



Megan Sullivan, P.E.  
Division of Water Resources  
Office of the State Engineer  
1313 Sherman Street, Room 818  
Denver CO 80203

September 11, 2020

RE: Kilgore Companies, LLC dba Peak Materials, Division 5 Request for Approval of a Substitute Water Supply Plan

Dear Megan:

On behalf of Kilgore Companies, LLC dba Peak Materials ("Applicant"), LRE Water. ("LRE") requests approval of a Substitute Water Supply Plan ("SWSP") submitted pursuant to C.R.S. § 37-92-308 (5) for its gravel mining operation within the Peak Ranch Resource Site ("Peak Ranch"), located in Summit County, Colorado. The requested approval period is November 1, 2020 through October 31, 2021. The applicant's contact information is:

Russ Larsen  
556 Struthers Ave.  
Grand Junction, CO 81505  
Telephone No.: 800-675-4598  
E-Mail: russ.larsen@kilgorecompanies.com

This SWSP request was provided electronically to [dwrpermitsonline@state.co.us](mailto:dwrpermitsonline@state.co.us) and the \$300 filing fee will be paid by credit card following the submittal. Pursuant to C.R.S. § 37-92-308 (5) written notice of this SWSP request and a copy of this request have been provided to all parties on the Division 5 SWSP notification list. A copy of the notice and Certificate of Service are attached.

This letter report presents background information, projected water usage and consumption for the 2020-2021 period including the associated engineering calculations and assumptions, and the proposed plan for replacing out-of-priority depletions.

## BACKGROUND

Peak Ranch is located in Summit County, Colorado, on the East bank of the Blue River, approximately seven miles upstream of Green Mountain Reservoir. Mining operations will take place at an elevation of approximately 8,225 feet, within a distance of approximately 600 feet of the Blue River, in Section 20 of Township 3 South, Range 78 West of the 6th P.M. **Figure 1** shows a location map for the Peak Ranch site. Peak Materials submitted their application for a Regular 112 Operation Reclamation Permit to the Colorado Division of Reclamation, Mining, and Safety ("DRMS") in August 2020.

The mining operation will be separated into two phases. The plan for Phase I is to “dry” mine (stay above the groundwater level) approximately 400,000 tons per year of material over a three-year period, while “wet” mining (below the groundwater table) will occur during a future Phase II. On-site water use during Phase I will consist solely of water for dust suppression, evaporation from an on-site augmentation pond, and for continued irrigation on the property. Only the dust suppression use and augmentation pond evaporation are the subject of the SWSP - the continued irrigation use will occur under decreed water rights associated with the Hawk Hill Pump and Pipeline water right. This water right operates pursuant to a Water Court approved plan for augmentation, which provides for releases from Green Mountain Reservoir to replace the out-of-priority depletions and was decreed in Case No. 89CW167.

All processing and washing of mined material will occur at the permitted Maryland Creek Ranch (“MCR”) gravel pit, located approximately seven miles upstream. Aggregate mining in MCR began in the late 1990s under DRMS Permit No. M-1996-049 and has been operating under SWSP ID 3594. The current SWSP approval for MCR runs through December 2020.

Total water consumption associated with the Peak Ranch mining operation during the period covered by this SWSP is estimated at 2.08 acre-feet (“af”) for the dust control operation, and up to a total maximum water consumption of 2.21 af, which includes evaporative losses from the augmentation pond once constructed. **Table 1**, attached, summarizes, on a monthly basis, the estimated water depletions. The out-of-priority depletions will be replaced via upstream releases to the Blue River of water available to Applicant pursuant to a Water Supply Contract with the Colorado River Water Conservation District (“CRWCD”). A copy of the executed Water Supply Contract, dated August 28, 2020, is attached as **Appendix A**. The CRWCD will release water from Upper Blue Lake, located upstream of the Peak Ranch in the headwaters of the Blue River, for direct replacement of out-of-priority depletions or for diversion from the Blue River by Applicant and storage in the on-site augmentation pond for subsequent release. A transit loss of 2.8% will be added to releases from Upper Blue Lake to account for any losses occurring between the point of release and the Peak Ranch. The methodologies utilized to calculate the water depletions are outlined in detail in the following paragraphs.

## **PROJECT DEMANDS AND DEPLETIONS**

Once the necessary approvals are received, Peak Materials plans to mine 400,000 tons of material from the Peak Ranch gravel pits during the 2020/2021 operational year. Mining will be conducted under “dry” conditions meaning all the mined material will be excavated above the natural groundwater table. Operational water for dust suppression will be diverted from the Blue River by means of a pumpset, which consists of a diesel generator and a water pump, at the currently decreed point of diversion for the Hawk Hill Pump and Pipeline irrigation water right.

Peak Materials will load the mined material into trucks for transportation, to its currently

permitted and operating MCR facility, where the gravel will be processed into construction products for local use including: sand, gravel, topsoil, aggregate, fill, asphalt, concrete, and road base. No raw material will be stockpiled at Peak Ranch, nor will any processing occur at the Peak Ranch facility. The MCR facility will reduce the amount of material processed from on-site gravel mining to offset the amount of material being trucked in for processing from the Peak Ranch gravel pit, so there will be no change to the depletions covered under the current MCR SWSP approval.

