

AMENDED INTERGOVERNMENTAL AGREEMENT

This Amended Intergovernmental Agreement dated April 28, 2014, 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. This Amended Agreement cancels and replaces the Intergovernmental Agreement among the parties dated May 20, 2009.

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. The design and construction have been completed, and operation of the structure has commenced.

E. The Enterprise has obtained a water storage right and approval of a plan for augmentation in Case No. 03CW108, Water Division 4, and will operate the plan for augmentation as prescribed by the decree in that case (Decree), the terms of this Agreement, and the bylaws adopted by the governing body of the Enterprise. A copy of the Decree entered December 5, 2011 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.** The County has adopted 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 four directors shall constitute a quorum for the conduct of Enterprise business, provided that at least one director appointed by each Party is present.

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. The Enterprise is named in the Decree as the party that will operate the plan for augmentation.

3.2 Easement. The County has executed, delivered and recorded 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. 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 The terms of the Decree limit the sale of Augmentation Certificates to a total of 475 acre-feet for the first 40 years following entry of the Decree.

4.2.2 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:

4.2.2.1 Upon execution of this Agreement by all Parties, the Enterprise shall issue a Class B Augmentation Certificate to the Town for 90 acre-feet (1,800 Base Units) as consideration for \$99,000.00 of the Town's capital contribution to the Enterprise; and,

4.2.2.2 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.

4.2.3 The Augmentation Certificates remaining after the issuance of a Class B certificate to the Town (Remaining 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:

4.2.3.1 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 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,

4.2.3.2 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.

4.2.4 Revenue from the sale of the Remaining Certificates shall be payable to and collected by the Enterprise and deposited in Enterprise accounts at such bank or 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 County and the District in equal priority until the County and the District have each received repayment of \$99,000.00, 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.

5.1 Equal Shares. Except as provided in paragraph 5.3 below, 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 in accordance with paragraph 4.2.4 above.

5.2 Accounting. An accounting of the final cost of permitting, design, and construction of the outlet works and any appropriate facilities incidental thereto, together with a calculation of the amount to be advanced by each of the Parties is set forth on *ATTACHMENT E* attached to this Agreement and incorporated herein by this reference.

5.3 Nonreimbursable Advances by the District. The District expended \$79,000.00 in costs prior to the initiation of Enterprise operations that were indirect costs of obtaining the Decree and creating the Enterprise. A listing of those costs is attached to this Agreement as *ATTACHMENT F*. Because the Lake San Cristobal project provides significant benefit to the constituents of the District and is consistent with the District's mission to develop the water resources within the District, the District will absorb those costs without reimbursement from the County or the Town; provided, however, that:

5.3.1 Any additional work on the project, including, without limitation, covering the vault, constructing a fence, or placing boulders in the lake will be completed by the County or the Town at no cost to the District; and,

5.3.2 Any in-kind contributions of labor and materials by the County or the Town to date shall be absorbed by those Parties at no cost to the District.

6. Withdrawal.

6.1 Voluntary Withdrawal. 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 Continued Existence. 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 Repayment. 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 remaining Parties, but shall not be entitled to any other distribution of Enterprise revenue, profits, or proceeds from sale of assets; provided, however, that:

6.3.1 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; and,

6.3.2 If the Town is the Withdrawing Party and it nevertheless wishes to remain included in the plan for augmentation, the Town shall not be repaid the capital contribution for which the Class B Augmentation Certificate was issued. If the Town is the Withdrawing Party and wishes to withdraw from the plan for augmentation, the Town shall surrender the Class B Augmentation Certificate and shall be repaid advances as provided in paragraph 6.3 above.

6.4 District Withdrawal. 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 Continued Viability. 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, 210 West Spencer, Suite B, 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.

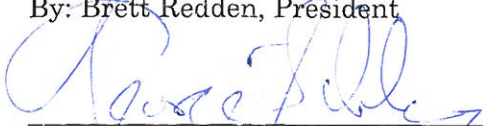
IN WITNESS WHEREOF the Parties have executed this Agreement on the date written above.

Upper Gunnison River
Water Conservancy District

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



By: Brett Redden, President

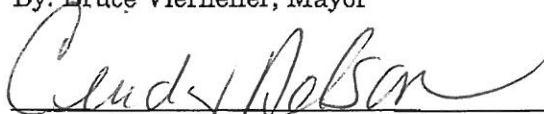

By: Cindy Dozier, Chair


Attest: George Sibley, Secretary


Attest: Linda Pavich Ragle, County Clerk

Town of Lake City, Colorado


By: Bruce Vierheller, Mayor


Attest: Cindy Nelson, Town Clerk

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<p>DISTRICT COURT, WATER DIVISION 4, COLORADO 1200 N. Grand Avenue, Bin A Montrose, CO 81401</p> <p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT</p> <p>in Hinsdale County.</p>	<p style="color: red;">EFILED Document CO Montrose County District Court 7th JD Filing Date: Dec 5 2011 4:57PM MST Filing ID: 41231605 Review Clerk: Darleen Cappannokeep</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p style="text-align: center;">Case Number: 03CW108</p>
<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE</p>	

This matter comes before the Court upon the amended application of the Upper Gunnison River Water Conservancy District (Upper Gunnison District or District) for a storage water right and approval of a plan for augmentation including exchange. The Court, having made such investigations as are necessary to determine whether the statements in the application are true, and having become fully advised with respect to the subject matter of the application, hereby enters and makes the following findings of fact, conclusions of law and ruling.

FINDINGS OF FACT

1. The Application was filed by the Upper Gunnison District on April 30, 2003. An Amended Application was filed by the District on December 10, 2008.

2. Statements of opposition were timely filed by the United States of America - Bureau of Land Management (BLM), the Colorado Water Conservation Board (CWCB), Trout Unlimited and Carolyn Kates. The District entered into a stipulation with the Estess Family Limited Partnership and Cockrell Investment Partners, L.P. in lieu of entry in the case by those parties. That stipulation is reflected in paragraphs 7(c)ii, 7(c)iii, 52, 54, and 55 of this Decree. Daniel L. Plies' Motion to Intervene was denied on June 23, 2010. No other person or entity sought to intervene. The time for filing statements of opposition and motions to intervene has expired.

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3. The CWCBC filed its Statement of Opposition to protect the natural lake level water right decreed to Lake San Cristobal in Case No. W-3366, Water Division No. 4, to protect the natural environment to a reasonable degree.

4. On October 12, 2010, the Water Referee approved Findings of Fact, Conclusions of Law, Ruling of the Referee and Decree that was filed pursuant to stipulations with, or consent by, the Opposers identified in paragraph .2 above.

5. On October 29, 2010, Daniel L. Plies filed a Protest to Ruling of the Referee and the matter is now before this Court.

6. The State Engineer filed a Motion to Intervene which was granted by the Court on December 20, 2010.

7. In the Amended Application, the District seeks:

(a) A conditional water storage right for 950 acre-feet with an appropriation date of April 28, 2003, to store in priority flows of the Lake Fork of the Gunnison River in Lake San Cristobal after construction of an outlet structure by the Enterprise described in paragraph 13, to be used for domestic, municipal, commercial, industrial to include mining, milling and reclamation, irrigation, recreation, and fishery and wildlife habitat within the Upper Gunnison River Water Conservancy District directly or by augmentation or exchange;

(b) A conditional water storage right for 950 acre-feet with an appropriation date of December 10, 2008 to store in priority flows of the Lake Fork of the Gunnison River for a second filling of Lake San Cristobal, to be used for domestic, municipal, commercial, industrial to include mining, milling and reclamation, irrigation, recreation, and fishery and wildlife habitat within the Upper Gunnison River Water Conservancy District directly or by augmentation or exchange;

(c) Approval of a plan for augmentation 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 supply of water either directly or by exchange.

i. 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 the proposed plan.

ii. Out-of-priority depletions in the reach of the Lake Fork of the Gunnison River upstream from Lake San Cristobal can be augmented under the proposed plan by exchange. The District seeks approval of a conditional appropriative right of exchange for this exchange with a priority date of

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December 10, 2008. The lower terminus of the exchange reach is the outlet of Lake San Cristobal; the upper terminus of the exchange reach is the depletions on the Lake Fork of the Gunnison River upstream from Lake San Cristobal. The rate of exchange claimed is four cubic feet per second.

iii. Out-of-priority depletions in the reach of the Gunnison River and its tributaries downstream of the structures listed in the table below or the lower terminus of the instream flow water rights listed in the table below can be augmented under the proposed plan by exchange. The exchange described in this paragraph 7(c)iii cannot operate on the tributaries of the Gunnison River upstream of the listed structures or the lower terminus of listed instream flow reaches because water rights decreed to those structures or reaches can exercise a local call that would interrupt the exchange. Attached *EXHIBIT A* shows the locations of the points of diversion of the local calling rights and lists a legal description for the points of diversion. The map is for guidance only, and is subject to change by the Division Engineer in accordance with Colorado law. The District seeks approval of a conditional appropriative right of exchange for the exchange with a priority date of December 10, 2008. The lower terminus of the exchange reaches is the confluence of the Lake Fork of the Gunnison River and Blue Mesa Reservoir; the upper termini of the exchange reaches are the depletion locations on the Gunnison River and its tributaries below the local call points identified on *EXHIBIT A* and in the following table. The rate of exchange claimed is four cubic feet per second.

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

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

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9. The operation and administration by the Division Engineer, Water Division No. 4 (Division Engineer) of the exchanges described in paragraph 7(c) above constitute an appropriative right subject to adjudication in this action in accordance with § 37-80-120(4), C. R. S. (2010).

10. Lake San Cristobal is located in Sections 15, 22 and 27, Township 43 North, Range 4 West, New Mexico Principal Meridian, in Hinsdale County. The left abutment of the proposed outlet structure is located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 15, Township 43 North, Range 4 West, New Mexico Principal Meridian, at a point approximately 2,260 feet east of the west section line and 2,040 feet north of the south section line of Section 15.

11. The proposed outlet structure will be approximately three feet high, approximately 85 feet long, and will be constructed at the location described in paragraph 10, which is the outlet of Lake San Cristobal into the Lake Fork of the Gunnison River.

12. Use of the outlet structure to maintain the lake level at 8,995 feet whenever augmentation releases are not required enhances the recreational, fishery and wildlife habitat uses of the lake, which are vital to Lake City's and Hinsdale County's tourism-based economy.

13. The District proposes to provide augmentation by releases of water stored in Lake San Cristobal under the storage rights described above as and when requests for release of water are made by the Division Engineer to provide replacement water sufficient to replace out-of-priority depletions by structures owned by holders of Augmentation Certificates issued by the Lake San Cristobal Water Activity Enterprise, an enterprise established in 2009 pursuant to § 37-45.1-101, *et seq.*, C.R.S. (2010), by Hinsdale County (Enterprise). The Enterprise is managed by the District, Hinsdale County, and the Town of Lake City pursuant to an Intergovernmental Agreement, and will operate the plan for augmentation approved by this Decree. Accordingly, the District will transfer the rights and obligations of this Decree to the Enterprise; nevertheless, the District will remain obligated to ensure compliance with the terms of this Decree. Augmentation Certificates will be available to owners of wells, surface diversions, ponds and other structures in the Lake Fork and Gunnison River basins and the basins of tributaries thereof within the boundaries of the District, subject to the limitations of paragraph 7(c)(iii).

14. The District's engineering consultants have determined that, taking into account the no call agreement contained in the District's Stipulation with Daniel L. Plies, attached hereto as Exhibit B, the firm annual yield of the water stored under the first filling in this Decree in Lake San Cristobal is sufficient to provide the amounts of water specified in paragraphs 18 and 41(h) below. As used herein, firm annual yield means the quantity of water that can dependably be released from the reservoir in every water year and be sold by the Enterprise as replacement water under this plan for augmentation.

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15. The Division Engineer has declared that the Lake Fork and Gunnison River Basins are over-appropriated, thus requiring a plan for augmentation for new well permits and other uses within those basins.

16. The Town of Lake City relies on wells with junior water rights for its municipal water supply. Presently the wells are augmented by exchange using replacement water stored in Blue Mesa Reservoir pursuant to two water service contracts with the Bureau of Reclamation. The CWCB instream flow water rights in the Lake Fork of the Gunnison River downstream from the Town are senior to that exchange and could therefore require curtailment of the Town wells in times of shortage. In addition, the Bureau contracts expire in 19 and 37 years, respectively, with no guarantee of renewal, and permit the Bureau to reduce or terminate water service under certain circumstances. Through participation in the Enterprise and the proposed plan for augmentation, the Town seeks to secure a supply of replacement water to protect its existing wells and provide for future growth of its service area. Participation in the plan for augmentation will permit the Town to cancel the Bureau contracts, resulting in significant reduction in the annual cost of augmenting the Town wells.

17. Hinsdale County and the District seek to provide replacement water for augmentation of new wells and other junior water rights within the over-appropriated Lake Fork and Gunnison River Basins. Currently, the District relies on a water service contract with the Bureau of Reclamation for 500 acre-feet of water stored in Blue Mesa Reservoir utilized by its constituents (including Hinsdale County residents) through third-party contracts for augmentation by exchange. The District has entered into third-party contracts for 206 acre-feet to date. The water service contract expires in 34 years with no guarantee of renewal, and permits the Bureau to reduce or terminate water service under certain circumstances. Replacement water stored in Lake San Cristobal will serve as protection against expiration, interruption or termination of the Blue Mesa contract and to provide for future growth. Furthermore, if current estimates for the outlet structure and related costs are correct, water stored in Lake San Cristobal will be significantly less expensive than Blue Mesa water, and can be offered as an alternative supply to District constituents now relying on a Blue Mesa exchange, subject to the limitations of paragraph 7(c)(iii).

18. Based upon a study of potential future demand for augmentation water in the District, Lake City and Hinsdale County conducted in 2008 and updated in 2011, the current demand for Blue Mesa water for augmentation, and a fifty-year planning horizon, 475 acre-feet is a reasonable estimate of the three entities' anticipated future water needs in the next fifty years sufficient to qualify for the limited governmental entity water supply exception to Colorado's anti-speculation doctrine. Those entities have therefore agreed, as part of the Settlement Agreement with Daniel L. Plies, to limit the sale of augmentation certificates to a total of 475 acre-feet during the first 40 years following the entry of this decree.

19. The Enterprise will sell Augmentation Certificates which will entitle the Certificate holder to have water released from Lake San Cristobal in increments of 0.05 acre-feet (Base Units). The holder of an Augmentation Certificate described in paragraph 37 becomes

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entitled to the benefits of the plan for augmentation and will not be required to implement or amend an individual plan for augmentation, but will be subject to the requirements of paragraph 41(g).

Stream Depletions

20. For purposes of this plan for augmentation, “dwelling unit” means a structure or any part of a structure designed for residential purposes having one or more rooms, not more than one kitchen and at least one bathroom, that is intended for long-term occupancy by one or more persons for living and sleeping purposes and that may or may not be placed on a permanent foundation.

21. Based upon the State Engineer’s assumption that daily indoor household use is 350 gallons per day per dwelling unit, the total annual diversion by a well for indoor household use is 0.39205 acre-feet per dwelling unit.

22. If a dwelling unit utilizes a non-evaporative sewage disposal system, the annual consumptive use by the well serving that dwelling unit from indoor household use is ten percent (10%) of the total amount diverted by the well. Therefore, the stream depletion by a well serving a dwelling unit utilizing a non-evaporative sewage disposal system will not exceed 0.0392 acre-feet per year. The depletion occurs at a uniform rate throughout the year.

23. If a dwelling unit is connected to a wastewater treatment facility, the annual consumptive use by the well serving that dwelling unit from indoor household use is five percent (5%) of the total amount diverted by the well. Therefore, the stream depletion by a well serving a dwelling unit connected to a wastewater treatment facility will not exceed 0.0196 acre-feet per year. The depletion occurs at a uniform rate throughout the year.

24. Consumptive use by a well diverting water for lawn irrigation has been determined by the District’s engineering consultants using a modified Blaney-Criddle assessment adjusted for precipitation and temperature conditions in each elevation zone within the District. The calculation of stream depletions from lawn irrigation is contained in Tables 2 and 3 attached hereto.

25. Consumptive use resulting from evaporation from ponds and other water surfaces in each elevation zone within the District has been determined by the District’s engineering consultants. The calculation of stream depletions from evaporation is contained in Table 1 attached hereto.

26. Consumptive use of water diverted for stock watering purposes is assumed to be one hundred percent of diversions and results in stream depletions of eleven gallons per animal watered per day.

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27. The consumptive use calculations described in paragraphs 21 through 26 above have been reviewed and approved by the State Engineer. Stream depletions from any other uses authorized to be augmented under this plan for augmentation shall be determined by the Division Engineer on a case-by-case basis consistent with the provisions of paragraph 37(b). Such determinations by the Division Engineer shall be subject to reconsideration by this Court on the question of injury to the vested rights of others pursuant to § 37-92-304(6), C.R.S. (2010).

Transit Loss

28. Transit losses occur in the delivery of water in a natural stream primarily as the result of channel storage, bank storage, evapotranspiration by phreatophytes and evaporation. For purposes of determining the amount of replacement water that must be released from Lake San Cristobal in order to replace depletions to the stream at the point of depletion, the transit losses associated with the incremental increase in the natural flow of the stream caused by reservoir releases must be included.

29. Based on the analysis by the District's engineering consultants, and after consultation with the Division Engineer and review of a number of relevant studies, the District and the Division Engineer concur that a reasonable and conservative transit loss assessment for releases from Lake San Cristobal is 0.1% (0.001) of the reservoir release for each mile of distance from the reservoir to the point of depletion.

30. The Court concludes that the transit loss assessment described in paragraph 29 accurately estimates the transit losses associated with releases from Lake San Cristobal under this plan for augmentation; however, upon proof that such transit loss rate is incorrect, the rate is subject to modification by the Division Engineer to a rate proven to be accurate.

Mitigation of Injury to CWCB Water Right

31. The CWCB holds a water right decreed to Lake San Cristobal by this Court in Case No. W-3366 with an appropriation date of May 12, 1976 (the NLL Right). The Amended Decree in that case provides that the elevation of the natural water surface is approximately 8,995 feet above sea level and awards a water right "To maintain such lake level and volume as are required to preserve the natural environment to a reasonable degree" pursuant to § 37-92-102(3), C.R.S. (2010).

32. Installation of the proposed outlet structure will permit the Enterprise to control the lake surface level between 8,992 feet and 8,995 feet, representing a volume of approximately 950 acre-feet, the volume of water sought to be appropriated for certain of the uses claimed in this case. Specifically, reservoir operations may lower the surface level below the CWCB's decreed elevation of 8,995 feet during periods when augmentation releases are required to be made from the reservoir.

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33. The District and the CWCB have reached a settlement regarding the injury to the CWCB water right pursuant to Rule 8i(3) of the *Rules Concerning the Colorado Instream Flow and Natural Lake Level Program* (IWM Rule) under the terms of which the District will provide mitigation that enables the CWCB to accept the impact to its water right while continuing to preserve the natural environment to a reasonable degree.

34. The mitigation consists of:

(a) Utilizing the outlet structure during most years to improve maintenance of a constant lake surface level at the decreed natural lake level of 8,995 feet where it has historically fluctuated;

(b) Utilizing the outlet structure to store water to provide replacement water for out-of-priority diversions on the Lake Fork of the Gunnison River, and to release water from the impoundment of the outlet structure that will supplement CWCB instream flow water rights in the Lake Fork of the Gunnison River downstream from Lake San Cristobal (these instream flow rights are entitled to call the river when flows fall below their decreed rates, but without the impoundment there would be little or no replacement water available);

(c) Dedicating 200 acre-feet of water stored in priority in Lake San Cristobal under the storage rights decreed herein for use as directed by the CWCB, in its discretion, to preserve the natural environment to a reasonable degree under its water rights decreed in Case Nos. 80CW097 and 80CW119. Notwithstanding any other provision of this decree, this 200 acre-feet of water will be released solely on such terms and according to a schedule as directed by the CWCB in consultation with the Colorado Division of Parks and Wildlife.

35. The settlement with the CWCB includes the following terms and conditions:

(a) The Enterprise will not store water in Lake San Cristobal under this Decree until the outlet structure is in place and fully operational, and the dedication required by paragraph 34(c) above has been delivered to the CWCB, thus providing the agreed-upon mitigation measures.

(b) The outlet structure must be maintained permanently as a condition of making releases from Lake San Cristobal.

(c) CWCB staff and Colorado Division of Parks and Wildlife staff shall have access to the outlet structure and the Reservoir at all times for the purpose of inspecting the structure and, if necessary, to perform biological lake monitoring; provided, however, that the Enterprise shall receive written notice of the date and time of any such inspection or testing at least fourteen days prior to the date of

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inspection or testing and shall be provided with the results of the testing and a copy of any report prepared as a result of such inspection or testing.

(d) If the Enterprise ceases to utilize the outlet structure when hydrologic conditions permit to improve maintenance of a constant lake surface level at the decreed natural lake level of 8,995 feet, or ceases in dry years to release water from the impoundment that supplements CWCB instream flow water rights in the Lake Fork of the Gunnison River downstream from Lake San Cristobal, all in accordance with this Decree, the CWCB will no longer accept the injury to the NLL Right. In such case, if the CWCB places a call for the natural lake level water right, the CWCB will notify the Division Engineer this provision of this Decree is now in effect and that the CWCB is not accepting the injury.

(e) All water released from Lake San Cristobal for the benefit of the CWCB pursuant to the injury with mitigation agreement described in paragraph 34 shall be available for diversion, for power generation only, by the Crooke's Falls Flume hydroelectric facility located on the Lake Fork of the Gunnison River in Hinsdale County, Colorado; provided, however, that at those specific times when: (1) such releases are necessary and are being made to satisfy the CWCB's instream flow decreed in Case No. 80CW097, and (2) such instream flow right is lawfully calling for water, and (3) the District and Enterprise are in compliance with their stipulation with Daniel L. Plies in this case, then the Crooke's Falls Flume may divert the amount of such releases that is needed to satisfy such instream flow right only if the location of the facility's discharge of hydropower return flows to the Lake Fork has not been moved downstream from its location on the date of this Decree.

(f) This court shall retain jurisdiction indefinitely to enforce the terms of the settlement with the CWCB as a water matter.

36. The injury with mitigation agreement incorporated in this Decree shall not otherwise interfere with the regular administration of the NLL Right, or the water rights decreed herein, in priority consistent with Colorado water law. The water rights decreed herein shall be administered in priority against all other water rights. The injury with mitigation settlement incorporated in this Decree shall not result in the CWCB subordinating the NLL Right to any other water rights that are junior to that water right. The CWCB is allowing the District and the Enterprise to cause impact to the NLL Right as specified in this Decree only because the proposed mitigation will enable the CWCB to continue to preserve the natural environment to a reasonable degree.

Augmentation Certificates

37. Water users with wells or other structures located in the Lake Fork of the Gunnison River basin, or the Gunnison River basin upstream from Blue Mesa Reservoir, who

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wish to be included in the District's plan for augmentation may purchase one or more of the following Augmentation Certificates.

(a) Class A Augmentation Certificate. This certificate entitles the owner to the release from Lake San Cristobal of 0.05 acre-feet of water (one Base Unit) per year when such releases are ordered by the Division Engineer to protect vested water rights or decreed conditional water rights from injury. A Class A Augmentation Certificate will provide sufficient replacement water, including transit loss at least as far as Blue Mesa Reservoir, to augment the annual depletions from in-house use only for a single dwelling unit that utilizes a non-evaporative sewage disposal system.

(b) Class B Augmentation Certificate. This certificate entitles the owner to the release from Lake San Cristobal of sufficient water to replace depletions from diversions for domestic, municipal and industrial uses, pond evaporation, lawn irrigation and livestock watering when such releases are ordered by the Division Engineer to protect vested water rights or decreed conditional water rights from injury. The required amount of replacement water shall be determined by the Division Engineer, in increments of 0.05 acre-feet of water (Base Units) per year, on a case-by-case basis. Diversions for drinking and sanitary uses other than in single dwelling units are to be estimated based on the table attached as *APPENDIX A*. Consumptive use of such diversions is ten percent for individual non-evaporative sewage disposal systems and five percent for central wastewater treatment systems that discharge effluent within the drainage of diversion. Pond evaporation is to be determined using the table attached as Table 1. The amount of consumptive use from lawn irrigation shall be determined using the tables attached as Tables 2 and 3. Consumptive use by livestock is eleven gallons per animal per day.

38. Water users with wells or other structures located in the Lake Fork of the Gunnison River basin, or the Gunnison River basin upstream from Blue Mesa Reservoir, who wish to acquire replacement water for use in a plan for augmentation other than the District's plan may apply for purchase of a Class C Augmentation Certificate. Said purchase shall be subject to review and approval by the Enterprise Board of Directors. This certificate will entitle the owner to the release from Lake San Cristobal of 0.05 acre-feet of water per Base Unit purchased per year when such releases are ordered by the Division Engineer to protect vested water rights or decreed conditional water rights from injury.

39. The terms and conditions which apply to the ownership and use of the Augmentation Certificates are set out in an *Agreement For Purchase of Augmentation Certificate Providing for Water Service From Lake San Cristobal* which must be entered into between the purchaser of an Augmentation Certificate and the Enterprise, and which may be amended by the Enterprise in its discretion. The Enterprise will maintain records of Augmentation Certificates issued in sufficient detail to enable the Division Engineer to determine the total annual augmentation requirements for all structures participating in this plan for augmentation. The Enterprise will provide annual reports of changes to the Division Engineer.

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40. The Water Commissioner will require the Enterprise to make releases from Lake San Cristobal pursuant to this Decree for all structures participating in the District's plan for augmentation when such releases are necessary to protect vested water rights or decreed conditional water rights from injury by out-of-priority depletions by participating structures.

TERMS AND CONDITIONS TO PREVENT INJURY

41. The following terms and conditions will prevent injury to vested water rights and decreed conditional water rights and are applicable to approval of the plan for augmentation sought in this case:

- (a) Transit losses are assessed on releases in accordance with paragraph 29;
- (b) An accounting of reservoir operation is maintained by the Enterprise;
- (c) The augmentation requirements of each structure served by the plan decreed herein are calculated in accordance with the provisions of paragraphs 21 through 26.
- (d) The Enterprise operates and maintains measuring devices that record storage and releases from Lake San Cristobal under the storage rights and the plan for augmentation decreed herein;
- (e) The exchanges described in paragraph 7(c) shall be operated only at such times as there are flows in the respective reaches of the exchange sufficient to satisfy all decreed priorities (including exchanges) within the exchange reach which are senior to the structures served by the plan decreed herein seeking to divert out-of-priority. Further, the exchange will be operated only at such times when there is a live flow of water in the stream within the exchange reach.
- (f) The Enterprise shall not include in this plan for augmentation any structures on the listed tributaries upstream of the point of diversion of the local calling rights identified in paragraph 7(c)iii.
- (g) Prior to issuance of an Augmentation Certificate where the applicant therefor proposes to augment by exchange, the applicant for the Augmentation Certificate shall provide the Division Engineer with sufficient details about the proposed exchange to enable the Division of Water Resources to determine whether an exchange can be made without impairing the availability of water lawfully divertible by others pursuant to § 37-80-120(4) C.R.S. (2010) or impairing decreed instream flow water rights. Paragraph 42 below describes additional requirements for applications for structures located within or upstream of a senior decreed CWCB instream flow water right. At the time of submission to the Division Engineer, the

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applicant shall provide notice of the application for an Augmentation Certificate by publication in the Water Resume for Water Division No. 4. Such notice shall state that any affected person may provide written comments regarding the application to the Division Engineer within thirty days after the date of publication. The Division of Water Resources shall not conclude its evaluation until after the expiration of thirty days from the date of publication of the resume.

(h) In accordance with the Stipulation between the District, the Enterprise, and Daniel L. Plies on file with this Court, the Enterprise shall not issue augmentation certificates that total more than 475 acre-feet during the first 40 years following the entry of this decree. The Enterprise shall have the right after such 40-year period to submit evidence to this Court, and to the owner of Crooke's Falls Flume hydroelectric facilities, that the Enterprise has a reasonable non-speculative need to issue augmentation certificates for more than 475 acre- feet, and upon establishing such need, augmentation certificates may be increased up to such demonstrated additional need, but not to exceed a total of 700 acre feet.

(i) All water released from storage in Lake San Cristobal by the District or Enterprise will be available for diversion, for power generation only, by the Crooke's Falls Flume hydroelectric facility located on the Lake Fork of the Gunnison River in Hinsdale County, Colorado; provided, however, that at those specific times when: (1) such releases are necessary and are being made to replace out of priority depletions by the holders of Lake San Cristobal augmentation certificates who are junior to the CWCB's instream flow decreed in Case No. 80CW097 and upstream of Crooke's Falls Flume, and (2) such instream flow right is lawfully calling for water, and (3) the District and Enterprise are in compliance with their stipulation with Daniel L. Plies in this case, then the Crooke's Falls Flume may divert the amount of such releases that is needed to satisfy such instream flow right only if the location of the facility's discharge of hydropower return flows to the Lake Fork has not been moved downstream from its location on the date of this Decree.

(j) At times that the Crooke's Falls Flume hydroelectric facility is in operation, releases of water from Lake San Cristobal stored pursuant to the storage right decreed in this case will be aggregated and made during the morning and evening peak power rate hours, as specified by Plies, or the then owner of the hydroelectric facility on an annual basis, unless such manner of operation is prohibited by Water Court decree or the State or Division Engineers. Plies will provide the Enterprise with written notice when operations at the hydroelectric facility begin and end each year, and at times during the year that operations are expected to cease for more than thirty consecutive days.

(k) With respect to the period of retained jurisdiction on the question of injury to the vested water rights of others required by § 37-92-304(6), C.R.S. (2010), the

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court finds that a period from the date of entry of this Decree to seven years following an out-of-priority diversion by the last participating structure is sufficient. Upon inclusion of the last participating structure in the plan, notice of that action will be provided by the Enterprise to the Court, the Division Engineer and the Opposers.

42. After the date of this Decree, the Enterprise shall not include in this plan for augmentation any structure which the owner proposes to augment by exchange that is located within or upstream of the reach of a senior decreed CWCB instream flow water right without completing the following procedure:

(a) The Enterprise shall prepare an analysis of the historical flows in said reach to determine if flows in excess of the decreed instream flow water right have consistently occurred in amounts sufficient to permit the exchange approved in this Decree to operate in said reach. The analysis shall utilize, without limitation, stream gauge data from a gauge within said instream flow reach, or a statistical analysis of stream gauge data from the nearest appropriate gauge or gauges, for the driest year of record for the Upper Gunnison Basin. Upon approval of the analysis by the CWCB pursuant to paragraph 42(c) or 42(d), structures served by the plan decreed herein shall be permitted to deplete the flows of said instream flow reach to the extent of the flows in excess of the decreed instream flow water right for said reach.

