or transbasin exchange of said water rights. Applicant's water rights subject to this restriction shall be binding on Applicant's heirs, successors and assigns and are described on the attached Exhibit C.

(11) In the event, as determined by Applicant at some future date, that said water for whatever reason, whether it be legal or physical availability or otherwise, cannot be utilized by said Applicant, Middle Park shall have the option to repurchase said water rights at the same price originally paid by Applicant if it is financially feasible for it to do so; and if not, to pursue its best efforts to purchase a certain amount of said water back per year over a given number of years. Middle Park shall not be obligated to repay any portion of the annual service charge.

(12) If any portion of this Contract is ruled unconstitutional or unenforceable, it shall not affect the enforceability of the other provisions.

(13) If Applicant conveys water rights in violation of this Contract, it shall pay a penalty equal to all funds it receives, together with damages equal to double the amount of money received, and Middle Park shall still have the right to void this Contract.

(14) Time is of the essence of this Contract.

(15) Since it is anticipated that Middle Park will be entering into similar contracts with many other Applicants, and since Middle Park has a vested interest in insuring that all the entities that Middle Park contracts with will have the least difficulty possible in utilizing their contracted amount of water, it is stipulated and agreed by Applicant that Applicant shall refrain from protesting, objecting or otherwise opposing transfers of water contracted between Middle Park and other Applicants, UNLESS there is substantial likelihood that said transfer will result in the diminution of water available to Applicant.

(16) If an annual payment is not made by the due date, written notice thereof will be sent by Middle Park to the Applicant at the following address:

Reclamation Ridge, LLC
Post Office Box 204
Granby CO 80446
970-364-0006

or to such address as may be designated by the Applicant in writing. It is Applicant's obligation to inform Middle Park in advance of any address change. Middle Park's present address is:

Post Office Box 145
Granby, Colorado 80446

If payment is not made within ten (10) days after the date of said written notice, Applicant shall have no further right, title or interest under this Contract, and the allotment of water, as herein made, shall be transferred, leased, or otherwise disposed of at the discretion of the Board of Directors of Middle Park.

WARNING: MIDDLE PARK'S WINDY GAP WATER HAS SPILLED IN 1996, 1997 AND 1998, 2014, 2015 and 2016 AND WAS UNAVAILABLE IN 2002. IN THE EVENT OF A SPILL, OR DROUGHT, THIS WATER MAY NOT BE AVAILABLE FOR APPLICANT'S USE.

(17) Middle Park Water Conservancy District reserves the right to clarify, amend, or supplement the Agreements providing that anything it does, does not result in less reliable water being made available to Applicant.

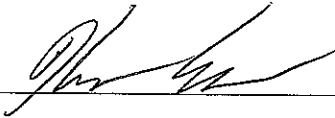
Total at signing:	Windy Gap:	\$ 6,928.66 (928.66 + 6,000)
	Wolford Mountain:	\$ 10,556.13 (1,556.13 + 9,000)
	Total:	\$ 17,484.79

IN WITNESS WHEREOF, the foregoing Contract was duly approved and ratified by the appropriate entities effective the day and year first above written.

BOARD OF DIRECTORS, MIDDLE PARK
WATER CONSERVANCY DISTRICT

APPLICANT

BY: 
President

BY: 

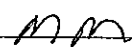
BY: 

EXHIBIT "A"
MIDDLE PARK WATER CONSERVANCY DISTRICT
RULES AND REGULATIONS (BYLAWS)

I. TERMS AND CONDITIONS AND FEES FOR WOLFORD MOUNTAIN AND WINDY GAP CONTRACTS (Revised 10/8/2014)

The following general fees and conditions apply to ^{Wolford}Wolford Mountain and Windy Gap Contracts:

1.	No contract can be granted which would adversely affect senior water rights
2.	No contract shall be executed which would exceed the reasonable present and future needs of any user as determined by Middle Park
3.	No contract shall be granted for purposes other than domestic or municipal use without a detailed plan of use
4.	No water will be provided to users who have adequate water for their purposes or who have conveyed their water rights off their property and which water historically has been used on that property
5.	The applications can only be granted on standard form contracts which may include additional terms and conditions if necessary and deemed proper by the Middle Park Water Conservancy District
6.	No contract shall exceed 5 acre-feet
7.	The one time only charge for Windy Gap and Wolford Mountain shall be adjusted as felt necessary by the Board and reviewed annually. Presently, the price of Windy Gap Water and Wolford Mountain Water is \$3,000.00 per acre foot. For Windy Gap water, the annual service charge shall be a minimum charge of \$210.58 up to 0.5 acre feet and an additional \$42.11 for each 0.1 acre feet per year (\$421.17 per acre foot) and increased a minimum of 5% per year. For Wolford Mountain Water, the annual service charge shall be a minimum charge of \$236.69 up to 0.5 acre feet, and an additional \$45.23 for each 0.1 acre foot per year (\$452.32 per acre foot which includes the current \$31.00 per acre foot charged by the River District) and increased a minimum of 5% per year; the Colorado River Conservation District also charges an acre foot operation and maintenance charge which will be assessed and collected from the Contractee (current River District charge is \$31.00 per acre foot, subject to change).
8.	Any applicant for a Windy Gap or Wolford Mountain Contract located inside an entity (for example, town, special district providing water, etc.) that has an existing Windy Gap or Wolford Mountain Contract (except counties) shall state why it cannot use that entity's existing contract water in its application. The applicant shall also provide a letter from the entity stating the reasons why such contract water is not

EXHIBIT "A"
MIDDLE PARK WATER CONSERVANCY DISTRICT
RULES AND REGULATIONS (BYLAWS)

	made available to its constituents unless previously provided and answered in a previous application. Any application falling under this criteria may be denied at the discretion of the Board.
9.	All applicants seeking a contract that includes temporary irrigation uses shall be provided a contract with a 5 year term. At the end of the term, the applicant must reapply for a new contract that may not be granted if the temporary irrigation use is no longer necessary. At expiration of the temporary contract, and upon written request by an applicant of a temporary irrigation contract, 50% of their original charge for the purchase of the contract water will be refunded by Middle Park; provided, however, that the applicant requesting refund must be in compliance with the terms of the contract at the time said request is made. Notice of any termination shall be provided to the Division Engineer.
10.	There is a limitation on the maximum allowable amount for a contract for any contractee who is an associated entity to an existing or proposed contractee. An associated entity is defined as an entity served by an existing contractee, or whose water use is within an existing contractee, or who is a subsidiary of an existing or proposed contractee, or whose use is adjudicated in the same water case as an existing or proposed contractee, or the ownership of said proposed contractee includes or is similar to an existing contractee. The intent of this paragraph is that no new contractee, collectively, shall have a contract for greater than 5.0 acre feet.
12.	The minimum contract amount is 0.1 acre foot.
13.	Any contract for water above Windy Gap may be blended with portions of Windy Gap and Woford Mountain water, as long as the percentages and request by the applicant are reasonable. The reasonableness of the request for any blended contract shall be subject to the sole determination of the Middle Park Water Conservancy District Board of Directors who may solicit the advice of either the Division Engineer's Office or its own engineer.
14.	Middle Park may require the applicant to perform engineering studies to provide or establish any of the information required by this Exhibit A or by the District's Rule and Regulations.
15.	Middle Park Water Conservancy District may require in any situation involving more than one owner, residence, or property being served, that the contractee form an entity such as a water association, or homeowners association who would be responsible for the bill and administration of the water rights contracted for.
16.	Contracts must be executed and paid for in full within nine months of approval of the application unless extended.

EXHIBIT "A"
MIDDLE PARK WATER CONSERVANCY DISTRICT
RULES AND REGULATIONS (BYLAWS)

17.	The consumptive use of .10 acre-feet per year is normally enough water to provide water to one single family equivalent consisting of 3.5 people and 1000 square feet of lawn and garden irrigation and 2 horses (however, check with your engineer).
18.	The applicant is encouraged to check with their own consultants (engineers and attorneys) to ascertain the dependability of either Middle Park Water Conservancy District's Windy Gap or Wolford Mountain water for their needs. The water decrees for both projects are relatively junior and subject to drought and spill year problems.
19.	<p>All Windy Gap water allotment contracts requesting augmentation water for either irrigation depletions, pond evaporation, or both irrigation depletions and pond evaporation shall contain the following limitations:</p> <p>A. If the District's Windy Gap pool is not 3,000 care feet in any water year, contract augmentation water for either irrigation and/or pond evaporation will not be made available if release of such water for such purposes would short any other District domestic use contractee.</p> <p>B. In any year that the District's Windy Gap pool spills from Granby Reservoir, release of Windy Gap water allotment contract water for either irrigation and/or pond evaporation shall be available up to the time of the spill and not thereafter.</p> <p>C. Windy Gap water allotment contract water designated for use by a contractee for either irrigation depletions and/or pond evaporation shall not have the right to utilize any carryover available to the District by virtue of any existing or future agreement with either the Municipal Subdistrict Northern Colorado Water Conservancy District or Northern Colorado Water Conservancy District.</p> <p>D. Windy Gap contracts involving water allotment contract water to only cover a contractees' irrigation depletions (understanding that the State Engineer's Office will require adequate water for domestic purposes for an augmentation plan) shall be limited to a maximum term of five (5) year for the irrigation purpose. The cost of a Windy Gap contract falling within this parameter shall be one-half the normal one-time charge for the quantity of water requested for such irrigation depletions. The annual service charge shall be the same as for all other Windy Gap contracts.</p>

EXHIBIT "B"
MIDDLE PARK WATER CONSERVANCY DISTRICT
RULES AND REGULATIONS (BYLAWS)

II. MIDDLE PARK WATER CONSERVANCY DISTRICT BYLAWS (RELATING TO WATER ALLOTMENT CONTRACT RESTRICTIONS)

A. The District's Water Rights and right to use water in Windy Gap Reservoir, as well as Wolford Mountain Reservoir, are the direct result of the "Basin-of-Origin" provisions found in CRS 37-45-118. The right to the use of water in Windy Gap Reservoir and Wolford Mountain Reservoir involves the settlement of litigation involving numerous parties, including both the Northern Colorado Water Conservancy District, Municipal Subdistrict Northern Colorado Water Conservancy District, as well as the Colorado River Water Conservation District. The Board of Directors of the Middle Park Water Conservancy District specifically find that it would be a violation of the policy found in CRS 37-45-118(1)(b)(II), as well as the various Windy Gap and Wolford Mountain Agreements, for it to contract with any user who, or whose predecessor, has sold, or otherwise conveyed water rights out of the Colorado River Basin for any parcel that either had water rights that were conveyed out-of-basin or said parcel was part of a larger parcel at the time that water rights were conveyed out-of-basin. The Board of Directors of the Middle Park Water Conservancy District further find that in order to prevent users from conveying water rights out-of-basin, the District shall have the right in any contract to require a covenant running with the land and/or water rights prohibiting conveyance directly or indirectly out-of-basin. This provision shall likewise apply to any situation in which the conveyance of water rights increases the amount of water that a trans-basin diverter can convey out-of-basin, even though it is unnecessary for the purchaser of that water right to bring a court action to transfer the water right to receive increased yield. As an example, where the non use or abandonment of a water right, increases the yield to an out-of-basin diverter, this policy would apply.

The provisions of this section shall be liberally construed by the Board to discourage providing Windy Gap Water or Wolford Mountain Water being provided to any property which is or which was part of a parcel that presently or previously had water rights previously appurtenant to some part of the property and which water rights have been conveyed separate and apart from the real property. The decision of the Board of Directors of the Middle Park Water and Conservancy District in all cases involving interpretation of this section shall be final and absolute.

B. No contract shall be executed to provide water to any user or entity which water rights would be utilized to service lands that were previously served by water rights which have been transferred and/or conveyed to entities or users and severed from the land historically irrigated by said water rights, or which lands have adequate water rights to serve said persons or user, even though it may take a water court proceeding to change the water right.

Furthermore, Middle Park may require any applicant not convey any water rights that it owns at time of contracting separate and apart from land it owns without Middle Park's prior written approval.

C. Nothing herein shall preclude the District from making water available by contract when an Applicant's water is unsuitable for its proposed purpose and/or Applicant proposes to limit the use of its water rights off of its property in a manner acceptable to the Board.

EXHIBIT C

DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO Garfield County Courthouse 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601 (970) 945-5075; 945-8756 - fax	FILED Document CO Garfield County District Court 9th JD Filing Date: Jul 13 2010 9:25AM MDT Filing ID: 32097241 Review Clerk: Kathy Hall
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: RECLAMATION RIDGE, LLC, in Grand County, Colorado.	▲ COURT USE ONLY ▲
	Case No. 07CW217
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, JUDGMENT AND DECREE	

The above-entitled application was filed on December 5, 2007; and the amended application was filed on October 31, 2008. The amended application is referred to herein as the "Application." The Application was referred to the Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court in accordance with Article 92, Chapter 37, C.R.S. (1973), known as the Water Rights Determination and Administration Act of 1969.

The undersigned Referee, having made such investigations as are necessary to determine whether or not the statements in the Application are true, having consulted with the Division Engineer as required by statute, and having become fully advised with respect to the subject matter in the Application, does hereby make the following Findings of Fact, Conclusions of Law and Ruling of the Referee in this matter:

FINDINGS OF FACT

1. *Name and address of Applicant:*

Reclamation Ridge, LLC, a Colorado limited liability company
Post Office Box 1147
Granby, CO 80446

With a copy to:
Jefferson V. Houpt, Esq.
Beattie, Chadwick & Houpt, LLP
932 Cooper Avenue
Glenwood Springs, CO 81601
(970) 945-8659

2. Timely and adequate notice of filing of this Application was given as required by law.
3. Statements of Opposition were filed by Loch-N-Vale Ltd. Liability Co. and Mountain Park Concrete, Inc. No other Statements of Opposition were filed and the time for filing Statement of Opposition has expired. Applicant and Opposers Loch-N-Vale Ltd. Liability Co. and Mountain Park Concrete, Inc. entered into a stipulation dated February 8, 2010, which stipulation was approved by the Court on May 10, 2010.
4. The Applicant has requested confirmation of a water right, described as follows:

Name of Structure: **Thompson Spring**

- A. *Legal description of point of diversion:* Thompson Spring is located at a point in the SE1/4NW1/4, Section 31, T. 2 N., R. 76 W., 6th P.M. that is 1,900 feet south of the north section line and 1,795 feet east of the west section line of said Section 31.
- B. *Source:* Groundwater tributary to the Colorado River.
- C. *Date of initiation of appropriation:* December 31, 1967.
- D. *How appropriation was initiated:* Capture, diversion and application to use in connection with the mining and processing of gravel and production of concrete.
- E. *Date water applied to beneficial use:* December 31, 1967.
- F. *Amount claimed:* 0.22 c.f.s., absolute.
- G. *Uses:* Commercial, industrial and fire protection uses.
- H. *Owner of land on which point of diversion is located:* Applicant.
- I. *Remarks:* Thompson Spring consists of a system of seeps and springs that are channelized, concentrated and collected in an area which may be characterized as a "near surface diversion," as set forth in C.R.S. §§ 37-90-103(21)(b) and 37-92-103(14)(b). Diversions from the Thompson Spring will be accomplished in priority

and, when out-of-priority, pursuant to the plan for augmentation described herein. Thompson Spring is a component of a single, integrated water supply system for Applicant's property, described in paragraph 5.C. below, that also includes the plan for augmentation and exchange described herein.

5. The Applicant requests approval of a plan for augmentation, described as follows:

- A. *Structure to be augmented:* Thompson Spring
- B. *Water rights to be used for augmentation:* Augmentation water will be delivered into the Colorado River pursuant to a Water Allotment Contract between Applicant and the Middle Park Water Conservancy District. The water may be delivered from the two sources described below:

Windy Gap Project: A portion of the 3,000 acre feet which the Municipal Subdistrict, Northern Colorado Water Conservancy District has agreed to annually place in storage in Granby Reservoir, which is located on the Colorado River upstream from the confluence of the Fraser and Colorado Rivers in Grand County, Colorado. Additional provisions of the agreement are outlined in the Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project, dated and signed April 30, 1980 and approved by the Water Court, Water Division No. 5, Civil Action 1768, by Interlocutory Decree dated October 27, 1980, and Supplement to Agreement of April 30, 1980, dated March 29, 1985, and duly decreed in Case No. 85CW135. Granby Reservoir is located in parts of T. 3 N., R. 76 W., and T. 2 N., Range 75 W., 6th P.M., and delivers water into the Colorado River.

Wolford Mountain Reservoir: As an alternative source of supply, Applicants may use a portion of the storage right confirmed by decree entered November 20, 1989, in Case No. 87CW283, District Court, Water Division No. 5. Middle Park Water Conservancy District has an interest in 3,000 acre feet of this Wolford Mountain water by virtue of an agreement between the Colorado River Water Conservation District, the Board of County Commissioners of Grand County, and the Middle Park Water Conservancy District, dated December 17, 1992. Water is stored in Wolford Mountain Reservoir (f/k/a Gunsight Pass Reservoir) under the following water rights:

(1) Case No. 87CW283:

- a. *Decree Date:* November 20, 1989.
- b. *Legal description of place of storage:*

The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The intersection of the dam axis with the right abutment will occur at a point which bears W. 54°54'20" E. a distance of 3,716.46 feet from the NW Corner of said Section 25.

- c. *Source:* Muddy Creek and its tributaries.
- d. *Amount:* 59,993 acre feet conditional; of this amount, 32,986 acre feet were made absolute for piscatorial and recreational uses by decree entered in Water Court Case No. 95CW251, and the full amount was made absolute for all purposes by decree entered in Water Court Case No. 02CW107.
- e. *Appropriation Date:* December 14, 1987.
- f. *Uses:* All beneficial uses, including but not limited to domestic, municipal, agricultural and recreational uses, which uses satisfy the requirements of the Windy Gap Settlement made with the Municipal Subdistrict of the Northern Colorado Water Conservancy District; use to meet the water requirements of the inhabitants of the Colorado River Water Conservation District for all uses, including uses in the Middle Park area; and use to meet the terms of a lease agreement executed March 3, 1987 between the Colorado River Water Conservation District and the City and County of Denver.

