

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement dated May 20, 2009, is entered into by and among the Upper Gunnison River Water Conservancy District, a water conservancy district organized pursuant to the Water Conservancy Act, §§ 37-45-101, *et seq.*, Colorado Revised Statutes (District), the Board of County Commissioners of the County of Hinsdale, Colorado, a Colorado political subdivision (County), and the Board of Trustees of the Town of Lake City, Colorado, a Colorado Statutory Town (Town) collectively referred to as the Parties.

RECITALS

A. The Parties enter into this Agreement for the purpose of prescribing the powers and obligations of the governing body of the Lake San Cristobal Water Activity Enterprise, a water activity enterprise established by the County pursuant to §§ 37-45.1-101, *et seq.*, Colorado Revised Statutes (Enterprise), certain limitations on the authority and activities of the Enterprise, and the organization and operation of the Enterprise.

B. The Parties are authorized to enter into this Agreement by Article XIV, Section 18 of the Colorado Constitution and §§ 29-1-201, *et seq.*, Colorado Revised Statutes.

C. The Parties have joined together to operate the Enterprise to combine their resources in order to achieve greater efficiency and cost savings not attainable by independent action in developing a critical water resource that will protect present and future water uses by their constituents.

D. The Parties anticipate that the Enterprise will provide for financing, design, construction and operation of an outlet structure in Lake San Cristobal, a lake and on-channel reservoir located on the Lake Fork of the Gunnison River in Hinsdale County.

E. The Parties anticipate that the Enterprise will obtain a water storage right and approval of a plan for augmentation in accordance with the Amended Application filed by the District in Case No. 03CW108, Water Division 4, and operate the plan for augmentation as prescribed by the decree therefor, the terms of this Agreement, and the bylaws adopted by the governing body of the Enterprise. A copy of the Amended Application is attached to this Agreement as *ATTACHMENT A*.

F. The Parties anticipate that operation of the plan for augmentation will eventually generate sufficient revenue, through sales of augmentation certificates, to repay the entire cost of the outlet structure and pay for the operating costs of the Enterprise; however, the parties recognize that it may take years to recoup those costs and therefore it will be necessary for the Parties to advance such costs to the Enterprise.

AGREEMENT

Now, therefore, in consideration of the mutual promises and benefits contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following terms.

1. **Creation of the Enterprise.** Simultaneously with the mutual execution of this Agreement, the County shall adopt the resolution attached as *ATTACHMENT B* and incorporated herein by this reference establishing the Enterprise for the purposes and with the authority stated in the attached resolution.

2. **Governing Body of the Enterprise.** Administration of the Enterprise and its governing body shall be conducted in accordance with bylaws adopted from time to time by the governing body; provided, however, that the matters addressed in this Agreement are fundamental to the creation and operation of the Enterprise and may be modified only by amendment of this Agreement.

2.1 Appointment of Directors. The governing body of the Enterprise shall be a board of directors consisting of six directors, who shall be appointed as follows:

2.1.1 Two directors shall be appointed by the Board of Directors of the District;

2.1.2 Two directors shall be appointed by the Board of County Commissioners of the County; and

2.1.3 Two directors shall be appointed by the Board of Trustees of the Town.

2.2 Term. The term of the Enterprise directors shall be as determined by their appointing board.

2.3 Quorum, Voting, Proxies.

2.3.1 The presence in person or by telephone conference call of five directors shall constitute a quorum for the conduct of Enterprise business.

2.3.2 Except as otherwise specifically provided in this Agreement, the affirmative vote of four directors shall be required to transact Enterprise business.

2.3.3 Voting by proxy shall not be permitted.

2.3.4 The Board of Directors of the Enterprise may conduct Enterprise business by telephone conference call.

3. **Conveyances to the Enterprise.**

3.1 Water Right and Plan for Augmentation. Upon mutual execution of this Agreement, the District shall convey to the Enterprise all of its interest in Case No. 03CW108, Water Division 4, and the Enterprise shall be substituted for the District as the Applicant in that case.

3.2 Easement. Upon mutual execution of this Agreement, the County shall execute and deliver to the Enterprise the Grant of Easement attached as *ATTACHMENT C*, which provides for construction, operation, repair and replacement of the outlet structure and appropriate incidental facilities contemplated by this Agreement upon the real property owned by the County at the mouth of Lake San Cristobal.

4. Operation of the Enterprise.

4.1 Outlet Structure. The Enterprise is authorized to obtain all necessary permits and other required authorization for construction and operation of an outlet structure on Lake San Cristobal, and to design, construct, operate, maintain, repair, and replace said outlet structure and any appropriate facilities incidental thereto, in such manner and at such cost as is determined by the Enterprise board of directors, in its sole discretion, to be in the best interest of the Enterprise.

4.2 Plan for Augmentation. Construction of the outlet structure will allow storage of water in Lake San Cristobal under the decree applied for in Case No. 03CW108. Augmentation will be provided by releases of water from Lake San Cristobal to provide replacement water sufficient to replace out-of-priority depletions by structures owned by holders of Augmentation Certificates issued by the Enterprise when a senior water right places a call on the Lake Fork of the Gunnison River.

4.2.1 Augmentation Certificates shall be sold by the Enterprise at a price established by the Enterprise board upon terms substantially in accordance with the agreement attached as *ATTACHMENT D*; provided, however, that the Enterprise board shall have the discretion to modify or amend the administrative provisions of the attached agreement in order to serve the best interest of the Enterprise.

4.2.2 Augmentation Certificates shall be sold by the Enterprise on a first come, first served basis to all persons who qualify for the benefit of the Plan for Augmentation; provided, however, that:

4.2.2.1 For a period of ten years following commencement of the sale of Certificates, not more than one-third of the total volume of stored water that can be released for the benefit of purchasers of Certificates may be sold to the Town and residents of the Town, or to residents of the County who are not residents of the Town, or to residents of the District who are residents of neither the Town nor the County without unanimous consent of the Enterprise Board ; and,

4.2.2.2 A Certificate or Certificates entitling a single purchaser, in either a single purchase or as the result of successive

purchases, to the release of more than 50 acre-feet of stored water shall not be sold without unanimous consent of the Enterprise Board. For the purpose of this subsection, "single purchaser" means one person or entity and includes all related parties and entities, as determined by the Enterprise Board in its sole discretion, for purposes of calculating the cumulative total of acre-feet represented by Certificates sold to such person or entity.

4.2.3 Revenue from the sale of Augmentation Certificates shall be payable to and collected by the Enterprise and deposited in Enterprise accounts at such banks as are selected by the Enterprise Board. Such revenue shall be applied first to operating expenses of the Enterprise and to the establishment of such operating and capital reserves as the Enterprise Board deems prudent, then to repayment of obligations of the Enterprise to the Parties in equal priority, and then to distribution of revenues in excess of operating expenses and operating and capital reserves to the Parties in equal priority.

