



**COLORADO**  
Division of Water Resources  
Department of Natural Resources

January 2, 2019

Jared Dains, P.E.  
Applegate Group, Inc.  
1490 W. 121<sup>st</sup> Avenue, Suite 100  
Denver, CO 80234

**Re: Irwin-Thomas Substitute Water Supply Plan (WDID 0502538, Plan ID 5829)**  
**Irwin-Thomas Pit, DRMS Permit No. M-2016-054 (WDID 0505626)**  
**Section 11, T2N, R69W, 6<sup>th</sup> P.M.**  
**Water Division 1, Water District 5, Boulder County**

**Approval Period: January 2, 2019 through December 31, 2019**

*Contact information for Mr. Dains: 303-452-6611; [jareddains@applegategroup.com](mailto:jareddains@applegategroup.com)*

Dear Mr. Dains:

We have received your letter dated June 14, 2016, requesting approval of the above referenced substitute water supply plan ("SWSP") in accordance with § 37-90-137(11), C.R.S. to replace depletions associated with the Irwin-Thomas Pit sand and gravel mining operation, operated by Aggregate Industries-WCR, Inc. ("Aggregate" or "Applicant"). The required filing fee of \$1,593.00 has been submitted (receipt no. 3675070). According to an email received October 4, 2018, the requested SWSP approval period is the 2019 calendar year.

### **SWSP Operation**

The Irwin-Thomas Pit (WDID 0505626) is located just east of the City of Longmont in Section 11, Township 2 North, Range 69 West of the 6<sup>th</sup> P.M., as shown on the attached Figure 1. Mining of the site is anticipated to begin in 2019, with Aggregate beginning dewatering operations to allow the site to be dry mined. Consumptive use at the Irwin-Thomas Pit during this plan period will consist of evaporation from exposed surface area, water removed in the mined product, and water used for dust control purposes. Replacement water will be provided by the City of Longmont pursuant to a temporary lease agreement. After December 31, 2019, this site is proposed to be incorporated into Aggregate Industries' South Platte Combined SWSP (WDID 0202565).

### **Depletions**

Aggregate has estimated that a total of 2.5 acres of groundwater will be exposed at the site beginning in July, consisting of approximately 0.5 acres of dewatering trenches and 2.0 acres of settling ponds. Net evaporative loss was estimated at 2.57 feet per exposed acre, as approved for the nearby Distel and Tull Pits in Aggregate Industries' South Platte Combined SWSP. This value is more conservative than the net evaporative loss estimated by DWR and therefore is acceptable for the purposes of this SWSP. Net evaporative losses are estimated to total 6.43 acre-feet at the site for the



requested plan period.

The Applicant anticipates mining up to 2,000 tons of aggregate per day, for a total of up to 730,000 tons of aggregate mined during this plan period. The material will be mined below the groundwater table in a dewatered state. For the purposes of this SWSP you have assumed that all mined material will be washed; therefore the water retained in the mined product is considered to be 4.0% of the mined material by weight. This results in a groundwater loss of 21.49 acre-feet.

The Applicant anticipates using 1.98 acre-feet of water from the pit for dust control purposes per year. All water used for dust control purposes is assumed to be 100% consumed.

The total consumptive use of ground water at the Irwin-Thomas Pit during this plan period, including evaporative and operational losses, is estimated to be 29.89 acre-feet.

Consumptive uses from the Irwin-Thomas Pit will result in lagged depletions to the stream system. The IDS Alluvial Water Accounting System (AWAS) analytical stream depletion model, which uses the Glover method, was used to calculate the lagged depletions to St. Vrain Creek. The following parameters were used in the model: transmissivity (T) = 50,000 gallons per day per foot, specific yield (SY) = 0.2, the aquifer width (W) = 6,000 feet, and the distance from the centroid of the exposed surface water areas to the creek = 1,900 feet. The total lagged depletions were determined to be 15.95 acre-feet for this plan period.

The attached Table 1 shows the monthly breakdown of evaporative, operational, and lagged depletions for the plan period of January 2019 through December 2019.

### **Dewatering**

Once dewatering of the site commences, it will be continuously dewatered during this SWSP period, with all such water discharged to St. Vrain Creek. As long as the pit is continuously dewatered and all water is discharged to St. Vrain Creek without consumptive use, the accretions to the stream system from dewatering of the pit should be sufficient to replace the lagged dewatering depletions. All site dewatering must be accounted for in a method satisfactory to the division engineer and water commissioner. Adequate measuring devices may be required in order to adequately account for the dewatering. You have indicated that the dewatering pump will be equipped with a totalizing flow meter and monthly meter readings will be maintained and reported with the accounting for this SWSP.

### **Replacements**

Aggregate has obtained a lease of 16.6 acre-feet of fully consumable water from the City of Longmont ("Longmont") for replacement purposes under this SWSP. A copy of the water supply agreement showing the monthly replacement schedule was provided in support of this SWSP request and is attached. Longmont will deliver the replacement water to St. Vrain Creek at either the outfall of Longmont's municipal wastewater treatment plant (WDID 0502300) located adjacent to the pit, or at the confluence of Spring Gulch and St. Vrain Creek in the SE¼ of Section 7, Township 2 North, Range 68 West of the 6<sup>th</sup> P.M., approximately 2 miles downstream of the Irwin-Thomas Pit. Any releases by Longmont at a location other than its municipal wastewater treatment plant must be coordinated with the water commissioner to insure the proper transit losses are applied and that no intervening water rights are injured.

## Long Term Augmentation

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 Colorado Division of Reclamation, Mining, and Safety ("DRMS") requires that you provide information to demonstrate you can replace long term injurious stream depletions that result from mining related exposure of groundwater. Aggregate Industries-WCR, Inc. has submitted a financial warranty in the amount of \$2,747,911 for the Irwin-Thomas Pit, which the DRMS has determined equals the estimated costs of reclamation, including the installation of a slurry wall.

## Conditions of Approval

I hereby approve this SWSP, in accordance with § 37-90-137(11), C.R.S., subject to the following conditions:

1. This SWSP shall be valid for the period of January 2, 2019 through December 31, 2019, unless otherwise revoked 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) prior to the expiration date but no later than **November 1, 2019**. If a renewal request is received after the expiration date of this plan, it may be considered a request for a new SWSP and the \$1,593 filing fee will apply.
2. A new well permit must be obtained for the Irwin-Thomas Pit in accordance with § 37-90-137(2), C.R.S., and this SWSP. An application is currently pending under receipt no. 3684947 and will be evaluated subsequent to approval of this SWSP. The provisions of § 37-90-137(2), C.R.S., prohibit the issuance of a permit for a well to be located within 600 feet of any existing well, unless the State Engineer finds that circumstances so warrant after a hearing in accordance with the procedural rules in 2CCR402-5. The hearing will be waived if you are able to obtain statements from the owners of all wells within 600 feet, verifying that they have no objection to your use of the proposed well.
3. The total surface area of the groundwater exposed at the Irwin-Thomas Pit must not exceed 2.5 acres, which results in an annual net evaporative loss of 6.43 acre-feet.
4. The annual amount of water used for operational purposes at the Irwin-Thomas Pit must not exceed 23.47 acre-feet, estimated as 1.98 acre-feet for dust control purposes and 21.49 acre-feet lost with the production of 730,000 tons of mined aggregate.
5. Total consumption at the Irwin-Thomas 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. This office must first approve any additional uses for the water.
7. 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 SWSP, the replacement water must be appurtenant to this site until a plan for augmentation is obtained.
8. All pumping for dust control purposes shall be measured in a manner acceptable to the division engineer.