(2) Case No. 95CW281:

- a. *Decree Date:* August 26, 1997.
- b. *Legal description of place of storage:* The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The as-built intersection of the dam axis (Sta. D19+35.61) with the West Access Road (Sta. WR50+55.05), as shown on the Colorado River Water Conservation District, Wolford Mountain Project, Ritschard Dam construction drawing "Dimensional Dam Layout" sheet 8 of 94, occurs at a point which bears S. 53°24'56" E. a distance of 3,395.51 feet from the NW Corner of said Section 25; the bearing of said dam axis from Sta. 19+35.61 to Sta. 0+00 being S. 75° 28' 29" E.
- c. *Source:* Muddy Creek and its tributaries.
- d. *Amount:* 6,000 acre feet conditional.

e. *Appropriation Date:* January 16, 1995.

f. *Uses:* All beneficial uses by and for the benefit of the inhabitants of the Colorado River Water Conservation District, including but not limited to domestic, municipal, industrial, irrigation, agricultural, piscatorial and recreational; such uses will include environmental mitigation, including environmental mitigation requirements associated with the Wolford Mountain Project; such uses will be made directly or by substitution, augmentation, or exchange. None of the water stored in the exercise of the right will be delivered directly or by exchange, substitution, or otherwise for use outside of Colorado Water Division No. 5.

(3) Case No. 98CW237:

a. *Decree Date:* July 6, 2000.

b. *Legal Description of place of storage:* Same as for 95CW281.

c. *Source:* Muddy Creek and its tributaries.

d. *Amount:* 30,000 acre feet conditional with 15,895 acre feet being absolute for recreational and piscatorial and flood control.

e. *Appropriation Date:* November 17, 1998.

f. *Use:* Certain of the beneficial uses previously adjudicated for Wolford Mountain Reservoir in Case No. 87CW283, District Court for Colorado Water Division No. 5 (November 20, 1989 Judgment and Decree), and Case No. 95CW281, District Court for Colorado Water Division No. 5 (August 26, 1997 Judgment and Decree). In Case No. 87CW283: The reservoir will be used to satisfy the requirements of the Windy Gap Settlement made with the Municipal Subdistrict of the Northern Colorado Water Conservancy District. This will involve all uses, including but not limited to domestic, municipal, agricultural, and recreational uses. The reservoir will also be used to meet the water requirements of the inhabitants of the Colorado River Water Conservation District for all uses, including uses in the Middle Park area. In Case No. 95CW281: All beneficial uses by and for the benefit of the inhabitants of the Colorado River Water Conservation District, including but not limited to domestic, municipal, industrial, irrigation, agricultural, piscatorial and recreational; such uses will include environmental mitigation, including environmental mitigation requirements associated with the Wolford Mountain Reservoir.

Project; such uses will be made directly or by substitution, augmentation, or exchange.

- g. *Remarks:* The Refill Right described herein will be exercised to provide supply for the Western Slope uses of water from Wolford Mountain Reservoir described above, including flood control, other operational purposes, and environmental mitigation and enhancement for the benefit of uses within the District. The Refill Right will not be used in conjunction with the Reservoir capacity (24,000 acre feet) which is allocated for the supply of water to the Denver Board of Water Commissioners under Applicant's contractual relationship with Denver, or the Reservoir capacity (6,000 acre feet) which is allocated for Colorado River endangered fish releases.

C. *Description of plan for augmentation:*

Applicant is the owner of real property located in the NW1/4 Section 31, T. 2 N., R. 76 W., 6th PM, more particularly described in Exhibit A (the "Property"). The Property has been used since the mid-1960s for the mining and processing of gravel and for the production of concrete, and water from the Thompson Spring has been used throughout this time to satisfy the water demands associated with those uses. Applicant intends to continue these uses of the Property in the future.

Water diverted from Thompson Spring is pumped via pipeline to that part of Applicant's property where active mining and processing is occurring, and used for gravel washing, concrete production, truck washout, and other related uses. Water is also pumped directly from Thompson Spring into water trucks and distributed within the Property for dust suppression. Estimated water demands and consumption associated with these uses are summarized in Table 1 below.

Table 1. Historical Water Use at Thompson Spring

Water Use	Water Consumption Rate	Pumping Rate/Method of Diversion from Pond	Total Annual Use (7 months or 214 days)
Dust Suppression	500 - 6,000 gals/day	pumped directly from spring at 100 gpm to fill trucks	0.33 to 3.3 AF
Gravel Washing	1,000 - 2,625 gals/day	pumped at 30 - 40 gpm up to mine	0.66 to 1.72 AF
Concrete Production	6,000 - 35,000 cubic yards/yr 45 - 75 gals water/yard	pumped at 30 - 40 gpm up to mine	0.92 to 3.8 AF
Vehicle Washout	5,000 - 20,000 gals/year	pumped at 30 - 40 gpm up to mine	0.015 to 0.06 AF

