

City of Grand Junction, Colorado

Resolution No. 86-00

**A RESOLUTION ADOPTING THE TEMPORARY AGREEMENT BETWEEN
THE CITY OF GRAND JUNCTION AND THE BUREAU OF RECLAMATION**

Recitals:

The City of Grand Junction, in cooperation with the Bureau of Reclamation, have negotiated a temporary agreement to furnish surplus Historic Users Pool water from Green Mountain Reservoir for non-consumptive recreational uses in and adjacent to the reach of the Colorado River extending from the present site of the Palisade Gage to the confluence of the Colorado River with the Gunnison River.

Whereas, the City of Grand Junction and the Bureau of Reclamation have cooperated to develop an temporary agreement, terminating on December 31, 2000, to furnish water in the Colorado River for non-consumptive recreational uses, and

Whereas, the City of Grand Junction has the authority to enter into such temporary agreements, and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION.

That the City Council approves this resolution adopting the temporary Agreement with the Bureau of Reclamation for delivery of surplus Historic User Pool water from Green Mountain Reservoir and authorizes the Acting City Manager to sign the Agreement.

PASSED and ADOPTED this 6th day of September, 2000.

/s/ Gene Kinsey
President of the Council

Attest:

/s/ Stephanie Nye
City Clerk

City of Grand Junction, Colorado

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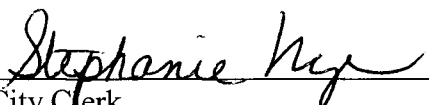
That the City Council approves this resolution adopting the temporary Agreement with the Bureau of Reclamation for delivery of surplus Historic User Pool water from Green Mountain Reservoir and authorizes the Acting City Manager to sign the Agreement.

PASSED and ADOPTED this 6th day of September, 2000.



President of the Council

Attest:



City Clerk

DAVE MAZOUR
TRI-STATE GENERATION & TRANSMISSION ASSOC, INC
PO BOX 33695
DENVER CO 80233

TOM PITTS
WATER CONSULTANT
535 NORTH GARFIELD AVE
LOVELAND CO 80537-5548

REED KELLY
855 COUNTY ROAD 67
PO BOX 1028
MEEKER CO 81641-1028

SUSAN BAKER
PARD-FISHERIES
US FISH & WILDLIFE SERVICE
PO BOX 25486 DFC
DENVER CO 80225

BARRY SANDERS &/ROBERT KING
UTAH DEPT OF NATURAL RESOURCES
DIVISION OF WATER RESOURCES
PO BOX 145610
SALT LAKE CITY UT 84114-5610

SHANE COLLINS
WESTERN AREA POWER ADMINISTRATION
257 E 200 S SUITE 475
SALT LAKE CITY UT 84111

CHRISTINE KARAS
BUREAU OF RECLAMATION
125 SOUTH STATE STREET SUITE 7423
SALT LAKE CITY UT 84138-1102

BRENT UILENBERG
BUREAU OF RECLAMATION
2764 COMPASS DRIVE
GRAND JUNCTION CO 81506

ROBERT WIGINGTON
THE NATURE CONSERVANCY
2060 BROADWAY SUITE 230
BOULDER CO 80302

BRUCE McCLOSKEY
COLORADO DIVISION OF WILDLIFE
6060 BROADWAY
DENVER CO 80216

JOHN SHIELDS
STATE ENGINEER'S OFFICE
HERSCHLER BLDG 4TH EAST
CHEYENNE WY 82002

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US FISH & WILDLIFE SERVICE
PO BOX 25486 DFC
DENVER CO 80225

MATT OTT
UT DEPARTMENT OF NATURAL RESOURCES
1594 WEST NORTH TEMPLE SUITE 3710
SALT LAKE CITY UT 84114-5610

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

Colorado-Big Thompson Project

**TEMPORARY AGREEMENT
BETWEEN THE BUREAU OF RECLAMATION,
THE CITY OF GRAND JUNCTION**

THIS AGREEMENT; hereinafter referred to as the Agreement, is made this 8 day of sept, 2000, pursuant to the Act of June 17, 1902 (32 Stat. 388), and more specifically to the Act of August 9, 1937 (50 Stat. 564, 595), which incorporates Senate Document 80, 75th Congress; Section 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1187) as amended; and all Acts amendatory thereof or supplementary thereto between the **UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION**, hereinafter referred to as "Reclamation"; and the **CITY OF GRAND JUNCTION**, hereinafter referred to as the "City"; for furnishing surplus Historic Users Pool water from Green Mountain Reservoir for nonconsumptive recreational uses in and adjacent to the reach of the Colorado River extending from the present site of the Palisade Gage to the confluence of the Colorado River with the Gunnison River.

WITNESSETH, THAT:

WHEREAS, the following statements are made in explanation:

EXPLANATORY RECITALS

- A. WHEREAS, Green Mountain Dam and Reservoir were constructed as a feature of the Colorado-Big Thompson (CBT) Project as recommended by the Secretary of the Interior and approved by the President on December 21, 1937, pursuant to Section 4 of the Act of June 25, 1910 (36 Stat. 835), and Subsection B of Section 4 of the Fact Finders' Act (Act of December 5, 1924 (43 Stat. 672)). The Green Mountain Reservoir is operated and maintained by the United States in accordance with Senate Document 80; the Act of August 9, 1937 (50 Stat. 564, 595), the stipulations and decrees in the Consolidated Cases (Civil Action Nos. 2782, 5016, and 5017, a.k.a. the (Blue River Decrees) and amendments thereof), United States District Court for the District of Colorado; the Operating Policy for Green Mountain Reservoir (hereinafter referred to as the "Operating Policy") as published in the Federal Register on December 22, 1983, which became effective January 23, 1984, and as amended September 3, 1987, as published in the Federal Register on September 11, 1987, and the stipulated settlement of the Orchard Mesa Check Case (Case No. 91CW247, District Court, Water Division No. 5, State of Colorado). The Green Mountain Reservoir was authorized to provide water for the purposes specified in Senate Document 80.
- B. WHEREAS, according to the Operating Policy for Green Mountain Reservoir 66,000 acre-feet of water annually from the power pool is deemed adequate to satisfy irrigation and domestic needs perfected by use prior to October 16, 1977. This release limitation of 66,000 acre feet from the Power Pool is commonly known as the Historic Users Pool (HUP). In accordance with paragraph eight of the Operating Policy, stored HUP water in excess (surplus) of the amounts reasonably necessary to meet the objectives of paragraphs two and four thereof may be disposed of on a short term basis by agreement or contract.

- C. WHEREAS, Reclamation entered into a Stipulation and Agreement dated September 4, 1996, which Stipulation and Agreement was approved by the court in the Orchard Mesa Check Case (Case No. 91CW247, District Court, Water Division No. 5, State of Colorado) on October 1, 1996.
- D. WHEREAS, Paragraph 5.a. of the Stipulation and Agreement for the Orchard Mesa Check Case specifies that surplus HUP water will first be delivered by contract/agreement through the Government Highline Canal, Orchard Mesa Power Canal and Grand Valley Power Plant, subject to available capacity; and that additional surplus HUP water contracts/agreements may provide for delivery of surplus HUP water to other locations and facilities when capacity is not available in the power canal or when water is not needed to produce power at the Grand Valley Power Plant.
- E. WHEREAS, as stipulated by the settlement of the Orchard Mesa Check Case the Green Mountain Reservoir HUP Operating Criteria (Operating Criteria) was developed. The Operating Criteria defines specific terms and conditions for declaring and managing releases of water surplus to the needs of HUP beneficiaries.
- F. WHEREAS, the additional surplus water provided by this Agreement will be determined as specified in the Operating Criteria and made available for recreational purposes on an "if and when" basis.
- G. WHEREAS, the Colorado River Recovery Program was established and signed in 1988 by Reclamation, Western Area Power Administration, the U.S. Fish and Wildlife Service (Service), and the States of Colorado, Utah and Wyoming for the recovery of four endangered native fish species on the upper Colorado River.

- H. WHEREAS, Reclamation is a signatory to the Recovery Implementation Program (RIP) for Endangered Fish Species in the Upper Colorado River Basin, and as a signatory to the RIP agrees within its discretion to assist with recovery of these endangered fishes.
- I. WHEREAS, the Parties to the Recovery Program have recently completed more than three years of negotiations resulting in a Final Programmatic Biological Opinion (PBO) covering the operations and water depletions of existing projects, including Reclamation projects. The PBO also covers funding and implementation of Recovery Program Actions in the Upper Colorado River above the Gunnison River. One of the action items listed in the PBO and in the Recovery Implementation Program Recovery Action Plan (RIPRAP) is the protection and delivery of HUP surplus water from Green Mountain to the 15 Mile Reach for the endangered fish by execution of this Municipal/Recreational agreement.
- J. WHEREAS, the reach of the Colorado River in the Grand Valley from its confluence with the Gunnison River upstream 15 miles to the Grand Valley Irrigation Company diversion dam (15 Mile Reach) has been designated by the RIP as critical habitat for two of the endangered fishes covered by the RIP. The Service has established annual target flows under the Colorado River Recovery Program for the 15 Mile Reach of the Colorado River to assist with recovery of the endangered fishes.
- K. WHEREAS, the City is a duly formed municipal entity under the laws of the State of Colorado.

- L. WHEREAS, the City is working to improve the recreational uses along the Colorado River between Palisade and Fruita. The Grand Junction Riverfront Commission has completed the “Colorado River Whitewater Improvements - Palisade to Fruita” plan along the Colorado River and adjacent lands. The City is agreeable to jointly entering into this Agreement with Reclamation to enhance recreational uses and indirectly enhance flows in the Colorado River between Palisade and the confluence of the Colorado River with the Gunnison River for endangered fish, and
- M. WHEREAS, the release of water from Green Mountain Reservoir for municipal/recreational purposes in the channel of the Colorado River is an allowable use of water under Colorado law, and
- N. WHEREAS, given the low flows in the Colorado River this year, the City desires for planning purposes to determine the effect of the releases to be made hereunder on enhanced recreational opportunities in and around the Colorado River at Grand Junction, and for its citizens, and has determined that test releases of water from Green Mountain Reservoir as provided in this contract will provide recreational benefit to the City.
- O. WHEREAS, the City desires to enter into this Agreement, pursuant to Federal Reclamation laws and the laws of the State of Colorado for delivery of HUP surplus water from Green Mountain Reservoir to the reach of the Colorado River extending from the Palisade Gage to the confluence of the Colorado River with the Gunnison River, and

P. WHEREAS, pursuant to Colorado Revised Statutes (C.R.S.), sections 37-92-301 and 501, the State Engineer and the Division Engineers are responsible for the administration and distribution of the waters of the State. Pursuant to section 37-92-102(3), the Parties to this Agreement may call upon the State Engineer, and Division Engineer for Water Division 5, to administer the delivery of water provided by this Agreement from Green Mountain Reservoir for nonconsumptive recreation uses in and adjacent to the reach of the Colorado River extending from the Palisade Gage to the confluence of the Colorado River with the Gunnison River.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants hereinafter set forth, the City agrees as follows:

I. DEFINITIONS

Where used herein, unless specifically expressed otherwise or obviously inconsistent with the intent herein the term:

- A. "Stipulation and Agreement" shall mean the Stipulation and Agreement entered into between the parties in the Orchard Mesa Check Case (Case No. 91CW247, District Court, Water Division No. 5, State of Colorado), a copy of which is attached hereto as Appendix B.
- B. "Operating Criteria" shall mean the Green Mountain Historic Users Pool Operating Criteria (Exhibit D to the Stipulation and Agreement), a copy of which is attached hereto as Appendix C.

- C. "Reservoir" shall mean the dam, reservoir and related facilities known as "Green Mountain Reservoir" as presently constructed and operated on the Blue River, a tributary of the Colorado River, in north-central Colorado, as a feature of the CBT Project.
- D. "Blue River Decrees," "Operating Policy," "HUP," "HUP Beneficiaries," "Orchard Mesa Check," "Power Right," and "15 Mile Reach" shall each have the meaning ascribed to them in the Stipulation and Agreement.
- E. "Managing Entities," "Surplus HUP water," and "Annual HUP Operating Plan" shall each have the meaning ascribed to them in the Operating Criteria.
- F. "If and When" water shall mean water provided pursuant to the terms of this agreement for recreational purposes on an interruptible basis, if and when all of the following criteria are met: (1) Reclamation, in consultation with the other Managing Entities, determines there is surplus water pursuant to the procedures set forth in the HUP Operating Criteria; (2) when it is determined to be appropriate to release the water pursuant to those procedures; (3) the need for water for the purpose of generating hydroelectric power at the Grand Valley Power Plant has been satisfied; (4) when water is needed to assist the Service in achieving target flows for the endangered fish in the 15 Mile Reach; and (5) when water can be applied to beneficial uses for recreational purposes by the City.

Any other terms used within this Agreement, which are defined in either the Stipulation and Agreement or the Operating Criteria shall have the meaning ascribed to them in those documents.

II. TERM OF AGREEMENT

This Agreement becomes effective on the date first written above and shall remain in effect through December 31, 2000 unless terminated sooner in accordance with the provisions of Article VIII. below or amended pursuant to Article VII. below.

III. PROVISION OF WATER AND RELEASE SCHEDULE

- A. Water provided pursuant to the terms of this Agreement shall be on an interruptible "if and when" basis not to exceed 10,000 acre feet.
- B. The amount of surplus HUP water will be determined by Reclamation in consultation with the Managing Entities during the development of an annual HUP Operating Plan for that year and during subsequent revisions, following the procedures set forth in the Operating Criteria.
- C. In accordance with Section 5.a. of the Stipulation and Agreement, surplus HUP water will first be delivered to the Grand Valley Power Plant. To the extent there is surplus HUP water in excess of the existing capacity of the Grand Valley Power Plant and there is a need to provide water at the time and in the amount requested to assist in achieving the U.S. Fish and Wildlife Service's target flows for the endangered fish in the delivery reach for this agreement, additional surplus HUP water may be released from Green Mountain Reservoir pursuant to this Agreement.

IV. WATER SERVICE CHARGES

Consideration for the release of the additional surplus HUP water pursuant to the terms of this Agreement is for the mutual benefit to the Parties cooperatively working with the Service to meet target flows for the 15 Mile Reach to assist with the recovery of the endangered fish. Reclamation will not charge the City for the surplus HUP water made available pursuant to the terms of this Agreement.

V. MEASUREMENT AND DELIVERY

- A. The delivery of water pursuant to this Agreement will be made into the Blue River at the outlet works of the Green Mountain Reservoir or by exchange with other sources of supply. All such exchanges shall be in accordance with State and Federal laws and regulations including, if required, approval by the Division No. 5 Engineer.

- B. All delivery of water into the Blue River shall be subject to the limitations of the outlet capacity of the Reservoir. All water delivered under this Agreement shall be measured at the outlet works of the Reservoir from which it is provided with equipment furnished, operated, and maintained by the reservoir owner. The United States shall not be responsible for the control, carriage, use, handling, or distribution of water delivered beyond the outlet works of the Reservoir or other point of release, and the City, to the extent allowed by law, shall hold the United States harmless from and against all claims, demands, and causes of action of any nature whatsoever on account of property damage, personal injury, or death resulting from the control, carriage, use, handling, or distribution of water delivered to the Parties provided such water is delivered at the outlet works of the Green Mountain Dam or other point of delivery in a safe and reasonable manner.

- C. It is understood that all water released by Reclamation pursuant to this Agreement, less evaporation, seepage, and other transit losses between the point of release through the reach of the Colorado River extending from the Palisade Gage to the confluence of the Colorado River and the Gunnison River is to be delivered and protected by the Division 5 Engineer.

VI. USE OF WATER

- A. Water made available pursuant to the terms of this Agreement shall be used, by the City, for nonconsumptive recreational purposes.
- B. Water made available pursuant to the terms of this Agreement shall not be diverted from the Colorado River stream channel by the City.
- C. Water made available pursuant to the terms of this Agreement does not constitute a firm supply but rather an interruptible, "if and when" supply. It is explicitly recognized that there will be times when surplus HUP water is not available due to hydrologic or other conditions. Reclamation will coordinate its releases to provide water at the time and in the amount as needed to assist in achieving the Service's target flows for the endangered fish, while also providing water to the City for recreational purposes.
- D. The City agrees that the provision of this water is on an "if and when" basis and shall not be used to obtain direct economic benefits from the release and delivery of this water for recreational purposes.
- E. No lease, sale, donation, transfer, exchange, or other disposition of any of the water provided pursuant to this Agreement may be made without the prior written

approval of Reclamation.

VII. AMENDMENT

This Agreement may be amended only by written agreement, which written agreement must be executed by the City and Reclamation. Any request to amend this Agreement shall be given in the same manner as provided in Article IX below.

VIII. TERMINATION

- A. Reclamation may terminate this Agreement at any time upon providing thirty (30) calendar days notice.
- B. This Agreement terminates December 31, 2000, unless terminated sooner as outlined in A. above.

IX. NOTICES

- A. Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the City when mailed, certified, postage prepaid, or delivered to the Area Manager, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Rd 18E, Loveland Colorado 80537-9711; and on behalf of Reclamation, when mailed postage prepaid or delivered to the City: City of Grand Junction, 250 N Fifth St., Grand Junction, Colorado 81501.
- B. The designation of the addressees or the addresses may be changed by notice given in the same manner as provided in Article IX. A. above.

All notices, demands, or other requests given pursuant to this Article IX. shall be effective on the date of mailing when sent by certified mail, return receipt requested or upon receipt (if personally delivered).

X. ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

XI. AGREEMENT NULL AND VOID IF OPERATING POLICY RULED INVALID

In the event the Operating Policy is ruled invalid by a Court of competent jurisdiction, this Agreement shall become null and void. Should a Court of competent jurisdiction require a modification of the Operating Policy, which would substantially affect the ability of Reclamation to perform its obligations pursuant to this Agreement, then this Agreement may be terminated at the option of Reclamation.

XII. STANDARD ARTICLES

The standard articles applicable to this Agreement are listed below. The full text of these standard articles is attached as Exhibit A and is hereby made a part of this agreement by this reference.

1. Contingent on Appropriation or Allotment of Funds
2. Officials Not to Benefit
3. Rules, Regulations, and Determinations
4. Quality of Water
5. Water and Air Pollution Control

6. Uncontrollable Forces
7. Books, Records, and Reports
8. Equal Opportunity
9. Compliance with Civil Rights Laws and Regulations
10. Certification of Nonsegregated Facilities

IN WITNESS WHEREOF, the Parties have executed this Agreement the
day and year first above written.