4.3 Management.

4.3.1 Prior to the commencement of operations of the Enterprise, the District will provide the services of its General Manager and General Counsel in establishing the existence of the Enterprise and Plan for Augmentation, including the conduct of any proceedings in the Water Court, and in managing the permitting, design and construction of the outlet works. The other parties will contribute the services of their staff as appropriate to effectively and efficiently establish the Enterprise.

4.3.2 When the Enterprise begins operations, the District's staff will provide management of the Enterprise day-to-day business activities, for which the District will be compensated from the Enterprise revenue at a rate equal to the direct cost to the District for its staff time devoted to Enterprise business, which rate may be adjusted annually. The District's General Manager shall act as General Manager of the Enterprise. The District staff shall devote to the conduct of the Enterprise business so much of its time as may be reasonably necessary for efficient operation of the Enterprise business. Specific limitations on management authority shall be as provided in the bylaws of the Enterprise. In the event that staff employed by other Parties perform services for the Enterprise, the employing Party will be compensated from the Enterprise revenue at a rate equal to the direct cost to the employing Party for its staff time devoted to Enterprise business, which rate may be adjusted annually.

4.3.3 The fiscal year for operation of the Enterprise shall commence on July 1 and conclude on June 30 of the following calendar year.

4.3.4 The General Manager of the Enterprise shall prepare a draft annual budget for Enterprise operations for the succeeding fiscal year and

submit it for review and approval by the Enterprise Board not later than March 1 in each year. Following submittal of the annual budget to the Enterprise Board, the board shall comply with the the public notice and hearing requirements of § 29-1-106 and § 29-1-108(1), Colorado Revised Statutes. The Enterprise Board shall adopt an annual budget for Enterprise operations for the succeeding fiscal year not later than June 1 in each year. The annual budget may be amended from time to time by the Enterprise Board at a public meeting following public notice of the Board's intent to amend its budget.

4.4 Financial Statements. The General Manager shall prepare and deliver monthly financial statements to the Enterprise Board. Financial statements of the Enterprise shall be audited annually by an independent certified public accountant selected by the Enterprise Board to assure that the financial statements are fairly presented in conformity with generally accepted accounting principles.

5. Capitalization of the Enterprise. The cost of permitting, design, and construction of the outlet works and any appropriate facilities incidental thereto, together with all other costs of establishing the Enterprise and the Plan for Augmentation not paid by funds granted by the Colorado Water Conservation Board from the Water Supply Reserve Account shall be advanced to the Enterprise by the Parties in equal shares. Such advances shall require repayment by the Enterprise to the Parties. Such repayment shall be upon the same terms for all Parties and shall be repaid in equal priority among the Parties.

6. Withdrawal.

6.1 Any Party (the Withdrawing Party) may voluntarily withdraw from the Enterprise at any time, provided that written notice of intention to withdraw shall be given to the remaining Parties at least one hundred eighty (180) days prior to the effective date of such withdrawal.

6.2 Upon withdrawal of a Withdrawing Party, the Enterprise shall not be dissolved but, instead, the business of the Enterprise shall be continued among the remaining Parties as if said withdrawal had not occurred. Upon the effective date of withdrawal, the remaining Parties shall each appoint an additional director who shall replace the two directors previously appointed by the Withdrawing Party.

6.3 After withdrawal, the Withdrawing Party shall be entitled to repayment of advances made pursuant to Section 5 according to the terms of repayment established by the Parties thereunder, but shall not be entitled to any other distribution of Enterprise revenue, profits, or proceeds from sale of assets; provided, however, that the Withdrawing Party shall pay any costs incurred by the Enterprise as a result of the Withdrawing Party's withdrawal, which costs may be deducted from distributions to the Withdrawing Party under Section 5.

6.4 If the District is the Withdrawing Party, the provisions of subsection 4.3.2 shall become void upon the effective date of the District's withdrawal, and the

remaining parties may make such arrangements for management of the Enterprise as they deem appropriate.

6.5 Notwithstanding anything stated or implied by the foregoing, as inducement each to the other to enter into this Agreement, the parties are committed to the continued viability of the Enterprise following withdrawal of any party; therefore, no Withdrawing Party shall take any action upon or after withdrawal that is detrimental to the interests of the Enterprise, the remaining parties, or the holders of Augmentation Certificates issued by the Enterprise.

7. Limitations on Authority and Activities of the Enterprise.

7.1 Sale or Transfer of Interests. No sale, transfer, assignment, pledge or encumbrance of all or any portion of a Party's interest in the Enterprise (including any economic or beneficial interest attributable thereto), or any of a Party's rights or obligations with respect to the Enterprise, shall be permitted without the prior unanimous consent of the Board of Directors of the Enterprise, which consent may be granted, granted upon conditions, or withheld in each Director's sole and absolute discretion.

7.2 In-Basin Uses Only. No water stored under decrees owned by the Enterprise may be sold for use outside the natural basin of the Lake Fork of the Gunnison River or the Gunnison River either directly or by exchange, or for any purpose that would facilitate the use of a Lake Fork or Gunnison Basin water right outside of its natural basin.

7.3 Open Meetings. All activities of the Enterprise shall be conducted consistent with the requirements of the Colorado Open Meetings Law and the Colorado Open Records laws as applicable to local governments.

8. General Provisions.

8.1 Agreement Jointly Drafted. This Agreement has been reviewed and approved by legal counsel for each of the Parties, and each of the Parties is empowered to enter into this Agreement and is vested with all powers necessary to accomplish the purposes of this Agreement. The Parties, with each having the opportunity to seek the advice of legal counsel and each having an equal opportunity to contribute to its content, drafted this Agreement jointly.

8.2 Colorado Law. It is the intent of the Parties that all questions with respect to the construction of this Agreement and the rights, duties, obligations and liabilities of the Parties shall be determined in accordance with the applicable provisions of the laws of the State of Colorado.

8.3 Required Instruments. The Parties agree that they and each of them will take whatever action or actions as are deemed by counsel to the Parties to be

reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Agreement, and to that end the Parties agree that they will execute, acknowledge, seal and deliver any further instruments or documents which may be necessary to give force and effect to this Agreement or any of the provisions hereof, or to carry out the intent of this Agreement, or any of the provisions hereof.

8.4 Entire Agreement. This Agreement, including the recitals, and the Attachments set forth all (and is intended by all Parties to be an integration of all) of the promises, agreements, conditions, understandings, warranties and representations among the Parties with respect to the Enterprise, the business of the Enterprise, and the property of the Enterprise and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, among them other than as set forth herein.

8.5 Notices. Whenever notice is given pursuant to this Agreement, it shall be in writing and shall be delivered by U. S. Mail, first class postage prepaid, at the address set forth below. Receipt of notice shall be deemed effective three calendar days after the date of postmark. Any Party may change its address for the giving of notice hereunder by notice so given.

8.5.1 If to the District: General Manager, 234 N. Main Street, Suite 3C, Gunnison, CO 81230.

8.5.2 If to the County: County Administrator, 311 N. Henson Street, Lake City, CO 81235-0277.

8.5.3 If to the Town: Town Manager, P. O. Box 544, Lake City, CO 81235.

8.6 Non-Severability. Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties.

8.7 Affect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to any Party or as to all Parties, the Parties will immediately negotiate valid alternative portion(s) that as nearly as possible give effect to any stricken portion(s).

8.8 No Third Party Beneficiaries. This Agreement is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties, nor to limit in any way the powers and responsibilities of the Parties or any other entity not a party hereto.

8.9 Waiver. The failure of one of the Parties to insist upon the strict performance of any provision of this Agreement or to exercise any right, power, or remedy upon a breach thereof shall not constitute a waiver of that or any other

provision of this Agreement or limit that Party's, or any other Party's, right thereafter to enforce any provision or exercise any right.

8.10 Captions. All captions contained in this Agreement are for convenience only and shall not be deemed to be part of this Agreement.

8.11 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

8.12 Dispute Resolution. If a dispute arises between the Parties relating to this Agreement, the following procedure shall be followed:

8.12.1 If the Parties cannot succeed in negotiating a resolution of the dispute, within twenty days, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.


8.12.2 The Parties agree to participate in good faith in the mediation and related negotiations for a period of thirty calendar days. The substantive law of the State of Colorado shall apply to the proceedings, but the rules of procedure and evidence need not be adhered to. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to pursue any other legal or equitable remedy, including specific performance. The Parties agree to reasonably expedite any legal proceedings brought hereunder in order to obtain a prompt resolution.

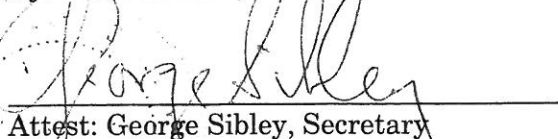
8.13 Parties to Exercise Good Faith. The Parties agree to devote their best efforts and to exercise good faith in implementing the provisions of this Agreement

8.14 Amendment. This Agreement may only be amended by unanimous consent of the Parties as reflected in a written instrument signed by all of the Parties.


IN WITNESS WHEREOF the Parties have executed this Agreement on the date written above.

Upper Gunnison River
Water Conservancy District


By: Brett Redden, President

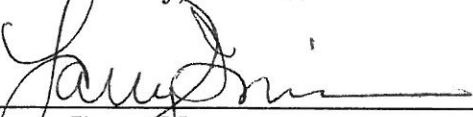

Attest: George Sibley, Secretary

County of Hinsdale, State of Colorado,
by and through its Board of Commissioners

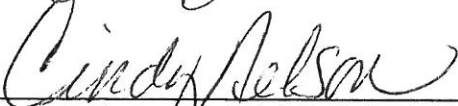

By: Allen Brown, Chair


Attest: Linda Pavich Ragle, County Clerk

Town of Lake City, Colorado



By: Larry Iiams, Mayor



Attest: Cindy Nelson, Town Clerk

ATTACHMENT A

<p>DISTRICT COURT, WATER DIVISION 4, COLORADO 1200 N. Grand Avenue, Bin A Montrose, CO 81401</p> <hr/> <p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT</p> <p>in Hinsdale County.</p> <hr/> <p>Attorney for Applicant:</p> <p>John H. McClow, General Counsel Attorney Registration No. 6185 234 N. Main Street, Suite 3C Gunnison, CO 81230 Telephone: 970.641.6065 Facsimile: 970.641.1162 E-mail: jmcclow@ugrwd.org</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 03 CW 108</p>
<p>AMENDED APPLICATION FOR STORAGE WATER RIGHT AND APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION INCLUDING EXCHANGE</p>	

1. Name, address, telephone number of Applicant:

Upper Gunnison River Water Conservancy District
234 N. Main Street, Suite 3C
Gunnison, CO 81230
Telephone: 970.641.6065

(hereafter referred to as the District).

ATTACHMENT A

**CLAIM NO. 1
AMENDED APPLICATION FOR WATER STORAGE RIGHT**

2. Name of Reservoir: Lake San Cristobal.
3. Legal description of location of dam: Left abutment of dam is located in Hinsdale County, in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 15, Township 43 North, Range 4 West, N.M.P.M., at a point approximately 2260 feet east of the west section line and 2040 feet north of the south section line of said Section 15.
4. Source: Lake Fork of the Gunnison River.
5. Facts concerning appropriation: The appropriation was initiated by resolution of the Upper Gunnison River Water Conservancy District Board of Directors on April 28, 2003.
6. Amount claimed:
 - (a) One annual fill in the amount of 950 acre-feet, conditional;
 - (b) A second annual fill in the amount of 950 acre-feet, conditional.
7. Uses: Domestic, municipal, commercial, industrial (to include mining, milling and reclamation), irrigation, recreation, fishery and wildlife habitat and all other lawful beneficial uses within the Upper Gunnison River Water Conservancy District directly or by augmentation or exchange.
8. Surface area of high water line: Approximately 340 acres.
9. Maximum height of dam in feet: Approximately four feet.
10. Length of dam in feet: Approximately 85 feet.
11. Total capacity of reservoir in acre-feet: 950 acre-feet, in addition to natural lake content of approximately 11,000 acre-feet.
12. Active capacity: 950 acre-feet.
13. Dead storage : None.
14. Names and addresses of the owners of the land on which structures are located and upon which water will be stored are attached as EXHIBIT A.

ATTACHMENT A

**CLAIM NO. 2
AMENDED APPLICATION FOR APPROVAL OF
PLAN FOR AUGMENTATION INCLUDING EXCHANGE**

15. Names of structures to be augmented: The District proposes to augment out-of-priority depletions by wells, surface diversions and ponds in the Lake Fork and Gunnison River basins, and the basins of tributaries thereof, within the boundaries of the District by providing a substitute water supply directly and by exchange.

(a) Out-of-priority depletions in the reach of the Lake Fork of the Gunnison River downstream from Lake San Cristobal can be augmented directly under this plan.

(b) Out-of-priority depletions in the reach of the Lake Fork of the Gunnison River upstream from Lake San Cristobal can be augmented under this plan by exchange. The District seeks approval of an appropriative right of exchange for this exchange.

