

CITY OF GRAND JUNCTION

PUBLIC ACCESS EASEMENT IN GROSS
Hallenbeck Reservoir #1("Purdy Mesa") and Juniata Reservoir

With

STATE OF COLORADO
acting by and through the
Department of Natural Resources,
for the use and benefit of the Division of Parks and Wildlife and Wildlife Board

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Summary: An easement for a term of 25 years for public access for fishing and wildlife viewing at the Hallenbeck Reservoir #1, also known as the Purdy Mesa Reservoir (Township 12 South, Range 98 West, 6th P.M., Sections 25 and 26) and the Juniata Reservoir (Township 12 South, Range 97 West, 6th P.M., Section 31) in Mesa County.

1. PARTIES

This deed of an easement for public access (the "Easement") is granted by the City of Grand Junction ("Grantor"), a municipal corporation organized under the laws of the State of Colorado, whose legal address is 250 N. 5th Street, Grand Junction, Colorado 81501 to the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Division of Parks and Wildlife and Parks and Wildlife Board (the "State" or "CPW" or "Grantee"), located at 1313 Sherman Street, Denver, Colorado 80203. The Parties hereby agree to the provisions set forth in this Easement.

2. EFFECTIVE DATE

This Easement shall not be effective or enforceable until the Effective Date as defined in §4. The State shall not be liable to pay or reimburse Grantor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Easement exists pursuant to CRS §33-10-107(1)(a & d); sufficient funds have been budgeted, appropriated and paid; and all prior reviews and approvals have been obtained.

B. Consideration

The Parties agree that the mutual promises and covenants contained herein and other good and valuable consideration, including the contemporaneous conveyance by the State to the Grantor of a sewer infrastructure easement at Walker State Wildlife Area, are sufficient and adequate to support the granting of this Easement.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Map of Easement Areas).

D. Purpose

This Easement provides access that assists CPW in performing the directives of CRS §33-10-107(1)(a & d). In particular, it provides access to and use of reservoirs for fishing and wildlife viewing by the general public.

E. References

All references in this Easement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. CRS

"CRS" means the Colorado Revised Statutes as amended.

B. Easement

"Easement" means this Easement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Easement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, State Fiscal Rules, and State Controller Policies.

C. Easement Areas

"Easement Areas" means those portions of the Property generally depicted on **Exhibit A**. The Easement Areas shown on these Exhibits extend for a distance of 200 feet from the high-water lines of the reservoirs and include the parking lot (at the intersection of Purdy Mesa Road and the Juniata Reservoir Access Road) and paths to and around both reservoirs.

D. Effective Date

"Effective Date" is the date this Easement is approved and signed by the Grantor and accepted by the State, whichever is later.

E. Party or Parties

"Party" means the State or Grantor and "Parties" means both the State and Grantor.

F. Property or Properties

"Property" or "Properties" is the Hallenbeck Reservoir #1 (Township 12 South, Range 98 West, 6th P.M., Sections 25 and 26) and the Juniata Reservoir (Township 12 South, Range 97 West, 6th P.M., Section 31) depicted in **Exhibit A**.

5. TERM AND RECORDATION

The Parties' respective duties and obligations and the burdens on the Property under this Easement shall commence on the Effective Date and shall continue for a period of 25 years. The Parties shall record this Easement in the official records of Mesa County following the Effective Date.

6. GRANT OF EASEMENT

The Grantor may be the owner of all or part of the Property: the Grantor is not making any representations concerning its ownership of nor warrants its title to any of the Property or the Easement Area, and if this Easement encroaches on lands not owned or controlled by the Grantor, State is solely responsible for any such encroachment. Subject to the foregoing caveat, by this Easement the Grantor hereby quitclaims, grants, conveys, and transfers to the State an easement for a term of 25 years over the Easement Area located on the Property that runs with the land, the nature and character and to the extent of which is hereinafter set forth.

A. Public Use. Granted hereby is:

1. The right to access, enter, and use the Easement Areas portions of the Properties for the purpose of fishing and wildlife viewing, which shall include the right of public access. This right shall be limited as follows: (a) Access by the public shall be limited to foot access only from the designated parking area: and (b) Overnight camping and starting fires shall be prohibited at all times.
2. The right to establish and collect fees from the public for use of the Public Access Area. Said fees shall belong to Grantee.
3. The right to build, install, maintain, repair, and replace signs anywhere on the Easement Areas and designated parking area in order to inform the public regarding what uses of the Properties are permitted and prohibited, and to provide information about public safety, ownership, management, and interpretation of all of the Properties. This right shall include, but not be limited to, the right to post signs advertising the Property to be a designated "State Wildlife Area."
4. The non-exclusive right to remove material that Grantee believes to be trash, litter, garbage, or junk that has been dumped, abandoned, or otherwise deposited on the Property.

B. Limitations on Use

Access to and use of the Easement shall be limited to foot or other non-motorized access and use (except for motorized wheelchairs). This right of public use shall not grant to the public or to Grantee any additional access, right of use, right-of-way or easement upon or across any of the Grantor's remaining property, excepting only the designated parking area and the paths to the reservoirs. Water contact by the public is prohibited except for the use of personal floatation devices used solely for the purpose of fishing, including, but not limited to, the use of float tubes with waders or belly boats. Boating is prohibited.

C. Management Plan

The Parties acknowledge that changing water conditions, climatic conditions, fish health, and other factors may impact this easement during its term. Therefore, the Parties agree to develop a written management plan outlining the details of the operation of the easement and whether it needs to be modified. At a minimum, every three years the Parties will meet to discuss necessary revisions to the Management Plan.

7. ABANDONMENT

Except as set forth in §9, Grantee's failure to perform its obligations under the Easement for a period of one year after written demand to perform by the City shall constitute an abandonment of its interests under the Easement. The City, at its sole discretion, may terminate and extinguish the Easement in the event of abandonment after providing Grantee 60 days written notice.

8. GRANTEE'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

The State makes the following specific representations and warranties, each of which was relied on by the Grantor in granting this Easement.

A. Hazardous Substances

The State shall not introduce or allow introduction of any "Hazardous Substance," as defined in 42 U.S.C. §9601 (14), or hazardous or toxic material, substance, or waste, as they may be defined under relevant state or local law, or asbestos, on the Property or any of the Grantor's adjacent real property. The State shall be solely responsible for all costs and expenses incurred if the State breaches this provision.

B. Legal Authority – State Signatory

The State possesses the legal authority to accept this Easement and its attendant obligations and has taken all actions required by its procedures, ordinances, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Easement, and to bind the State to its terms. If requested by the Grantor, the State shall provide the Grantor with proof of the State's authority to accept this Easement within 15 days of receiving such request.

C. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Easement or which may affect the State's ability to perform its obligations hereunder, the State shall notify the Grantor of such action and deliver copies of such pleadings to the State's principal representative as identified herein.

9. VIOLATIONS-REMEDIES

A. Defined

In addition to any specified in other sections of this Easement, the States' failure to perform any of its material obligations hereunder shall constitute a violation of this Easement.

B. Notice

The Grantor shall send the State in the manner provided in §10 a notice detailing alleged violations of this Easement. Upon receipt thereof, the State shall immediately send the Grantor a response in the manner provided in §10 agreeing with the Grantor or denying the alleged violation in whole or part and cease and desist from any use or activity that could increase or expand the alleged violation until it is finally resolved by agreement of the Parties or by decree of a court of competent jurisdiction.

C. Remedies

i. Agreement

If the State agrees with or does not dispute the Grantor's assertion regarding the alleged violation, the State shall, at its sole cost, restore the Property to its condition prior to the violation or to take such other action as may be reasonable or necessary to eliminate the violation and prevent its further occurrence and shall provide the Grantor with details of its remedial plan together with a reasonably prompt time for completion thereof. The Grantor may enforce such remedial plan via proceedings at law or in equity if the State fails to perform it in accordance with its terms.

ii. Dispute-Meeting

If the State disagrees with and disputes the Grantor's assertion regarding the alleged violation in whole or part, the State shall provide the Grantor with a written explanation stating the reasons why the Grantor's allegations are erroneous or stating why the use or activity should be permitted. Thereafter, representatives of the Parties with settlement authority shall meet as soon as possible, but not later than 60 days after the State's receipt of the State's response, to resolve issues. If the Parties reach agreement, they shall create a remedial plan together with a reasonably prompt time for completion thereof. The Grantor may enforce such remedial plan via proceedings at law or in equity if the State fails to perform it in accordance with its terms.

iii. Legal Proceedings

The Grantor may, in its sole discretion, exercise any or all remedies available at law or in equity, including those available at common law, concurrently or consecutively, to enforce its

rights hereunder if any meeting pursuant to §9(C)(ii) fails to resolve any issues and to otherwise enforce its rights hereunder, including enforcing remedial plans created under §9(C)(i and ii). Courts are specifically authorized to issue both mandatory and negative injunctions, including one requiring restoration of the Property to its condition before a violation occurred.

iv. Costs

The State shall be solely responsible for the costs of remedying any violations of this Easement caused by the State or its agents.

D. Public Safety

Notwithstanding anything to the contrary herein, the Grantor need not provide advance notice or a cure period and may immediately take action if it is necessary to preserve public safety or to prevent immediate public crisis.

10. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Colorado Division of Parks and Wildlife
6060 Broadway
Denver, CO 80216
With copy to:
Area 7 Wildlife Manager
711 Independent Avenue
Grand Junction, CO 81505

B. Grantor:

City of Grand Junction
Rich Englehart, City Manager
250 N. 5th Street
Grand Junction, CO 81501
With copy to:
John Shaver, City Attorney
250 N. 5 th Street
Grand Junction, CO 81501

11. LIMITATION OF LIABILITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees or from the negligence of the City of Grand Junction, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management). No term or condition of this Easement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of CGIA, or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

12. GENERAL PROVISIONS

A. Binding Arbitration Prohibited

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Easement or incorporated herein by reference shall be null and void.

B. Binding Effect-Perpetual Application

All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns and shall continue as a servitude running in perpetuity with the Property

C. Captions

The captions and headings in this Easement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

D. Construction of this Easement

This Easement shall be liberally construed to further the purposes and intent set forth in §3(D). In the event of an ambiguity in this Easement the rule of contract construction that ambiguities shall be construed against the drafter shall not apply and the Parties hereto shall be treated as equals and no Party shall be treated with favor or disfavor.

E. Counterparts

This Easement may be executed in multiple identical original counterparts constituting one agreement.

F. Entire Understanding

This Easement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

G. Jurisdiction and Venue

All suits or actions related to this Easement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the county in which the Property is situate.

H. Modification

i. By the Parties

Except as specifically provided in this Easement, modifications hereof shall not be effective unless agreed to by the Parties in a written amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies.

ii. By Operation of Law

This Easement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of this Easement on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Easement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Easement and its exhibits and attachments, including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the main body of this Easement, and
- ii. Exhibits.

J. Severability

Provided this Easement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Easement in accordance with its intent.

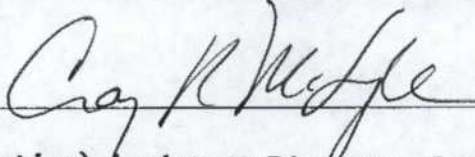
K. Third Party Beneficiaries

Enforcement of this Easement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Easement are incidental to the Easement, and do not create any rights for such third parties.

L. Waiver

Waiver of any breach or event of default under a term, provision, or requirement of this Easement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement. Grantee hereby waives any defense of laches, estoppel, or prescription, including any defenses available under CRS §38-41-119. The failure of the State to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

STATE: ACCEPTED BY THE STATE OF COLORADO, acting by and through the DEPARTMENT OF NATURAL RESOURCES, for the use and benefit of the DIVISION OF PARKS AND WILDLIFE and the PARKS AND WILDLIFE BOARD,

By:  CRAIG R. McLAUGHLIN

Title: (Acting) Assistant Director of Wildlife & Natural Resources

Date: May 18, 2012

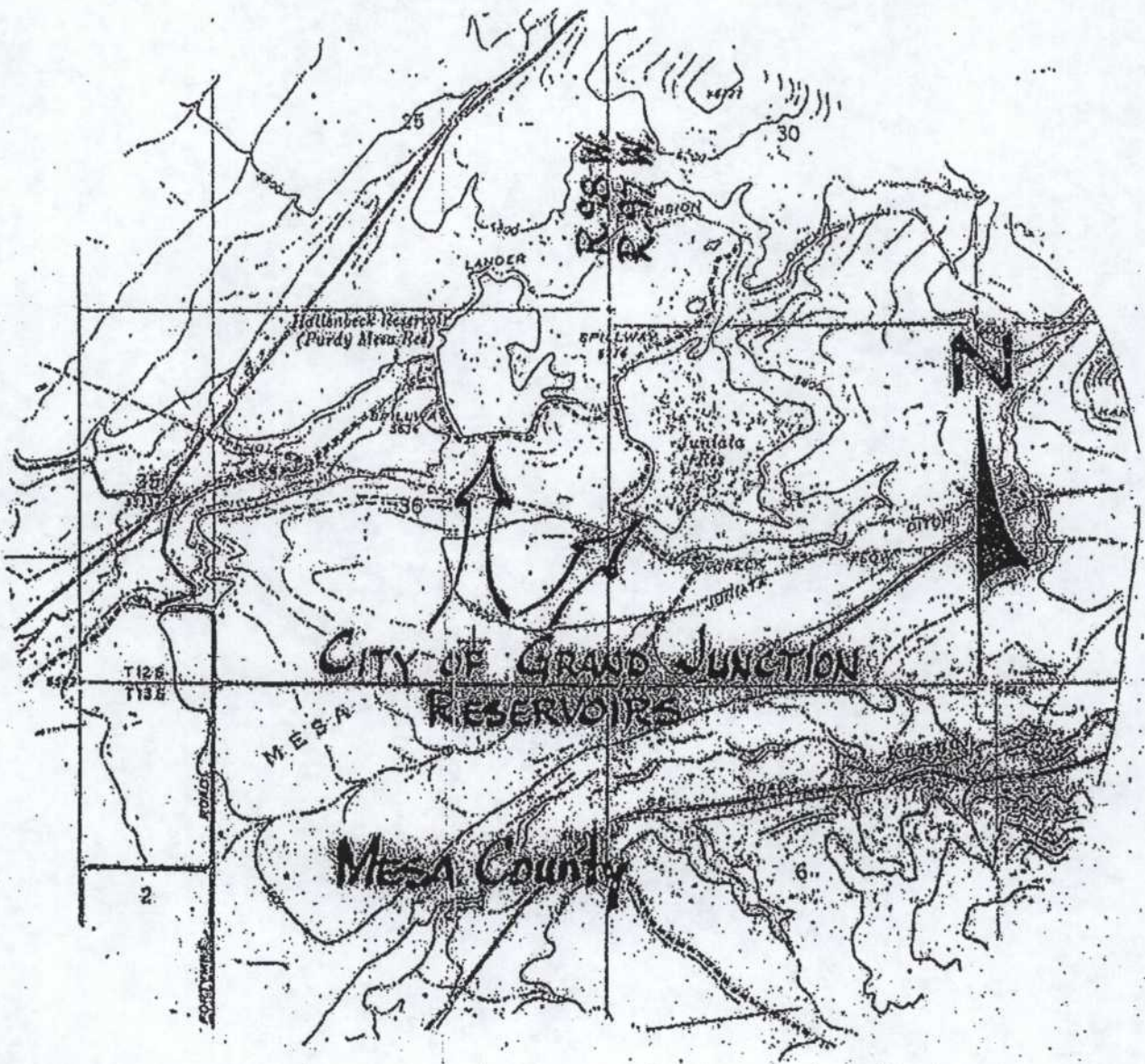
EXHIBIT A

City of Grand Junction

to

Colorado Parks and Wildlife

Public Access Easement Area Map



RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION