



April 25, 2025

Paul J. Bruss, P.E.

BBA Water Consultants, Inc.

333 West Hampden Avenue, Suite 1050

Englewood, CO 80110

Re: Willow Creek Mine Substitute Water Supply Plan

DRMS File No. M-1983-011

Sections 5 and 6, T11S, R80W, 6th P.M.

Water Division 2, Water District 11

SWSP ID 6230, WDID 1107819

Approval Period: March 1, 2025 through February 28, 2026

Contact Information for Mr. Bruss: (303) 806-8952; pbruss@bbawater.com

Dear Mr. Bruss:

We have reviewed your letter of January 7, 2025 requesting approval of a substitute water supply plan ("SWSP") pursuant to section 37-92-308(5), C.R.S., for a gold sluice mining operation known as Willow Creek Mine operated by Mount Elbert Mining Company ("MEMC" or "Applicant"). Notice was provided to all subscribers to the Division 2 SWSP notification list on January 7, 2025. Comments were received from Brown and Caldwell on behalf of Lake County Government during the 35-day comment period, which Brown and Caldwell indicated were addressed following conversations with the Applicant and Division Engineer. The \$300 filing fee has been received and given receipt no. 10040108.

An application for approval of a change of water right or plan for augmentation has not been filed with the water court and the depletions associated with the proposed water uses will not exceed five years, therefore this request has been submitted pursuant to section 37-92-



308(5), C.R.S. In accordance with section 37-92-308(5), C.R.S., SWSPs may be approved for new water use plans involving out-of-priority diversions or a change of water right, if no application for approval of a plan for augmentation or a change of water right has been filed with the water court and the depletions associated with such water use plan or change will be for a limited duration not to exceed five years. **This is the third year of approval for this SWSP.**

SWSP Operation

The Willow Creek Mine is a placer mining operation that processes glacial till material through a trommel. Water used to wash and separate material is circulated through a series of four settling ponds that allow process water to be recirculated and reused. Water is delivered to the site through a ditch system that crosses property owned by the City of Aurora (“Aurora”). Previously, water use at the mine occurred pursuant to an administrative exchange. This SWSP is being requested to allow the current operations to continue through replacement of out-of-priority depletions with no change in the amount or location of water use.

Glacial till material is excavated on-site, and processed using a gravity flow trommel. Water is diverted from Corske Creek and/or Herrington Creek into a ditch and delivered to an on-site pond before being delivered into the trommel/slucice system. A vibrating hopper feeds an eight-inch grizzly screen. All material smaller than eight inches is then fed through an apron feeder, onto a 36-inch conveyor belt that is conveyed by stacker to a stockpile to be used for backfilling the open pit. Material smaller than $\frac{7}{8}$ inch is conveyed into a hopper which feeds two side-by-side 4×30-inch sluices followed by two 42-inch square duplex jigs and another set of 4×30 sluices. The final concentrate is stored in 55-gallon drums in the process building awaiting final gravity filtration. Sluice tailings are placed in a four-step series of settling ponds that allows for recirculating process water. The fresh water pond is lined, and does not expose groundwater. The four settling/recycling ponds are excavated above the groundwater table. According to the Division of Reclamation, Mining and Safety

{“DRMS”) permit application from August 14, 2018, the groundwater level is approximately 54 feet below ground surface, and the lowest elevation of disturbance for the mining activities, including pond construction, was expected to be 9850 feet in elevation. All diversions from Corske Creek and Herrington Creek will be measured with either a flume, totalizing flow meter or other approved measuring device. The Applicant will coordinate with the Water Commissioner before diverting and with the Division 2 office, and Pueblo Board of Water Works on replacement requests to ensure that adequate replacement water will be released.

The most recent operation of the Willow Creek Mine in 2022 diverted a total of 5.12 acre-feet of water from Corske Creek from mid-May through mid-August. Average diversions during this period were approximately 19,000 gallons per day. During that period, the Applicant coordinated with PBWW to release 5.70 acre-feet of replacement water from Twin Lakes Reservoir. The net impact to the Arkansas River from the mine operations was therefore approximately 0.58 acre-feet.

During this plan period, the Applicant intends to operate daily from mid-April through mid-September. The average daily water requirements for processing, dust suppression and replacement of evaporative and seepage losses from on-site ponds are estimated to be 20,000 gallons per day. There are five ponds on site (four settling ponds and a freshwater pond), with a total surface area of 1.5 acres. Estimated evaporative depletions from the ponds are 3.85 acre-feet, which are included in the overall estimate of 20,000 gallons per day.

To allow for operational flexibility, the estimated maximum water requirements for this SWSP approval period as presented in the table below include diversions from April through October. The total diversion during this plan period will not exceed 15 acre-feet, less any transit loss that is assessed on releases from upstream reservoirs.

Month	Estimated Water Requirements in acre-feet
March 2025	0
April	2.0
May	3.0
June	3.0
July	2.0
August	2.0
September	2.0
October	1.0
November	0
December	0
January 2026	0
February	0
Total	15.0

Depletions

Depletions from the site consist of direct diversions of water from Corske Creek and/or a branch of Herrington Creek, which will be used for processing material and dust suppression. All excavated ponds on site have been constructed above the groundwater table. Diversions from Corske Creek will be made at two potential diversion points, and the delivery to the mine will be made via a historical placer ditch system and/or pipe-hose system. Diversions from Herrington Creek will be made via a separate pipe-hose system from a branch of Herrington Creek that is on the Applicant's property. Diversions are considered to be 100% consumptive.

Replacements

MEMC has leased 15 acre-feet of fully consumable water from the Pueblo Board of Water Works (“PBWW”) and will use this leased water as the source of replacement water through February 28, 2026. A copy of the lease has been provided and a copy is attached to this letter. Due to physical channel constraints downstream of Willow Creek, releases will be made from Twin Lakes Reservoir or other PBWW decreed replacement sources above the downstream calling right on the Arkansas River to prevent injury to senior water rights.

Conditions of Approval

Pursuant to section 37-92-308(5)(a)(IV)(A), the State Engineer, after consideration of the comments received, has determined that the operation and administration of this SWSP will replace all out-of-priority depletions in time, location, and amount and will otherwise prevent injury to other water rights and decreed conditional water rights, including water quality and continuity to meet the requirements of use to which the senior appropriation has normally been put, pursuant to section 37-80-120(3), and will not impair compliance with any interstate compact.

This SWSP is hereby approved pursuant to section 37-92-308(5), C.R.S., subject to the following conditions:

1. This SWSP shall be valid for the period of March 1, 2025 through February 28, 2026 unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of section 37-92-308(5)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to section 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than **December 1, 2025. Applicant shall meet with the Division Engineer’s office prior to submitting an additional SWSP request to discuss the Applicant’s plan.**

2. In accordance with section 37-92-308(5), C.R.S., this SWSP cannot be renewed or approved for more than five years and the depletions associated with the proposed water uses must not exceed five years. **This is the third year of approval for this SWSP.**
3. The total direct diversions from Corske Creek and Herrington Creek at the Willow Creek Mine site must not exceed 15.0 acre-feet, including transit losses from any releases from upstream reservoirs, during this SWSP period. Total consumption must not exceed the aforementioned amount unless a new SWSP request is submitted and approved for such.
4. All direct diversions from Corske Creek and Herrington Creek must be measured with a Parshall Flume, or equivalent measuring device, and recorded with a digital continuous recorder. Daily average diversions must be reported monthly and augmented at 100%.
5. The replacement water that is the subject of this SWSP cannot be sold or leased to any other entity without prior, written approval of the Division Engineer. As a condition of subsequent renewals of this SWSP, the replacement water must be appurtenant to this site until a plan for augmentation is obtained or all depletions have ceased and any lagged depletions have been replaced. All replacement water must be concurrent with depletions in quantity, timing and location, except that releases aggregated at the discretion of the Division Engineer or the Augmentation Coordinator may occur in a later month than the depletions. Releases of water by PBWW pursuant to this SWSP shall be identified as to the Reservoir making the release, to determine appropriate transit losses, and be coordinated with the Division Engineer and the Augmentation Coordinator. All release requests for the following month must be coordinated with Division 2 Staff by the last day of each month. All releases of water by PBWW are subject to transit losses, which are subject to assessment and modification by the Water Commissioner and Division Engineer.

6. The Applicant shall provide daily accounting (including, but not limited to diversions and river calls) on a monthly basis. The accounting must be submitted to the Division Engineer via the online submittal tool. Submission access was established under the previous SWSP approval, please contact Kassidy Davis at kassidy.davis@state.co.us with any questions related to accounting submission under this SWSP approval. Accounting must be submitted within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
7. If required by the Division Engineer, Applicant shall work with Division Engineer staff to appropriately reflect operations in the diversion records and shall incorporate into the accounting any necessary water classes via a DWR tab.
8. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.
9. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the State Engineer concerning an SWSP pursuant to section 37-92-308(5), C.R.S., shall be to the Division 2 water judge within thirty days of the date of this decision.

Should you have any questions regarding this SWSP, please contact Willem Scott at (719) 221-0367 or willem.scott@state.co.us, or Melissa van der Poel of this office.

Sincerely,



Sarah Brucker, P.E.
Deputy State Engineer

Attachments: Willow Creek Mine General Location Map
Table 1
Water Lease Agreement

cc: Division 2 SWSP Review Team
Willem Scott, District 11 Lead Water Commissioner
Division of Reclamation, Mining and Safety

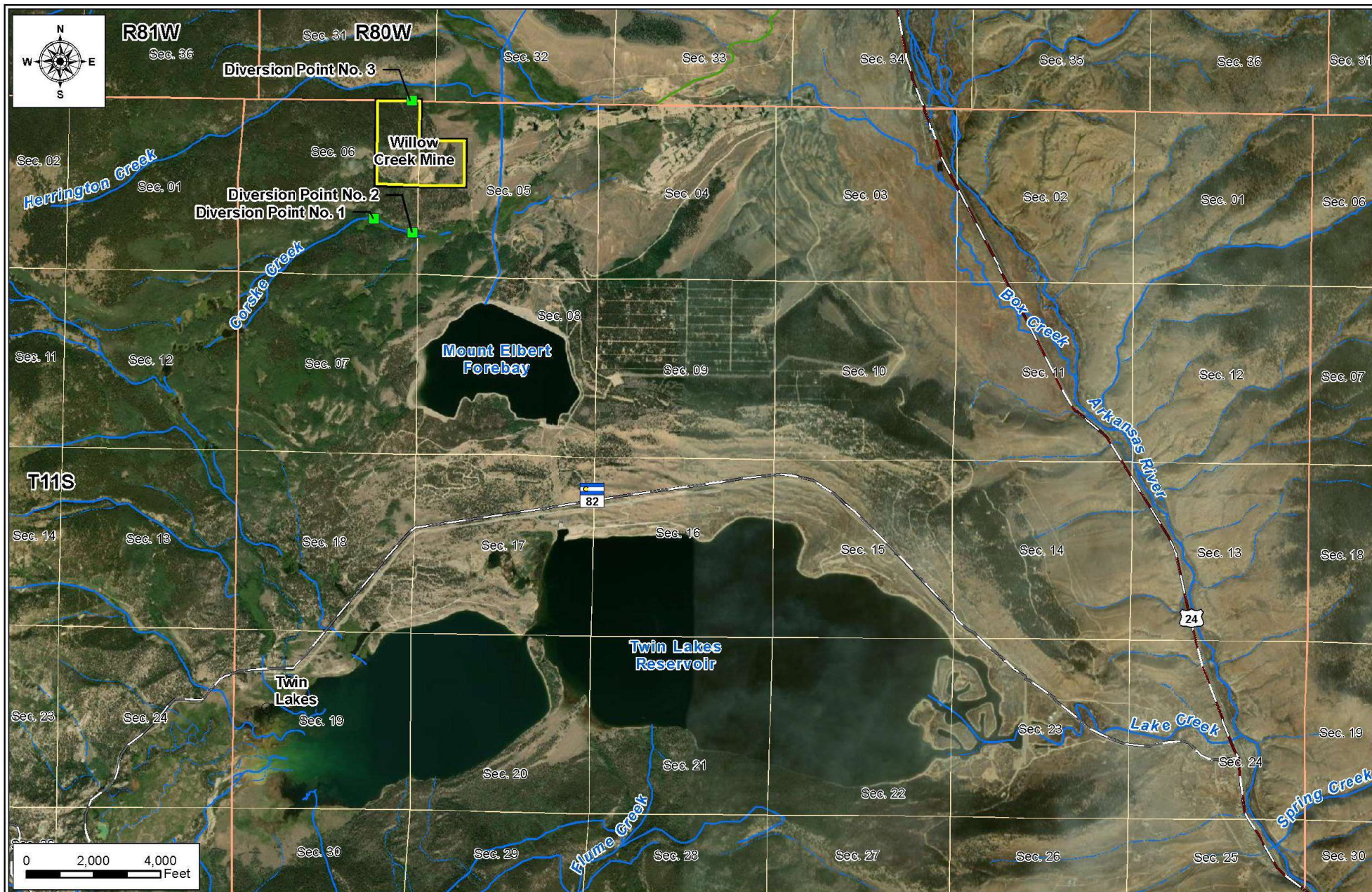


Figure 1
Willow Creek Mine
General Location Map

Date: 11/22/2022 | Job No. 2027.00

Legend

- Point of Diversion
- Mine Permit Boundary - Approx.

Data Source: Lake County, Edward-James Surveying, CDSS, CDOT, USGS, BLM



Table 1
Mt. Elbert Mining Company - Willow Creek Mine
Summary of Estimated Water Demand

Month	Estimated Water Demand (ac-ft)
March 2025	0.0
April	2.0
May	3.0
June	3.0
July	2.0
August	2.0
September	2.0
October	1.0
November	0.0
December	0.0
January 2026	0.0
February	0.0
	15.0

Note: Estimated monthly water demand schedule based on input from MEMC.

WATER LEASE AGREEMENT

This AGREEMENT is made and entered into effective as of the 21st day of December, 2022 (hereinafter called "Effective Date"), by and between Pueblo, a municipal corporation, acting by and through the Board of Water Works of Pueblo, Colorado (hereinafter called "Pueblo Water") and Mt. Elbert Mining Co., L.L.C. (hereinafter called "Lessee").

RECITALS

WHEREAS, Pueblo Water, pursuant to Section 15-2 of the Charter for the City of Pueblo, Colorado ("City Charter"), has the entire control, management and operation of the water works for the City of Pueblo ("City") and has and exercises all powers granted to cities of the first class by the Constitution and laws of the state of Colorado, except the power to levy and collect taxes;

WHEREAS, the City Charter provides that title to the properties of the former districts now consolidated and to any property of the water works is in the City and that the Board has the power to make and execute contracts in the name of the City, institute and defend all litigation affecting its powers and duties or in relation to the water works system, and as to all other property under its management;

WHEREAS, the water use that is the subject of this Agreement is of a type not normally within any regular rate schedule fixed by Pueblo Water; and the parties mutually agree that the terms for the lease of water for the purposes hereinafter set forth should be the subject of this special Agreement;

WHEREAS, Lessee desires to procure raw water from Pueblo Water for replacement of depletions resulting from its gold mining operation in Lake County, Colorado; and

WHEREAS, Pueblo Water desires to supply raw water to Lessee for its use for this purpose.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and the payments to be made hereunder, the parties hereto agree as follows:

AGREEMENT

1. **Term of Agreement.** This Agreement will be in force for a period of 3 years commencing March 1, 2023 and terminating February 28, 2026. Each twelve-month period, beginning with the commencement date stated above in this paragraph, is treated as a Contract Year under the terms of this Agreement.

2. **Quantity.** In accordance with the terms hereof, Pueblo Water will make available for delivery to Lessee 15 acre-feet of water during each Contract Year. This is the quantity of water to be paid for and made available for delivery under this Agreement for each Contract Year.

3. **Delivery of Raw Water.** The water to be delivered hereunder is raw water that has not been treated to make it suitable for any particular use. Any treatment of the water delivered hereunder to make it suitable for Lessee's use is the responsibility of Lessee.

4. **Delivery of Fully Consumable Water.** Pueblo Water agrees to deliver to Lessee, at the Place of Delivery described in Paragraph 5, transmountain water or other water fully consumable under Colorado law, including but not limited to, reusable return flows from transmountain water or other fully consumable water, but such sources will not include Fryingpan-Arkansas Project Water. The Lessee may fully consume and reuse the water delivered under this Agreement.

5. **Place of Delivery.** The Place of Delivery will be the location where water is released from any of Pueblo Water's sources, including but not limited to stored water at Clear Creek Reservoir, Twin Lakes Reservoir or Turquoise Reservoir, or at such other location as Pueblo Water chooses. Lessee bears responsibility for any exchanges necessary to get the leased water from the Place of Delivery to Lessee's place of use.

6. **Approval to Utilize Water.** Lessee will use the water to be delivered pursuant to the terms of this Agreement for replacement of depletions resulting from its mining operations in Lake County, Colorado. Lessee will be responsible for compliance with all applicable laws and regulations. If Lessee requires approvals from administrative or judicial authorities to use the water to be delivered under this Agreement, then Pueblo Water will cooperate with Lessee to provide information regarding Pueblo Water's water rights that may be needed to obtain approval of Lessee's water use. However, all costs of any such approvals will be borne by Lessee. Lessee will not file an application with any administrative or judicial authorities that includes a change to any of Pueblo Water's water rights without the express written consent of Pueblo Water, which consent is in the sole discretion of Pueblo Water.

7. **Rate of Delivery.** Pueblo Water will not be required to deliver water at a rate higher than 25 cubic feet per second, but may do so in its discretion. Pueblo Water will upon written request deliver at rates lower than 5 cubic feet per second subject, however, to the following:

7.1. Any such lower rate of delivery is subject to the approval of the Division Engineer, Water Division No. 2;

7.2. Any such delivery from Pueblo Water's supplies at Pueblo, Turquoise, Twin Lakes or other reservoir not controlled by Pueblo Water is subject to the approval of the agency which operates or controls discharges from said reservoir;

7.3. Pueblo Water is not required to make any physical alteration of any outlet gates or outlet measuring devices or incur any additional cost for the purpose of making such low-rate deliveries.

8. **Transportation and Evaporation Losses.** The quantity of water to be delivered hereunder will be measured at the Place of Delivery. Lessee will bear all transportation and evaporation losses from the Place of Delivery to Lessee's place of use. Pueblo Water will, in its

sole discretion, deliver water from the location closest to the Lessee's place of use when reasonably possible in order to minimize transit losses.

9. **Notice of Delivery.** Pueblo Water agrees in accordance with the terms of this Agreement, to make available for delivery up to the quantities of water specified in paragraph 2 during the term of the Agreement at the request of Lessee. Lessee must notify Pueblo Water's Water Resources Division by an exchange of emails or some other form of written communication by the parties at least two business days in advance of when any requested delivery of water needs to commence. Such notice will include the desired rate of delivery and the date and time such delivery should begin and end. Once released by Pueblo Water, it is the Lessee's responsibility to ensure that the state water officials cause the water released to be delivered to the Lessee's place of use. Pueblo Water will cooperate with Lessee and the state water officials to provide them with the necessary information concerning the source, location, rate, and duration of the release of the leased water.

10. **Charge.** In consideration of the water leased under this Agreement Lessee agrees to pay Pueblo Water a charge of \$828.71 per acre-foot of water for the quantity of water specified in paragraph 2. The parties agree that the water leased hereunder is on a "take or pay" basis. Accordingly, Lessee must pay the charge for all leased water, whether or not said quantities of water are actually taken by Lessee or are required for use by Lessee. Likewise, Pueblo Water agrees to make the water available for delivery throughout the term of this Agreement subject to paragraphs 13 through 16. Except as provided in paragraph 11.5, the failure of Lessee to take delivery of the full quantity of water contracted for and required to be paid for in any given Contract Year does not entitle Lessee to a refund of any sums paid or to receive any portion of such unused water in a subsequent Contract Year.

11. **Payments.**

11.1. On the Effective Date of this Agreement, Lessee must pay to Pueblo Water the First Contract Year payment of \$12,430.65.

11.2. Upon the Effective Date of this Agreement, Lessee will also pay to Pueblo Water a non-refundable fee of \$1,000 in consideration of legal and administrative costs incurred by Pueblo Water for this Agreement.

11.3. Additional payments in an amount equal to the Contract Year quantity of water specified in paragraph 2 multiplied by the applicable per acre-foot charge as determined under paragraphs 10 and 12 are due from Lessee to Pueblo Water on the first day of the second Contract Year and on the first day of each Contract Year thereafter for the term of this Agreement.

11.4. Delinquent balances will be subject to a late payment charge of 1.5% per month on the unpaid balance. No water will be delivered under this Agreement if Lessee has an unpaid balance.

11.5. If Pueblo Water, pursuant to paragraphs 13 through 16, does not make available for delivery the full quantity of water specified in paragraph 2 during any Contract Year, Pueblo Water will notify Lessee of the quantity of water available for the Contract Year. Said notice will be provided to Lessee within 15 business days of when Pueblo Water makes the determination of the quantity of water available and will include reimbursement to Lessee of the amount paid by Lessee, per acre-foot, for the difference between the quantity of water specified in paragraph 2 and the quantity of water specified as available for delivery in said notice.

12. **Escalation.** The charge for water for the second and all subsequent Contract Years of this Agreement will be annually adjusted based upon the percentage increase, if any, over the previous calendar year in Pueblo Water's water rates for its general customers for treated water. For example, if the percentage increase for the second Contract Year is five percent, then the price for the second Contract Year will be \$870.15 per acre-foot. Pueblo Water will give Lessee written notice of any rate increase pursuant to this paragraph that will take effect in the next Contract Year.

13. **Pueblo City Charter Provision.** This Agreement involves the use of water outside the territorial limits of the City ("extraterritorial") and is specifically limited by the provisions of the City Charter governing such use. The City Charter provides, among other things, that: "The Board of Water Works shall have and exercise all powers which are granted to cities of the first class by the Constitution and Laws of the State of Colorado, except the power to levy and collect taxes directly or indirectly. Surplus water may be supplied to territories outside the City until same is needed by the inhabitants of the City."

14. **Determination of Water Availability by Pueblo Water.** Pueblo Water has determined that the welfare of the City requires a stable water supply for water users inside the City and, to a reasonable degree, for the extraterritorial customers of Pueblo Water putting to beneficial use Pueblo Water's surplus water. Therefore, the extent to which limitation of extraterritorial water use or delivery may be necessary to enable Pueblo Water to provide adequately for users inside the City is a fact to be determined by Pueblo Water in the exercise of its reasonable discretion from time to time as occasion may require. In the exercise of this discretion Pueblo Water may, from time to time, establish priorities for limitation of extraterritorial water uses or deliveries.

15. **Interruption of Water Supply Beyond Pueblo Water's Control.** While it is the purpose of Pueblo Water to maintain a water supply adequate to meet the current and future needs of the inhabitants of the City and to lease surplus water supplies to its extraterritorial contract customers, there are many elements that make it uncertain whether the water supply can always be adequate for all. Both parties to this Agreement recognize that the water supply for Pueblo Water and its water customers is dependent upon sources from which the supply is variable in quantity and beyond the control of Pueblo Water. The parties further agree that from time to time emergency or shortage situations may arise where there is a necessity to limit the use of or delivery of water to extraterritorial contract customers of Pueblo Water.

16. **No Liability for Interruption of Supply.** The Lessee agrees that no liability in tort or contract attaches to Pueblo Water hereunder on account of (a) any failure to correctly anticipate

availability of water supply or because of an actual failure to supply water due to inadequate physical water supply or inadequate storage, (b) the necessity for adopting and implementing water use or delivery restrictions or priorities to meet emergency conditions or shortage or (c) any other cause arising from an occurrence beyond the reasonable control of Pueblo Water, including, but not limited to, act of God, strike, war, insurrection, public health emergency, or inability to serve arising out of the order of any court, or the lawful order of any governmental entity with the authority to regulate matters pertaining to water, public utilities, public health, public safety, or pollution control.

17. **Not a Permanent Supply.** The parties understand and agree that this Agreement is not to be interpreted as any commitment on the part of Pueblo Water to furnish water to Lessee on a permanent basis, but rather to provide Lessee with water from Pueblo Water for the limited term of this Agreement.

18. **Sales Tax or Other Taxes.** In the event any sales tax or other tax is levied on the water leased under this Agreement, Lessee agrees to pay said tax. Lessee may, however, contest the imposition of any such tax at its own expense, and the requirement of such payment under this Agreement is without prejudice to Lessee's right to contest any attempted imposition of tax.

19. **Assignability; Sublease.** This Agreement may not be assigned or subleased without prior written approval by Pueblo Water, which approval is in the sole discretion of Pueblo Water.

20. **Use of Water.** The water leased hereunder will be used in connection with Lessee's gold mining operation in Lake County, Colorado. The water leased hereunder will not be used in connection with the cultivation, testing, manufacturing, distribution or selling of marijuana.