At any given time, the mix of uses identified above may vary according to the local demand for gravel and concrete. However, all water uses are derived from a single source (Thompson Spring), and all of Applicant's water uses are 100% consumptive. Thus, under this plan, Applicant will divert water from the Thompson Spring under its own priority until a call is placed by downstream senior water rights. During times of a valid senior downstream call, out-of-priority depletions to the Colorado River resulting from the operations described above will be replaced with water released into the Colorado River from the sources described in paragraph 5.B. above, pursuant to a Water Allotment Contract between Applicant and Middle Park Water Conservancy District. Water so released will be exchanged to the point of depletion pursuant to the appropriate right of exchange described in paragraph 6 below. Applicant's Water Allotment Contract will be limited to 5.0 acre feet annually. Therefore, total annual out-of-priority diversions under this plan for augmentation shall be limited to 5.0 acre feet annually.

D. *Names and addresses of owners of land on which structures are located:*

The Windy Gap facilities are located on property owned or controlled by the Northern Colorado Water Conservancy District, whose address is 220 Water Ave., Berthoud, CO 80513. The Wolford Mountain Reservoir facilities are located on lands owned or controlled by the Colorado River Water Conservation District, whose address is P.O. Box 1120, Glenwood Springs, CO 81602. Thompson Spring is located on lands owned by Applicant.

6. The Applicant seeks approval of an appropriate right of exchange, described as follows:

Name of exchange: Thompson Exchange

A. *Downstream Terminus:* A point located on the north bank of the Colorado River at the confluence with Muddy Creek that is 40 feet north of the south section line and 1,850 feet west of the east section line in the SW1/4 SE1/4 of Section 18, T. 1 N., R. 80 W., 6th P.M. (when augmentation water is supplied from Wolford Mountain Reservoir), and the confluence of the Fraser and Colorado Rivers, located in the SW1/4SW1/4 Section 25, T. 2 N., R. 77 W., 6th P.M. at a point which is 4,700 feet from the east section line and 590 feet from the south section line (when augmentation water is supplied from Lake Granby).

B. *Upstream terminus:* Thompson Spring, described in paragraph 4.A, above.

C. (1) *Date of initiation of appropriation:* August 30, 2008.

- (2) *How appropriation was initiated:* Formation of the intent to appropriate the exchange, and field inspection of the site.
- D. *Maximum rate of exchange:* 0.22 cfs, conditional, not to exceed 5.0 acre-feet annually.
- E. *Remarks:* This exchange will be operated in conjunction with the augmentation plan described in paragraph 5, above.

CONCLUSIONS OF LAW

7. The foregoing Findings of Fact are incorporated in these Conclusions of Law as though fully set forth herein.
8. The Application filed herein is complete, covering all applicable matters required under C.R.S. § 37-92-302.
9. All notices required by law have been given, and no further notice need to be given. C.R.S. § 37-92-101, *et seq.*
10. This Court has jurisdiction of this matter and of all persons, whether they have appeared or not. C.R.S. §§ 37-92-301(2) and -303(1).
11. This Court has authority to confirm the absolute water right for Thompson Spring, appropriative right of exchange for Thompson Exchange, and to approve the plan for augmentation requested in the Application. C.R.S. §§ 37-92-301(2), -302, -303(1), and -304.
12. Pursuant to C.R.S. §§37-90-103(21)(b) and 37-92-103(14)(b), improvements made to a spring are not considered to be a "well" where the natural spring discharge is captured or concentrated by installation of a near surface structure or device less than ten feet in depth located at or within 50 feet of the springs' natural discharge point and the water is conveyed directly by gravity flow or into a separate sump or storage, if the owner obtains a water right for such structure or device as a spring pursuant to Title 38, Article 92 of the Colorado Revised Statutes. The Court concludes that the improvements to the Thompson Spring, as detailed in paragraph 4.I. constitute a near-surface structure, as set forth in C.R.S. §§37-90-103(21)(b) and 37-92-103(14)(b).
13. A plan for augmentation shall be approved if it will not injuriously affect the owner or persons entitled to use water under a vested water right or decreed conditional water right. C.R.S. § 37-92-305(3).

14. Any decree approving a plan for augmentation must be conditional upon the retained jurisdiction of the court for a period necessary or desirable to preclude or remedy any injury to the vested rights of others. C.R.S. § 37-92-304(6).
15. The proposed plan for augmentation meets the statutory criteria for a plan for augmentation set forth in C.R.S. §§ 37-92-103(9), -302(1), and -305(8), as one contemplated by law. Pursuant to C.R.S. § 37-92-305(8), the plan for augmentation approved herein is sufficient to permit the continuation of diversions under the water rights described above when curtailment would otherwise be required to meet a valid senior call for water, because the Applicant will provide adequate replacement water necessary to meet the lawful requirements of a senior diverter at the time and location and to the extent that the senior would be deprived of his or her lawful entitlement by the Applicant's diversion. Provided that this plan for augmentation is operated in accordance with the terms and conditions of this Ruling, the use of water pursuant to said plan will not injuriously affect the owner of or persons entitled to use water under a vested water right or decreed conditional water right.

