

March 13, 1939

MEMORANDUM OF AGREEMENT

WHEREAS, the following appropriations of the water of Sand Creek for beneficial use have been made and have been decreed in the State of Colorado, to-wit:

Sand Creek	6-18-96	8.30	C. F.S.
Spring No. 1	4-15-00	2.70	"
Seepage No. 2	5- 1-00	5.85	"
Spring Creek No. 2	5- 2-00	6.60	"
Wilson Supply Ditch	6-15-99	288	"

(Which appropriation is owned by the Divide Canal & Reservoir Company)

AND WHEREAS, the following appropriations of the water of Sand Creek for beneficial use have been made and have been decreed in the State of Wyoming, to-wit:

<u>Ditch</u>	<u>Appropriator</u>	<u>Priority</u>	<u>Amount</u>
Richards	Wyo. Central L. & I. Co.	1871	3.58 C.F.S.
Guillihan No. 2	Do.	Do.	2.80 "
Braden	Do.	Do.	1.31 "
Nedart	Do.	Do.	1.74 "
Red	Do.	Do.	1.04 "
Guillihan No. 1	Do.	Do.	1.69 "
Guillihan No. 2	J. M. Hoge	1880	3.20 "
Red	Do.	Do.	2.96 "
Guillihan No. 1	Do.	1882	2.51 "
Davis Bros. No. 1	John Goetz	May 1885	3.66 "
LeRoy	Riverside Live Stock Co.	Spring, 1885	4.98 "
William Konold	Wm. Konold	April, 1886	4.57 "
Konold	Nicholas Lundquist	April, 1886	1.11 "
Collins No. 4	F. B. Collins	1887	.37 "
Richards	J. M. Hoge	1888	.64 "
Lone Tree	John Goetz	Mar. 1890	5.69 "
Collins	F. B. Collins	1890	.79 "
Lone Tree or Antelope	J. M. Hoge	Mar. 17, 1894	5.86 "
Bush No. 1	Cora B. Cook	July 24, 1897	2.14 "
Fred B. Collins	Andrew Johnson	July 5, 1899	.73 "
Davis Bros. No. 2	John Goetz	May 28, 1900	2.86 "
Lundquist No. 1	Nicholas Lundquist	June 28, 1900	.37 "
Cook No. 1	L. E. Cook	July 1, 1901	3.71 "
Lone Tree No. 1 Res.	John Goetz Live Stock Co.	Nov. 4, 1905	112.32 a.f.
Lone Tree No. 2 Res.	Do.	Do.	124.10 "

Appropriations from Sand Creek in Wyoming in cubic feet per second of time,	58.31
Additional appropriations from Sand Creek in Wyoming in acre feet,	236.42
Total of such appropriations prior to June 15, 1899,	50.64

WHEREAS, in addition to said appropriations of water from Sand Creek in the State of Wyoming, other appropriations of water from said Sand Creek have been made and decreed in the State of Wyoming in the total amount of 16.82 cubic feet of water per second of time, which said appropriations are hereinafter enumerated, the ownership of which has been, and is now claimed by both The Divide Canal Reservoir Company, a Colorado corporation, through purchase by Bruce G. Eaton, and by the present owners of the lands to which same were originally appurtenant; and both said states, and their respective water users, desire to terminate said dispute and to settle the manner of administration of said stream.

NOW, THEREFORE, in consideration of the premises and of the agreements hereinafter set forth, it is mutually agreed by all parties signing or approving this agreement:

1. That The Divide Canal and Reservoir Company, for itself, its successors and assigns hereby waives, foregoes and surrenders all claims under said appropriations, as to which controversy exists, to-wit:

<u>Ditch</u>	<u>Appropriator</u>	<u>Priority</u>	<u>Amount</u>
Jas. Hardman No. 2	James Hardman	May, 1878	1.81 C.F.S.
LeRoy	Peter Cunningham	May, 1885	8.65 "
Enl. Davis Bros. Sand Creek No. 2	Alice Hardman	Aug. 8, 1891	4.57 "
Enl. Davis Bros. Sand Creek No. 2	Alice Hardman	Nov. 26, 1894	<u>1.79</u> "
			<u>16.82</u>

2. That the owners of the lands to which said appropriations were originally appurtenant, to-wit:

Oda S. Mason
Gertrude McDermott

each severally, and for himself, his heirs, legal representatives and assigns agrees that hereafter no claim or demand for water as against the right of The Divide Canal and Reservoir Company under its decree for The Sand Creek Ditch System, also called The Wilson Supply Ditch, dated June 15, 1899, for Two Hundred Eight-eight (288)

cubic feet of water per second of time, will be made in virtue or on account of or under said appropriations of water in Wyoming in said total amount of 16.82 cubic feet of water per second of time.