21. **Waiver.** Failure of either party hereto to exercise any right hereunder is not a waiver of such party's right and does not affect the right of said party to exercise at some future time said right or rights or any other right it may have hereunder. No waiver of any of the provisions of this Agreement will be deemed or constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver is binding unless executed in writing by the party making the waiver.

22. **No Exclusive Right or Privilege.** Nothing in this Agreement is to be construed as a grant by Pueblo Water of any exclusive right or privilege.

23. **Title to Water Rights.** Nothing herein is to be interpreted to give Lessee any legal or equitable title in or to any of Pueblo Water's water rights.

24. **Notices.** Unless otherwise expressly provided in this Agreement, each notice must be in writing and sent by first class mail, postage prepaid, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice will be deemed to have been given at the time it is deposited in the United States mail in the manner prescribed herein. Nothing contained herein is to be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or

other legal process. All notices required to be given to Pueblo Water hereunder must be delivered to:

Board of Water Works of Pueblo, Colorado
Attention: Executive Director
Hand Delivery:
319 West 4th Street
Pueblo, CO 81003

Mail:
P.O. Box 400
Pueblo, CO 81002-0400

or at such other address as Pueblo Water may direct by written notice. All notices required to be given to Lessee hereunder must be delivered to:

Mt. Elbert Mining Co., L.L.C.
32460 Inverness Drive
Evergreen, CO 80439

or at such other address as Lessee may direct by written notice.

25. Remedies. In the event that either party defaults in the performance of any of its obligations under this Agreement, in addition to any and all other remedies provided in this Agreement or by law or equity, each party will have the right of specific performance against the other. Each party agrees to personal jurisdiction in any action brought in any court within the County of Pueblo, State of Colorado having subject matter jurisdiction over the matters arising under this Agreement. Any suit, action, or proceeding arising out of or relating to this Agreement will only be instituted in the County of Pueblo, State of Colorado.

26. Default, Right to Cure. In the event that either party believes that the other is in default of any obligation under this Agreement, except as provided below in this paragraph, the non-defaulting party must give written notice of the default to the defaulting party. Such notice will be given by certified or registered mail, postage prepaid and return receipt requested. If a notice of default is provided, the party accused of the default must either cure it or provide a written statement explaining why it is not in default. If the alleged default is not cured or otherwise resolved within 30 days, the parties may resort to their remedies. In the event of default for failure to pay any amount required to be paid by Lessee pursuant to the terms of this Agreement, Pueblo Water is not required to deliver water and notice of default is not required. Pueblo Water may, at its sole option, provide notice and a 10 day cure period. However, Pueblo Water will not be required to deliver water until the entire amount owed is paid by Lessee.

27. Right to Enter Agreement. Each party hereby warrants and represents that it has the full right and lawful authority to enter into this Agreement.

28. Governing Law. This Agreement will be governed by the laws of the State of Colorado in all respects.

29. Entire Agreement, Modification. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter described in it and supersedes all prior

contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement is binding unless executed in writing by all parties.

30. **Captions and Headings.** The captions and headings in this Agreement are for convenience of reference only, and will not be used to interpret, define, or limit its provisions.

31. **Construction Against the Drafter.** In the event of an ambiguity in this Agreement, the rule of construction that ambiguities will be construed against the drafter is inapplicable, and the parties hereto are to be treated as equals and no party will be treated with favor or disfavor.

32. **Third Party Beneficiaries.** Other than any successor or assigns of the parties, enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the parties, and not to any third party. Any services or benefits that third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

33. **Governmental Immunity.** No term or condition of this Agreement is to be construed or interpreted as a waiver, express or implied, by Pueblo Water 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 applicable now or hereafter amended.

34. **Offer.** This Agreement will not be effective and Pueblo Water withdraws its offer to enter into this Agreement unless Lessee executes and delivers this Agreement to Pueblo Water, along with the initial payments required under paragraphs 11.1 and 11.2, within 60 days following approval of this Agreement by Pueblo Water's elected Board which occurred on November 15, 2022.

IN WITNESS WHEREOF, Pueblo Water and Lessee have caused these presents to be executed in their respective behalf by their proper officers.

PUEBLO, A MUNICIPAL CORPORATION, ACTING
BY AND THROUGH THE BOARD OF WATER
WORKS OF PUEBLO, COLORADO

By: 

Seth J. Clayton, Executive Director

MT. ELBERT MINING CO., L.L.C.

By: 

Dennis Sonnenschein, Managing Director