(c) Out-of-priority depletions in the reach of the Gunnison River and its tributaries downstream of the structures listed below or the lower terminus of the instream flow water rights listed below can be augmented under this plan by exchange. The District seeks approval of an appropriative right of exchange for this exchange.

Stream Name	Local Calling Right
Tomichi Creek	Biebel Ditches No.1 and No.2
Stubbs Gulch	Graham Ditch
Powderhorn Creek	Schecker Ditch
Trout Creek	Johnson Ditch
Ohio Creek	CWCB Instream Flow
East River	East River No. 2 Ditch
Slate River	CWCB Instream Flow
Antelope Creek	Hamor Ditch

16. The reaches described above are within the boundaries of the District.

17. Water right to be used for augmentation: The water right to be decreed to Lake San Cristobal as described in paragraphs 2 through 13, above.

ATTACHMENT A

18. Statement of Plan for Augmentation: Augmentation will be provided by releases of water from Lake San Cristobal as and when requests for release of water are made by the Division Engineer, Water Division No. 4 (Division Engineer), to provide replacement water sufficient to replace out-of-priority depletions by structures owned by holders of Augmentation Certificates issued by a Water Activity Enterprise owned by the District (Enterprise). The Enterprise will be managed jointly by the District, Hinsdale County, and the Town of Lake City. The District anticipates that the decree will provide that the Division Engineer should consult with the Colorado Water Conservation Board and the Colorado Division of Wildlife regarding the timing and quantity of releases.

(a) Depletions. The required augmentation for the depletions caused by the various structures within the District will be based upon the following assumptions:

(i) Domestic Indoor Use. To assure that adequate replacement water is delivered under this plan, diversion for indoor use for single family dwellings is assumed to be 350 gallons per dwelling unit per day, unless actual pumping records demonstrate otherwise to the satisfaction of the Division Engineer. Consumptive use of such diversions is ten percent (10%) where the dwelling utilizes a non-evaporative individual sewage disposal system and five percent (5%) where the dwelling unit is connected to a central wastewater treatment system.

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ATTACHMENT A

(ii) Lawn and Garden Irrigation. Consumptive use of diversions from wells completed within the alluvium and located within 100 feet of a live stream for lawn and garden irrigation has been determined using a modified Blaney-Criddle assessment adjusted for precipitation and temperature conditions in each elevation zone within the District, and will be calculated based upon the following table.

Elevation Range		Bluegrass Consumptive Use from Irrigation (in acre-feet per acre of irrigated lawn)												
Lower	Upper	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
6,600	6,799	0.00	0.00	0.00	0.00	0.36	0.44	0.44	0.36	0.30	0.00	0.00	0.00	1.90
6,800	6,999	0.00	0.00	0.00	0.00	0.35	0.44	0.43	0.36	0.29	0.00	0.00	0.00	1.87
7,000	7,199	0.00	0.00	0.00	0.00	0.34	0.43	0.42	0.35	0.29	0.00	0.00	0.00	1.83
7,200	7,399	0.00	0.00	0.00	0.00	0.33	0.42	0.42	0.34	0.28	0.00	0.00	0.00	1.79
7,400	7,599	0.00	0.00	0.00	0.00	0.32	0.42	0.41	0.34	0.28	0.00	0.00	0.00	1.77
7,600	7,799	0.00	0.00	0.00	0.00	0.31	0.41	0.40	0.33	0.27	0.00	0.00	0.00	1.72
7,800	7,999	0.00	0.00	0.00	0.00	0.30	0.40	0.39	0.32	0.26	0.00	0.00	0.00	1.67
8,000	8,199	0.00	0.00	0.00	0.00	0.29	0.40	0.38	0.32	0.26	0.00	0.00	0.00	1.65
8,200	8,399	0.00	0.00	0.00	0.00	0.28	0.39	0.38	0.31	0.25	0.00	0.00	0.00	1.61
8,400	8,599	0.00	0.00	0.00	0.00	0.27	0.38	0.37	0.30	0.25	0.00	0.00	0.00	1.57
8,600	8,799	0.00	0.00	0.00	0.00	0.26	0.38	0.36	0.30	0.24	0.00	0.00	0.00	1.54
8,800	8,999	0.00	0.00	0.00	0.00	0.25	0.37	0.35	0.29	0.24	0.00	0.00	0.00	1.50
More than 9,000		0.00	0.00	0.00	0.00	0.24	0.36	0.34	0.28	0.23	0.00	0.00	0.00	1.45

ATTACHMENT A

(iii) Pond Evaporation. The amount of replacement water for evaporation from ponds and other water surfaces in each elevation zone within the District will be calculated in accordance with the following tables:

Lake Evaporation Rates

RATES FOR ON CHANNEL LAKES														
Elevation Range		Net Lake Evaporation (feet) (calculated as lake evaporation minus effective precipitation using SEO SWSP Guidelines)												
Lower	Upper	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
6,600	6,799	0.00	0.00	0.00	0.28	0.40	0.50	0.48	0.37	0.33	0.21	0.10	0.00	2.65
6,800	6,999	0.00	0.00	0.00	0.28	0.39	0.49	0.48	0.37	0.33	0.21	0.10	0.00	2.65
7,000	7,199	0.00	0.00	0.00	0.27	0.39	0.49	0.47	0.36	0.32	0.21	0.10	0.00	2.61
7,200	7,399	0.00	0.00	0.00	0.27	0.39	0.49	0.47	0.36	0.32	0.21	0.10	0.00	2.61
7,400	7,599	0.00	0.00	0.00	0.27	0.38	0.48	0.47	0.36	0.32	0.21	0.10	0.00	2.58
7,600	7,799	0.00	0.00	0.00	0.24	0.37	0.47	0.45	0.35	0.31	0.20	0.09	0.00	2.48
7,800	7,999	0.00	0.00	0.00	0.21	0.36	0.46	0.44	0.34	0.30	0.19	0.09	0.00	2.39
8,000	8,199	0.00	0.00	0.00	0.18	0.35	0.45	0.43	0.33	0.29	0.19	0.09	0.00	2.31
8,200	8,399	0.00	0.00	0.00	0.15	0.34	0.44	0.42	0.32	0.28	0.18	0.09	0.00	2.22
8,400	8,599	0.00	0.00	0.00	0.12	0.33	0.43	0.41	0.31	0.27	0.17	0.09	0.00	2.13
8,600	8,799	0.00	0.00	0.00	0.09	0.32	0.43	0.40	0.30	0.27	0.17	0.09	0.00	2.07
8,800	8,999	0.00	0.00	0.00	0.06	0.31	0.42	0.39	0.29	0.26	0.16	0.09	0.00	1.98
Greater than 9,000		0.00	0.00	0.00	0.00	0.29	0.39	0.36	0.27	0.24	0.15	0.08	0.00	1.79