3. The State of Colorado and its officers charged with the administration of the waters of said Sand Creek, and said The Divide Canal and Reservoir Company, will recognize the right to and demands by Wyoming appropriators of the waters of Sand Creek for said waters when same are available and needed by them for beneficial use under any or all of the Wyoming appropriations first above listed, and excluding said last mentioned appropriations in the total amount of 16.82 cubic feet of water per second of time, whose dates and priorities are senior to June 15, 1899, in amounts which at no time shall exceed in the aggregate 50.64 cubic feet of water per second of time for said Wyoming appropriations, provided that in the use of water to be diverted from Sand Creek to satisfy the said Wyoming appropriations, the demand for water for beneficial use upon said Wyoming lands shall not increase the use of water out of Sand Creek over the amount that could be taken if diversions in Wyoming, under said appropriations, were made strictly in order of decree and priority date.

4. That the State of Wyoming and its officers, charged with the administration of the waters of said Sand Creek, and the respective owners of appropriations of water therefrom in Wyoming, will recognize the right to and demand by The Divide Canal and Reservoir Company, after the said appropriations in Wyoming first hereinabove listed, which are senior to June 15, 1899, in the total aggregate amount of 50.64 cubic feet of water per second of time, and excluding said last mentioned appropriations in the total amount of 16.82 cubic feet of water per second of time, have been satisfied, to take and divert from said stream the 288 cubic feet of water per second of time, decreed to its Sand Creek Ditch System, also known as The Wilson Supply Ditch, as of date June 15, 1899, now owned by it.

5. Proper headgates and accurate measuring devices shall be installed and maintained at each diversion point in every ditch in both Colorado and Wyoming diverting water out of Sand Creek or claimed by any appropriator in either State. All headgates and measuring devices shall be of a kind and shall be installed in a manner and maintained in a condition which shall be satisfactory and approved by the State Engineer of both Colorado and Wyoming. No claimant of any appropriation of water, or of any right to divert water from Sand Creek in either State, shall divert any water from Sand Creek in any year until such appropriator or claimant shall have installed such headgate or headgates and such measuring device or devices, nor unless such headgates and measuring devices are so maintained.

6. The State Engineers of said two States shall appoint a Commissioner or Water Master who shall impartially administer the water of Sand Creek in both States according to this agreement. The compensation and expense of said Commissioner or Master shall be agreed upon by said Engineers and shall be paid by the respective States in such proportion as said Engineers shall agree, as part of the administration expense of their respective offices.

7. The purpose and intent of this agreement is that it shall:

(a) Operate as and declare an abandonment to the stream, by the State of Colorado and by The Divide Canal and Reservoir Company, of all water and water rights evidenced by said disputed appropriations for 16.82 cubic feet of water per second of time from said Sand Creek, above specified, and as a waiver and relinquishment of all claim or right, by the State of Wyoming and her water users, under or evidenced by said appropriations, as against The Divide Canal and Reservoir Company only, under the appropriation of The Sand Creek Ditch System, also known as The Wilson Supply Ditch, dated June 15, 1899, for 288 cubic feet of water per second of time, owned by it.

(b) Establish the prior right of Wyoming appropriators, as against said The Divide Canal and Reservoir Company, to 50.64 cubic feet of water per second of time from Sand Creek, at their respective headgates, when same is available to, and needed

by them for beneficial use under the appropriations in Wyoming first hereinabove listed, which are senior to June 15, 1899, in the total aggregate amount of 50.64 cubic feet of water per second of time, and excluding said last mentioned appropriations in the total amount of 16.82 cubic feet of water per second of time.

(c) Establish the prior right of The Divide Canal and Reservoir Company, as against all Wyoming appropriations except those first hereinabove listed, which are senior to June 15, 1899, in the total aggregate amount of 50.64 cubic feet of water per second of time, to take and divert, at its diversion works, the 288 cubic feet of water per second of time, decreed to said The Sand Creek Ditch System, also known as The Wilson Supply Ditch, as of date, June 15, 1899, owned by it.

(d) Require proper headgates and measuring devices in both States, and

(e) Provide for joint administration of said stream by both States at joint expense.

SIGNED IN TRIPLICATE this 13th day of March, A. D. 1939.

(Signed) <u>LEMUEL E. COOK</u>	<u>GENERAL AMERICAN LIFE INSURANCE COMPANY</u>
(Signed) <u>RALPH KLINK</u>	By (Signed) <u>Sidney W. Sours</u> (Sidney W. Sours) Vice-President
(Signed) <u>Oda S. MASON</u>	(Signed) <u>GERTRUDE McDERMOTT</u>
(Signed) <u>JOHN GOETZ</u>	(Signed) <u>A. H. Schmidt</u>
(Signed) <u>THE DIVIDE CANAL AND RESERVOIR CO.</u> Sec'y - <u>Rex C. Eaton</u> By <u>Bruce G. Eaton, Pres.</u>	(Signed) <u>OSCAR MARSH</u>

STATE OF WYOMING)
 : SS.
COUNTY OF LARAMIE)

On this 13th day of March, A. D. 1939, before me personally appeared Lemuel E. Cook, Ralph Klink, Oda S. Mason and John Goetz, to me being each personally known and who are described in and who executed the above foregoing instrument, and each for himself acknowledged that he executed the same as his free act and deed.

Subscribed and sworn to before me this 13th day of March, A. D. 1939.

(Signed) LOIS E. SPROWLS
Notary Public

(SEAL)
My Commission expires Feb. 1, 1943.

STATE OF OREGON)
 : SS.
COUNTY OF LINN)

On this 5th day of May, A. D. 1939, before me personally appeared Gertrude McDermott who is described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Subscribed and sworn to before me this 5th day of May, A. D. 1939.

(S E A L)

(Signed) W. L. MARKS
Notary Public

My Commission expires Nov. 8, 1940

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STATE OF WYOMING)
 : SS.
COUNTY OF ALBANY)

On this 17th day of June, A. D. 1939, before me personally appeared Oscar Marsh, who is personally known to me and who is described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Subscribed and sworn to before me this 17th day of June, A.D. 1939.

(Signed) VIRGINIA HERRING
Notary Public

(S E A L)

My Commission expires Aug. 24, 1940

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STATE OF MISSOURI)
 : SS.
COUNTY OF JACKSON)

On this 12 day of May, A. D. 1939, before me personally appeared A. H. Schmidt, who is personally known to me and who is described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Subscribed and sworn to before me this 12 day of May, A.D. 1939.

My Commission Expires Mar. 22, 1942 (Signed) C. E. Miller

STATE OF MISSOURI)
 : SS.
COUNTY OF)

On this 27th day of April, A. D. 1939, before me personally appeared Sidney W. Souers, to me personally known, who being by me duly sworn did say that he is the Vice President of General American Life Insurance Company, and that the seal affixed to said instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of the said Corporation by authority of its Board of Directors, and Sidney W. Souers acknowledged said instrument to be the free act and deed of said Corporation.

Subscribed and sworn to before me this 27th day of April, A. D. 1939.

(Signed) W. E. WARNER
Notary Public

My Commission expires
March 13, 1943

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STATE OF COLORADO)
 : SS.
COUNTY OF WELD)

On this 14th day of March, A. D. 1939, before me personally appeared Bruce G. Eaton, to me personally known, who being by me duly sworn did say that he is the President of The Divide Canal & Reservoir Company, a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Bruce G. Eaton acknowledged said instrument to be the free act and deed of said corporation.

Subscribed and sworn to before me this 14th day of March, A. D. 1939.

(Signed) LULA LEADBETTER
Notary Public

MY Commission Expires Oct. 14, 1940

The attached Memorandum of Agreement is hereby signed and approved by the undersigned representatives of the States of Colorado and Wyoming respectively, as a permanent basis for dividing, regulating, and administering and controlling the diversions and taking for beneficial use of all portions of the water from Sand Creek hereafter.

(Signed) JOHN D. QUINN
State Engineer for State of Wyoming
March 13, 1939

APPROVED:

(Signed) EWING T. KERR
Attorney General of the
State of Wyoming
3-13-39

(Signed) M. C. HINDERLIDER
State Engineer for State of Colorado
3-14-39

APPROVED:

(Signed) BYRON G. ROGERS
Attorney General of the
State of Colorado
3-14-39