



**COLORADO**  
**Colorado Water  
Conservation Board**  
Department of Natural Resources

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

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**TO:** Colorado Water Conservation Board Members

**FROM:** Robert Viehl & Pete Conovitz  
Stream and Lake Protection Section

**DATE:** November 15, 2023

**AGENDA ITEM:** 5. Shoshone Power Plant Water Rights Background Information

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**Staff Recommendation:** This is an informational item with no Board action required.

**Background:**

The Colorado River Water Conservation District (District) submitted an application to the CWCB in September 2023 for a Non-Reimbursable Investment Project which sought funding to purchase the water rights associated with the Shoshone Power Plant. At this time the purchase agreement between Xcel Energy and the District has not been completed. As a result no action by the Board is being requested at this time.

Attached to this memo are high-level summaries comprised by staff of the four major agreements that influence the operation of the Shoshone Water Rights and situations when the power plant is offline. These are: the Agreement Concerning Reduction of Shoshone Call (2007 Relaxation Agreement), Colorado River Cooperative Agreement (CRCA), Shoshone Outage Protocol (ShOP), and the Orchard Mesa Check Case 91CW0247. During the presentation for this item, First Assistant Attorney General Jen Mele will provide a brief overview of the agreements. Caleb Foy Lead Assistant Division 5 Engineer will follow up with a presentation on mainstem Colorado River administration and the potential implications of no call at Shoshone.

**Attachments:**

- A) Staff Summaries of Agreements
- B) 2007 Relaxation Agreement
- C) CRCA Article VI
- D) ShOP Agreement
- E) Decree and Stipulation from Orchard Mesa Check Case 91CW0247



## **AGREEMENT CONCERNING REDUCTION OF SHOSHONE CALL (2007 RELAXATION AGREEMENT)**

**Date:** March 13, 2006

**Term:** January 1, 2007 – February 28, 2032

**Parties:** Denver Water and PSCo/Xcel

**Reason:** Following drought year 2002, a brief relaxation of the Shoshone Call<sup>1</sup> during the spring of 2003 provided benefit to east and west slope reservoirs. Xcel agreed to participate in developing a long-term program of relaxation of the Shoshone Call

### **Key Terms and Provisions:**

- When Water Shortage occurs, Xcel reduces its call to a one-turbine call of 704 cfs.
- Call relaxation may occur March 14 through May 20.
- If the call is relaxed and Cameo call not met (up to 1,950 cfs), Shoshone Call will be adjusted to amount greater than 704 cfs to avoid the initiation of a Cameo call.
- If the call is relaxed Denver Water pays power interference to Xcel and supplies water to other Xcel power plant facilities as well as west slope water users.
- Denver Water and Xcel agree to make good faith effort to secure commitments from Northern, Aurora, and CS-U to also provide water to Xcel and west slope entities.
- In event Xcel decides to sell Shoshone water rights, agrees to do so only in an open bidding process in which Denver Water has equal opportunity to purchase the rights.

## **COLORADO RIVER COOPERATIVE AGREEMENT (CRCA)**

**Date:** May 15 2012

**Term:** Effective date September 26, 2013, in perpetuity

**Parties:** Denver Water, River District, 16 other west slope entities

**Reason/Effect:** Restrict Denver Water's use of existing rights, conservation and reuse commitments by Denver Water, other commitments to west slope users regarding Denver Water's west slope water, agreement as to Green Mountain Reservoir administration, Shoshone Outage Protocol developed.

### **Key Terms and Provisions**

Art. VI: Shoshone Call

<sup>1</sup> Shoshone rights total 1,408 cfs (1,250 cfs 1902 senior right, 158 cfs 1940 junior right)

Stated goal: Achieve permanent management of the Colorado River so flow mimics the Shoshone Call Flows, whether or not a call is on the river and whether or not the Shoshone Power Plant remains operational.

- In event of Shoshone outage, River District, Middle Park, and Denver Water agree to operate systems as if Senior Shoshone Call on the river.
- Irrigation season target flows 1,250 cfs, non-irrigation season target flows 900 cfs.
- Does not apply in very dry irrigation season.
- Does not fully apply to very dry non-irrigation season.
- Denver Water and River District agree to operate their systems on a permanent basis under the outage protocol even if Shoshone power plant ceases operation altogether and regardless of whether someone buys the power plant and water rights.
- Acquisition of Shoshone Assets (both power plant and water rights) is contemplated as way to ensure permanency of Shoshone call flows. Purchase must be by governmental entity that is mutually acceptable to the West Slope Signatories, defined as a "West Slope Governmental Entity."
- If West Slope Governmental Entity intends to acquire the Shoshone Assets, Denver will not assert its right of first refusal for purchase of the assets under the 2007 Relaxation Agreement.
- If West Slope Governmental Entity acquires the Shoshone Assets, 2007 Relaxation Agreement remains permanently in effect.
- West slope parties agree to support Denver Water efforts to extend the call relaxation period under the 2007 Relaxation Agreement into the winter months during extreme drought periods.

## SHOSHONE OUTAGE PROTOCOL (SHOP)

**Date:** June 27, 2016

**Term:** 40 years (expires 2056)

**Parties:** Reclamation, DWR, Denver Water, River District, Middle Park Water Conservancy District, Northern, Grand Valley Water Users Assn, Orchard Mesa Irrigation District, Grand Valley Irrigation Company

**Reason:** The Shoshone call commands the flow in the Colorado River and when being administered upstream juniors cannot store or divert without providing replacement water. When the Shoshone Power Plant is down, the call can't be exercised and river flows may drop. Parties desire to keep the flow regime of the Colorado River as it has been historically influenced by the senior Shoshone call.

### Key Terms and Provisions

- Only applies to SENIOR Shoshone water right.
- Reclamation can terminate for "just cause."
- Will not apply during relaxation under 2007 Relaxation Agreement.
- Parties generally agree to operate resources as if call being administered to keep 1,250 cfs at Dotsero gage in non-winter season, 900 cfs at Dotsero in winter.
- Exceptions for Water Shortage/dry conditions/short water supply.

- DWR during operation of SHOP administers system as if a senior Shoshone call is in place.
- Parties agree not to divert or exchange on available water above Shoshone as a result of this agreement.

## ORCHARD MESA CHECK CASE 91CW247

**Date:** 1996

**Term:** Perpetual

**Parties:** Aurora, Basalt, BWCD, Carbondale, DOW, River District, Colorado Springs, State and Division Engineers, CWCB, Copper Mountain CMCMD, Cyprus Climax Metals, DeBeque, Eagle, Exxon, Frisco, Glenwood Springs, Grand County WSD No. 1, GVIC, Middle Park WCD, Mid Valley Metro Dist., Mobil, New Castle, North Barton Creek, Palisade, Parachute, Pueblo Board of Water Works, PSCo., Ralston Resorts, Rifle, Rifle Land Associates, Silverthorne, Spruce Valley Ranch Foundation, Summit County, Union Oil, Upper Eagle Regional Water Authority, Vail Associates, and Vail Valley Consolidated Water Dist.

**Reason/Effect:** Water court application by Grand Valley Water Users Association, Orchard Mesa Irrigation District, and the United States for an exchange based on operation of the Orchard Mesa Check. The Orchard Mesa Check is a structure below the common afterbay of the OMID Pumping Plant and the Grand Valley Power Plant. The Check can raise the water level in the afterbay to cause water to flow through the bypass channel and return to the Colorado River upstream of the GVIC Diversion Dam.

### Key Terms and Provisions

- Cameo call during irrigation season is limited under certain conditions.
  - US prohibited from exercising its power right April 1 – October 1, with exceptions when there are reduced diversions at Roller Dam and by GVIC.
  - Reduces Cameo call to 1,950 cfs April 1 – October 1.
- Intent to ensure diversions by Green Mountain Reservoir Historic Users Pool (HUP) beneficiaries will not be curtailed.
  - As long as there is at least 66,000 AF in HUP storage pool.
  - Dependent on Shoshone rights being exercised and in manner consistent with historical operations for hydropower production.

## ATTACHMENT S

Please reference the following  
number on all billings or payments.

Contract # 10266A

### AGREEMENT CONCERNING REDUCTION OF SHOSHONE CALL

This Agreement is between the City and County of Denver, acting by and through its Board of Water Commissioners (Board), and Public Service Company of Colorado d/b/a Xcel Energy (Company).

#### Recital

The Board's ability to store water in its reservoirs for beneficial use by its customers is adversely impacted, especially in dry years, by the Company's Shoshone Call. Following the drought year of 2002, a brief relaxation of the Shoshone Call during the spring of 2003 provided some benefit to storage reservoirs operated by both west slope and east slope entities, including the Board. Although a more comprehensive and long-term agreement on relaxation achieved through multi-party negotiations may be desirable, the Company and the Board agree to a relaxation of the Call under the provisions in this Agreement. The Company agrees to participate in developing a long-term program of relaxation, including a relaxation of the junior Shoshone Call, with the Board, other water users on the Colorado River and appropriate west slope entities.

#### Agreement

1. Agreement to Relax Call. When a water shortage occurs, as defined in Paragraph 2, the Company agrees to reduce the Shoshone Call to a one-turbine call of 704 cfs. If the Call is relaxed and the flow of the Colorado River at the Shoshone Power Plant, together with flows contributed by intervening tributaries, is not sufficient to meet the then-current demand of the major Grand Valley water rights, up to 1950 cfs (commonly referred to as the "Cameo Call"), then the level of the Shoshone Call will be adjusted to an amount greater than 704 cfs so as to avoid the initiation of a Cameo Call.

2. Water Shortage Defined. For purposes of this Agreement, a water shortage occurs when the following two conditions are met:

a. Using its regular methodology and based on the "normal" scenario, the Board predicts that reservoir storage in its system on July 1 will be at or below 80% full; and

b. The Most Probable forecast of streamflow prepared by the Natural Resources Conservation Service (NCRS) or jointly by NCRS and the Colorado Basin River Forecast Center indicates that the April – July flow of the Colorado River at the Kremmling gage will be less than or equal to 85% of average. If no forecast for the Kremmling gage is available, then the Dotsero gage will be used.

3. Timing of Relaxation of Call. If the two forecasts described in paragraph 2 occur in March, then the call will be relaxed beginning March 14 until May 20, inclusive, in accordance with this Agreement. If the two conditions described in paragraph 2 occur in April or May forecasts, then the Call will be relaxed in accordance with this Agreement until May 20, inclusive. The methodology that the Board uses to predict system storage shall be substantially the same as that described in the attached Exhibit A.

4. Power Interference. The Board agrees to pay power interference to compensate the Company for its incremental cost of replacement power and energy as a result of relaxing the Shoshone Call, regardless of which entity ultimately stores the water not called. The procedure for determining power interference is shown in Exhibit B.

5. Potential for Longer Call Relaxation. The Company agrees to consider a longer period of relaxation when water supplies are more severely impacted than described in paragraph 1, if such longer period is defined cooperatively between the Board, the Company and appropriate west slope entities.

6. Water for the Company's Facilities. The Board agrees to deliver water as described in this paragraph to the Company's Cherokee, Arapahoe, or Zuni Power Plants or a future Company power plant located within the Board's Combined Service Area. The Company will select the plant or plants to which the water will be delivered. Deliveries to the Arapahoe, Zuni or a future plant will be made to the South Platte River. Deliveries to the Cherokee plant will be made, at the Board's choice, to the South Platte River or through the Board's Recycled Water Plant. The Board may choose in its discretion the type of water delivered to these facilities, so long as the water is suitable for their use. The Board will not deliver water under this paragraph to the South Platte River downstream of the Cherokee plant's diversion structures. Any water delivered by the Board to the Company under this paragraph shall be used by the Company only at the plants listed in this paragraph 6 and only for purposes for which the Board's water rights have been decreed.

6.1 Amount of Water. The Board shall deliver under this paragraph 6 an amount of water equivalent to 15% of the "net water" it is able to store or divert as a direct result of the reduction of the Shoshone Call. "Net water" is defined as the total amount of water the Board is able to store or divert as a direct result of the reduction of the Shoshone Call at the following facilities, less any deductions described below:

- a. Water stored or diverted at the Board's Dillon Reservoir, less any water spilled from Dillon after filling and any water bypassed from Dillon for flood management purposes; and

- b. Water stored or diverted at the Board's Williams Fork Reservoir, less any water spilled from Williams Fork after filling and any water bypassed from Williams Fork for flood management purposes; and
- c. Water stored in the Board's account in Wolford Reservoir, less any water spilled from the Board's account after filling; and
- d. Water diverted through the Board's Moffat Tunnel, less any water spilled from the Fraser Collection System in excess of the Forest Service minimum bypass flow requirements; and
- e. Water stored or diverted at any western slope reservoir or storage account acquired or constructed by the Board after the date of this agreement, less any water spilled after filling and any water bypassed for flood management purposes.

6.2 Schedule for 15% Water Delivery. The Board shall make deliveries under this paragraph 6 between June 1 in the same calendar year as the Shoshone Call is reduced and March 31 of the following calendar year. The delivery schedule will be subject to approval by the Company.

6.3 Cost of Water Delivered. For each acre foot of water delivered to the Company under this paragraph 6, the Company shall reimburse the Board for the Board's power interference payments at the same rate per acre foot as the Board paid to the Company under paragraph 4.

7. Water for West Slope Entities. The Board agrees to make available to entities on the west slope, at no charge to the recipients, an amount of water equivalent to 10% of the "net water" it is able to store or divert as a direct result of the reduction of the Shoshone Call. "Net water" is defined in paragraph 6.1. The Board may choose in its discretion the method of delivery that is consistent with its water right decrees, so long as the delivery method is suitable for each recipient's desired use. The Board shall deliver the water in the same calendar year as the Shoshone Call is reduced. The Board agrees to cooperate with the Colorado River Water Conservation District to determine the particular west slope entities and the proportionate share of the water to be made available to each entity.

8. Additional East Slope Participants. The Board and the Company agree to make a good faith effort to secure commitments from the Municipal Subdistrict of the Northern Colorado Water Conservancy District, the City of Aurora and Colorado Springs Utilities to deliver to the Company, at no charge, 15% of their additional water diversions that result from a relaxation of the Shoshone Call, in accordance with paragraph 6, and to deliver 10% of the water diverted or stored to west slope entities in accordance with paragraph 7.

9. Priority System. Water made available by the relaxation of the Shoshone Call will be allocated in accordance with the priority system.

10. No Warranties. The Company is not warranting or representing that the diversion and use by the Board of additional water as a result of the relaxation of the Shoshone Call is administrable or lawful. To the extent that the State Engineer or a court with jurisdiction determines that the diversion and use by the Board of additional water as a result of the relaxation of the Shoshone Call is not administrable or lawful, the Company can continue to place the Shoshone Call notwithstanding this Agreement.

11. Increased Call for Company Operations. If the Company in its sole discretion determines that additional river flow is required for safe operation of the Shoshone Hydroelectric Station or the Company's electrical system, then the Company may increase the Call, notwithstanding this Agreement.

12. Operational Meeting. The Company agrees to meet with the Board each October to discuss operation of the Shoshone Call and any planned outages of the Shoshone Plant for repair or maintenance during the following twelve months so that the parties may better coordinate their activities.

13. Sale of Shoshone Water Rights. In the event the Company should determine that it is in its best interest to sell the Shoshone water rights, it agrees to do so only on an open bidding basis in which the Board shall have an equal opportunity to purchase the water rights as all others. If the Company sells the Shoshone water rights to an entity other than the Board, the new owner shall have the right to terminate this Agreement two years after closing of the sale.

14. Term. This Agreement shall be effective as of January 1, 2007 and will terminate on February 28, 2032.

15. Prior Agreement. The previous Letter Agreement between the Company and the Board dated April 14, 1986, is hereby terminated in its entirety.

IN WITNESS WHEREOF, the Board and the Company have executed this Agreement.

ATTEST:

PUBLIC SERVICE COMPANY OF  
COLORADO d/b/a XCEL ENERGY

*Carol J. Peterson*  
Asst. Secretary

By: *Paul V. Vitek*  
President and CEO  
Public Service Company of Colorado

Reviewed  
Legal

03/13/2006

*3/13/06 PVL*

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CITY AND COUNTY OF DENVER,  
acting by and through its  
BOARD OF WATER COMMISSIONERS

ATTEST:

Secretary

President

APPROVED:

Director of Planning

Director of Finance

APPROVED AS TO FORM:

Legal Division

REGISTERED AND COUNTERSIGNED  
Dennis J. Gallagher, Auditor

By:

Title:

Deputy Auditor

## Exhibit A

### DESCRIPTION OF PROCEDURES USED BY THE BOARD FOR RESERVOIR PROJECTIONS

Denver Water projects future reservoir levels monthly in the springtime and less frequently throughout the rest of the year. Active storage levels (excluding the dead storage pools) for the 10 largest reservoirs in Denver's system (Antero, Eleven Mile, Cheesman, Marston, Chatfield, Gross,Ralston, Dillon, Williams Fork, and Wolford Mountain) are forecasted. Calculations of gross and net aggregate reservoir contents are made. The calculation of net reservoir contents excludes any water in Denver's system owed to others (primarily Green Mountain Reservoir). The net active storage of the 10 reservoirs will be used in the forecast for the Shoshone call reduction.

The reservoir projections are based on natural streamflow forecasts produced primarily by the Natural Resources Conservation Service (NRCS). However, streamflow forecasts produced by other organizations including the Colorado Basin River Forecast Center, the Bureau of Reclamation, the Northern Colorado Water Conservancy District and Denver Water are also used.

The reservoir projections utilize correlations between natural streamflow and divertible streamflow to estimate how much of the natural streamflow can be diverted under Denver's water rights. Other factors incorporated in the reservoir projections include projections of treated water use, raw water deliveries, evaporation (based on rates approved by the State Engineer's Office), minimum bypass and release requirements, carriage losses assessed by the State Engineer's Office, existing capacities of diversion and conveyance facilities, system outages and river calls. The assumed treated water use considers any water use restrictions approved by the Denver Water Board at the time of the forecast.

Usually, three levels of reservoir projections are produced. These projections are based on three scenarios after the forecast date: "dry", "normal" and "wet" conditions. The "dry" scenario is based on the "reasonable minimum" streamflow forecasts, which have a 90% chance of being exceeded. The "normal" scenario is based on the "most probable" streamflow forecasts, which have a 50% chance of being exceeded. The "wet" scenario is based on the "reasonable maximum" streamflow forecasts, which have a 10% chance of being exceeded. The "normal" scenario will be used for the Shoshone call reduction.

## Exhibit B

### COMPENSATION FOR POWER INTERFERENCE

The Board agrees to pay power interference to compensate the Company for its incremental cost of replacement power and energy as a result of relaxing the Shoshone Call. The procedure for determining power interference is shown below.

#### Depletions to Shoshone Power Plant

The Board will compensate the Company for each acre-foot of net turbine flow depletion caused to the Shoshone Power Plant through the relaxation of the Shoshone Call. Net depletions are defined as gross depletions caused by the Board and all other water users upstream of the Shoshone power plant, less any water subsequently released from Green Mountain and Wolford Reservoirs utilized to generate power at the Shoshone plant. Some of the water stored in Green Mountain and Wolford as a result of relaxation of the Call will later be released, run through the Shoshone Plant for power generation, and delivered for use below the plant; such amounts of water do not constitute a net depletion for purposes of calculating power interference. Similarly, amounts of water spilled from Dillon Reservoir, Williams Fork Reservoir, the Board's account in Wolford Reservoir, or a new west slope reservoir or storage account described in Paragraph 6.1(e), and run through the Shoshone Plant for power generation, do not constitute a net depletion for purposes of calculating power interference. Depletions will be calculated at the Shoshone plant and will be adjusted for stream carriage losses assessed by the State Engineer in water rights administration.

#### Reimbursement to Xcel

The Board will reimburse the Company for power interference at the rate of at least \$5.00 per acre-foot of the net depletion described above. The \$5.00 per acre-foot minimum will be adjusted on a monthly basis (but not below \$5.00 per acre-foot) by the change in the Price of Spot Gas Delivered to Pipelines for Colorado Interstate Gas, Rocky Mountain (Index) as published in "Platts Inside FERC Gas Market Report," compared to a baseline representing the average Index for the first three months of 2006.

#### Accounting and Payment.

After the Call relaxation has ended, the Board will prepare an accounting of the power interference and provide it to the Company for review. Once final accounting has been determined, the Board will make payment to the Company within 60 days. Upon mutual agreement and the development of mutually agreeable terms, the Board may substitute a delivery of energy to the Company for the payment of power interference.

## **ARTICLE VI**

### **Shoshone Call**

#### **A. Shoshone Call.**

1. The Shoshone Power Plant, which is owned and operated by Public Service Company of Colorado, d/b/a/ Xcel Energy ("Xcel"), is located on the mainstem of the Colorado River in Glenwood Canyon. The Shoshone Power Plant produces hydroelectric energy by means of two water rights, the 1902 Shoshone Senior Right in the amount of 1250 cfs and the 1929 Shoshone Junior Right in the amount of 158 cfs (together, "Shoshone Water Rights").
2. When the Shoshone Power Plant is operating, the Shoshone Water Rights command the flow in the river by exercising the Senior Shoshone Call against upstream junior water rights. When the Senior Shoshone Call is on, upstream reservoirs cannot store water and junior water rights cannot divert unless they provide an equal volume of replacement water to the stream. Over the years, many water users have come to rely on the river flow regime created by the Senior Shoshone Call ("Shoshone Call Flows").
3. Whenever the Shoshone Power Plant is subject to a shutdown for repair, maintenance, or other reasons ("Shoshone Outage"), the Shoshone Call cannot be exercised, and Shoshone Call Flows may not be present in the river.
4. The Signatories agree that a Shoshone Outage could adversely affect water users and recreation interests on the Colorado River. Accordingly, the Signatories agree to implement the operational procedures described in this section during a Shoshone Outage (the "Shoshone Outage Protocol") to mitigate such potential adverse effects. The Signatories also agree to cooperate to achieve permanent management of the flows of the Colorado River as described in Article VI.C, whether or not the Shoshone Power Plant remains operational.

#### **B. Shoshone Outage Protocol.**

1. Outage During Irrigation Season. If a Shoshone Outage occurs during the period from March 25 through November 10 (Irrigation Season) and results in a flow of the Colorado River at the Dotsero Gauge below 1,250 cfs (not including any water released for endangered fish species purposes), then the River District, Middle Park and Denver Water agree that they will operate their systems as if the Senior Shoshone Call were on the River, resulting in a flow of not more than 1250 cfs at the Dotsero Gauge (not including any water released for endangered fish species purposes). The Shoshone Outage Protocol

will not apply to Shoshone Outages that occur during certain very dry Irrigation Seasons, as described in the following subparagraphs.

- a. The very dry Irrigation Seasons occur when the two conditions for a water shortage, as defined in paragraph 2 of the 2007 Shoshone Agreement, are met. Denver Water will make projections in March prior to March 25, and again in early May and late June to determine whether a water shortage is occurring.
  - b. If a projection made under subparagraph a above in March or May meets the conditions for a water shortage, then the Shoshone Outage Protocol will not apply during the period from that projection to the next projection. If a projection made in March or May does not meet the conditions for a water shortage, then the Shoshone Outage Protocol will apply during the period from that projection to the next projection; provided, however, that the Shoshone Outage Protocol will not apply during any period when the Shoshone Call is relaxed under the 2007 Shoshone Agreement.
  - c. If the projection made in June under subparagraph a above meets the conditions for a water shortage, then the Shoshone Outage Protocol will not apply during the remainder of the Irrigation Season that year. If the projection made in June does not meet the conditions for a water shortage, then the Shoshone Outage Protocol will apply during the remainder of the Irrigation Season that year.
2. Green Mountain Reservoir. The Signatories will cooperate with one another and use their best efforts to negotiate a separate agreement with the U. S. Bureau of Reclamation ("Reclamation") pursuant to which Reclamation would agree that if a Shoshone Outage occurs, it will continue to operate Green Mountain Reservoir as if the Senior Shoshone Call were on the river. Such agreement with Reclamation shall be subject to terms and conditions as to which the Signatories and Reclamation shall agree, including the following
- a. Any water released from storage in Green Mountain Reservoir would be debited to the appropriate account within the reservoir's 100,000 Acre-Foot Pool to which the releases were attributed, e.g., the historic users pool identified in paragraph 2 of Reclamation's January 23, 1984 Operating Policy for Green Mountain Reservoir,
  - b. Water that would have been released from the 52,000 Acre-Foot Replacement Pool had the Senior Shoshone Call been on the river shall be debited as discretionary power releases from the 100,000 Acre-Foot

Pool, unless other arrangements are made with Reclamation and the Northern Colorado Water Conservancy District.

- c. Reclamation will not be obligated to make releases from storage pursuant to this provision if water is not available in the 100,000 Acre-Foot Pool or if the total volume of Green Mountain Reservoir storage accounts is less than an amount to be agreed upon by the West Slope Signatories and Reclamation.

- 3. Outage During Winter Season. If a Shoshone Outage occurs during the period from November 11 to March 24 (Winter Season): (1) as a result of conditions other than scheduled maintenance on the Shoshone power plant facilities, and (2) if flows at the Dotsero Gauge are at or below 900 cfs, the River District and Denver Water agree that they will operate their systems as if the Senior Shoshone Call were on the river, subject to the following:

The Shoshone Outage Protocol will not apply fully to Shoshone Outages that occur during certain very dry Winter Seasons, when the overall storage in Denver Water's system is less than 79% of capacity on November 1. For purposes of this paragraph, the reservoirs that will be considered in determining overall storage are those reservoirs listed in Exhibit A to the 2007 Shoshone Agreement, but excluding any reservoirs under storage restrictions due to maintenance, repairs or orders from the Colorado State Engineer.

- a. If the storage is less than 79%, but more than 63%, then the Shoshone Outage Protocol will be applied at half the normal effect during that Winter Season. For example, if Denver Water would be required to bypass or replace 60 c.f.s. under the full operation of the Shoshone Outage Protocol, Denver Water would be required to bypass or replace 30 c.f.s. if the Shoshone Outage Protocol is applied at half the normal effect.
  - b. If the storage is equal to or less than 63%, but more than 49%, then the Shoshone Outage Protocol will be applied at one-fourth the normal effect during that Winter Season.
  - c. If the storage is equal to or less than 49%, then the Shoshone Outage Protocol will not be applied during that Winter Season.
- 4. The Signatories will cooperate with one another and use their best efforts to:
    - a. Obtain the agreement of other diverters to participate in the Shoshone Outage Protocol.
    - b. Obtain the agreement of the State of Colorado water administration officials to shepherd water released from upstream reservoirs or

otherwise bypassed from upstream water rights under the Shoshone Outage Protocol to the Grand Valley under a donated instream flow, a municipal recreation delivery contract or other acceptable arrangement, and to refrain from accounting for releases from storage under the Shoshone Outage Protocol as storable inflow.

C. Permanency of Shoshone Call Flows.

1. It is the goal of the Signatories to achieve permanent management of the flow of the Colorado River so that the flow mimics the Shoshone Call Flows, whether or not the Senior Shoshone Call is on the river and whether or not the Shoshone Power Plant remains operational.
2. Denver Water and the River District agree to operate their systems on a permanent basis under the Shoshone Outage Protocol described in Article VI.B, even if the Shoshone Power Plant ceases operations altogether, and regardless of whether the plant is acquired under Article VI.D, subject to the following conditions:
  - a. The relaxation provisions described in Article VI.E below remain in full force and effect.
  - b. The Shoshone Outage Protocol would not apply for 17 cumulative days during the Winter Season, to duplicate the effect of the current scheduled outages for maintenance.
3. The Signatories agree to use their best efforts to work with Xcel Energy, other diverters, Reclamation and the State of Colorado water administration officials to devise and implement a mechanism or combination of mechanisms that will permanently preserve the Shoshone Call Flows. In addition to the amounts provided in Article VI.E.1.c., Denver Water agrees to pay one-third of the costs, not to exceed \$100,000, incurred by West Slope Signatories to begin the process of implementing a mechanism to preserve the Shoshone Call Flows on a permanent basis. If total costs exceed \$300,000, the Signatories will confer with regard to further actions.

D. West Slope Acquisition of Shoshone Assets

1. West Slope water users believe that one means to ensure the permanent maintenance of the Shoshone Call is the acquisition and operation of the Shoshone Power Plant and Shoshone Water Rights (the "Shoshone Assets") by a West Slope governmental entity that is mutually acceptable to the West Slope Signatories ("West Slope Governmental Entity").
2. Within twenty-four (24) months after the effective date of this Agreement ("Investigation Period"), any of the West Slope Signatories may agree among

themselves and at their own cost, to undertake and complete an investigation of the viability of purchasing the Shoshone Assets and operating the Shoshone Power Plant (the "Initial Investigation"). The Initial Investigation may include direct negotiations with Xcel; the hiring of consultants necessary to evaluate the Plant's physical and financial condition and the value of the Shoshone Assets; an evaluation of the legal and regulatory requirements that must be met in order to transfer the Shoshone Assets to a West Slope Governmental Entity; an evaluation of the appropriate West Slope Governmental Entity to acquire and operate the Shoshone Assets and the steps necessary to create such an entity, if a new entity is to be created; and any other matters that the West Slope Signatories believe are necessary or desirable. Denver Water shall assist the West Slope Signatories upon request in undertaking and completing the investigations during the Investigation Period. The West Slope Signatories may agree among themselves to extend the Investigation Period.

3. If the Initial Investigation determines that it is feasible for a West Slope Governmental Entity to acquire and operate the Shoshone Assets and if Xcel is willing to sell or otherwise transfer the Shoshone Assets to a West Slope Governmental Entity, the West Slope Governmental Entity may pursue the transfer of the Shoshone Assets. Denver Water agrees that it will support such acquisition and will take such reasonable actions as may be necessary to assist the West Slope Governmental Entity in completing the acquisition of the Shoshone Assets. Upon notification by any of the West Slope Governmental Entity of its intent to acquire the Shoshone Assets, Denver Water agrees not to assert its right under paragraph 13 of the 2007 Shoshone Agreement regarding the method of disposition of the Shoshone Water Rights.
4. Denver Water shall not be obligated to pay any of the purchase price for the Shoshone Assets if other mechanisms are reasonably available to preserve the Shoshone Call Flows. If other mechanisms are not reasonably available, and purchase of the Shoshone Assets is determined to be the best viable option to preserve the Shoshone Call Flows, then Denver Water agrees to contribute to the purchase price in a negotiated amount that is proportionate to its share of the overall benefits created by the purchase, and reasonable as compared to the financial contributions to the purchase price by other parties.
5. If a West Slope Governmental Entity acquires the Shoshone Assets, the Shoshone Call relaxation provisions described in Section VI.E below, shall remain permanently in effect.

E. Relaxation of Shoshone Call.

1. Existing Call Relaxation Agreement. Denver Water and Xcel are parties to the 2007 Shoshone Agreement, a copy of which is attached as Attachment S.



The 2007 Shoshone Agreement currently is set to expire on December 31, 2032. The Signatories agree that the Shoshone Call relaxation provisions of the 2007 Shoshone Agreement shall remain in effect during its term and any renewal thereof.

- a. Denver Water agrees that, except as provided in Articles V and VI.E.2, it will not seek any relaxation of the Shoshone Call, other than a renewal of the specific provisions of the 2007 Shoshone Agreement beyond the year 2032.
- b. The West Slope Signatories will not oppose a renewal of the 2007 Shoshone Agreement, provided that the Shoshone Outage Protocol remains in effect.
- c. If the relaxation of the Shoshone Call is made permanent and Denver Water's yield is increased as a result, Denver Water agrees that 500 acre-feet of the increased yield (Relaxation Water) will be made available as potable water for use as blending water in a project using reusable return flows as described in Article I.B.2.e. The water supply created by the Relaxation Water will be added to the list of permissible fixed-amount contracts listed in Article I.B.1. In return for the availability of the Relaxation Water, the recipients must agree to pay the 2010 System Development Charge (SDC) applicable to potable water served outside the Combined Service Area. Denver Water will transmit the SDCs attributable to the Relaxation Water into a Relaxation Water Fund to be used (a) to contribute to the acquisition of the Shoshone Assets under Article VI.D; or (b) to implement a mechanism or combination of mechanisms that will permanently preserve the Shoshone Call Flows. It is anticipated that advance financing may be needed to accomplish the purposes described in this paragraph. The Signatories agree to consult with each other on an appropriate financing mechanism, should one be needed. It is also anticipated that the SDCs for the Relaxation Water may be paid pursuant to a payment schedule. If the Relaxation Water Fund is not fully expended for the purposes described in this paragraph, the money shall be used to contribute to the costs of a future cooperative project, determined by the River District and Denver Water to be beneficial to both the West Slope and the East Slope.

2. Expansion of Call Relaxation Period for Severe Drought Conditions. The 2007 Shoshone Agreement provides that the Shoshone Call may be relaxed during the period from March 14 until May 20, inclusive ("Call Relaxation Period"), under the conditions specified in the 2007 Shoshone Agreement. Denver Water desires to extend the Call Relaxation Period back into the winter months during extreme drought periods. The West Slope Signatories agree to support the amendment of the 2007 Shoshone Agreement to provide

for the relaxation of the Senior Shoshone Call down to 704 cfs (a “one-turbine call”) for an expanded period during the winter months (“Expanded Call Relaxation Period”), subject to the following terms and conditions:

- a. An Expanded Call Relaxation Period may occur under either of the following circumstances:
  - i. The Senior Shoshone Call may be relaxed to a one-turbine call beginning on November 11 if Denver Water has banned outdoor residential lawn watering beginning no later than August 1, and the ban has remained in effect continuously from its inception through November 11.
  - ii. The Senior Shoshone Call may also be relaxed to a one-turbine call beginning three (3) days after the date that the Denver Water Board formally adopts a drought declaration requiring that outdoor residential lawn watering be prohibited during the following irrigation season. The call relaxation under this section only applies to the period from November 11 until March 14 of the following year.
- b. Denver Water will pay for power replacement costs as provided for in the 2007 Shoshone Agreement.
- c. Denver Water will provide ten percent (10%) of the net water savings as defined in the 2007 Shoshone Agreement for use by West Slope Signatories. The West Slope Signatories will allocate the 10% as they may determine pursuant to any future agreement among them.
- d. The Expanded Call Relaxation Period will end the earlier of:
  - i. The date Denver Water rescinds its ban on outdoor residential lawn watering; or
  - ii. The date a Cameo Call is placed on the river; or
  - iii. March 14 of the year following implementation of the Extended Call Relaxation Period if implementation occurs on or prior to December 31; or March 14 of the year in which the Expanded Call Relaxation Period was implemented if implementation occurs on or after January 1.
- e. Any relaxation of the Shoshone Call after March 14 of any given year shall occur only as provided in the 2007 Shoshone Agreement.

3. Call Relaxation Mitigation. The \$500,000 to be placed in a special fund by Denver Water pursuant to Article III.G of this Agreement shall be managed and utilized as follows:
  - a. The proceeds of this fund will be used to help offset the impacts of, or prepare for, a call relaxation pursuant to the 2007 Shoshone Agreement or during the Expanded Call Relaxation Period, or a Shoshone Outage during the Winter Season pursuant to Section VI.B.3, above.
  - b. In order for a municipal water provider to access the funds described in this subsection, the provider must either be a signatory to this Agreement or must be located in Garfield County and agree to be bound by the terms and conditions of this Agreement.
  - c. The West Slope Signatories at their discretion may utilize funds available to any of them pursuant to Article III of this Agreement or the West Slope Fund to either replace or increase the funding for this special fund as may be necessary or desirable from time to time.
- F. Environmental and Recreational Pilot Project. The Signatories agree to evaluate a pilot project to determine the feasibility of implementing a partial Shoshone Call relaxation in non-critical winter months and dedicating the saved water to environmental and recreation purposes.
- G. Support for Glenwood Springs RICD. The City of Glenwood Springs currently has whitewater features located below the confluence of the Colorado River and the Roaring Fork River near Glenwood Springs, Colorado. Glenwood Springs currently does not have an adjudicated water right for these white water features but anticipates filing for one at some point in the future. In addition, Glenwood Springs anticipates creating additional white water features on the reach of the Colorado River between the Shoshone Power Plant and South Canyon on the main stem of the Colorado River. Denver Water will not oppose the filing of a water rights application for a Recreational In-Channel Diversion ("RICD") for the existing and proposed structures by Glenwood Springs; provided that any such application filed for any proposed structure above the confluence of the Roaring Fork and Colorado Rivers does not: (1) Claim a flow rate that exceeds the amount of water needed to satisfy the senior Shoshone Call for 1,250 cfs at the Dotsero gage; (2) Seek an amount of water in excess of that needed to replicate historic operations under the Senior Shoshone Call; or (3) Impair Denver's ability to divert under Article VI.

As to structures located below the confluence of the Roaring Fork and Colorado Rivers, Denver and Glenwood Springs recognize that the contributing flows of the two rivers make it difficult to predict the exact effect of a RICD on flows above the confluence. Glenwood Springs agrees to consult with Denver regarding such application prior to filing.

**SHOSHONE OUTAGE PROTOCOL**  
**AGREEMENT NUMBER 13XX6C0129**

**INCLUDING THE**

**UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION,**  
**THE STATE OF COLORADO, DIVISION OF WATER RESOURCES,**  
**THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF**  
**WATER COMMISSIONERS,**  
**THE COLORADO RIVER WATER CONSERVATION DISTRICT,**  
**THE MIDDLE PARK WATER CONSERVANCY DISTRICT,**  
**THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT,**  
**THE MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER**  
**CONSERVANCY DISTRICT,**  
**THE GRAND VALLEY WATER USERS ASSOCIATION,**  
**THE ORCHARD MESA IRRIGATION DISTRICT, AND**  
**THE GRAND VALLEY IRRIGATION COMPANY**

THIS AGREEMENT is made this 27<sup>th</sup> day of June, 2016, and includes the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION (Reclamation), the STATE OF COLORADO DIVISION OF WATER RESOURCES (DWR), THE CITY AND COUNTY OF DENVER acting by and through its BOARD OF WATER COMMISSIONERS (Denver Water), the COLORADO RIVER WATER CONSERVATION DISTRICT (River District), the MIDDLE PARK WATER CONSERVANCY DISTRICT (Middle Park), the NORTHERN COLORADO WATER CONSERVANCY DISTRICT (Northern Water), the MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT (Subdistrict), the GRAND VALLEY WATER USERS ASSOCIATION, the ORCHARD MESA IRRIGATION DISTRICT, and the GRAND VALLEY IRRIGATION COMPANY, hereinafter collectively referred to as the "Parties".

**I. EXPLANATORY RECITALS**

The following statements are made in explanation:

- A. When the Shoshone Power Plant is operating, the Shoshone Call can command the flow in the Colorado River and its tributaries in certain stream conditions by exercising the Shoshone Water Rights against upstream junior water rights. When the Shoshone Call is being administered, junior water rights cannot store or divert water without providing replacement water to offset their depletions to the river system as necessary to prevent injury.
- B. Whenever the Shoshone Power Plant is subject to a shutdown for repair, maintenance, or other reasons, the Shoshone Call cannot be exercised, and river flows may drop.
- C. Certain Parties desire to keep the flow regime of the Colorado River as it has been historically influenced by the Senior Shoshone Call.

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- D. The Parties agree to implement the operational procedures described in this agreement during a Shoshone Outage.
- E. This Agreement will provide greater certainty for the administration of water rights.
- F. As is explicitly provided for in this Agreement, certain Parties to this Agreement are only agreeing to be bound by specifically identified sections of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants hereinafter set forth, the Parties hereto agree as follows:

**II. DEFINITIONS**

Where used herein, unless specifically expressed otherwise or obviously inconsistent with the intent herein, the following definitions apply to this Agreement. Nothing in these definitions alters or amends any existing or future agreement between all or various Parties to this Agreement:

- A. “15-Mile Reach” is the reach of the Colorado River which extends from the point at which the tailrace common to the Grand Valley Power Plant and the Orchard Mesa Irrigation District pumping plant returns to the Colorado River below the Grand Valley Irrigation Company diversion dam, downstream to the confluence of the Colorado River and Gunnison River (definition verbatim from the Stipulation and Agreement incorporated into the decree entered in Case No. 91CW247, Colorado Water Division 5).
- B. “2007 Shoshone Agreement” is an agreement between Denver Water and Public Service Company of Colorado d/b/a Xcel Energy, effective January 1, 2007, concerning reduction of the Shoshone Call.
- C. “Dotsero Gauge” is Gauge Number 09070500 on the Colorado River, near Dotsero, Colorado, which is operated by the United States Geological Survey, Colorado Water Science Center.
- D. “End of Fill Season” is the end of the Green Mountain Reservoir fill season as defined in the Green Mountain Reservoir Administrative Protocol.
- E. “Grand Valley Entities” are the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, and the Grand Valley Irrigation Company.
- F. “Green Mountain Reservoir 1935 First Fill Storage Right” is the storage right for Green Mountain Reservoir with a priority date of August 1, 1935, from the Blue River and its tributaries in the amount of 154,645 acre-feet (AF).
- G. “Green Mountain Reservoir 1935 Senior Refill Storage Right” is the storage refill right for Green Mountain Reservoir with a priority date of August 1, 1935, from the Blue River and its tributaries in the amount of 6,316 AF.

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- H. “Green Mountain Reservoir 1935 Direct Flow Hydropower Right” is the direct-flow right with a priority date of August 1, 1935, from the Blue River and its tributaries in the amount of 1,726 cubic feet per second (cfs) for the generation of electrical power at the Green Mountain Power Plant.
- I. “Green Mountain Reservoir Administrative Protocol” is the protocol for administration of Green Mountain Reservoir that will result from the procedures that will be specified in the Green Mountain Reservoir Protocol Agreement by and among Reclamation, Denver Water, Northern Water, the Subdistrict, the City of Colorado Springs acting through its Utilities Department, River District, Middle Park, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Grand Valley Irrigation Company, Palisade Irrigation District, Climax Molybdenum Company, Ute Water Conservancy District, and the State Engineer and Division Engineer for Water Division 5, Colorado Division of Water Resources.
- J. Green Mountain Reservoir Historic User Pool Operating Criteria is the operating criteria set forth in Exhibit D of the Orchard Mesa Check Case Stipulation and Agreement.
- K. “Green Mountain Reservoir Marketing Allocation” is a 20,000 AF marketable yield available for contracting from the Power Pool.
- L. “Green Mountain Reservoir Operating Policy” is the Operating Policy for Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado (Volume 48, No. 247 Federal Register December 22, 1983; as amended in Volume 52, No. 176 Federal Register September 11, 1987).
- M. “Historic Users’ Pool” (“HUP”) is water to be released from the Green Mountain Reservoir Power Pool as described in paragraphs 2 and 3 of the Green Mountain Reservoir Operating Policy.
- N. “Non-Winter Season” is the period of any year from March 25 through November 10 of any year.
- O. “Orchard Mesa Check Case Stipulation and Agreement” is the September 4, 1996, agreement incorporated into the decree entered October 1, 1996 in Case No. 91CW247, District Court, Colorado, Water Division 5.
- P. “Power Pool” is 100,000 AF of water stored primarily for power purposes in Green Mountain Reservoir and available for such other uses in western Colorado as provided in Senate Document 80.
- Q. “Senate Document 80” is the “Manner of Operation of Project Facilities and Auxiliary Features” section of the Synopsis of Report document referenced in the Act of August 9, 1937, 50 Stat 564, 75 Congress, 1st Session, which authorized the Colorado-Big Thompson Project.

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- R. “Senior Shoshone Call” is a request to the state water officials to curtail diversions of junior water rights to produce a flow at the Dotsero Gauge sufficient for diversion at the Shoshone Dam of 1,250 cfs for power purposes at the Shoshone Power Plant.
- S. “Shepherded Streamflow Reservoir Releases” are those reservoir releases in rate and volume made for the reservoir owners’ purposes of increasing stream flows either at the Shoshone Power Plant, in the 15-Mile Reach, or at other stream locations at rates and volumes in excess of the stream flows that would exist at these locations in the absence of such reservoir releases (including streamflows that may exist as a result of releases, power diversions, or bypasses made pursuant to this Agreement), provided such releases are made for decreed beneficial uses for instream or in-channel purposes at any such locations including, but not limited to, endangered fish species purposes within the 15-Mile Reach.
- T. “Shoshone Call” is a request to the state water officials to curtail diversions of junior water rights to produce a flow for beneficial use at the Shoshone Power Plant pursuant to the Shoshone Senior Right or the Shoshone Junior Right.
- U. “Shoshone Junior Right” is the water right decreed for and associated with the Shoshone Power Plant adjudicated for 158 cfs on February 7, 1956, with an appropriation date of May 15, 1929.
- V. “Shoshone Outage” is whenever the Senior Shoshone Call cannot be fully exercised because the Shoshone Power Plant is subject to a shutdown for repair, maintenance, or other reasons. For the purposes of this Agreement, a Shoshone Outage does not include a cumulative total of 17 days during January and February of each Winter Season, when the Shoshone Senior Right is not calling for water due to regularly scheduled maintenance at the Shoshone Power Plant.
- W. “Shoshone Outage Protocol” is a combination of the respective described actions to be taken by each of the Parties.
- X. “Shoshone Power Plant” is owned and operated by Public Service Company of Colorado, d/b/a/ Xcel Energy (“Xcel”), and is located on the mainstem of the Colorado River in Glenwood Canyon. The Shoshone Power Plant produces hydroelectric energy by means of the Shoshone Water Rights.
- Y. “Shoshone Senior Right” is the water right decreed for and associated with the Shoshone Power Plant adjudicated for 1,250 cfs on December 9, 1907, with an appropriation date of January 7, 1902.
- Z. “Shoshone Water Rights” are both the Shoshone Senior Right and the Shoshone Junior Right.

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- AA. “Start of Fill Date” is the date between April 1 and May 15 fixed annually by the Secretary of the Interior as the start of fill of Green Mountain Reservoir.
- BB. “Windy Gap Project” and “Windy Gap Firming Project” shall have the meanings defined in the Windy Gap Firming Project Intergovernmental Agreement (“WGFP IGA”).
- CC. “Winter Season” is the period from November 11 of any calendar year through March 24 of the next calendar year.

**III. TERM OF AGREEMENT**

- A. This Agreement will remain in effect for 40 years unless terminated sooner pursuant to paragraph III.B, below. Any of the Parties have the right to request renewal of this agreement for an additional 40-year term upon written request to all other Parties on or before two years prior to the expiration of this agreement. The Parties agree to negotiate any requests for renewal in good faith.
- B. This Agreement may be terminated upon written mutual agreement of all Parties.
- C. This Agreement may be amended at any time by written consent of all Parties hereto.
- D. Notwithstanding paragraph III.B, Reclamation may, at any time, terminate its participation in this Agreement for just cause upon providing written notice to all other Parties.

**IV. DESCRIPTION OF SHOSHONE OUTAGE PROTOCOL  
ACTION BY PARTIES**

- A. Actions by the River District, Middle Park and Denver Water.
  - 1. This Section IV.A is an Agreement between the River District, Middle Park and Denver Water. Other parties are not bound by this Section IV.A.
  - 2. Outage During the Non-Winter Season. If a Shoshone Outage occurs during the Non-Winter Season and results in a flow of the Colorado River at the Dotsero Gauge below 1,250 cfs (not including Shepherded Streamflow Reservoir Releases), then the River District, Middle Park and Denver Water agree that they will operate their water resources as if the Senior Shoshone Call was being administered in order to result in a flow of not more than 1,250 cfs at the Dotsero Gauge (not including Shepherded Streamflow Reservoir Releases).
  - 3. Denver Water, the River District, and Middle Park will not participate in the Shoshone Outage Protocol during periods of certain very dry Non-Winter Seasons that meet the definition of a Water Shortage in accordance with this paragraph IV.A.3. For the purposes of this paragraph IV.A, a Water Shortage exists when the following two conditions exist:



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- a. Using the procedures described in Exhibit A of the 2007 Shoshone Agreement (copy attached hereto for reference) and based on the "normal" scenario, Denver Water predicts that reservoir storage in its system on July 1 will be at or below 80% full; and
  - b. The "most probable" forecast of streamflow prepared by the Natural Resources Conservation Service (NRCS) or jointly by NRCS and the Colorado Basin River Forecast Center (or such other forecast that the River District, Denver Water and Middle Park agree to use) indicates that the April – July undepleted flow of the Colorado River at the Kremmling gage will be less than or equal to 85% of average. If no forecast for the Kremmling gage is available, then the Dotsero gage will be used.
4. Denver Water will make projections prior to March 25<sup>th</sup>, and again in early May and late June to determine whether a Water Shortage exists.
  - a. If a projection made under paragraph IV.A.3 above meets the conditions for a Water Shortage, then the Shoshone Outage Protocol will not apply during the period from that projection to the next projection. If a projection does not meet the conditions for a Water Shortage, then the Shoshone Outage Protocol will apply during the period from that projection to the next projection; provided, however, that the Shoshone Outage Protocol will not apply during any period when the Shoshone Call is relaxed under the 2007 Shoshone Agreement.
  - b. If the projection made in June under paragraph IV.A.3 above meets the conditions for a Water Shortage, then the Shoshone Outage Protocol will not apply during the remainder of the Non-Winter Season that year. If the projection made in June does not meet the conditions for a Water Shortage, then the Shoshone Outage Protocol will apply during the remainder of the Non-Winter Season that year.
5. Outage During Winter Season. If a Shoshone Outage occurs during the Winter Season and flows at the Dotsero Gauge are at or below 900 cfs, the River District, Denver Water, and Middle Park agree that they will operate their water resources as if the Senior Shoshone Call were on the Colorado River in the amount of 900 cfs, subject to the following:

The Shoshone Outage Protocol will not apply fully to Shoshone Outages that occur during certain very dry Winter Seasons, when the overall storage in Denver Water's system is less than 79% of capacity on November 1. For purposes of this Agreement, the reservoirs that will be considered in determining overall storage for Denver Water are those reservoirs listed in Exhibit A to the 2007 Shoshone Agreement (Antero, Eleven Mile, Cheesman, Marston, Chatfield, Gross, Ralston,

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Dillon, Williams Fork, and Wolford Mountain), but excluding any reservoirs under storage restrictions due to maintenance, repairs or orders from the Colorado State Engineer.

- a. If the storage is less than 79%, but more than 63% of capacity, then the Shoshone Outage Protocol will be applied at half the normal effect during that Winter Season. For example, if Denver Water would be required to bypass or replace 60 cfs under the full operation of the Shoshone Outage Protocol, Denver Water would be required to bypass or replace 30 cfs if the Shoshone Outage Protocol is applied at half the normal effect.
  - b. If the storage is equal to or less than 63%, but more than 49% of capacity, then the Shoshone Outage Protocol will be applied at one-fourth the normal effect during that Winter Season.
  - c. If the storage is equal to or less than 49% of capacity, then the Shoshone Outage Protocol will not be applied during that Winter Season.
6. As between the River District, Denver Water, and Middle Park, releases from Wolford Mountain Reservoir shall be accounted to the various accounts at Wolford Mountain Reservoir in the same manner that would have occurred if the Shoshone Senior Right had been exercised.
  7. Prior to any final decree that is entered to amend the Windy Gap Project water rights to implement the Windy Gap Firming Project, Middle Park's water resources in this Shoshone Outage Protocol will be limited to water released on Middle Park's behalf from Wolford Mountain Reservoir. Subsequent to any final decree that is entered to amend the Windy Gap Project water rights to implement the Windy Gap Firming Project, Middle Park's water resources in this Shoshone Outage Protocol may include water released on its behalf from Wolford Mountain Reservoir, and Windy Gap Project water released from Granby Reservoir. Any such release of Middle Park's Windy Gap Project water resources will be consistent with the water court decrees for such resources and with any final Windy Gap Firming Project Intergovernmental Agreement by and between the Municipal Subdistrict, its Windy Gap Firming Project Water Activity Enterprise, Board of County Commissioners of Grand County, Middle Park, River District, and Northwest Colorado Council of Governments.

**B. Actions by the Subdistrict.**

1. The Municipal Subdistrict agrees to the operation by Reclamation of Green Mountain Reservoir as contemplated by this Agreement and will not object to the operation of Green Mountain Reservoir in the manner described in this Agreement, unless any person or entity (other than the Municipal Subdistrict or Northern Water):

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- a. Objects, in any judicial or administrative forum, to the operation of the Windy Gap Project or Windy Gap Firming Project in the manner described in this Agreement;
  - b. Asserts, in any judicial or administrative forum, that an historic or a future operation of the Windy Gap Project or Windy Gap Firming Project including, without limitation, the performance of this Shoshone Outage Protocol in accordance with this Agreement, is in violation of Senate Document No. 80, the Blue River Decree, or the decrees for the Windy Gap Project or Windy Gap Firming Project; or
  - c. Asserts, in any judicial or administrative forum, that bypasses of water otherwise divertible by the Windy Gap Project count toward Windy Gap Project diversions.
2. Operation of Windy Gap Project.
- a. Nothing in this Agreement shall alter or amend the Intergovernmental Agreement between the Subdistrict, Grand County, Middle Park, the Northwest Colorado Council of Governments (NWCCOG) and the River District fully executed in 2016 ( "WGFP IGA"), including, without limitation, Paragraph IV.K. of the WGFP IGA, which remains in full force and effect and provides, with respect to the subject of the Shoshone Outage Protocol, that [abbreviations and short-forms in the quoted text below rely on definitions set forth in the WGFP IGA]:

**K. Shoshone Outage Protocol.**

- 1) For purposes of this WGFP IGA, the Shoshone Outage Protocol means that the Windy Gap Project and WGFP will operate as described in this paragraph IV.K.1), IV.K.2), and IV.K.3) during periods when the Shoshone Power Plant is shutdown or otherwise not able to divert the full amount of its 1,250 cfs senior water right due to repair, maintenance, or other reasons ("Shoshone Outage"). When the Windy Gap Project's participation in the Shoshone Outage Protocol is in effect pursuant to this WGFP IGA, the Windy Gap Project and WGFP will bypass the amount of water that the Windy Gap Project and WGFP would have been required to bypass if the Senior Shoshone Call had been in effect in order to result in a flow of not more than 1,250 cfs at the Dotsero gage on the Colorado River (not including any water released for endangered fish species purposes). For purposes of this WGFP IGA, a Shoshone Outage does not include a shutdown of the Shoshone Power Plant for regularly scheduled maintenance for a cumulative period of 17-days during the period of November 1 through March 15.

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- 2) The Windy Gap Project and WGFP will operate in accordance with the Shoshone Outage Protocol from July 16-April 14 of each year. Prior to WGFP Completion, the Windy Gap Project and WGFP may operate in accordance with the Shoshone Outage Protocol during the period of April 15-July 15 on a voluntary cooperative basis. Following WGFP Completion, the Windy Gap Project and WGFP will operate in accordance with the Shoshone Outage Protocol during the period April 15 – July 15 at any time during this period when the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir is greater than 50% of the Active Capacity of Chimney Hollow Reservoir.
  - 3) Participation in the Shoshone Outage Protocol by the Windy Gap Project and WGFP during the period of April 15-July 15 will be limited to a total maximum volume of foregone pumping equal to 10,000 acre feet (30 days with one pump running) in one year, a total of 20,000 acre feet (60 days with one pump running) in any 3 consecutive year period, and a total of 30,000 acre feet (90 days with one pump running) in any 5 consecutive year period.
  - 4) The Subdistrict agrees that it will participate in good faith in negotiations to achieve permanent management of the flow of the Colorado River to address certain flow changes that result during a Shoshone Outage.
3. Nothing in this Agreement shall create, modify, alter or amend the contractual relationships between Reclamation and the Municipal Subdistrict.
  4. No Waiver.
    - a. Except as expressly provided herein, this Agreement shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the parties respective positions regarding the operation of the Windy Gap Project and Windy Gap Firming Project. This Agreement shall not have the effect of precedent or preclusion on any factual or legal issue in any other matter. The Subdistrict expressly reserves its rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter

C. Actions by Northern Water.

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1. Northern Water agrees to the operation by Reclamation of Green Mountain Reservoir, as contemplated by this Agreement and will not object to the operation of Green Mountain Reservoir in the manner described in this Agreement, unless any person or entity (other than the Municipal Subdistrict or Northern Water):
  - a. Objects, in any judicial or administrative forum, to the operation of Green Mountain Reservoir in the manner described in the Shoshone Protocol Agreement; or
  - b. Asserts, in any judicial or administrative forum, that an historic or a future operation of Green Mountain Reservoir or the Colorado-Big Thompson Project including, without limitation, the performance of this Shoshone Outage Protocol in accordance with this Agreement, is in violation of Senate Document No. 80 or the Blue River Decree.
2. This Agreement meets the requirements of the first sentence of Paragraph 3 of the Intergovernmental Agreement between Northern Water, Grand County, Middle Park, and the River District fully executed in 2016.
3. Nothing in this Agreement shall create, modify, alter or amend the contractual relationships between Reclamation and Northern Water.

**D. Actions by Reclamation.**

1. Subject to the provisions of paragraph IV.G.4 of this Agreement, Reclamation will participate in the Shoshone Outage Protocol when either of the following conditions are met:
  - a. The Shoshone Outage occurs between the Start of Fill Date and the End of Fill Season and Reclamation projects with 90% probability that a total of 154,645 AF will be accounted toward the volumes of water calculated in accordance with paragraphs II.A.3.b.i through II.A.3.b.v of the Green Mountain Reservoir Administrative Protocol prior to the Green Mountain Reservoir End of Fill Season, and that Reclamation projects with a 90% probability that after the End of Fill Season any volume of Bypassed Storage Water Owed To Green Mountain Reservoir by the Cities will be available to Reclamation pursuant to the Green Mountain Reservoir Administrative Protocol.or;
  - b. The Shoshone Outage occurs after the End of Fill Season and a total of 154,645 acre feet have been accounted toward the volumes of water identified in paragraphs II.A.3.b.i through II.A.3.b.v of the Green Mountain Reservoir Administrative Protocol and that any Bypassed Storage Water

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Owed to Green Mountain Reservoir by the Cities will be available to Reclamation.

- c. Capitalized terms in paragraphs IV.D.1.a and b have the same meaning as set forth in the Green Mountain Reservoir Administrative Protocol.
2. Green Mountain Releases Under Shoshone Outage Protocol: Reclamation will bypass storable inflow, exercise the Green Mountain Reservoir 1935 Direct Flow Hydropower Right, and/or make releases from previously stored water in its Power Pool as follows:
- a. The daily total reservoir release will be equivalent to the amount that would have been required had the Senior Shoshone Call been in place on that day in the amount of 1,250 cfs during the Non-Winter Season and 900 cfs during the Winter Season, subject to the following conditions:
    - i. The daily total release will not exceed the release that would have been made had the Senior Shoshone Call been in place on that day and all junior water rights had been curtailed or the appropriate amount of replacement or augmentation water made available.
    - ii. In order to prevent any unintended impact to the HUP by this Agreement, during a Shoshone Outage, the Grand Valley Entities will not request any direct delivery of HUP water without first placing a call with the Division 5 Engineer's Office, unless Reclamation and the Grand Valley Entities agree that such a call is not necessary to prevent impacts to the HUP.
  - b. Except as provided in paragraph IV.D.2.c, below, the total volume of storage water released from the Power Pool for Shoshone Outage Protocol purposes from the Start of Fill Date will not exceed the sum of the following:
    - i. 2,000 AFplus;
  - ii. The amount of uncontracted water in the Green Mountain Reservoir Marketing Allocation.
- plus;
- iii. The amount of water that would have been released for HUP beneficiary purposes had the Senior Shoshone Call been in place during the Shoshone Outage period.

**AGREEMENT NUMBER 13XX6C0129**

- c. Reclamation may, at its own discretion, bypass storable inflow, exercise the Green Mountain Reservoir 1935 Direct Flow Power Right, or release additional water from the Power Pool to assist in meeting the purposes of Shoshone Outage Protocol if it deems that conditions make additional water available.
- 3. Accounting: The Green Mountain Reservoir releases, bypasses, and power diversions shall be accounted for as follows:
  - a. Bypass of Inflow and Power Diversions: Reclamation will bypass storable inflow or exercise the Green Mountain Reservoir 1935 Direct Flow Hydropower Right to the extent that a bypass of inflow would have been required by a Senior Shoshone Call. The accounting of discretionary power releases and bypassed storable inflow will be consistent with the Green Mountain Reservoir Administrative Protocol.
  - b. Release of Stored Water: All releases of stored water shall be charged to the aggregate Power Pool rather than individual allocations in the Power Pool. However, the HUP allocation will be reduced by the amount of water that was released from Green Mountain Reservoir in accordance with paragraph IV.D.2.b.iii, above.
- E. Actions by the Grand Valley Entities and Reclamation.
  - 1. This Section IV.E is an Agreement between the Grand Valley Entities and Reclamation. Other parties are not bound by this Section IV.E.
  - 2. Subject to the provisions of Paragraph IV.E.3, below, the Grand Valley Entities and Reclamation agree, solely for purposes of paragraph 3.b.(3) of the Orchard Mesa Check Case Stipulation and Agreement, that the Shoshone Water Rights continue to be exercised in a manner substantially consistent with their historical operation for hydropower production at their currently decreed point of diversion.
  - 3. Paragraph IV.E.2, above, shall not be effective:
    - a. During any period of time in which any Party is not in compliance with their obligations described in this Agreement; or
    - b. During any period of time in which storage releases or bypasses of water made pursuant to this Agreement are being diverted or exchanged in a manner that results in flow at the Dotsero Gauge that is materially lower than the flow that otherwise would have been produced by the Shoshone Senior Call; or

**AGREEMENT NUMBER 13XX6C0129**

- c. If the United States terminates its participation in this Agreement pursuant to Paragraph III.D., above.

F. Actions by DWR.

The DWR shall administer water released, bypassed, or diverted for power purposes pursuant to this Agreement as follows:

1. Reservoir releases from Wolford Mountain Reservoir shall be administered as Shepherded Streamflow Reservoir Releases for in-channel recreation and fishery purposes and, as directed by the River District for subsequent consumptive uses, within the boundaries of the River District pursuant to the decree entered in Case No. 87CW283, Water Division 5. The River District will provide information to the Division Engineer for Water Division 5 to support the intended in-channel recreation and fishery purposes. Bypasses of storable inflow at Wolford Mountain Reservoir will be accounted toward the fill of the Wolford Mountain Reservoir storage decree for the then-current storage season on an instantaneous store and release accounting basis. Any bypasses made pursuant to this Agreement shall not be accounted toward the next fill season's storage volume for Wolford Mountain Reservoir. If a hydroelectric power facility is constructed to use inflow to Wolford Mountain Reservoir, then any diversions used to generate power may be accounted toward the exercise of the direct flow power right decreed in Case No. 87CW283 and will not count toward the fill of the then-current fill season's storage account for Wolford Mountain Reservoir provided the direct flow power right is operated and administered under the same priority as the storage right.
2. Reservoir releases and direct diversions at Williams Fork Reservoir to generate power will be accounted as releases or diversions made for power purposes and will not be accounted toward the decreed storage volume for Williams Fork Reservoir. Bypasses of storable inflow at Williams Fork Reservoir that are not used to generate power will be accounted toward the fill of the Williams Fork Reservoir storage decree for the then-current storage season on an instantaneous store and release accounting basis. Any such bypasses made pursuant to this Agreement shall not be accounted toward the next fill season's storage volume for Williams Fork Reservoir.
3. Reservoir releases, diversions for power purposes, and the bypass of storable inflow from Green Mountain Reservoir without power generation will be accounted for in accordance with the Green Mountain Reservoir Administration Protocol. Releases and the bypass of storable inflow shall be administered as Shepherded Streamflow Reservoir Releases to the Shoshone Power Plant or to and through the 15-Mile Reach as directed by Reclamation.
4. Bypasses of water otherwise divertible by the Windy Gap Project will not count toward the diversion amount for the Windy Gap Project. Releases of Windy Gap Project water from storage will be accounted in accordance with the then current



**AGREEMENT NUMBER 13XX6C0129**

Windy Gap Project water right decrees, and subject to paragraph IV.A.7 of this Agreement.

Shepherded Streamflow Reservoir Releases shall be shepherded and protected by DWR under C.R.S. §§ 37-87-102(4) and 37-87-103 or as otherwise provided by law to accomplish the reservoir owners' purposes for making such releases as is consistent with the reservoir owners' legal use of such stored or storable waters. The intent is to continue the historical practice of administering such releases to produce increased flows in the 15-Mile Reach above the flows that would otherwise occur in the 15-Mile Reach, and to accommodate any new releases to be made for such or similar purposes.

**G. Notice and Cooperation.**

1. Notification to DWR. The Parties will work cooperatively to timely notify DWR, through the Division Engineer for Water Division 5, of operations pursuant to the Shoshone Outage Protocol.
2. The Parties will not divert or exchange any of the water released, diverted for power purposes, or bypassed by any of the Parties pursuant to this Agreement at any location upstream of the current location of the Shoshone Power Plant, or otherwise operate their systems or water rights in a manner that will diminish the benefit to the stream system at any location upstream of the current location of the Shoshone Power Plant of the releases, diversions for power purposes, and bypasses of water made pursuant to this Agreement.
3. Subject to the express conditions and limitations of this Agreement, the Parties will cooperate in good faith to achieve the goals of this Agreement of managing the flow of the Colorado River to maintain the historical flow regime of the Colorado River influenced by the exercise of the Shoshone Senior Right and to mitigate the impacts of any Shoshone Outage. If any party believes that the goals of this Agreement are not being met, including but limited to circumstances where water released or bypassed pursuant to this Agreement during a Shoshone Outage is diverted or exchanged by persons or entities who are not parties to this Agreement at locations upstream of the Dotsero Gauge, then any Party may, in its discretion and in good faith, issue a written notice to the other Parties of such circumstances. Upon such notice, the Parties will meet promptly and work together in good faith to identify such actions as may be necessary to alleviate the conditions that led to the written notice and to implement such actions to which the Parties may agree or any such actions that can be implemented by a subset of the Parties to which that subset may agree.
4. Notwithstanding any provision in this Agreement to the contrary, none of the Parties are obligated by this Agreement to participate in the Shoshone Outage Protocol

**AGREEMENT NUMBER 13XX6C0129**

during such periods that a Shoshone call reduction is in effect pursuant to the terms of the 2007 Shoshone Agreement (copy attached for reference).

**V. SEVERABILITY AND REFORM**

Wherever possible each provision of this Agreement shall be interpreted and implemented in such manner as to be effective and valid under applicable law. If any provision or portion of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect unless the remaining provision's effectiveness is explicitly dependent upon the invalid or unenforceable provision. The Parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision. The provisions of this Agreement shall be reasonably and liberally construed to achieve the intent of the Parties.

**VI. COMPENSATION**

Consideration for the actions pursuant to this Agreement is in providing greater certainty in the administration of water rights, and in the resolution among some of the Parties of certain unresolved issues. There will be no charge for water released under this agreement.

**VII. GREEN MOUNTAIN RESERVOIR**

Subject only to the express exceptions provided herein, the Parties agree not to challenge Reclamation's operation of Green Mountain Reservoir under this Agreement as inconsistent with Senate Document 80 or the Green Mountain Reservoir Operating Policy. The Parties will work in good faith to address any conflicts that may arise between the operations contemplated by this Agreement and the Green Mountain Reservoir Administrative Protocol. Any conflict that may arise shall be resolved in a manner that is consistent with Senate Document 80, the Blue River Decree, the Green Mountain Reservoir Operating Policy, and the Green Mountain Reservoir Administrative Protocol.

**VIII. COLORADO RIVER COOPERATIVE AGREEMENT**

Nothing in this Agreement shall be interpreted to constitute compliance with, or satisfaction of, the obligations of Article VI.C of the Colorado River Cooperative Agreement between Denver Water and seventeen West Slope entities.

**IX. NO WAIVER**

The Parties agree that nothing contained in this Agreement including, but not limited to, any Party's forbearance in the exercise of any Party's right to divert, store, and beneficially use water pursuant to its decrees, is intended nor shall it be construed to give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning the operation of such Parties' water rights.

**AGREEMENT NUMBER 13XX6C0129**

The Parties agree that except as expressly provided herein, this Agreement shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the Parties respective positions regarding the operation of the Colorado-Big Thompson Project. The Parties further agree that they do not intend this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The Parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other Party or third-party on any other matter.

**X. REGULATION AND DISTRIBUTION OF WATER**

Nothing in this Agreement abridges the obligations of the DWR established by Section 37-92-304(8), Colorado Revised Statutes (2011), or other applicable law.

**XI. PRIOR VERSIONS.**

This Agreement replaces and supersedes the 2013 Shoshone Outage Protocol Agreement that was executed by some, but not all, of the Parties to this Agreement.

**AGREEMENT NUMBER 13XX6C0129**

**XII. SIGNATURES of PARTIES**

**UNITED STATES DEPARTMENT OF THE INTERIOR**

By:

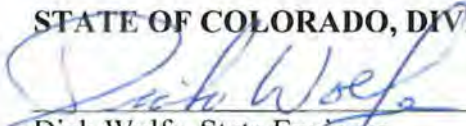


Michael J. Ryan, Regional Director  
Great Plains Regional Office  
Bureau of Reclamation  
P.O. Box 36900  
Billings, MT 59107-6900  
(406) 247-7600

**AGREEMENT NUMBER 13XX6C0129**

**STATE OF COLORADO, DIVISION OF WATER RESOURCES**

By:

 7-12-16

Dick Wolfe, State Engineer  
1313 Sherman Street, Suite 821  
Denver, CO 80203  
(303) 866-3581

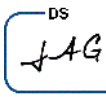
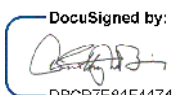
**AGREEMENT NUMBER 13XX6C0129**

**DENVER WATER**  
By:   
James S. Lochhead, CEO/Manager  
1600 W. 12<sup>th</sup> Avenue  
Denver, CO 80204-3412  
(303) 628-6000

**APPROVED AS TO FORM**

  
**LEGAL DIVISION**

**REGISTERED AND COUNTERSIGNED:  
CITY AND COUNTY OF DENVER**

By:    
Timothy M. O'Brien, CPA  
Auditor

**AGREEMENT NUMBER 13XX6C0129**

**COLORADO RIVER WATER CONSERVATION DISTRICT**

By:



Eric Kuhn, General Manager  
P.O. Box 1120  
Glenwood Springs, CO 81602  
(970) 945-8522

AGREEMENT NUMBER 13XX6C0129


MIDDLE PARK WATER CONSERVANCY DISTRICT

By: Duane Scholl  
Duane Scholl, President  
P.O. Box 145  
Granby, CO 80446  
(970) 887-3376




**AGREEMENT NUMBER 13XX6C0129**

**NORTHERN COLORADO WATER CONSERVANCY DISTRICT**

By:   
Eric Wilkinson, General Manager  
220 Water Avenue  
Berthoud, CO 80513  
(800) 369-7246

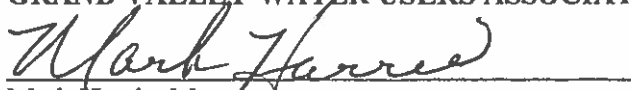
**MUNICIPAL SUBDISTRICT,  
NORTHERN COLORADO WATER CONSERVANCY DISTRICT**

By:   
Eric Wilkinson, General Manager  
220 Water Avenue  
Berthoud, CO 80513  
(800) 369-7246

**AGREEMENT NUMBER 13XX6C0129**

**GRAND VALLEY WATER USERS ASSOCIATION**

By:

A handwritten signature in black ink, appearing to read "Mark Harris", is written over a horizontal line.

Mark Harris, Manager

1147 24 Road

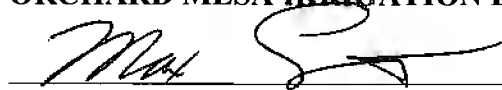
Grand Junction, CO 81505-9639

(970) 242-5065

**AGREEMENT NUMBER 13XX6C0129**

**ORCHARD MESA IRRIGATION DISTRICT**

By:

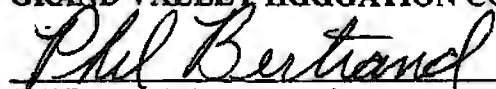
A handwritten signature in black ink, appearing to read 'Max Schmidt', is written over a horizontal line.

Max Schmidt, Manager  
668 38 Road  
Palisade, CO 81526  
(970) 464-7885

**AGREEMENT NUMBER 13XX6C0129**

**GRAND VALLEY IRRIGATION COMPANY**

By:



Phil Bertrand, Superintendent

668 26 Road

Grand Junction, CO 81506

(970) 242-2762

**2007 SHOSHONE AGREEMENT**  
**(as referenced in**  
**Agreement Number 13XX6C0129)**

Please reference the following  
number on all billings or payments.  
Contract # 10766A

**AGREEMENT CONCERNING  
REDUCTION OF SHOSHONE CALL**

This Agreement is between the City and County of Denver, acting by and through its Board of Water Commissioners (Board), and Public Service Company of Colorado d/b/a Xcel Energy (Company).

**Recital**

The Board's ability to store water in its reservoirs for beneficial use by its customers is adversely impacted, especially in dry years, by the Company's Shoshone Call. Following the drought year of 2002, a brief relaxation of the Shoshone Call during the spring of 2003 provided some benefit to storage reservoirs operated by both west slope and east slope entities, including the Board. Although a more comprehensive and long-term agreement on relaxation achieved through multi-party negotiations may be desirable, the Company and the Board agree to a relaxation of the Call under the provisions in this Agreement. The Company agrees to participate in developing a long-term program of relaxation, including a relaxation of the junior Shoshone Call, with the Board, other water users on the Colorado River and appropriate west slope entities.

**Agreement**

1. Agreement to Relax Call. When a water shortage occurs, as defined in Paragraph 2, the Company agrees to reduce the Shoshone Call to a one-turbine call of 704 cfs. If the Call is relaxed and the flow of the Colorado River at the Shoshone Power Plant, together with flows contributed by intervening tributaries, is not sufficient to meet the then-current demand of the major Grand Valley water rights, up to 1950 cfs (commonly referred to as the "Cameo Call"), then the level of the Shoshone Call will be adjusted to an amount greater than 704 cfs so as to avoid the initiation of a Cameo Call.

2. Water Shortage Defined. For purposes of this Agreement, a water shortage occurs when the following two conditions are met:

- a. Using its regular methodology and based on the "normal" scenario, the Board predicts that reservoir storage in its system on July 1 will be at or below 80% full; and
- b. The Most Probable forecast of streamflow prepared by the Natural Resources Conservation Service (NCRS) or jointly by NCRS and the Colorado Basin River Forecast Center indicates that the April – July flow of the Colorado River at the Kremmling gage will be less than or equal to 85% of average. If no forecast for the Kremmling gage is available, then the Dotsero gage will be used.

3. Timing of Relaxation of Call. If the two forecasts described in paragraph 2 occur in March, then the call will be relaxed beginning March 14 until May 20, inclusive, in accordance with this Agreement. If the two conditions described in paragraph 2 occur in April or May forecasts, then the Call will be relaxed in accordance with this Agreement until May 20, inclusive. The methodology that the Board uses to predict system storage shall be substantially the same as that described in the attached Exhibit A.

4. Power Interference. The Board agrees to pay power interference to compensate the Company for its incremental cost of replacement power and energy as a result of relaxing the Shoshone Call, regardless of which entity ultimately stores the water not called. The procedure for determining power interference is shown in Exhibit B.

5. Potential for Longer Call Relaxation. The Company agrees to consider a longer period of relaxation when water supplies are more severely impacted than described in paragraph 1, if such longer period is defined cooperatively between the Board, the Company and appropriate west slope entities.

6. Water for the Company's Facilities. The Board agrees to deliver water as described in this paragraph to the Company's Cherokee, Arapahoe, or Zuni Power Plants or a future Company power plant located within the Board's Combined Service Area. The Company will select the plant or plants to which the water will be delivered. Deliveries to the Arapahoe, Zuni or a future plant will be made to the South Platte River. Deliveries to the Cherokee plant will be made, at the Board's choice, to the South Platte River or through the Board's Recycled Water Plant. The Board may choose in its discretion the type of water delivered to these facilities, so long as the water is suitable for their use. The Board will not deliver water under this paragraph to the South Platte River downstream of the Cherokee plant's diversion structures. Any water delivered by the Board to the Company under this paragraph shall be used by the Company only at the plants listed in this paragraph 6 and only for purposes for which the Board's water rights have been decreed.

6.1 Amount of Water. The Board shall deliver under this paragraph 6 an amount of water equivalent to 15% of the "net water" it is able to store or divert as a direct result of the reduction of the Shoshone Call. "Net water" is defined as the total amount of water the Board is able to store or divert as a direct result of the reduction of the Shoshone Call at the following facilities, less any deductions described below:

- a. Water stored or diverted at the Board's Dillon Reservoir, less any water spilled from Dillon after filling and any water bypassed from Dillon for flood management purposes; and

- b. Water stored or diverted at the Board's Williams Fork Reservoir, less any water spilled from Williams Fork after filling and any water bypassed from Williams Fork for flood management purposes; and
- c. Water stored in the Board's account in Wolford Reservoir, less any water spilled from the Board's account after filling; and
- d. Water diverted through the Board's Moffat Tunnel, less any water spilled from the Fraser Collection System in excess of the Forest Service minimum bypass flow requirements; and
- e. Water stored or diverted at any western slope reservoir or storage account acquired or constructed by the Board after the date of this agreement, less any water spilled after filling and any water bypassed for flood management purposes.

6.2 Schedule for 15% Water Delivery. The Board shall make deliveries under this paragraph 6 between June 1 in the same calendar year as the Shoshone Call is reduced and March 31 of the following calendar year. The delivery schedule will be subject to approval by the Company.

6.3 Cost of Water Delivered. For each acre foot of water delivered to the Company under this paragraph 6, the Company shall reimburse the Board for the Board's power interference payments at the same rate per acre foot as the Board paid to the Company under paragraph 4.

7. Water for West Slope Entities. The Board agrees to make available to entities on the west slope, at no charge to the recipients, an amount of water equivalent to 10% of the "net water" it is able to store or divert as a direct result of the reduction of the Shoshone Call. "Net water" is defined in paragraph 6.1. The Board may choose in its discretion the method of delivery that is consistent with its water right decrees, so long as the delivery method is suitable for each recipient's desired use. The Board shall deliver the water in the same calendar year as the Shoshone Call is reduced. The Board agrees to cooperate with the Colorado River Water Conservation District to determine the particular west slope entities and the proportionate share of the water to be made available to each entity.

8. Additional East Slope Participants. The Board and the Company agree to make a good faith effort to secure commitments from the Municipal Subdistrict of the Northern Colorado Water Conservancy District, the City of Aurora and Colorado Springs Utilities to deliver to the Company, at no charge, 15% of their additional water diversions that result from a relaxation of the Shoshone Call, in accordance with paragraph 6, and to deliver 10% of the water diverted or stored to west slope entities in accordance with paragraph 7.

9. Priority System. Water made available by the relaxation of the Shoshone Call will be allocated in accordance with the priority system.

10. No Warranties. The Company is not warranting or representing that the diversion and use by the Board of additional water as a result of the relaxation of the Shoshone Call is administrable or lawful. To the extent that the State Engineer or a court with jurisdiction determines that the diversion and use by the Board of additional water as a result of the relaxation of the Shoshone Call is not administrable or lawful, the Company can continue to place the Shoshone Call notwithstanding this Agreement.

11. Increased Call for Company Operations. If the Company in its sole discretion determines that additional river flow is required for safe operation of the Shoshone Hydroelectric Station or the Company's electrical system, then the Company may increase the Call, notwithstanding this Agreement.

12. Operational Meeting. The Company agrees to meet with the Board each October to discuss operation of the Shoshone Call and any planned outages of the Shoshone Plant for repair or maintenance during the following twelve months so that the parties may better coordinate their activities.

13. Sale of Shoshone Water Rights. In the event the Company should determine that it is in its best interest to sell the Shoshone water rights, it agrees to do so only on an open bidding basis in which the Board shall have an equal opportunity to purchase the water rights as all others. If the Company sells the Shoshone water rights to an entity other than the Board, the new owner shall have the right to terminate this Agreement two years after closing of the sale.

14. Term. This Agreement shall be effective as of January 1, 2007 and will terminate on February 28, 2032.

15. Prior Agreement. The previous Letter Agreement between the Company and the Board dated April 14, 1986, is hereby terminated in its entirety.

IN WITNESS WHEREOF, the Board and the Company have executed this Agreement.

ATTEST:

PUBLIC SERVICE COMPANY OF  
COLORADO d/b/a XCEL ENERGY

*Carol J. Peterson*  
*asst.* Secretary

By: *Paul V. [Signature]*  
President and CEO  
Public Service Company of Colorado

Reviewed  
Legal

03/13/2006

*3/31/06 PML*



CITY AND COUNTY OF DENVER,  
acting by and through its  
BOARD OF WATER COMMISSIONERS

ATTEST:

Secretary

President

APPROVED:

Director of Planning

Director of Finance

APPROVED AS TO FORM:

Legal Division

REGISTERED AND COUNTERSIGNED  
Dennis J. Gallagher, Auditor

By:

Title:

Deputy Auditor

## **Exhibit A**

### **DESCRIPTION OF PROCEDURES USED BY THE BOARD FOR RESERVOIR PROJECTIONS**

Denver Water projects future reservoir levels monthly in the springtime and less frequently throughout the rest of the year. Active storage levels (excluding the dead storage pools) for the 10 largest reservoirs in Denver's system (Antero, Eleven Mile, Cheesman, Marston, Chatfield, Gross, Ralston, Dillon, Williams Fork, and Wolford Mountain) are forecasted. Calculations of gross and net aggregate reservoir contents are made. The calculation of net reservoir contents excludes any water in Denver's system owed to others (primarily Green Mountain Reservoir). The net active storage of the 10 reservoirs will be used in the forecast for the Shoshone call reduction.

The reservoir projections are based on natural streamflow forecasts produced primarily by the Natural Resources Conservation Service (NRCS). However, streamflow forecasts produced by other organizations including the Colorado Basin River Forecast Center, the Bureau of Reclamation, the Northern Colorado Water Conservancy District and Denver Water are also used.

The reservoir projections utilize correlations between natural streamflow and divertible streamflow to estimate how much of the natural streamflow can be diverted under Denver's water rights. Other factors incorporated in the reservoir projections include projections of treated water use, raw water deliveries, evaporation (based on rates approved by the State Engineer's Office), minimum bypass and release requirements, carriage losses assessed by the State Engineer's Office, existing capacities of diversion and conveyance facilities, system outages and river calls. The assumed treated water use considers any water use restrictions approved by the Denver Water Board at the time of the forecast.

Usually, three levels of reservoir projections are produced. These projections are based on three scenarios after the forecast date: "dry", "normal" and "wet" conditions. The "dry" scenario is based on the "reasonable minimum" streamflow forecasts, which have a 90% chance of being exceeded. The "normal" scenario is based on the "most probable" streamflow forecasts, which have a 50% chance of being exceeded. The "wet" scenario is based on the "reasonable maximum" streamflow forecasts, which have a 10% chance of being exceeded. The "normal" scenario will be used for the Shoshone call reduction.

## Exhibit B

### COMPENSATION FOR POWER INTERFERENCE

The Board agrees to pay power interference to compensate the Company for its incremental cost of replacement power and energy as a result of relaxing the Shoshone Call. The procedure for determining power interference is shown below.

#### Depletions to Shoshone Power Plant

The Board will compensate the Company for each acre-foot of net turbine flow depletion caused to the Shoshone Power Plant through the relaxation of the Shoshone Call. Net depletions are defined as gross depletions caused by the Board and all other water users upstream of the Shoshone power plant, less any water subsequently released from Green Mountain and Wolford Reservoirs utilized to generate power at the Shoshone plant. Some of the water stored in Green Mountain and Wolford as a result of relaxation of the Call will later be released, run through the Shoshone Plant for power generation, and delivered for use below the plant; such amounts of water do not constitute a net depletion for purposes of calculating power interference. Similarly, amounts of water spilled from Dillon Reservoir, Williams Fork Reservoir, the Board's account in Wolford Reservoir, or a new west slope reservoir or storage account described in Paragraph 6.1(e), and run through the Shoshone Plant for power generation, do not constitute a net depletion for purposes of calculating power interference. Depletions will be calculated at the Shoshone plant and will be adjusted for stream carriage losses assessed by the State Engineer in water rights administration.

#### Reimbursement to Xcel

The Board will reimburse the Company for power interference at the rate of at least \$5.00 per acre-foot of the net depletion described above. The \$5.00 per acre-foot minimum will be adjusted on a monthly basis (but not below \$5.00 per acre-foot) by the change in the Price of Spot Gas Delivered to Pipelines for Colorado Interstate Gas, Rocky Mountain (Index) as published in "Platts Inside FERC Gas Market Report," compared to a baseline representing the average Index for the first three months of 2006.

#### Accounting and Payment.

After the Call relaxation has ended, the Board will prepare an accounting of the power interference and provide it to the Company for review. Once final accounting as been determined, the Board will make payment to the Company within 60 days. Upon mutual agreement and the development of mutually agreeable terms, the Board may substitute a delivery of energy to the Company for the payment of power interference.

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO

Case No. 91CW247

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STIPULATION AND AGREEMENT

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CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE GRAND VALLEY  
WATER USERS ASSOCIATION, ORCHARD MESA IRRIGATION DISTRICT, AND  
THE UNITED STATES OF AMERICA, IN MESA COUNTY, COLORADO

---

This Stipulation and Agreement, dated as of September 4, 1996, is made between the Co-Applicants, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District ("OMID"), the United States of America ("United States"), and the following parties who are collectively referred to herein as the "Objectors":

Aurora, City of  
Basalt, Town of  
Basalt Water Conservancy District  
Carbondale, Town of  
Colorado Division of Wildlife  
Colorado River Water Conservation District  
Colorado Springs, City of  
Colorado State Engineer  
Colorado Water Conservation Board  
Copper Mountain, Inc.  
Copper Mountain Consolidated Metropolitan District (successor-in-interest to  
Copper Mountain Water and Sanitation District)  
Cyprus Climax Metals Company  
DeBeque, Town of  
Division Engineer, Water Division No. 5  
Eagle, Town of  
Exxon Company, U.S.A.  
Frisco, Town of  
Glenwood Springs, City of  
Grand County Water & Sanitation District No. 1  
Grand Valley Irrigation Company  
Middle Park Water Conservancy District  
Mid Valley Metropolitan District  
Mobil Mining & Minerals Company

**Stipulation and Agreement**

**Case No. 91CW247, Water Division No. 5**

**Page 2**

New Castle, Town of  
North Barton Creek Ltd. Liability Company  
Palisade, Town of  
Parachute, Town of  
Pueblo, Board of Water Works of  
Public Service Company of Colorado  
Ralston Resorts, Inc. (successor-in-interest to Keystone Resorts Management, Inc., and Breckenridge Ski Corporation)  
Rifle, City of  
Rifle Land Associates, Ltd.  
Silverthorne, Town of  
Spruce Valley Ranch Foundation  
Summit County Commissioners, Board of  
Union Oil Company of California  
Upper Eagle Regional Water Authority  
Vail Associates, Inc.  
Vail Valley Consolidated Water District

In consideration of the mutual agreements contained herein, Co-Applicants and Objectors agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following definitions in this Stipulation and Agreement and in any decree which may be subsequently entered in this case:

- "15-Mile Reach" shall mean the reach of the Colorado River which extends, from the point at which the tailrace common to the Grand Valley Power Plant and the OMID pumping plant returns to the Colorado River below the Grand Valley Irrigation Company ("GVIC") diversion dam, downstream to the confluence of the Colorado River and Gunnison River.

- "Blue River Decrees" shall mean the stipulations, judgments, orders and decrees entered in consolidated Civil Action Nos. 2782, 5016 and 5017, United States District Court, District of Colorado, including without limitation the decrees dated October 12, 1955, and April 16, 1964.

- "HUP" shall mean the so-called "historic users pool" defined as water to be released from the Green Mountain Reservoir power pool as described in paragraphs 2 and 3 of the Operating Policy.

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- "HUP beneficiaries" shall mean those persons or entities for whose benefit releases are made from the HUP pursuant to the Operating Policy.

- "OMID Right" shall mean the 450 c.f.s. decreed as Priority No. 197 as renumbered to the OMID System of Canals and Ditches by decree of the Mesa County District Court entered on July 25, 1941, in Case No. 5812.

- "Operating Policy" shall mean the Operating Policy for Green Mountain Reservoir; Colorado-Big Thompson Project, Colorado (Volume 48, No. 247 Federal Register 12/22/83; as amended in Volume 52, No. 176 Federal Register 9/11/87).

- "Orchard Mesa Check" shall mean the three mechanically operated radial gates and the bypass channel by which the water level in the common afterbay of the Grand Valley Power Plant and the OMID pumping plant can be raised to a level which causes water to flow through the bypass channel and return to the Colorado River immediately upstream of the GVIC diversion dam, and shall include any replacement structure in the same location which performs that same function.

- "Parties" shall mean each of the parties to this Stipulation and Agreement as identified in the first unnumbered paragraph, above. A "party" shall mean one of the parties.

- "Power Right" shall mean the 800 c.f.s., 400 c.f.s. during the irrigation season, decreed to the United States for the Grand Valley Project by decree of the Mesa County District Court entered July 25, 1941, in Case No. 5812.

- "Shoshone Rights" shall mean the water rights decreed for and associated with the Shoshone Power Plant (a.k.a. the Glenwood Power Canal), adjudicated for 1,250 c.f.s. on December 9, 1907, with an appropriation date of January 7, 1902, and adjudicated for 158 c.f.s. on February 7, 1956, with an appropriation date of May 15, 1929.

2. Application. The Co-Applicants filed an application on December 30, 1991, which application was amended on May 24, 1993, for approval of an exchange of water based upon the discharge of water from the common afterbay of the Grand Valley Power Plant and the OMID pumping plant into the Colorado River upstream from the GVIC diversion dam by means of the Orchard Mesa Check. The Co-Applicants have claimed an absolute right for an existing exchange of water with a 1926 priority date. Attached hereto as Exhibit A and incorporated herein by this reference is a list of all of the decreed water

## **Stipulation and Agreement**

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rights of the Co-Applicants (the "Co-Applicants' Water Rights"), Mesa County Irrigation District and Palisade Irrigation District which are legally divertible at the headgate of the Government Highline Canal (commonly referred to as the "Roller Dam"). Attached hereto as Exhibit B and incorporated herein by this reference is a list of all the decreed water rights of the GVIC (the "GVIC Water Rights") which are legally divertible at the GVIC diversion dam.

3. Decree Provisions. The parties agree to the entry of a decree in Case No. 91CW247, in the form of the proposed decree attached hereto as Exhibit C, granting the application as amended and incorporating the terms of this Stipulation and Agreement.

3.a. Except as provided in paragraphs 3.a.(1), (2) and (3), below, the United States agrees not to exercise the Power Right from April 1 through October 31 of each year so as to place an administrative call which results in the curtailment of diversions by upstream water rights.

3.a.(1) During the months April through October, at any time diversions at the Roller Dam under the irrigation rights listed on Exhibit A are less than 1,310 c.f.s., the Power Right may be exercised so as to maintain a total call of 1,310 c.f.s. at the Roller Dam by the water rights listed on Exhibit A.

3.a.(2) In addition, at any time during the months April through October that diversions by the GVIC Water Rights are less than 400 c.f.s., the Power Right may be exercised for up to the amount that diversions by such GVIC rights are less than 400 c.f.s.; provided, however, that if GVIC gives written notice to the parties pursuant to paragraphs 3.e.(1) or (2) that the GVIC Water Rights shall no longer be subject to the terms of paragraph 3.b., then, at any time during the months April through October, the Power Right may be exercised for up to the amount that GVIC's diversions are less than the amount of GVIC's then existing decreed water rights or less than 400 c.f.s., whichever is less.

3.a.(3) If the Orchard Mesa Check is physically inoperable due to an Act of God or an emergency situation beyond the control of the Co-Applicants, the United States may exercise the Power Right to the full decreed amount for a period not to exceed a total of 14 days during the April 1 through October 31 period in any given year or until the Orchard Mesa Check becomes operable, whichever occurs first. For purposes of this provision, an emergency situation shall not be deemed to occur if the Orchard Mesa Check is inoperable due to a lack of funding or the non-performance of ordinary maintenance.

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3.a.(4) Any calls of the Power Right pursuant to paragraphs 3.a.(1), (2) and (3), above, may be made only when and to the extent the Power Right is in priority, there is capacity in the power canal, and all water called thereunder is delivered to and through the Grand Valley Power Plant.

3.a.(5) For purposes of paragraph 3 of this Stipulation and Agreement, the priority date of the Power Right shall be considered to be August 3, 1934. So long as none of the provisions of paragraph 3 of this Stipulation and Agreement are suspended, the United States agrees not to seek administration under a more senior priority, which the United States asserts is decreed as February 27, 1908. By agreeing not to assert a 1908 priority for the Power Right while paragraph 3 of this Stipulation and Agreement is not suspended, the United States does not waive and shall not be estopped from asserting the right to seek administration under a 1908 priority, nor shall Objectors be estopped from challenging a 1908 priority, in the event any of the provisions of paragraph 3 of this Stipulation and Agreement shall be suspended, as addressed in paragraphs 3.b.(6), 5.c. and 5.d., below. The parties agree that the time for raising claims and defenses concerning the priority of the Power Right is tolled so long as none of the provisions of paragraph 3 of this Stipulation and Agreement are suspended.

3.a.(6) No provision of this Stipulation and Agreement shall be considered to affect in any way the right of the United States to call for the 800 c.f.s. power right from November 1 through March 31.

3.b. During the period April 1 through October 31 of any year that the conditions set forth in paragraphs 3.b.(1), (2) and (3), below, are met, diversions by HUP beneficiaries (except the HUP beneficiaries who own and/or operate the water rights listed in Exhibits A and B) shall not be curtailed by any administrative call by the water rights listed in Exhibits A and B:

3.b.(1) the Orchard Mesa Check is physically operable. For purposes of this provision, the Orchard Mesa Check shall be considered to be physically operable unless it is rendered inoperable due to an Act of God or an emergency situation beyond the control of the Co-Applicants. An emergency situation shall not be deemed to occur if the Orchard Mesa Check is inoperable due to a lack of funding or the non-performance of ordinary maintenance. If the Orchard Mesa Check is rendered inoperable, Co-Applicants shall make best efforts to bring the facility back into operation as soon as possible.



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3.b.(2) there is at least 66,000 acre feet of water available for releases for the benefit of HUP beneficiaries when Green Mountain Reservoir ceases to be in-priority for its initial fill under the Blue River Decrees. Nothing in this Stipulation and Agreement shall be construed to limit or diminish the ability of the United States to exercise its full right to fill Green Mountain Reservoir as provided by the Blue River Decrees.

3.b.(3) the Shoshone Rights continue to be exercised in a manner substantially consistent with their historical operations for hydropower production at their currently decreed point of diversion.

3.b.(4) As provided in paragraph 3.c., below, this paragraph 3.b. shall not cause increased curtailment of diversions by non-HUP beneficiaries.

3.b.(5) If any of the three conditions set forth in paragraphs 3.b.(1), (2) or (3), above, is not met, Co-Applicants and GVIC (based on concurrence of any three out of four of those entities) may give written notice to the parties that the Operating Criteria developed pursuant to paragraph 5, below, and the non-curtailment provisions of this paragraph 3.b. shall be inoperative until each of said three conditions is being met (if paragraph 3.b. is rendered inoperative under this provision, it shall not be considered to be suspended for the purposes of this Stipulation and Agreement). During any period that the Operating Criteria are inoperative, no water in the HUP shall be deemed to be surplus to the needs of the HUP beneficiaries, and releases from the HUP shall only be made to replace out-of-priority depletions by HUP beneficiaries and to make direct deliveries to HUP beneficiaries. To the extent that such releases are less than the out-of-priority depletions of HUP beneficiaries, the water rights listed in Exhibits A and B may place an administrative call and seek curtailment of diversions by HUP beneficiaries, provided, however, that nothing herein shall diminish or limit the statutory authority and responsibility of the Division 5 Engineer.

3.b.(6) If any of the three conditions set forth in paragraphs 3.b.(1), (2) or (3), above, is not met, Co-Applicants and GVIC (based on concurrence of any three out of four of those entities) may give written notice to the parties that the terms of paragraph 3.a. of this Stipulation and Agreement are suspended until each of said three conditions is being met. During any period that the terms of paragraph 3.a. are suspended, the United States may fully exercise the Power Right, and the parties may raise the matters addressed in paragraphs 3.a.(5), 3.e., 3.f. and 3.g. of this Stipulation and Agreement. If an action raising any such matter is commenced during any period of

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suspension of paragraph 3.a., the parties to such action shall be free to continue to prosecute and defend such action to its conclusion, notwithstanding that the conditions set forth in paragraphs 3.b.(1), (2) and (3) become fully satisfied and paragraph 3.a. goes back in effect after commencement of such action.

3.c. The parties recognize that under the terms of paragraph 3.b. of this Stipulation and Agreement, there may be instances when the actual releases from the HUP will be less than the out-of-priority depletions of the HUP beneficiaries. In such instances, the Division Engineer shall not curtail the water right(s) of any entity not entitled to benefits of the HUP to the extent that entity's water right(s) would otherwise have been in priority to divert if the out-of-priority depletions of HUP beneficiaries would have been fully replaced in the absence of the execution of this Stipulation and Agreement and the decree based thereon.

3.d. The provisions of paragraphs 3.a. and 3.b. of this Stipulation and Agreement shall not be considered to intend, evidence, or represent abandonment in whole or in part of any of the Co-Applicants' Water Rights, the GVIC Water Rights or other water rights listed on Exhibit A and Exhibit B, including, but not limited to, the Power Right.

3.e. Issues concerning waste and reasonable efficiency in the exercise of the water rights, diversion, carriage and delivery systems of the Co-Applicants, GVIC and other owners of the water rights listed on Exhibits A and B, are not determined in this proceeding and all claims and defenses regarding those issues are dismissed without prejudice and shall not be raised by any of the parties in any proceeding before the Division 5 Engineer or the State Engineer or in any judicial proceeding so long as none of the provisions of paragraph 3 of this Stipulation and Agreement are suspended. The parties agree that the time for raising claims and defenses concerning these issues is tolled so long as none of the provisions of paragraph 3 of this Stipulation and Agreement are suspended. Nothing herein shall diminish or limit the statutory authority and responsibility of the Division 5 Engineer. Nothing herein shall affect the rights of the parties regarding the disposition of water saved through implementation of conservation measures. Nor shall anything herein affect the rights of the parties regarding issues relating to administration of water rights, except those issues which the parties have agreed not to raise pursuant to paragraphs 3.a.(5), 3.e., 3.f. and 3.g.

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3.e.(1) If, during any period of suspension of paragraph 3.a., an action is brought by any party to this Stipulation and Agreement raising issues concerning waste or reasonable efficiency in the exercise of the GVIC Water Rights, GVIC may then give written notice to the parties that the GVIC Water Rights shall no longer be subject to the terms of paragraph 3.b.

3.e.(2) In the event that any person or entity not a party to this Stipulation and Agreement brings an action raising issues concerning waste or reasonable efficiency in the exercise of the GVIC Water Rights, GVIC may give written notice to the parties that the GVIC Water Rights shall no longer be subject to the terms of paragraph 3.b. If GVIC elects to give such notice, the parties to this Stipulation and Agreement may then join in any such action or bring a separate action concerning issues of waste or reasonable efficiency in the exercise of the GVIC Water Rights.

3.f. Issues concerning the historical administration of Co-Applicants' Water Rights and GVIC's Water Rights and operation of the Orchard Mesa Check as a precondition to exercise of a call by such water rights and as a term and condition of the decree adjudicating the exchange herein are not determined in this proceeding, and all claims and defenses regarding those issues are dismissed without prejudice and shall not be raised so long as none of the provisions of paragraph 3 of this Stipulation and Agreement are suspended. The parties agree that the time for raising claims and defenses concerning the historical administration and operation of the Orchard Mesa Check is tolled as long as none of the provisions of paragraph 3 of this Stipulation and Agreement are suspended.

3.g. Certain Objectors moved the Court for partial summary judgment on the issue of whether OMID is precluded by the terms of the decrees heretofore awarded it from pumping more than 125 c.f.s. for actual irrigation usage. On June 22, 1995, the Court entered an order denying the motion based on the Court's conclusion that "it cannot be said as a matter of law that OMID is limited to an irrigation right of 125 c.f.s." The Court's Order did not preclude the parties from raising and litigating at trial issues concerning whether or not the OMID Right should be limited to 125 c.f.s., nor did it preclude the parties from raising these issues in a separate action. These issues are not determined in this proceeding and all claims and defenses regarding those issues are dismissed without prejudice and shall not be raised so long as none of the provisions of paragraph 3 of this Stipulation and Agreement are suspended. The parties agree that the time for raising claims and defenses concerning such issues is tolled as long as none of the provisions of paragraph 3 of this Stipulation and Agreement are suspended.

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**4. Operating Policy.**

4.a. Nothing contained in this Stipulation and Agreement shall in any manner be construed or intended to limit the availability of water from Green Mountain Reservoir for contract pursuant to paragraphs 4 through 7 of the Operating Policy, subject to the terms and conditions of such contracts, or otherwise adversely affect any Green Mountain Reservoir water service contract.

4.b. Nothing in this Stipulation and Agreement or in the Operating Criteria attached hereto as Exhibit D shall be construed as a consent to the validity or enforceability of the Operating Policy or a waiver or relinquishment of any claims or defenses regarding the validity or enforceability of the Operating Policy.

**5. Green Mountain Reservoir Historic User Pool Operating Criteria.**

5.a. Co-Applicants and Objectors have jointly developed the Green Mountain Reservoir Historic User Pool Operating Criteria, attached hereto and incorporated herein as Exhibit D ("Operating Criteria"), in order to meet the purposes set forth therein, including defining the terms and conditions under which water in the HUP is surplus to the needs of HUP beneficiaries ("HUP surplus water"). HUP surplus water shall be available for delivery to beneficial uses in Western Colorado under contracts ("HUP surplus water contracts") to be developed by the Bureau of Reclamation. The parties agree that HUP surplus water contracts will provide that HUP surplus water will be delivered to and through the Grand Valley Power Plant to the extent that there is capacity in the power canal and water is needed to produce power at the Grand Valley Power Plant, and that HUP surplus water contracts may provide for delivery of HUP surplus water to other locations and facilities to the extent that there is not capacity in the power canal or that water is not needed to produce power at the Grand Valley Power Plant. Any HUP surplus water contract, entered into pursuant to this Stipulation and Agreement, for delivery of HUP surplus water upstream of the 15-Mile Reach shall be for non-consumptive use only. HUP surplus water contracts shall provide that return flows from delivery of HUP surplus water to and through the Grand Valley Power Plant shall be returned to the river through the tailrace common to the Grand Valley Power Plant and the OMID pumping plant, and that deliveries or return flows of HUP surplus water delivered to other locations and facilities shall flow through the 15-Mile Reach or be returned or delivered to the Colorado River as near as practicable to the upstream point of the 15-Mile Reach, thereby augmenting flows for the recovery of endangered Colorado River fish species.

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5.b. The Operating Criteria shall be binding upon and observed by the parties; provided, however, that the Operating Criteria may be amended by mutual agreement of the parties or otherwise modified as provided in this paragraph 5 and paragraph 6 of this Stipulation and Agreement. The parties agree to implement the Operating Criteria and, if necessary, to use good faith efforts to modify such criteria to promote the purposes set forth in paragraph 2 of the Operating Criteria.

5.c. If any party desires to request a modification to the Operating Criteria, based upon an allegation that use of one or more of the party's water rights in existence as of May 31, 1996 have been injured by the Operating Criteria and/or this Stipulation and Agreement, whether such injury be in water quantity, water quality or any injury which occurs as a result of a significant expansion of the amount of water required to offset or satisfy the demands of HUP beneficiaries, as a result of amendment or modification of the Operating Policy, or as a result of a substantial change in the manner in which the Shoshone Rights are exercised, the parties shall follow the procedures set forth below.

5.c.(1) Notice of the asserted injury shall be mailed to all parties to this Stipulation and Agreement. A party's failure to assert a particular type of injury during a given water year shall not limit that party's right to assert such an injury in subsequent water years unless the conditions upon which the claimed injury are based have existed during any five years out of any seven year period following execution of this Stipulation and Agreement.

5.c.(2) The parties shall each have the opportunity to designate a representative to serve on a committee which will review the injury claim and make an initial determination as to whether the alleged injury exists and, if so, whether it was caused by operation of the Operating Criteria and/or the provisions of this Stipulation and Agreement. Any party choosing not to designate a representative shall be deemed to accept the finding of the committee.

5.c.(2)(A) In the event the committee unanimously determines that no injury has occurred or that the injury alleged was not caused in whole or part by operation of the Operating Criteria and/or this Stipulation and Agreement, then the Operating Criteria and all provisions of this Stipulation and Agreement shall remain in full force and effect. If the committee cannot unanimously agree, then the party claiming injury may submit the issue to arbitration in accordance with paragraph 5.c.(3), below.

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5.c.(2)(B) If the committee unanimously determines that injury has been caused in whole or in part by the operation of the Operating Criteria and/or this Stipulation and Agreement, then the committee shall attempt to reach agreement as to how to modify the Operating Criteria and/or this Stipulation and Agreement to alleviate such injury to the satisfaction of the parties. If such an agreement is reached, the Operating Criteria and/or this Stipulation and Agreement shall be modified in accordance with that agreement and a stipulated motion to modify this Stipulation and Agreement shall be filed with the Court and any modifications to appropriate documents shall be made.

5.c.(2)(C) In the event the committee unanimously determines that injury has occurred and that it was caused in whole or in part by operation of the Operating Criteria and/or this Stipulation and Agreement, but cannot determine how to alleviate the injury to the satisfaction of the parties, the Operating Criteria and the provisions of paragraph 3 of this Stipulation and Agreement shall be suspended. In that event, any participating party may file a motion in this case or a separate action for determination of such issue and for appropriate relief. The Operating Criteria and the provisions of paragraph 3 of this Stipulation and Agreement shall remain suspended unless and until the Court determines otherwise.

5.c.(2)(D) The committee shall have a maximum period of one year from the date notice of the asserted injury is sent to the parties in which to make its determination of injury and, if injury is found, to reach agreement concerning how to alleviate the injury. During this period, the Operating Criteria and all provisions of this Stipulation and Agreement shall remain in full force and effect.

5.c.(3) Upon written notification from the committee organized under paragraph 5.c.(2), above, notifying all parties that the committee has been unable to agree upon a determination of injury or noninjury, or upon expiration of the one year period to make such determination, any party claiming injury may submit the issue of whether injury has occurred by operation of the Operating Criteria and/or this Stipulation and Agreement to arbitration.

5.c.(3)(A) Arbitration shall be governed by the rules of the American Arbitration Association (or, if it no longer exists, a similar organization). A panel of three arbitrators shall be selected as follows: (i) One person shall be selected by Co-Applicants and GVIC; (ii) One person shall be selected by Objectors; and, (iii) The two

## **Stipulation and Agreement**

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selected arbitrators shall select a third. The arbitrators shall be engineers, hydrologists, geologists, or practicing or retired water lawyers familiar with Colorado water law. None of the arbitrators shall have had any previous association with this case, absent the express consent of the parties.

5.c.(3)(B) Any party to the Stipulation and Agreement may participate as a party in the arbitration. All participating parties shall share in the costs of arbitration equally. Participating parties shall cooperate to conclude the arbitration expeditiously.

5.c.(3)(C) The arbitrators shall issue a written determination within 60 days following the conclusion of the taking of evidence. The arbitrators are only authorized to make determinations as to whether injury has occurred and, if so, whether it was caused by the Operating Criteria and/or this Stipulation and Agreement.

5.c.(3)(C)(i) If the arbitrators determine that injury has occurred and that it was caused by operation of the Operating Criteria and/or this Stipulation and Agreement, the Operating Criteria and the provisions of paragraph 3 of this Stipulation and Agreement shall be suspended. The parties shall then re-convene the committee organized under paragraph 5.c.(2), above, and the committee shall attempt to reach agreement as to how to alleviate such injury to the satisfaction of the parties. If such an agreement is reached, the Operating Criteria and/or this Stipulation and Agreement shall be modified in accordance with that agreement and a stipulated motion to modify this Stipulation and Agreement shall be filed with the Court and any modifications to appropriate documents shall be made. The committee shall have a maximum of six months from the date the arbitrators' determination is sent to the parties in which to reach agreement concerning how to alleviate the injury. Upon written notification from the committee notifying all parties that the committee has been unable to agree as to how to alleviate the injury, or upon expiration of the six month period for the committee to reach agreement, any participating party may proceed as provided in paragraph 5.c.(2)(C), above. The Operating Criteria and the provisions of paragraph 3 of this Stipulation and Agreement shall remain suspended unless and until the committee is able to unanimously agree on necessary modifications to the Operating Criteria and/or this Stipulation and Agreement, or unless and until the Court determines otherwise.

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Case No. 91CW247, Water Division No. 5

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5.c.(3)(C)(ii) If the arbitrators determine that no injury has occurred, or that injury has occurred but was not caused by operation of the Operating Criteria and/or this Stipulation and Agreement, the Operating Criteria and all provisions of this Stipulation and Agreement shall remain in full force and effect.

5.c.(3)(D) Any party to the arbitration who disagrees with the arbitrators' decision may file a motion in this case or a separate action for de novo review of the issue of injury and its causation and any issues related thereto, including whether the Operating Criteria and/or whether any provisions of this Stipulation and Agreement should be suspended, reinstated, or modified.

5.d. In the event the Operating Criteria are suspended, no water in the HUP shall be deemed to be surplus to the needs of the HUP beneficiaries, and releases from the HUP shall only be made to replace out-of-priority depletions by HUP beneficiaries and to make direct deliveries to HUP beneficiaries. In the event the Operating Criteria are suspended, the provisions of paragraph 3 of this Stipulation and Agreement shall also be suspended, and the Power Right may be fully exercised and the water rights listed in Exhibits A and B may place an administrative call and seek curtailment of diversions by HUP beneficiaries to the extent that HUP releases are less than the out-of-priority depletions of HUP beneficiaries.

5.e. In the event the Operating Criteria or HUP surplus water contracts are determined to be invalid or unenforceable by a court of competent jurisdiction, then the Operating Criteria shall be deemed suspended under paragraph 5.d., and paragraph 5.d. shall apply.

6. Entry of Decree. The parties agree that the decree attached hereto as Exhibit C shall be entered by the Court and that the Court shall retain jurisdiction for the purposes of considering any motion filed pursuant to paragraph 5 of this Stipulation and Agreement. In the event the Operating Criteria and the provisions of paragraph 3 of this Stipulation and Agreement are suspended, the parties shall then be free to raise any and all claims, whether in this case or in a separate action, including but not limited to, the matters addressed in paragraphs 3.a.(5), 3.e., 3.f. and 3.g. of this Stipulation and Agreement, except that the priority date and rate of the exchange shall not be relitigated. The parties agree that the Court shall not use the entry of the decree adjudicating the exchange and the priority thereof in a manner prejudicial to the positions or claims of either Co-Applicants or Objectors in any such subsequently filed motion or action. Any and all claims and defenses



**Stipulation and Agreement**  
**Case No. 91CW247, Water Division No. 5**  
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asserted in this proceeding, including issues as to the relevancy of various matters to this application, may be asserted by the parties and shall not be deemed waived.

7. Binding Effect. Upon the execution of this Stipulation and Agreement by all of the parties hereto, which execution must take place on or before September 4, 1996, and upon the Court's approval of this Stipulation and Agreement, this Stipulation and Agreement shall become effective and the rights and obligations created hereby shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that the Operating Criteria and the limitations set forth in paragraphs 3.a. and 3.b. shall not take effect until the beginning of the 1997 irrigation season, i.e., April 1, 1997. The parties to this Stipulation and Agreement may consist of less than all the parties to Case No. 91CW247 only if the parties to this Stipulation and Agreement consent in writing to the full effectiveness hereof notwithstanding the failure of other parties to Case No. 91CW247 to execute the same.

8. Authority of Counsel to Bind Parties. Counsel executing this Stipulation and Agreement represent that they are authorized by their client(s) to do so.

9. Notice. All notices required or permitted under this Stipulation and Agreement shall be effective when sent to a party by certified United States mail, return receipt requested, to the address shown for that party on the attached Exhibit E, or to any new address of any party or any party's successor-in-interest, provided that notice of any such new address has been sent to all parties in accordance with this paragraph.

**Stipulation and Agreement**  
**Case No. 91CW247, Water Division No. 5**  
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A handwritten signature in cursive script, appearing to read "Bruce D. Bernard", is written over a horizontal line.

Bruce D. Bernard, #12166  
Stephen G. Bartell  
U.S. Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
999 18th Street, Suite 945  
Denver, CO 80202  
Telephone: 303/312-7319

ATTORNEYS FOR THE  
UNITED STATES OF AMERICA

EXHIBIT A

Stipulation and Agreement  
Case No. 91CW247, Water Division No. 5

CO-APPLICANTS' WATER RIGHTS

<u>Owner</u>	<u>Amount/cfs</u>	<u>Adjudication Date</u>	<u>Appropriation Date</u>	<u>Source</u>
Irrigation use:				
Orchard Mesa Irrigation District	450	07/22/1912	10/25/1907	Colorado R.
Orchard Mesa Irrigation District	10.2	07/22/1912	10/01/1900	Colorado R.
Grand Valley Water Users Association/United States	730	07/22/1912	02/27/1908	Colorado R.
Palisade Irrigation District	80	07/22/1912	10/01/1889	Colorado R.
Palisade Irrigation District	23.5	07/25/1941	06/01/1918	Colorado R.
Mesa County Irrigation District	40	07/22/1912	07/06/1903	Colorado R.
Power:				
Grand Valley Water Users Association/United States 1/	400/800	07/25/1941	02/27/1908	Colorado R.
1/ 400 during irrigation season & 800 during non-irrigation season.				

EXHIBIT B

Stipulation and Agreement  
Case No. 91CW247, Water Division No. 5

GVIC WATER RIGHTS

<u>Owner</u>	<u>Amount/cfs</u>	<u>Adjudication Date</u>	<u>Appropriation Date</u>	<u>Source</u>
Grand Valley Irrigation Company	520.81	07/22/1912	08/22/1882	Colorado River
Grand Valley Irrigation Company	119.47	07/25/1941	04/26/1914	Colorado River

**EXHIBIT C**

Stipulation and Agreement  
Case No. 91CW247, Water Division No. 5

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

Case No. 91CW247

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE**

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CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE GRAND VALLEY WATER USERS ASSOCIATION, ORCHARD MESA IRRIGATION DISTRICT, AND THE UNITED STATES OF AMERICA, IN MESA COUNTY, COLORADO

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**FINDINGS OF FACT**

1. Filing of Application. This matter was commenced on December 30, 1991 by the filing of an Application to Confirm and Approve Appropriative Right of Exchange which application was amended by leave of Court on May 24, 1993.

2. Co-Applicants. The application and amendment were filed by the United States of America (the "United States"), the Grand Valley Water Users Association, a corporation (the "Association"), and the Orchard Mesa Irrigation District, a corporation ("OMID"). The United States, the Association and OMID are referred to herein as the "Co-Applicants."

3. Objectors.

3.1 Statements of Opposition Opposing Application. The following parties filed timely Statements of Opposition opposing the application or seeking protective terms and conditions:

Basalt, Town of  
Basalt Water Conservancy District  
Carbondale, Town of  
Collbran, Town of  
Colorado Division of Wildlife  
Colorado Springs, City of  
Copper Mountain, Inc.  
Copper Mountain Consolidated Metropolitan District (successor-in-interest to  
Copper Mountain Water & Sanitation District)

DeBeque, Town of  
Eagle, Town of  
Glenwood Springs, City of  
Grand County Water & Sanitation District No. 1  
Middle Park Water Conservancy District  
Mid Valley Metropolitan District  
Mobil Mining and Minerals Company  
Natec Resources, Inc.  
New Castle, Town of  
North Barton Creek Ltd. Liability Company  
Palisade, Town of  
Parachute, Town of  
Pueblo, Board of Water Works of  
Public Service Company of Colorado  
Ralston Resorts, Inc. (successor-in-interest to Keystone Resorts Management,  
Inc. and Breckenridge Ski Corporation)  
Rifle, City of  
Rifle Land Associates, Ltd.  
Silverthorne, Town of  
Spruce Valley Ranch Foundation  
Summit County Commissioners, Board of  
Union Oil Company of California  
Upper Eagle Regional Water Authority

3.2 Statements of Opposition in Support of Application. The following parties filed timely Statements of Opposition in support of the application:

Colorado River Water Conservation District  
Colorado State Engineer  
Division Engineer, Water Division No. 5  
Grand Valley Irrigation Company

3.3 Intervenors. The following parties did not file timely Statements of Opposition, but were granted leave to intervene as Objectors:

Aurora, City of  
Colorado Water Conservation Board  
Cyprus Climax Metals Company  
Exxon Company, U.S.A.  
Englewood, City of  
Frisco, Town of

Vail Associates, Inc.  
Vail Valley Consolidated Water District

3.4 Withdrawals. The following parties subsequently withdrew their Statements of Opposition:

Collbran, Town of (by Order dated January 29, 1996)  
Englewood, City of (by Withdrawal dated March 8, 1996)  
Natec Resources, Inc. (by Order dated January 29, 1996)

4. Stipulation. On or about September 23, 1996, the parties filed the Stipulation and Agreement attached hereto as Attachment 1. The Stipulation and Agreement has been executed by the Co-Applicants and by all the Objectors who remain parties to the case and provides that the parties to the Stipulation and Agreement agree to the entry of a decree herein granting the application as amended and incorporating the terms of the Stipulation and Agreement.

5. Jurisdiction. Timely and adequate notice of the filing and contents of the application and amendment to the application herein was given in the manner required by law. The time for filing Statements of Opposition and for seeking leave to intervene has expired. The Court has jurisdiction over the subject matter of this proceeding and over all persons and owners of property affected hereby, irrespective of whether or not those persons and owners of property have appeared.

6. Relief Requested by Application. The application requests confirmation of an appropriative right of substitution and exchange for an existing exchange on the Colorado River which is based on the operation of a structure commonly referred to as the Orchard Mesa Check. Co-Applicants request adjudication of an absolute right for this existing exchange, in the amount of 640 c.f.s., with a priority of April 1, 1926.

7. Description of Exchange Facilities. In order to describe the exchange, it is helpful to describe the facilities by which the exchange is operated. These facilities are described as follows:

7.1 Point of Diversion. The point of diversion for the exchange and the upstream point of the exchange is the headgate on the right (West) side of the Grand Valley Project diversion dam on the Colorado River (commonly referred to as the "Roller Dam") located in the Northwest Quarter of Section 13, Township 10 South, Range 98 West, 6th P.M., in Mesa County, Colorado, on the right (West) bank of the Colorado River at a point whence the Southwest Corner of said Section 13 bears South 16°41' West 4,023 feet (the "Upstream Point of Exchange").

7.2 Point of Delivery of Substitute Supply. The water diverted by exchange is returned to the Colorado River immediately upstream from the Grand Valley Irrigation Company ("GVIC") diversion dam, which is located at a point on the right (West) bank of the Colorado River from whence the Northeast Corner of Section 3, Township 1 South, Range 2 East, of the Ute Meridian, in Mesa County, Colorado, bears North 13°18' East 1,800 feet (the "Downstream Point of Exchange").

7.3 Delivery Facilities. The water diverted by exchange at the Upstream Point of Exchange is delivered for a distance of approximately 4.6 miles through the Highline Canal located on the right (West) bank of the Colorado River, at which point it is diverted under the Colorado River by means of a siphon into the Orchard Mesa Power Canal located on the left (East) bank of the Colorado River. The Orchard Mesa Power Canal delivers the water diverted by exchange for a distance of approximately 3.8 miles to the Grand Valley Power Plant and the OMID Pumping Plant.

7.4 Grand Valley Power Plant. The Grand Valley Power Plant is owned by the United States and leased to the Association, OMID and the Public Service Company of Colorado. A portion of the water diverted by exchange is diverted into the Grand Valley Power Plant for power generation purposes.

7.5 OMID Pumping Plant. The remainder of the water diverted by exchange is diverted into the OMID Pumping Plant to operate hydraulic pumps which lift irrigation water into OMID irrigation canals.

7.6 Afterbay. All the water used for non-consumptive power generation purposes at the Grand Valley Power Plant and non-consumptive operation of hydraulic pumps at the OMID Pumping Plant passes into a common afterbay located below the Grand Valley Power Plant and the OMID Pumping Plant (the "Afterbay"). If the water in the Afterbay is allowed to flow in its natural course, it reenters the Colorado River at a point below the GVIC diversion dam.

7.7 Orchard Mesa Check. The Orchard Mesa Check (the "Check") is a structure which can be operated to alter the point at which water in the Afterbay reenters the Colorado River. The Check is located at or near the downstream end of the Afterbay, across the channel through which water from the Afterbay flows back to the Colorado River. The Check consists of three mechanically operated radial gates and a bypass channel which parallels the Colorado River to a point immediately above the GVIC diversion dam. The Check is operated by lowering one or more of the three radial gates. The lowered gate or gates block the flow in the channel leading from the Afterbay to the Colorado River, thus raising the level of the water in the Afterbay by up to eight feet, more or less. Raising the level of the water in the Afterbay causes water in the Afterbay to flow through the Check's



bypass channel. The water flowing in this bypass channel returns to the Colorado River immediately above the GVIC diversion dam. Thus, the operation of the Check alters the point at which water in the Afterbay is returned to the Colorado River. When the Check is not being operated, water flowing into the Afterbay is returned to the Colorado River at a point below the GVIC diversion dam. When the Check is being operated, some or all of the water flowing into the Afterbay is returned to the Colorado River above the GVIC diversion dam, where it can then be diverted by GVIC which owns water rights senior in priority to the water rights owned by Co-Applicants. The Check may be operated in varying degrees to return more or less water in the Afterbay to the Colorado River above the GVIC diversion dam depending upon the demands of GVIC and the Co-Applicants and the amount of water available at the Roller Dam.

8. Description of Orchard Mesa Check Exchange. The operation of the Check constitutes an appropriative right of substitution and exchange. This existing exchange has been operated as described below.

8.1 Point of Diversion/Upstream Point of Exchange. The point of diversion for the exchange, which is also referred to herein as the Upstream Point of Exchange, is the Roller Dam on the Colorado River, the location of which is set forth in paragraph 7.1, above.

8.2 Point of Delivery of Substitute Supply/Downstream Point of Exchange. The point of delivery of the substitute supply, which is also referred to herein as the Downstream Point of Exchange, is a point at which water diverted into the Check bypass channel returns to the Colorado River immediately above the GVIC diversion dam, the location of which is set forth in paragraph 7.2, above.

8.3 Exchange Reach. The reach of the Colorado River over which the exchange depletes river flows (the "Exchange Reach") extends from the Upstream Point of Exchange described in paragraph 7.1, above, to the Downstream Point of Exchange described in paragraph 7.2, above, and is approximately 8.4 miles in length.

8.4 Source. The source of the water diverted by exchange is the Colorado River.

8.5 Description of Operation of Exchange. The exchange operates by the diversion of water out of the Colorado River at the Upstream Point of Exchange, delivery of that water through the Highline Canal and the Power Canal to the Grand Valley Power Plant and the OMID Pumping Plant for non-consumptive power generation and hydraulic pumping purposes, and the return of the same amount of water to the Colorado River at the Downstream Point of Exchange through operation of the Check. The water returned to the Colorado River at the Downstream Point of Exchange by diversion through the Check bypass

channel can then be diverted by GVIC which owns water rights senior in priority to the water rights owned by Co-Applicants.

8.6 Amount. The maximum flow rate of the exchange is 640 c.f.s., absolute.

8.7 Use. The water diverted by exchange is used for non-consumptive power generation and hydraulic pumping purposes at the Grand Valley Power Plant and the OMID Pumping Plant.

8.8 Priority. The date of initiation of the appropriation is April 1, 1926, the date of completion of construction of the Check and the Check bypass channel. The appropriation was completed with reasonable diligence by the operation of the exchange up to its maximum rate of flow and beneficial use of water diverted by exchange for the uses described above. Co-Applicants have complied with the requirements of Rule 89, C.R.C.P., the exchange has been administered in a manner consistent with recognition of the original priority date of the exchange, and, pursuant to § 37-92-305(10), C.R.S., Co-Applicants are entitled to recognition of the original priority date of April 1, 1926 for this existing exchange, without postponement under § 37-92-306, C.R.S.

9. Terms and Conditions. The terms and conditions set forth below will prevent injury to the vested water rights and conditional water rights of others and will ensure that the substitute supply made available under the exchange will be of a quality, quantity and continuity adequate to meet the requirements of the uses to which the water of senior appropriators has normally been put.

9.1 Quality of substitute supply. The same water which is diverted by exchange out of the Colorado River at the Upstream Point of Exchange shall be returned to the Colorado River at the Downstream Point of Exchange. The return of the same water, after its use in non-contaminating power generating and hydraulic pumping facilities, will ensure that the water returned to the river, i.e., the substitute supply, is of a quality to meet the requirements of the uses to which senior appropriators have normally put such water.

9.2 Quantity of substitute supply. The amount of water returned to the Colorado River above the GVIC diversion dam at the Downstream Point of Exchange by operation of the Check (the "substitute supply") shall equal or exceed the amount of water diverted by exchange out of the Colorado River by means of the Roller Dam at the Upstream Point of Exchange.

9.3 Continuity of substitute supply. The water diverted by exchange out of the Colorado River at the Upstream Point of Exchange shall be returned to the Colorado River at the Downstream Point of Exchange in approximately the same time as it would take that water to flow in the Colorado River from the Upstream Point of Exchange to the Downstream Point of Exchange if the water were left in the river.

9.4 Intervening Seniors. All water rights located between the Upstream Point of Exchange and the Downstream Point of Exchange, i.e., within the Exchange Reach, which are senior to the date of appropriation of the exchange, shall be fully satisfied by the remaining flows subject to their call.

9.5 Terms of Stipulation Incorporated. The terms and conditions of the Stipulation and Agreement attached hereto as Attachment 1 are incorporated herein.

10. Decree Administrable. The Court notes that, by way of the Stipulation and Agreement attached hereto as Attachment 1, the State and Division Engineer for Water Division No. 5 stipulated to the entry of this decree. The Court finds that this decree is administrable by the Division Engineer for Water Division No. 5.

### CONCLUSIONS OF LAW

11. Incorporation of Findings of Fact. The Court incorporates the foregoing Findings of Fact to the extent that these may constitute conclusions of law.

12. Jurisdiction. Timely and adequate notice of the filing and contents of the application and the amendment to the application herein was given in the manner required by law. The time for filing Statements of Opposition and for seeking leave to intervene has expired. The Court has jurisdiction over all persons and owners of property affected hereby, irrespective of whether or not those persons and owners of property have appeared.

13. Subject Matter Jurisdiction. The Court has jurisdiction over the subject matter of this proceeding. The application herein is one contemplated by law, and adjudication of the exchange described in this decree is authorized by law and is within the jurisdiction of this Court. §§ 37-80-120, 37-92-101, *et seq.*, C.R.S. The right of substitution and exchange decreed herein is an appropriative water right, with a priority date and, like other appropriative water rights, must be exercised within the priority system and in accordance with applicable state law. §§ 37-80-120(4), 37-92-101, *et seq.*, C.R.S.