RATES FOR OFF-CHANNEL LAKES														
Elevation Range		Lake Evaporation (feet) (lake evaporation with no effective precipitation offset)												
Lower	Upper	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
6,600	6,799	0.00	0.00	0.00	0.31	0.43	0.53	0.55	0.44	0.38	0.26	0.14	0.00	3.02
6,800	6,999	0.00	0.00	0.00	0.31	0.42	0.53	0.54	0.44	0.37	0.25	0.14	0.00	3.00
7,000	7,199	0.00	0.00	0.00	0.30	0.42	0.52	0.54	0.44	0.37	0.25	0.14	0.00	2.98
7,200	7,399	0.00	0.00	0.00	0.30	0.42	0.52	0.54	0.44	0.37	0.25	0.13	0.00	2.97
7,400	7,599	0.00	0.00	0.00	0.30	0.42	0.52	0.53	0.43	0.37	0.25	0.13	0.00	2.95
7,600	7,799	0.00	0.00	0.00	0.27	0.41	0.51	0.53	0.43	0.36	0.25	0.13	0.00	2.89
7,800	7,999	0.00	0.00	0.00	0.23	0.41	0.50	0.52	0.42	0.36	0.24	0.13	0.00	2.81
8,000	8,199	0.00	0.00	0.00	0.20	0.40	0.50	0.51	0.42	0.35	0.24	0.13	0.00	2.75
8,200	8,399	0.00	0.00	0.00	0.17	0.39	0.49	0.50	0.41	0.35	0.24	0.13	0.00	2.68
8,400	8,599	0.00	0.00	0.00	0.14	0.39	0.48	0.50	0.40	0.34	0.23	0.12	0.00	2.60
8,600	8,799	0.00	0.00	0.00	0.10	0.38	0.47	0.49	0.40	0.34	0.23	0.12	0.00	2.53
8,800	8,999	0.00	0.00	0.00	0.07	0.38	0.47	0.48	0.39	0.33	0.23	0.12	0.00	2.47
Greater than 9,000		0.00	0.00	0.00	0.00	0.36	0.45	0.47	0.38	0.32	0.22	0.12	0.00	2.32

(iv) Stockwater. Consumptive use by horses, cows and other types of livestock is eleven (11) gallons per animal per day.

(v) Transit losses. Estimated to be 0.1% (0.001) of reservoir releases for each mile of distance from the reservoir to the point of the depletion being augmented.

(vi) Other. Replacement water requirements for other uses, including irrigation, commercial and industrial uses, will be determined by applicants for Augmentation Certificates on a case-by-case basis, subject to review and approval by the Division Engineer.

ATTACHMENT A

(b) Implementation of the plan. The plan will be implemented as follows:

(i) Augmentation Certificates. Persons who are users of water diverted at points of diversion within the stream reaches described in paragraph 15 above, may apply to the Enterprise to purchase the right to direct release of augmentation water. Such rights will be evidenced by Augmentation Certificates. Upon receipt of an application, payment of all required fees and such other information as the Enterprise may require, the Enterprise will issue Augmentation Certificates to qualified water users entitling them to benefit from this plan for augmentation. The Augmentation Certificates will be issued in the amount requested by the applicant in increments of not less than 0.05 acre-foot of replacement water. It is incumbent upon each applicant for an Augmentation Certificate to determine the amount of water required to replace its depletions and to make application for same. Determination of the amount of replacement water required will be in accordance with the assumptions contained in paragraph 18.(a).

(ii) Number of Augmentation Certificates. The number of Augmentation Certificates to be issued by the Enterprise will be limited by the amount of water decreed to Lake San Cristobal pursuant to the application described in paragraphs 2 through 13 above and will not exceed the acre-foot equivalent of that amount as determined by this Court.

(iii) Source of Replacement Water. Holders of Augmentation Certificates may identify as the source of replacement water for their out-of-priority depletions the water rights decreed to Lake San Cristobal described in paragraphs 2 through 13 and this plan for augmentation.

(iv) Locations. The locations of the authorized points of diversion and places of use for water rights whose depletions are being augmented by this plan for augmentation will be defined on the Augmentation Certificates when the application for Augmentation Certificate is reviewed and approved by the Division Engineer.

(v) Listing. The Enterprise will maintain a permanent listing of the Augmentation Certificates, identifying the water rights whose depletions are being augmented by this plan for augmentation, the amount of replacement water purchased for each water right, and the name, address and telephone number of the owner of the water right. A current listing will be provided annually, or as requested, to the Division Engineer.

ATTACHMENT A

Dated this 10th day of December, 2008.

Upper Gunnison River Water Conservancy District

s/ John H. McClow

By: John H. McClow, General Counsel

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

I, Frank J. Kugel, General Manager of the Upper Gunnison River Water Conservancy District, state under oath that I have read this Application and verify its content.

s/Frank J. Kugel

Frank J. Kugel

Subscribed and affirmed or sworn to before me in the County of Gunnison, State of Colorado, this 10th day of December, 2008.

My commission expires:

Witness my hand and official seal.

SEAL

s/Beverly Richards

Notary Public

ATTACHMENT A

CERTIFICATE OF SERVICE

The undersigned certifies that on the 1st day of December, 2008, a copy of the **AMENDED APPLICATION FOR STORAGE WATER RIGHT AND APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION INCLUDING EXCHANGE** was served upon the parties by U. S. Mail and via LexisNexis File and Serve to the following:

By U. S. Mail:

Carolyn M. Kates
1207 Jamaica Court
Jacksonville, FL 32216-5102

Via LexisNexis:

Andrew Peternell, Esq.
Trout Unlimited
1320 Pearl St., Ste 320
Boulder, CO 80302

Susan J. Schneider, Esq.
First Assistant Attorney General
1525 Sherman St., 5th Floor
Denver, CO 80203

Thomas Graf
United States Department of the Interior

/s/ John H. McClow

John H. McClow

***This document was filed electronically pursuant to Rule 121 § 1-26, C.R.C.P.
A signed original is on file at the office of Upper Gunnison River Water Conservancy District.***

ATTACHMENT B

**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF HINSDALE, COLORADO**

RESOLUTION NO. _____

SERIES 2009

WHEREAS, Hinsdale County (County) is a government entity that has statutory authority to conduct water activities pursuant to §§ 37-45.1-101, *et seq.*, Colorado Revised Statutes (Water Activity Enterprise Law); and,

WHEREAS, the Board of County Commissioners of Hinsdale County (Board) desires to create a Water Activity Enterprise pursuant to said statutory authority in order to engage in development of the plan for augmentation described in Case No. 03CW108, Water Division 4, as a water activity business dedicated to developing a critical water resource that will protect present and future water uses by the residents of Hinsdale County and the Upper Gunnison River Water Conservancy District; and,

WHEREAS, the Board has entered into an Intergovernmental Agreement among the Board, the Upper Gunnison River Water Conservancy District, a water conservancy district organized pursuant to the Water Conservancy Act, §§ 37-45-101, *et seq.*, Colorado Revised Statutes (District), and the Board of Trustees of the Town of Lake City, Colorado, a Colorado Statutory Town (Town) for the purpose of prescribing the powers and obligations of the governing body of the Lake San Cristobal Water Activity Enterprise, which Agreement will become effective and binding upon the Parties thereto upon adoption, execution and recording of this Resolution and execution of the Agreement;

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Hinsdale County that:

1. The water activity represented by obtaining a decree for a water storage right, obtaining approval by the water court of a plan for augmentation, sale of augmentation certificates entitling water users within the Town, the County and part of the District to the use of water released from Lake San Cristobal, and general administration of the plan for augmentation are confirmed, authorized and established as a water activity enterprise as defined and authorized by Colorado law and in accordance with the following statement of purpose and authority of the water activity enterprise of the County:

a. Name and Nature. This water activity enterprise of the County shall be identified, known and referred to as the "Lake San Cristobal Water Activity Enterprise" (and in this Resolution as the Enterprise), and it constitutes a business owned by the County and managed in accordance with the Intergovernmental Agreement dated _____, 2009 between the County, the District, and the Town (referred to in this Resolution as the IGA).

ATTACHMENT B

b. Purpose. The purpose of the Enterprise is to provide water for beneficial use to the constituents of the Town, the County, and the District.

c. Specific Authority. Without limiting the general authority of the Enterprise as provided in the Water Activity Enterprise Law, and subject to the provisions of the IGA, the Enterprise shall have authority to:

(i) Acquire all water and water rights decreed to Lake San Cristobal in Case No. 03CW108, Water Division 4; and

(ii) Construct outlet works in Lake San Cristobal; and,

(iii) Acquire an easement from the County for use of the real property upon which the outlet works are to be constructed; and,

(iv) Borrow from the County, the Town, and the District (in equal portions) the sufficient funds to provide for the cost of permitting, design and construction of the outlet works and its appurtenant facilities and to assist the Enterprise with start-up operating costs associated with the Enterprise. This amount shall be repaid when the Board of Directors of the Enterprise determines that the Enterprise has sufficient capital to do so; and,

(v) Issue or reissue bonds in accordance with applicable laws; and,

(vi) To do all things necessary and proper under law to develop, implement, protect and defend the interests and assets of the Enterprise.

d. Water Activities. In engaging in those activities described in paragraph 1.c. above, the Enterprise shall exercise the legal authority of the County relating to "water activities" as defined in the Water Activity Enterprise Law.

e. Enterprise Revenues. The Enterprise shall not exercise any of the taxing authority of the County, the Town or the District and shall not receive or expend tax revenues in excess amounts lawfully granted to the Enterprise which amounts, together with any other state and local government grants received by the Enterprise, shall total less than ten percent (10%) of annual Enterprise revenues.

2. The Enterprise shall continue to be maintained and operated as an enterprise as defined and recognized in Article X, Section 20, of the Colorado Constitution and as a water activity enterprise as defined in the Water Activity Enterprise Law, as presently enacted or as hereafter amended. The Enterprise as so maintained and operated shall be entitled to exercise all powers, authorities, rights, and responsibilities exercisable by it in accordance with the foregoing statements of purpose and authority.

ATTACHMENT B

3. The Board of Directors of the Enterprise, appointed in accordance with the IGA, shall be and constitute the governing body of the Enterprise.

4. This Resolution shall become effective immediately upon its execution and recording in the office of the Clerk and Recorder of Hinsdale County.

INTRODUCED by Commissioner _____, and seconded by
Commissioner _____, and passed this ____ day of _____, 2009.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF HINSDALE, COLORADO

By: Allen Brown, Chair

ATTEST:

Linda Pavich Ragle, County Clerk

ATTACHMENT C

GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made and entered into on _____, 2009, by and between the Board of County Commissioners of the County of Hinsdale, Colorado (Grantor), and the Lake San Cristobal Water Activity Enterprise (Grantee).

WHEREAS, by Resolution dated _____, 2009, Grantor has created Grantee, a water activity enterprise established pursuant to §§ 37-45.1-101, *et seq.*, Colorado Revised Statutes, for the purpose of developing a critical water resource that will protect present and future water uses by its residents; and,

WHEREAS, in furtherance of that purpose, Grantee will construct and operate an outlet structure in Lake San Cristobal upon the Easement Area (as defined in paragraph 1 below) in order to perfect a water storage right and obtain approval of a plan for augmentation in Case No. 03CW108, Water Division 4;

THEREFORE:

1. Grant of Easement. For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor has this date bargained, conveyed, delivered, transferred, and sold, and by these presents, does bargain, convey, deliver, transfer and sell unto Grantee an easement for construction, operation, repair and replacement of an outlet structure regulating Lake San Cristobal and appropriate incidental facilities, said easement being described on *EXHIBIT A* attached hereto and incorporated herein by reference (Easement Area).

2. Construction of Facilities. In addition to the easement described above, Grantee shall have the temporary right to use as much of the surface of Grantor's property adjacent to the Easement Area as may be reasonably necessary to construct and install within the easement the facilities contemplated by this grant. On the completion of construction and installation, Grantee shall restore all areas that have been disturbed by Grantee's construction activity to their pre-construction condition.

3. Term. The term for the interest in land granted in paragraph 1 above shall be perpetual, commencing on the date of execution of this Grant of Easement; provided, however, that the easement and any interest of Grantee in the land created hereunder shall automatically terminate in the event that (a) the water storage right decreed in Case No. 03CW108 is abandoned; or (b) operation of the plan for augmentation approved in said case, as said plan may be amended or modified, is permanently discontinued.

4. Removal of Structure. In the event of termination pursuant to paragraph 3 above, Grantee shall remove the outlet structure from the Easement Area and restore the Easement Area to its condition on the date of execution of this Grant of Easement. Grantee's obligation to remove the outlet structure shall be subject to appropriate regulatory conditions and approval.

ATTACHMENT C

5. Assignment. This Easement, or any interest of Grantee in the Easement Area, shall not be assigned without written consent of Grantor.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal.

Board of County Commissioners
of the County of Hinsdale, Colorado

By: Allen Brown, Chair

ATTEST:

Linda Pavich Ragle, County Clerk

STATE OF COLORADO)
) ss.
COUNTY OF HINSDALE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009 by Allen Brown, Chair of the Board of County Commissioners of the County of Hinsdale, Colorado, and Linda Pavich Ragle, as Hinsdale County Clerk.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

ATTACHMENT D

March 20, 2009 SAMPLE DRAFT

Contract No. _____

Contract Date: _____

LAKE SAN CRISTOBAL WATER ACTIVITY ENTERPRISE
AGREEMENT

FOR PURCHASE OF AN AUGMENTATION CERTIFICATE
PROVIDING FOR WATER SERVICE FROM LAKE SAN CRISTOBAL

This Agreement is entered into between the Lake San Cristobal Water Activity Enterprise, a water activity enterprise established by Hinsdale County, Colorado, pursuant to § 37-45.1-103, Colorado Revised Statutes (Enterprise) and the buyer identified below (Buyer).

Buyer's Name: _____

Address: _____

Telephone: _____ E-mail Address: _____

The Enterprise is providing water stored in Lake San Cristobal for use as replacement water to the Lake Fork of the Gunnison River and the Gunnison River to permit out-of-priority depletions by wells or other diversion structures that would otherwise be curtailed by a call by senior water rights diverting water from said rivers or senior instream flow water rights. The replacement water is provided by the Enterprise according to the terms and conditions of the Plan for Augmentation decreed in Case No. 03CW108, Water Division No. 4 (Plan for Augmentation).

AGREEMENT

In consideration of the mutual and dependent covenants contained herein, the parties to this Agreement agree as follows:

1. This Agreement shall become effective upon execution of the Agreement by the Enterprise, and shall continue until terminated as provided in this Agreement.
2. The well or other diversion structure to be protected by release of water authorized by an Augmentation Certificate acquired under the terms of this Agreement is described on *EXHIBIT A* attached to this Agreement and is referred to in this Agreement as the Protected Well.
3. A Base Unit is quantified as 0.05 acre-feet of water stored in Lake San Cristobal. Ownership of an Augmentation Certificate entitles Buyer to the release of water from Lake San Cristobal, according to the terms and conditions of the Plan for Augmentation, in an amount equal to the number of Base Units purchased multiplied by 0.05 acre-feet.

The number of Base Units purchased by Buyer is _____ Base Units.

ATTACHMENT D

March 20, 2009 SAMPLE DRAFT

4. The purchase price for each Base Unit is \$_____ per Base Unit, for a total payment under this Agreement of \$_____, payable to the Enterprise in cash upon execution of this Agreement. The Enterprise acknowledges receipt of the purchase price in the form of _____.

5. Upon execution of this Agreement by all parties and payment by Buyer of the purchase price, the Enterprise will issue and deliver to Buyer an Augmentation Certificate identifying the Protected Well and the number of Base Units purchased by Buyer. The Enterprise will record a copy of the Augmentation Certificate in the records of the county in which the Protected Well is located.

6. Commencing in the calendar year following the year in which this Agreement is signed, Buyer shall pay an annual assessment to the Enterprise equal to Buyer's prorated share of the reservoir operations, maintenance and capital reserve assessment adopted for such year by the Enterprise, plus Buyer's prorated share of the Enterprise's annual cost reimbursement for administration of the Plan for Augmentation (collectively, the Annual Assessment) according to the following procedures.

6.1 During July of each year during the term of this Agreement, the Enterprise will mail an invoice for the Annual Assessment to Buyer's last known address, as reflected in the Enterprise's records, which shall include the following:

6.1.1 An itemization of the reservoir operations and maintenance assessment for that year and the calculation of Buyer's prorated share thereof;

6.1.2 An itemization of the reservoir capital reserve assessment for that year and the calculation of Buyer's prorated share thereof;

6.1.3 The amount of the Enterprise's annual cost reimbursement for administration of the Plan for Augmentation and the calculation of Buyer's prorated share thereof.

6.2 Buyer shall pay the invoiced Annual Assessment on or before August 31 in each year.

7. By signing this Agreement, Buyer acknowledges:

7.1 That Buyer has read and understands this Agreement and agrees to be bound by its terms;

7.2 That the Plan for Augmentation requires Owners of Augmentation Certificates to install totalizing flow meters on augmented wells and approved measuring devices for augmented surface diversions and ponds, and that the Colorado Division of Water Resources will enforce this requirement;

ATTACHMENT D

March 20, 2009 SAMPLE DRAFT

7.3 That Buyer is responsible for obtaining any permit required by the Colorado Division of Water Resources for the Protected Well;

7.4 That the Augmentation Certificate purchased under this Agreement entitles Buyer to the release of water from Lake San Cristobal according to the terms and conditions of the Plan for Augmentation, that the water released for Buyer shall be measured by facilities of the Enterprise and delivered into the Lake Fork of the Gunnison River at the outlet works of Lake San Cristobal, and that Buyer shall suffer all transit losses assessed by the Division Engineer from the point of delivery to the place of use;

7.5 That water released for Buyer's benefit from Lake San Cristobal will be released from the reservoir according to the terms and conditions of the Plan for Augmentation upon request of the Division Engineer, Water Division 4, at times and in amounts determined by the Division Engineer in his sole discretion, and only for the purpose of providing replacement water to the Lake Fork of the Gunnison or Gunnison Rivers (or tributaries thereof) to permit out-of-priority depletions by the Protected Well which would otherwise be curtailed by a valid call on such rivers by senior water rights diverting water downstream from the point of diversion for the Protected Well or by senior instream flow water rights;

7.6 That the number of Base Units purchased by Buyer under the terms of this Agreement has been determined solely by Buyer, and that the Enterprise makes no representation that the amount purchased by Buyer is sufficient to protect the Protected Well from curtailment as a result of a call placed by senior water rights;

7.7 That the amount to be paid annually by Buyer under this Agreement for operations and maintenance assessment and reimbursement for administration costs is due and payable in full, whether or not any water is released from Lake San Cristobal according to the terms and conditions of the Plan for Augmentation;

7.8 That Buyer shall have no right to holdover of water storage in Lake San Cristobal from year to year; therefore, any water which is not released by October 31 in each year according to the terms and conditions of the Plan for Augmentation shall become integrated with the stored water in Lake San Cristobal and be available for all purposes at that time;

7.9 That because of drought or other natural causes, there may occur a shortage during any year in the quantity of water stored or released from Lake San Cristobal, and that such a shortage may result in the curtailment of the Protected Well. In no event shall any liability accrue against the Enterprise or any of its directors, agents or employees for any damage, direct or indirect, arising from such a shortage. In any year in which such a shortage occurs, the Enterprise reserves the right to apportion the available water supply among those entitled under Augmentation Certificates to releases of water from Lake San Cristobal in a manner to be prescribed by the Enterprise in its sole discretion.

8. Buyer agrees to maintain a permanent record of all diversions by the Protected Well, recorded by Buyer at least monthly, and to submit a copy of such record to the Enterprise annually. To assist Buyer in maintaining such record, the Enterprise will provide to Buyer a

ATTACHMENT D

March 20, 2009 SAMPLE DRAFT

form to be completed by Buyer itemizing monthly diversions by the Protected Well, as reflected by Buyer's flow meter (Diversion Record). In October of each year the Enterprise will mail a new Diversion Record to Buyer's last known address, as reflected in the Enterprise's records. On or before November 15 in each year, Buyer shall mail to the Enterprise a completed Diversion Record for the preceding twelve months. Buyer may request additional forms at any time.

9. Payment by Buyer of the purchase price described in paragraph 4 is a condition precedent to receiving the benefit of the Augmentation Certificate acquired under the terms of this Agreement. In the event that Buyer's tendered payment is dishonored, the Augmentation Certificate shall be void and the Enterprise shall not release water for Buyer's benefit under Buyer's Augmentation Certificate until Buyer provides payment of the amount due, plus interest at the rate of eighteen percent (18%) per annum from the date of Buyer's original tender and a late charge equal to five percent (5%) of the payment, in cash, electronic transfer funds, certified check or cashier's check.

10. In the event of failure by Buyer to pay the Annual Assessment when due, or Buyer's failure to provide a completed Diversion Record to the Enterprise as required by paragraph 8 (collectively referred to as Buyer's Default), the Enterprise shall have the following rights and remedies:

10.1 The Enterprise may terminate release of water for Buyer's benefit under Buyer's Augmentation Certificate and, upon such termination, shall give written notice to Buyer and the Division Engineer that Buyer's right to releases has been terminated.

10.2 The Enterprise shall have a lien against the real property served by the Protected Well to secure payment of the Annual Assessment, plus interest from the date the Annual Assessment was due and payable at a rate determined by the Enterprise, but not to exceed twenty-one percent (21%) per annum, plus a late charge in an amount determined by the Enterprise, plus all costs and expenses of collecting the unpaid amount, including, but not limited to, reasonable attorneys' fees. The lien may be foreclosed in the manner of foreclosure of mortgages in the State of Colorado. If Buyer fails to pay the Annual Assessment when due, the Enterprise may record a Notice of Lien in the records of the county in which the Protected Well is located that shall set forth the amount of the Annual Assessment due and owing to the Enterprise, specifying the date such amount was due and payable and from which interest accrues, specifying all costs and expenses, including reasonable attorneys' fees, of collecting the unpaid amount to the date of recording of such Notice of Lien, describing the real property affected by the lien and specifying the name or names, last known to the Enterprise, of the owner of said real property.

10.3 In any foreclosure proceeding under this Agreement, Buyer shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, such costs, expenses and attorneys' fees to be secured by the lien being foreclosed. The Enterprise, through its duly authorized agents, shall have the power to bid on the real property at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

ATTACHMENT D

March 20, 2009 SAMPLE DRAFT

10.4 The amount of the Annual Assessment shall be the personal obligation of Buyer and shall be owed to the Enterprise. Suit to obtain a money judgment for such personal obligation shall be maintainable by the Enterprise without foreclosing or waiving the lien that secures the same.

10.5 In the event of voluntary sale or other conveyance of the real property served by the Protected Well, the grantee thereof shall be jointly and severally liable with the grantor for all unpaid Annual Assessments against the latter, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

10.6 The Enterprise shall, upon request, furnish to any person liable for an Annual Assessment, a certificate in writing, setting forth whether the Annual Assessments have been paid and the amount of the delinquency, if any. Such certificate shall be conclusive evidence of payment of the Annual Assessment.

10.7 The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Enterprise may have under this Agreement and by law, including suit to obtain money judgment for unpaid assessments, as provided above.

10.8 Following Buyer's Default, the benefits of Buyer's Augmentation Certificate, including release of water for Buyer's benefit, shall not be restored by the Enterprise until Buyer's Default is cured, including payment in full to the Enterprise of all amounts due, including interest, late fees, and costs of collection including attorneys' fees.

11. Neither the Augmentation Certificate nor a Base Unit acquired under this Agreement may be transferred by Buyer separately from the Protected Well without the prior written consent of the Enterprise. The Enterprise may, in its absolute discretion, require that any Base Unit transferred separately from the Protected Well be sold back to the Enterprise for a purchase price equal to the price paid by Buyer under this Agreement; provided, however, that the Enterprise may delay payment of the purchase price to Buyer until the Enterprise is able to resell the Base Unit. Resale of Base Units by the Enterprise may be at such selling price as the Enterprise determines at the time of resale, but said resale price shall have no effect on the amount paid by the Enterprise to Buyer.

12. Prior to any transfer of the Protected Well, Buyer shall notify the Enterprise of such transfer in writing. The notice shall include the name, address and telephone number of the person to whom the transfer will be made and an application for transfer of the Augmentation Certificate. Upon receipt of such application, the Enterprise may, in its discretion, assess an administration fee to process and record a notice of the transfer, and require payment of any unpaid assessments (together with any amounts due pursuant to paragraph 10). The Enterprise shall record a notice of transfer of the Augmentation Certificate in the records of the county in which the Protected Well is located.

ATTACHMENT D

March 20, 2009 SAMPLE DRAFT

13. Any transfer of a Base Unit acquired under this Agreement or of the Augmentation Certificate without the written consent and approval of the Enterprise required by this Agreement shall be void, the Augmentation Certificate shall be rendered void, and the transferee thereof shall receive no benefit. As used in this Agreement, "transfer" shall not include a transfer by devise, descent or by operation of law upon the death of a joint tenant.

14. The Base Units purchased under the terms of this Agreement and the Augmentation Certificate shall be appurtenant to the Protected Well, and the terms of this Agreement shall be binding upon Buyer's successors in interest to the Protected Well.

15. This Agreement constitutes the entire and only agreement between the Enterprise and Buyer relating to the subject matter hereof. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

16. This Agreement shall be interpreted, construed and governed by the laws of the State of Colorado. Jurisdiction and venue for any action relating to this contract or the interpretation, enforcement or determination of the rights and duties of the parties hereto shall be the District Court in Gunnison County, Colorado.

17. Any notice to Buyer provided for in this Agreement shall be in writing and shall be given and be effective upon (1) hand delivery to Buyer or (2) mailing such notice by first-class U.S. mail, addressed to Buyer at the Buyer's address stated on the first page of this Agreement, or to such other address as Buyer may designate by notice to the Enterprise. Any notice to the Enterprise shall be in writing and shall be given and be effective upon (1) hand delivery to the Enterprise's manager or (2) by mailing such notice by first-class U.S. mail to the Enterprise at _____
or to such other address as the Enterprise may designate by notice to Buyer.

Buyer:

Lake San Cristobal Water Activity
Enterprise

By: _____

Date: _____

Date: _____

