

**STATE OF
COLORADO**

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

Boettcher Limestone Quarry - M1977-348 - Augmentation Plan and Court Ruling

Michael TOELLE <mike.toelle@holcim.com>

Thu, Sep 1, 2022 at 6:48 AM

To: "Eschberger - DNR, Amy" <amy.eschberger@state.co.us>

Cc: Travis WEIDE <travis.weide@holcim.com>

Amy,

Per our conversation yesterday during the Site Visit to the Boettcher Limestone Quarry. Attached please find a copy of the Letter of Determination and Water Court Ruling Approval as well as the Augmentation Agreement with the City of Greeley regarding the Water Ponds at the Boettcher Limestone Quarry

Thanks,
Mike

Michael B. Toelle
Manager Raw Materials and Quarries
CIP-NA - Holcim US
3500 [US Highway 120](#)
[Florence, CO 81226](#)

mike.toelle@holcim.com

Cell: (719) 429-5566



Greeley Augmentation Adjustment Submittal 12-9-2021.pdf
21200K



December 9, 2021

Greeley Water and Sewer Department
Attn: Jennifer Petrzela, Water Resource Operations Manager
1001 11th Avenue, Second Floor
Greeley, Colorado 80631

Dear Ms. Petrzela,

I am writing regarding the attached March 5, 2019 Augmentation Water Lease Agreement between Holcim (US), Inc. and the City of Greeley (the "Agreement").

By way of the Agreement, Holcim leases augmentation water from Greeley to replace out-of-priority depletions to the Cache la Poudre River from certain ponds owned by Holcim as described in the Agreement. Section 3 of the Agreement includes a Delivery Schedule for release of the augmentation water, and provides that "Holcim may update the Delivery Schedule at any time during the term of this Agreement by submitting an advance written notice to Greeley of sixty days."

On October 29, 2021, the Division 1 Water Court entered a decree in Case No. 2020CW3000 (also attached) which includes a revised delivery schedule for replacement of out-of-priority depletions from the Holcim ponds. Accordingly, Holcim is providing notice to the City of its update to the Delivery Schedule. Exhibit C of the decree shows the monthly augmentation requirement at the point of depletion. The revised Delivery Schedule accounts for the augmentation requirement at the point of depletion and transit losses between Milton Seaman Reservoir and the point of depletion (assuming a 0.25% per mile loss rate and 11.8 river miles of travel). The revised Delivery Schedule does not exceed the maximum 10 acre-feet of water to be delivered under the Agreement, or the maximum 2.5 acre-feet of augmentation water in any month. The revised Delivery Schedule is provided below.

	April	May	June	July	August	September	October	Total
Amount (acre-feet)	1.44	2.26	1.34	1.24	1.34	1.34	1.03	9.99

Section 4 of the Agreement provides for the calculation of Holcim's payments for the leased water, and any adjustments to those payments for changes to the CPI or increases to the Delivery Schedule. Please direct future invoices for Greeley's provision of water under the Agreement to my attention at the address above. Please also contact me or Matt Lindburg (303-239-5456) if you have any questions regarding the Agreement or Holcim's requested revision to the Delivery Schedule.

Respectfully,

Holcim (US) Inc.

A handwritten signature in blue ink, appearing to read 'T. B. Weide', with a stylized flourish at the end.

Travis B. Weide
Sr. Manager, Closed Sites

District Court, Water Division 1 Weld County Combined Courts 901 9 th Avenue P.O. Box 2038 Greeley, CO 80632 (970) 475-2400	DATE FILED: October 29, 2021 12:14 PM CASE NUMBER: 2020CW3000
CONCERNING THE APPLICATION FOR WATER RIGHTS OF HOLCIM (US) INC., IN LARIMER COUNTY, COLORADO	Δ COURT USE ONLY Δ Case No.: 2020CW3000
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND DECREE OF THE WATER COURT	

The above-captioned application was referred to the Water Referee for Water Division 1, State of Colorado, by the Water Judge of said Court in accordance with Article 92 of Title 37 of the Colorado Revised Statutes, known as the Water Right 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, and having become fully advised with respect to the subject matter of the application, does hereby make the following Findings of Fact, Conclusions of Law, and Ruling of the Referee in this matter:

I. FINDINGS OF FACT

1. Application. The application in this matter was filed on January 17, 2020, and amended on June 23, 2020, by Holcim (US) Inc., Attn: Michael B. Toelle, 3500 US Highway 120 Florence, CO 81226. The Court hereby finds that the application is complete, covering all matters required by law.

2. Notice and Jurisdiction. All notices required by law have been duly given and the Court has jurisdiction over the subject matter of the application and over all persons affected thereby, whether or not they have chosen to appear.

3. Objectors. Statements of opposition were timely filed by the City of Fort Collins, the Water Supply and Storage Company, the Northern Colorado Water Conservancy District, the Cache la Poudre Water Users Association, and the City of Greeley, acting by and through its Water & Sewer Board (the "City of Greeley"). No other statements of opposition were filed and the time for filing such statements has expired.

4. Report of the Division Engineer. A Summary of Consultation for the original application was issued by the Division Engineer for Water Division 1 on April 30, 2020, and a further Summary of Consultation for the amended application on September 30, 2020. The Court has

given due consideration to the Summary of Consultation and Applicant's response thereto in making these findings.

5. Stipulations with Objectors. Applicant has entered into the following stipulations with objectors as follows:

- A. Stipulation with the City of Fort Collins entered on June 2, 2021.
- B. Stipulation with the Northern Colorado Water Conservancy District entered on June 16, 2021.
- C. Stipulation with the City of Greeley entered on August 16, 2021.
- D. Stipulation with the Water Supply and Storage Company entered on August 18, 2021.
- E. Stipulation with the Cache la Poudre Water Users Association entered on August 31, 2021.

6. Overview. Applicant owns the Boettcher Quarry, located north of Fort Collins in Sections 5, 6, 8, 17 and 20 of Township 8 North, Range 69 West, 6th P.M., in Larimer County, Colorado (the "Property"). By its application, Applicant is seeking a plan for augmentation to replace the out-of-priority depletions from five ponds associated with former quarry operations on the Property.

7. Name and Description of Structures to be Augmented. Pond B3, Pond 2, Pond B, Pond C and Pond A (the "Ponds") are off-channel ponds located in Sections 5, 6, 8, and 17 of Township 8 North, Range 69 West, 6th P.M. The locations of the Ponds were obtained using CDSS MapViewer, (UTM Zone 13, NAD 83). A description of the location and capacities of the Ponds is as follows.

- A. Pond B3 is located in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 5, Township 8 North, Range 69 West, 6th P.M., the approximate center of which is at UTM coordinates 487163.0535, 4503934.5603. The capacity of Pond B3 is 1.4 acre-feet, with a surface area of 0.4 acres.
- B. Pond 2 is located in the NW $\frac{1}{4}$ of Section 8, Township 8 North, Range 69 West, 6th P.M., the approximate center of which is at UTM coordinates 487509.0100, 4503340.2574. The capacity of Pond 2 is 7.3 acre-feet, with a surface area of 1.7 acres.
- C. Pond B is located in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 8, Township 8 North, Range 69 West, 6th P.M., the approximate center of which is at UTM coordinates 487372.2460, 4502717.6112. The capacity of Pond B is 1.7 acre-feet, with a surface area of 0.5 acres.
- D. Pond C is located in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 8, Township 8 North, Range 69 West, and the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 17, Township 8 North, Range 69

West, 6th P.M., the approximate center of which is at UTM coordinates 487841.2012, 4501752.3640. The capacity of Pond C is 10.5 acre-feet, with a surface area of 2.1 acres.

- E. Pond A is located in the NW $\frac{1}{4}$ of Section 5, Township 8 North, Range 69 West, and the NE $\frac{1}{4}$ of Section 6, Township 8 North, Range 69 West, 6th P.M., the approximate center of which is at UTM coordinates 487146.2751, 4504802.2860. The capacity of Pond A is 1.7 acre-feet, with a surface area of 0.5 acres.

Applicant is not claiming a water right for any of the Ponds by way of the application in this case. Depletions from the Ponds will impact the Cache la Poudre River at UTM coordinates 488334.01, 4496635.14, which is located in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 33, Township 8 North, Range 69 West, 6th P.M. A map depicting the locations of the Ponds and the location where depletions affect the Cache la Poudre River is attached hereto as Exhibit A.

8. Water Rights to be Used for Augmentation. Depletions from the Ponds will be replaced using augmentation water provided by the City of Greeley pursuant to a March 5, 2019 Augmentation Water Lease Agreement (the "Lease"). The Lease provides Applicant with water from Greeley's supplies in storage at Milton Seaman Reservoir that are available and decreed for augmentation, including but not limited to Greeley's water rights currently decreed for augmentation use as more specifically provided in the Lease, attached hereto as Exhibit B. The decreed location of Milton Seaman Reservoir is upon Sections 33 and 28, Township 9 North, Range 70 West. The Milton Seaman Reservoir Dam is presently located in the SW $\frac{1}{4}$, NE $\frac{1}{4}$ and SE $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 33, Township 9 North, Range 70 West, taking its supply of water from the North Fork of the Cache La Poudre River and its tributaries originating upstream of Milton Seaman Dam. The location of Milton Seaman Reservoir in relation to the Ponds is depicted on Exhibit A. If the Lease is terminated or renewed at any time in the future, Applicant shall file with the court and serve the parties notice of the same together with a copy of any renewed Lease pursuant to process described in paragraph 10(C) below. Applicant shall follow the process described in Paragraph 10(C) below in advance of any termination of the Lease or change of augmentation supply to ensure uninterrupted replacement of depletions pursuant to this decree.

9. Complete Statement of Plan for Augmentation. Applicant will augment depletions from the Ponds any time there is an unsatisfied calling water right downstream of the location of the depletions identified in paragraph 7, pursuant to the terms and conditions of this decree. For so long as the Lease is in effect, replacement will be made with releases of water from Milton Seaman Reservoir on a monthly basis pursuant to the Lease and the terms and conditions of this decree. Depletions from the Ponds have been calculated to be a total of 9.7 acre-feet annually based upon water-level and climatological monitoring between June 2016 and November 2017 conducted at the request and meeting the requirements of the State Engineer. Inflows, outflows, and change in storage were monitored between June 2016 and November 2017 on a daily basis and summarized on a monthly and annual basis. The annual depletion amount is calculated as the maximum net amount of inflow observed over a 12-month period from precipitation and surface water runoff entering the Ponds during the monitoring period and have been allocated to the months of April

through October as shown in Exhibit C. No ground water is intercepted by the Ponds. Applicant will account for and replace the depletions in the same month that the losses occur by releasing Milton Seaman Reservoir water in accordance with the monthly replacement schedule provided in Exhibit C, and as directed by the Water Commissioner. Transit losses will be assessed by the Water Commissioner and replaced at the time releases are made from the location where the augmentation water is delivered to the stream to location where depletions affect the Cache la Poudre River identified in paragraph 7. If the Applicant is unable to replace losses from the Ponds with sufficient Milton Seaman Reservoir water as a result of the Lease terminating or any other reason, Applicant shall fill in the ponds, or obtain and use other approved fully consumable sources in accordance with the terms of paragraph 10.C, or pump water from the Ponds and deliver it to the Cache la Poudre River at or above the location of depletions identified in paragraph 7 and shown on Exhibit A in the amounts shown on the monthly schedule in Exhibit C hereto. Applicant will submit accounting information to the Division Engineer on an annual basis, or such other basis as may be reasonably required by the State or Division Engineer, and shall provide copies of the accounting to opposers upon request. The Applicant's obligation to account for and replace depletions from the Ponds pursuant to this decree shall continue until the Applicant provides notice to the parties and the Division Engineer with sufficient evidence demonstrating that the Ponds have permanently ceased to cause depletions and obtains an order from the Court cancelling the Applicant's replacement obligations under this decree.

10. Terms and conditions. The plan for augmentation set forth in paragraph 9 above will not result in injury to any owners of or persons entitled to use water under a vested water right or a decreed conditional water right if approved upon the following terms and conditions:

A. Measuring Devices. Applicant shall install and maintain such meters, gauges, or other measuring and recording devices as may be reasonably required by the State or Division Engineer.

B. Accounting. Applicant shall measure and account for all depletions as specified in paragraph 9 above and report such information to the Division Engineer and Water Commissioner on an annual basis, unless required more often at the request of the Division Engineer or Water Commissioner. All depletions and augmentation replacements shall be reported on accounting forms approved by the Division Engineer.

C. Additional or Alternative Water Rights to be Used for Augmentation. Applicant may use additional or alternative sources of replacement water pursuant to § 37-92-305(8)(c), including temporary supplies of limited duration, if such sources are decreed or lawfully available for such use, and are part of an approved substitute water supply plan approved pursuant to C.R.S. § 37-92-308 or an interruptible water supply agreement approved pursuant to C.R.S. § 37-92-309. Applicant shall give notice of its intent to use additional or alternative water rights for augmentation by providing to the Water Court, the Division Engineer, and all other parties in this case notice of its intent to use such sources, along with an engineering report summarizing (i) the water right, by name and decree, if any; (ii) the annual and monthly amount of water available to Applicant from the water right; (iii) the location or locations at which the water right will be

delivered to the stream system; and (iv) evidence that Applicant has the right to use the water right. The Division Engineer must approve the alternative or additional augmentation supply before Applicant is entitled to use it in this plan for augmentation. Any party may, pursuant to the Court's retained jurisdiction described in paragraph 20 below, file an objection with the Water Court objecting to the engineering report within sixty-three (63) days of receipt of the notice and engineering report. If an objection is filed, Applicant shall have the burden of proving that use of the additional or alternative augmentation supply will not injure other decreed or conditional water rights under a *de novo* proceeding conducted pursuant to the Court's retained jurisdiction. The additional or alternative source of replacement water may not be used until the objection is resolved by an order of the Court or the objection is withdrawn and the use is approved by the Division Engineer.

D. The Division Engineer or his designated representative shall administer all such water transported in the stream past intervening headgates to ensure that such water is not intercepted or otherwise diminished in quantity by diversions, use, or other interference by intervening water rights and to assure that such water remains available and suitable for Applicant's uses. State water administration officials must be capable of administering the water past intervening headgates on the stream, including at times when those intervening headgates are diverting the entire flow of ("sweeping") the river. Applicant shall not use water attributable to the Subject Water Right downstream of any intervening headgates sweeping the stream, unless bypass and measurement structures are in place to allow State water officials to ensure that Applicant's water is delivered past such headgates. In the event that the Division Engineer determines that delivery past intervening headgates or other structures requires the installation of a bypass structure or the use of an existing bypass structure by agreement with a third-party, Applicant shall be responsible for either installing a new bypass structure with a continuous recording measuring device(s) as approved by the Water Commissioner or securing an agreement with a third-party to use an existing bypass structure and providing such information and agreement to the Division Engineer. Applicant shall contact the appropriate Water Commissioner prior to the installation of measuring and recording devices to ensure that the devices are adequate for proper administration.

II. CONCLUSIONS OF LAW

11. The foregoing Findings of Fact are incorporated herein to the extent that they constitute or include conclusions of law.

12. The application was filed with the Water Court in accordance with C.R.S. § 37-92-302(1)(a). All notices of the application have been properly made as required by law, including as required under C.R.S. § 37-92-302(3), and the Court has jurisdiction over the subject matter of this action and over all entities or persons who had standing to appear, even if they did not. The original application and the amendment thereto, and the resume publication of the application, placed all parties on notice of the relief requested by the application and granted by this decree.

13. The application is complete, covering all matters required by C.R.S. §§ 37-92-101 *et seq.*

14. Applicant has satisfied all legal requirements and met all standards and burdens of proof associated with obtaining approval of a plan for augmentation pursuant to C.R.S. §§ 37-92-301 through 305, and is therefore entitled to a decree approving the plan for augmentation described in paragraph 9 above.

15. The stipulations entered in this case are described in paragraph 5 above. All stipulations are approved by the Court and are binding upon the parties thereto, their successors and assigns, and shall be deemed incorporated into and made a part of this Decree of the Water Court. All terms and conditions required for the administration of this Decree are set forth directly in this Decree.

16. Applicant has demonstrated as a matter of law that the plan for augmentation described in paragraph 9 above, subject to the terms and conditions described in paragraph 10 above, will not cause injury to any owner of or person entitled to use water under a vested water right or a decreed conditional water right.

17. Provided Applicant furnishes the Division Engineer appropriate accounting and other records evidencing the operation of the plan for augmentation, the requested plan for augmentation is administrable.

III. RULING OF THE REFEREE AND DECREE OF THE WATER COURT

18. The Findings of Fact and Conclusions of Law set forth above are incorporated herein by reference.

19. The request for approval of the plan for augmentation described in paragraph 9 above replacing out-of-priority depletions from the structures described in paragraph 7 above is hereby GRANTED subject to the terms and conditions contained herein.

20. Pursuant to C.R.S. § 37-92-304(6), the Court shall retain jurisdiction in this proceeding to reconsider the question of injury to the vested water rights of others from the operation of the plan for augmentation approved herein for a period commencing on the date of the decree and extending for five (5) years. If no petition for reconsideration is filed within the period of retained jurisdiction, the retention of jurisdiction shall automatically expire. In the event any person petitions the Court for reconsideration of the question of injury, the Court shall order that an appropriate notice be given to all parties. The petition for reconsideration shall be made in good faith, under oath, and shall set forth with particularity the factual basis upon which the requested reconsideration is premised, together with proposed decretal language to eliminate the injury. The party lodging the petition shall have the burden of going forward to establish a *prima facie* showing of the injury alleged in the petition. If such a petition is filed, Applicant shall have the burden of proof to show: (a) that any modification to the decree that is sought by the petitioner is not necessary to avoid injury to other water rights; or (b) that any modification to the decree proposed by Applicant will avoid injury to other water rights. The Court shall also retain perpetual

jurisdiction in this proceeding to consider any disputes regarding the notice of additional or alternative augmentation supplies to be added pursuant to paragraph 10.C, and the cancellation of Applicant's replacement obligations pursuant to paragraph 9.

21. A copy of these Findings of Fact, Conclusions of Law, Ruling of the Referee and Decree of the Water Court shall be filed with the Division Engineer for Water Division 1 and the State Engineer.

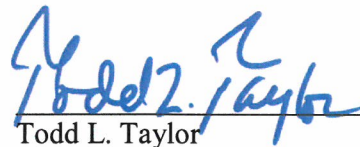
Dated September 29, 2021



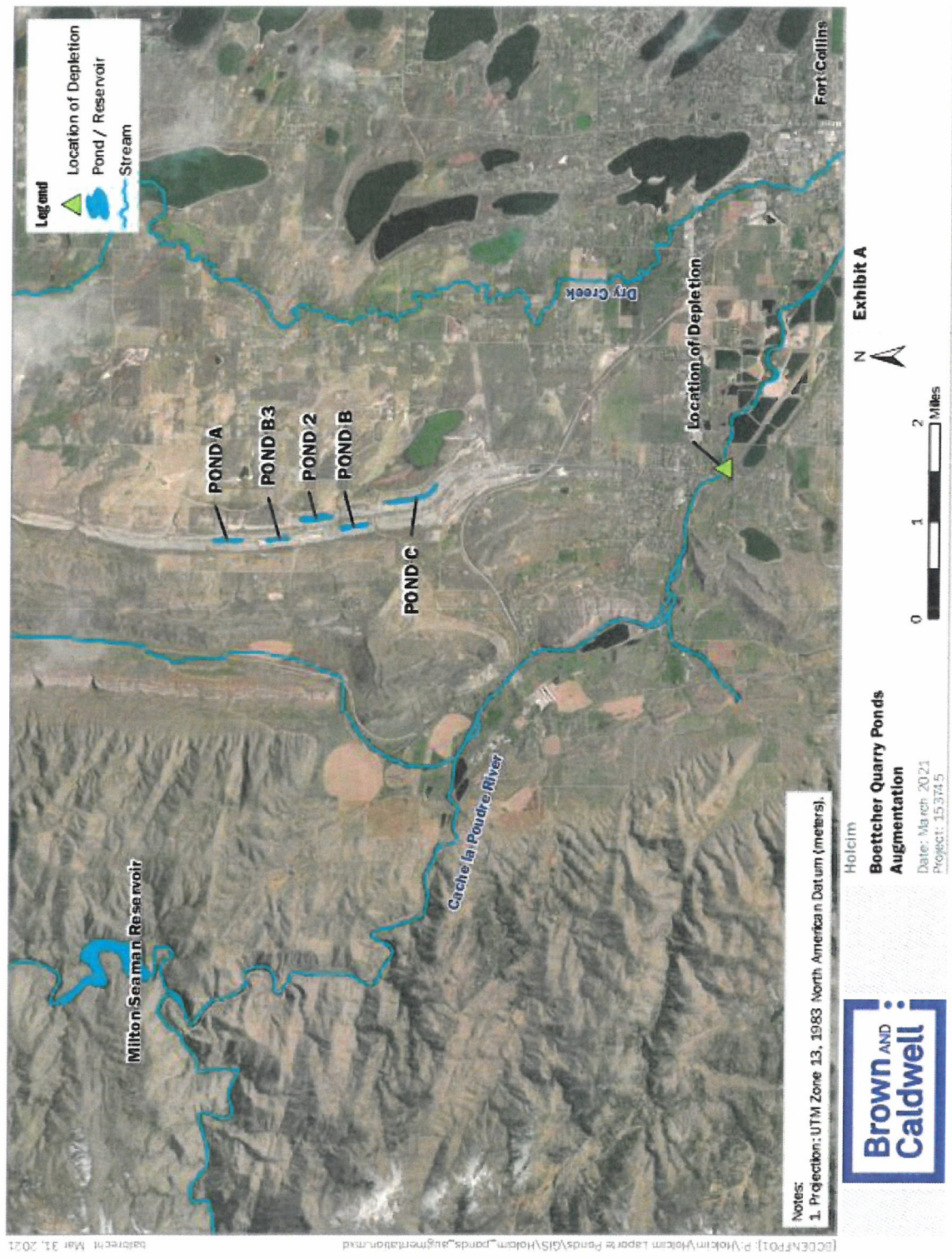
John S. Cowan
Water Referee
Water Division One

The court finds that no protest was filed in this matter. The foregoing ruling is confirmed and approved and is made the judgment and decree of this Court.

Date: October 29, 2021



Todd L. Taylor
Water Judge
Water Division One



Holcim (US) Inc.
20CW3000

EXHIBIT A

AUGMENTATION WATER LEASE AGREEMENT
(Holcim (US), Inc.)

This AUGMENTATION WATER LEASE AGREEMENT ("Agreement") is entered into this 5th day of March 2019, by and between HOLCIM (US), INC., a Delaware corporation operating in the State of Colorado, whose address is 8700 W. Bryn Mawr Ave., Suite 300N, Chicago, IL 60631 ("Holcim") and the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water and Sewer Board, whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 ("Greeley") (collectively the "Parties").

Recitals

WHEREAS, Holcim owns and operates a series of ponds located in the SW¼ of the SW¼ of Section 5, the NW¼ of Section 8, the NW¼ of the SW¼ of Section 8, the SE¼ of the SW¼ of Section 8, and the E¼ of the NW¼ of Section 17, all in Township 8 North, Range 69 West of the 6th P.M. in Larimer County, Colorado ("Holcim Ponds"); and

WHEREAS, Holcim desires to replace out-of-priority depletions to the Cache la Poudre River caused by the Holcim Ponds; and

WHEREAS, Holcim accordingly plans to seek approval of an augmentation plan from the Division 1 Water Court to set forth the terms by which Holcim will replace such depletions to the Cache la Poudre River; and

WHEREAS, Holcim desires to secure a reliable source of augmentation water to utilize as a replacement source in its augmentation plan, and Greeley is willing to lease to Holcim water that may be lawfully used for this purpose;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Holcim and Greeley agree as follows.

Agreement

1. Lease of Augmentation Water. Greeley hereby agrees to lease Holcim up to 10 acre-feet of water per year during the term of this Agreement. The water made available by Greeley pursuant to this Agreement shall be decreed or otherwise usable for augmentation purposes under Colorado law ("Augmentation Water").
2. Term of Lease. The term of this Agreement begins on the date of mutual execution by the Parties and ends on December 31, 2028. Thereafter, this Agreement will automatically renew for up to two additional subsequent terms of five years each. Notwithstanding the foregoing, this Agreement may be terminated at any time by Holcim or Greeley pursuant to either Paragraph 6 or Paragraph 9 below.
3. Water Delivery Schedule and Administration. The Augmentation Water to be made available by Greeley pursuant to this Agreement shall be released in accordance with the following annual schedule ("Delivery Schedule").



Holcim (US) Inc.
20CW3000

EXHIBIT B

	March	April	May	Total
Amount (acre-feet)	1.0	2.5	1.5	5.0
Rate (c.f.s.)	0.016	0.042	0.024	

Holcim may update the Delivery Schedule at any time during the term of this Agreement by submitting an advance written notice to Greeley of sixty days. Notwithstanding the total maximum amount of 100 acre-feet available to Holcim under this Agreement through December 31, 2028, Greeley shall not be obligated to deliver more than 2.5 acre-feet of Augmentation Water in any month, or more than 10 acre-feet of Augmentation Water in any year. The foregoing delivery limits shall remain in effect if the Parties renew this Agreement in accordance with Paragraph 2 above.

4. Lease Payment. Holcim shall pay to Greeley \$1,200.00 per acre-foot of Augmentation Water leased pursuant to this Agreement ("Lease Payment"). Holcim shall pay to Greeley an initial Lease Payment for the 5 acre-feet of Augmentation Water set forth in the Delivery Schedule above and anticipated as necessary in 2019, in the amount of \$6,000.00, within five days after mutual execution of this Agreement by the Parties. Each year thereafter during the term of this Agreement, Greeley shall adjust the Lease Payment in accordance with the increase in the Consumer Price Index ("CPI") for the Denver/Boulder/Greeley region, using 2019 as a baseline. Holcim shall pay to Greeley that annually adjusted Lease Payment based on the then current Delivery Schedule for that year, but in no event shall the Lease Payment for Augmentation Water under this Agreement be less than \$1,200.00 per acre-foot. Greeley shall invoice Holcim in advance of each augmentation year, and Holcim shall remit payment to Greeley no later than March 1, or within fifteen days after receiving such invoice. Failure to timely pay the Lease Payment may result in the suspension of Augmentation Water deliveries and termination of this Agreement, as described more particularly in Paragraph 9 below. In any year during which Greeley curtails deliveries of Augmentation Water pursuant to Paragraphs 6(a) or 6(b) below, Greeley shall either (i) provide Holcim with a refund for any amounts of Augmentation Water requested and paid for but not delivered, or (ii) apply such amount as credits toward Holcim's future payments for Augmentation Water.

5. Delivery of Augmentation Water. Greeley shall make the Augmentation Water available to Holcim, according to the then current Delivery Schedule, by releasing such water from its available supplies in storage at Milton Seaman Reservoir. Greeley may, in its sole discretion, use any of its supplies in storage at Milton Seaman Reservoir that are available and decreed for augmentation use to meet its obligations under this Agreement. Holcim shall be solely responsible for all accounting and administration of the Augmentation Water after its release from Milton Seaman Reservoir, including for the accounting of any transit losses charged to Holcim by the Colorado Division of Water Resources. Greeley's obligation to make the Augmentation Water available to Holcim under this Lease shall commence on March 1, 2019, or the date on which Greeley receives the initial payment described in Paragraph 4 above, whichever date occurs later.

6. Limitations on Obligation to Deliver Augmentation Water. Greeley's obligation to make the Augmentation Water available to Holcim under this Agreement may be curtailed

under the following circumstances:

a. Greeley may curtail deliveries of Augmentation Water to Holcim if it imposes, in Greeley's sole discretion, mandatory city-wide water use restrictions to address drought conditions, dam or pipeline failure, or other catastrophic circumstance limiting Greeley's ability to satisfy the indoor water usage needs of its citizens, so long as, and to the extent that, deliveries under this Agreement are prevented or delayed by such cause.

b. Greeley may curtail deliveries of Augmentation Water to Holcim if an accident, act of war, natural catastrophe, fire, explosion, or other cause beyond the reasonable control of Greeley prevents or delays its ability to deliver Augmentation Water, so long as, and to the extent that, deliveries under this Agreement are prevented or delayed by such cause.

c. If at any time during the term of this Agreement Holcim no longer needs Augmentation Water to replace out-of-priority depletions associated with the Holcim Ponds, Greeley's obligation to make Augmentation Water available under this Agreement shall terminate and be of no further force and effect, subject to the notice provisions in this paragraph. If Greeley reasonably believes that the Holcim Ponds are no longer causing depletions to the Cache la Poudre River, Greeley shall notify Holcim of such belief in writing sixty days prior to its proposed termination of this Agreement. Holcim shall be entitled during this sixty-day period to demonstrate in writing that it still needs Augmentation Water to replace depletions from the Holcim Ponds, which shall preclude termination of the Augmentation Water delivery obligation.

d. If Holcim determines that it no longer needs Augmentation Water to replace out-of-priority depletions associated with the Holcim Ponds, Holcim may terminate the Agreement by submitting an advance written notice to Greeley of ninety days.

7. Use of the Augmentation Water. Holcim shall use the Augmentation Water made available pursuant to this Agreement only to replace the out-of-priority depletions associated with the Holcim Ponds, whether in an augmentation plan approved by the Division 1 Water Court or in an associated substitute water supply plan approved by the Colorado Division of Water Resources. Greeley may object to or oppose the inclusion and use of the Augmentation Water by Holcim in any proceeding to approve such a substitute water supply plan or augmentation plan to ensure that the proposed use of the Augmentation Water by Holcim is consistent with this Agreement. Greeley may also participate in such proceedings to protect Greeley's interest in its water rights, so long as Greeley's participation is not inconsistent with, or does not frustrate the purpose of, this Agreement.

8. Notices. Any notices required hereunder shall be deemed sufficient when (i) hand-delivered or (ii) sent certified mail, return receipt requested to the Parties by the contact information set forth below. The Parties shall notify each other in the event that the appropriate contact information changes.

-3-



Holcim (US) Inc.
20CW3000

EXHIBIT B

If to Holcim: Holcim (US), Inc. Portland Plant
3500 State Hwy 120
Florence, Colorado 81226

With copy to: Brown and Caldwell
Attn: Matt Lindburg, P.E.
1527 Cole Boulevard, Suite 300
Lakewood, Colorado 80401
mlindburg@brwnclald.com

If to Greeley: Greeley Water and Sewer Department
Attn: Jennifer Petrzelka, Water Resource Operations Manager
1001 11th Avenue, Second Floor
Greeley, Colorado 80631
jennifer.petrzelka@greeleygov.com

With copy to: Greeley City Attorney's Office
Attn: Environmental and Water Resources Practice Group
1100 10th Street, Suite 401
Greeley, Colorado 80631
daniel.biwer@greeleygov.com

9. Default and Termination. If either of the Parties fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 8 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 8 above.

a. Notwithstanding the above, any failure by Holcim to comply with the terms of Paragraph 7 or 15 in this Agreement constitutes a material breach. In the event that Holcim commits a material breach, Greeley may immediately terminate this Agreement by written notice to Holcim.

b. The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

10. Attorneys' Fees and Costs. In addition to any remedies otherwise available, a party that prevails in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

11. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Venue for any action regarding this Agreement shall be in the District Court for Weld County, Colorado or the Division 1 Water Court, as appropriate.

12. Recording. Holcim shall not record this Agreement in the real property records of any jurisdiction, but may disclose or otherwise utilize this Agreement in any proceeding to obtain approval of a plan for augmentation from the Division 1 Water Court or a substitute water supply plan from the Colorado Division of Water Resources.

13. Counterparts. This Agreement may be executed in counterparts, each of which when executed by the Parties may be deemed an original. The combination of such identical counterparts when executed by the Parties shall constitute one agreement.

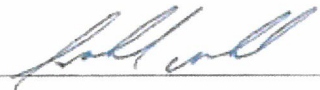
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16. Indemnification. Holcim agrees to exercise its rights under this Agreement at its own risk. Holcim shall indemnify and hold Greeley harmless from and against any cost, expense, or liability arising out of this Agreement or related activities. Nothing in this Agreement is intended constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as it may be applicable now or hereafter amended.

IN WITNESS WHEREOF, Holcim and the City of Greeley have executed this Agreement on the dates set forth below.

HOLCIM (US), INC.

By: 
Title: _____

Sr. Vice President, Manufacturing

Date: 2/13/19

CITY OF GREELEY

a Colorado home rule municipal corporation
acting by and through its Water and Sewer Board

By: [Signature]
Mayor

Date: 2-20-19

ATTEST:

By: Patsy N. Holder
City Clerk 3/5/19



-0-

[Handwritten mark]

Holcim (US) Inc.
20CW3000

EXHIBIT B

	April	May	June	July	August	September	October	Total
Amount (acre-feet)	1.4	2.2	1.3	1.2	1.3	1.3	1.0	9.7

AUGMENTATION WATER LEASE AGREEMENT
(Holcim (US), Inc.)

This AUGMENTATION WATER LEASE AGREEMENT ("Agreement") is entered into this 5th day of March 2019, by and between HOLCIM (US), INC., a Delaware corporation operating in the State of Colorado, whose address is 8700 W. Bryn Mawr Ave., Suite 300N, Chicago, IL 60631 ("Holcim") and the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water and Sewer Board, whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 ("Greeley") (collectively the "Parties").

Recitals

WHEREAS, Holcim owns and operates a series of ponds located in the SW¼ of the SW¼ of Section 5, the NW¼ of Section 8, the NW¼ of the SW¼ of Section 8, the SE¼ of the SW¼ of Section 8, and the E½ of the NW¼ of Section 17, all in Township 8 North, Range 69 West of the 6th P.M. in Larimer County, Colorado ("Holcim Ponds"); and

WHEREAS, Holcim desires to replace out-of-priority depletions to the Cache la Poudre River caused by the Holcim Ponds; and

WHEREAS, Holcim accordingly plans to seek approval of an augmentation plan from the Division 1 Water Court to set forth the terms by which Holcim will replace such depletions to the Cache la Poudre River; and

WHEREAS, Holcim desires to secure a reliable source of augmentation water to utilize as a replacement source in its augmentation plan, and Greeley is willing to lease to Holcim water that may be lawfully used for this purpose;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Holcim and Greeley agree as follows.

Agreement

1. Lease of Augmentation Water. Greeley hereby agrees to lease Holcim up to 10 acre-feet of water per year during the term of this Agreement. The water made available by Greeley pursuant to this Agreement shall be decreed or otherwise usable for augmentation purposes under Colorado law ("Augmentation Water").

2. Term of Lease. The term of this Agreement begins on the date of mutual execution by the Parties and ends on December 31, 2028. Thereafter, this Agreement will automatically renew for up to two additional subsequent terms of five years each. Notwithstanding the foregoing, this Agreement may be terminated at any time by Holcim or Greeley pursuant to either Paragraph 6 or Paragraph 9 below.

3. Water Delivery Schedule and Administration. The Augmentation Water to be made available by Greeley pursuant to this Agreement shall be released in accordance with the following annual schedule ("Delivery Schedule").



	March	April	May	Total
Amount (acre-feet)	1.0	2.5	1.5	5.0
Rate (c.f.s.)	0.016	0.042	0.024	

Holcim may update the Delivery Schedule at any time during the term of this Agreement by submitting an advance written notice to Greeley of sixty days. Notwithstanding the total maximum amount of 100 acre-feet available to Holcim under this Agreement through December 31, 2028, Greeley shall not be obligated to deliver more than 2.5 acre-feet of Augmentation Water in any month, or more than 10 acre-feet of Augmentation Water in any year. The foregoing delivery limits shall remain in effect if the Parties renew this Agreement in accordance with Paragraph 2 above.

4. Lease Payment. Holcim shall pay to Greeley \$1,200.00 per acre-foot of Augmentation Water leased pursuant to this Agreement ("Lease Payment"). Holcim shall pay to Greeley an initial Lease Payment for the 5 acre-feet of Augmentation Water set forth in the Delivery Schedule above and anticipated as necessary in 2019, in the amount of \$6,000.00, within five days after mutual execution of this Agreement by the Parties. Each year thereafter during the term of this Agreement, Greeley shall adjust the Lease Payment in accordance with the increase in the Consumer Price Index ("CPI") for the Denver/Boulder/Greeley region, using 2019 as a baseline. Holcim shall pay to Greeley that annually adjusted Lease Payment based on the then current Delivery Schedule for that year, but in no event shall the Lease Payment for Augmentation Water under this Agreement be less than \$1,200.00 per acre-foot. Greeley shall invoice Holcim in advance of each augmentation year, and Holcim shall remit payment to Greeley no later than March 1, or within fifteen days after receiving such invoice. Failure to timely pay the Lease Payment may result in the suspension of Augmentation Water deliveries and termination of this Agreement, as described more particularly in Paragraph 9 below. In any year during which Greeley curtails deliveries of Augmentation Water pursuant to Paragraphs 6(a) or 6(b) below, Greeley shall either (i) provide Holcim with a refund for any amounts of Augmentation Water requested and paid for but not delivered, or (ii) apply such amount as credits toward Holcim's future payments for Augmentation Water.

5. Delivery of Augmentation Water. Greeley shall make the Augmentation Water available to Holcim, according to the then current Delivery Schedule, by releasing such water from its available supplies in storage at Milton Seaman Reservoir. Greeley may, in its sole discretion, use any of its supplies in storage at Milton Seaman Reservoir that are available and decreed for augmentation use to meet its obligations under this Agreement. Holcim shall be solely responsible for all accounting and administration of the Augmentation Water after its release from Milton Seaman Reservoir, including for the accounting of any transit losses charged to Holcim by the Colorado Division of Water Resources. Greeley's obligation to make the Augmentation Water available to Holcim under this Lease shall commence on March 1, 2019, or the date on which Greeley receives the initial payment described in Paragraph 4 above, whichever date occurs later.

6. Limitations on Obligation to Deliver Augmentation Water. Greeley's obligation to make the Augmentation Water available to Holcim under this Agreement may be curtailed

under the following circumstances:

a. Greeley may curtail deliveries of Augmentation Water to Holcim if it imposes, in Greeley's sole discretion, mandatory city-wide water use restrictions to address drought conditions, dam or pipeline failure, or other catastrophic circumstance limiting Greeley's ability to satisfy the indoor water usage needs of its citizens, so long as, and to the extent that, deliveries under this Agreement are prevented or delayed by such cause.

b. Greeley may curtail deliveries of Augmentation Water to Holcim if an accident, act of war, natural catastrophe, fire, explosion, or other cause beyond the reasonable control of Greeley prevents or delays its ability to deliver Augmentation Water, so long as, and to the extent that, deliveries under this Agreement are prevented or delayed by such cause.

c. If at any time during the term of this Agreement Holcim no longer needs Augmentation Water to replace out-of-priority depletions associated with the Holcim Ponds, Greeley's obligation to make Augmentation Water available under this Agreement shall terminate and be of no further force and effect, subject to the notice provisions in this paragraph. If Greeley reasonably believes that the Holcim Ponds are no longer causing depletions to the Cache la Poudre River, Greeley shall notify Holcim of such belief in writing sixty days prior to its proposed termination of this Agreement. Holcim shall be entitled during this sixty-day period to demonstrate in writing that it still needs Augmentation Water to replace depletions from the Holcim Ponds, which shall preclude termination of the Augmentation Water delivery obligation.

d. If Holcim determines that it no longer needs Augmentation Water to replace out-of-priority depletions associated with the Holcim Ponds, Holcim may terminate the Agreement by submitting an advance written notice to Greeley of ninety days.

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If to Holcim: Holcim (US), Inc. Portland Plant
3500 State Hwy 120
Florence, Colorado 81226

With copy to: Brown and Caldwell
Attn: Matt Lindburg, P.E.



Fwd: IPB Methodology - Annual 2021 & Preparation for 2022

1 message

Rick DARNELL <rick.darnell@lafargeholcim.com>

Wed, Dec 8, 2021 at 12:24 PM

To: Alba Luz Barrios <albaluz.barrios@lafargeholcim.com>, Alissa Collins <alissa.collins@lafargeholcim.com>, Anastasios Gkolemis <anastasios.gkolemis@lafargeholcim.com>, Angelica Marcelo <angelica.marcelo@lafargeholcim.com>, Benjamin KIST <benjamin.kist@lafargeholcim.com>, Darryl Prokop <darryl.prokop@lafargeholcim.com>, David Hearell <david.hearell@lafargeholcim.com>, Doug Wilde <doug.wilde@lafargeholcim.com>, Erin Watson <erin.watson@lafargeholcim.com>, Harold Ptachyk <harold.ptachyk@lafargeholcim.com>, Jane FLEMING <jane.fleming@lafargeholcim.com>, Janelle Baier <janelle.baier@lafargeholcim.com>, Jason RAUCH <jason.rauch@lafargeholcim.com>, Jason Ridley <jason.ridley@lafargeholcim.com>, Jessica Hardenburg <jessica.hardenburg@lafargeholcim.com>, Jim Hess <jim.hess@lafargeholcim.com>, John Blair <john.blair@lafargeholcim.com>, John Judd <john.judd@lafargeholcim.com>, Justin Prince <justin.prince@lafargeholcim.com>, Leila Saidi <leila.saidi@lafargeholcim.com>, Lillian PACHON <lillian.pachon@lafargeholcim.com>, Lisa Van Hoek <lisa.vanhoek@lafargeholcim.com>, Lorraine RICHARDS <lorraine.richards@lafargeholcim.com>, Nayara Santos <nayara.santos@lafargeholcim.com>, Ramon Olivero Segarra <ramon.olivero@lafargeholcim.com>, Richard Bird <richard.bird@lafargeholcim.com>, Rick Camm <rick.camm@lafargeholcim.com>, Scott Derhammer <scott.derhammer@lafargeholcim.com>, Scott Poaps <scott.poaps@lafargeholcim.com>, Shannon BURNETT <shannon.burnett@lafargeholcim.com>, Tessa McCreight <tessa.mccreight@lafargeholcim.com>, Theresa Hammons <theresa.hammons@lafargeholcim.com>