(b) If future hydrologic conditions result in lower flows at the selected gauge than were recorded in the year of record utilized in the Enterprise's analysis, the CWCB may require the Enterprise to prepare an updated analysis before accepting additional structures in this plan for augmentation which the owners propose to augment by exchange and are located within or upstream of the reach of a CWCB instream flow water right.

(c) When the Enterprise has completed the analysis pursuant to paragraph 42(a), the Enterprise shall deliver a copy of the analysis to the Stream and Lake Protection Section of the CWCB by electronic mail and by U. S. Mail at the following address: 1313 Sherman Street, Room 721, Denver, CO 80203, or to such other address designated by the CWCB by written notice to the Enterprise. The CWCB shall have sixty days from the date of the electronic mailing to review and approve the analysis. If no objection is delivered by the CWCB to the Enterprise within that period, the analysis shall be deemed accepted and the procedure in paragraph 42(a) shall be deemed completed; however, paragraph 42(b) shall remain in effect.

(d) If the CWCB disagrees with the Enterprise's analysis, it shall state specific reasons for such disagreement, which may not include disapproval of the methodology or procedure described in paragraph 42(a) above. In the event of disagreement by the CWCB, the Enterprise may apply to the water court for a hearing to determine that the Enterprise's analysis demonstrates that flows in excess of the

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decreed instream flow water right have consistently occurred in amounts sufficient to permit the exchange approved in this Decree to operate in said reach, utilizing data from the driest year of record on the date of the analysis. If the court deems the CWCB rejection to be consistent with the terms of this Decree, the Enterprise shall have the burden of proof to establish the determination required by this paragraph 42(d). Because this determination constitutes reconsideration of the question of injury to the vested rights of others, the court shall retain jurisdiction over this plan for augmentation for the purpose of making the determination required in this paragraph 42(d) indefinitely.

(e) This paragraph 42 shall not apply to Participating Structures for which Third-Party Agreements for contract water in Blue Mesa Reservoir were signed prior to the date of this Decree.

(f) Once a structure has been included in this plan for augmentation in accordance with the procedure described in this paragraph 42, it may not be subsequently excluded from the plan as a result of updated analyses by the Enterprise or changes in hydrologic conditions.

(g) Actual valid gauge data shall take precedent over that obtained by statistical analysis.

CONCLUSIONS OF LAW

43. The applicant is a water conservancy district established pursuant to the Water Conservancy Act, § 37-45-101 *et seq.*, C.R.S. (2010) and is entitled to make appropriations of water to benefit citizens within the Upper Gunnison River Water Conservancy District boundaries. On the facts herein, the District and the Enterprise are entitled to the governmental agency exception to the anti-speculation doctrine articulated in *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1 (Colo. 1996).

44. Operation of the plan for augmentation decreed herein, and the sale of Augmentation Certificates as described in paragraph 13 by the Lake San Cristobal Water Activity Enterprise is authorized by § 37-45.1-101, *et seq.*, C.R.S. (2010).

45. Timely and adequate notice of the pendency of this proceeding *in rem* was given in the manner required by law. This Court has jurisdiction over the subject matter of this proceeding and over all who have standing to appear as parties, whether they have appeared or not.

46. Subject to the limitations of paragraph 41(h) above, the District has demonstrated the intent to appropriate 950 acre-feet of storage with an appropriation date of April 28, 2003, and a second filling of 950 acre-feet with an appropriation date of December 10, 2008, for domestic, municipal, commercial, industrial to include mining, milling and reclamation,

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irrigation, recreation, and fishery and wildlife habitat within the Upper Gunnison River Water Conservancy District directly or by augmentation or exchange, and which may be released to augment out-of-priority depletions pursuant to the plan for augmentation decreed herein, and manifested that intent by an act sufficient to provide notice to third parties. The District has also demonstrated that it can and will store said water and put it to beneficial use within a reasonable time. § 37-92-305(9)(b), C.R.S. (2010). Consequently, the District is entitled to a conditional storage right for 950 acre-feet with an appropriation date of April 28, 2003 and a second filling of 950 acre-feet (conditional) with an appropriation date of December 10, 2008.

47. The settlement between the District and the CWCB described in paragraphs 31-35 and paragraph 42 was entered into by way of compromise and settlement of this litigation and any agreement by the CWCB not to oppose entry of this Decree shall not be construed as concurrence with any specific finding of fact or conclusion of law contained therein or with the specific engineering methodologies or administrative practices utilized by the District or the Enterprise other than for purposes of settlement of this matter. Nothing contained in this Decree shall be binding upon the CWCB other than in the current proceeding.

48. The CWCB's finding that, because of the proposed mitigation to the NLL Right, the CWCB can continue to preserve the natural environment to a reasonable degree despite the impacts caused by the water storage rights and plan for augmentation decreed herein is entitled to deference by this Court. The CWCB may exercise discretion in determining when and how to apply the IWM Rule because the CWCB has the unique statutory authority to "enter into stipulations for decrees or other forms of contractual agreements, including enforcement agreements, that it determines will preserve the natural environment to a reasonable degree" pursuant to § 37-92-102(4)(a), C.R.S. (2010). The IWM Rule allows the CWCB to meet its statutory responsibility to correlate the activities of mankind with some reasonable preservation of the natural environment by allowing necessary, reasonable water development when no other reasonable water supply alternatives can be implemented and only when the CWCB determines that the mitigation offsetting such injury enables the CWCB to continue to preserve the natural environment to a reasonable degree. The stipulations contained in this Decree incorporating injury with mitigation are an appropriate exercise of the CWCB's statutory authority and are consistent with the IWM Rule and the CWCB's responsibility to correlate the activities of mankind with some reasonable preservation of the natural environment.

RULING

IT IS HEREBY RULED AND ORDERED:

49. The foregoing Findings of Fact and Conclusions of Law are incorporated into and form a part of this Decree, as if fully set forth herein at this point.

50. The facts alleged in the amended application are true.

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51. The Application for a conditional water storage right in LAKE SAN CRISTOBAL RESERVOIR for 950 acre-feet with an appropriation date of April 23, 2003 to be used for domestic, municipal, commercial, industrial to include mining, milling and reclamation, irrigation, recreation, and fishery and wildlife habitat, and be released to augment out-of-priority depletions by such uses (including pond evaporation and livestock watering) is GRANTED, subject to the limitations of paragraph 41(h) above. Pursuant to § 37-92-306, C.R.S. (2010), the priority date decreed herein for said 950 acre-feet shall be April 23, 2003 and shall establish its relative priority among water rights awarded for applications filed in 2003.

52. The Application for a conditional water storage right in LAKE SAN CRISTOBAL RESERVOIR for a second filling in the amount of 950 acre-feet with an appropriation date of December 10, 2008 to be used for domestic, municipal, commercial, industrial to include mining, milling and reclamation, irrigation, recreation, and fishery and wildlife habitat, and be released to augment out-of-priority depletions by such uses (including pond evaporation and livestock watering) is GRANTED, subject to the limitations of paragraph 41(h) above. Pursuant to § 37-92-306, C.R.S. (2010), the priority date decreed herein for said 950 acre-feet shall be December 10, 2008 and shall establish its relative priority among water rights awarded for applications filed in 2008.

53. The Application for approval of the plan for augmentation described in this Decree is GRANTED subject to the terms and conditions stated in this Decree.

54. The exchanges described in paragraph 7(c) are hereby APPROVED, and conditionally decreed for proposed future exchange. The maximum rate of exchange shall be as determined by the Division Engineer when releases are needed to meet a senior call recognized and lawfully administered by the Division Engineer. Pursuant to § 37-92-305(10), C.R.S. (2010), the priority date decreed herein for the appropriative right of exchange shall be December 10, 2008.

55. The exchanges decreed in this case shall not be operated or administered so as to injure senior water rights, regardless of whether those senior water rights are upstream or downstream of the Local Calling Rights described in paragraph 7(c)iii.

56. No owners of or persons entitled to use water under a vested water right or decreed conditional water right will be injured or injuriously affected by the operation of the plan for augmentation decreed herein, including the appropriative right of exchange, so long as the terms and conditions of this Decree are administered as set forth herein. Pursuant to § 37-92-305(8), C.R.S. (2010), the Division Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

57. The Enterprise shall install measuring devices for Lake San Cristobal Reservoir as required by the Division Engineer for the operation of the plan for augmentation decreed herein or for administering the terms of the District's settlement with the CWCBC. Owners of Augmentation Certificates shall install totalizing flow meters on augmented wells and such other

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type of measuring device for surface diversions and ponds as may be ordered by the Division Engineer.

58. In the event the CWCB directs a release of all or any part of the 200 acre-feet of water described in paragraph 34(c), the Division Engineer shall shepherd such releases to Blue Mesa Reservoir, provided, however, that all of such releases shall be available for diversion, for power generation only, by the Crooke's Falls Flume hydroelectric facility located on the Lake Fork of the Gunnison River in Hinsdale County, Colorado; provided, however, that at those specific times when: (1) such releases are necessary and are being made to satisfy the CWCB's instream flow decreed in Case No. 80CW097, and (2) such instream flow right is lawfully calling for water, and (3) the District and Enterprise are in compliance with their stipulation with Daniel L. Plies in this case, then the Crooke's Falls Flume may divert the amount of such releases that is needed to satisfy such instream flow right only if the location of the facility's discharge of hydropower return flows to the Lake Fork has not been moved downstream from its location on the date of this Decree.

59. The Enterprise shall file an annual report with the Division Engineer by December 15th of each year itemizing diversions and replacements made under this plan.

60. Prior to or during the month of December, 2017, and every six years thereafter until the conditional water right decreed herein is decreed absolutely, the District, if it desires to maintain the same, shall file an application for finding of reasonable diligence with this Court.

61. The District shall notify this Court of any change in mailing address. Upon the sale or other transfer of the conditional water right decreed herein, the transferee shall file with this Court a notice of transfer which shall state:

- (a) The title and case number of this case;
- (b) The description of the water right transferred;
- (c) The name of the transferor;
- (d) The name and mailing address of the transferee.

62. This Decree shall be filed with the water clerk and a copy shall be filed with the State Engineer and Division Engineer, Water Division No. 4.

63. Pursuant to § 37-92-304(6), C.R.S. (2010), and subject to the provisions of paragraphs 35(f) and 42(d), this court retains jurisdiction over this Decree, including the Tables attached, for reconsideration of the question of injury to the vested rights of others for a period from the date of entry of this Decree to seven years following an out-of-priority diversion by the last participating structure. Upon inclusion of the last participating structure in the plan, notice of

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that action will be provided by the Enterprise to the Court, the Division Engineer and the Opposers.

64. In accordance with the terms of the settlement between the District and the CWCB, this court will retain jurisdiction to enforce the terms and conditions set out in paragraph 35 as a water matter.

65. Administration of the storage rights decreed herein shall be coordinated with administration of the NLL right; accordingly, the Division Engineer shall administer the NLL Right and the water storage rights decreed herein in accordance with the Contract entered into effective on November 23, 2011 between the Enterprise, the CWCB and the Colorado Division of Water Resources, a copy of which is attached to this Decree as *EXHIBIT C*.

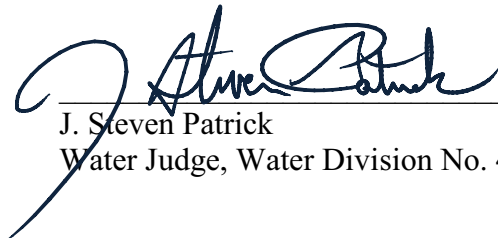
66. In the event that the transfer from the District to the Enterprise contemplated in paragraph 13 has not occurred, the rights and obligations of the Enterprise under the terms of this Decree shall be binding on the District.

67. In accordance with the terms of the Stipulation between the District and the BLM filed with this Court, the District shall submit applications to the BLM for right-of-way grants to construct and operate the outlet structure decreed herein within 12 years of the date of this Decree, or affirmatively relinquish and abandon the conditional water rights decreed in this case.

68. The terms of the Stipulation between the District and the CWCB filed with this Court are incorporated in this Decree by this reference.

69. The terms of the Stipulation between the District, the Enterprise and Daniel L. Plies filed with this Court are incorporated in this Decree by this reference.

Dated this 5th day of Dec., 2011.



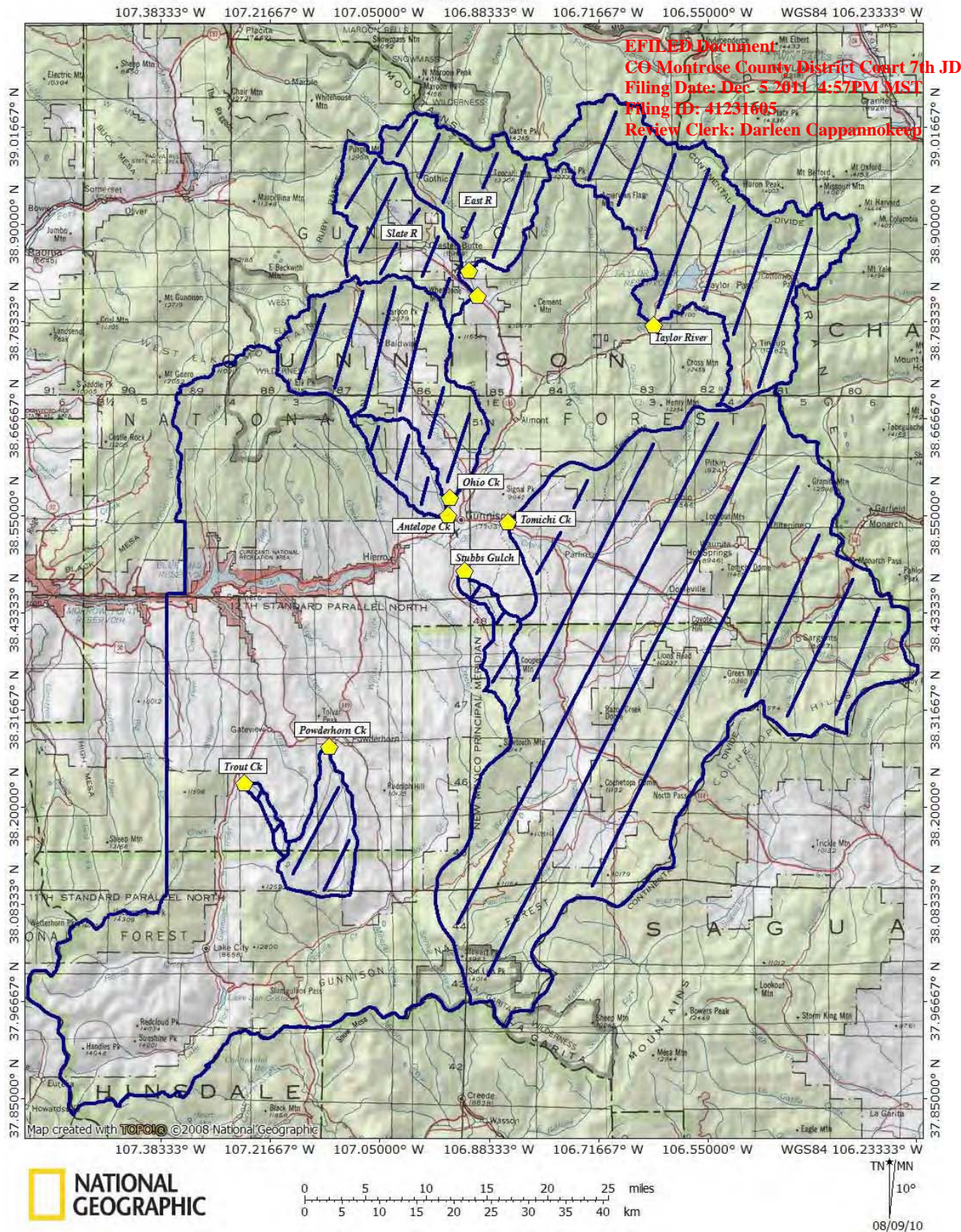
J. Steven Patrick
Water Judge, Water Division No. 4

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LSC Local Calls



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LEGAL DESCRIPTIONS

POINTS OF DIVERSION FOR LOCAL CALLING RIGHTS

Biebel Ditches Nos. 1 & 2: WD 28;

Biebel Ditches Nos. 1 & 2 is located within the NE/4 NW/4 SW/4 of Section 3, Township 49 North, Range 1 East, N.M.P.M., at a point 2122 feet north of the south section line and 1088 feet east of the west section line.

Graham Ditch: WD 28;

Graham Ditch is located within the SE/4 SW/4 NW/4 of Section 24, Township 49 North, Range 1 West, N.M.P.M., at a point 2317 feet south of the north section line and 935 feet east of the west section line.

Schecker Ditch: WD 62;

Schecker Ditch is located within the NE/4 SW/4 NW/4 of Section 5, Township 46 North, Range 2 West, N.M.P.M., at a point 1700 feet south of the north section line and 1150 feet east of the west section line.

Johnson Ditch: WD 62;

Johnson Ditch is located within the SE/4 NE/4NW/4 of Section 19, Township 46 North, Range 3 West, N.M.P.M., at a point 706 feet south of the north section line and 2905 feet west of the east section line.

East River No. 2 Ditch: WD 59;

East River No.2 Ditch is located within the SW/4 SW/4 NE/4 of Section 17, Township 14 South, Range 85 West, 6th P.M., at a point 2076 feet south of the north section line and 2020 feet west of the east section line.

Hamor Ditch: WD 59;

Hamor Ditch is located within the SW/4 SW/4 NE/4 of Section 27, Township 50 North, Range 1 West, N.M.P.M., at a point 1044 feet north of the south section line and 1981 feet west of the east section line.

Taylor River Instream Flow Right (W-1991): WD59

The downstream terminus of the Taylor River Instream Flow Right is located at the confluence of Lottis Creek within the NE/4 SW/4 NE/4 of Section 2, Township 15 South, Range 83 West, 6th P.M., at a point 1940 feet south of the north section line and 1920 feet west of the east section line.

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CONTRACT

November 23

This contract is entered into effective ~~October 31~~, 2011 between the Lake San Cristobal Water Activity Enterprise, an enterprise established pursuant to § 37-45.1-101, *et seq.*, Colorado Revised Statutes, by Hinsdale County (Enterprise) the Colorado Water Conservation Board (CWCB) and the Colorado Division of Water Resources..

RECITALS

Pursuant to Rule 8 of the *Rules Concerning the Colorado Instream Flow and Natural Lake Level Program*, at a regular meeting of the CWCB on July 21, 2010, the Board gave final approval to the Enterprise's proposal, related to Case No. 03CW108 in Water Division 4 (03CW108), for injury with mitigation to the natural lake level water right decreed to Lake San Cristobal in Case No. W-3366, Water Division 4 (NLL Right). The mitigation contemplates a coordinated operation of the NLL Right and the storage rights decreed in 03CW108 (described below).

As a condition of the CWCB approval, the Enterprise agreed to dedicate 200 acre-feet of water stored in priority in Lake San Cristobal under the storage rights decreed in Case No. 03CW108 for use as directed by the CWCB, in its discretion, for any purpose that serves to preserve or improve the natural environment to a reasonable degree, including recreation, fishery and wildlife habitat uses, subject to certain conditions stated in the decree in said case.

In 03CW108, the Upper Gunnison River Water Conservancy District, on behalf of the Enterprise, obtained a decree for a conditional water storage right for 950 acre-feet with an appropriation date of April 28, 3, to store in priority flows of the Lake Fork of the Gunnison River in Lake San Cristobal after construction of an outlet structure by the Enterprise, a conditional water storage right for 950 acre-feet with an appropriation date of December 10, 8 to store in priority flows of the Lake Fork of the Gunnison River for a second filling of Lake San Cristobal, and for approval of a plan for augmentation utilizing releases of water stored in Lake San Cristobal.

The purpose of this contract is to provide an agreement enforceable by CWCB regarding dedication of 200 acre-feet stored in Lake San Cristobal and to provide the Division Engineer with a mutually agreeable method for administration of storage in Lake San Cristobal.

AGREEMENT

1. The Enterprise hereby dedicates 200 acre-feet of water stored in priority in Lake San Cristobal under the storage rights decreed in Case No. 03CW108 for use as directed by the CWCB, in its discretion, to preserve the natural environment to a reasonable degree under its

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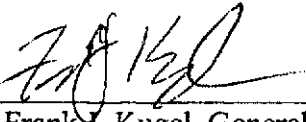
water rights decreed in Case Nos. 80CW097 and 80CW119. The provisions of this paragraph shall be enforceable by the CWCB as a water matter in the Water Court, Water Division 4.

2. Solely for the purpose of facilitating administration of water stored in Lake San Cristobal, and to allow coordinated operation of the NLL Right and the 03CW108 storage rights held by the Enterprise and the CWCB, respectively, the parties agree that water stored in priority in Lake San Cristobal by operation of the Enterprise's outlet structure from lake level elevation 8,992 to 8,995 feet above sea level, not to exceed 950 acre-feet stored in priority under the first fill right and 950 acre-feet stored in priority under the refill right decreed in 03CW108, shall be charged against those water storage rights. When storage commences under the 03CW108 priority, the NLL Right will be deemed for administration purposes to be fully satisfied for that water year for elevations exceeding 8,992 feet above sea level. The agreement set out in this paragraph is intended only as an accounting procedure for water stored in Lake San Cristobal, and because of the coordinated operation of the NLL Right and 03CW108 rights, it will not diminish the NLL Right or affect its priority.

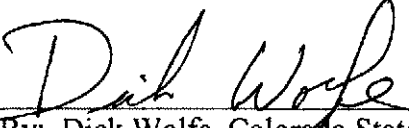
3. This Contract shall not otherwise interfere with the regular administration of the NLL Right, or the water rights decreed in 03CW108, in priority consistent with Colorado water law. The water rights decreed in 03CW108 shall be administered in priority against all other water rights. The injury with mitigation settlement incorporated in the 03CW108 Decree shall not result in the CWCB subordinating the NLL right to any other water rights that are junior to that water right. The CWCB is allowing the District and the Enterprise to cause impact to the NLL Right as specified in the 03CW108 Decree only because the proposed mitigation will enable the CWCB to continue to preserve the natural environment to a reasonable degree.

4. This contract was entered into by way of compromise and as part of the settlement of 03CW108 reached between the Enterprise and the CWCB shall not be construed as a precedent regarding administration of any other water storage right or natural lake level water right.

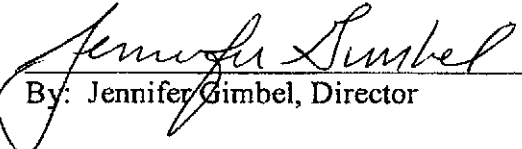
Lake San Cristobal Water Activity Enterprise


By: Frank J. Kugel, General Manager

Colorado Division of Water Resources


By: Dick Wolfe, Colorado State Engineer

Colorado Water Conservation Board


By: Jennifer Gimbel, Director

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Table 1
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

Notes:

- 1) Values shown for the 6,600 to 6,799 elevation range are the rates from Table 2 for a small reservoir located near Crystal Reservoir which is located at an approximate elevation of 6,760 feet
- 2) Values shown for the 7,400 to 7,599 elevation range are the rates from Table 2 for a small reservoir located near Blue Mesa Reservoir which is located at an approximate elevation of 7,500 feet
- 3) Values shown for the greater than 9,000 feet elevation range are the rates from Table 2 for a small reservoir located near Taylor Park Reservoir which is located at an approximate elevation of 9,330 feet
- 4) Values for intermediate elevation ranges determined by linear interpolation.
- 5) The on-stream criteria for ponds can only be used for Mine Land Reclamation Division permitted gravel pits and ponds on a year-around live stream.

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Table 2

Lagged Streamflow Effects from Outdoor Water Use for Lawn Irrigation

(includes the alluvium of the mainstems of the Gunnison River & Tomichi Creek, and all area north of these)

(original July 14, 2003 SEO table modified by the UGRWCD to correct minor rounding errors)

Elevation Range		Distance from the Stream	Lagged Stream Depletions from Irrigation of Blue Grass (ac-ft/ac)												Total
Lower	Upper		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
6,600	6,799	Less than 100	0.00	0.00	0.00	0.00	0.39	0.48	0.48	0.39	0.32	0.00	0.00	0.00	2.06
		100 to 499	0.00	0.00	0.00	0.00	0.39	0.48	0.47	0.39	0.33	0.00	0.00	0.00	2.06
		500 to 999	0.01	0.01	0.01	0.00	0.30	0.42	0.45	0.39	0.34	0.08	0.03	0.02	2.06
		Greater than 1,000	0.04	0.03	0.02	0.01	0.18	0.33	0.38	0.37	0.35	0.18	0.10	0.07	2.06
6,800	6,999	Less than 100	0.00	0.00	0.00	0.00	0.37	0.47	0.46	0.38	0.31	0.00	0.00	0.00	1.99
		100 to 499	0.00	0.00	0.00	0.00	0.38	0.46	0.45	0.38	0.32	0.00	0.00	0.00	1.99
		500 to 999	0.01	0.01	0.01	0.00	0.29	0.41	0.42	0.38	0.33	0.08	0.03	0.02	1.99
		Greater than 1,000	0.04	0.03	0.02	0.01	0.17	0.32	0.36	0.36	0.34	0.17	0.10	0.07	1.99
7,000	7,199	Less than 100	0.00	0.00	0.00	0.00	0.36	0.45	0.44	0.37	0.31	0.00	0.00	0.00	1.93
		100 to 499	0.00	0.00	0.00	0.00	0.37	0.45	0.43	0.37	0.31	0.00	0.00	0.00	1.93
		500 to 999	0.01	0.01	0.01	0.00	0.28	0.39	0.42	0.37	0.32	0.07	0.03	0.02	1.93
		Greater than 1,000	0.04	0.03	0.02	0.01	0.17	0.31	0.34	0.35	0.33	0.17	0.09	0.07	1.93
7,200	7,399	Less than 100	0.00	0.00	0.00	0.00	0.34	0.44	0.44	0.35	0.29	0.00	0.00	0.00	1.86
		100 to 499	0.00	0.00	0.00	0.00	0.35	0.43	0.43	0.35	0.30	0.00	0.00	0.00	1.86
		500 to 999	0.01	0.01	0.01	0.00	0.27	0.38	0.40	0.35	0.31	0.07	0.03	0.02	1.86
		Greater than 1,000	0.04	0.03	0.02	0.01	0.16	0.30	0.34	0.33	0.32	0.16	0.09	0.06	1.86
7,400	7,599	Less than 100	0.00	0.00	0.00	0.00	0.32	0.43	0.42	0.35	0.28	0.00	0.00	0.00	1.80
		100 to 499	0.00	0.00	0.00	0.00	0.34	0.42	0.41	0.34	0.29	0.00	0.00	0.00	1.80
		500 to 999	0.01	0.01	0.01	0.00	0.26	0.37	0.38	0.34	0.30	0.07	0.03	0.02	1.80
		Greater than 1,000	0.03	0.03	0.02	0.01	0.16	0.29	0.32	0.32	0.31	0.16	0.09	0.06	1.80
7,600	7,799	Less than 100	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
		100 to 499	0.00	0.00	0.00	0.00	0.33	0.40	0.38	0.33	0.28	0.00	0.00	0.00	1.72
		500 to 999	0.01	0.01	0.01	0.00	0.25	0.35	0.36	0.33	0.28	0.07	0.03	0.02	1.72
		Greater than 1,000	0.03	0.03	0.02	0.01	0.15	0.28	0.31	0.31	0.29	0.15	0.08	0.06	1.72
7,800	7,999	Less than 100	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
		100 to 499	0.00	0.00	0.00	0.00	0.32	0.39	0.37	0.32	0.27	0.00	0.00	0.00	1.67
		500 to 999	0.01	0.01	0.01	0.00	0.24	0.34	0.36	0.32	0.28	0.06	0.02	0.02	1.67
		Greater than 1,000	0.03	0.02	0.02	0.01	0.15	0.27	0.30	0.30	0.28	0.15	0.08	0.06	1.67
8,000	8,199	Less than 100	0.00	0.00	0.00	0.00	0.28	0.39	0.37	0.31	0.25	0.00	0.00	0.00	1.60
		100 to 499	0.00	0.00	0.00	0.00	0.30	0.37	0.37	0.30	0.26	0.00	0.00	0.00	1.60
		500 to 999	0.01	0.01	0.01	0.00	0.23	0.33	0.35	0.30	0.26	0.06	0.02	0.02	1.60
		Greater than 1,000	0.03	0.02	0.02	0.01	0.14	0.26	0.29	0.29	0.27	0.14	0.08	0.05	1.60
8,200	8,399	Less than 100	0.00	0.00	0.00	0.00	0.27	0.37	0.36	0.30	0.24	0.00	0.00	0.00	1.54
		100 to 499	0.00	0.00	0.00	0.00	0.29	0.36	0.35	0.29	0.25	0.00	0.00	0.00	1.54
		500 to 999	0.01	0.01	0.01	0.00	0.22	0.31	0.35	0.29	0.25	0.06	0.02	0.01	1.54
		Greater than 1,000	0.03	0.02	0.01	0.01	0.13	0.25	0.30	0.28	0.26	0.13	0.07	0.05	1.54
8,400	8,599	Less than 100	0.00	0.00	0.00	0.00	0.25	0.36	0.35	0.28	0.23	0.00	0.00	0.00	1.47
		100 to 499	0.00	0.00	0.00	0.00	0.28	0.34	0.33	0.28	0.24	0.00	0.00	0.00	1.47
		500 to 999	0.01	0.01	0.01	0.00	0.21	0.30	0.32	0.28	0.24	0.06	0.02	0.01	1.47
		Greater than 1,000	0.03	0.02	0.01	0.01	0.13	0.24	0.27	0.26	0.25	0.13	0.07	0.05	1.47
8,600	8,799	Less than 100	0.00	0.00	0.00	0.00	0.24	0.35	0.33	0.27	0.22	0.00	0.00	0.00	1.41
		100 to 499	0.00	0.00	0.00	0.00	0.27	0.33	0.31	0.27	0.23	0.00	0.00	0.00	1.41
		500 to 999	0.01	0.01	0.01	0.00	0.21	0.29	0.30	0.27	0.23	0.05	0.02	0.01	1.41
		Greater than 1,000	0.03	0.02	0.01	0.01	0.12	0.23	0.26	0.25	0.24	0.12	0.07	0.05	1.41
8,800	8,999	Less than 100	0.00	0.00	0.00	0.00	0.22	0.33	0.31	0.26	0.21	0.00	0.00	0.00	1.33
		100 to 499	0.00	0.00	0.00	0.00	0.25	0.31	0.31	0.25	0.21	0.00	0.00	0.00	1.33
		500 to 999	0.01	0.01	0.01	0.00	0.19	0.27	0.29	0.25	0.22	0.05	0.02	0.01	1.33
		Greater than 1,000	0.03	0.02	0.01	0.01	0.12	0.21	0.23	0.24	0.23	0.12	0.06	0.05	1.33
Greater than 9,000		Less than 100	0.00	0.00	0.00	0.00	0.21	0.32	0.30	0.25	0.20	0.00	0.00	0.00	1.28
		100 to 499	0.00	0.00	0.00	0.00	0.24	0.30	0.29	0.24	0.21	0.00	0.00	0.00	1.28
		500 to 999	0.01	0.01	0.01	0.00	0.19	0.26	0.27	0.24	0.21	0.05	0.02	0.01	1.28
		Greater than 1,000	0.02	0.02	0.01	0.01	0.11	0.21	0.24	0.23	0.22	0.11	0.06	0.04	1.28

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Table 3

Lagged Streamflow Effects from Outdoor Water Use for Lawn Irrigation
(includes all areas south of the alluvium of the mainstem of the Gunnison River & Tomichi Creek)
(original July 14, 2003 SEO table modified by the UGRWCD to correct minor rounding errors)

Elevation Range			Lagged Stream Depletions from Irrigation of Blue Grass (ac-ft/ac)													
Lower	Upper	Distance from the Stream	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	
6,600	6,799	Less than 100	0.00	0.00	0.00	0.00	0.43	0.52	0.52	0.43	0.36	0.00	0.00	0.00	2.26	
		100 to 499	0.00	0.00	0.00	0.00	0.43	0.52	0.52	0.43	0.36	0.00	0.00	0.00	2.26	
		500 to 999	0.01	0.01	0.01	0.00	0.33	0.46	0.50	0.43	0.37	0.08	0.04	0.02	2.26	
		Greater than 1,000	0.05	0.04	0.02	0.01	0.20	0.36	0.42	0.40	0.38	0.20	0.11	0.07	2.26	
6,800	6,999	Less than 100	0.00	0.00	0.00	0.00	0.41	0.52	0.51	0.42	0.34	0.00	0.00	0.00	2.20	
		100 to 499	0.00	0.00	0.00	0.00	0.42	0.51	0.50	0.42	0.35	0.00	0.00	0.00	2.20	
		500 to 999	0.01	0.01	0.01	0.00	0.32	0.45	0.48	0.42	0.36	0.08	0.04	0.02	2.20	
		Greater than 1,000	0.05	0.04	0.02	0.01	0.19	0.35	0.41	0.39	0.37	0.19	0.11	0.07	2.20	
7,000	7,199	Less than 100	0.00	0.00	0.00	0.00	0.40	0.50	0.49	0.41	0.34	0.00	0.00	0.00	2.14	
		100 to 499	0.00	0.00	0.00	0.00	0.41	0.49	0.49	0.41	0.34	0.00	0.00	0.00	2.14	
		500 to 999	0.01	0.01	0.01	0.00	0.31	0.44	0.46	0.41	0.35	0.08	0.04	0.02	2.14	
		Greater than 1,000	0.05	0.04	0.02	0.01	0.19	0.34	0.39	0.38	0.36	0.19	0.10	0.07	2.14	
7,200	7,399	Less than 100	0.00	0.00	0.00	0.00	0.38	0.49	0.49	0.39	0.33	0.00	0.00	0.00	2.08	
		100 to 499	0.00	0.00	0.00	0.00	0.40	0.48	0.47	0.40	0.33	0.00	0.00	0.00	2.08	
		500 to 999	0.01	0.01	0.01	0.00	0.30	0.42	0.46	0.40	0.34	0.07	0.04	0.02	2.08	
		Greater than 1,000	0.05	0.04	0.02	0.01	0.18	0.33	0.39	0.37	0.35	0.18	0.10	0.06	2.08	
7,400	7,599	Less than 100	0.00	0.00	0.00	0.00	0.36	0.48	0.47	0.39	0.32	0.00	0.00	0.00	2.02	
		100 to 499	0.00	0.00	0.00	0.00	0.38	0.46	0.48	0.38	0.32	0.00	0.00	0.00	2.02	
		500 to 999	0.01	0.01	0.01	0.00	0.29	0.41	0.45	0.38	0.33	0.07	0.04	0.02	2.02	
		Greater than 1,000	0.04	0.04	0.02	0.01	0.18	0.32	0.37	0.36	0.34	0.18	0.10	0.06	2.02	
7,600	7,799	Less than 100	0.00	0.00	0.00	0.00	0.35	0.47	0.46	0.38	0.31	0.00	0.00	0.00	1.97	
		100 to 499	0.00	0.00	0.00	0.00	0.37	0.45	0.47	0.37	0.31	0.00	0.00	0.00	1.97	
		500 to 999	0.01	0.01	0.01	0.00	0.29	0.40	0.44	0.37	0.32	0.07	0.03	0.02	1.97	
		Greater than 1,000	0.04	0.03	0.02	0.01	0.17	0.31	0.38	0.35	0.33	0.17	0.10	0.06	1.97	
7,800	7,999	Less than 100	0.00	0.00	0.00	0.00	0.34	0.45	0.44	0.36	0.30	0.00	0.00	0.00	1.89	
		100 to 499	0.00	0.00	0.00	0.00	0.36	0.43	0.44	0.36	0.30	0.00	0.00	0.00	1.89	
		500 to 999	0.01	0.01	0.01	0.00	0.28	0.38	0.41	0.36	0.31	0.07	0.03	0.02	1.89	
		Greater than 1,000	0.04	0.03	0.02	0.01	0.17	0.30	0.35	0.33	0.32	0.17	0.09	0.06	1.89	
8,000	8,199	Less than 100	0.00	0.00	0.00	0.00	0.32	0.45	0.42	0.36	0.29	0.00	0.00	0.00	1.84	
		100 to 499	0.00	0.00	0.00	0.00	0.35	0.42	0.43	0.35	0.29	0.00	0.00	0.00	1.84	
		500 to 999	0.01	0.01	0.01	0.00	0.27	0.37	0.40	0.35	0.30	0.07	0.03	0.02	1.84	
		Greater than 1,000	0.04	0.03	0.02	0.01	0.16	0.29	0.34	0.33	0.31	0.16	0.09	0.06	1.84	
8,200	8,399	Less than 100	0.00	0.00	0.00	0.00	0.31	0.43	0.42	0.34	0.28	0.00	0.00	0.00	1.78	
		100 to 499	0.00	0.00	0.00	0.00	0.34	0.41	0.41	0.34	0.28	0.00	0.00	0.00	1.78	
		500 to 999	0.01	0.01	0.01	0.00	0.26	0.36	0.39	0.34	0.29	0.06	0.03	0.02	1.78	
		Greater than 1,000	0.04	0.03	0.02	0.01	0.16	0.28	0.31	0.32	0.30	0.16	0.09	0.06	1.78	
8,400	8,599	Less than 100	0.00	0.00	0.00	0.00	0.30	0.42	0.40	0.33	0.27	0.00	0.00	0.00	1.72	
		100 to 499	0.00	0.00	0.00	0.00	0.33	0.40	0.39	0.33	0.27	0.00	0.00	0.00	1.72	
		500 to 999	0.01	0.01	0.01	0.00	0.25	0.35	0.37	0.33	0.28	0.06	0.03	0.02	1.72	
		Greater than 1,000	0.04	0.03	0.02	0.01	0.15	0.27	0.33	0.30	0.29	0.15	0.08	0.05	1.72	
8,600	8,799	Less than 100	0.00	0.00	0.00	0.00	0.28	0.41	0.39	0.32	0.26	0.00	0.00	0.00	1.66	
		100 to 499	0.00	0.00	0.00	0.00	0.32	0.38	0.38	0.32	0.26	0.00	0.00	0.00	1.66	
		500 to 999	0.01	0.01	0.01	0.00	0.24	0.34	0.36	0.32	0.27	0.06	0.03	0.01	1.66	
		Greater than 1,000	0.04	0.03	0.01	0.01	0.15	0.26	0.31	0.29	0.28	0.15	0.08	0.05	1.66	
8,800	8,999	Less than 100	0.00	0.00	0.00	0.00	0.27	0.39	0.37	0.31	0.26	0.00	0.00	0.00	1.60	
		100 to 499	0.00	0.00	0.00	0.00	0.30	0.37	0.38	0.30	0.25	0.00	0.00	0.00	1.60	
		500 to 999	0.01	0.01	0.01	0.00	0.23	0.33	0.35	0.30	0.26	0.06	0.03	0.01	1.60	
		Greater than 1,000	0.04	0.03	0.01	0.01	0.14	0.25	0.30	0.28	0.27	0.14	0.08	0.05	1.60	
Greater than 9,000		Less than 100	0.00	0.00	0.00	0.00	0.25	0.38	0.36	0.30	0.24	0.00	0.00	0.00	1.53	
		100 to 499	0.00	0.00	0.00	0.00	0.29	0.35	0.36	0.29	0.24	0.00	0.00	0.00	1.53	
		500 to 999	0.01	0.01	0.01	0.00	0.22	0.31	0.34	0.29	0.25	0.05	0.03	0.01	1.53	
		Greater than 1,000	0.03	0.03	0.01	0.01	0.14	0.24	0.28	0.27	0.26	0.14	0.07	0.05	1.53	

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GUIDELINES ON
INDIVIDUAL SEWAGE DISPOSAL SYSTEMS
REVISED 2000

COLORADO STATE BOARD OF HEALTH
AUTHORITY: CHAPTER 25, ARTICLE 10
Colorado Revised Statutes, 1973,
as Amended

COLORADO DEPARTMENT OF HEALTH
WATER QUALITY CONTROL DIVISION
4300 Cherry Creek Drive South
DENVER, CO 80246-1530