THE UNITED STATES OF AMERICA

By *RJ Syllenberg*
Acting Area Manager
Bureau of Reclamation
Eastern Colorado Area Office

(CORPORATE SEAL)

CITY OF GRAND JUNCTION

By *David VanDey*
INTERIM CITY MANAGER
Title

EXHIBIT A

STANDARD CONTRACT ARTICLES

Contract#: 00XX6C0136

1. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

The expenditure or advance of any money or the performance of any obligation by the United States under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Parties from any obligations under this Agreement. No liability shall accrue to the United States, in case funds are not appropriated or allotted.

2. OFFICIALS NOT TO BENEFIT

No member of, or Delegate to Congress, Resident Commissioner, or official of the Parties shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

3. RULES, REGULATIONS, AND DETERMINATIONS

The parties agree that the delivery of water or the use of Federal facilities pursuant to this Agreement is subject to Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation law.

Reclamation shall have the right to make determinations necessary to administer this agreement that are consistent with the expressed and implied provisions of this Agreement, the laws of the United States and the State of Colorado, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Parties to this Agreement.

4. QUALITY OF WATER

The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by Reclamation. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

5. WATER AND AIR POLLUTION CONTROL

The Parties, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

6. UNCONTROLLABLE FORCES

None of the Parties shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed, for the purpose of this Agreement, to mean any cause beyond the control of the party(s) affected, including, but not limited to, drought, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Any party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

7. BOOKS, RECORDS, AND REPORTS

The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, and project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing and water-use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

Note: The above provision should be modified as necessary to eliminate those records and reports not specifically required due to the type of contract being executed.

8. EQUAL OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.
- C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or worker's representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Contractor will include the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

9. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

- A. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
- B. These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.
- C. The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Contractor by the United States, including installment payments after such date on account of arrangements for Federal financial assistance, which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

10. CERTIFICATION OF NONSEGREGATED FACILITIES

The Contractor hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will no maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

11. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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4. Operating Policy.

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

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

5. Green Mountain Reservoir Historic User Pool Operating Criteria.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

asserted in this proceeding, including issues as to the relevancy of various matters to this application, may be asserted by the parties and shall not be deemed waived.

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

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

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

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Page 15

Bruce D. Bernard

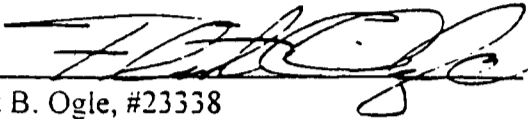
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Stephen G. Bartell
U.S. Department of Justice
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General Litigation Section
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Page 16

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ATTORNEYS FOR GRAND VALLEY WATER USERS ASSOCIATION



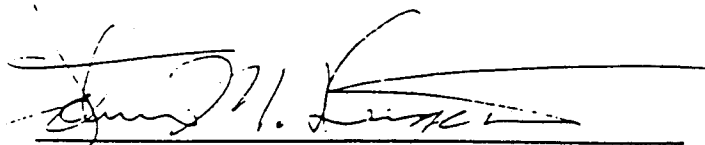
Flint B. Ogle, #23338
Laird T. Milburn, #2914
Dufford, Waldeck, Milburn & Krohn, L.L.P.
744 Horizon Court, Suite 300 .
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ATTORNEYS FOR ORCHARD MESA IRRIGATION DISTRICT

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

John M. Dingess, #12239

Duncan, Ostrander & Dingess, P.C.

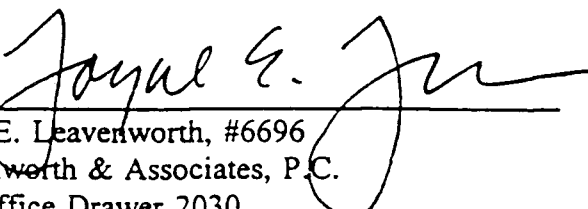
7800 East Union Avenue, #200

Denver, CO 80237

Telephone: 303/779-0200

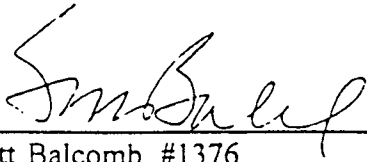
ATTORNEY FOR CITY OF AURORA, COLORADO, ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE

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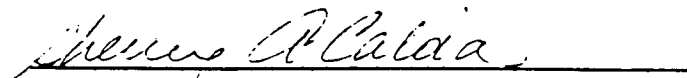
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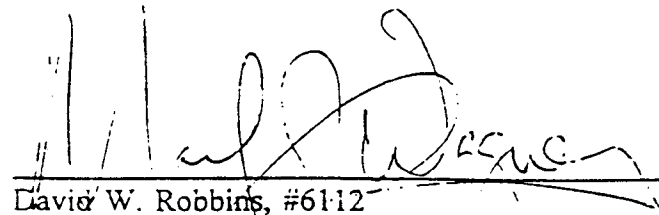
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A handwritten signature in black ink, appearing to read "Mark J. Wagner", is written over a horizontal line.

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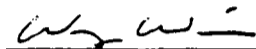
ATTORNEYS FOR TOWN OF FRISCO; TOWN OF SILVERTHORNE; TOWN OF
PARACHUTE; CITY OF GLENWOOD SPRINGS; NORTH BARTON CREEK, LLC;
SPRUCE VALLEY RANCH FOUNDATION AND RIFLE LAND ASSOCIATES, LTD.

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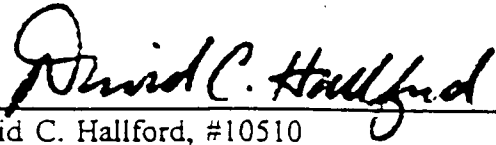
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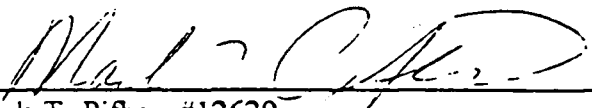
Stipulation and Agreement
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A handwritten signature in cursive script that reads "David C. Hallford". The signature is written in black ink and is positioned above a horizontal line.

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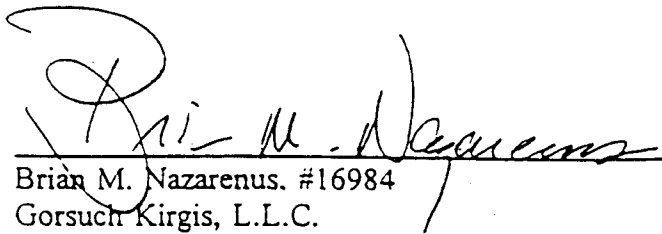
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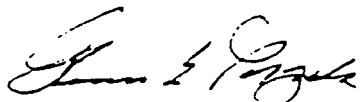
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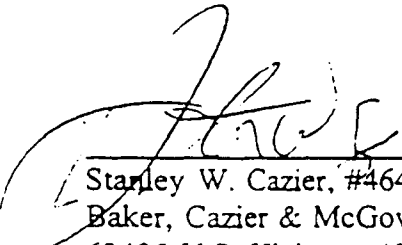
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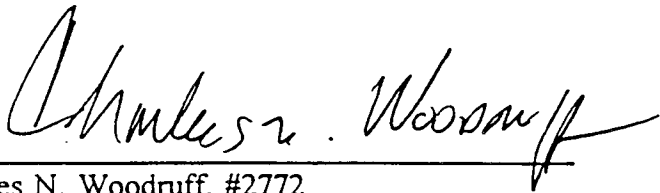
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Page 32



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EXHIBIT A

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

CO-APPLICANTS' WATER RIGHTS

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

EXHIBIT B

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

GVIC WATER RIGHTS

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

EXHIBIT D

Stipulation and Agreement

Case No. 91CW247

GREEN MOUNTAIN RESERVOIR HISTORIC USER POOL

OPERATING CRITERIA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Figure 1

Green Mountain Reservoir

HUP Operating Criteria - Dry Years