RULING OF THE REFEREE

16. The foregoing Findings of Fact and Conclusions of Law are incorporated as if fully set forth herein, and the Referee concludes that the Application should be granted, subject to the terms and conditions set forth herein.
17. The Referee rules that the absolute water right for Thompson Spring, as more fully described in paragraph 4 above, is hereby confirmed.
18. The Referee rules that the appropriative right of exchange for Thompson Exchange, as more fully described in paragraph 6 above, is hereby confirmed.
19. Applicant shall notify the Water Commissioner or Division Engineer prior to operating the Thompson Exchange.
20. The Referee rules that the plan for augmentation for Thompson Spring, as more fully described in paragraph 5 above, is hereby approved subject to the terms and conditions of this decree.
21. Pursuant to C.R.S. § 37-92-305(8), in administering the augmentation plan, the State Engineer shall curtail all out-of-priority depletions, the depletions from which are not so replaced as to prevent injury to vested water rights.
22. The plan for augmentation approved herein relies in part on the Thompson Exchange. Should a valid call be placed and administered by a water right senior to and located within the reach of this exchange, the augmentation plan will not be operational, and any

out-of-priority diversions under the water right decreed to the Thompson Spring herein will be subject to curtailment.

23. Applicant recognizes that the Colorado Water Conservation Board's instream flow rights on the Colorado River, decreed in Case Nos. 5-80CW446-448 and 5-90CW300, are senior to the right decreed to the Thompson Spring herein. If the Colorado Water Conservation Board places a call for its water right on the Colorado River that is recognized and administered by the Division Engineer, Applicant shall either bypass flows from the Thompson Spring or replace its out-of-priority diversions from Granby Reservoir.
24. The augmentation supply approved herein is subject to a Water Allotment Contract with the Middle Park Water Conservancy District. The augmentation plan approved herein shall not become operational until the Applicant has provided a copy of a valid Water Allotment Contract to the Court, the Division Engineer and the Parties. If such Water Allotment Contract should expire, fail to be renewed, or is otherwise terminated, and an alternate source for replacement water is not included in this plan by proper amendment prior to such expiration, the Division Engineer will curtail all out-of-priority diversions.
25. Actual transit losses associated with the water released from the augmentation sources described in paragraph 5.B. above will be determined and assessed at the time such releases are made and may be modified pursuant to C.R.S. §§ 37-80-102(7) and 37-83-104 as determined necessary by the Division Engineer.
26. Pursuant to C.R.S. § 37-92-502(5), the Applicant shall install and maintain measuring devices, provide accounting and supply calculations regarding the timing of depletions as required by the Division Engineer to administer this decree. The Applicant shall also prepare and provide an annual report to the Division Engineer summarizing diversions and replacements pursuant to this plan on or before November 15 of each year. The timing and amount of augmentation releases shall be at the discretion and direction of the Division Engineer, provided that the total annual amount of augmentation releases shall not exceed total out-of-priority depletions, including transit losses.
27. In consideration of the specific findings and conclusions made herein, and in conformance with C.R.S. § 37-92-304(6) (1990), as amended, the plan for augmentation approved herein shall be subject to reconsideration by the Water Judge on the question of injury to the vested water rights of others for a period of five years after the Applicant provides written notice to the parties, the Court, and the Division Engineer that the augmentation plan approved herein has become operational and 75% of the total out-of-priority depletions authorized under the plan have been augmented. Such notice shall confirm that a valid Water Allotment Contract with the Middle Park Water Conservancy District remains in effect, that the terms and conditions necessary to operate the plan as required by this Decree have been met and that the augmented uses and augmentation

have been initiated. Any party who desires the Court to reconsider the question of injury shall file a verified petition with the Court, setting forth the facts that cause such injury and explaining the claimed injury. The party filing the petition shall have the burden of proof to establish the facts and the injury alleged in the petition. If no petition for reconsideration is filed within said five years, retention of jurisdiction for this purpose shall automatically expire.

28. Review of determinations made by the Division Engineer or the State Engineer in administration of the subject water rights and plan for augmentation are "water matters" which the Water Court may review *de novo* and over which the Water Court has exclusive jurisdiction.

29. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or other transfer of the subjection conditional water rights, the transferee shall file with this Court a notice of transfer which shall state:

- A. The title and case number of this Case No. 07CW217;
- B. The description of the conditional water right(s) transferred;
- C. The name of the transferor;
- D. The name and mailing address of the transferee; and
- E. A copy of the instrument by which the subject conditional water right(s) were transferred.

The owner of the said conditional water right(s) shall also notify the Clerk of the Division 5 Water Court of any change in mailing address. The Clerk shall place any notice of transfer or change of address in the case file of this Case No. 07CW217.

It is accordingly ORDERED that this Ruling of Referee and Judgment and Decree shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review.

It is further ORDERED that a copy of this Ruling of Referee and Judgment and Decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 5.

DATED this 18th day of May, 2010.

BY THE REFEREE:

E-FILED

31182093

DATE

5/18/10

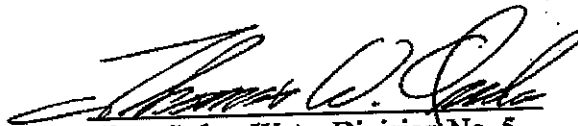
WKS Grubitzky
Water Referee, Water Division No. 5
State of Colorado

JUDGMENT AND DECREE

No protest was filed in this matter, and accordingly, the foregoing Ruling is confirmed and approved, and is made the Judgment and Decree of this Court. The month and year for filing an Application for Finding of Reasonable Diligence regarding the conditional water rights approved herein shall be July, 2016.

DATED this 12th day of July, 2010.

BY THE COURT:



Water Judge, Water Division No. 5
State of Colorado

EXHIBIT A

PARCEL A:

Tracts 5, 6 and the North $\frac{1}{2}$ of Tract 11,
GREAT DIVIDE HEAD LETTUCE COLONY.

PARCEL B:

Part of the W $\frac{1}{2}$ of Section 31, Township 2 North, Range 76 West of the 6th P.M., described as follows:

Beginning at the Center $\frac{1}{4}$ Corner of said Section 31, whence the North $\frac{1}{4}$ Corner of said Section 31 bears North 00°08' 01" East, for a distance of 2641.16 feet;
Thence North 00°08'01" East, for a distance of 2459.83 feet along the North and South $\frac{1}{4}$ line of said Section 31;
Thence North 87°12'10" West, for a distance of 957.91 feet to the South Easterly R.O.W. of Colorado State High [sic] No. 34;
Thence Southerly along said R.O.W. the following bearings and distances: Thence South 45°17'26" West, for a distance of 505.68 feet; Thence South 45°10'35" West, for a distance of 284.54 feet; Thence South 41°12'15" West, for a distance of 206.70 feet; Thence South 36°48'43" West, for a distance of 199.89 feet; Thence South 53°54'33" East, for a distance of 29.78 feet; Thence South 31°36'00" West, for a distance of 871.16 feet; Thence South 19°23'18" West, for a distance of 237.91 feet to the North line of Garrett's Industrial Park on the town limits of Granby; Thence South 44°21' East, for a distance of 455.1 feet; Thence South 67°08' East, for a distance of 349.06 feet; Thence South 00°52' West, for a distance of 143.44 feet; Thence South 27°43' East, for a distance of 127.70 feet; Thence South 42°24' East, for a distance of 283.14 feet; Thence leaving Garrett's Industrial Park and Granby town limits North 80°32'35" East, for a distance of 79.52 feet to the West line of Harris, Dacheff or McVane Gravel Pit; Thence following the boundary of Harris, Dacheff or McVane Gravel Pit, the following bearings and distances: North 41°26'53" East, for a distance of 323.05 feet; North 48°40'15" East, for a distance of 300.00 feet; South 79°02'42" East, for a distance of 430.75 feet; South 21°14'20" West, for a distance of 404.02 feet to the Town of Granby town limits and the North West Corner and end of New Church Ave. in First Valley Addition to Granby; Thence following the boundary the following bearings and distances: Thence South 52°20'02" East, for a distance of 44.17 feet;

Thence North 37°39'57" East, for a distance of 128.00 feet;
Thence South 52°20'02" East, for a distance of 38.36 feet;
Thence North 37°39'57" East, for a distance of 315.00 feet to the
North West Corner of Lot 1, Block 2, First Valley Addition to
Granby; Thence South 52°20'02" East, for a distance of 320.44 feet
along the Northerly boundary of First Valley Addition to Granby to
the North and South Center 1/4 line of said Section 31;
Thence North 00°08'01" East, for a distance of 173.08 feet to the
Center 1/4 Corner of said Section 31 and the Point of Beginning.

County of Grand,
State of Colorado,

also known by street and number as 919 County Road 612, Granby, CO 80446.

Together with all its appurtenances and warrants the title to the above described property, which
includes an undivided 100% fee simple interest in both the surface and mineral estates therein.