9. 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. Notice must be provided and approval made by the water commissioner at least 48 hours prior to the release of replacement water, or as required by the water commissioner.
10. If approved by the division engineer, 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 any aggregated release.
11. Conveyance loss for delivery of augmentation water is subject to assessment and modification as determined by the water commissioner or division engineer.
12. Adequate accounting of depletions and replacements must be provided to the division engineer in Greeley ([DNR.Div1Accounting@state.co.us](mailto:DNR.Div1Accounting@state.co.us)) and the water commissioner (Shera Sumerford at [Shera.Sumerford@state.co.us](mailto:Shera.Sumerford@state.co.us)) on a monthly basis or other interval acceptable to both of them. Submitted accounting shall conform to the Administration Protocol "*Augmentation Plan Accounting, Division One - South Platte Basin*" (attached).

In addition, it is the applicant's responsibility to verify that the entities making replacements are identifying this use on their accounting submitted to our office. For the period of this plan, that entity is the City of Longmont.

13. The name, mailing address, and phone number of the contact person who will be responsible for operation and accounting of this plan must be provided on the accounting forms to the division engineer and water commissioner.
14. The approval of this SWSP does not relieve the Applicant and/or landowner of the requirement to obtain a Water Court decree approving a permanent plan for augmentation or mitigation to ensure the permanent replacement of all depletions, including long-term evaporation losses and lagged depletions after gravel mining operations have ceased. If reclamation of the mine site will produce 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 and lagged depletions. If a lined pond results after reclamation, replacement of lagged depletions shall continue until there is no longer an effect on stream flow.
15. 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 attributable to the dewatering operation, thus dewatering is required to continue during the term of this plan. The operator shall equip the dewatering operations with a totalizing flow meter and report monthly meter readings which will be used to determine the post-pumping depletions when dewatering ceases. Once dewatering at the site ceases, the delayed depletions must be addressed, including depletions resulting from the gradual refilling of the pit. At least three years prior to completion of dewatering, a plan must be submitted that specifies how the post pumping dewatering depletions (including refilling of the pit) will be replaced, in time, place and amount.
16. If dewatering of the site is discontinued, the pit would fill creating additional depletions to the stream system due to increased evaporation. To assure that additional depletions to the river do not occur, a financial warranty for \$2,747,911 for lining or backfilling of the pit has been

obtained. Therefore, if the dewatering is discontinued this warranty can finance the completion of the lining of this pit or the backfilling, thus preventing depletions to the stream system.

17. The state engineer may revoke this SWSP or add additional restrictions to its operation if at any time the state engineer determines that injury to other vested water rights has or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all excavation of product from below the water table, and all other use of water at the pit, must cease immediately.
18. 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 if the substitute supply is of a quality to meet the requirements of use to which the senior appropriation receiving the substitute supply has normally been put. As such, water quality data or analyses may be requested at any time to determine if the requirement of use of the senior appropriator is met.
19. 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 water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the state engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, 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.

Should there be any further comments or questions, please contact Michael Hein in Greeley at 970-352-8712 or Sarah Brucker of this office.

Sincerely,



Jeff Deatherage, P.E.  
Chief of Water Supply

Attachments: Figure 1  
Table 1  
Water Supply Agreement  
Administration Protocol “*Augmentation Plan Accounting, Division One - South Platte River*”

Cc: Michael Hein, Lead Assistant Division Engineer, [Michael.Hein@state.co.us](mailto:Michael.Hein@state.co.us)  
810 9<sup>th</sup> Street, Ste. 200, Greeley, CO 80631, (970) 352-8712

Shera Sumerford, Water Commissioner, Water District 5, [Shera.Sumerford@state.co.us](mailto:Shera.Sumerford@state.co.us)

Amy Eschberger, Division of Reclamation Mining and Safety, [Amy.Eschberger@state.co.us](mailto:Amy.Eschberger@state.co.us)