14. Appropriative Right of Exchange. The appropriative right of exchange confirmed herein was initiated on April 1, 1926, was diligently prosecuted thereafter, and was completed with reasonable diligence by the diversion of water by exchange and the application of such water to the beneficial uses described herein. §§ 37-92-305(1), 37-92-305(9)(a) C.R.S.

15. Non-Injury. Subject to the terms and conditions of the Stipulation and Agreement, the exchange may be operated under terms and conditions which prevent injury to the vested water rights and conditional water rights of others, including the requirement that the substitute supply made available under the exchange will be of a quality, quantity and continuity adequate to meet the requirements of the uses to which the water of senior appropriators has normally been put. §§ 37-80-120(2), (3) & (4), 37-92-305(3) & (5), C.R.S.

16. Entitlement to Original Priority Without Postponement. Pursuant to § 37-92-305(10), C.R.S., Co-Applicants are entitled to recognition of the original priority date of April 1, 1926 for the exchange described herein, without postponement under § 37-92-306, C.R.S.

### **JUDGMENT AND DECREE**

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby adjudged, ordered and decreed that:

17. Incorporation of Findings of Fact and Conclusions of Law. The foregoing Findings of Fact and Conclusions of Law are incorporated herein as if set out verbatim.

18. Confirmation of Orchard Mesa Check Exchange. Subject to the terms and conditions set forth herein, the Court hereby confirms and approves the Orchard Mesa Check Exchange which is more specifically described in the Findings of Fact, above, in the amount of 640 c.f.s., absolute, with a priority date of April 1, 1926, without postponement under § 37-92-306, C.R.S.

19. Terms and Conditions. The terms and conditions set forth in the Stipulation and Agreement, as well as paragraph 9, above, will prevent injury to the vested water rights and conditional water rights of others and will ensure that the substitute supply made available under the exchange will be of a quality, quantity and continuity adequate to meet the requirements of the uses to which the water of senior appropriators has normally been put.

20. Approval and Incorporation of Stipulation and Agreement. The parties have executed the Stipulation and Agreement attached hereto as Attachment 1. The Court, having reviewed the Stipulation and Agreement and being otherwise fully advised in the premises,

hereby approves the Stipulation and Agreement and incorporates it into this decree as though it were restated here in full.

21. Retained Jurisdiction. The Court shall retain permanent jurisdiction over the subject matter of this case and parties hereto for all purposes set forth in the Stipulation and Agreement; provided, however, that the priority date and amount of the exchange are finally determined hereby and will not be further considered under the Court's retained jurisdiction.

22. Filing of Decree with State and Division Engineers. A copy of these Findings of Fact, Conclusions of Law, Judgment and Decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 5.

Dated at Glenwood Springs, Colorado, this \_\_\_\_ day of \_\_\_\_\_,  
1996.

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THOMAS W. OSSOLA  
Water Judge  
Water Division No. 5

EXHIBIT D

Stipulation and Agreement

Case No. 91CW247

GREEN MOUNTAIN RESERVOIR HISTORIC USER POOL  
OPERATING CRITERIA

1. DEFINITIONS. The definitions set forth in paragraph 1 of the forgoing Stipulation and Agreement are incorporated herein. For purposes of these Operating Criteria and the Stipulation and Agreement, "HUP surplus water" shall mean that amount of the HUP which, in accordance with paragraph 8 of the Operating Policy is included in that portion of the stored water in Green Mountain Reservoir in excess of that necessary to meet the objectives of paragraphs 2 and 4 of the Operating Policy, and which is determined under these Operating Criteria to be available for releases for HUP surplus water contracts at any particular time after taking into consideration releases to be made to meet the replacement and direct delivery needs of HUP beneficiaries.

2. PURPOSES AND OBJECTIVES. The purposes and objectives of these Operating Criteria are to:

2.a. Ensure that a sufficient quantity of water is retained in the HUP for release to meet the replacement needs of HUP beneficiaries throughout the irrigation season.

2.b. Ensure that a sufficient quantity of water is retained in the HUP for release to meet the direct delivery needs of the Grand Valley Water Users Association, Orchard Mesa Irrigation District, Grand Valley Irrigation Company, Mesa County Irrigation District and Palisade Irrigation District throughout the irrigation season.

2.c. Ensure that a sufficient quantity of water is retained in the HUP at the end of the irrigation season for release to meet the winter needs of HUP beneficiaries.

2.d. Define the terms and conditions under which water in the HUP is surplus to the needs of HUP beneficiaries, and therefore available for delivery to beneficial uses in Western Colorado, in accordance with paragraph 8 of the Operating Policy, under contract(s) to be developed, and indirectly to the 15-Mile Reach to augment flows for the recovery of endangered Colorado River fish species.

3. HUP Operating Criteria. Figure 1, attached to these Operating Criteria, depicts the estimated "Upstream HUP Replacement Allocation," estimated "Winter HUP Allocation," and estimated "Total HUP Draw Down Band".

3.a. The Upstream HUP Replacement Allocation represents the maximum volume required to fully meet the irrigation, domestic and municipal replacement needs of HUP beneficiaries upstream of Shoshone (a.k.a. the Glenwood Power Canal) for the remainder of the irrigation season. The total volume of water estimated for this purpose is 14,685 acre-feet at the beginning of the irrigation season. This volume diminishes throughout the irrigation season as depicted in Figure 1. Attachment A to these Operating Criteria documents the data and technical analyses used to estimate this volume.

3.b. The Winter HUP Allocation represents the maximum volume required to fully meet the domestic and municipal replacement needs of HUP beneficiaries during the winter or non-irrigation season. The total volume of water estimated for this

purpose is 500 acre-feet. Attachment A to these Operating Criteria documents the data and technical analyses used to estimate this volume.

3.c. The Total HUP Draw Down Band represents the estimated range of storage volumes that will serve as a guideline for managing HUP releases in dry years similar to those analyzed in Attachment A to these Operating Criteria to accomplish the purposes of Section 2 as more fully described in Section 3.d and 3.e of these Operating Criteria. Attachment A to these Operating Criteria documents the data and technical analyses used to estimate this range of volumes.

3.d. In order to meet the purposes and objectives of Section 2, above, the Bureau of Reclamation, after direct consultation with the Grand Valley Water Users Association, Orchard Mesa Irrigation District, Grand Valley Irrigation Company, Colorado Division of Water Resources, Colorado Water Conservation Board and Fish and Wildlife Service (the Bureau of Reclamation and the above mentioned entities with whom the Bureau of Reclamation shall consult in managing releases of water from the HUP are hereafter collectively referred to as the "managing entities"), will attempt to manage the release of water from the HUP to maintain actual storage conditions within the range of storage volumes as represented by the Total HUP Draw Down Band and will attempt to manage the release of water from the HUP so that the entire HUP, except the Winter HUP Allocation, will be released by the end of the irrigation season unless the managing entities determine that the release of such water is not necessary to meet the purposes and objectives of Section 2, above, considering hydrologic, demand and operational conditions. However, it is expressly recognized that in some years release of



the entire HUP by the end of the irrigation season may not be necessary or possible. Grand Valley Water Users Association, Orchard Mesa Irrigation District and Grand Valley Irrigation Company retain exclusive control of determining their irrigation demands, subject to the otherwise applicable administrative powers of the Colorado Division of Water Resources and the provisions of the Stipulation and Agreement. It is recognized that actual storage conditions may deviate from the indicated range due to hydrologic, demand and operational conditions; however, the managing entities will take all reasonable actions to maintain actual HUP storage conditions within the indicated range. The obligation of the managing entities to take reasonable actions to maintain actual HUP storage conditions within the indicated range shall be limited to operation of the Orchard Mesa Check and such other actions as to which the managing entities agree. At any particular time during the irrigation season, the actual HUP storage volume shall not fall below the volume indicated by the sum of the Upstream HUP Replacement Allocation at that time and Winter HUP Allocation, as depicted in Figure 1, unless required by Acts of God or emergency situations beyond the control of the managing entities, or unless modified as provided for in paragraph 5 of the Stipulation and Agreement.

3.e. To accomplish management of the HUP as described in Section 3.d, the managing entities agree to participate in the following process.

3.e.(1) On or before June 30 of each year, the Bureau of Reclamation will conduct a meeting, involving the managing entities, to review HUP storage conditions, projected runoff forecasts, climatological conditions, projected irrigation

demands and 15-Mile Reach flow needs, and other operational conditions to determine an annual operational plan for the Green Mountain Reservoir HUP, the Orchard Mesa Check and the Grand Valley Power Plant ("Annual HUP Operating Plan"). The Annual HUP Operating Plan will cover water operations for the July through October irrigation season. Water in the HUP shall not be deemed to be surplus to the needs of HUP beneficiaries prior to the determination that there is at least 66,000 acre feet of water available for releases for the benefit of HUP beneficiaries when Green Mountain Reservoir ceases to be in priority for its initial fill under the Blue River Decrees, as provided by paragraph 3.b.(2) of the Stipulation and Agreement.

3.e.(2) The managing entities agree to participate in subsequent meetings during the irrigation season to reexamine HUP storage conditions, projected runoff forecasts, climatological conditions, projected irrigation demands and 15-Mile Reach flow needs, and other operational conditions on an as-needed basis to modify the Annual HUP Operating Plan. Any of the managing entities may call for a meeting, and all of the managing entities agree to participate to reexamine changing conditions and to modify the Annual HUP Operating Plan. All such meetings will be open to the public.

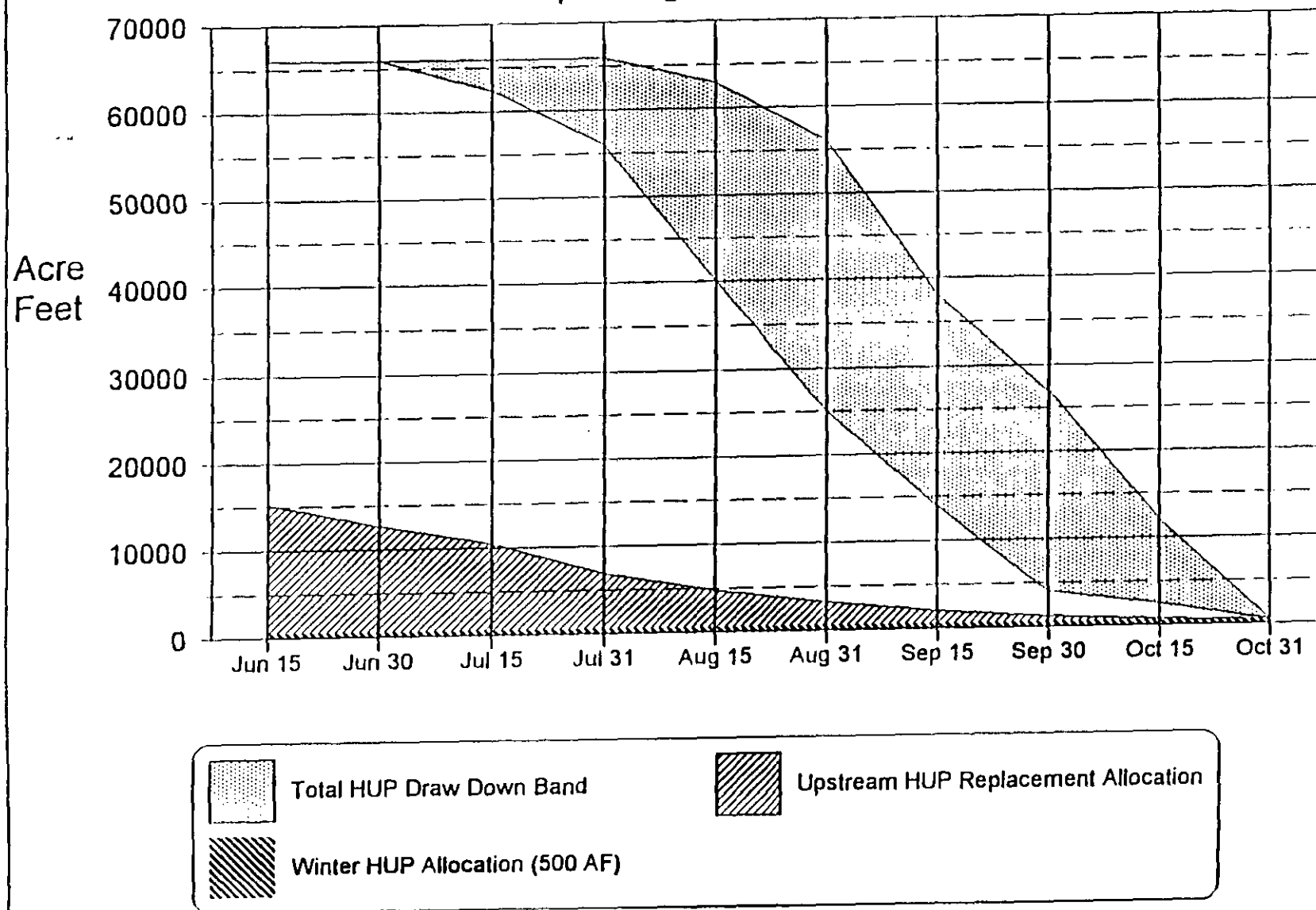
3.e.(3) The managing entities agree to make good faith efforts to develop an Annual HUP Operating Plan that is unanimously supported by the managing entities. If however, an Annual HUP Operating Plan cannot be developed that is unanimously agreed to, the Bureau of Reclamation reserves the right to establish a release schedule from the HUP for the irrigation season in question consistent with the Total HUP Draw Down Band and the State water right priority system. The Bureau of

Reclamation's establishment of a release schedule pursuant to the preceding sentence shall not prevent any other of the managing entities from requesting a subsequent meeting to reexamine changing conditions and to develop the Annual HUP Operating Plan.

4. Nothing contained in these Operating Criteria shall diminish or limit the statutory authority and responsibility of the Colorado Division of Water Resources or be deemed to alter the duties and responsibilities of the Bureau of Reclamation under the Operating Policy, Senate Document 80 and the Blue River Decrees.

*Figure 1*

## Green Mountain Reservoir HUP Operating Criteria - Dry Years



**Stipulation and Agreement**  
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Mark Hermundstad, #10527

Anthony Williams, #1587

Williams, Turner & Holmes, P.C.

200 North 6th Street, #103

P.O. Box 338

Grand Junction, CO 81502

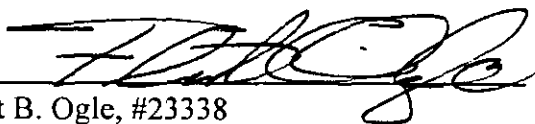
Telephone: 970/242-6262

**ATTORNEYS FOR GRAND VALLEY WATER USERS ASSOCIATION**

**Stipulation and Agreement**

**Case No. 91CW247, Water Division No. 5**

**Page 17**

A handwritten signature in black ink, appearing to read 'Flint B. Ogle', written over a horizontal line.

Flint B. Ogle, #23338

Laird T. Milburn, #2914

Dufford, Waldeck, Milburn & Krohn, L.L.P.

744 Horizon Court, Suite 300

Grand Junction, CO 81506

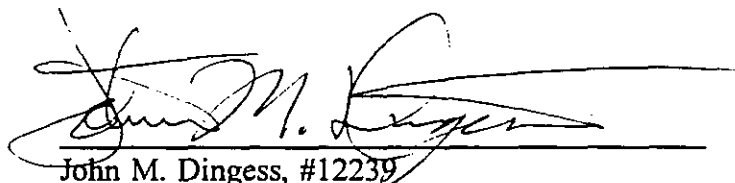
Telephone: 970/241-5500

ATTORNEYS FOR ORCHARD MESA IRRIGATION DISTRICT

**Stipulation and Agreement**

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**Page 18**

A handwritten signature in black ink, appearing to read "John M. Dingess", is written over a horizontal line.

John M. Dingess, #12239

Duncan, Ostrander & Dingess, P.C.

7800 East Union Avenue, #200

Denver, CO 80237

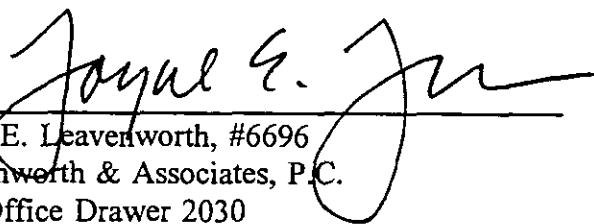
Telephone: 303/779-0200

ATTORNEY FOR CITY OF AURORA, COLORADO, ACTING BY AND THROUGH ITS  
UTILITY ENTERPRISE

**Stipulation and Agreement**

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A handwritten signature in black ink, appearing to read "Loyal E. Leavenworth", is written over a horizontal line.

Loyal E. Leavenworth, #6696  
Leavenworth & Associates, P.C.  
Post Office Drawer 2030  
Glenwood Springs, CO 81602  
Telephone: 970/945-2261

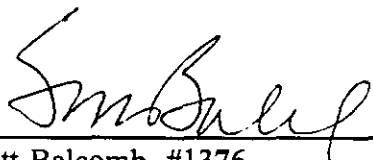
ATTORNEY FOR TOWN OF BASALT; MID VALLEY METROPOLITAN DISTRICT;  
CITY OF RIFLE; TOWN OF NEW CASTLE



**Stipulation and Agreement**

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A handwritten signature in cursive script, appearing to read "S. Balcomb", is written over a horizontal line.

Scott Balcomb, #1376

Lori Satterfield, #23380

Delaney & Balcomb, P.C.

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Glenwood Springs, CO 81602

Telephone: 970/945-6546

ATTORNEYS FOR COPPER MOUNTAIN, INC.; BASALT WATER CONSERVANCY  
DISTRICT; COPPER MOUNTAIN CONSOLIDATED METROPOLITAN DISTRICT;  
MOBIL MINING & MINERALS COMPANY

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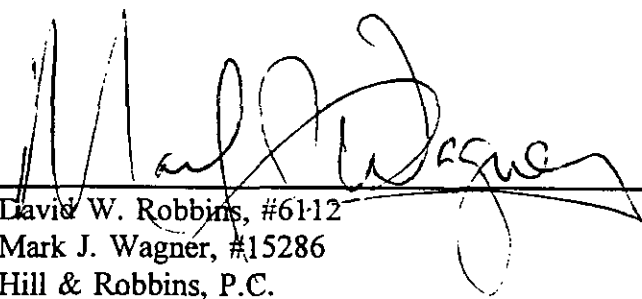
Sherry A. Caloia, #11947  
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1204 Grand Avenue  
Glenwood Springs, CO 81601  
Telephone: 970/945-6067

ATTORNEY FOR TOWN OF EAGLE; TOWN OF DEBEQUE; TOWN OF PALISADE;  
TOWN OF CARBONDALE

**Stipulation and Agreement**

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A handwritten signature in black ink, appearing to read "Mark J. Wagner", is written over a horizontal line. The signature is fluid and cursive.

David W. Robbins, #6112

Mark J. Wagner, #15286

Hill & Robbins, P.C.

1441 18th Street, #100

Denver, CO 80202

Telephone: 303/296-8100

ATTORNEYS FOR TOWN OF FRISCO; TOWN OF SILVERTHORNE; TOWN OF  
PARACHUTE; CITY OF GLENWOOD SPRINGS; NORTH BARTON CREEK, LLC;  
SPRUCE VALLEY RANCH FOUNDATION AND RIFLE LAND ASSOCIATES, LTD.

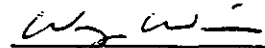
**Stipulation and Agreement**  
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Gale A. Norton  
Attorney General

Stephen K. Erkenbrack  
Chief Deputy Attorney General

Timothy M. Tymkovich  
Solicitor General

Jennifer L. Gimbel  
Deputy Attorney General



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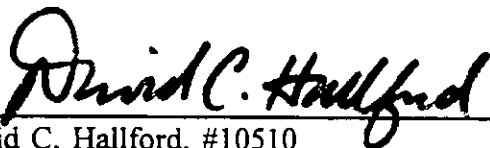
Wendy Weiss, #7254  
First Assistant Attorney General  
Natural Resources Section  
1525 Sherman, 5th Floor  
Denver, CO 80203  
Telephone: 303/866-5008

ATTORNEY FOR THE STATE AND DIVISION ENGINEERS; COLORADO DIVISION  
OF WILDLIFE; COLORADO WATER CONSERVATION BOARD

**Stipulation and Agreement**

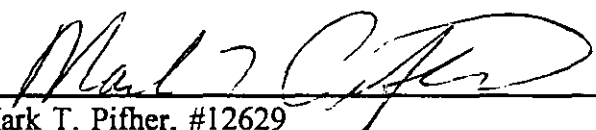
**Case No. 91CW247, Water Division No. 5**

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\_\_\_\_\_  
David C. Hallford, #10510  
P.O. Box 1120  
Glenwood Springs, CO 81602  
Telephone: 970/945-8522

ATTORNEY FOR COLORADO RIVER WATER CONSERVATION DISTRICT

Stipulation and Agreement  
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Page 25



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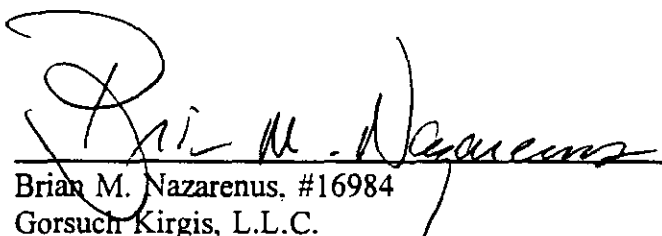
Mark T. Pifher, #12629  
Anderson, Johnson & Gianunzio  
104 South Cascade  
Colorado Springs, CO 80901  
Telephone: 719/632-3545

ATTORNEY FOR CITY OF COLORADO SPRINGS

**Stipulation and Agreement**

**Case No. 91CW247, Water Division No. 5**

**Page 26**

A handwritten signature in black ink, appearing to read "Brian M. Nazareus", is written over a horizontal line.

Brian M. Nazareus, #16984

Gorsuch Kirgis, L.L.C.

1401 17th Street, #1100

Denver, CO 80202

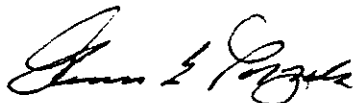
Telephone: 303/299-8900

ATTORNEY FOR CYPRUS CLIMAX METALS COMPANY.

**Stipulation and Agreement**

**Case No. 91CW247, Water Division No. 5**

**Page 27**



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Glenn E. Porzak, #2793

Steven Bushong, #21782

Porzak, Browning & Johnson, L.L.P.

1300 Walnut Street, Suite 100

Boulder, CO 80302

Telephone: 303/443-6800

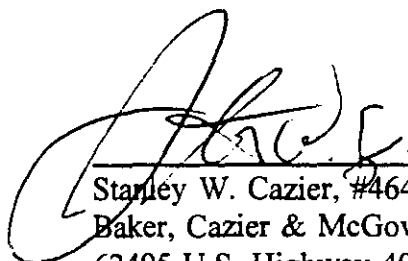
ATTORNEYS FOR VAIL ASSOCIATES, INC.; EXXON COMPANY, U.S.A.; VAIL  
VALLEY CONSOLIDATED WATER DISTRICT; BOARD OF COUNTY  
COMMISSIONERS OF SUMMIT COUNTY, COLORADO; UPPER EAGLE REGIONAL  
WATER AUTHORITY



**Stipulation and Agreement**

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Stanley W. Cazier, #4648  
Baker, Cazier & McGowan  
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P.O. Box 588  
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ATTORNEY FOR GRAND COUNTY WATER AND SANITATION DISTRICT NO. 1;  
MIDDLE PARK WATER CONSERVANCY DISTRICT

**Stipulation and Agreement**

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**Page 29**

A handwritten signature in black ink, appearing to read 'F. G. Aldrich', is written over a horizontal line.

Frederick G. Aldrich, #428

John T. Howe, #18845

Hoskin, Farina, Aldrich & Kampf, P.C.

200 Grand Avenue, Suite 400

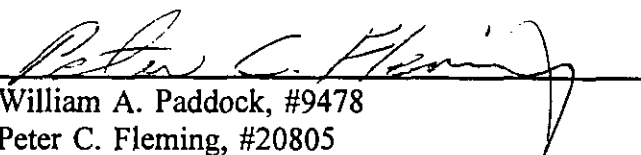
P.O. Box 40

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Telephone: 970/242-4903

ATTORNEYS FOR GRAND VALLEY IRRIGATION COMPANY

**Stipulation and Agreement**  
**Case No. 91CW247, Water Division No. 5**  
**Page 30**



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William A. Paddock, #9478  
Peter C. Fleming, #20805  
Carlson, Hammond & Paddock, L.L.C.  
1700 Lincoln Street, Suite 3900  
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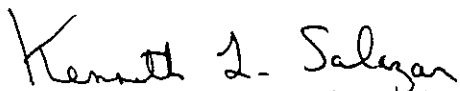
William F. Mattoon, #2004  
Peterson, Fonda, Farley, Mattoon,  
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650 Thatcher Building  
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ATTORNEYS FOR BOARD OF WATER WORKS OF PUEBLO, COLORADO

**Stipulation and Agreement**

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**Page 31**

A handwritten signature in cursive script, reading "Kenneth L. Salazar", is written over a horizontal line.

William A. Hillhouse II, #2959

Kenneth L. Salazar, #11648

Parcel, Mauro, Hultin & Spaanstra, P.C.

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ATTORNEYS FOR PUBLIC SERVICE COMPANY OF COLORADO

**Stipulation and Agreement**  
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**Page 32**

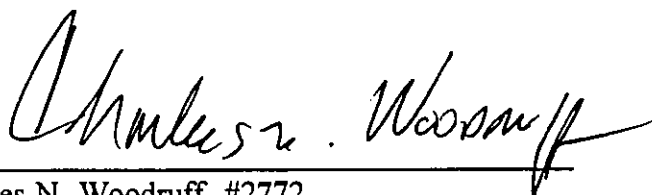


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Gary L. Greer, #4482  
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Denver, CO 80202  
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ATTORNEY FOR RALSTON RESORTS, INC.

**Stipulation and Agreement**  
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A handwritten signature in black ink, reading "Charles N. Woodruff". The signature is written in a cursive style with a horizontal line underneath the name.

Charles N. Woodruff, #2772  
James R. Montgomery, #10989  
Moses, Wittemyer, Harrison & Woodruff, P.C.  
1002 Walnut, #300 (80302)  
P.O. Box 1440  
Boulder, CO 80306  
Telephone: 303/443-8782

ATTORNEYS FOR UNOCAL

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

Case No. 91CW247

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE**

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CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE GRAND VALLEY  
WATER USERS ASSOCIATION, ORCHARD MESA IRRIGATION DISTRICT, AND THE  
UNITED STATES OF AMERICA, IN MESA COUNTY, COLORADO

---

**FINDINGS OF FACT**

1. Filing of Application. This matter was commenced on December 30, 1991 by the filing of an Application to Confirm and Approve Appropriative Right of Exchange which application was amended by leave of Court on May 24, 1993.

2. Co-Applicants. The application and amendment were filed by the United States of America (the "United States"), the Grand Valley Water Users Association, a corporation (the "Association"), and the Orchard Mesa Irrigation District, a corporation ("OMID"). The United States, the Association and OMID are referred to herein as the "Co-Applicants."

3. Objectors.

3.1 Statements of Opposition Opposing Application. The following parties filed timely Statements of Opposition opposing the application or seeking protective terms and conditions:

Basalt, Town of  
Basalt Water Conservancy District  
Carbondale, Town of  
Collbran, Town of  
Colorado Division of Wildlife  
Colorado Springs, City of  
Copper Mountain, Inc.  
Copper Mountain Consolidated Metropolitan District (successor-in-interest to  
Copper Mountain Water & Sanitation District)  
DeBeque, Town of  
Eagle, Town of  
Glenwood Springs, City of

Grand County Water & Sanitation District No. 1  
Middle Park Water Conservancy District  
Mid Valley Metropolitan District  
Mobil Mining and Minerals Company  
Natec Resources, Inc.  
New Castle, Town of  
North Barton Creek Ltd. Liability Company  
Palisade, Town of  
Parachute, Town of  
Pueblo, Board of Water Works of  
Public Service Company of Colorado  
Ralston Resorts, Inc. (successor-in-interest to Keystone Resorts Management, Inc. and Breckenridge Ski Corporation)  
Rifle, City of  
Rifle Land Associates, Ltd.  
Silverthorne, Town of  
Spruce Valley Ranch Foundation  
Summit County Commissioners, Board of  
Union Oil Company of California  
Upper Eagle Regional Water Authority

3.2 Statements of Opposition in Support of Application. The following parties filed timely Statements of Opposition in support of the application:

Colorado River Water Conservation District  
Colorado State Engineer  
Division Engineer, Water Division No. 5  
Grand Valley Irrigation Company

3.3 Intervenors. The following parties did not file timely Statements of Opposition, but were granted leave to intervene as Objectors:

Aurora, City of  
Colorado Water Conservation Board  
Cyprus Climax Metals Company  
Exxon Company, U.S.A.  
Englewood, City of  
Frisco, Town of  
Vail Associates, Inc.  
Vail Valley Consolidated Water District



3.4 Withdrawals. The following parties subsequently withdrew their Statements of Opposition:

Collbran, Town of (by Order dated January 29, 1996)  
Englewood, City of (by Withdrawal dated March 8, 1996 and Amended Withdrawal dated September 24, 1996)  
Natec Resources, Inc. (by Order dated January 29, 1996)

4. Stipulation. On or about September 23, 1996, the parties filed the Stipulation and Agreement attached hereto as Attachment 1. The Stipulation and Agreement has been executed by the Co-Applicants and by all the Objectors who remain parties to the case and provides that the parties to the Stipulation and Agreement agree to the entry of a decree herein granting the application as amended and incorporating the terms of the Stipulation and Agreement.

5. Jurisdiction. Timely and adequate notice of the filing and contents of the application and amendment to the application herein was given in the manner required by law. The time for filing Statements of Opposition and for seeking leave to intervene has expired. The Court has jurisdiction over the subject matter of this proceeding and over all persons and owners of property affected hereby, irrespective of whether or not those persons and owners of property have appeared.

6. Relief Requested by Application. The application requests confirmation of an appropriative right of substitution and exchange for an existing exchange on the Colorado River which is based on the operation of a structure commonly referred to as the Orchard Mesa Check. Co-Applicants request adjudication of an absolute right for this existing exchange, in the amount of 640 c.f.s., with a priority of April 1, 1926.

7. Description of Exchange Facilities. In order to describe the exchange, it is helpful to describe the facilities by which the exchange is operated. These facilities are described as follows:

7.1 Point of Diversion. The point of diversion for the exchange and the upstream point of the exchange is the headgate on the right (West) side of the Grand Valley Project diversion dam on the Colorado River (commonly referred to as the "Roller Dam") located in the Northwest Quarter of Section 13, Township 10 South, Range 98 West, 6th P.M., in Mesa County, Colorado, on the right (West) bank of the Colorado River at a point whence the Southwest Corner of said Section 13 bears South 16°41' West 4,023 feet (the "Upstream Point of Exchange").

7.2 Point of Delivery of Substitute Supply. The water diverted by exchange is returned to the Colorado River immediately upstream from the Grand Valley Irrigation Company ("GVIC") diversion dam, which is located at a point on the right (West) bank of the Colorado River from whence the Northeast Corner of Section 3, Township 1 South, Range 2 East, of the Ute Meridian, in Mesa County, Colorado, bears North 13°18' East 1,800 feet (the "Downstream Point of Exchange").

7.3 Delivery Facilities. The water diverted by exchange at the Upstream Point of Exchange is delivered for a distance of approximately 4.6 miles through the Highline Canal located on the right (West) bank of the Colorado River, at which point it is diverted under the Colorado River by means of a siphon into the Orchard Mesa Power Canal located on the left (East) bank of the Colorado River. The Orchard Mesa Power Canal delivers the water diverted by exchange for a distance of approximately 3.8 miles to the Grand Valley Power Plant and the OMID Pumping Plant.

7.4 Grand Valley Power Plant. The Grand Valley Power Plant is owned by the United States and leased to the Association, OMID and the Public Service Company of Colorado. A portion of the water diverted by exchange is diverted into the Grand Valley Power Plant for power generation purposes.

7.5 OMID Pumping Plant. The remainder of the water diverted by exchange is diverted into the OMID Pumping Plant to operate hydraulic pumps which lift irrigation water into OMID irrigation canals.

7.6 Afterbay. All the water used for non-consumptive power generation purposes at the Grand Valley Power Plant and non-consumptive operation of hydraulic pumps at the OMID Pumping Plant passes into a common afterbay located below the Grand Valley Power Plant and the OMID Pumping Plant (the "Afterbay"). If the water in the Afterbay is allowed to flow in its natural course, it reenters the Colorado River at a point below the GVIC diversion dam.

7.7 Orchard Mesa Check. The Orchard Mesa Check (the "Check") is a structure which can be operated to alter the point at which water in the Afterbay reenters the Colorado River. The Check is located at or near the downstream end of the Afterbay, across the channel through which water from the Afterbay flows back to the Colorado River. The Check consists of three mechanically operated radial gates and a bypass channel which parallels the Colorado River to a point immediately above the GVIC diversion dam. The Check is operated by lowering one or more of the three radial gates. The lowered gate or gates block the flow in the channel leading from the Afterbay to the Colorado River, thus raising the level of the water in the Afterbay by up to eight feet, more or less. Raising the level of the water in the Afterbay causes water in the Afterbay to flow through the Check's

bypass channel. The water flowing in this bypass channel returns to the Colorado River immediately above the GVIC diversion dam. Thus, the operation of the Check alters the point at which water in the Afterbay is returned to the Colorado River. When the Check is not being operated, water flowing into the Afterbay is returned to the Colorado River at a point below the GVIC diversion dam. When the Check is being operated, some or all of the water flowing into the Afterbay is returned to the Colorado River above the GVIC diversion dam, where it can then be diverted by GVIC which owns water rights senior in priority to the water rights owned by Co-Applicants. The Check may be operated in varying degrees to return more or less water in the Afterbay to the Colorado River above the GVIC diversion dam depending upon the demands of GVIC and the Co-Applicants and the amount of water available at the Roller Dam.

8. Description of Orchard Mesa Check Exchange. The operation of the Check constitutes an appropriative right of substitution and exchange. This existing exchange has been operated as described below.

8.1 Point of Diversion/Upstream Point of Exchange. The point of diversion for the exchange, which is also referred to herein as the Upstream Point of Exchange, is the Roller Dam on the Colorado River, the location of which is set forth in paragraph 7.1, above.

8.2 Point of Delivery of Substitute Supply/Downstream Point of Exchange. The point of delivery of the substitute supply, which is also referred to herein as the Downstream Point of Exchange, is a point at which water diverted into the Check bypass channel returns to the Colorado River immediately above the GVIC diversion dam, the location of which is set forth in paragraph 7.2, above.

8.3 Exchange Reach. The reach of the Colorado River over which the exchange depletes river flows (the "Exchange Reach") extends from the Upstream Point of Exchange described in paragraph 7.1, above, to the Downstream Point of Exchange described in paragraph 7.2, above, and is approximately 8.4 miles in length.

8.4 Source. The source of the water diverted by exchange is the Colorado River.

8.5 Description of Operation of Exchange. The exchange operates by the diversion of water out of the Colorado River at the Upstream Point of Exchange, delivery of that water through the Highline Canal and the Power Canal to the Grand Valley Power Plant and the OMID Pumping Plant for non-consumptive power generation and hydraulic pumping purposes, and the return of the same amount of water to the Colorado River at the Downstream Point of Exchange through operation of the Check. The water returned to the Colorado River at the Downstream Point of Exchange by diversion through the Check bypass

channel can then be diverted by GVIC which owns water rights senior in priority to the water rights owned by Co-Applicants.

8.6 Amount. The maximum flow rate of the exchange is 640 c.f.s., absolute.

8.7 Use. The water diverted by exchange is used for non-consumptive power generation and hydraulic pumping purposes at the Grand Valley Power Plant and the OMID Pumping Plant.

8.8 Priority. The date of initiation of the appropriation is April 1, 1926, the date of completion of construction of the Check and the Check bypass channel. The appropriation was completed with reasonable diligence by the operation of the exchange up to its maximum rate of flow and beneficial use of water diverted by exchange for the uses described above. Co-Applicants have complied with the requirements of Rule 89, C.R.C.P., the exchange has been administered in a manner consistent with recognition of the original priority date of the exchange, and, pursuant to § 37-92-305(10), C.R.S., Co-Applicants are entitled to recognition of the original priority date of April 1, 1926 for this existing exchange, without postponement under § 37-92-306, C.R.S.

9. Terms and Conditions. The terms and conditions set forth below will prevent injury to the vested water rights and conditional water rights of others and will ensure that the substitute supply made available under the exchange will be of a quality, quantity and continuity adequate to meet the requirements of the uses to which the water of senior appropriators has normally been put.

9.1 Quality of substitute supply. The same water which is diverted by exchange out of the Colorado River at the Upstream Point of Exchange shall be returned to the Colorado River at the Downstream Point of Exchange. The return of the same water, after its use in non-contaminating power generating and hydraulic pumping facilities, will ensure that the water returned to the river, i.e., the substitute supply, is of a quality to meet the requirements of the uses to which senior appropriators have normally put such water.

9.2 Quantity of substitute supply. The amount of water returned to the Colorado River above the GVIC diversion dam at the Downstream Point of Exchange by operation of the Check (the "substitute supply") shall equal or exceed the amount of water diverted by exchange out of the Colorado River by means of the Roller Dam at the Upstream Point of Exchange.

9.3 Continuity of substitute supply. The water diverted by exchange out of the Colorado River at the Upstream Point of Exchange shall be returned to the Colorado River at the Downstream Point of Exchange in approximately the same time as it would take that water to flow in the Colorado River from the Upstream Point of Exchange to the Downstream Point of Exchange if the water were left in the river.

9.4 Intervening Seniors. All water rights located between the Upstream Point of Exchange and the Downstream Point of Exchange, i.e., within the Exchange Reach, which are senior to the date of appropriation of the exchange, shall be fully satisfied by the remaining flows subject to their call.

9.5 Terms of Stipulation Incorporated. The terms and conditions of the Stipulation and Agreement attached hereto as Attachment 1 are incorporated herein.

10. Decree Administrable. The Court notes that, by way of the Stipulation and Agreement attached hereto as Attachment 1, the State and Division Engineer for Water Division No. 5 stipulated to the entry of this decree. The Court finds that this decree is administrable by the Division Engineer for Water Division No. 5.

### **CONCLUSIONS OF LAW**

11. Incorporation of Findings of Fact. The Court incorporates the foregoing Findings of Fact to the extent that these may constitute conclusions of law.

12. Jurisdiction. Timely and adequate notice of the filing and contents of the application and the amendment to the application herein was given in the manner required by law. The time for filing Statements of Opposition and for seeking leave to intervene has expired. The Court has jurisdiction over all persons and owners of property affected hereby, irrespective of whether or not those persons and owners of property have appeared.

13. Subject Matter Jurisdiction. The Court has jurisdiction over the subject matter of this proceeding. The application herein is one contemplated by law, and adjudication of the exchange described in this decree is authorized by law and is within the jurisdiction of this Court. §§ 37-80-120, 37-92-101, *et seq.*, C.R.S. The right of substitution and exchange decreed herein is an appropriative water right, with a priority date and, like other appropriative water rights, must be exercised within the priority system and in accordance with applicable state law. §§ 37-80-120(4), 37-92-101, *et seq.*, C.R.S.

14. Appropriative Right of Exchange. The appropriative right of exchange confirmed herein was initiated on April 1, 1926, was diligently prosecuted thereafter, and was completed with reasonable diligence by the diversion of water by exchange and the application of such water to the beneficial uses described herein. §§ 37-92-305(1), 37-92-305(9)(a) C.R.S.

15. Non-Injury. Subject to the terms and conditions of the Stipulation and Agreement, the exchange may be operated under terms and conditions which prevent injury to the vested water rights and conditional water rights of others, including the requirement that the substitute supply made available under the exchange will be of a quality, quantity and continuity adequate to meet the requirements of the uses to which the water of senior appropriators has normally been put. §§ 37-80-120(2), (3) & (4), 37-92-305(3) & (5), C.R.S.

16. Entitlement to Original Priority Without Postponement. Pursuant to § 37-92-305(10), C.R.S., Co-Applicants are entitled to recognition of the original priority date of April 1, 1926 for the exchange described herein, without postponement under § 37-92-306, C.R.S.

### **JUDGMENT AND DECREE**

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby adjudged, ordered and decreed that:

17. Incorporation of Findings of Fact and Conclusions of Law. The foregoing Findings of Fact and Conclusions of Law are incorporated herein as if set out verbatim.

18. Confirmation of Orchard Mesa Check Exchange. Subject to the terms and conditions set forth herein, the Court hereby confirms and approves the Orchard Mesa Check Exchange which is more specifically described in the Findings of Fact, above, in the amount of 640 c.f.s., absolute, with a priority date of April 1, 1926, without postponement under § 37-92-306, C.R.S.

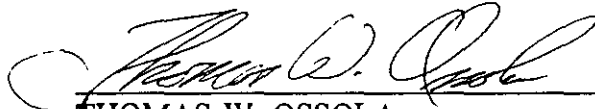
19. Terms and Conditions. The terms and conditions set forth in the Stipulation and Agreement, as well as paragraph 9, above, will prevent injury to the vested water rights and conditional water rights of others and will ensure that the substitute supply made available under the exchange will be of a quality, quantity and continuity adequate to meet the requirements of the uses to which the water of senior appropriators has normally been put.

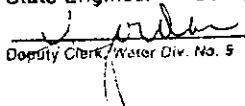
20. Approval and Incorporation of Stipulation and Agreement. The parties have executed the Stipulation and Agreement attached hereto as Attachment 1. The Court, having reviewed the Stipulation and Agreement and being otherwise fully advised in the premises, hereby approves the Stipulation and Agreement and incorporates it into this decree as though it were restated here in full.

21. Retained Jurisdiction. The Court shall retain permanent jurisdiction over the subject matter of this case and parties hereto for all purposes set forth in the Stipulation and Agreement; provided, however, that the priority date and amount of the exchange are finally determined hereby and will not be further considered under the Court's retained jurisdiction.

22. Filing of Decree with State and Division Engineers. A copy of these Findings of Fact, Conclusions of Law, Judgment and Decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 5.

Dated at Glenwood Springs, Colorado, this 1st day of October,  
1996.

  
THOMAS W. OSSOLA  
Water Judge  
Water Division No. 5

Copy of the foregoing mailed to all  
Counsel of record—Water  
Referees—Div. Engineer and  
State Engineer—Date 10-22-96  
  
Deputy Clerk, Water Div. No. 5