For Biodegradable Wastes Only

Amended Intergovernmental Agreement

ATTACHMENT A

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TABLE I

**QUANTITIES AND BOD STRENGTH OF SEWAGE
FOR VARIOUS TYPES OF USES**

TYPE OF ESTABLISHMENT	GALLONS/PERSON/DAY (AVERAGE) (UNLESS OTHERWISE STATED)	LBS. BOD5/PERSON/DAY (UNLESS OTHERWISE STATED)
Residential		
Single-family dwellings (two people per bedroom)	75	.20
Separate Distribution of Flows - Individual Residential use		
Bath/Shower	14.7	.014
Dishwasher	1.8	.002
Kitchen sink	4.4	.045
Additional for garbage grinder	1.4	.052
Laundry washer	19.5	.037
Lavatory	8.4	.021
Water closet	24.8	.029
Hotels and Motels - per room (without private baths)	50	.15
Hotels and Motels - per room (with private baths)	75	.15
Multiple-family dwellings or apartments	75	.20
Boarding and Rooming houses	50	.15
Mobile Home Parks	75	.20
(per space)	300	.80
Commercial		
Airports (per passenger)	5	.02
(per employee)	10	.06
Barber and Beauty Shops (per chair)	100	.70*
Bowling Alleys (per lane - toilet wastes only)	5	.03*
Bus Service Areas (not including food)	5	.02

Amended Intergovernmental Agreement

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Country clubs		
(per member)	30	.02
(per employee)	20	.06
Dentist offices	50	.14*
(per non-wet chair)		
Doctors offices (per doctor)	250	.80*
Fairgrounds	5	.02
(per person attending)		
Factories and plants		
(exclusive of industrial wastes)		
(per employee per 8-hour shift-no showers)	20	.05
(per employee per 8-hour shift - showers provided)	35	.08
Food service establishments		
(per seat)		
Restaurant (Open 1 or 2 meals)	50	.06/meal served
24-hour Restaurant	75	.07/meal served
Restaurant with paper service only	25	.01/meal served
Additional for bars and cocktail lounges	30	.02.
Drive-in Restaurant	50	.02
(per car space)		
Kennels (per dog)	30	.20
Laundries, self-service	400	.75
(per commercial washer)		
Office Buildings	15	.06
(per employee per 8-hour shift)		
Stores and Shopping Centers	.1	.01*
(per square foot of Retail space)		
Service Stations (per toilet fixture)	250	.50*
Stadiums, Race Tracks, Ball Parks (per seat)	5	.02
Theaters (Movie, Indoor, or Auditorium)	5	.17
Work or construction camps (semi-permanent - with flush toilets)	50	.02
Work or construction camps (semi-permanent - without flush toilets)	35	.02
Institutional (does not include kitchen wastewater flows)		
Churches (not including food)	5	.01

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Hospitals (per bed space)	250	.20
Nursing Homes (per bed space)	100	.17
Schools, Boarding	100	.17
Schools, Day	15	.04
(without cafeteria, gym or showers)		
(with cafeterias, no gym or showers)	20	.08
(with cafeterias, gym and showers)	25	.10
(additional for school workers)	15	.06
Recreational and Seasonal		
Camps, day (no meal served)	15	.12
Luxury Resort	125	.17
Resort (night and day)	50	.12
Campground (seasonal occupancy - per unit)**	50	.12
Public Park (during hours when park is open)		
- Flush Toilet (per fixture per hour)	36	.04 lbs./ fixture
- Urinal (per fixture per hour)	10	.01 lbs./fixture
- Shower (per fixture per hour)	100	.10 lbs./ fixture
- Faucet (per fixture per hour)	15	.04 lbs./ fixture
Swimming pools and bathhouses	10	.06
Travel trailer parks	50	.12
(with individual water and sewage hookup - per unit) **		
(without individual water and sewage hookup - per unit) **	50	.12

* = BOD Levels needing further verification

** = Laundry facilities are to be calculated on a per commercial washer basis in accordance with other elements of this table.



97564 05/21/2009 12:05 PM RES Linda Ragle
1 of 3 R:\$0.00 D:\$0 N:\$0 S:\$0.00 M:\$0E:\$ Hinsdale Co.

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

RESOLUTION NO. 24

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 May 20, 2009 between the County, the District, and the Town (referred to in this Resolution as the IGA).

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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.

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3 of 3 R:\$0.00 D:\$0 N:\$0 S:\$0.00 M:\$0E:\$ Hinsdale Co.

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 Stan McKinney, and seconded by Commissioner Bryan Mangum, and passed this 20th day of May, 2009.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF HINSDALE, COLORADO

Allen Brown
By: Allen Brown, Chair

ATTEST

Linda Pavich Ragle
Linda Pavich Ragle, County Clerk



97565 05/21/2009 02:11 PM EASE Linda Ragle
1 of 3 R:\$0.00 D:\$0 N:\$0 S:\$0.00 M:\$0E:\$ Hinsdale Co.

GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made and entered into on May 20, 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 May 20, 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.



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

Allen Brown
By: Allen Brown, Chair

ATTEST:

Linda Pavich Ragle
Linda Pavich Ragle, County Clerk

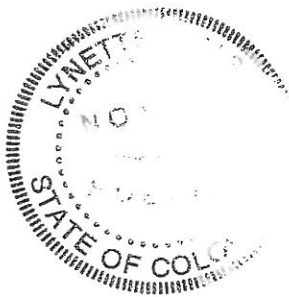
STATE OF COLORADO)
) ss.
COUNTY OF HINSDALE)

The foregoing instrument was acknowledged before me this 20 day of May, 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.

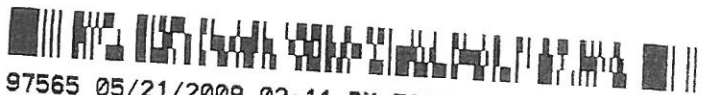
My commission expires: September 08, 2010

[SEAL]



Lynette K. Wilson
Notary Public





97565 05/21/2009 02:11 PM EASE Linda Ragle
 3 of 3 R:\$0.00 D:\$0 N:\$0 S:\$0.00 M:\$0E:\$ Hinsdale Co.



Civil, Structural & Geotechnical Engineers

222 South Park Ave. • Montrose, CO 81401
 Ph: (970) 249-6828 • FAX: (970) 249-0845

(Commitment No.1123-08/RTR)

HINSDALE COUNTY A Outlet Structure Easement - Property Description:

A tract of land within the S1/2 of Section 15, Township 43 North, Range 4 West, New Mexico Principal Meridian, Hinsdale County, Colorado; said tract being more particularly described as follows:

Commencing at the east quarter corner of said Section 15, (as witnessed by a found USGLO brass cap monument), thence South 81° 46' 23" West 2873.56 feet a point on the north boundary of the Hinsdale County property, (as recorded in Book 123 at page 529 of the records of Hinsdale County), said point also being the POINT OF BEGINNING for the herein described tract; thence the following courses around said tract:

1. North 88° 53' 07" West 164.31 feet along the north boundary of said Hinsdale County property to the northwest corner of said Hinsdale County property;
2. South 01° 41' 52" East 51.08 feet;
3. South 03° 23' 24" West 8.99 feet to a point on the south boundary of said Hinsdale County property;
4. South 88° 53' 07" East 81.16 feet along said boundary to a southerly corner of said Hinsdale County property;
5. North 12° 37' 30" West 2.79 feet along said boundary to a southerly corner of said Hinsdale County property;
6. South 85° 51' 21" East 49.26 feet along said boundary to a southerly corner of said Hinsdale County property;
7. North 68° 43' 00" East 35.76 feet along said boundary;
8. North 00° 22' 23" East 46.27 feet to a point on the north boundary of said Hinsdale County property, said point also being the POINT OF BEGINNING of the herein described tract.

This tract contains 0.22 acres more or less.

The basis of bearings used herein is WGS84 Geodetic North as measured by real time kinematic GPS or GPS L1/L2 observations. Said WGS84 Geodetic North observations being measured at a latitude of 37°58'45.56651" N and a longitude of 107°17'28.60000" W.

Brenda G. Kiester
 5/19/09

Amended Intergovernmental Agreement

ATTACHMENT D

Page 1 of 6 pages

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.

4. The purchase price for each Base Unit is \$ _____ per Base Unit, for a total

Amended Intergovernmental Agreement
ATTACHMENT D
Page 2 of 6 pages

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;

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

Amended Intergovernmental Agreement
ATTACHMENT D
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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 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 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.

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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.

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

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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.

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.

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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
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_____	By: _____
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Date: _____	Date: _____
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ACCOUNTING OF FINAL COSTS

<u>DESCRIPTION</u>	<u>EXPENSE</u>
Legal Expenses	\$5,000.00
Construction	\$490,065.86
Gage Installation and Agreement	\$33,125.00
Incidentals (Utilities, Modem Repairs, Software)	\$5,594.97
Fees	\$403.96
TOTAL	\$534,189.79

CALCULATION OF AMOUNT ADVANCED BY EACH PARTY

<u>PARTICIPANT</u>	<u>AMOUNT</u>
UGRWCD	\$140,000.00
Extra Funds – Shortfall Coverage	\$45,000.00
Payment toward USGS gage	\$13,920.00
TOTAL	\$198,920.00
 Hinsdale County	 \$140,000.00
Construction Shortfall Contribution	<u>\$31,231.17</u>
TOTAL	\$171,231.17
 Town of Lake City	 \$140,000.00
Construction Shortfall Contribution	<u>\$31,231.17</u>
TOTAL	<u>\$171,231.17</u>
 TOTAL CONTRIBUTIONS	 \$541,382.34

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**NONREIMBURSABLE EXPENSES INCURRED BY
UPPER GUNNSION RIVER WATER CONSERVANCY DISTRICT**

<u>DESCRIPTION</u>	<u>EXPENSE</u>
Legal Counsel	\$45,201.00
Copies	\$80.00
Fees	\$2,655.00
Advertising	\$497.00
Title Search	\$1,196.00
Grant Application Preparation	\$87.00
Engineering	\$20,022.00
Online Research	\$98.00
Mailing	\$52.00
Conference calling	\$74.00
Staff gages	\$77.00
Mileage	\$68.00
<u>Crooke's Falls Hydropower Appraisal</u>	<u>\$9,058.00</u>
TOTAL	\$79,192.00