

p36 - FWS concerned about Green Mt. surplus - said more depletions

37 Desire to avoid regulatory confrontation
If difficulty in providing water in reach ^{15 mile} what does this about Colorado's ability to meet compact obligations - if flows are to be same as compact obligations.

Tuckhead

A-2 Contract deliveries can be delivered by administration

Contract for Redlands Fish

G Shows how to deal with Aspiral operations.

Contract for extra

A-5 Trade of storage for hydropower at Green Mountain for hydropower at Grand Valley - at different time

G Shows modeling assumptions? May help others

A6 at least some increase for fish 8-16% - p. B-8 11% 10%

G This incorporation with other measures - dam - fish ladder

B-4 Reduced irrigation requirements 18,400 af and 5,000^{af} sent back above 15 mile reach.

See up U.C. to conserve water

G? Sampling of washes - already in place - continue address salinity.

Up Green gages

By Rec letter 12 Dec 87

AP B-1

P B-4 Dyer agreed not to send junior as said & settled. Had sold land.

MAJOR IRRIGATION
SYSTEMS IN THE
GRAND VALLEY

Mark A. Hermundstad
WILLIAMS, TURNER & HOLMES, P.C.
200 N. 6th St-P.O. Box 338
Grand Junction, CO 81502
(303) 242-6262

I. NAME OF ENTITY: GRAND VALLEY IRRIGATION COMPANY (242-2762)

II. TYPE OF ENTITY

- A. Grand Valley Irrigation Company ("GVIC") is a mutual ditch company organized under Colorado statutes relating to ditch and reservoir companies, §§7-42-101, et seq., C.R.S. GVIC was incorporated on January 27, 1894, and was organized to purchase the rights of several existing ditch companies. It is governed by an elected board of directors.
- B. A mutual ditch company issues shares of stock, which represent each water user's interest in the company's ditch and the company's water rights.
- C. A mutual ditch company has the power to levy assessments on the stock that it issues, in order to pay the expenses of operation and maintenance. In addition, a mutual ditch company may issue different classes of stock and levy different assessments on the different classes.

III. PRIMARY CANALS

- A. The primary canals operated by GVIC are the following:
 - 1. Grand Valley Canal.
 - 2. Grand Valley Mainline Canal.
 - 3. Independent Ranchmen's Ditch.
 - 4. Grand Valley Highline Canal.
 - 5. Kiefer Extension Ditch.
- B. Water is delivered out of the Grand Valley Canal system to lateral ditches, to serve lands which are not adjacent to the main canal system. Some of the lateral owners have incorporated to assess and improve their systems. The maintenance on unincorporated laterals is accomplished voluntarily by the lateral owners.

IV. PRIMARY WATER RIGHTS OWNED BY ENTITY

- A. GVIC owns the following irrigation water rights, which are diverted from the Colorado River at the GVIC diversion dam near Palisade:
 - 1. An irrigation water right in the amount of 520.81 c.f.s., with a priority date of 1882.

2. An irrigation water right in the amount of 119.47 c.f.s., with a priority date of 1914.

V. BOUNDARIES

- A. The boundaries of the land served by GVIC are shown on the attached maps. The GVIC system serves irrigation water to approximately 27,720 acres of land located North of the Colorado River and South of the lands served by the Government Highline Canal and the Price Ditch.

VI. HOW WATER IS ALLOCATED TO USERS

- A. As mentioned above, the rights of users of GVIC water are evidenced by stock in GVIC. GVIC has three different classes of stock.
- B. Generally, GVIC stockholders will have both Class A stock and Class B stock. Class A stock is assessed pro-rata at a rate based upon GVIC's operating and administering expenses of delivering the first share of water to any stockholder. Class B stock is assessed pro-rata at a rate based upon GVIC's operating and administrative expenses of delivering all subsequent shares of water to any stockholder.
 1. The Bylaws of GVIC state that each share of Class A and Class B stock entitles the holder to receive 4/10 of a statute inch of water from GVIC. (38.4 statute inches equal 1 c.f.s. of water)
- C. Users who obtain water from the Kiefer Extension Ditch must have Class C stock, in addition to Class A and B stock. These shares do not have any additional "water value"; they are used to levy additional assessments of persons who use water from the Kiefer Extension.
- D. Assessments for the coming year are proposed by a "Budget Committee" of the Board of Directors of GVIC, and are voted on by the shareholders of GVIC at a meeting held in December.
 1. For 1994, the following assessments have been set by GVIC:
 - a. Class A stock: \$72.00
 - b. Class B stock: \$8.82
 - c. Class C stock: \$3.52

VII. HOW RIGHTS TO WATER ARE TRANSFERRED

- A. The shares of stock in GVIC are evidenced by share certificates. In order to transfer the right to GVIC water, the owner of shares of stock in GVIC must endorse his share certificates to a new owner. The endorsed share certificates are then delivered to GVIC, which will then note the transfer in its records and issue a new certificate to the new owner.

- B. GVIC shares are not tied to any particular lands within the area served by GVIC.

I. NAME OF ENTITY: PALISADE IRRIGATION DISTRICT (464-5113)

II. TYPE OF ENTITY

- A. Palisade Irrigation District ("PID") is an irrigation district, formed in 1905 under the Colorado Irrigation District Law of 1905.
- B. Irrigation districts are "public corporations", and are governed by an elected board of directors. PID has a three-person board of directors. An irrigation district is formed by the filing of a petition by, and majority vote of, the owners of irrigated land in a particular area. Irrigation districts have the power to construct, acquire, operate, and maintain irrigation canals and systems.
- C. An irrigation district can issue bonds to construct its system, and repay those bonds through special assessments on irrigable property in the district.
- D. In order to pay for the operation, repair, and maintenance of its system, an irrigation district may levy taxes on all of the irrigable property in the district, and it may also impose rates and charges for persons using water from its system.

III. PRIMARY CANALS

- A. PID's primary canal is the Price Ditch, which is approximately 9.1 miles long.
- B. There are approximately 109 private owned laterals off of the Price Ditch.
- C. Some of PID's water is also carried in, and delivered from, the Government Highline canal.

IV. PRIMARY WATER RIGHTS OWNED BY ENTITY

- A. PID owns the following water rights, which are diverted out of the Colorado River at the roller dam of the Grand Valley Project located near Cameo:
 - 1. An irrigation water right in the amount of 80 c.f.s., with a priority date of 1889.
 - 2. An irrigation water right in the amount of 23.5 c.f.s., with a priority date of 1918.

V. BOUNDARIES

- A. The boundaries of the land served by PID are shown on the attached maps. PID's boundaries encompass approximately 6,000 acres, but of this amount, only about 3,690 acres are irrigated. The lands are located North of the Grand Valley Canal between Palisade and Grand Junction.

VI. HOW WATER IS ALLOCATED TO USERS

- A. Water is allocated to the irrigable lands in the district by PID, and is appurtenant to those lands. The water cannot be sold separately from the lands to which it is appurtenant.
- B. Assessments are set by the Board of Directors of PID. The assessments are certified by the Board to the County Commissioners, and are collected by the Mesa County Treasurer as part of the property taxes levied on property in PID.

VII. HOW RIGHTS TO WATER ARE TRANSFERRED

- A. Since the rights to use water from the PID system are appurtenant to the irrigable lands in the district, the rights to use PID water are automatically transferred with the land, when irrigable land is transferred from one owner to another.

I. NAME OF ENTITY: MESA COUNTY IRRIGATION DISTRICT

II. TYPE OF ENTITY

- A. Mesa County Irrigation District ("MCID") is an irrigation district, formed in 1906 under the Colorado Irrigation District Law of 1905.
- B. Irrigation districts are "public corporations", and are governed by an elected board of directors. MCID has a three person board of directors. An irrigation district is formed by the filing of a petition by, and majority vote of, the owners of irrigated land in a particular area. Irrigation districts have the power to construct, acquire, operate, and maintain irrigation canals and systems.
- C. An irrigation district can issue bonds to construct its system, and repay those bonds through special assessments on irrigable property in the district.
- D. In order to pay for the operation, repair, and maintenance of its system, an irrigation district may levy taxes on all of the irrigable property in the district, and it may also impose rates and charges for persons using water from its system.

III. PRIMARY CANALS

- A. MCID's primary canal is the Stub Ditch, which is approximately 10.2 miles long.
- B. There are approximately 48 privately owned laterals off of the Stub Ditch.
- C. Some of MCID's water is also carried in, and delivered from, the Government Highline canal.

IV. PRIMARY WATER RIGHTS OWNED BY ENTITY

- A. MCID owns the following water right, which is diverted out of the Colorado River at the roller dam of the Grand Valley Project located near Cameo:

1. An irrigation water right in the amount of 40 c.f.s., with a priority date of 1903.

V. BOUNDARIES

- A. The boundaries of the lands served by MCID are shown on Exhibit A. MCID boundaries encompass approximately 2,300 acres, of which approximately 900 acres are irrigated. The lands are located North of the Price Ditch between Palisade and Grand Junction.

VI. HOW WATER IS ALLOCATED TO USERS

- A. Water is allocated to the irrigable lands in the district by PID, and is appurtenant to those lands. The water cannot be sold separately from the lands to which it is appurtenant.
- B. Assessments are set by the Board of Directors of MCID. The assessments are certified by the Board to the County Commissioners, and are collected by the Mesa County Treasurer as part of the property taxes levied on property in MCID.

VII. HOW RIGHTS TO WATER ARE TRANSFERRED

- A. Since the rights to use water from the PID system are appurtenant to the irrigable lands in the district, the rights to use PID water are automatically transferred with the land, when irrigable land is transferred from one owner to another.

I. NAME OF ENTITY: ORCHARD MESA IRRIGATION DISTRICT (464-7885)

II. TYPE OF ENTITY

- A. Orchard Mesa Irrigation District ("OMID") is an irrigation district, formed in 1914 under the Colorado Irrigation District Law of 1905.
- B. Irrigation districts are "public corporations", and are governed by an elected board of directors. An irrigation district is formed by the filing of a petition by, and majority vote of, the owners of irrigated land in a particular area. Irrigation districts have the power to construct, acquire, operate, and maintain irrigation canals and systems.
- C. An irrigation district can issue bonds to construct its system, and repay those bonds through special assessments on irrigable property in the district.
- D. In order to pay for the operation, repair, and maintenance of its system, an irrigation district may levy taxes on all of the irrigable property in the district, and it may also impose rates and charges for persons using water from its system.

III. PRIMARY CANALS

- A. OMID's system consists of the Orchard Mesa Power Canal, the Orchard Mesa Pumping Plant, and Canals No. 1 and 2.
- B. OMID's water is diverted from the Colorado River at the roller dam for the Grand Valley Project, near Cameo, along with the water rights of several other entities. For approximately 4.6 miles, all of these water rights are transported in a facility known as the Highline Canal, located on the North bank of the Colorado River. OMID's water rights are then separated from the other water rights, and are diverted under the Colorado River by means of a siphon. This siphon delivers water to the Orchard Mesa Power Canal located on the South side of the Colorado River.
- C. The Orchard Mesa Power Canal transports water for a distance of approximately 3.8 miles to the Orchard Mesa Pumping Plant, which is located about 1 mile South of Palisade. Along this stretch of the Orchard Mesa Power Canal, irrigation water is delivered by gravity to approximately 560 acres of land, using 14 independently owned and operated laterals.

- D. At the Orchard Mesa Pumping Plant, a portion of OMID's water is used to operate hydraulic pumps, which lift the remainder of OMID's water into Orchard Mesa Canals Nos. 1 and 2. Orchard Mesa Canal No. 1 is approximately 16.3 miles long, and Canal No. 2 is approximately 17.3 miles long. Approximately 163 privately owned and operated laterals deliver water from Canals No. 1 and No. 2.
- E. The Orchard Mesa system was originally constructed by private funds, but in 1922, OMID became a part of the Federal Grand Valley Project.

IV. PRIMARY WATER RIGHTS OWNED BY ENTITY

- A. OMID has two primary irrigation water rights which are diverted from the Colorado River at the roller dam of the Grand Valley Project located near Cameo, which water rights are described as follows:
 - 1. An irrigation water right in the amount of 10.2 c.f.s., with a priority date of 1898.
 - 2. An irrigation water right in the amount of 450 c.f.s., with a priority date of 1907.
- B. Water from the two water rights identified above is used as follows: 17.2 c.f.s. (peak demand) are delivered out of the Orchard Mesa Power Canal to the Vinelands area, for irrigation. (Some of this water is delivered by gravity flow, and some by pumping). The remaining water travels to the Orchard Mesa Pumping Plant, where 272 c.f.s. are used to operate the hydraulic pumps, which pump the remaining 171 c.f.s. to Orchard Mesa Canals No. 1 and No. 2.

V. BOUNDARIES

- A. The boundaries of lands served by OMID are shown on the attached maps. The Orchard Mesa Power Canal delivers irrigation water to approximately 560 acres of land, while Orchard Mesa Canals No. 1 and No. 2 provide water to approximately 6,870 acres of irrigated land on Orchard Mesa, South of the Colorado River.

VI. HOW WATER IS ALLOCATED TO USERS

- A. Water was allocated to the irrigable lands in the district by OMID in the 1920's, and is appurtenant to those lands. The water cannot be sold separately from the lands to which it is appurtenant.

1. Water is allocated at the rate of 0.7 statute inches (approximately 8 gallons per minute) per irrigable acre.
- B. Records showing the amount of water allocated to each parcel can be obtained from OMID or from the Mesa County Assessor's Office.
- C. Assessments are set by the Board of Directors of OMID. The assessments are certified by the Board to the County Commissioners, and are collected by the Mesa County Treasurer as part of the property taxes levied on property in OMID.
 1. The Board of OMID has set the following assessments for 1994:
 - a. Fruitland: \$41.40 per irrigated acre
 - b. Good cropland: \$35.19 per irrigated acre
 - c. Fair cropland: \$24.84 per irrigated acre
 - d. Poor cropland: \$24.84 per irrigated acre
 - e. Small tracts (1-5 acres), subdivisions, commercial: \$51.75 per acre or per lot

VII. HOW RIGHTS TO WATER ARE TRANSFERRED

- A. Since the rights to use water from the OMID system are appurtenant to the irrigable lands in the district, the rights to use OMID water are automatically transferred with the land, when irrigable land is transferred from one owner to another.

I. NAME OF ENTITY: GRAND VALLEY WATER USERS ASSOCIATION (242-5065)

II. TYPE OF ENTITY

A. Grand Valley Water Users Association ("GVWUA") is a water users association formed under special Colorado statutes relating to water users associations, found at §§7-44-101, et. seq., C.R.S. The water users association statutes were enacted by the Colorado Legislature in 1905, and authorized the formation of water users association as quasi-public corporations for the purpose of entering into repayment contracts with the United States for projects constructed under the Federal Reclamation Act of 1902. GVWUA was formed in 1905 to obtain authorization from the Reclamation Service and Congress for a federal project that would irrigate the higher ground in the Grand Valley, to operate the project once it was built, and to repay the costs of construction.

B. The water users association statutes say that water users associations may be organized as regular Colorado corporations or non-profit corporations. GVWUA has elected to operate under the provisions of the Colorado Non-Profit Corporation Act, and accordingly is a non-profit corporation.

C. GVWUA is governed by an elected eleven member board of directors.

III. PRIMARY CANALS

A. GVWUA operates the Government Highline Canal, pursuant to a contract with the United States, which owns the canal.

B. There are 74 laterals off of the Government Highline Canal that are federally owned and operated as part of the Grand Valley Project by GVWUA.

IV. PRIMARY WATER RIGHTS OWNED BY ENTITY

A. GVWUA operates an irrigation water right owned by the United States, pursuant to a contract with the United States. This irrigation water right is in the amount of 730 c.f.s., has a priority date of 1908, and is diverted from the Colorado River at the roller dam for the Grand Valley Project near Cameo.

B. GVWUA also operates a water right for power purposes, which water right is also owned by the United States.

- C. The above water rights are part of the Grand Valley Project, constructed by the United States Reclamation Service. Construction started in the fall of 1912, and water was first turned into the project works in June of 1915. Water is diverted from the Colorado River into the Government Highline Canal at the roller dam for the Grand Valley Project, located approximately 8 miles upstream from Palisade. The roller dam diverts water into the Highline Canal, which is located on the North side of the Colorado River. About 4.6 miles below the main diversion dam, water is diverted from the Highline Canal through a siphon under the Colorado River to the Orchard Mesa Power Canal, to provide the water supply for the Orchard Mesa Irrigation District, and to provide power water to the Grand Valley Power Plant. The Main Highline Canal continues on the North side of the Colorado River. Pursuant to contracts with the Palisade Irrigation District and the Mesa County Irrigation District, water is delivered from the Government Highline Canal to the ditches of those two entities (the Price and Stub Ditches). After it delivers water to the Price and Stub Ditches, the Government Highline Canal continues westward for about 47 miles.

V. BOUNDARIES

- A. The boundaries of the land served by the Government Highline Canal are shown on the attached maps. The Government Highline Canal provides water to approximately 25,740 acres of irrigated land, located on the North side of the Colorado River from Grand Junction to Mack.

VI. HOW WATER IS ALLOCATED TO USERS

- A. Water has been allocated to the lands served by the Government Highline Canal pursuant to "subscription agreements" which were entered into between GYWUA and owners of irrigated lands in the early part of the century. Those subscription agreements have been recorded with the Mesa County Clerk and Recorder's Office. Once allocated to specific land pursuant to these subscription agreements, the water remains appurtenant to those lands, and cannot be sold separately from the lands to which they are appurtenant.
- B. The Board of Directors of GYWUA determines the assessments that are necessary to operate and maintain the system, and bills the owners of the irrigated land for those assessments. If those assessments are not paid, GYWUA can commence a foreclosure proceeding against the lands to collect the assessments.

- C. GVWUA shareholders are currently entitled to a base allotment of four acre feet of water per "water right" acre. They can obtain more than the base allotment if they pay an excess charge. About one-half of the water users in GVWUA use more than the base allotment.
- D. For 1994, the assessment for the base allotment is \$14.30 per water right acre for agricultural land. The excess charge is \$4.95 per water right acre for each acre foot of water above the base allotment.

VII. HOW RIGHTS TO WATER ARE TRANSFERRED

- A. Since the rights to use water from the GVWUA system are appurtenant to the irrigable lands in the district, the rights to use GVWUA water are automatically transferred with the land, when irrigable land is transferred from one owner to another.

WHAT IS A "SHARE"?

HOW MUCH IS A "SHARE"?

- A "Share" is a unit of capital stock which represents an individual's ownership in a reservoir, or canal, or ditch.
- A "Share" is commonly represented as a unit of water available.
- The value of a "Share" is dependent on amount of water available (Water Right), number of users, and percent of the Right available at any given time.
- A "Share" can either be:
 - (a) Flow over a period of time (CFS or Miner's Inch*)
 - (OR)
 - (b) Volume (acre feet).
- A "Share" has two costs associated with it:
 - (a) Cost to purchase (or lease)
 - (b) Cost of annual assessment.

EXAMPLES

(A) GRAND VALLEY IRRIGATION COMPANY (GVIC)

1 Share is .4 of a miner's inch
1 CFS is 38.4 miner's inches (say, 40).
Thus, 1 Share is 1/100 of a CFS
100 Shares = 1 CFS (or 2 ac.ft. in 24 hrs)
1 Share is "valued" at \$200/share (Clifton)

(B) COLORADO BIG THOMPSON (CB-T)

1 Unit is .5 ac.ft. to 1.0 ac.ft.; .7 avg.
1 Unit sells for \$1,350/unit or \$1,929/ac.ft.

(C) PLATTE RIVER IRRIGATION COMPANY

1 Share is 90-120 ac.ft./year
1 Share is \$25,000 or about \$250/ac.ft.

*.02604 CFS -- Quantity which will flow through orifice 1" square with a stated head from 4-6 1/2 inches.

(D) GRAND MESA RESERVOIR COMPANY (GR. MESA)

1 Share is .89 ac.ft.

1 ac.ft is \$1,000 (City Cost), thus 1 Share is \$890.
Annual Assessment is \$.50/share.

(E) JUNIATA DITCH CO. (KANNAH CREEK)

1 Share is equal to .0425 CFS

23.5 Shares is equal to 1.00 CFS (2 ac.ft./day)

1993 assessment was \$7/share.

(F) HIGHLINE DITCH CO. (KANNAH CREEK)

1 Share is .0125 CFS

89 Shares is 1.00 CFS (2 ac.ft./day).

The value of a share is also dependent on Seniority of Water Right
and Number of Shares. For example:

Juniata Ditch Company has a higher value than Highline Ditch
Company:

	<u>Shares</u>	<u>Run/Year</u>	<u>Right/Share</u>
Juniata	500	90 days	.0425 CFS
Highline	4000	65 days	.0125 CFS

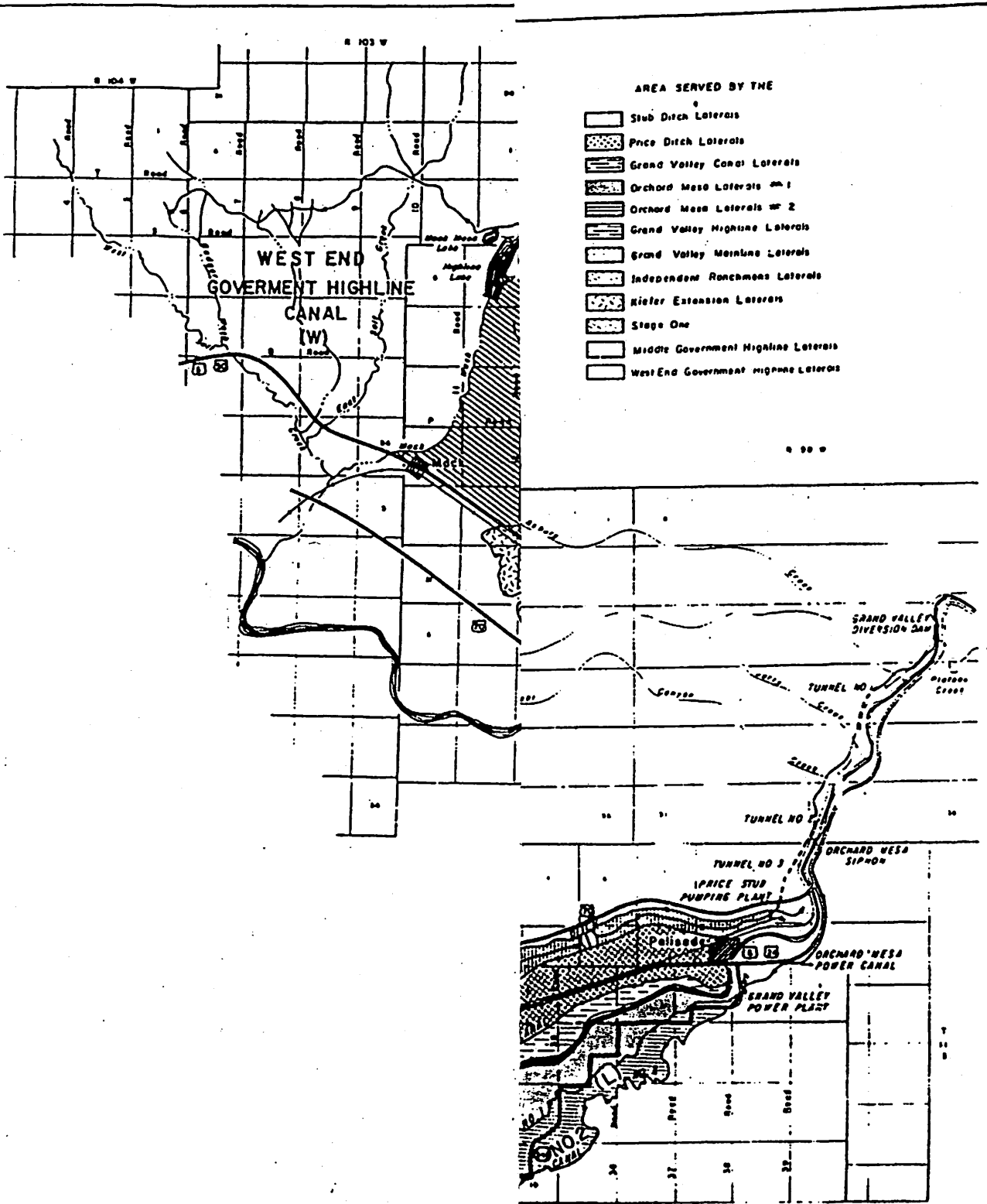
If a person says they have five shares of Highline Company water,
they have --

$$\begin{aligned} 5 \text{ Shares} \times .0125 \text{ CFS} &= .0625 \text{ CFS/Day} \\ &= .125 \text{ ac.ft./Day} \end{aligned}$$

If a garden hose runs 10 gallons a minute --

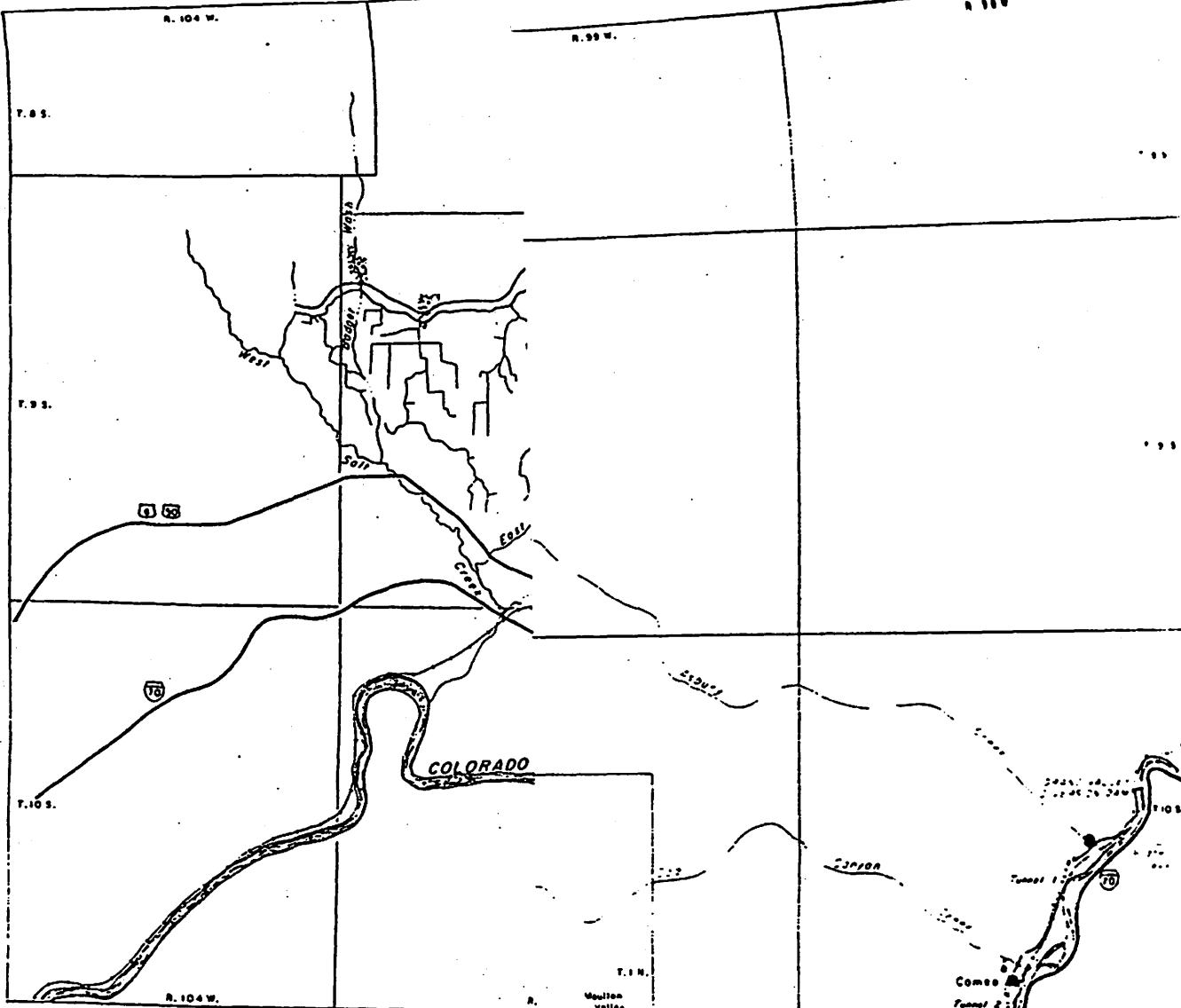
$$\begin{aligned} 10 \text{ Gallons} \times 1440 \text{ minutes/day} &= .04 \text{ ac.ft./day} \\ &= .02 \text{ CFS/day} \\ &= 1.6 \text{ Shares of Highline} \end{aligned}$$

OR about enough water for 3 garden hoses, IF 100% OF THE
WATER IS AVAILABLE. In normal years, 100% might be
available for a week or so then the percentage DROPS.

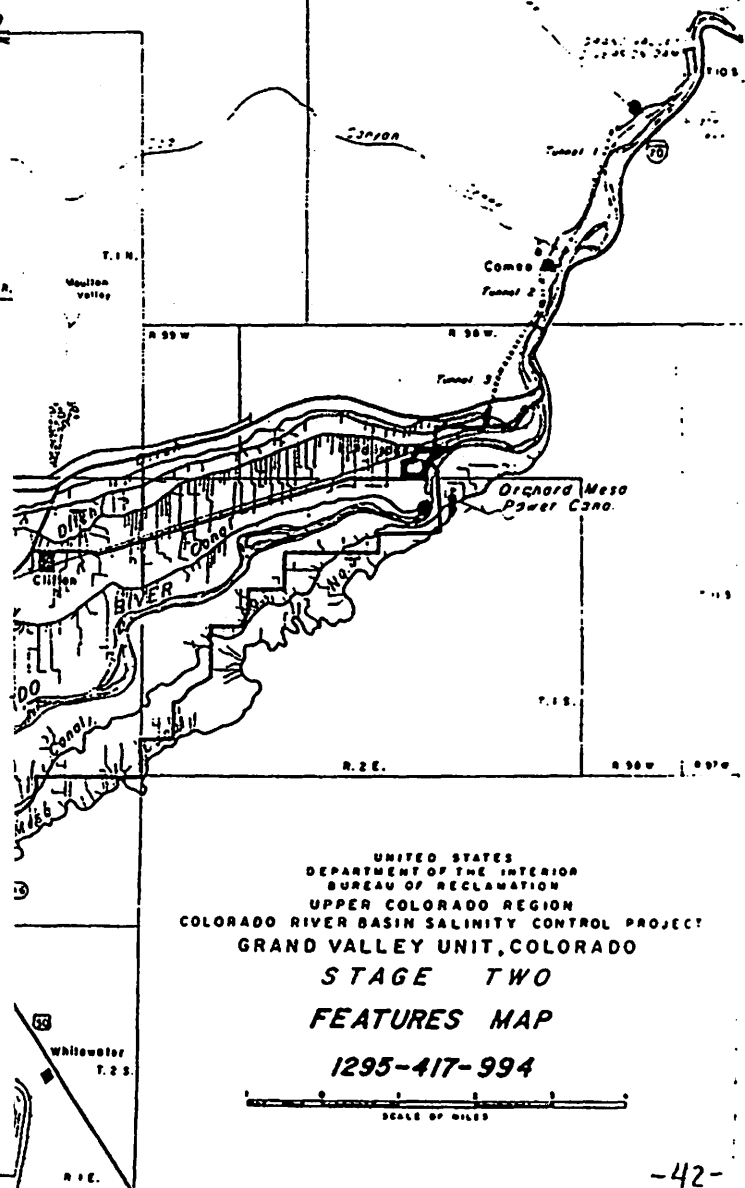


- AREA SERVED BY THE
- Stub Ditch Laterals
 - Price Ditch Laterals
 - Grand Valley Canal Laterals
 - Orchard Mesa Laterals No. 1
 - Orchard Mesa Laterals No. 2
 - Grand Valley Highline Laterals
 - Grand Valley Mainline Laterals
 - Independent Ranchmen Laterals
 - Kieler Extension Laterals
 - Stage One
 - Middle Government Highline Laterals
 - West End Government Highline Laterals

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION
 UPPER COLORADO REGION
 COLORADO RIVER BASIN SALINITY CONTROL PROJECT
 GRAND VALLEY UNIT, COLORADO
 STAGE TWO
 LATERAL SYSTEM SERVICE AREAS
 1295-417-1161



- EXPLANATION**
- Detection Ponds
 - Stage One Cross-Drainage Facilities
 - Detection Ditch
 - Moss and Debris Removal Structures (Proposed)
 - Aggregate Source
 - Construction Material Sites
 - Existing Canals
 - Pumping Plant
 - Powerplant
 - Canal & Laterals To Be Improved
 - Canal & Laterals Already Improved
 - Moss and Debris Removal Structure (Existing)
 - Stage One Area



UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION
 UPPER COLORADO REGION
 COLORADO RIVER BASIN SALINITY CONTROL PROJECT
 GRAND VALLEY UNIT, COLORADO
STAGE TWO
FEATURES MAP
 1295-417-994

SCALE OF MILES

DISTRICT COURT, WATER DIVISION 5, COLORADO

Case No. 91CW247

JUL 29 1996

ORDER


CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE GRAND VALLEY WATER USERS ASSOCIATION, ORCHARD MESA IRRIGATION DISTRICT, AND THE UNITED STATES OF AMERICA,

IN MESA COUNTY, COLORADO

The Court, having reviewed the Joint Motion to Continue Case and to Set Hearing and being fully advised as to the premises, does hereby order that the said Motion is granted. All deadlines established in the January 4, 1996 Case Management Order (as amended by the supplemental Orders entered April 17, 1996 and June 20, 1996) shall be continued and stayed through October 1, 1996. Moreover, the Court also grants the request for a hearing regarding the parties' request for Court approval of the Stipulation and stipulated proposed Decree, and regarding any other outstanding issues or matters the parties wish to bring before the Court. The Court hereby sets that hearing for 10:30 to 12:00 P.M. on October 1, 1996 (Term Day). The Court anticipates the hearing will be two hours in length.

ENTERED this 25th day of July, 1996.

BY THE COURT:


Thomas W. Ossola, Water Judge
Water Division No. 5
State of Colorado

The moving party is hereby ordered to provide a copy of this order to all parties of record within seven (7) days from the date of this order.

Thomas W. Ossola

Judge

To Bernard for Distribution
7/26/96
pg

91CW247A.ORD
July 24, 1996



United States Department of the Interior

BUREAU OF RECLAMATION

Upper Colorado Region
Western Colorado Area Office

WCN-LWest
ENV-6.00

Northern Division
2764 Compass Drive
PO Box 60340
Grand Junction CO 81506-8785

DEC 31 1997

Southern Division
835 E 2nd Avenue
PO Box 640
Durango CO 81302-0640

To: Interested Individuals, Organizations, and Agencies

Subject: Draft Environmental Assessment (EA) for the Grand Valley Water Management Project, Mesa County, Colorado

Enclosed for your review and comment is the subject EA. The EA describes proposed efficiency improvements to the Government Highline Canal of Reclamation's Grand Valley Project and a draft agreement to deliver 'surplus' water from Green Mountain Reservoir to the Grand Valley Power Plant. The project is designed to conserve water by reducing late summer spills from the Government Highline Canal, and to use as much of the conserved water as possible to increase flows in the Colorado River and help recover endangered fish.

Your comments are needed to help us adequately and appropriately address all concerns when we finalize the EA. You are also invited to our office on Thursday, January 22, 1998, at 2764 Compass Drive in Grand Junction to discuss the project. At 10:00 a.m., Reclamation, the Grand Valley Water Users' Association, Orchard Mesa Irrigation District, and Public Service Company of Colorado will begin negotiations for the draft surplus water agreement. These negotiations will be open to observation, and will be followed by a public comment period. At 1:30 p.m., informal discussions on the overall project and EA will begin.

To be considered in our decision-making process, your written comments on the Draft EA should be submitted by Monday, **February 9, 1998**, to: Carol DeAngelis, Area Manager, Bureau of Reclamation, PO Box 60340, Grand Junction CO 81506.

If you have questions, please call Jone Wright at (970) 248-0636.

Sincerely,

Carol DeAngelis
Area Manager

Enclosure

Exhibit E

*Orcharil Mesa Check Exchange
Water Division No. 5 - Case 91CW247*

Public Service Company of Colorado	William A. Hillhouse II, Esquire Kenneth L. Salazar, Esquire	Parcel, Mauro, Hultin & Spaanstra, P.C. 1801 California Street, Suite 3600 Denver, Colorado 80202
Ralston Resorts, Inc.	Gary L. Greer, Esquire	Sherman & Howard, L.L.C. 633 Seventeenth Street, Suite 3000 Denver, Colorado 80202
Union Oil Company of California (UNOCAL)	Charles N. Woodruff, Esquire James R. Montgomery, Esquire	Moses, Wittemyer, Harrison & Woodruff, P.C. 1002 Walnut, #300 (80302) P.O. Box 1440 Boulder, Colorado 80306

Exhibit E

*Orchard Mesa Check Exchange
Water Division No. 5 - Case 91CW247*

Colorado River Water Conservation District	David C. Hallford, Esquire	201 Centennial Street, #204 (81601) P.O. Box 1120 Glenwood Springs, Colorado 81602
Colorado Springs, City of	Mark T. Pifher, Esquire Wm Kelly Dude, Esquire	Dude, Pifher & Lebel, P.C. 104 South Cascade Avenue, Suite 204 Colorado Springs, Colorado 80903
Cyprus Climax Metals Company	Brian M. Nazareus, Esquire	Gorsuch, Kirgis, L.L.C. 1401 17th Street, #1100 Denver, Colorado 80202
Exxon Company, U.S.A. Board of County Commissioners of Summit County, Colorado Vail Associates, Inc. Vail Valley Consolidated Water District Upper Eagle Regional Water Authority	Glenn E. Porzak, Esquire Steven Bushong, Esquire	Porzak, Browning & Johnson, L.L.P. 1300 Walnut Street, Suite 100 Boulder, Colorado 80302
Grand County Water & Sanitation District No. 1 Middle Park Water Conservancy District	Stanley W. Cazier, Esquire	Baker, Cazier & McGowan 62495 U.S. Highway 40, E P.O. Box 500 Granby, Colorado 80446
Grand Valley Irrigation Company	Frederick G. Aldrich, Esquire John T. Howe, Esquire	Hoskin, Farina, Aldrich & Kampf, P.C. 200 Grand Avenue, Suite 400 P.O. Box 40 Grand Junction, Colorado 81502
Pueblo, Colorado, Board of Water Works of	William F. Mattoon, Esquire William A. Paddock, Esquire Peter C. Fleming, Esquire	Peterson, Fonda, Farley, Mattoon Crockenberg & Garcia, P.C. 650 Thatcher Building P.O. Box 35 Pueblo, Colorado 81002 Carlson, Hammond & Paddock, L.L.C. 1700 Lincoln Street, Suite 3900 Denver, Colorado 80203

Exhibit E

*Orchard Mesa Check Exchange
Water Division No. 5 - Case 91CW247*

Basalt Water Conservancy District Copper Mountain, Inc. Copper Mountain Consolidated Metropolitan District Mobil Mining & Minerals Company	Scott Balcomb, Esquire Lori Satterfield, Esquire	Delaney & Balcomb, P.C. 818 Colorado Avenue P.O. Drawer 790 Glenwood Springs, Colorado 81602
Carbondale, Town of Debeque, Town of Eagle, Town of Palisade, Town of	Sherry A. Caloia, Esquire	Caloia, Houpt & Light, P.C. 1204 Grand Avenue Glenwood Springs, Colorado 81601
Frisco, Town of Glenwood Springs, City of North Barton Creek, LLC Parachute, Town of Rifle Land Associates, Ltd. Silverthorne, Town of Spruce Valley Ranch Foundation	David W. Robbins, Esquire Mark J. Wagner, Esquire	Hill & Robbins, P.C. 1441 18th Street, #100 Denver, Colorado 80202
Colorado Division of Wildlife Colorado State Engineer Colorado Water Conservation Board Division Engineer, Water Division No. 5	Gale A. Norton, Attorney General Stephen K. Erkenbrack, Chief Deputy Attorney General Timothy M. Tymkovich, Solicitor General Jennifer L. Gimbel, Deputy Attorney General Wendy Weiss, First Assistant Attorney General	Natural Resources Section 1525 Sherman, 5th Floor Denver, Colorado 80203

Exhibit E

*Orchard Mesa Check Exchange
Water Division No. 5 - Case 91CW247*

Applicant	Counsel	Firm and Address
United States of America	Bruce D. Bernard, Esquire Stephen G. Bartell, Esquire	U.S. Department of Justice Environment and Natural Resources Division General Litigation Section 999 18th Street, Suite 945 Denver, Colorado 80202
Grand Valley Water Users Association	Mark Hermundstad, Esquire	Williams, Turner & Holmes, P.C. 200 North 6th Street, #103 P.O. Box 338 Grand Junction, Colorado 81502
Orchard Mesa Irrigation District	Flint B. Ogle, Esquire	Dufford, Waldeck, Milburn & Krohn, L.L.P. 744 Horizon Court, Suite 300 Grand Junction, Colorado 81506
Objector	Counsel	Firm and Address
City of Aurora, Colorado, acting by and through its Utility Enterprise	John M. Dingess, Esquire	Duncan, Ostrander & Dingess, P.C. 7800 East Union Avenue, #200 Denver, Colorado 80237
Basalt, Town of New Castle, Town of Mid-Valley Metropolitan District Rifle, City of	Loyal E. Leavenworth, Esquire	Leavenworth & Associates, P.C. P.O. Drawer 2030 Glenwood Springs, Colorado 81602



DEAN HUMPHREY/The Daily Sentinel

THE BOAT RAMP at Corn Lake State Park illustrates the low water level in the Colorado River as it flows through Grand Junction. On Wednesday, the Shoshone Power Plant called its senior water right — the oldest right on the river — which will boost flows downstream of the power plant.



ROBERT GARCIA/The Daily Sentinel

Plant to get water

Shoshone calls for its right to upstream flow

By C. PATRICK CLEARY
The Daily Sentinel

Grand Valley water users already eking by on a low supply of Colorado River water got a bit of relief this week when a power plant in Glenwood Canyon requested all available upriver water.

The request means water users upriver from the Shoshone Power Plant — which owns the oldest water right on the Colorado River — will have less water to draw from. However, downriver users in the Grand Valley and elsewhere will have more water available because the hydroelectric plant returns most of the water it uses to the river.

Still, water officials are worried that irrigation water will run low this summer, in the wake of a winter that saw the snowpack statewide reach only 65 percent of normal. At

See WATER, page 8A ➤



DAILY SENTINEL
Grand Junction, CO
(Mesa County)
M-F(PM), 31,345; S/Su(AM), 36,648

Colorado Press Service

Continued from Page One

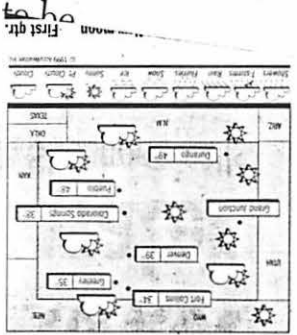
lower levels, the snowpack was almost nonexistent. Dick Proctor, manager of the Grand Valley Water Users Association, said it is a bit unusual for Shoshone to call its senior water right this early in the year. Typically by now, there is ample runoff in the Colorado River to satisfy all users, he said. The runoff sometimes starts as late as this week, but water users are worried that the below-normal snowpack could spell trouble as the summer gets hot. "This last snowfall will help some but it has stayed cold enough in the high country it is not running off," Proctor said.

The snowpack in the highest elevations also aids in filling a series of reservoirs used to store water for dry years. Shoshone Power Plant's call on Monday means the power plant gets all natural flows in the river above the plant. Also, upriver reservoirs must stop filling and let the water run through until Shoshone stops its call for water. Situations like this could have wider impacts later in the year. "This year will be really short for water," said Alan Martellano, assistant state engineer with the Colorado Division of Water Resources in Glenwood Springs. "It's almost like playing poker. They have to decide if they are not allowing those reservoirs to store water at this time of

West Coast Gets Near
In a sharp rebuke, Sen. Carl Levin, D-Mich., an architect of the water law, announced his resignation to the river. The Grand Valley Water Users Association, which operates the Government Highline Canal, has already curtailed water it sends to its power plant while the Orchard Mesa Check dam has been lowered to ensure another irrigation company gets its share of water. "We're struggling to keep water in the headgates right now," Proctor said. Proctor said use of the Highline Canal has not reached capacity so he cut back some water to his power plant to shift it to the Grand Valley Canal and the Grand Valley Irrigation Company's Grand Valley Canal because of problems that company had Tuesday filling water needs.



Legend: S-sunny, PC-partly cloudy, C-cloudy, SH-showers, T-thunderstorms, R-rain, SF-snow flurries, SH-snow, Ice



COLORADO and REGIONAL forecast for today

Precipitation	0.00 inch	Temp.	High: 37° at 12 a.m.	Relative humidity:	LO 46 at 7:25 a.m.	Avg. Rec. Year 1998	38	21	1933	34	Total this month ending at 6 p.m.	0.39 inch	Total for year	0.79 inch	Average year to date	2.30 inch
	Temp.		Low: 17° at 4 p.m.		65		81	1936	47	Average month to date		0.36 inch				

WEDNESDAY in Grand Junction

Front Range	33-50	35-40	15-25
Southeastern Utah	33-50	35-40	15-25
Grand Valley 5-day outlook	Mon	Sun	Sat
Highs in the 60s, lows around 30. Dry and warming to 70 by Monday.			

Rifle/Glenwood Springs		48-55		15-20	Sunny today with some wind. Clear and cold tonight. Sunny Friday.
Grand Mesa/Central mountains		45-55		15-20	Sunny today with some wind. Clear and cold tonight. Sunny Friday.
Southeastern Utah		55-60		25-30	Sunny and cooler today. Clear tonight with wind. Sunny Friday.
Front Range		35-40		15-25	Cloudy today with widely scattered snow showers. Partly cloudy tonight. Cloudy Friday.

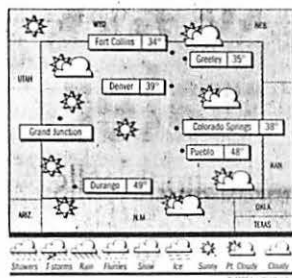
GRAND VALLEY 5-day outlook

Today	Fri.	Sat.	Sun.	Mon.
Highs in the 60s, lows around 30. Dry and warming to 70 by Monday.				

WEDNESDAY in Grand Junction

Temp.	Temperature				24-hour period ending at 6 p.m.	Precipitation
	HI	Avg.	Rec. Year	1998		
60 at 4:19 p.m.	65	81	1936	47	0.00 inches	
46 at 7:25 a.m.	38	21	1933	34	0.39 inches	
Relative humidity:					Total for month	0.36 inches
High: 37% at 12 a.m.					Average month to date	0.79 inches
Low: 17% at 4 p.m.					Total for year	2.30 inches
					Average year to date	

COLORADO and REGIONAL forecast for today



Legend: S-sunny, PC-partly cloudy, C-cloudy, SH-showers, T-thunderstorms, R-rain, SF-snow flurries, SN-snow, I-ice



Sunset today 7:51 p.m. | Sunrise Friday 6:37 a.m.

WEATHER helplines

Current Grand Junction conditions	243-0914
Five-day forecast	243-0914
Time & local temperature	242-2550
Road conditions	245-8800
Air quality advisory	
Mesa County	248-6990
Montrose/Delta counties	874-2172

Heavy snow hits Front Range; West Coast gets heat in 80s

FORECAST for 10 a.m. today

5117 FAX 303-571-1803
 Press Service
 Press
 (AM), 36,648

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO

Case No. 91CW247

STIPULATION AND AGREEMENT

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE GRAND VALLEY
WATER USERS ASSOCIATION, ORCHARD MESA IRRIGATION DISTRICT, AND
THE UNITED STATES OF AMERICA, IN MESA COUNTY, COLORADO

This Stipulation and Agreement, dated as of September 4, 1996, is made between the Co-Applicants, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District ("OMID"), the United States of America ("United States"), and the following parties who are collectively referred to herein as the "Objectors":

Aurora, City of
Basalt, Town of
Basalt Water Conservancy District
Carbondale, Town of
Colorado Division of Wildlife
Colorado River Water Conservation District
Colorado Springs, City of
Colorado State Engineer
Colorado Water Conservation Board
Copper Mountain, Inc.
Copper Mountain Consolidated Metropolitan District (successor-in-interest to
Copper Mountain Water and Sanitation District)
Cyprus Climax Metals Company
DeBeque, Town of
Division Engineer, Water Division No. 5
Eagle, Town of
Exxon Company, U.S.A.
Frisco, Town of
Glenwood Springs, City of
Grand County Water & Sanitation District No. 1
Grand Valley Irrigation Company
Middle Park Water Conservancy District
Mid Valley Metropolitan District
Mobil Mining & Minerals Company

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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

Stipulation and Agreement

Case No. 91CW247, Water Division No. 5

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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.

Stipulation and Agreement

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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.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

Stipulation and Agreement

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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

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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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Case No. 91CW247, Water Division No. 5
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Bruce D. Bernard, #12166
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U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
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**ATTORNEYS FOR THE
UNITED STATES OF AMERICA**

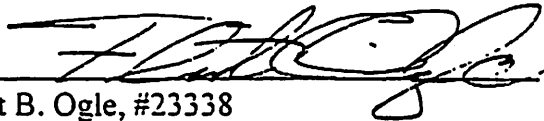
Stipulation and Agreement
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Mark Hermundstad

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ATTORNEYS FOR GRAND VALLEY WATER USERS ASSOCIATION

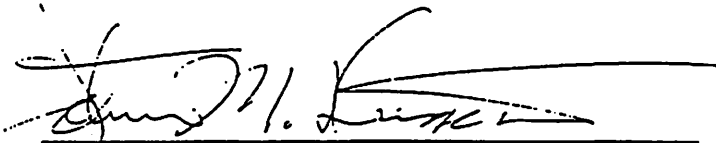
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ATTORNEYS FOR ORCHARD MESA IRRIGATION DISTRICT

Stipulation and Agreement
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Page 18

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

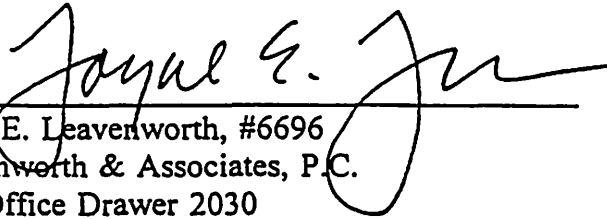
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ATTORNEY FOR CITY OF AURORA, COLORADO, ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE

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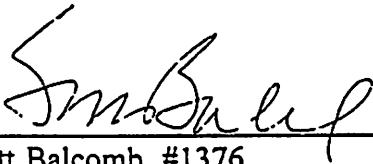
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**ATTORNEY FOR TOWN OF BASALT; MID VALLEY METROPOLITAN DISTRICT;
CITY OF RIFLE; TOWN OF NEW CASTLE**

Stipulation and Agreement

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**ATTORNEYS FOR COPPER MOUNTAIN, INC.; BASALT WATER CONSERVANCY
DISTRICT; COPPER MOUNTAIN CONSOLIDATED METROPOLITAN DISTRICT;
MOBIL MINING & MINERALS COMPANY**

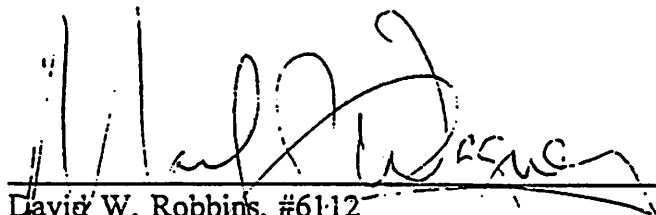
Stipulation and Agreement
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**ATTORNEY FOR TOWN OF EAGLE; TOWN OF DEBEQUE; TOWN OF PALISADE;
TOWN OF CARBONDALE**

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Case No. 91CW247, Water Division No. 5
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A handwritten signature in black ink, appearing to read "Mark J. Wagner", written over a horizontal line.

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Gale A. Norton
Attorney General

Stephen K. Erkenbrack
Chief Deputy Attorney General

Timothy M. Tymkovich
Solicitor General

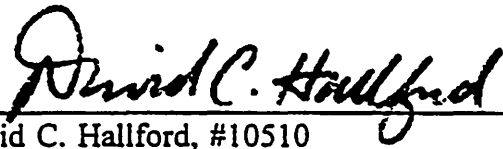
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Page 24

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

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ATTORNEY FOR COLORADO RIVER WATER CONSERVATION DISTRICT


on and Agreement
91CW247, Water Division No. 5

Norton
General

K. Erkenbrack
Deputy Attorney General

M. Tymkovich
General

L. Gimbel
Attorney General



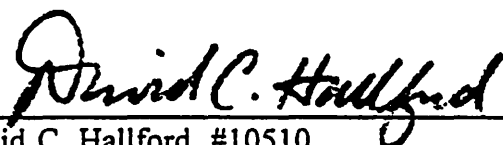
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ATTORNEY GENERAL AND DIVISION ENGINEERS; COLORADO DIVISION
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Stipulation and Agreement

Case No. 91CW247, Water Division No. 5

Page 24

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

David C. Hallford, #10510

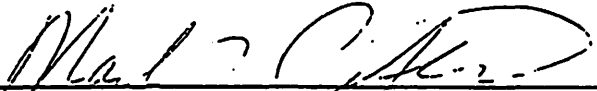
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ATTORNEY FOR COLORADO RIVER WATER CONSERVATION DISTRICT

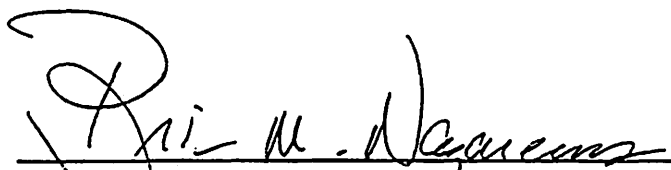
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ATTORNEY FOR CITY OF COLORADO SPRINGS

Stipulation and Agreement
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Page 26

A handwritten signature in black ink, appearing to read "Brian M. Nazareus", written over a horizontal line.

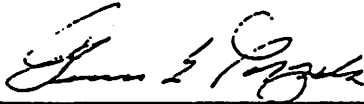
Brian M. Nazareus. #16984
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ATTORNEY FOR CYPRUS CLIMAX METALS COMPANY.

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Steven Bushong, #21782

Porzak, Browning & Johnson, L.L.P.

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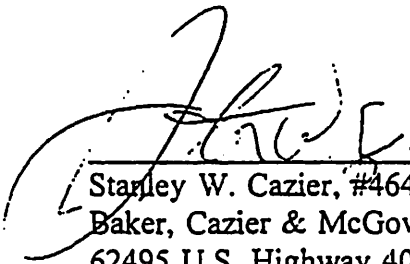
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ATTORNEYS FOR VAIL ASSOCIATES, INC.; EXXON COMPANY, U.S.A.; VAIL VALLEY CONSOLIDATED WATER DISTRICT; BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO; UPPER EAGLE REGIONAL WATER AUTHORITY

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**ATTORNEY FOR GRAND COUNTY WATER AND SANITATION DISTRICT NO. 1;
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A handwritten signature in black ink, appearing to be "F. G. Aldrich" and "John T. Howe" joined together, positioned above a horizontal line.

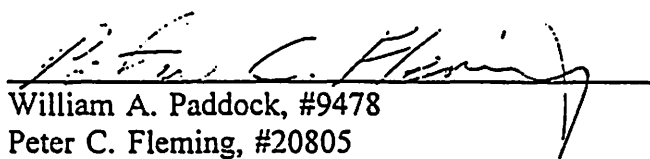
Frederick G. Aldrich, #428
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ATTORNEYS FOR GRAND VALLEY IRRIGATION COMPANY

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A handwritten signature in cursive script, appearing to read "Peter C. Fleming", is written over a horizontal line.

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Peter C. Fleming, #20805

Carlson, Hammond & Paddock, L.L.C.

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ATTORNEYS FOR BOARD OF WATER WORKS OF PUEBLO, COLORADO

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Kenneth L. Salazar

William A. Hillhouse II, #2959

Kenneth L. Salazar, #11648

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ATTORNEYS FOR PUBLIC SERVICE COMPANY OF COLORADO

Stipulation and Agreement

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Gary L. Greer, #4482

Sherman & Howard, L.L.C.

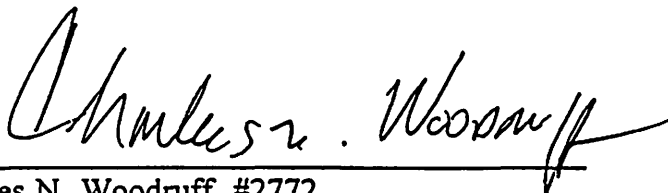
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ATTORNEY FOR RALSTON RESORTS, INC.

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Charles N. Woodruff, #2772
James R. Montgomery, #10989
Moses, Wittemyer, Harrison & Woodruff, P.C.
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ATTORNEYS FOR UNOCAL

EXHIBIT A

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

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO

Case No. 91CW247

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE GRAND VALLEY
WATER USERS ASSOCIATION, ORCHARD MESA IRRIGATION DISTRICT, AND THE
UNITED STATES OF AMERICA, IN MESA COUNTY, COLORADO

FINDINGS OF FACT

1. Filing of Application. This matter was commenced on December 30, 1991 by the filing of an Application to Confirm and Approve Appropriative Right of Exchange which application was amended by leave of Court on May 24, 1993.

2. Co-Applicants. The application and amendment were filed by the United States of America (the "United States"), the Grand Valley Water Users Association, a corporation (the "Association"), and the Orchard Mesa Irrigation District, a corporation ("OMID"). The United States, the Association and OMID are referred to herein as the "Co-Applicants."

3. Objectors.

3.1 Statements of Opposition Opposing Application. The following parties filed timely Statements of Opposition opposing the application or seeking protective terms and conditions:

Basalt, Town of
Basalt Water Conservancy District
Carbondale, Town of
Collbran, Town of
Colorado Division of Wildlife
Colorado Springs, City of
Copper Mountain, Inc.
Copper Mountain Consolidated Metropolitan District (successor-in-interest to
Copper Mountain Water & Sanitation District)

DeBeque, Town of
Eagle, Town of
Glenwood Springs, City of
Grand County Water & Sanitation District No. 1
Middle Park Water Conservancy District
Mid Valley Metropolitan District
Mobil Mining and Minerals Company
Natec Resources, Inc.
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

3.2 Statements of Opposition in Support of Application. The following parties filed timely Statements of Opposition in support of the application:

Colorado River Water Conservation District
Colorado State Engineer
Division Engineer, Water Division No. 5
Grand Valley Irrigation Company

3.3 Intervenors. The following parties did not file timely Statements of Opposition, but were granted leave to intervene as Objectors:

Aurora, City of
Colorado Water Conservation Board
Cyprus Climax Metals Company
Exxon Company, U.S.A.
Englewood, City of
Frisco, Town of

Vail Associates, Inc.
Vail Valley Consolidated Water District

3.4 Withdrawals. The following parties subsequently withdrew their Statements of Opposition:

Collbran, Town of (by Order dated January 29, 1996)
Englewood, City of (by Withdrawal dated March 8, 1996)
Natec Resources, Inc. (by Order dated January 29, 1996)

4. Stipulation. On or about September __, 1996, the parties filed the Stipulation and Agreement attached hereto as Attachment 1. The Stipulation and Agreement has been executed by the Co-Applicants and by all the Objectors who remain parties to the case and provides that the parties to the Stipulation and Agreement agree to the entry of a decree herein granting the application as amended and incorporating the terms of the Stipulation and Agreement.

5. Jurisdiction. Timely and adequate notice of the filing and contents of the application and amendment to the application herein was given in the manner required by law. The time for filing Statements of Opposition and for seeking leave to intervene has expired. The Court has jurisdiction over the subject matter of this proceeding and over all persons and owners of property affected hereby, irrespective of whether or not those persons and owners of property have appeared.

6. Relief Requested by Application. The application requests confirmation of an appropriative right of substitution and exchange for an existing exchange on the Colorado River which is based on the operation of a structure commonly referred to as the Orchard Mesa Check. Co-Applicants request adjudication of an absolute right for this existing exchange, in the amount of 640 c.f.s., with a priority of April 1, 1926.

7. Description of Exchange Facilities. In order to describe the exchange, it is helpful to describe the facilities by which the exchange is operated. These facilities are described as follows:

7.1 Point of Diversion. The point of diversion for the exchange and the upstream point of the exchange is the headgate on the right (West) side of the Grand Valley Project diversion dam on the Colorado River (commonly referred to as the "Roller Dam") located in the Northwest Quarter of Section 13, Township 10 South, Range 98 West, 6th P.M., in Mesa County, Colorado, on the right (West) bank of the Colorado River at a point whence the Southwest Corner of said Section 13 bears South 16°41' West 4,023 feet (the "Upstream Point of Exchange").

7.2 Point of Delivery of Substitute Supply. The water diverted by exchange is returned to the Colorado River immediately upstream from the Grand Valley Irrigation Company ("GVIC") diversion dam, which is located at a point on the right (West) bank of the Colorado River from whence the Northeast Corner of Section 3, Township 1 South, Range 2 East, of the Ute Meridian, in Mesa County, Colorado, bears North 13°18' East 1,800 feet (the "Downstream Point of Exchange").

7.3 Delivery Facilities. The water diverted by exchange at the Upstream Point of Exchange is delivered for a distance of approximately 4.6 miles through the Highline Canal located on the right (West) bank of the Colorado River, at which point it is diverted under the Colorado River by means of a siphon into the Orchard Mesa Power Canal located on the left (East) bank of the Colorado River. The Orchard Mesa Power Canal delivers the water diverted by exchange for a distance of approximately 3.8 miles to the Grand Valley Power Plant and the OMID Pumping Plant.

7.4 Grand Valley Power Plant. The Grand Valley Power Plant is owned by the United States and leased to the Association, OMID and the Public Service Company of Colorado. A portion of the water diverted by exchange is diverted into the Grand Valley Power Plant for power generation purposes.

7.5 OMID Pumping Plant. The remainder of the water diverted by exchange is diverted into the OMID Pumping Plant to operate hydraulic pumps which lift irrigation water into OMID irrigation canals.

7.6 Afterbay. All the water used for non-consumptive power generation purposes at the Grand Valley Power Plant and non-consumptive operation of hydraulic pumps at the OMID Pumping Plant passes into a common afterbay located below the Grand Valley Power Plant and the OMID Pumping Plant (the "Afterbay"). If the water in the Afterbay is allowed to flow in its natural course, it reenters the Colorado River at a point below the GVIC diversion dam.

7.7 Orchard Mesa Check. The Orchard Mesa Check (the "Check") is a structure which can be operated to alter the point at which water in the Afterbay reenters the Colorado River. The Check is located at or near the downstream end of the Afterbay, across the channel through which water from the Afterbay flows back to the Colorado River. The Check consists of three mechanically operated radial gates and a bypass channel which parallels the Colorado River to a point immediately above the GVIC diversion dam. The Check is operated by lowering one or more of the three radial gates. The lowered gate or gates block the flow in the channel leading from the Afterbay to the Colorado River, thus raising the level of the water in the Afterbay by up to eight feet, more or less. Raising the level of the water in the Afterbay causes water in the Afterbay to flow through the Check's

bypass channel. The water flowing in this bypass channel returns to the Colorado River immediately above the GVIC diversion dam. Thus, the operation of the Check alters the point at which water in the Afterbay is returned to the Colorado River. When the Check is not being operated, water flowing into the Afterbay is returned to the Colorado River at a point below the GVIC diversion dam. When the Check is being operated, some or all of the water flowing into the Afterbay is returned to the Colorado River above the GVIC diversion dam, where it can then be diverted by GVIC which owns water rights senior in priority to the water rights owned by Co-Applicants. The Check may be operated in varying degrees to return more or less water in the Afterbay to the Colorado River above the GVIC diversion dam depending upon the demands of GVIC and the Co-Applicants and the amount of water available at the Roller Dam.

8. Description of Orchard Mesa Check Exchange. The operation of the Check constitutes an appropriative right of substitution and exchange. This existing exchange has been operated as described below.

8.1 Point of Diversion/Upstream Point of Exchange. The point of diversion for the exchange, which is also referred to herein as the Upstream Point of Exchange, is the Roller Dam on the Colorado River, the location of which is set forth in paragraph 7.1, above.

8.2 Point of Delivery of Substitute Supply/Downstream Point of Exchange. The point of delivery of the substitute supply, which is also referred to herein as the Downstream Point of Exchange, is a point at which water diverted into the Check bypass channel returns to the Colorado River immediately above the GVIC diversion dam, the location of which is set forth in paragraph 7.2, above.

8.3 Exchange Reach. The reach of the Colorado River over which the exchange depletes river flows (the "Exchange Reach") extends from the Upstream Point of Exchange described in paragraph 7.1, above, to the Downstream Point of Exchange described in paragraph 7.2, above, and is approximately 8.4 miles in length.

8.4 Source. The source of the water diverted by exchange is the Colorado River.

8.5 Description of Operation of Exchange. The exchange operates by the diversion of water out of the Colorado River at the Upstream Point of Exchange, delivery of that water through the Highline Canal and the Power Canal to the Grand Valley Power Plant and the OMID Pumping Plant for non-consumptive power generation and hydraulic pumping purposes, and the return of the same amount of water to the Colorado River at the Downstream Point of Exchange through operation of the Check. The water returned to the Colorado River at the Downstream Point of Exchange by diversion through the Check bypass

channel can then be diverted by GVIC which owns water rights senior in priority to the water rights owned by Co-Applicants.

8.6 Amount. The maximum flow rate of the exchange is 640 c.f.s., absolute.

8.7 Use. The water diverted by exchange is used for non-consumptive power generation and hydraulic pumping purposes at the Grand Valley Power Plant and the OMID Pumping Plant.

8.8 Priority. The date of initiation of the appropriation is April 1, 1926, the date of completion of construction of the Check and the Check bypass channel. The appropriation was completed with reasonable diligence by the operation of the exchange up to its maximum rate of flow and beneficial use of water diverted by exchange for the uses described above. Co-Applicants have complied with the requirements of Rule 89, C.R.C.P., the exchange has been administered in a manner consistent with recognition of the original priority date of the exchange, and, pursuant to § 37-92-305(10), C.R.S., Co-Applicants are entitled to recognition of the original priority date of April 1, 1926 for this existing exchange, without postponement under § 37-92-306, C.R.S.

9. Terms and Conditions. The terms and conditions set forth below will prevent injury to the vested water rights and conditional water rights of others and will ensure that the substitute supply made available under the exchange will be of a quality, quantity and continuity adequate to meet the requirements of the uses to which the water of senior appropriators has normally been put.

9.1 Quality of substitute supply. The same water which is diverted by exchange out of the Colorado River at the Upstream Point of Exchange shall be returned to the Colorado River at the Downstream Point of Exchange. The return of the same water, after its use in non-contaminating power generating and hydraulic pumping facilities, will ensure that the water returned to the river, i.e., the substitute supply, is of a quality to meet the requirements of the uses to which senior appropriators have normally put such water.

9.2 Quantity of substitute supply. The amount of water returned to the Colorado River above the GVIC diversion dam at the Downstream Point of Exchange by operation of the Check (the "substitute supply") shall equal or exceed the amount of water diverted by exchange out of the Colorado River by means of the Roller Dam at the Upstream Point of Exchange.

9.3 Continuity of substitute supply. The water diverted by exchange out of the Colorado River at the Upstream Point of Exchange shall be returned to the Colorado River at the Downstream Point of Exchange in approximately the same time as it would take that water to flow in the Colorado River from the Upstream Point of Exchange to the Downstream Point of Exchange if the water were left in the river.

9.4 Intervening Seniors. All water rights located between the Upstream Point of Exchange and the Downstream Point of Exchange, i.e., within the Exchange Reach, which are senior to the date of appropriation of the exchange, shall be fully satisfied by the remaining flows subject to their call.

9.5 Terms of Stipulation Incorporated. The terms and conditions of the Stipulation and Agreement attached hereto as Attachment 1 are incorporated herein.

10. Decree Administrable. The Court notes that, by way of the Stipulation and Agreement attached hereto as Attachment 1, the State and Division Engineer for Water Division No. 5 stipulated to the entry of this decree. The Court finds that this decree is administrable by the Division Engineer for Water Division No. 5.

CONCLUSIONS OF LAW

11. Incorporation of Findings of Fact. The Court incorporates the foregoing Findings of Fact to the extent that these may constitute conclusions of law.

12. Jurisdiction. Timely and adequate notice of the filing and contents of the application and the amendment to the application herein was given in the manner required by law. The time for filing Statements of Opposition and for seeking leave to intervene has expired. The Court has jurisdiction over all persons and owners of property affected hereby, irrespective of whether or not those persons and owners of property have appeared.

13. Subject Matter Jurisdiction. The Court has jurisdiction over the subject matter of this proceeding. The application herein is one contemplated by law, and adjudication of the exchange described in this decree is authorized by law and is within the jurisdiction of this Court. §§ 37-80-120, 37-92-101, *et seq.*, C.R.S. The right of substitution and exchange decreed herein is an appropriative water right, with a priority date and, like other appropriative water rights, must be exercised within the priority system and in accordance with applicable state law. §§ 37-80-120(4), 37-92-101, *et seq.*, C.R.S.

14. Appropriative Right of Exchange. The appropriative right of exchange confirmed herein was initiated on April 1, 1926, was diligently prosecuted thereafter, and was completed with reasonable diligence by the diversion of water by exchange and the application of such water to the beneficial uses described herein. §§ 37-92-305(1), 37-92-305(9)(a) C.R.S.

15. Non-Injury. Subject to the terms and conditions of the Stipulation and Agreement, the exchange may be operated under terms and conditions which prevent injury to the vested water rights and conditional water rights of others, including the requirement that the substitute supply made available under the exchange will be of a quality, quantity and continuity adequate to meet the requirements of the uses to which the water of senior appropriators has normally been put. §§ 37-80-120(2), (3) & (4), 37-92-305(3) & (5), C.R.S.

16. Entitlement to Original Priority Without Postponement. Pursuant to § 37-92-305(10), C.R.S., Co-Applicants are entitled to recognition of the original priority date of April 1, 1926 for the exchange described herein, without postponement under § 37-92-306, C.R.S.

JUDGMENT AND DECREE

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby adjudged, ordered and decreed that:

17. Incorporation of Findings of Fact and Conclusions of Law. The foregoing Findings of Fact and Conclusions of Law are incorporated herein as if set out verbatim.

18. Confirmation of Orchard Mesa Check Exchange. Subject to the terms and conditions set forth herein, the Court hereby confirms and approves the Orchard Mesa Check Exchange which is more specifically described in the Findings of Fact, above, in the amount of 640 c.f.s., absolute, with a priority date of April 1, 1926, without postponement under § 37-92-306, C.R.S.

19. Terms and Conditions. The terms and conditions set forth in the Stipulation and Agreement, as well as paragraph 9, above, will prevent injury to the vested water rights and conditional water rights of others and will ensure that the substitute supply made available under the exchange will be of a quality, quantity and continuity adequate to meet the requirements of the uses to which the water of senior appropriators has normally been put.

20. Approval and Incorporation of Stipulation and Agreement. The parties have executed the Stipulation and Agreement attached hereto as Attachment 1. The Court, having reviewed the Stipulation and Agreement and being otherwise fully advised in the premises,

hereby approves the Stipulation and Agreement and incorporates it into this decree as though it were restated here in full.

21. Retained Jurisdiction. The Court shall retain permanent jurisdiction over the subject matter of this case and parties hereto for all purposes set forth in the Stipulation and Agreement; provided, however, that the priority date and amount of the exchange are finally determined hereby and will not be further considered under the Court's retained jurisdiction.

22. Filing of Decree with State and Division Engineers. A copy of these Findings of Fact, Conclusions of Law, Judgment and Decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 5.

Dated at Glenwood Springs, Colorado, this ____ day of _____,
1996.

THOMAS W. OSSOLA
Water Judge
Water Division No. 5

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

DRAFT
(Revised 10/17/97)
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Colorado-Big Thompson Project
Grand Valley Project

OPERATING AGREEMENT
AMONG THE BUREAU OF RECLAMATION,
THE PUBLIC SERVICE COMPANY OF COLORADO,
THE ORCHARD MESA IRRIGATION DISTRICT,
THE GRAND VALLEY WATER USERS ASSOCIATION.

THIS OPERATING AGREEMENT hereinafter referred to as the Agreement , is made this ____ day of _____, 1997, pursuant to the Act of June 17, 1902 (32 Stat. 388), and more particularly pursuant to the Act of August 9, 1937 (50 Stat. 564, 595), and the Act of August 4, 1939 (53 Stat. 1187) as amended, and all Acts amendatory thereof or supplementary thereto among the **UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF RECLAMATION** (Reclamation), the **PUBLIC SERVICE COMPANY of COLORADO** (PSCo), the **ORCHARD MESA IRRIGATION DISTRICT** (OMID), and the **GRAND VALLEY WATER USERS ASSOCIATION** (GVWUA), hereinafter referred to as the 'Parties', for furnishing historic users pool surplus water from Green Mountain Reservoir for the purpose of generating hydroelectric power at the Grand Valley Power Plant

WITNESSETH, THAT:

WHEREAS, The following statements are made in explanation:

EXPLANATORY RECITALS

- A. WHEREAS, Green Mountain Dam and Reservoir were constructed as features 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 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), as decreed in the Consolidated Cases (Civil Action Nos. 2782, 5016, and 5017 and amendments thereof) United States District Court for the District of Colorado; and 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. The Reservoir was authorized to provide replacement water for senior downstream diversion rights in western Colorado when water is diverted to or stored for use in eastern Colorado through the CBT Project. Additional capacity was provided for hydroelectric power generation and beneficial uses in western Colorado.

- B. WHEREAS, The Operating Policy for Green Mountain Reservoir provides for releases of water from the Power Pool to fully satisfy water rights in Western Colorado perfected by use on or before October 15, 1977 which would otherwise be curtailed by a legal call on the river. The amount of these releases is not to exceed 66,000 acre feet annually which is deemed adequate to satisfy irrigation and domestic uses so perfected. 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 8. of the Operating Policy stored water in excess (surplus) of the amounts reasonably necessary to meet the objectives of paragraphs 2 and 4 thereof may be disposed of on a short term basis by agreement or contracts.
- C. WHEREAS, The Grand Valley Project (GV) was authorized by the Act of June 25, 1910 and approved by the President on January 5, 1911. The Reclamation Service was authorized by the Secretary of the Interior on September 23, 1912 to begin construction. Features of the Grand Valley Project include the Grand

Valley Diversion Dam (Roller Dam), the Government Highline Canal System, the Orchard Mesa Canal System and the Grand Valley Power Plant.

- D. WHEREAS, The Grand Valley Water Users Association (GVWUA) and the Orchard Mesa Irrigation District (OMID) are duly incorporated entities under the laws of the state of Colorado and are responsible for operation and maintenance of the Grand Valley Project.
- E. WHEREAS, PSCo, a corporation organized and existing under the laws of the State of Colorado with its principal office at Denver, Colorado, operates and maintains the Grand Valley Power Plant through a Lease of Power Privilege Contract (No. 0-07-40-P0180) dated December 12, 1990.
- F. WHEREAS, the Stipulation and Agreement for the Orchard Mesa Check Case in Case No. 91CW247, dated September 4, 1996, concerning the application for water rights of the Grand Valley Water Users Association, Orchard Mesa Irrigation District, and the United States, in Mesa County, Colorado was executed. A copy of the Stipulation and Agreement is attached here to as Appendix C, and hereby made a part of this agreement by reference, and the terms defined therein, when used in this agreement, shall have the meanings ascribed to them in Exhibit C and no other.
- G. WHEREAS, As part of the stipulated settlement for the Orchard Mesa Check Case the Green Mountain Reservoir HUP Operating Criteria (Operating Criteria) was developed. Said Operating Criteria defines specific terms and conditions for declaring water surplus to the need of HUP beneficiaries. A copy of the HUP Operating Criteria (Exhibit D to the Stipulation and Decree, Case No. 91CW247) is attached hereto as Appendix D, and hereby made a part of this agreement by reference, and the terms defined therein, when used in this agreement, shall have the meanings ascribed to them in Exhibit D and no other.

- H. WHEREAS, Paragraph 5.a. of the Stipulation and Agreement for the Orchard Mesa Check Case specifies that Reclamation will develop contracts (agreements) to make available HUP surplus waters. The water to be provided under this Agreement will be made available on an 'if and when' basis, based on Reclamation's determination of surplus water availability pursuant to the HUP Operating Criteria developed for the settlement of the Orchard Mesa Check Case. The HUP Operating Criteria specify the management of releases from the Green Mountain HUP and the determination of surplus water.
- I. WHEREAS, Paragraph 5.a. of the Stipulation and Agreement for the Orchard Mesa Check Case specifies that HUP surplus water will be delivered to and through the Government Highline Canal, Orchard Mesa Power Canal and Grand Valley Power Plant, to the extent there is capacity; and that HUP surplus water will first be delivered to the Grand Valley Power Plant before additional HUP surplus water deliveries are made under separate HUP surplus water agreements or contracts.
- J. WHEREAS, The surplus waters of Green Mountain Reservoir HUP available to this Agreement are based on the assumptions and conditions incorporated in the supporting hydrology studies documented in the Stipulation and Agreement for the Orchard Mesa Check Case. The supporting hydrology is provided in Attachment A to that Stipulation and Agreement and entitled 'HUP Operating Criteria Technical Analysis Summary'
- K. WHEREAS, pursuant to sections 37-92-301 and 501, Colorado Revised Statutes, the State Engineer and the Division Engineers are responsible for the administration and distribution of the waters of the State and 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 through this Agreement from Green Mountain Reservoir to the Grand Valley Power Plant.

- L. WHEREAS, The Parties desire to enter into this Agreement, pursuant to Federal Reclamation laws, the laws of the State of Colorado and the Orchard Mesa Check Case Stipulation and Agreement , for delivery of HUP surplus water from Green Mountain Reservoir via Government Highline Canal and the Orchard Mesa Power Canal to the Grand Valley Power Plant.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants hereinafter set forth, the Parties hereto agree as follows:

I. DEFINITIONS

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

- A. "Colorado River Basin" shall mean the geographical area of the natural drainage basin of the Colorado River, including all tributaries thereof, in western Colorado upstream from the Colorado-Utah State line.
- B. "Project" shall mean the Colorado-Big Thompson and/or the Grand Valley Project, Colorado.
- C. "Year" shall mean the period beginning July 1 and ending the following June 30.
- D. "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.

- E. "Operating Policy" shall mean the operating policy for Green Mountain Reservoir as published in the Federal Register on December 22, 1983, as amended September 3, 1987, as published in the Federal Register on September 11, 1987.
- F. "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.
- G. "Power Pool" shall mean the Reservoir's remaining capacity of approximately 100,000 acre-feet, including the 6,316 acre-foot refill right, which to the extent feasible will be released to the Grand Valley Power Plant.
- H. "HUP" shall mean the "historic users pool" defined as the 66,000 acre feet of water to be released from the Green Mountain Reservoir power pool as described in paragraphs 2 and 3 of the Operating Policy.
- I. "HUP beneficiaries" shall mean those persons or entities for whose benefit releases are made from the HUP pursuant to the Operating Policy.
- J. "Stipulation and Agreement" shall mean the Stipulation and Agreement of the Orchard Mesa Check Case (Colorado Water Division No. 5. case no. 91CW247) entered on July 25, 1996 and executed on October 14, 1996.
- K. "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 Grand Valley Irrigation Company's diversion dam, and shall include any replacement structure in the same location which performs that same function.
- L. "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.
- M. "Operating Criteria" shall mean the Green Mountain Historic Users Pool Operating Criteria (Exhibit D to the Stipulation and Decree, Case No. 91CW247)

developed jointly by the Co-Applicant and Objectors to the Orchard Mesa Check Case.

- N. "Managing Entities" shall mean the Bureau of Reclamation and the following entities with whom Reclamation will directly consult in declaring surplus waters and managing the releases of surplus waters from the HUP consistent with the terms and conditions of the Operating Criteria : Grand Valley Water Users Association, Orchard Mesa Irrigation District, Grand Valley Irrigation Company, Colorado Division of Water Resources, Colorado Water Conservation Board and the U.S. Fish and Wildlife Service.
- O. "HUP surplus waters" shall mean those waters of the HUP declared surplus by the Managing Entities pursuant to operations under the HUP Operating Criteria and in conformance with paragraph 8. of the Green Mountain Operating Policy.

II. TERM OF AGREEMENT

- A. This Agreement shall be effective on the date first written above and shall remain in effect for 5 years unless terminated pursuant to Article VIII A below or amended pursuant to Article IX below.
- B. This Agreement may be renewed for an additional term of 5 years upon written request to Reclamation on or before 1 year prior to the expiration of this Agreement and mutual agreement of the Parties hereto. Prior to renewal of this Agreement, all terms and conditions may be renegotiated by the Parties hereto subject to applicable Federal and State laws and Reclamation policy in effect or as established by the Secretary of the Interior at that time.

III. PROVISION OF WATER AND RELEASE SCHEDULE

- A. The amount of surplus water made available annually under this Agreement will be determined by the Managing Entities based upon HUP storage conditions,

projected runoff forecasts, climatological conditions, projected irrigation demands and other operational considerations.

- B. The Managing entities will meet to develop an Annual HUP Operating Plan by June 30 of each year in accordance with the Operating Criteria. The operating plan will include water operations for July through October. The Managing Entities agree to make good faith efforts to develop an operating plan that is unanimously supported, however Reclamation reserves the right to establish a release schedule from the HUP if unanimous consent cannot be reached.
- C. The Managing Entities will determine whether there are surplus waters in the HUP and determine the timing of release of any HUP surplus waters under this Agreement. The Managing Entities agree to meet as needed to reexamine and adjust the operating plan and releases as the irrigation season (July through October) progresses.
- D. HUP surplus water delivered under this Agreement will be limited to the lesser of; the available capacity of the Government Highline Canal; the available capacity of the Orchard Mesa Power Canal; or the available capacity of the Grand Valley Power Plant,
- E. In accordance with Section 5.a. of the Stipulation and Agreement, HUP surplus water will be delivered under this Agreement before any additional HUP surplus waters are delivered under similar agreements or contracts.
- F. Releases made under this Agreement shall not result in any water bypassing the Green Mountain Power Plant except that which may be released during periods when the Power Plant is not operating.
- G. Nothing herein contained in this Agreement shall be deemed to alter or change the duties and obligations of the Department of the Interior under the judgments and decrees entered in the Consolidated Cases, Senate Document 80, the

Green Mountain Operating Policy, the applicable provisions of the Constitution of the State of Colorado regarding water, and the State of Colorado laws regarding the adjudication and administration of water.

IV. WATER SERVICE CHARGES

- A. In consideration for the release and carriage of HUP surplus water pursuant to this Agreement the Parties agree that there will be no charge for the water delivered to the Grand Valley Power Plant.

V. MEASUREMENT AND DELIVERY

- A. On or before June 30 of each year, the Managing Entities will meet to review HUP storage conditions, projected runoff forecasts, climatological conditions, projected irrigation demands and other operational conditions to determine an annual operational plan for the Green Mountain Reservoir HUP. 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. 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.
- B. All delivery of water into the Blue River shall be subject to the limitations of the outlet capacity of Green Mountain Dam. All water delivered under this Agreement from the Reservoir shall be measured at the outlet works of Green Mountain Dam by Reclamation with equipment furnished, operated, and maintained by the United States. The United States shall not be responsible for

the control, carriage, use, handling, or distribution of water delivered beyond the outlet works of Green Mountain Dam, and the Parties 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 Grand Valley Power Plant provided such water is delivered at the outlet works of Green Mountain Dam or other point of delivery in a safe and reasonable manner.

- C. The delivery of water under this agreement shall be made into the Blue River at the outlet works of Green Mountain Dam or by exchange with other sources of supply; Provided, That the delivery of water from a source other than the Reservoir shall not reduce the Parties' ability to beneficially use said water in the same location and manner, at the same times, and for the same purposes specified in this agreement and the delivery schedules. All such exchanges shall be in accordance with State and Federal laws and regulations including, if required, approval by the Division No. 5 Engineer.
- D. Reclamation will be solely responsible for the storage of water in, or the operation and maintenance of Green Mountain Reservoir and Reclamation agrees to be responsible for all claims, demands, and causes of action of any nature whatsoever resulting from the storage of water in or the operation and maintenance of Green Mountain Reservoir, as authorized by the terms and conditions of the Federal Tort Claims Act (18 U.S.C., Sections 2671-2680).
- E. All water released pursuant to this Agreement will be delivered through the Government Highline Canal and the Orchard Mesa Power Canal to the Grand Valley Power Plant.
- F. Reclamation shall provide an annual accounting of all water released pursuant to this Agreement.

VI. USE OF WATER

- A. Water provided pursuant to this Agreement shall be used for power generation at the Grand Valley Power Plant in accordance with paragraph 5.a. of the Stipulation and Agreement and Section 3. of Operating Criteria.
- B. 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. WATER SHORTAGE APPORTIONMENT

- A. Water provided under this Agreement is HUP surplus water as determined by the Managing Entities. To the extent that there is no HUP surplus water delivered under this Agreement, no apportionment of shortages shall be made.

VIII. AMENDMENT

- A. This agreement may be amended upon approval of the parties hereto. Any request to amend this agreement shall be given in the same manner as provided in article XI below.

IX. TERMINATION

- A. The Stipulation and Agreement provides for a mechanism for amending the Operating Criteria and suspension of the conditions of the Stipulation and Agreement and of the Operating Criteria. In the event that the Stipulation and Agreement or the Operating Criteria are suspended then this Agreement may be terminated with mutual agreement by all parties hereto.

X. ENVIRONMENTAL COMPLIANCE

- A. Compliance with the National Environmental Policy Act (NEPA), as amended, and other environmental laws such as the Endangered Species Act (ESA), as amended, are a prerequisite to execution of this agreement. Environmental impacts associated with this agreement are described in an Environmental Assessment for the Grand Valley Water Management Proposal, EA No. [REDACTED]

XI. NOTICES

- A. Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the Parties to this Agreement, when mailed, postage prepaid, or delivered to the Regional Director, Bureau of Reclamation, Great Plains Region, P.O. Box 36900, Billings, Montana 59107-6900; and on behalf of Reclamation, when mailed postage prepaid or delivered to the Parties to this Agreement as listed below:
Manager Public Service Company of Colorado, P.O. Box J, Palisade CO 81526;
President, Orchard Mesa Irrigation District, P.O. Box 356, Palisade CO 81526;
President, Grand Valley Water Users Association, 500 S. 10th St. Grand Junction CO 81501.

- B. The designation of the addressees or the addresses may be changed by notice given in the same manner as provided in article XI. A. above.

XII. ASSIGNMENT OF THE AGREEMENT

- A. The United States reserves the right to enter into agreements with third party agents for administration of this Agreement; Provided, That such agreements shall not adversely affect the rights of the Parties under this Agreement.
- B. No assignment or transfer of this Agreement or any rights or interests therein shall be valid until approved in writing by Reclamation and the other Parties to this Agreement; Except, That this Agreement may be assigned by a Party without the prior approval of Reclamation where such assignment is to any affiliate of said Party or to any successor owners of the facilities for which the water is being furnished; Provided, That any such assignee assumes all obligations of the Party and uses the water provided for herein in the same location, manner, and times for the purposes agreed to by the Party under this Agreement.
- C. For purposes of this article, an "affiliate" of a corporation or entity shall be deemed to include any corporation or entity which is controlled by, is under common control with, or controls said corporation or entity.

XIII. AGREEMENT NULL AND VOID IF OPERATING POLICY RULED INVALID

- A. 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 such modification of the Operating Policy as in Reclamation's judgment would substantially affect the ability of the United States

to perform its obligations under this Agreement, then this Agreement may be terminated at the option of Reclamation.

XIV. STANDARD ARTICLES

A. 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. Books, Records, and Reports
4. Uncontrollable Forces

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

THE UNITED STATES OF AMERICA

By _____
Regional Director
Bureau of Reclamation
Great Plains Region

(CORPORATE SEAL)

PUBLIC SERVICE COMPANY of COLORADO

By _____

Title

(CORPORATE SEAL)

ORCHARD MESA IRRIGATION DISTRICT

By _____

Title

(CORPORATE SEAL)

GRAND VALLEY WATER USERS ASSOCIATION

By _____

Title

EXHIBIT A

STANDARD CONTRACT ARTICLES

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 PSCo 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 PSCo shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

3. BOOKS, RECORDS AND REPORTS

PSCo shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including: PSCo's financial transactions, water supply data, water-use data, and other matters that the United States may require. Subject to applicable Federal laws and regulations, each party to this agreement 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 Agreement.

4. UNCONTROLLABLE FORCES

Neither party 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 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. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

ACKNOWLEDGEMENT

STATE OF)
) ss.
COUNTY OF)

On _____, 19__, before me, _____
_____ appeared _____,

the person(s) whose name(s) (is)(are) subscribed to the within instrument
and known to me to have executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the
day and year in this acknowledgment first above written.

(SEAL)

Notary Public

My commission expires: