

<p><b>DISTRICT COURT, WATER DIVISION NO. 4, COLORADO</b></p> <p>Montrose County Justice Center 1200 N. Grand Avenue, Bin A Montrose, Colorado 81401-3146</p> <hr/> <p><b>CONCERNING THE APPLICATION OF THE UNITED STATES OF AMERICA TO MAKE ABSOLUTE A CONDITIONAL WATER RIGHT</b> in Montrose County, Colorado.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p style="text-align: center;">Case Number: 01CW005</p>
<p><b>STIPULATION</b></p>	

The Upper Gunnison River Water Conservancy District, the Colorado River Water Conservation District, Gunnison County Stockgrower's Association, Inc., the Board of County Commissioners of Gunnison County, Colorado, Uncompaghre Valley Water Users Association, Tri-County Water Conservancy District, Colorado Farm Bureau, Crystal Creek Homeowners Association, Estess Family Limited Partnership, U. S. Energy Corp. and Crested Corp. ("water user opposers") the United States of America, the State of Colorado (State and Division Engineers, Division of Wildlife, and Colorado Water Conservation Board), and Trout Unlimited, Environmental Defense, Rocky Mountain Office, High Country Citizens' Alliance, Western Colorado Congress, Western Slope Environmental Resource Council, The Wilderness Society, Four Corners States Office, and National Parks Conservation Association (the undersigned Parties) agree as follows:

A. WHEREAS, this case was commenced by the United States' filing of an Application to Make Absolute a Conditional Water Right that seeks to quantify a federal reserved water right decreed to the Black Canyon of the Gunnison National Park in Case No. W-437, Water Division No. 4 ("Black Canyon Right"); and,

B. WHEREAS, pursuant to the assignment from the Colorado River Water Conservation District dated January 26, 1962, the United States also holds the water rights recorded in former Colorado Water Districts 62 and 59 and in Water Division 4 decreed to the reservoirs and power plants of the Wayne N. Aspinall Unit of the Colorado River Storage Project, made absolute November 13, 1980 in Case No. 80CW156, Water Division 4, and assigned administration number 39398 in the State Engineer's Water Rights Tabulation ("Aspinall Unit Rights"); and,

C. WHEREAS, the United States entered into an Agreement for Administration of Water Pursuant to the Subordination of the Wayne N. Aspinall Unit Water Rights within the Upper Gunnison River Basin dated June 1, 2000, Contract No. 00-WC-40-6590 (“Aspinall Subordination Agreement”); and,

D. WHEREAS, the United States entered into, and filed with the Court, Stipulations for Withdrawal with 106 parties who filed Statements of Opposition in this case (“Existing Stipulations for Withdrawal”); and,

E. WHEREAS, on April 16, 2007, the State of Colorado filed objections to the Existing Stipulations for Withdrawal based primarily upon its concerns that the Existing Stipulations for Withdrawal required selective subordination of water rights, and on April 27, 2007 filed a Motion to Withdraw Objection Without Prejudice that sought to maintain the State’s right to object to the Existing Stipulations for Withdrawal should the State’s concerns remain unresolved; and,

F. WHEREAS, the water user opposers and the United States were concerned about maintaining the terms and conditions set forth in the Existing Stipulations on the Black Canyon Right; and,

G. WHEREAS, the undersigned parties agreed to work cooperatively to resolve the State of Colorado’s concerns about selective subordinations and yet maintain the protections granted to the signatories to the Existing Stipulations for Withdrawal;

THEREFORE, the undersigned parties agree as follows:

1. The United States shall include in the final decree in Case No. 01CW05, Water Division 4, the language contained in paragraphs 1.a. through 1.e., below, verbatim.

a. The United States shall subordinate the Black Canyon Right to all water rights with adjudicated priorities that are senior to the Aspinall Unit Rights. The Black Canyon Right is subordinated by this paragraph to all water rights assigned an administration number less than 39398.00000 in the tabulation of water rights for Water Division 4 dated July 1, 2006 (the “Senior Rights”).

b. In determining whether a future change in the place of use of a Senior Right from within the Upper Gunnison River Basin to outside of the Basin, or a future change of a Senior Right that would facilitate the use of any other Upper Gunnison River Basin water right outside of the Basin, would injuriously affect other water rights under §37-92-305(3), C.R.S., (2006) and in imposing terms and conditions to prevent injury under §305(4)(a), C.R.S. (2006) the referee or water judge shall evaluate the historical use of that Senior Right without the benefit of the subordination described in paragraph 1.a. above. The State and

Division Engineers shall not be required to file a statement of opposition or otherwise appear in a change of water right case for the purpose of enforcing the terms of this paragraph 1.b.

c. The Aspinall Subordination Agreement as decreed in Case No. 03CW263, Water Division 4, represents an existing, non-discretionary commitment by the United States to operate the Aspinall Unit so as to allow the depletions authorized in Case No. 03CW263 to the Gunnison River in the drainages above Crystal Dam, Morrow Point Dam, and Blue Mesa Dam. In furtherance of this existing commitment, the depletions to the Gunnison River that are authorized by the Aspinall Subordination Agreement shall be entitled to continue when a call is placed on the Gunnison River by the United States under the Black Canyon Right, subject to the separate drainage limitations set forth in the Agreement. This Court finds that the United States' forbearance of its right to call specifically noted above is not a selective subordination because (1) doing so gives effect to the commitment made by the United States in the Aspinall Subordination Agreement as recognized by the Colorado Supreme Court in *Board of County Commissioners of the County of Arapahoe v. Crystal Creek Homeowners Association*, 14 P. 3d 325 (Colo. 2000); and (2) in administering this decree, as a matter of state law, the State and Division Engineers shall continue to account for up to 60,000 acre feet of water that is necessary to implement the augmentation plan that is the subject of the decree in Case No. 03CW263, Water Division 4, as the first 60,000 acre feet of water attributable to the Aspinall Unit Water Rights, regardless of the temporal relationship between the depletions that benefit from the decree in Case No. 03CW263 and the call for water by the Black Canyon Right.

d. Some Parties have interpreted the tabulation of water rights for Water Division 4, dated July 1, 2006, to assign administrative number 39398 to individual plans for augmentation. For the purposes of this Decree, any attribution of an administrative number to individual plans for augmentation in the Water Division 4 Tabulation dated July 1, 2006, or any future tabulation, does not assign an administrative priority to the plan for augmentation. For the purposes of this Decree, any such attribution is purely for reference to the water right used for replacement purposes in the augmentation plan, and such attribution is not intended to assign an administrative priority to a plan for augmentation nor to the actual water right or water use that is augmented. Accordingly, any such attribution of administrative numbers shall not affect whether the water right or water use is entitled to the protections of Paragraphs 1.a., 1.b., or 1.c. of this Decree.

e. The provisions of paragraphs 1.a., 1.b, 1.c., and 1.d. of this Decree do not include a selective subordination and therefore nothing in these provisions is intended to require the State and Division Engineers to administer a selective subordination. Nothing in this Decree constitutes any admission by any party as to the legality of selective subordination, or shall be used as precedent in any other case regarding any party's position on selective subordination.

2. The numbering and language of paragraphs 1.a. through 1.e. above shall be revised in the final decree to reflect the correct paragraph numbers for these provisions in the decree. The defined terms contained the recitals herein shall be likewise defined in the final decree.

3. The language set forth in paragraphs 1.a., 1.b., 1.c., and 1.d. above is at least as restrictive as the terms and conditions on the Black Canyon Right agreed to in the Existing Stipulations for Withdrawal, is consistent therewith, and will allow the Colorado State Engineer to effectively administer the general subordinations described herein in accordance with Colorado law. Inclusion of the above language in the decree in place of paragraphs 1, 2, and 3 of the Existing Stipulations for Withdrawal is in accord with paragraphs 6 and 7 of the Existing Stipulations for Withdrawal.

4. This stipulation and the terms agreed to in paragraph 1 herein shall not require nor prevent any party from negotiating with, and the United States agreeing to, more restrictive terms and conditions to be included in any final decree, provided that such terms and conditions do not have a negative impact on the protections specifically described in paragraphs 1.a, 1.b., 1.c., and 1.d. above.

5. The State of Colorado is not intending nor attempting to waive any water user's right to make any available legal argument concerning the effect of paragraph 1.b. on any entity which has not entered into a stipulation with the United States.

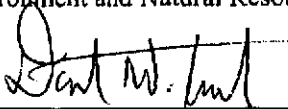
6. To ensure clarity in the future, the United States agrees to use the language set forth in paragraph 1.a, 1.b., 1.c. and 1.d. above in future stipulations resolving similar opposer concerns in this case.

7. Agreement by the United States to the use of the language herein in the final decree in place of the language in paragraphs 1, 2, and 3 of the Existing Stipulations for Withdrawal resolves the State of Colorado's concerns with the Existing Stipulations for Withdrawal as stated in its Objection to Stipulations for Withdrawal. The State of Colorado's objections to the Existing Stipulations for Withdrawal are hereby withdrawn with prejudice. Notwithstanding this Withdrawal, the State of Colorado shall not be prevented from objecting to any attempt to include the language of paragraphs 1, 2, or 3 of the Existing Stipulations for Withdrawal in the final decree, or from responding to any party's legal arguments concerning the legal issues raised in the Objection to Stipulations.

8. This Stipulation may be enforced as a contract or as an Order of the Court, if so entered.

Respectfully submitted this 3<sup>rd</sup> day of August, 2007.

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Environment and Natural Resources Division



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Victor T. Roushar, 1941

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Users Association and Tri-County Water  
Conservancy District

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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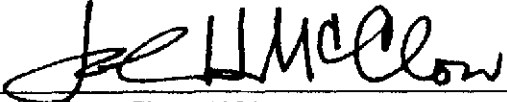
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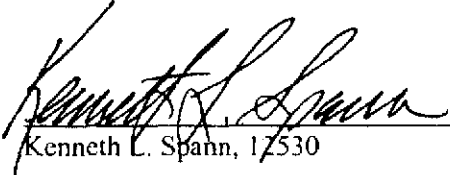
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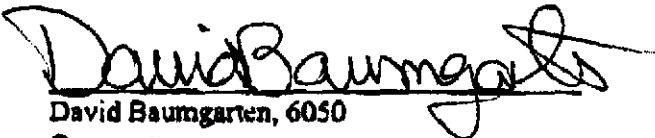
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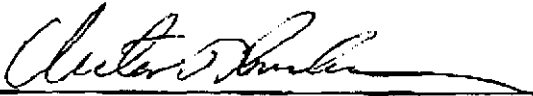
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**ORDER**

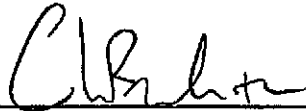
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J. Steven Patrick, Water Judge

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A signed original is on file at the office of the Colorado Attorney General*

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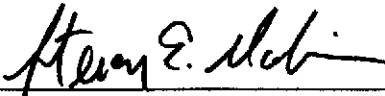
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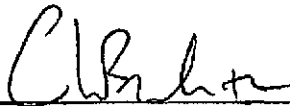
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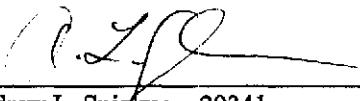


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