

## **APPENDIX 7-4**

COMPLIANCE ORDER ON CONSENT

COLORADO DEPARTMENT OF NATURAL RESOURCES –  
DIVISION OF WATER RESOURCES  
AND  
SNOWCAP COAL COMPANY, INC.

ALTERNATE WATER SUPPLY  
COTTONWOOD AND/OR RAPID CREEKS

**COLORADO DEPARTMENT OF NATURAL RESOURCES – DIVISION OF WATER  
RESOURCES, OFFICE OF THE STATE ENGINEER AND THE DIVISION  
ENGINEER FOR WATER DIVISION NO. 5**

---

**COMPLIANCE ORDER ON CONSENT**

---

**IN THE MATTER OF SNOWCAP COAL COMPANY, A DELAWARE  
CORPORATION**

---

The State Engineer and the Division Engineer for Water Division 5 (together the “Engineers”) issue this Compliance Order on Consent (“Consent Order”), pursuant to the Engineers’ authority under sections 37-92-501 and 502, C.R.S., of the Water Rights Determination and Administration Act of 1969 (the “Act”) with the express consent of Snowcap Coal Company, a Delaware corporation (“Snowcap”). The Engineers and Snowcap may be referred to collectively as “the Parties.”

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are:
  - a. To establish compliance requirements and criteria for Snowcap to implement temporary solutions and adjudicate a permanent solution in the form of a plan for augmentation to remedy injurious out-of-priority stream depletions to Rapid and/or Cottonwood Creeks that may be attributable to the Roadside Mine (formerly known as the Roadside and Cameo Mines) which is an underground coal mining operation located in Mesa County, approximately three miles northeast of Palisade, Colorado, adjacent to Interstate 70 and the Colorado River, at the Cameo exit in DeBeque Canyon (the “Roadside Mine”) compliant with the Act; and
  - b. To resolve the violations of the Act cited herein and to bring Snowcap into full compliance with the January 27, 2021 Administrative Order pursuant to sections 37-92-501 and 502, C.R.S., to replace out of priority depletions of the Roadside Mine (“Administrative Order”). From the effective date of this Consent Order and moving forward, the terms of this Consent Order shall define and control Snowcap’s obligations for compliance with the Engineers’ order pursuant to the Act to remedy injurious stream depletions attributable to the Roadside Mine.

## **THE ENGINEERS' FINDINGS AND DETERMINATIONS**

2. Based upon the Engineers' investigation into and review of the issues identified herein, and in accordance with section 37-92-502, C.R.S., the Engineers have made the following determinations.

3. The Engineers acknowledge that Snowcap asserts that, at all relevant times, Snowcap was a Delaware corporation in good standing, but the Engineers have not independently confirmed Snowcap's corporate standing.

4. Snowcap is the holder of Permit No. C-1981-041 ("Reclamation Permit") for the Roadside Portals Mine ("Roadside Mine") east of Palisade which was issued in 1983 pursuant to section 34-33-101, C.R.S., *et seq.* (the "Coal Act"). The Reclamation Permit requires that Snowcap complete reclamation of the Roadside Mine and affected areas in the Reclamation Permit boundary in compliance with a reclamation plan established under section 34-33-111, C.R.S. ("Reclamation Plan"). There has been no coal extraction at the mine since December 1999. The Roadside Mine is nearing completion of the approved Reclamation Plan required by the Coal Act.

5. The southern portion of the Reclamation Permit area associated with the Roadside Mine is primarily drained by Rapid and Cottonwood Creeks. These creeks begin on the flanks of Grand Mesa and flow northwest to their confluence one mile southwest of the Roadside South Portal operations area. From this confluence, Rapid Creek flows westward approximately 1.2 miles and empties into the Colorado River. Flows in these creeks occur primarily in response to annual snowmelt and seasonal precipitation events. Both streams are intermittent during most years, but they do flow continuously during wet years. Portions of the underground mine workings for the Roadside Mine are located in the Rapid Creek and Cottonwood Creek basins.

6. Snowcap's predecessor in interests, Powderhorn Coal Co., obtained a water right for certain limited uses of water collected by the Roadside Mine. The water right confirmed to the Roadside Mine Dewatering System No. 1 was adjudicated pursuant to the Decree entered on May 13, 1987 by the Water Court in and for Water Division No. 5 in Case No. 86CW90, and the system was permitted as Well Permit No. 33210. The 86CW90 Decree and Well Permit No. 33210 found that the mine dewatering system collected only groundwater tributary to the Colorado River, as opposed to groundwater tributary to Rapid and Cottonwood Creeks. All water collected by the Roadside Mine, and its collection system, is discharged directly to the Colorado River.

7. In the course of Snowcap's stream monitoring and completion of the Reclamation Plan required by the Coal Act, it was determined by the Division of Reclamation Mining and Safety in its October 8, 2015, *Phases I, II and III Bond Release Proposed Decision and Findings of Compliance for the Roadside Portals SL -08 PERMIT NUMBER C- 1981-*

041, that the source of the water discharging from the Roadside Mine by way of the collection system was groundwater inflow to the mine that is not directly related to Cottonwood and Rapid Creeks.

8. Subsequently on November 15, 2019, Snowcap Coal Company, Inc. (“Snowcap”) received a letter from the Engineers concerning a complaint from Rudolph Fontanari (“Fontanari”) to the Engineers that the Roadside Mine is causing undecreed out-of-priority stream depletions to Rapid Creek to the injury of Fontanari’s decreed surface water rights (the “SEO Letter”). The Engineers further determined that because the Roadside Mine is no longer operating, the Roadside Mine Dewatering System No. 1 is therefore no longer being used for decreed purposes, notwithstanding its continued collection of water and delivery of water from the mine to the Colorado River.

9. In response to the SEO Letter, Snowcap engaged hydrogeologists and water resource engineers with BBA Water Consultants, Inc. (“BBA”) who investigated whether the underground mine workings were or potentially could have an impact on groundwater movement and on surface water supplies in the Rapid Creek Drainage. The conclusion of those investigations, completed in May of 2020, was that the Roadside Mine likely influenced groundwater movement and that the depletion to Rapid and Cottonwood Creeks from the Roadside Mine is approximately thirty-two percent (32%) of the mine discharge, or 38.1 gallons per minute on average. Further BBA specifically concluded that approximately four percent (4%) of mine discharge (less than 4.8 gallons per minute on average) is a potential depletion to Rapid Creek above the Martin-Crawford Ditch, owned by Fontanari.

10. The Engineers acknowledge that it is Snowcap’s position that prior to completing the BBA analysis, Snowcap had not previously been presented evidence that the Roadside Mine may be impacting surface water availability in either Rapid or Cottonwood Creeks. Upon so learning, Snowcap initiated efforts to identify and develop/acquire replacement supplies to address any depletions to Rapid and Cottonwood Creeks. The Roadside Mine and its associated dewatering system constitute a well under Colorado law. See *Three Bells Ranch Associates v. Cache la Poudre Water Users Ass’n*, 758 P.2d 164 (Colo. 1988); *Zigan Sand & Gravel, Inc. v. Cache la Poudre Water Users Ass’n*, 758 P.2d 175 (Colo. 1988); and C.R.S. § 37-90-103(21). Because the Roadside Mine is a well, Snowcap is required by the Act to apply for a well permit from the State Engineer. Neither Snowcap, nor its predecessors in interest, have obtained a well permit for the Roadside Mine for such current uses in compliance with the Act.

11. A well permit cannot be issued, however, if the water rights of others will be materially injured. C.R.S. § 37-90-137(1). Because Rapid and Cottonwood Creeks are already over-appropriated during certain times of the year, an augmentation plan must be adjudicated to remedy any injury caused to senior water rights. C.R.S. §§ 37-90-137(2). Until an augmentation plan can be adjudicated, a Substitute Water Supply Plan pursuant to section 37-92-308, C.R.S., (“SWSP”) may be implemented by Snowcap to address injurious depletions.

12. The Engineers issued the Administrative Order on January 27, 2021 directing Snowcap to either:

a. Implement a temporary solution, by May 1, 2021 for the 2021 irrigation season to replace or remedy any injury caused by the Roadside Mine dewatering system, and to submit a SWSP not later than March 26, 2021, for State Engineer review and approval of the temporary solution; or

b. Alternatively, by March 26, 2021, if a temporary solution in the form of an SWSP cannot be implemented, then Snowcap must provide justification for its inability to put in place a temporary solution for the 2021 irrigation season and commit in writing to a plan for a permanent solution acceptable to the Engineers to remedy any injury to senior water rights, and that temporary operations of that plan must be in operation by the 2022 irrigation season. The Administrative Order required that such commitment be a binding and enforceable agreement with the Engineers with timelines.

13. The Engineers extended the deadline of the Administrative Order to April 2, 2021.

14. On April 2, 2021, Snowcap submitted a written response to the Administrative Order detailing and documenting its ultimately unsuccessful efforts to investigate and obtain a complete temporary solution for submission of a SWSP to the Engineers for the 2021 irrigation season. The Engineers acknowledge that it is Snowcap's position that Snowcap diligently attempted to comply with the Administrative Order and obtain replacement supplies from the owners of water rights in the Rapid and Cottonwood Creek drainages that might have been converted to augmentation purposes as part of a SWSP, and further sought forbearance agreements with the owners of those water rights as a contractual remedy. Such solutions would have required the agreement of those water rights owners. It is the Engineers' understanding and the Engineers acknowledge that Snowcap was unable to find owners of water rights who were willing to lease their water rights for the 2021 irrigation season for augmentation use by Snowcap under a SWSP.

15. Snowcap subsequently obtained forbearance agreements with some (the Smith Ditch and the Martin-Crawford Ditch), but not all, owners of water rights in Rapid and Cottonwood Creeks to compensate those water rights owners for any injury during the 2021 irrigation season.

16. Snowcap's April 2, 2021 response to the Administrative Order did not provide a binding and enforceable agreement with timelines, but acknowledged the need to enter into an enforceable agreement with the Engineers for a plan to implement a permanent solution, and asked the Engineers for coordination in the development of such a stipulated order with obligations and timelines acceptable to the Engineers. A complete temporary solution for 2021 has not been implemented.

## **ORDER AND AGREEMENT**

17. Based on the foregoing factual and legal determinations, pursuant to its authority under sections 37-92-501 and 37-92-502, C.R.S., and as a result of the violation of the Act and the failure to implement a temporary solution for the 2021 season in compliance with the Administrative Order cited herein, the Engineers order Snowcap to comply with all provisions of this Consent Order, including all requirements set forth below.

18. Snowcap agrees to the terms and conditions of this Consent Order. Snowcap agrees that this Consent Order constitutes an order issued pursuant to section 37-92-502, C.R.S., and is an enforceable order of the Engineers. Snowcap also agrees not to challenge directly or collaterally, in any judicial proceeding brought by the Engineers to enforce this Consent Order under section 37-92-503, C.R.S., or by Snowcap against the Engineers concerning this Consent Order:

- a. the issuance of this Consent Order;
- b. the factual and legal determinations made by the Engineers herein; and
- c. the Engineers' authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order.

19. Notwithstanding the above, Snowcap does not admit to any of the factual or legal determinations made by the Engineers herein, and any action undertaken by Snowcap pursuant to this Consent Order shall not constitute evidence of fault by Snowcap with respect to the conditions of the Roadside Mine or the extent of its permitting and augmentation obligations, if any, associated with the Roadside Mine. Snowcap expressly reserves its rights to deny any of the Engineers' factual or legal determinations or defend itself in any other third-party proceeding relating to the information identified in this Consent Order.

## **COMPLIANCE REQUIREMENTS**

20. Given the water supply limitations present in Rapid and Cottonwood Creeks, and the existing allocation of property and water rights in those basins, it is anticipated that a permanent solution to address depletions from the Roadside Mine to Rapid and Cottonwood Creeks will consist of either the use of reservoir storage releases from reservoirs located on lands currently owned by third parties, or the conversion of water rights to augmentation use, or a combination of both. In accordance with the deadlines set forth in this Order on Consent, Snowcap shall comply with the following deadlines and obligations for the development and implementation of a permanent augmentation solution and for a temporary solution for the 2022 irrigation season and subsequent irrigation seasons, which may include forbearance

agreements with water rights holders, until adjudication of a plan for augmentation is completed:

a. Snowcap will submit proposed plans for any proposed reservoir construction/rehabilitation to DWR Division of Dam Safety by January 17, 2022, which plans seek to address all requirements of DWR's Dam Safety Rules, 2 CCR 402-1.

b. Snowcap will submit an update to the Engineers regarding the Direct Flow Rights actually purchased, scope of reservoir plans, and engineering re: anticipated plan for augmentation operations based on historical consumptive use ("HCU") of any Target Direct Flow Rights purchased and/or any planned reservoir by January 31, 2022.

c. Snowcap will submit to the Engineers by February 15, 2022, the following:

i. An application for DWR's approval of a SWSP for use of direct flow rights actually purchased for augmentation purposes for 2022 (partial or complete remedy);

ii. A Well Permit Application for the Roadside Mine dewatering system;

iii. Initial Engineering Documentation and Support for the DWR's approval of the SWSP application;

iv. Forbearance Agreements with willing Rapid Creek and Cottonwood Creek owners, if any; and

v. Any other proposed replacement sources necessary to prevent injury from Snowcap's out-of-priority diversions occurring during the SWSP plan period, including any lagged stream depletions accruing after the period for which diversions are approved.

d. Snowcap shall work diligently with DWR to secure DWR's approval of the SWSP prior to April 1, 2022, including providing additional information that can reasonably be provided or developed in response to any comments on the SWSP received by DWR or in response to any requests by DWR regarding the requested SWSP.

e. Subject to DWR Division of Dam Safety approval of reservoir construction/rehabilitation plans by May 16, 2022, as soon as reasonably practicable, Snowcap, or its agents, will mobilize and initiate construction at reservoir construction/rehabilitation site as approved by DWR Division of Dam Safety.

f. Subject to DWR Division of Dam Safety approval of reservoir construction/rehabilitation plans by May 16, 2022, substantial completion of any reservoir construction or modification shall be completed by November 1, 2022, and Snowcap shall seek DWR authorization to commence storage. Snowcap shall diligently work with DWR to provide additional information or complete work as DWR determines to be reasonably necessary to authorize storage in the reservoir structure after completion of construction or modification.

g. If the DWR Division of Dam Safety fails to approve reservoir construction/rehabilitation plans by May 16, 2022, then the deadline for completion of reservoir construction or modification and Snowcap's request for DWR authorization to commence storage shall be November 1, 2023.

h. Subject to DWR Division of Dam Safety approval of reservoir construction/rehabilitation plans by December 1, 2022, Snowcap shall file an Application for Approval of Plan for Augmentation with the Water Court in and for Water Division No. 5 by December 31, 2022, which application may further include claims for water rights, changes of water rights, and appropriative rights of exchange and/or water exchange project(s). Snowcap shall prosecute the application to completion before the Water Court, including through any appeal to the Colorado Supreme Court or after any reversal or remand by the Supreme Court. The Engineers shall have the right to file a Statement of Opposition or a Motion to Intervene to participate before the Water Court. Snowcap agrees to not oppose any such motion. If DWR Division of Dam Safety approval of plans for reservoir construction/rehabilitation occurs after December 1, 2022, the deadline for Snowcap to file an Application for Approval of Plan for Augmentation with the Water Court in and for Water Division No. 5 shall be thirty (30) days after written notice of such approval, subject to all other provisions of this paragraph.

i. Snowcap shall submit an application for DWR's approval of an SWSP by February 15, 2023, for temporary operation and administration of the augmentation plan pending before the Water Court, and in each year thereafter until adjudication of the plan for augmentation is completed. Snowcap shall diligently work with DWR to secure DWR's approval of each annual SWSP prior to April 1st, including providing additional information in response to any comments on the SWSP received by DWR or in response to any requests by DWR.

j. Force Majeure. In the event of an occurrence outside of Snowcap's control that is unforeseeable or impossible to overcome and not as a result of the negligence or willful acts or inaction of Snowcap, including acts of God or other instances of Force Majeure, which prevents Snowcap from fulfilling its obligations hereunder, then, in that event, the failure to comply or satisfy the obligations of this paragraph 20 shall not be treated as a violation of this Consent Order. Force Majeure includes, but is not limited to,



the following: acts of government, strikes, acts of terrorism/sabotage, war, fire, hurricanes, snowstorms, floods, and natural disasters. If performance cannot be performed because of an occurrence described in this paragraph 20(j), then Snowcap's deadlines under this paragraph 20 shall be extended for so long as the conditions created by the act of God or other instances of Force Majeure, interfere with or reasonably preclude satisfaction of the condition. In such a case, Snowcap will coordinate with the Engineers on acceptable deadlines.