The water requirements for Peak Ranch total approximately 2.08 af/yr up to a maximum of 2.21 af/yr once the augmentation pond is constructed and operational. The monthly distribution is shown on the attached **Table 1**. The background and analyses are described below.

### **Water Losses due to Dust Suppression**

Water required for dust control was estimated based upon historical water use at the MCR gravel pit. The 2016 through 2019 average rate of 42,343 square feet (sf) of operational area and roads per acre-foot of water, which assumes that dust control demands increase or decrease with the amount of area being sprayed, was applied to approximately 88,000 sf of operational area and roads, which approximates the Peak Ranch Phase I operational area and distributed monthly based on the historical distribution at MCR. Operations for dust control within Peak Ranch's roads are considered 100% consumptive. It is estimated that losses due to dust control operations for 2020/2021 will total 2.08 af.

### **Water Retained in Product**

Consumption use associated with water retained in washed material was calculated based upon the percentages (by weight) outlined in the General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits. A 2% loss was estimated for material mined above the groundwater table. Calculations show that losses due to water retained in washed material will be approximately 5.89 af/yr. Based upon discussions with the Colorado Division of Water Resources ("CDWR"), the 2% loss will be charged at the MCR site and replaced under the approved MCR SWSP and is not covered under this SWSP.

### **Augmentation Pond Evaporation**

The total open surface area of the proposed augmentation pond is 0.15 acre. A portion of the water leased from the CRWCD may be diverted, when available from June through October, and stored in the pond for later release to cover depletions when deliveries from Upper Blue Lake are not possible during the winter season. The average total annual evaporation from the pond is estimated at 0.13 af. If necessary, the pond will be lined to prevent the interception of groundwater and will not create delayed evaporation depletions.

The augmentation pond is an off-channel structure. The pond has a total water surface area of 0.15 acre. The average annual evaporation rate is 2.56 feet (36.0 inches) and the average annual evaporation from 0.15 acre of pond surface area is 0.13 af as shown on the attached

**Table 2.** The evaporation was calculated using the gross annual evaporation rate of 36.0 inches derived from the isopleths of shallow lake evaporation for Colorado in the NOAA Technical Report NWS 33, Evaporation for the Contiguous 48 United States. The gross evaporation was distributed monthly in accordance with the SB120 Guidelines for ponds above 6500 feet in elevation. No credit was taken for effective precipitation and the pond was assumed to be frozen from mid-November through the beginning of April. The evaporation calculation is presented on the attached **Table 2**.

### **Irrigation**

Irrigation on the Peak Ranch will occur in order to establish grasses and trees on the berms. The existing Hawk Hill Pump and Pipeline direct surface diversion from the Blue River will be used to meet the irrigation demand. Depletions from the continued irrigation on the property will be replaced as required under the current plan for augmentation (Case No. 89CW167), and are not covered under this SWSP.

### **TOTAL DEPLETIONS**

The Phase I water demands for the mining operation are for on-site dust suppression operations and replacement of evaporative loss occurring from water stored in an on-site augmentation pond for subsequent release during months when releases are unavailable from Upper Blue Lake. The physical water supply for the project will be diversions from the Blue River via a pump and pipeline, at the decreed point of diversion for the Hawk Hill Pump and Pipeline (see Case No. 89CW167). Total depletions associated with the Peak Ranch mining operation is 2.21 af.

### **REPLACEMENT SOURCES**

The out-of-priority depletions will be replaced with 3.0 af of CRWCD Blue River contract water in conjunction with operation of an on-site augmentation pond. Prior to the augmentation pond being constructed, Peak Ranch will cease dust control operations and, thus, on-site water use under this SWSP, during any period when Upper Blue Lake deliveries are not feasible.

### **OPERATION OF PLAN**

#### **River Administration**

The Blue River is subject to calls from senior rights year-round. Based on the Green Mountain Reservoir Administrative Protocol, the Blue River is administered year-round; therefore, replacement water is required for out-of-priority depletions January through December.

#### **Replacement of Depletions**

A monthly balance of depletions and replacement water sources is shown on the attached **Table 1**. The analysis indicates that up to approximately 2.28 af of contract storage releases

pursuant to the CRWCD Water Supply Contract, including a 2.8%<sup>1</sup> transit loss, are required to offset the balance of potential out-of-priority depletions. Peak Materials' CRWCD contract, for 3.0 af, is sufficient to cover the downstream out-of-priority depletions.

Due to potential avalanche conditions in the vicinity of Upper Blue Lake, releases are potentially not feasible during the period of November through May. A portion of the water released from Upper Blue Lake during the period when contract water is available may be delivered to an on-site augmentation pond for storage and subsequent release. Peak Ranch will curtail dust suppression operations during times when there is a valid downstream call administered prior to construction of the on-site augmentation pond.

### **No Injury to Vested Water Rights**

As proposed, the SWSP will replace all out-of-priority depletions in time, location, and amount and will otherwise continue on from 37-92-308 (5)(a)(IV)(A). There will be no injury to other vested water rights if the SWSP is operated as described above.

Please call if you have any questions or need additional information.

Sincerely,

### **LRE Water**



Angela B. Schenk  
Project Hydrogeologist



R. Scott Fifer, P.H.  
Senior Advisor

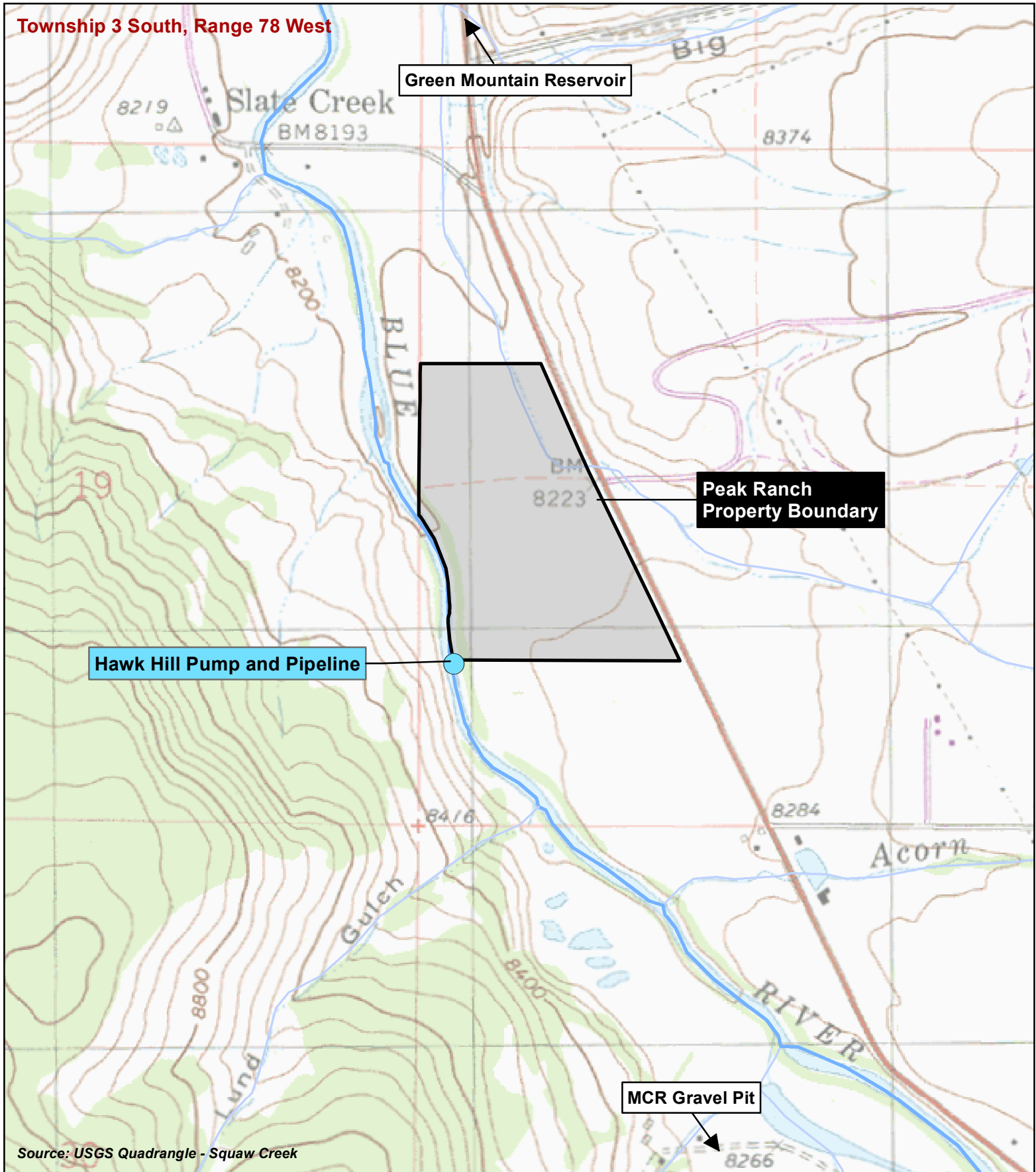
21525KILG01-20

### **Attachments**

CC: Alan Martellaro, P.E., Division 5 Engineer  
Troy Wineland, District 36 Water Commissioner  
Russ Larsen  
Christopher Thorne

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<sup>1</sup> Calculated based on the State's accepted transit loss rate of 0.08% per mile, applied in accounting for Tenmile Creek, over the 35 miles from the Upper Blue Lake to the location of depletion (0.08% / mile \* 35 miles = 2.8% transit loss).



**Figure 1**  
**Peak Ranch Location Map**  
**Kilgore Companies LLC dba Peak Materials**



**Table 1**  
Peak Materials  
**Phase I**

Peak Ranch - Gravel Pit Depletions and Replacement

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
Month	PRODUCTION			DEPLETIONS					REPLACEMENTS							
	Mined Material		Total	Exposed Pit Net Evap (af)	First/Int. Fill (af)	Water for Dust Control (af)	Total Depletions (af)	Lagged Depletions (af)	Upper Blue Lake Direct Augmentation (af)	Augmentation Pond Operation				Upper Blue Lake TOTAL Releases (af)	Upper Blue Lake Releases with Transit Loss (af)	
	Above GW (Tons)	Below GW (Tons)								BOM Storage (af)	Upper Blue Inflows (af)	Augmentation Releases (af)	Evaporation (af)			EOM Storage (af)
Jan	0	0	0	0.0	0.00	0.00	0.00	N/A		0.65		0.00	0.00	0.65	0.00	0.0
Feb	0	0	0	0.0	0.00	0.00	0.00	N/A		0.65		0.00	0.00	0.65	0.00	0.0
Mar	0	0	0	0.0	0.00	0.00	0.00	N/A		0.65		0.00	0.00	0.65	0.00	0.0
Apr	36,000	0	36,000	0.0	0.00	0.25	0.25	N/A		0.65		0.25	0.04	0.36	0.00	0.0
May	40,000	0	40,000	0.0	0.00	0.30	0.30	N/A		0.36		0.30	0.06	0.00	0.00	0.0
Jun	44,000	0	44,000	0.0	0.00	0.30	0.30	N/A	0.30	0.00		0.00		0.00	0.30	0.30
Jul	60,000	0	60,000	0.0	0.00	0.29	0.29	N/A	0.29	0.00		0.00		0.00	0.29	0.30
Aug	60,000	0	60,000	0.0	0.00	0.32	0.32	N/A	0.32	0.00		0.00		0.00	0.32	0.33
Sep	56,000	0	56,000	0.0	0.00	0.25	0.25	N/A	0.25	0.00		0.00		0.00	0.25	0.26
Oct	72,000	0	72,000	0.0	0.00	0.25	0.25	N/A	0.25	0.00	0.81	0.00	0.03	0.78	1.06	1.09
Nov	32,000	0	32,000	0.0	0.00	0.13	0.13	N/A		0.78		0.13	0.01	0.65	0.00	0.00
Dec	0	0	0	0.0	0.00	0.00	0.00	N/A		0.65		0.00	0.00	0.65	0.00	0.0
TOTAL	400,000	0	400,000	0.00	0.00	2.08	2.08		1.40		0.81	0.68	0.13		2.21	2.28

Exposed Pit Area (acres)

0.0

Augmentation Pond Surface Area (acres)

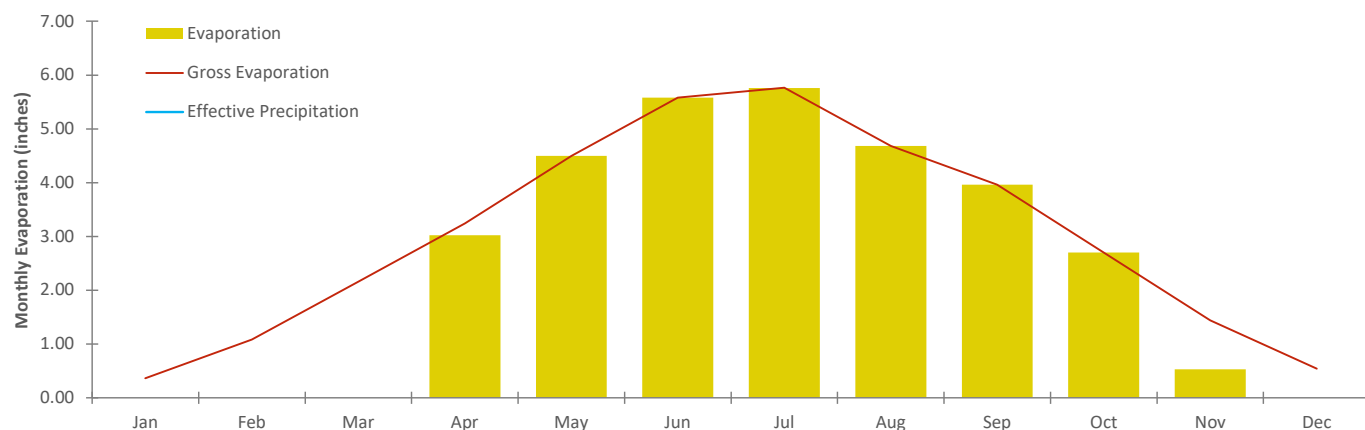
0.15

Source: Depletion calculations based on the "General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits."

**Notes:**

- (1) Tons of material mined from above the groundwater table. For Phase 1 all mining will occur above groundwater table.
- (2) Tons of material mined from below the groundwater table. For Phase 1 no mining will occur below the groundwater table.
- (3) Total excavated material removed from the pit during the month = Column (1) + Column (2)
- (4) Zero exposed pit area in Phase I.
- (5) Equals Column (2) x 2,000 / 120 / 43,560 x (1-0.3) - Column (2) x 4% x 2,000 / 62.4 / 43,560
- (6) Estimated based on average historical rate (42,343 square feet of area per acre-foot of water) and historical distribution at the Maryland Creek Ranch Resource.
- (7) Equals Column (4) + Column (5) + Column (7)
- (8) Water pumped directly from the river using the Hawk Hill Pump and Pipeline. N/A because depletions are instantaneous.
- (9) Upper Blue Lake releases for direct augmentation occurring from mid-June through mid-November.
- (10) Beginning of month content of Upper Blue Lake contract water stored in the augmentation pond.
- (11) Inflows into the augmentation pond from releases of Upper Blue Lake contract water for subsequent release to replace winter season depletions and evaporation losses.
- (12) Releases from augmentation pond to cover project depletions.
- (13) Equals the gross evaporation rate (see **Table 2**) times the augmentation pond surface area.
- (14) Equals Column (10) + Column (11) - Column (12) - Column (13).
- (15) Equals Column (9) + Column (11).
- (16) Equals Column (15) times 1.028%. (Calculated based on the 0.08% transit loss / mile \* 35 miles = 2.8% transit loss).

**TABLE 2**  
**Monthly Evaporation Analysis for Peak Materials**  
**Peak Ranch Augmentation Pond**



~TOTAL POND SURFACE AREA (ACRES): **0.15**  
~ELEVATION (FEET): **8,220**

**Reservoir Evaporation**

								Evaporation		Ponds Evaporation (AF)	TOTAL Net Monthly Evaporation (AF)
Month	SEO Monthly Distribution	Gross Evaporation (in)	Gross Evaporation (af)	Average Precip. (in)	Effective Precip (in)	Adj. Effective Precip (in)	% of Month Avg. Temp. < 32 deg F	(in)	(ft)		
1 Jan 31	1.0%	0.36	0.00				100.0%	0.00	0.00	0.00	0.00
2 Feb 28	3.0%	1.08	0.01				100.0%	0.00	0.00	0.00	0.00
3 Mar 31	6.0%	2.16	0.03				100.0%	0.00	0.00	0.00	0.00
4 Apr 30	9.0%	3.24	0.04				6.7%	3.02	0.25	0.04	0.04
5 May 31	12.5%	4.50	0.06				0.0%	4.50	0.38	0.06	0.06
6 Jun 30	15.5%	5.58	0.07				0.0%	5.58	0.47	-	0.00
7 Jul 31	16.0%	5.76	0.07				0.0%	5.76	0.48	-	0.00
8 Aug 31	13.0%	4.68	0.06				0.0%	4.68	0.39	-	0.00
9 Sep 30	11.0%	3.96	0.05				0.0%	3.96	0.33	-	0.00
10 Oct 31	7.5%	2.70	0.03				0.0%	2.70	0.23	0.03	0.03
11 Nov 30	4.0%	1.44	0.02				63.3%	0.53	0.04	0.01	0.01
12 Dec 31	1.5%	0.54	0.01				100.0%	0.00	0.00	0.00	0.00
<b>TOTAL</b>	100.0%	<b>36.00</b>	<b>0.45</b>	0.00	0.00	0.00		30.73	2.56	0.13	<b>0.13</b>

Note: The State's monthly distribution was taken from SB 120 guidelines for reservoirs above 6,500 feet in elevation.  
The gross annual evaporation was based on NOAA NWS Atlas Lines, analyzed in GIS.  
If pond is off-channel, net evaporation equals gross evaporation. According to State Policy No. 2004-3, off-channel ponds cannot account for effective precipitation (gravel pits exempt)  
Effective precipitation is equal to 70% of the monthly precipitation.  
The percent of the month that temperatures are equal to or below 32 degrees Fahrenheit is based on climate data that was collected at the DILLON 1E weather station adjusted for difference in elevation. Used 8,220 foot elevation for temperature adjustments (3.6 degrees/1000 feet in elevation change).  
The net evaporation is equal to the gross evaporation adjusted to account for icing temperatures and effective precipitation.



# **APPENDIX A**

## **CRWCD CONTRACT**

## WATER SUPPLY CONTRACT

This Contract is made between the COLORADO RIVER WATER CONSERVATION DISTRICT (herein the “River District”), a political subdivision of the State of Colorado acting by and through its Colorado River Water Projects Enterprise, and KILGORE COMPANIES, LLC, d/b/a PEAK MATERIALS (herein “Contractor”) effective as of the date of the River District’s execution indicated below.

### RECITALS

A. The River District is authorized to contract to deliver water for beneficial use from River District water projects pursuant to provisions of C.R.S. § 37-46-101, *et seq.* (herein “River District Organic Act”).

B. The River District is the owner and operator of the Wolford Mountain Reservoir Project located on the Muddy Creek drainage near Kremmling, Colorado, having obtained necessary decrees from the District Court in and for Colorado Water Division No. 5 (herein “Water Court”) and permits from governmental agencies. The River District also is entitled to deliveries of Wolford Mountain Reservoir water physically stored in Upper Blue Reservoir pursuant to the Memorandum of Agreement Regarding Colorado Springs Substitution Operations among the Colorado River Water Conservation District acting by and through its Colorado River Water Projects Enterprise, the City of Colorado Springs acting through its Utilities Enterprise, the City and County of Denver acting by and through its Board of Water Commissioners, the Northern Colorado Water Conservancy District, the County of Summit acting by its Board of County Commissioners, Vail Summit Resorts, Inc., and the Town of Breckenridge, dated May 15, 2003 (herein “MOA”).