Cc: Marie-Andree Guindon <marie-andree.guindon@lafargeholcim.com>, Rob Shogren <rob.shogren@lafargeholcim.com>, Ken Kazanis <ken.kazanis@lafargeholcim.com>, Peter Bohme <peter.bohme1@lafargeholcim.com>

fyi

We are getting to that time of year where the data for the 2021 annual IPB report is collected. A few reminders:

- Time period covered for all quality kpi's is 12/1/20 to 11/30/21
- Please take the time now to review your data and eliminate any bad data (typos, missing data, double entries, etc.)
 - After January 7th, I can not guarantee that last-minute changes (data or limits) will be reflected in your score.
- Please take the time now to review your limits in case they were changed during the year, but not reflected in TiS
 - These are managed in TiS in folder 5. System - Process Limits
 - You can filter on *PQM* in the Limit field to find all of the limits configured for your plant
 - Cement uniformity reminder:
 - No limits configuration necessary. Score based on standard deviation at 3-d and 28-d
 - Cement compliance limits reminder:
 - 1-d strength: Target - 2.5 MPa lower limit. No upper limit (enter 9999 or similar as HHH limit)
 - 28-d strength: Target -4.0 MPa lower limit. No upper limit (9999 as HHH limit)
 - Vicat initial set: Target +/- 35 minutes (i.e. a 70-minute window)
 - Clinker compliance limits reminder:
 - FCaO target -0.5,+1.0 (i.e. a 1.5% window)
 - LSF target +/- 2.5 (i.e. a 5 point window)

The note below indicates that Lab Accuracy Index **may** be added as an additional quality KPI in 2022. This is generated from your RRT interlab results.

Please let me know asap if there are any structural changes that need to be made for your plant. For example, we need to add or subtract cement types based on industrial / market / volume changes.

Rick Darnell
Cement Industrial Performance - North America
Head of Materials

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If to Holcim: Holcim (US), Inc. Portland Plant
3500 State Hwy 120
Florence, Colorado 81226

With copy to: Brown and Caldwell
Attn: Matt Lindburg, P.E.
1527 Cole Boulevard, Suite 300
Lakewood, Colorado 80401
mlindburg@brwnald.com

If to Greeley: Greeley Water and Sewer Department
Attn: Jennifer Petrzela, Water Resource Operations Manager
1001 11th Avenue, Second Floor
Greeley, Colorado 80631
jennifer.petrzelka@greeleygov.com

With copy to: Greeley City Attorney's Office
Attn: Environmental and Water Resources Practice Group
1100 10th Street, Suite 401
Greeley, Colorado 80631
daniel.biwer@greeleygov.com

9. Default and Termination. If either of the Parties fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 8 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 8 above.

a. Notwithstanding the above, any failure by Holcim to comply with the terms of Paragraph 7 or 15 in this Agreement constitutes a material breach. In the event that Holcim commits a material breach, Greeley may immediately terminate this Agreement by written notice to Holcim.

b. The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

10. Attorneys' Fees and Costs. In addition to any remedies otherwise available, a party that prevails in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

11. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Venue for any action regarding this Agreement shall be in the District Court for Weld County, Colorado or the Division 1 Water Court, as appropriate.


12. Recording. Holcim shall not record this Agreement in the real property records of any jurisdiction, but may disclose or otherwise utilize this Agreement in any proceeding to obtain approval of a plan for augmentation from the Division 1 Water Court or a substitute water supply plan from the Colorado Division of Water Resources.

13. Counterparts. This Agreement may be executed in counterparts, each of which when executed by the Parties may be deemed an original. The combination of such identical counterparts when executed by the Parties shall constitute one agreement.

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Rate (c.f.s.)	0.016	0.042	0.024	

Holcim may update the Delivery Schedule at any time during the term of this Agreement by submitting an advance written notice to Greeley of sixty days. Notwithstanding the total maximum amount of 100 acre-feet available to Holcim under this Agreement through December 31, 2028, Greeley shall not be obligated to deliver more than 2.5 acre-feet of Augmentation Water in any month, or more than 10 acre-feet of Augmentation Water in any year. The foregoing delivery limits shall remain in effect if the Parties renew this Agreement in accordance with Paragraph 2 above.

4. Lease Payment. Holcim shall pay to Greeley \$1,200.00 per acre-foot of Augmentation Water leased pursuant to this Agreement ("Lease Payment"). Holcim shall pay to Greeley an initial Lease Payment for the 5 acre-feet of Augmentation Water set forth in the Delivery Schedule above and anticipated as necessary in 2019, in the amount of \$6,000.00, within five days after mutual execution of this Agreement by the Parties. Each year thereafter during the term of this Agreement, Greeley shall adjust the Lease Payment in accordance with the increase in the Consumer Price Index ("CPI") for the Denver/Boulder/Greeley region, using 2019 as a baseline. Holcim shall pay to Greeley that annually adjusted Lease Payment based on the then current Delivery Schedule for that year, but in no event shall the Lease Payment for Augmentation Water under this Agreement be less than \$1,200.00 per acre-foot. Greeley shall invoice Holcim in advance of each augmentation year, and Holcim shall remit payment to Greeley no later than March 1, or within fifteen days after receiving such invoice. Failure to timely pay the Lease Payment may result in the suspension of Augmentation Water deliveries and termination of this Agreement, as described more particularly in Paragraph 9 below. In any year during which Greeley curtails deliveries of Augmentation Water pursuant to Paragraphs 6(a) or 6(b) below, Greeley shall either (i) provide Holcim with a refund for any amounts of Augmentation Water requested and paid for but not delivered, or (ii) apply such amount as credits toward Holcim's future payments for Augmentation Water.

5. Delivery of Augmentation Water. Greeley shall make the Augmentation Water available to Holcim, according to the then current Delivery Schedule, by releasing such water from its available supplies in storage at Milton Seaman Reservoir. Greeley may, in its sole discretion, use any of its supplies in storage at Milton Seaman Reservoir that are available and decreed for augmentation use to meet its obligations under this Agreement. Holcim shall be solely responsible for all accounting and administration of the Augmentation Water after its release from Milton Seaman Reservoir, including for the accounting of any transit losses charged to Holcim by the Colorado Division of Water Resources. Greeley's obligation to make the Augmentation Water available to Holcim under this Lease shall commence on March 1, 2019, or the date on which Greeley receives the initial payment described in Paragraph 4 above, whichever date occurs later.

6. Limitations on Obligation to Deliver Augmentation Water. Greeley's obligation to make the Augmentation Water available to Holcim under this Agreement may be curtailed

under the following circumstances:

a. Greeley may curtail deliveries of Augmentation Water to Holcim if it imposes, in Greeley's sole discretion, mandatory city-wide water use restrictions to address drought conditions, dam or pipeline failure, or other catastrophic circumstance limiting Greeley's ability to satisfy the indoor water usage needs of its citizens, so long as, and to the extent that, deliveries under this Agreement are prevented or delayed by such cause.

b. Greeley may curtail deliveries of Augmentation Water to Holcim if an accident, act of war, natural catastrophe, fire, explosion, or other cause beyond the reasonable control of Greeley prevents or delays its ability to deliver Augmentation Water, so long as, and to the extent that, deliveries under this Agreement are prevented or delayed by such cause.

c. If at any time during the term of this Agreement Holcim no longer needs Augmentation Water to replace out-of-priority depletions associated with the Holcim Ponds, Greeley's obligation to make Augmentation Water available under this Agreement shall terminate and be of no further force and effect, subject to the notice provisions in this paragraph. If Greeley reasonably believes that the Holcim Ponds are no longer causing depletions to the Cache la Poudre River, Greeley shall notify Holcim of such belief in writing sixty days prior to its proposed termination of this Agreement. Holcim shall be entitled during this sixty-day period to demonstrate in writing that it still needs Augmentation Water to replace depletions from the Holcim Ponds, which shall preclude termination of the Augmentation Water delivery obligation.

d. If Holcim determines that it no longer needs Augmentation Water to replace out-of-priority depletions associated with the Holcim Ponds, Holcim may terminate the Agreement by submitting an advance written notice to Greeley of ninety days.

7. Use of the Augmentation Water. Holcim shall use the Augmentation Water made available pursuant to this Agreement only to replace the out-of-priority depletions associated with the Holcim Ponds, whether in an augmentation plan approved by the Division 1 Water Court or in an associated substitute water supply plan approved by the Colorado Division of Water Resources. Greeley may object to or oppose the inclusion and use of the Augmentation Water by Holcim in any proceeding to approve such a substitute water supply plan or augmentation plan to ensure that the proposed use of the Augmentation Water by Holcim is consistent with this Agreement. Greeley may also participate in such proceedings to protect Greeley's interest in its water rights, so long as Greeley's participation is not inconsistent with, or does not frustrate the purpose of, this Agreement.

8. Notices. Any notices required hereunder shall be deemed sufficient when (i) hand-delivered or (ii) sent certified mail, return receipt requested to the Parties by the contact information set forth below. The Parties shall notify each other in the event that the appropriate contact information changes.

If to Holcim: Holcim (US), Inc. Portland Plant
3500 State Hwy 120
Florence, Colorado 81226

With copy to: Brown and Caldwell
Attn: Matt Lindburg, P.E.
1527 Cole Boulevard, Suite 300
Lakewood, Colorado 80401
mlindburg@brwnald.com

If to Greeley: Greeley Water and Sewer Department
Attn: Jennifer Petrzeka, Water Resource Operations Manager
1001 11th Avenue, Second Floor
Greeley, Colorado 80631
jennifer.petrzeka@greeleygov.com

With copy to: Greeley City Attorney's Office
Attn: Environmental and Water Resources Practice Group
1100 10th Street, Suite 401
Greeley, Colorado 80631
daniel.biwer@greeleygov.com

9. Default and Termination. If either of the Parties fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 8 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 8 above.

a. Notwithstanding the above, any failure by Holcim to comply with the terms of Paragraph 7 or 15 in this Agreement constitutes a material breach. In the event that Holcim commits a material breach, Greeley may immediately terminate this Agreement by written notice to Holcim.

b. The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

10. Attorneys' Fees and Costs. In addition to any remedies otherwise available, a party that prevails in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

11. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Venue for any action regarding this Agreement shall be in the District Court for Weld County, Colorado or the Division 1 Water Court, as appropriate.

12. Recording. Holcim shall not record this Agreement in the real property records of any jurisdiction, but may disclose or otherwise utilize this Agreement in any proceeding to obtain approval of a plan for augmentation from the Division 1 Water Court or a substitute water supply plan from the Colorado Division of Water Resources.

13. Counterparts. This Agreement may be executed in counterparts, each of which when executed by the Parties may be deemed an original. The combination of such identical counterparts when executed by the Parties shall constitute one agreement.

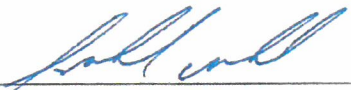
14. No Vested Interest in Augmentation Water. This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. Greeley grants no interest in the Augmentation Water to Holcim other than as explicitly set forth in this Agreement. Holcim shall make no claim to any rights, title, or interest in the Augmentation Water other than as expressly set forth in this Agreement. In no event shall Greeley be required to provide Augmentation Water in amounts greater or for a period longer, than expressly described herein.

15. Restriction on Sublease and Assignment. Holcim shall not rent, sublet, or otherwise convey the right to use the Augmentation Water. Holcim shall not assign this Agreement, except to a successive owner or operator of the Holcim Ponds for augmentation of the Holcim Ponds, and only with prior written consent from Greeley. Holcim shall request consent from Greeley prior to any purported assignment of this Agreement by advance written notice of at least thirty days. Such consent may be given or withheld in the sole discretion of Greeley.

16. Indemnification. Holcim agrees to exercise its rights under this Agreement at its own risk. Holcim shall indemnify and hold Greeley harmless from and against any cost, expense, or liability arising out of this Agreement or related activities. Nothing in this Agreement is intended constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as it may be applicable now or hereafter amended.

IN WITNESS WHEREOF, Holcim and the City of Greeley have executed this Agreement on the dates set forth below.

HOLCIM (US), INC.

By: 
Title: _____

Sr. Vice President, Manufacturing

Date: 2/13/19

CITY OF GREELEY

a Colorado home rule municipal corporation
acting by and through its Water and Sewer Board

By: [Signature]
Mayor

Date: 2-20-19

ATTEST:

By: Betsy D. Holder
City Clerk 3/5/19



[Signature]

View/Print Label

1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialogue box that appears. Note: If your browser does not support this function, select Print from the File menu to print the label.
2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**

Customers with a scheduled Pickup

 - o Your driver will pickup your shipment(s) as usual.

Customers without a scheduled Pickup

 - o Schedule a Pickup on [ups.com](https://www.ups.com) to have a UPS driver pickup all of your packages.
 - o Take your package to any location of The UPS Store®, UPS Access Point(TM) location, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. To find the location nearest you, please visit the 'Locations' Quick link at [ups.com](https://www.ups.com).

UPS Access Point™
CARQUEST STORE # 3019

115 LOCKWOOD ST
ALPENA MI 49707-2539


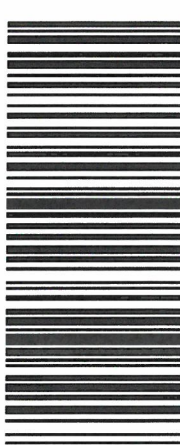
UPS Access Point™
THE UPS STORE

486 S RIPLEY BLVD
ALPENA MI 49707-4008

UPS Access Point™
ADVANCE AUTO PARTS STORE
#6164

1480 M 32 W
ALPENA MI 49707-8194

FOLD HERE

<p>TRAVIS WEIDE 989 657 3808 HOLCIM 1435 FORD AVE ALPENA MI 49707</p> <p>SHIP TO: JENNIFER PETZELKA GREELEY WATER AND SEWER DEPARTMENT 1001 11TH AVENUE GREELEY CO 80631</p>	<p>0.5 LBS LTR</p> <p>1 OF 1</p>	<p>CO 806 3-01</p> 	<p>2</p> <p>UPS 2ND DAY AIR</p> <p>TRACKING #: 1Z 457 613 02 9717 3710</p> 	<p>BILLING: P/P</p>  <p>XOL 21.11.24 NV45 50.0A 12/2021*</p>
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