**PENALTY FOR VIOLATION OF CONSENT ORDER AND DEFERRED CIVIL  
PENALTY FOR ADMINISTRATIVE ORDER**

21. The Engineers may assess civil penalties of up to Five Hundred Dollars (\$500) per day, in their discretion, as a stipulated penalty amount against Snowcap for failure to satisfy one or more compliance requirement set forth in paragraph 20, above in the absence of any written authorization for extension or agreement for modification of the compliance requirement by the Engineers. For example, if Snowcap fails to submit proposed plans for reservoir construction/rehabilitation by January 17, 2022, and instead submits the required plans on January 22, then the Engineers may assess five days of violation and a Two Thousand Five Hundred Dollars (\$2,500) penalty. Except as provided under paragraph 32 below, Snowcap will not contest or appeal imposition of such civil penalties that are consistent with this Consent Order. Further, should the deadlines be missed, or Snowcap otherwise violates this Consent Order, the Engineers reserve the right to proceed with a complaint to enforce this Consent Order and the Engineers may seek imposition of civil penalties from the Water Court under section 37-92-503, C.R.S., for any and all violations dating back to and inclusive of the date of this this Consent Order and going forward, and for penalties up to the amount provided by statute. The Engineers may also request injunctive relief and the costs of any such enforcement proceedings, including the Engineers' reasonable attorney fees, or seek other relief under the Administrative Order as provided in paragraphs 22 and 26 below, should Snowcap fail to comply with this Consent Order. The parties further agree to a deferred civil penalty of FIFTY FIVE THOUSAND DOLLARS (\$55,000) payable to the State Treasurer pursuant to C.R.S. § 37-92-503 for Snowcap's failure to fully comply with the Administrative Order issued pursuant to C.R.S. § 37-92-503. The parties agree this deferred civil penalty will be automatically imposed against Snowcap upon a unappealable final finding that Snowcap has failed to comply with the terms of this Consent Order, after completion of any appeal permitted by paragraph 32 below. It will be waived upon the Engineers' written acceptance of Snowcap's completion of all compliance requirements of this Consent Order set forth in paragraph 20 above. This deferred civil penalty is directed specifically to the Administrative Order and is not to be considered in the nature of liquidated damages and does not foreclose the Engineers' ability to seek additional penalties as permitted by this paragraph 21 if Snowcap fails to comply with the Consent Order.

### **SCOPE AND EFFECT OF CONSENT ORDER**

22. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the Administrative Order. This Consent Order is final agency action. Snowcap agrees not to appeal this Consent Order. Should Snowcap fail to comply with the terms of the Consent Order, the Engineers may enforce this Consent Order pursuant to section 37-92-503, C.R.S., in the Water Court in and for Water Division No. 5, State of Colorado, and may seek civil penalties of up to Five Hundred Dollars (\$500) for each day of any violation of this Consent Order as well as injunctive relief and the recovery of the Engineers' costs of any enforcement proceedings, including allowance of reasonable attorney fees.

23. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in submissions required hereunder. All approved submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Engineers.

24. The Engineers' approval of any submission, standard, extension of time, or action under this Consent Order shall not constitute a defense to any subsequent violation of any requirement of this Consent Order, the Act, or the Regulations.

25. Snowcap shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Engineers make no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

26. Upon the effective date of this Consent Order, and until the Engineers approve completion of all required actions in this Consent Order, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the Administrative Order and/or the Roadside Mine and its impact on the Colorado River, and the tributaries of Rapid and Cottonwood Creeks and in the Administrative Order cited in paragraph 1.b. The Engineers reserve the right to bring any action to enforce this Consent Order, including actions for civil penalties and/or injunctive relief to compel Snowcap's compliance with this Consent Order and, should Snowcap fail to comply with the terms of this Consent Order, as well as injunctive relief and the recovery of the Engineers' costs of those proceedings, including allowance of reasonable attorney fees.

27. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

28. Snowcap reserves its rights and defenses regarding the Roadside Mine and its effect on surface or groundwater rights, other than proceedings to enforce this Consent Order.

### **NOTICES**

29. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to, via Certified United States Mail, return receipt requested, or by email to:

For the Engineers:

James Heath, P.E., Division Engineer  
Water Division 5 – Main Office  
Colorado Division of Water Resources  
202 Center Drive  
Glenwood Springs, CO 81601  
Email: [james.heath@state.co.us](mailto:james.heath@state.co.us)  
with a copy to [dnr\\_div5filing@state.co.us](mailto:dnr_div5filing@state.co.us)

For Snowcap Coal Company:

Jim Henry  
Riverside Plaza, 20<sup>th</sup> Floor  
Columbus, OH 43215  
Email: [jdhenry@aepes.com](mailto:jdhenry@aepes.com)  
with a copy to [kmmilenkovski@aep.com](mailto:kmmilenkovski@aep.com)

### **MODIFICATIONS**

30. This Consent Order may be modified only upon mutual written agreement of the Parties.

### **COMPLETION OF REQUIRED ACTIONS**

31. Snowcap shall submit a written Notice of Completion to the Engineers, via Certified United States Mail, return receipt requested, or by email as provided in paragraph 29 above, upon satisfactory completion of each of the requirements of this Consent Order as described in paragraph 20 above. Each Notice of Completion submitted by Snowcap shall be an independent and separate Notice for each of the requirements. The Engineers shall either accept or reject each of Snowcap's Notice of Completion in writing within thirty (30) calendar days of receipt. If no action is taken by the Engineers within thirty (30) calendar days of receipt, that specific Notice of Completion for that specific requirement shall be deemed accepted. If the Engineers reject a Notice of Completion, the written rejection shall identify the requirements that the Engineers consider incomplete or not satisfactorily performed and a

schedule for completion. Snowcap shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:

- a. Submit a notice of acceptance of the determination; or
- b. Submit a notice of dispute.

If Snowcap fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Engineers' determination, and the Engineers may impose the stipulated penalties under paragraph 21 above, as applicable.

32. If Snowcap timely files any notice of dispute pursuant to paragraph 31, the notice shall specify the particular matters in the Engineers' determination that Snowcap seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Snowcap and any stipulated penalties as provided under paragraph 21 above shall apply based on any determinations accepted by Snowcap. The Engineers and Snowcap shall have thirty (30) calendar days from the receipt by the Engineers of Snowcap's notification of dispute to reach an agreement, during which time Snowcap must provide any additional evidence or argument to the Engineers to be included in the administrative record. If agreement cannot be reached on all issues within this thirty (30) day period, the Engineers shall confirm or modify their decision, including any determination of stipulated penalties under paragraph 21 above, within an additional fourteen (14) days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, sections 24-4-101 through 108, C.R.S.

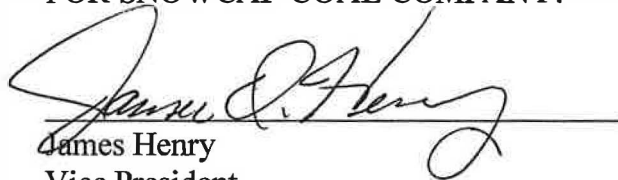
#### **NOTICE OF EFFECTIVE DATE**

33. This Consent Order shall be effective on the date signed by the last party.

#### **BINDING EFFECT AND AUTHORIZATION TO SIGN**


34. This Consent Order is binding upon Snowcap, its officers, directors, employees, successors in interest, and assigns. The undersigned persons warrant that they are authorized to legally bind their respective principals to this Consent Order and that they understand all of the terms of this Consent Order. Snowcap agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR SNOWCAP COAL COMPANY:

  
James Henry  
Vice President


January 5, 2022  
Date

FOR THE STATE ENGINEER AND THE DIVISION ENGINEER FOR WATER DIVISION  
NO. 5:

  
James Heath  
Division Engineer, Water Division 5

1/13/2022  
Date

Approved as to form:

  
Christopher R. Stork #47555\*  
Assistant Attorney General  
Water Resources/Conservation Units  
Natural Resources & Environment Section

1/13/2022  
Date

Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 7<sup>th</sup> Floor  
Denver, Colorado 80203  
Telephone: (720) 508-6311

\*Counsel of Record