

## WATER DELIVERY AGREEMENT

The Colorado Water Conservation Board ("CWCB"), an agency of the State of Colorado, and the Board of County Commissioners of Summit County, Colorado, a political subdivision of the State of Colorado ("Summit County") in consideration of the mutual promises contained in this document, agree as follows:

### RECITALS

- A. Summit County has obtained a decree for conditional water rights and a change of conditional water rights in Case No. 10CW43, Water Division No. 5 (the "Decree"), providing for the storage of water in Peru Creek Reservoir as described in paragraphs 7 and 10 of the Decree.
- B. Paragraph 31(e) of the Decree provides, inter alia, that the place of use for water released from storage in Peru Creek Reservoir for piscatorial purposes shall be the stream reach(es) decreed for present or future CWCB instream flow water right(s) within Summit County.
- C. The CWCB has obtained a decree in the District Court, Water Division 5, in Case No. 86CW210 for an instream flow ("ISF") water right to preserve the natural environment to a reasonable degree on the Snake River from its confluence with the North Fork of the Snake River to the confluence with Dillon Reservoir.
- D. Summit County and the CWCB desire to work cooperatively on water matters in the Snake River Basin. Summit County may elect in its sole discretion to release from Peru Creek Reservoir water for piscatorial purposes in accordance with the terms and conditions of the Decree, at times to be determined at the sole discretion of Summit County, at rates of flow up to those provided in paragraphs 1 and 2 of this Agreement (the "Piscatorial Releases"). The CWCB has agreed to use the Piscatorial Releases under Summit County's Decree to preserve or improve the natural environment to a reasonable degree in the stream reach(es) decreed for present or future CWCB instream flow water right(s) within Summit County, subject to the terms and conditions outlined in this Agreement. The Piscatorial Releases do not include water stored in or released from Peru Creek Reservoir at the sole discretion of Summit County for any other purposes authorized by the Decree.
- E. Pursuant to section 37-92-102(3), C.R.S. (2011), the CWCB may acquire by contractual agreement with any person, including any governmental entity, such water, water rights or interests in water that are not on the Division Engineer's abandonment list in such amount as the CWCB determines is appropriate for stream flows to preserve or improve the natural environment to a reasonable degree. This Agreement provides for the CWCB's contractual acquisition of water or an interest in water to preserve or improve the natural environment to a reasonable degree in certain stream reaches.

F. Pursuant to C.R.S. § 29-1-203, the CWCB and Summit County may cooperate or contract with one another with respect to the exercise of their governmental functions.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, Summit County and the CWCB agree as follows:

1. The Piscatorial Releases, in the volumes and at the rates of flow and times to be determined at the sole discretion of Summit County in accordance with the Decree, shall be made available to and protected for instream flow use under Summit County's Decree exclusively by the CWCB pursuant to this Agreement in the stream reach(es) decreed for CWCB ISF right(s) within Summit County, up to the decreed amount(s) of such ISF right(s) by maintaining flows in those stream reaches where the CWCB has instream flow rights, when the CWCB's instream flow rights on these reaches are not satisfied.
2. Summit County may also elect, in its sole discretion, to make Piscatorial Releases from Peru Creek Reservoir available to and protected for instream flow use under Summit County's Decree exclusively by the CWCB pursuant to this Agreement, at times to be determined at the sole discretion of Summit County, up to the maximum rates of flow to be determined pursuant to CWCB administrative procedures and a future agreement between Summit County and the CWCB, to improve the natural environment to a reasonable degree by increasing flows in the stream reaches above the CWCB's decreed flows.
3. The CWCB shall protect Piscatorial Releases in the ISF reach(es) consistent with the policies and procedures contained in the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, subject to the availability of funds. The parties shall cooperate in the administration, measurement, and monitoring of the Piscatorial Releases and their intended beneficial uses under this Agreement. In the event that the CWCB does not or cannot protect the full amount of the Piscatorial Releases in accordance with the terms of this Agreement, nothing in this Agreement shall prevent Summit County from exercising its rights under the Decree with respect to the Piscatorial Releases.
4. Nothing in this Agreement shall require Summit County to allocate any Peru Creek Reservoir water for release for non-consumptive piscatorial use or limit the ability of Summit County, in its sole discretion, to allocate Peru Creek Reservoir water for use for any of its decreed purposes.
5. Nothing in this agreement shall require either party to install gages to measure the Piscatorial Releases. The CWCB will contact the Division 5 Engineer and seek administration to ensure the full amount of Piscatorial Releases is protected through the ISF reach(es). Summit County shall be responsible for maintaining all records necessary for the implementation of this Agreement, using forms mutually agreeable to the parties, and all records required by the Division Engineer for administration of the CWCB

Releases. Summit County shall provide annual accounting related to the operation of this Agreement to the CWCB and the Division Engineer.

6. The CWCB will give due consideration, consistent with its generally applicable financial policies, to applications by Summit County for loans and grants to assist in funding the development, construction, operation, maintenance, and repair of the Peru Creek Reservoir.

7. Any rights created by this Agreement are contractual rights. This Agreement does not create and shall not be construed to create or convey any property interest, including any covenant, easement or servitude, in the real property or water rights of any party.

8. Pursuant to section 37-92-102(3), C.R.S. (2011), the terms of this Agreement shall be enforceable by each party as a water matter in the District Court, Water Division 5. Before commencing any action for enforcement of this Agreement, however, the party alleging a breach shall notify the other party in writing of the alleged breach and the parties shall make a good-faith effort to resolve their differences through informal consultation. All rights of enforcement shall be strictly reserved to the parties, and no third party shall have any right to enforce this Agreement. Specific performance of this Agreement shall be the exclusive remedy for failure of any party to comply with any provision of this Agreement. This Agreement shall be construed in accordance with the laws of the State of Colorado and shall be interpreted broadly to effect its purpose.

9. This Agreement was completed as the result of substantial discussions, negotiations and compromises by, between and among the CWCB and Summit County pertaining to the pending water court litigation referenced in the recitals. It is specifically understood and agreed by the parties hereto that the terms of this Agreement are based on and limited to the specific factual and legal circumstances of the matters described in the recitals. The interrelated compromises reached by the parties herein shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, laches or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the parties hereto in any other matter, case or dispute, nor shall testimony concerning such acquiescence of any party to the terms of this Agreement be allowed in any other matter, case or dispute. All parties stipulate and agree that they do not intend the terms of this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties further stipulate and agree that they each reserve the right to propose or challenge any legal or factual position in any other matter filed in Water Division No. 5 or any other court without limitation by the terms of this Agreement.

10. Any failure or delay by a party in exercising any of its rights, powers and remedies hereunder or in accordance with laws shall not lead to a waiver of such rights, and the waiver of any single or partial exercise of a party's rights shall not preclude such party from exercising such rights in any other way and exercising the remaining part of the party's rights.

11. Each provision contained herein shall be severable and independent from each of the other provisions such that if at any time any one or more provisions herein are found to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions herein shall not be affected as a result thereof.

12. The effective date of this Agreement shall be the last date shown on the signature page of this Agreement, which may be executed in counterparts.

13. The term of this Agreement is perpetual unless terminated under the provisions of this paragraph. This Agreement shall not be assignable by any party without the written consent of the other party. This Agreement may only be amended or terminated by the written agreement of the parties, and any such termination or amendment shall take effect only when properly signed by both parties to this Agreement.

14. Any notice required or permitted to be given under this Agreement will be in writing and considered effective when delivered by fax, email, hand delivery, Express Mail, Federal Express, or similar service, or on the third mail-delivery day after being deposited in the United States mail, postage prepaid, addressed to the parties as follows:

Summit County:  
County Manager  
Summit County, Colorado  
208 East Lincoln Avenue  
Breckenridge, CO 80424

CWCB:  
Colorado Water Conservation Board  
Stream and Lake Protection Section  
1313 Sherman Street, Room 721  
Denver, CO 80203

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**COLORADO WATER CONSERVATION BOARD**

  
By: James Eklund, Director

Date: 11.20.2013

**SUMMIT COUNTY BOARD OF COUNTY COMMISSIONERS**

By: [Handwritten Signature]

Date: 11-12-13

ATTEST: M. S. Joffin  
Deputy Clerk