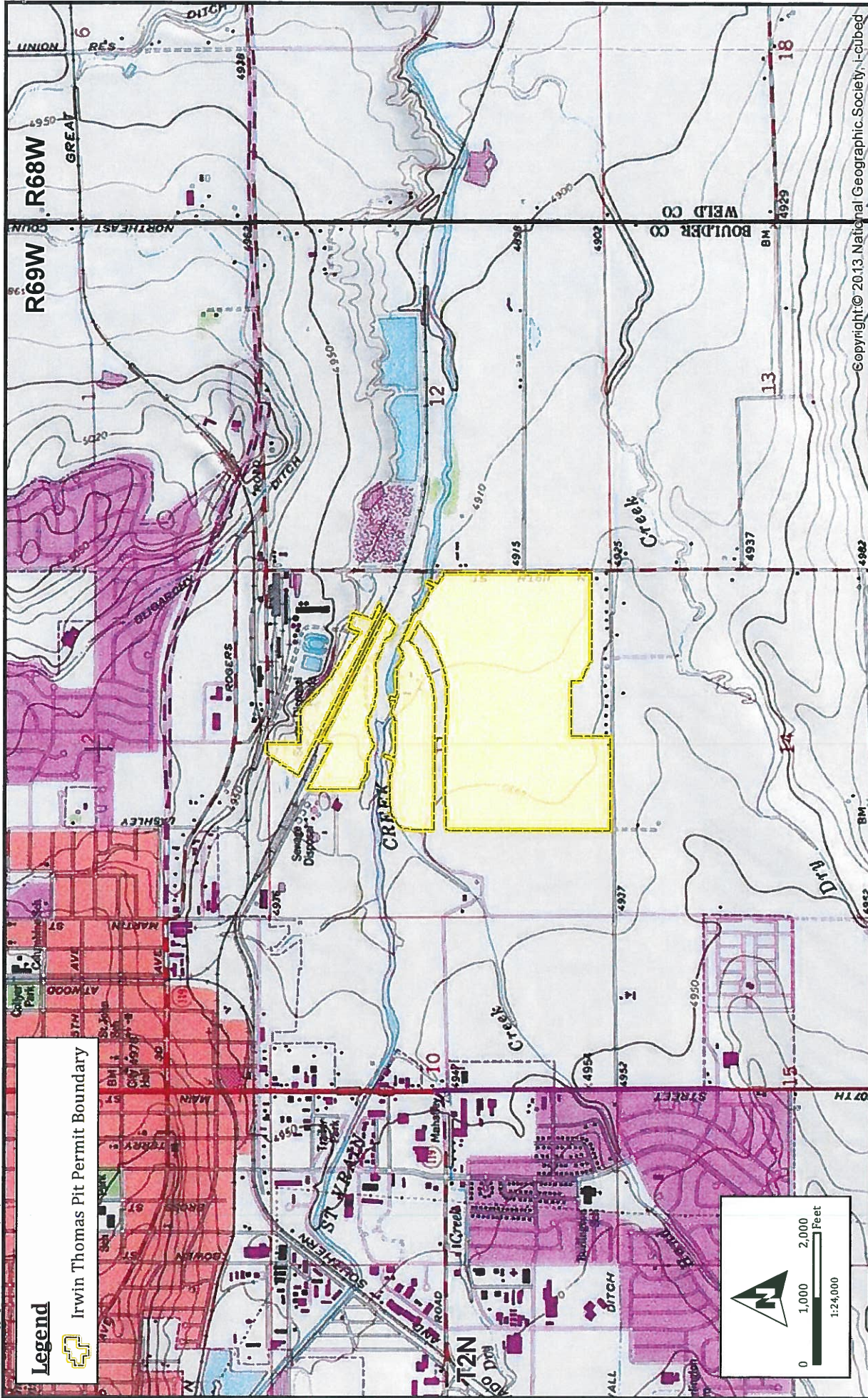


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# Legend



Irwin Thomas Pit Permit Boundary



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## IRWIN THOMAS PIT SWSP

### Overview Map

Date: 6 May 2016

Job #: 06-103

Drawn By: JMD

Figure:

1

Of:

1



**Table 1**  
**2019 Water Balance**  
**Irwin/Thomas Pit Substitute Water Supply Plan**

Date Revised: 10/4/2018

AG Job #: 06-103

All values in ac-ft unless noted

	Depletions								Replacements		
	Monthly Net	Exposed Water		On-site	Water	Water used			Longmont		
Month	Evap (ft) (A)	Surface Area (acres) (B)	Evaporative Losses (C)	Aggregate Production (tons) (D)	Retained in Product (E)	for Dust Control (F)	Total CU (G)	Lagged Depletions (H)	Lease Volume (I)	Longmont Lease Credit (J)	Water Balance (K)
Jan-19	0.08	2.5	0.20	62,000	1.82	0.07	2.09	0.15	0.2	0.20	0.05
Feb-19	0.09	2.5	0.23	56,000	1.65	0.10	1.97	0.56	0.6	0.60	0.04
Mar-19	0.13	2.5	0.33	62,000	1.82	0.13	2.28	0.82	0.9	0.90	0.08
Apr-19	0.20	2.5	0.50	60,000	1.77	0.20	2.47	1.04	1.1	1.10	0.06
May-19	0.25	2.5	0.63	62,000	1.82	0.23	2.68	1.24	1.3	1.30	0.06
Jun-19	0.38	2.5	0.95	60,000	1.77	0.23	2.95	1.43	1.5	1.50	0.07
Jul-19	0.44	2.5	1.10	62,000	1.82	0.23	3.15	1.62	1.7	1.70	0.08
Aug-19	0.38	2.5	0.95	62,000	1.82	0.23	3.00	1.79	1.8	1.80	0.01
Sep-19	0.26	2.5	0.65	60,000	1.77	0.23	2.65	1.86	1.9	1.90	0.04
Oct-19	0.18	2.5	0.45	62,000	1.82	0.13	2.40	1.85	1.9	1.90	0.05
Nov-19	0.10	2.5	0.25	60,000	1.77	0.13	2.15	1.81	1.9	1.90	0.09
Dec-19	0.08	2.5	0.20	62,000	1.82	0.07	2.09	1.77	1.8	1.80	0.03
Total	2.57		6.43	730,000	21.49	1.98	29.89	15.95	16.6	16.60	0.65

**Notes:**

- (A) Monthly Evaporation rates from previous AI CoSSP approvals
- (B) Estimated exposed groundwater acreage
- (C) Monthly Evap rate (Col A) multiplied by current monthly exposed surface area (Col B)
- (D) Estimated aggregate production
- (E) Assuming material is 4% water by weight; material is mined in a dewatered state but may be washed
- (F) Estimated water needed for dust control on-site
- (G) Total Consumptive Use (CU) is Col C + Col E + Col F
- (H) CU amount is lagged back to river using Glover equation
- (I) Lease from the City of Longmont
- (J) Credit from the City of Longmont lease after transit loss is assessed
- (K) Water Balance = (J) - (H)

Unit Transit Loss =	0.00%	per mile
Lease Transit Distance =	0	miles
Lease Total Transit Loss =	0.00%	

## WATER SUPPLY AGREEMENT

This WATER SUPPLY AGREEMENT ("Agreement") is made and entered into this 2<sup>nd</sup> day of October, 2018, by and between the City of Longmont, a municipal corporation organized under the laws of the State of Colorado and acting by and through its Water Utility Enterprise ("Longmont"), whose address is 1100 South Sherman Street, Longmont, Colorado 80501, and Aggregate Industries – WCR, Inc., a Colorado corporation, whose mailing address is P.O. Box 80633, Greeley CO 80633 ("Customer"). Longmont and Customer may sometimes be referred to herein individually as a "Party" or collectively as "Parties."

### **RECITALS**

A. Longmont, a home rule municipality in Boulder County, Colorado, duly organized and existing under Article XX of the State Constitution, acting on behalf of its water utility enterprise, is authorized, pursuant to Sections 1.2, 1.3 and 11.1 of Longmont's Home Rule Charter and Section 31-15-101, et seq., C.R.S., as amended, to acquire, hold, lease and dispose of real and personal property, including water and water rights.

B. Longmont owns water, water rights, or water credits in the St. Vrain Creek basin that are fully consumable.

C. Longmont and Customer desire to enter into this Agreement to provide water to be supplied by Longmont to Customer.

D. Pursuant to Section 14.09.030 of the Longmont Municipal Code, Longmont's General Manager of Public Works and Natural Resources, or the General Manager's designee, is authorized to enter into and execute water rights leases or raw water supply agreements, at the then-current rental market rates for agricultural and other uses, or exchange agreements by which Longmont obtains water of equal or greater value, of one year or less.

### **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. **Supply.** Longmont hereby agrees to provide to Customer 16.6 acre-feet of fully consumable water (the "Subject Water"). The Subject Water may be selected and delivered by Longmont, in its discretion, from various sources including reusable effluent, water stored in Union Reservoir, other fully consumable water controlled by Longmont or water from any other source, provided the Subject Water shall be usable by Customer for its stated purpose.



## 2. Deliveries.

2.1. Point of delivery. Longmont shall, at its sole discretion, deliver the Subject Water at either (hereinafter the "Delivery Point"): (1) the outfall of Longmont's municipal wastewater treatment plant, presently located in the SE¼ NW¼ of Section 11, T2N, R69W of the 6<sup>th</sup> P.M., Boulder County, Colorado, or (2) the confluence of Spring Gulch and the Saint Vrain Creek, presently located in the SE1/4 of Section 7, T2N, R68W of the 6<sup>th</sup> P.M., Weld County, Colorado. Customer shall bear any losses associated with conveyance of the Subject Water from the Delivery Point to any location where Customer may use the Subject Water. Longmont shall be responsible for all losses and/or return obligations associated with delivery of the Subject Water to the Delivery Point.

2.2. Timing of deliveries. The Subject Water shall be delivered based upon the following schedule:

<u>Month</u>	<u>Year</u>	<u>Ac-Ft</u>
January	2019	0.2
February	2019	0.6
March	2019	0.9
April	2019	1.1
May	2019	1.3
June	2019	1.5
July	2019	1.7
August	2019	1.8
September	2019	1.9
October	2019	1.9
November	2019	1.9
December	2019	1.8
Total		16.6

2.3. Accounting. Longmont shall maintain an accounting of all deliveries of the Subject Water to Customer, and shall provide monthly copies of such accounting to Customer upon request.

3. Use of Subject Water. Customer shall use the Subject Water for the purpose of operating a Temporary Substitute Water Supply Plan at the Irwin-Thomas Pit located in Section 11, Township 2 North, Range 69 West, in Boulder County, CO (the "Property"). No change of Longmont's water rights shall be applied for or reviewed as part of such use. Customer shall be responsible for obtaining all necessary authorizations, approvals, decrees, and/or permits from any and all private entities, and local, state, and federal agencies, as may be required to effectuate use of the Subject Water by Customer pursuant to this Agreement. If requested, Customer shall provide copies of any such authorizations, approvals, and permits to Longmont.



4. Rate. Customer agrees to pay Longmont \$641.00 per acre-foot. The total price for the 16.6 acre-feet of Subject Water is \$10,640.60. Payment to Longmont of \$10,640.60 is due upon execution of this Agreement; such payment shall be nonrefundable and not contingent upon whether the Subject Water is actually diverted or used by Customer, so long as Longmont delivered the Subject Water based upon the schedule in paragraph 2 above.

5. Term. The term of this Agreement shall begin January 2019 and shall end on December 31, 2019.

6. Untreated water. The water delivered to Customer under this Agreement is untreated or non-potable water of whatever quality that is now or in the future available from the sources specified herein. Delivery of non-potable water under this Agreement will be on an "as is" basis only, and Longmont does not warrant the quality of the Subject Water or the suitability of the Subject Water for any particular purpose. Customer shall not make any claim against Longmont arising from the quality of water delivered, and Longmont shall have no treatment responsibility for the Subject Water made available under this Agreement.

7. Indemnification. Customer shall bear all responsibility for its use of the Subject Water provided under this Agreement, together with the costs associated therewith. To the extent allowed by law, Customer shall defend, indemnify and hold harmless Longmont from and against any and all damages, claims, losses, obligations, other costs, and other liabilities arising out of Customer's use of the Subject Water provided under this Agreement.

8. Transfer and assignment. This Agreement, and the right to use the Subject Water, may not be transferred, assigned, subleased or otherwise conveyed by Customer for use at locations other than the Property without the prior written consent of Longmont.

9. Use Restrictions and Accounting. Customer shall not use any water provided by Longmont under this Agreement for any oil and gas operation, nor suffer such water to be put to such use by anyone to whom Customer conveys the water, or their ultimate successors or assigns. Customer shall not provide this water to any subject political entity or for any use within an urbanized area, as those terms are defined in Chapter 14.09 of the Longmont Municipal Code, as amended, nor suffer the water to be transferred to such entities or used in such areas by anyone to whom Customer conveys the water, or their ultimate successors or assigns. Customer shall account for, and make record of, all uses, deliveries, and transfers of the water provided by Longmont under this Agreement; shall include such information in the monthly State accounting form required to be submitted to the State Engineer's Office, Division One Engineer; and shall provide Longmont a copy of such form when it is submitted thereto or required to be submitted thereto, whichever is sooner.

10. Water conservation. Customer agrees to implement or continue reasonable Best Management Practices ("BMP") for water conservation during the term of this Agreement. This paragraph shall not be construed to require any specific BMP but shall broadly be held to encourage reasonable, cost effective efforts to conserve water used by Customer both under this Agreement and for base water supplies used by Customer. Procedures and application processes

for this paragraph shall be as outlined in the City's annual Water Supply and Drought Management Plan.

11. Integration. This instrument embodies the whole agreement of the Parties with respect to the subject matter contained herein. This Agreement shall supersede all previous communications, representations, or agreements, whether verbal or written, between the Parties hereto. There shall be no modification of this Agreement nor waiver of any of its provisions except upon mutual agreement of the Parties expressed in writing, executed with the same formalities as this instrument.

12. Default; Remedies. A default shall be deemed to have occurred if either Party breaches its obligations hereunder and fails to cure such breach within thirty (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 this 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.

13. Notices and payments. All notices, payments and other communications under this Agreement shall be in writing, except as otherwise provided for in this Agreement. 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; on the next business day after deposit for overnight delivery by a courier service such as Federal Express; 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:

Longmont:	City of Longmont PW&NR General Manger 1100 South Sherman Street Longmont, Colorado 80501 Facsimile (303) 651-8812
With a Copy to:	City of Longmont City Attorney 408 Third Avenue Longmont, Colorado 80501
Customer:	Aggregate Industries – WCR, Inc. P.O. Box 337231 Greeley, CO 80633



Persons and addresses to which notices are to be sent may be changed by the same method.

14. No beneficiaries. This Agreement is for the sole benefit of and binds the Parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any person besides Longmont or Customer receiving services or benefits under this Agreement is only an incidental beneficiary.

15. Governmental immunity. Nothing in this Agreement shall be construed to waive Longmont's protection from liability or the limitations on its liability due to its sovereign immunity under the Colorado Governmental Immunity Act or otherwise.

16. Governing law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event of litigation over this Agreement, jurisdiction and venue shall be proper and exclusive in the District Court in and for Boulder County, State of Colorado.

17. Force majeure. Customer acknowledges that the availability of the Subject Water provided for hereunder is dependent upon natural water resources that are variable in quantity of supply, and which can be affected by causes beyond Longmont's control. Moreover, Longmont shall not be liable for any delay or failure to perform its obligations under this Agreement caused by an event or condition beyond the reasonable control of, and without the fault of Longmont, including, without limitation failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, contamination, war, terrorist act, riot, civil disturbance, labor disturbance, accidents, sabotage, or restraint by court or restrictions by other public authority which delays or prevents performance (including but not limited to the adoption or change in any rule, policy, or regulation or environmental constraints imposed by federal, state or local governments), which Longmont could not reasonably have avoided by exercise of due diligence and foresight. Upon the occurrence of such an event or condition, the obligations of Longmont under this Agreement shall be excused and suspended without penalty or damages, provided that Longmont shall give Customer written notice describing the particulars of the occurrence or condition, the suspension of performance is of no greater scope and of no longer duration than is required by the event or condition, and Longmont proceeds with reasonable diligence to remedy its inability to perform and provides progress reports to Customer describing the actions taken to remedy the consequences of the event or condition.

18. Independent contractors. Both Parties shall perform all services under this Agreement as independent contractors, and not as an agent or employee of the other Party. No official or employee of Longmont shall supervise Customer. No official or employee of Customer shall supervise Longmont. Neither Party shall represent that it is an employee or agent of the other Party in any capacity. Neither Party has any right to worker's compensation benefits from the other Party or its insurance carriers or funds. Customer shall pay any federal and state income tax on money earned under this Agreement.

19. No continuing duty to supply water. Longmont shall have no obligation to supply water to Customer after this Agreement expires or is otherwise terminated. By agreeing to deliver

water to Customer under this Agreement, Longmont does not intend to represent itself as a public utility to Customer or others in such regard nor shall it be deemed to operate as a public utility. Customer shall not assert that Longmont is a public utility by reason of delivering water pursuant to this Agreement, nor that it is subject to regulation as a public utility or subject to regulation by the Colorado Public Utilities Commission or to rate regulation by any other public entity.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement. Facsimile signatures shall be acceptable and binding upon all Parties.

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

22. Negotiated provisions. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both Longmont and Customer have contributed substantially and materially to the preparation of this Agreement.

23. Authority. The Parties warrant that they have taken all actions necessary or required by their own procedures, bylaws, or applicable law, to authorize their respective signatories to sign this Agreement for them and bind them to its terms.

Executed as of the date first set forth above.

*Signatures on following page*



CITY OF LONGMONT, acting by and through its Water Utility Enterprise:

Ken S. Huson  
Water Resources Manager

APPROVED AS TO FORM

[Signature]  
Assistant City Attorney

10/1/18  
Date

CA File: 10707

State of Colorado     )  
                                  ) ss:  
County of Boulder    )

The foregoing instrument was acknowledged before me by Ken S. Huson of the City of Longmont, this 2<sup>nd</sup> day of October, 2018.

Witness my hand and official Seal.

Heather McIntyre  
Notary Public

My Commission expires 05/29/2022





CUSTOMER:  
AGGREGATE INDUSTRIES – WCR, INC.

By: Joel Bolduc  
Joel Bolduc, Regional Land and Environment Manager

State of Colorado )  
County of Jefferson ) ss:

The foregoing instrument was acknowledged before me by Joel Bolduc,  
(Name of Party Signing)

as Reg. Land + Envir. Mgr. of Aggregate Industries-WCR, Inc.  
(Title of Party Signing) (Name of Corporation)

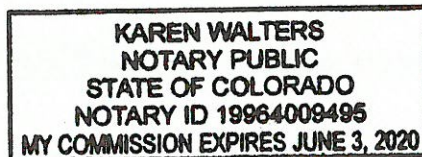
a Colorado corporation, on behalf of the corporation, this  
(State of Incorporation)

4th day of October, 2018.

Witness my hand and official Seal.

Karen Walters  
Notary Public

My Commission expires 6-3-2020.



# 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](tel:970-352-8712)) and division engineer at [Div1Accounting@state.co.us](mailto: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:

“Plan**WDID**\_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 undecreed 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)