C. The River District’s Board of Directors has adopted a Water Marketing Policy, as revised by the Board from time to time, to provide for the use of water available from the River District’s sources of supply pursuant to contracts, and that Water Marketing Policy is to be implemented through the River District’s Water Projects Enterprise.

D. Contractor has a need for wholesale water supply, demonstrated in its submittal to the River District pursuant to the Water Marketing Policy’s contracting process, in the amount of 3.0 acre feet annually for municipal/industrial purposes, which beneficial uses will be accomplished by Contractor generally in the vicinity of Section 20, Township 3 South, Range 78 West, 6<sup>th</sup> PM, in Summit County, Colorado by surface water diversions from or within the Blue River drainage for use in Water Division 5.

E. Contractor has reviewed the MOA and the Water Marketing Policy and is aware of the “Hydrology Assumptions” which are part of the Water Marketing Policy and is satisfied that, based on its review and investigations, Contractor legally and physically can make use for its intended purposes of the Contracted Water, which are the subject of this Contract and that such use will comply with the Water Marketing Policy, the MOA and the Project’s permits and decrees.

## AGREEMENT

The foregoing Recitals are incorporated into this agreement between the River District and Contractor.

## DEFINITIONS

In this Contract certain terms will have definitions as stated below:

- The “River District” means the Colorado River Water Conservation District created and existing pursuant to the River District Organic Act defined in Recital A and acting by and through its Colorado River Water Projects Enterprise which is currently described and memorialized in the Resolution of the Colorado River Water Conservation District’s Board of Directors dated April 20, 2005.
- The “Project” or “Blue River Supply” means the River District’s contractual right to delivery of Wolford Mountain Reservoir water physically stored in Upper Blue Reservoir pursuant to the MOA. Wolford Mountain Reservoir storage water right decrees were obtained by the River District in Cases No. 87CW283, 95CW281 and 98CW237, District Court for Colorado, Water Division No. 5, and additional storage water right decrees may be obtained in the future by the River District in other cases.
- “Agricultural” means the use of water for commercial production of agricultural crops and livestock and other uses consistent with any right decreed for irrigation purposes, which uses are made on a parcel of land of at least ten acres.
- “Municipal and Industrial” means the use of water by individuals, cities, towns, public or quasi-public districts, private corporations, homeowners associations, or other entities for domestic, municipal, and miscellaneous related purposes as those terms are traditionally and commonly construed, including the use of water for purposes of producing or processing a non-agricultural product or service for sale, including without limitation, such uses as manufacturing, mining, milling, land reclamation, golf course irrigation, snowmaking, and non-hydroelectric power generation; but excepting the agricultural use of water defined herein.
- “Contracted Water” means the water which is the subject of this Contract which is to be released and delivered by the River District and used by Contractor. The Contracted Water is 3.0 acre feet of Blue River supply available during each Project Year during the term of this Contract, subject to the provisions hereof, for Contractor’s use without right of carryover of any amount not used in any Project Year. The Contracted Water includes the right to reuse and successively use the return flows, provided that no judicial, regulatory or other administrative order is entered finding that the River District or Contractor does not have the legal right to reuse and successively use the return flows.

- “Project Year” means a period of time from July 1 through and including the subsequent June 30.
- “Water Marketing Policy” means the River District’s policy statement as revised and readopted as of the execution date of this Contract and as the same may be amended in the future.
- “Project Hydrology Assumptions” or “Hydrology Assumptions” means the document attached as Appendix “A” to the Water Marketing Policy adopted on October 17, 2006.

1. River District Water Delivery Obligations and Responsibilities.

- a. Delivery. The River District will deliver the Contracted Water at the outlet works of the Contracted Water’s sources of supply into the receiving natural streams in quantities provided herein. Unless otherwise agreed to by the River District’s General Manager based upon written request of Contractor, the River District will make releases or request that releases be made for Contractor, based upon Contractor’s written schedule of anticipated demand, adjusted as necessary by the ongoing status of river administration *vis-a-vis* the priority status of Contractor’s diversions, provided that the releases can be made within the operational limitations of the River District’s project facilities as determined by the River District in its sole discretion. Contractor shall be solely responsible after delivery for the legal and physical delivery and use of the Contracted Water.
- b. Delivery Contingencies. The River District’s delivery of Contracted Water shall be subject to Contractor’s payments pursuant to paragraph 3 below, and the provisions for curtailment of deliveries in paragraph 5 below.
- c. Water Measurements. The River District shall measure at the outlet works of the Contracted Water’s sources of supply all Contracted Water and shall notify the Division Engineer of Colorado Water Division No. 5 of the date, time and amount of Contracted Water released pursuant to this Contract. Copies of such records shall be provided to Contractor upon request.
- d. Water Quality. The River District shall have no obligation to Contractor or any other person regarding and makes no warranties or representations to Contractor concerning the quality of Contracted Water delivered pursuant to this Contract by releases of raw water to natural streams.
- e. Maintenance of Facilities. The River District, to the extent that it has ownership and maintenance control, shall use its best efforts to maintain in good working condition the water storage and release facilities of the Contracted Water.

- f. Withholding of Delivery. The River District may withhold deliveries of Contracted Water in the event of Contractor's nonpayment for Contracted Water or any other breach of this Contract by Contractor. Such remedy shall not be the River District's exclusive remedy in the event of any such breach.
  - g. Delivery from Primary or Alternate Sources. The River District will deliver the Contracted Water from the sources of Blue River supply described herein, which will meet the Contractor's need to satisfy calls by senior water rights or the Contractor's physical need for any direct delivery of Contracted Water to Contractor's diversions. Subject to meeting those objectives, the River District reserves the right to provide all or any of the Contracted Water to Contractor from alternate reservoirs for Contractor's use, provided that the alternate sources are suitable to physically satisfy calls by senior water rights or Contractor's need for direct delivery. Any releases from alternate facilities shall not diminish the supply of Contracted Water or impair Contractor's legal or physical ability to make use of Contracted Water or to meet its obligations under any judicial or administrative approval described in paragraph 2.d.
- 2. Contractor's Water Use Obligations and Responsibilities.
  - a. Scheduling of Use. Contractor has provided the River District a preliminary written schedule of its anticipated monthly demands for the Contracted Water during the current Project Year (July 2020 - June 2021). The schedule provided by Contractor in its application for this Contract shall serve as the schedule to be used until it is modified in a written notice given by Contractor to the River District, or as necessary in response to river administration of the Contractor's diversions. The schedule shall identify the volume of any Contracted Water anticipated by Contractor not to be needed by it during any particular Project Year. Contractor shall update said schedule periodically during the Project Year as conditions require and give the River District written notice of all such revisions.
  - b. Carriage Losses. Contractor shall bear carriage losses in such amount as is determined by the Division Engineer for Colorado Water Division No. 5, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.
  - c. Use per Contract and Law. Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of the Project, the Water Marketing Policy, as it may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Contractor is not authorized to apply for or secure any change in the water rights for or associated with any of the sources of supply of the Contracted Water.
  - d. Legal Approvals. Contractor shall at its sole expense adjudicate a plan or plans for augmentation or exchange and/or secure administrative approvals of any temporary

substitute supply plans which are needed for Contractor to use its Contracted Water. If Contractor intends to make any application(s) for any augmentation or exchange plan(s) or substitute supply plan(s) needed for Contractor to use its Contracted Water, Contractor shall submit the proposed application(s) to the River District within a reasonable time before Contractor proposes to file such application(s). The River District shall grant written approval of such applications before they are submitted or filed, and the River District's approval shall not be unreasonably withheld. The River District may in its discretion become a co-applicant in the prosecution of any such applications for the purpose of protecting its water rights and related policies. Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of a River District contract.

e. Limitation on Disposition.

- i. Contractor shall not sublet, sell, donate, loan, assign or otherwise dispose of any of its rights to this Contract or to Contracted Water without prior written notice to, and the written approval of, the River District and the payment of a transfer fee at the prevailing rate set forth in the Water Marketing Policy. The River District's approval of such disposition shall be granted in all instances in which the Contractor is transferring the water system which supplies the Contracted Water, or a permanent transfer of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted Water, or where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the River District to be served with the Contracted Water.
- ii. The assignment of a Contract is subject to the Water Marketing Policy as revised as of the effective date of the assignment. In accordance with this subparagraph (ii), any assignee must pay for the Contracted Water at the then-current price determined by the River District Board of Directors.

f. Contractor's Water Rates. Contractor may charge its water customers who are supplied with Contracted Water such rates and charges as are permitted by Colorado law.

g. Nondiscrimination. Contractor shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, or national origin or any other criteria prohibited under state or federal law.

h. Accounting of Use. Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to the River District

specifically for the purpose of enabling the River District to prove the use of River District Project water rights and to administer and operate the Project and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to the River District promptly upon request and shall assist the River District as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

- i. Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, *et seq.*) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species. As of March 1, 2007, designated critical habitat exists from the Garfield County 320 Road Bridge Crossing of the Colorado River in Rifle downstream to the Colorado State line.

3. Contractor's Payments.

- a. In addition to the application fee already paid by Contractor, in order for the River District's delivery obligation to become effective, Contractor shall pay to the River District on the execution of this Contract the total sum of \$3,430.50, being \$1,143.50 for each acre foot of 3.0 acre feet of Contracted Water for the Project Year (July 2020-June 2021).
- b. Contractor also shall pay any special assessment levied by the River District on Contractor to recoup all or a portion of costs attributable to extraordinary maintenance incurred by the River District or assessed upon the River District by its third party water suppliers.

4. Contract Term. The term of this Contract shall be for a period of one (1) year.

5. Water Shortage. In the event that the River District is unable, because of either legal or physical reasons (including, but not limited to, hydrologic shortages and operational restrictions), to deliver any or all of the full amount of water contracted from the Project, including the Contracted Water, the River District reserves the right to apportion the Project's available water among its several contractors, including Contractor, in the manner provided in paragraph 6 of the Water Marketing Policy.

6. Contract Termination.



- a. Termination by River District.
    - i. The River District may terminate this Contract for any violation or breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any sum or amount due under this Contract within thirty (30) days after receiving written notice from the River District of such breach.
    - ii. The River District also may terminate this Contract if, in its discretion, any judicial or administrative proceedings initiated by Contractor as contemplated in subparagraph 2.d above, threaten the River District's authority to contract for delivery of Project Water or the River District's water rights, permits, or other interests associated with the Project.
    - iii. The River District may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.
  - b. Notice of Termination to Affected Officials. The River District will notify the Division Engineer and any other appropriate governmental officials of any full or partial contract termination except for any partial termination under subparagraph 6.b.(iii).
7. Force Majeure. The River District shall not be responsible for any losses or damages incurred as a result of the River District's inability to perform pursuant to this Agreement due to the following causes if beyond the River District's control and when occurring through no direct or indirect fault of the River District, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to the River District's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.
8. Miscellaneous/Standard Provisions.
- a. Notices.
    - i. All notices required or appropriate under or pursuant to this Contract shall be given in writing mailed or delivered to the parties at the following addresses:

River District:

Colorado River Water Conservation District  
Attention: General Manager / Secretary  
201 Centennial Street, Suite 200  
P. O. Box 1120  
Glenwood Springs, Colorado 81602  
Phone: (970) 945-8522  
Fax: (970) 945-8799

Contractor:

with copy to:

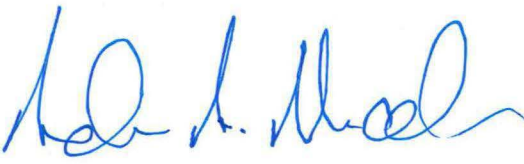
Kilgore Companies, LLC  
d/b/a Peak Materials  
Russ Larsen, Chief Operations Officer  
556 Struthers Avenue  
Grand Junction, CO 81505  
(800) 675-4596  
[Russ.larsen@kilgorecompanies.com](mailto:Russ.larsen@kilgorecompanies.com)

LRE Water  
Attention: Angela Schenk  
909 Colorado Avenue  
Glenwood Springs, CO 81601  
(970) 945-6777  
[angela.schenk@LREWater.com](mailto:angela.schenk@LREWater.com)

- ii. Either party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.
- b. Contact Person. Pursuant to paragraph 4.j. of the MOA, the parties hereto designate the following as the contact person who is authorized to coordinate with Colorado Springs Utilities all operational matters involving the Blue River Supply:  
  
Don Meyer, Water Resources Engineer  
Colorado River Water Conservation District  
P.O. Box 1120  
Glenwood Springs, CO 81602  
Phone: (970) 945-8522  
E-mail: [dmeyer@crwcd.org](mailto:dmeyer@crwcd.org)
- c. Amendments. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.
- d. This Contract is subject to the River District's Water Marketing Policy, as it may be revised from time to time by the River District's Board.

COLORADO RIVER WATER CONSERVATION  
DISTRICT acting by and through its Colorado River  
Water Projects Enterprise

DATE: August 28, 2020

By:   
\_\_\_\_\_  
Andrew A. Mueller  
General Manager/Secretary

ATTEST:



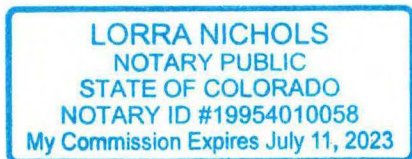
\_\_\_\_\_  
John Currier  
Chief Engineer/Assistant Secretary


**VERIFICATION**

STATE OF COLORADO    )  
                                      ) ss.  
COUNTY OF GARFIELD    )

The foregoing Water Supply Contract was subscribed and sworn to before me by Andrew A. Mueller as General Manager/Secretary and John Currier, Chief Engineer/Assistant Secretary of the Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise this 28th day of August, 2020.

Witness my hand and official seal. My Commission Expires: 07/11/2023



  
\_\_\_\_\_  
Lorra Nichols, Notary Public

CONTRACTOR:  
KILGORE COMPANIES, LLC  
d/b/a PEAK MATERIALS

By:

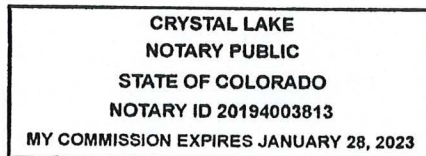
  
Russ Larsen, Chief Operations Officer


**VERIFICATION**

STATE OF Colorado )  
 ) ss.  
COUNTY OF Mesa )

The foregoing Water Supply Contract was subscribed and sworn to before me by Russ Larsen, Chief Operations Officer for Kilgore Companies, LLC, d/b/a Peak Materials, this 28th day of August, 2020.

Witness my hand and official seal. My Commission Expires: 1-28-23



  
Notary Public