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*Agmt as of 12/28/98*

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

ASPINALL UNIT  
COLORADO RIVER STORAGE PROJECT

AGREEMENT AMONG THE UNITED STATES OF AMERICA,

THE COLORADO STATE ENGINEER,

THE COLORADO RIVER WATER CONSERVATION DISTRICT,

AND

THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT.

FOR THE ADMINISTRATION OF WATER PURSUANT TO THE SUBORDINATION  
OF WAYNE N. ASPINALL UNIT WATER RIGHTS WITHIN THE  
UPPER GUNNISON RIVER BASIN

THIS AGREEMENT is made this \_\_\_\_\_ day of December, 1998, between the United States of America (the United States), acting through the Secretary of the Interior, pursuant to The Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat.388) and all acts amendatory and supplementary thereto, including the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105), the Colorado State Engineer, the Colorado River Water Conservation District (River District), organized and existing pursuant to the laws of the State of Colorado, with its office and principal place of business at Glenwood Springs, Colorado; and the Upper Gunnison River Water Conservancy District (Upper Gunnison District), organized and existing pursuant to the laws of the State of Colorado with its office and principal place of business at Gunnison, Colorado;

WITNESSETH, THAT:

WHEREAS, the United States constructed the Curecanti Unit, now known as the Wayne N. Aspinall Unit (Aspinall Unit), of the Colorado River Storage Project, including the Blue Mesa, Morrow Point and Crystal Dams and Reservoirs, for the purpose, among other things, of regulating the flows of the Colorado River to permit the Upper Colorado River Basin States to more fully utilize their allocation of Colorado River waters, as set forth in the Upper Colorado River Basin Compact; and

WHEREAS, the United States, by that certain Assignment of Water Rights from the River District dated January 26, 1962, is the owner of the following water rights recorded in former Colorado Water Districts 62 and 59 and Water Division 4 in Montrose, Colorado, which were made absolute November 13, 1980 in Case No. 80CW156, Water Division 4:

**DISTRICT 62  
1960 DECREE**

	<u>Amount</u>	<u>Priority No.</u>
Crystal Reservoir	160,867 af	445
Crystal Power Plant	3,000 cfs	446
Blue Mesa Reservoir	939,204 af	447
Blue Mesa Power Plant	2,500 cfs	448
Morrow Point Reservoir	114,706 af	449
Morrow Point Power Plant	2,500 cfs	450

**DISTRICT 59  
1961 DECREE**

	<u>Amount</u>	<u>Priority No.</u>	<u>Diversion Structure No.</u>
Blue Mesa Reservoir	939,204 af	565	38
Blue Mesa Reservoir	2500 cfs	566	39
Morrow Point Reservoir	114,706 af	567	40
Morrow Point Power Plant	2,500 cfs	568	41

appropriation date November 13, 1957 (Aspinall Unit Rights); and,

WHEREAS, the Upper Gunnison District, by two certain Assignments of Water Rights from the River District dated January 26, 1962, is the owner of the following water rights recorded in former Colorado Water Districts 28 and 59 and Water Division 4 in Montrose, Colorado, which are conditional water rights as of the date of this Agreement:

## THE TOMICHI UNIT

	Amount	Priority No.	Diversion Structure No.
Monarch Reservoir	29,200.7 af	402	312
South Crookton Canal	277 cfs	404	314

## THE COCHETOPA UNIT

Banana Ranch Reservoir	21,733 af	405	315
Flying M. Reservoir	15,457 af	406	316
Upper Cochetopa Reservoir	12,693.2 af	407	317
Cochetopa Meadows Ditch Enlargement	11 cfs	408	318
Cochetopa Canal	240 cfs	409	319
Pass Creek Canal	46 cfs	410	320
Los Pinos Canal	51 cfs	411	321
Stubbs Gulch Canal	277 cfs	412	322

## OHIO CREEK UNIT

Castleton Reservoir	9,000 af	572	43
Ohio Creek Canal	302 cfs	573	350
Taylor River Canal	302 cfs	574	351
East River Canal	82 cfs	575	352

appropriation date November 13, 1957 (Upper Gunnison District Rights); and,

WHEREAS, the February, 1959 *Supplemental Report and Certification of Economic Justification on the Curecanti Storage Unit of the Colorado River Storage Project in Colorado, Pursuant to the Act of April 11, 1956 (70 Stat. 105)* recognized the possibility that up to 60,000 acre-feet (af) of in-basin depletions would occur upstream of the Aspinall Unit without affecting the feasibility of the Aspinall Unit; and



WHEREAS, the United States decided that the Aspinall Unit Rights would be utilized in such a manner, and pursuant to such operating criteria, so as to permit future upstream water depletions by projects constructed for use of water within the Gunnison River Basin, in an aggregate amount to be determined by the United States, even though such projects divert under priorities equal or junior to the priorities of the Aspinall Unit Rights, thereby creating a Depletion Allowance for the Aspinall Unit; and

WHEREAS, the Depletion Allowance reflects a commitment that was made by the United States prior to the construction of the Aspinall Unit and which has been recognized by the United States prior to this Agreement both in correspondence and in four Agreements executed in 1964 and 1965 with water users and reaffirmed in August 1996 in correspondence from the U. S. Department of Justice to the Colorado Attorney General and from the United States Department of the Interior to the Colorado Water Conservation Board; and

WHEREAS, the River District enters into this Agreement in order to represent various individuals and entities who divert water upstream from either Crystal Dam and Reservoir or Morrow Point Dam and Reservoir and use that water downstream from Blue Mesa Dam within the Gunnison River Basin in order to implement the Depletion Allowance; and

WHEREAS, the Upper Gunnison District enters into this Agreement in order to represent various individuals and entities who divert and use water in the Gunnison River Basin upstream from Blue Mesa Dam in order to implement the Depletion Allowance;

THEREFORE, it is agreed as follows:

1. From the date of this Agreement, the Depletion Allowance for the Aspinall Unit shall be implemented only pursuant to this Agreement and not through subsequent agreements with water users.

2. The United States agrees to subordinate the Aspinall Unit Rights to up to 10,000 af of annual water depletions in the Gunnison River Basin drainage between Crystal Dam and Morrow Point Dam, and 10,000 af of such depletions in the drainage between Blue Mesa Dam and Morrow Point Dam to the water users represented by the River District, and to subordinate the Aspinall Unit Rights to up to 40,000 af of annual water depletions in the drainage above Blue Mesa Dam to the water users represented by the Upper Gunnison District and to the Upper Gunnison District Rights under the conditions described in paragraph 5. By subordinating to the rights of such water users, the United States agrees that such water users may continue to divert when a call is placed on the Gunnison River by the United States under the Aspinall Rights, subject to the limits of the stated subordination in the separate drainages.

3. As consideration for the United States' agreement to subordinate the Aspinall Unit Rights to water users in the Gunnison River Basin to implement the Depletion

Allowance, the River District agrees to represent the various individuals and entities who divert water upstream of either Crystal Dam or Morrow Point Dam and use water downstream of Blue Mesa Dam by exercising in-basin rights upstream and junior to the Aspinall Unit Rights.

4. As consideration for the United States' agreement to subordinate the Aspinall Unit Rights to water users in the Gunnison River Basin to implement the Depletion Allowance, the Upper Gunnison District agrees to represent the various individuals and entities who use water upstream of Blue Mesa Dam by exercising in-basin rights upstream from and equal or junior in priority to the Aspinall Unit Rights.

5. If water is being diverted under the Upper Gunnison District Rights during a time when there exists a shortage of supply such that the Division Engineer is required, because of identical priority dates, to apportion the water available for diversion between the Aspinall Unit Rights and the Upper Gunnison District Rights, the United States agrees to subordinate the Aspinall Unit Rights to the Upper Gunnison District Rights in an amount sufficient to provide for a diversion of the full decreed amount of the Upper Gunnison District Rights under which diversions are being made. Proportional depletions attributable to diversions having equal priority to the Aspinall Unit Rights which would otherwise be called out by Aspinall Unit Rights but are made by the Upper Gunnison District Rights pursuant to this paragraph are included within, and not in addition to, subordination of the Aspinall Unit Rights to up to 40,000 af of annual water depletions in the drainage above Blue Mesa Dam.

6. The depletions against which the United States foregoes its right to call under this Agreement shall be charged by the Colorado State Engineer against the annual fills of Crystal Reservoir, Morrow Point Reservoir and/or Blue Mesa Reservoir (including the second filling of Blue Mesa Reservoir), and/or the exercise of the related direct flow hydropower rights (depending on which of the Aspinall Unit Rights are then being exercised) in the amounts specified in paragraph 2.

7. Water consumptively used under privately held water rights benefitting from this Agreement and used within the Gunnison River Basin through evapotranspiration, reservoir evaporation, irrigation, industrial, domestic and other beneficial uses shall be appropriate uses of the Depletion Allowance. Water which is diverted and ultimately returns to the stream and then is available for use pursuant to the Aspinall Unit Rights shall not be considered a depletion and, therefore, not a use of the Depletion Allowance.

8. Within one year after the date of this Agreement the River District and the Upper Gunnison District shall provide to the Bureau of Reclamation in Grand Junction, Colorado, or any other location designated by the United States, and to the Colorado State Engineer and Division 4 Engineer, an initial Report listing the names of the diversion or storage structures and priority or administration numbers of the diversions in the areas represented by them which qualify for subordination of Aspinall Unit Rights under the Depletion Allowance described in this Agreement, together with an estimate of the total

amount of annual diversions (in af) and an estimate of the total amount of related annual depletions (in af) by the listed structures. The estimates of diversions and depletions contained in the Report shall be derived from information compiled by the Division 4 Engineer in the ordinary course of his duties.

9. Following delivery of the initial Report described in paragraph 8, on or before April 1 of each year, the River District and the Upper Gunnison District shall provide to the Bureau of Reclamation in Grand Junction, Colorado, or any other location designated by the United States, and to the Colorado State Engineer and Division 4 Engineer, an Annual Report. The Annual Report shall include an updated listing of the names of the diversion or storage structures and priority or administration numbers of the diversions in the areas represented by the Districts which qualify for subordination of Aspinall Unit Rights under the Depletion Allowance described in this Agreement, which separately identifies the structures and diversions which have been added to or removed from the listing since the initial Report or previous Annual Report. Each Annual Report shall also include an estimate of the total amount of diversions (in af) and an estimate of the total amount of related depletions (in af) by the listed structures made during the previous water year (November 1 through October 31). The estimates of diversions and depletions contained in the Annual Report shall be derived by the Districts from information compiled by the Division 4 Engineer in the ordinary course of his duties.

10. Both Districts agree that the Reports described in paragraphs 8 and 9 shall include diversions and related depletions which occur pursuant to the four existing agreements between the United States and individual water users for use of a portion of the Depletion Allowance, and that said depletions are included within the total annual water depletions described in paragraph 2 of this Agreement.

11. The Upper Gunnison District agrees that the Reports described in paragraphs 8 and 9 shall include diversions and related depletions resulting from the consumptive uses decreed to the second filling of Taylor Park Reservoir in case number 86CW203, District Court, Water Division 4, Colorado, and that said depletions are included within the total annual water depletions described in paragraph 2 of this Agreement.

12. The United States will complete such work as may be required under the National Environmental Policy Act in order to effect and implement this Agreement.

13. Nothing in this Agreement shall be construed as an assignment of Aspinall Unit Rights, as an obligation to deliver Aspinall Unit water, or as a limitation on the United States' right to place a call on the Gunnison River pursuant to the Aspinall Unit Rights, other than as explicitly described herein.

14. Nothing herein shall be construed to permit use by the River District or the Upper Gunnison District, or any water user which the River District or the Upper Gunnison District represents, of Aspinall Unit reservoirs in exchange or replacement of water or for any other purpose without the additional approval of the United States, including payment

therefor to the United States.

15. The utilization of water by the water users represented by the Upper Gunnison District or by the Upper Gunnison District, shall be subject to the laws of the State of Colorado relating to water use and administration and ditch and reservoir rights. The River District and the Upper Gunnison District shall be responsible for obtaining appropriate decrees as may be required in order for the Colorado State Engineer to effectively administer this Agreement in accordance with Colorado law. The United States shall cooperate with the Districts in accomplishing such adjudication.

16. Subordination of Aspinall Unit Rights pursuant to this Agreement shall be applicable only to water rights with priorities junior or equal to the Aspinall Unit Rights which are exercised for beneficial use within the Upper Gunnison River Basin, and shall not in any way be construed as affecting the relationship or relative priorities of any of those rights or other water rights within such basin.

17. This Agreement may not be assigned in whole or in part without the written consent of the United States, provided that the River District and the Upper Gunnison District may impose obligations on water users and/or the Water Court may impose decretal obligations on water users in order to facilitate compliance by the River District and Upper Gunnison District with this Agreement and any related water decrees. Obligations imposed by the Districts pursuant to this paragraph shall relate only to matters such as water measurement, accounting, and other administrative matters, and may include, without limitation, recoupment of the Districts' actual costs of administration of the Depletion Allowance.

18. This Agreement and all water diverted pursuant thereto shall be subject to and controlled by the Colorado River Compact dated November 24, 1922, and proclaimed by the President of the United States, June 25, 1929, 46 Stat. 3000; the Boulder Canyon Project Act approved December 21, 1928, 45 Stat. 1057; the Boulder Canyon Project Adjustment Act of July 19, 1940, 54 Stat. 774; the Upper Colorado River Basin Compact dated October 11, 1948 and approved April 16, 1949, 63 Stat. 31; the Mexican Water Treaty of February 3, 1944, 64 Stat. 846; the Colorado River Storage Project Act of April 11, 1956, 70 Stat. 105; and the Colorado River Basin Project Act of September 30, 1968, 82 Stat. 885, as any of the above may have been amended or supplemented and to related decrees of appropriate courts.

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

20. Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the River District or Upper Gunnison District when mailed, postage prepaid, or delivered to the Area Manager, Western Colorado Area Office, Bureau of Reclamation, 2764 Compass Drive, Grand Junction, Colorado 81506; Colorado State Engineer, 1313 Sherman Street, Denver, Colorado



80203; Division 4 Engineer, P. O. Box 456, Montrose, Colorado 81402; and on behalf of the United States, State Engineer and Division 4 Engineer when mailed, postage prepaid, or delivered to the General Manager, Colorado River Water Conservation District, P. O. Box 1120, Glenwood Springs, Colorado 81602, and/or to the Manager, Upper Gunnison River Water Conservancy District, 275 South Spruce Street, Gunnison, Colorado 81230. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Agreement for other notices.

21. This Agreement shall remain in full force and effect until terminated by the mutual consent of the parties.

22. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but, except as provided in paragraph 17, assignment or transfer of this Agreement or any right or interest therein shall not be valid until approved in writing by the United States.

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

United States of America

Colorado State Engineer

\_\_\_\_\_  
By: Carol DeAngelis, Area Manager

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Harold D. (Hal) Simpson

Colorado River Water  
Conservation District

ATTEST:

\_\_\_\_\_  
By: Wesley E. Signs, President

\_\_\_\_\_  
Richard Eric Kuhn, Secretary



By: Mark A. Schumacher, President

Carol Drake, Secretary

Upper Gunnison River  
Water Conservancy District

ATTEST: