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July 30, 2012

Grand County Board of County Commissioners
308 Byers Ave.
P.O. Box 264
Hot Sulphur Springs, CO 80451

Re: 1041 Hearing for Windy Gap Firming Project

Dear Commissioners:

The following is the Municipal Subdistrict, Northern Colorado Water Conservancy District's draft witness summary and list of exhibits for Grand County Board of County Commissioners Hearing:

Witnesses:

- Jeff Drager and Eric Wilkinson

Exhibits:

- All exhibits presented at July 11, 2012 Planning Commission Hearing.

A series of figures are attached which depict:

- Annual deliveries to WGF and Spill years from 1950 to 1996
- Deliveries with Windy Gap Firming from 1950-1996
- Flows in Colorado River at Windy Gap Historic Flows 2002, 2010, 2011, 2012
- 2011 flows with 100,000 acre-feet pumped Windy Gap Firming
- 2012 Colorado River flows with enhancements
- 2010 Colorado River flows with enhancements
- Bar Chart with flushing flows above 600 cfs
- Graphic of waste water treatment plants on which nutrient reductions in the three lakes system are possible

- A graphic of three waste water treatment plants for nutrient reductions are focussed
- Nutrient reduction non point source evaluation graphic
- A photograph Windy Gap Reservoir to illustrate by pass or through pass

Testimony will cover:

- The Environmental Impact Statement of the Windy Gap Firming Project including need for the Project, the existing condition and the no action alternative, impacts of the project on various resources including fish and wildlife, hydrology, water quality and the interface with county 1041 regulations.
- The Application Submitted by the Municipal Sub District for a 2012 1041 Permit from Grand County;
- Flushing flows below Windy Gap Reservoir
- Water Quality Impacts of the Project and existing conditions
- Windy Gap Firming mitigation requirements by state and federal authorities;
- Operation of the existing Windy Gap Project;
- Proposed operation of the Windy Gap Firming Project;
- Enhancement measures proposed by the Municipal Subdistrict both money and water;
- A proposed water By pass structure or pass through structure at the Windy Gap Reservoir;
- The 1041 Grand County regulations and the Applicant's compliance with those regulations; and
- Any testimony required for rebuttal of other witness testimony or responsive information for the public and the Commissioners.

Sincerely yours,



Peggy E. Montañó,
for
Trout, Raley, Montañó,
Witwer & Freeman, P.C.

cc: Eric Wilkinson, Municipal Subdistrict, Applicant
Jeff Drager, Municipal Subdistrict, Applicant



GRAND COUNTY MANAGER'S OFFICE

308 Byers Ave • P.O. Box 264 • Hot Sulphur Springs • Colorado • 80451
970-725-3347

CERTIFICATE OF RECOMMENDATION

TO: GRAND COUNTY PLANNING COMMISSION

FROM: Grand County Manager's Office

DATE: July 11, 2012

RE: 1041 Permit – 2012 Windy Gap Firing Project

APPLICANT: Municipal Subdistrict of the Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firing Project Water Activity Enterprise.

LOCATION: As described in the Final Environmental Impact Statement for locations within Grand County, Colorado

ZONING: Forestry and Open Zone District (F)

APPLICABLE SECTION OF CODE: Grand County Administrative Regulations for Areas and Activities Designated as Matters of State Interest and Grand County Master Plan.

STAFF CONTACT: Lurline Underbrink Curran, County Manager

EXHIBITS: Letter of Application and 1041 Application Packet

REQUEST: Applicant is requesting approval of a 1041 Permit for the 2012 Windy Gap Firing Project in order to firm up the yield originally contemplated by the Windy Gap Project.

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DISCUSSION:

The Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict) is the owner of the Windy Gap project. The Subdistrict, acting by and through the Windy Gap Firming Project Water Activity Enterprise, has proposed the Windy Gap Firming Project (2012 WGFP) which would firm up the yield contemplated in the Windy Gap Project. The Subdistrict has submitted an application for a permit under Grand County Areas and Activities Designated as Matters of State Interest (1041 permit) for the 2012 WGFP. The Subdistrict has applied for the Grand County 1041 permit under protest. Applying under protest means that the Subdistrict is reserving all of its legal arguments as to why they do not need a new permit.

The Subdistrict bases its protest on the County's issuance of the original Windy Gap Permit which it feels covers the depletions contemplated as well as mitigates the impacts to Grand County. Further, the 2012 WGFP does not require any construction or alteration of the current Windy Gap Project in Grand County.

Listed below are some of the new issues that were not considered in the Original Windy Gap Project permit:

1. The 2012 WGFP proposes a different operational regime for the Windy Gap water rights known as prepositioning. Prepositioning was never contemplated or permitted with the original Windy Gap Project and it changes the timing and magnitude of diversions from those originally taken into account by Grand County. Prepositioning is a method whereby Colorado Big Thompson Project (C-BT) water will be delivered through the system to the preferred alternative Chimney Hollow Reservoir, a non-federal facility thereby making additional room in Granby Reservoir. When Windy Gap or 2012 WGFP water is delivered into Granby Reservoir, the C-BT water in Chimney Hollow would be exchanged for a like amount of Windy Gap water (both 2012 WGFP and Windy Gap) in Granby Reservoir. Prepositioning requires an amendment to the existing Amendatory Contract (Carriage Contract). The Carriage Contract is a contract issued by Bureau of Reclamation (Reclamation) to allow Windy Gap water to be transported through the C-BT project. Prepositioning would allow not only the 2012 WGFP water to be transported but also allows C-BT water to be stored in a non-federal facility until the substitution is made. The 2012 WGFP will change the impacts to the Colorado River over those being caused by the Windy Gap Project.

2. The amendments to the Carriage Contract are a Major Federal Action under NEPA that required the Bureau of Reclamation to prepare and Environmental Impact Statement to disclose the new impacts associated with the 2012 WGFP. In addition, Reclamation must make a determination that Windy Gap Firming Project is in compliance with Senate Document 80. The original Windy Gap Agreement, also known as the Azure Agreement and the Windy Gap Supplement (1980 and 1985 Agreements) are incorporated into the Windy Gap water rights decrees. The draft Windy Gap Firming Project Intergovernmental Agreement (WGFP IGA) which is an attachment to the application amends the 1980 and 1985 Agreements and will be incorporated into the Windy Gap decrees.

3. The 1980 Grand County 1041 Permit was issued to the Subdistrict for the cities of Estes Park, Boulder, Longmont, Greeley, and Loveland as well as the Platte River Power Authority

and their projected needs by the year 2000. The 2012 WGFP participants are City and County of Broomfield, Central Weld County Water District, Town of Erie, City of Evans, City of Fort Lupton, City of Greeley, City of Lafayette, Little Thompson Water District, City of Longmont, City of Louisville, City of Loveland, Platte River Power Authority and Town of Superior. The Subdistrict explains this difference by the fact that participants can sell or lease their respective shares and that the original Windy Gap Project was never intended to limit the original participants to the project forever. The additional participants change the demand from the demand projected in 2000. Grand County's 1980 Permit was based on the Purpose and Need as stated in the Environmental Impact Statement which did not discuss the possibility of sale or lease.

4. There is additional impact to the aquatic habitat and terrestrial life that were not considered in the original EIS or permit issued by Grand County. Even though the application submitted for the 2012 WGFP acknowledges there will be a loss of habitat, it states that it will not be substantial because it is less than 15%, Grand County does not use a 15% threshold to determine whether will be significant deterioration or degradation.

HISTORY OF EXISTING WINDY GAP PROJECT

In order provide a complete review of the 2012 WGFP it is useful to understand the history of the original Windy Gap Project which is a diversion at the Windy Gap Reservoir that is pumped through a pipeline into and via the C-BT project to the front range to an identified group of participants.

1. **The 1980 Azure Agreement and 1985 Supplement.** West slope objections to the Windy Gap water rights led to the 1980 Azure Reservoir and Power Project Agreement (1980 Agreement). The 1980 Agreement was Attachment 1.A. of the Final Environmental Impact Statement (Final EIS) for the existing Windy Gap Project, as well as an attachment to the 1041 permit, and the Windy Gap water right decrees.

The 1980 Agreement was executed by the Subdistrict, Colorado River Water Conservation District, (River District), Grand County Board of County Commissioners, Northwest Colorado Council of Governments, Three Lakes Water and Sanitation District, Winter Park Water and Sanitation District, Middle Park Water Conservancy District, Town of Hot Sulphur Springs, Town of Granby, Ritschard Cattle Company, Inc. Colorado River Land Corporation, Jacques Ranch I, Jacques Ranch II, David Mayhoffer, Lloyd A. Palmer, Edna L. Palmer, Leo Marte, Eunice Marte, Jessie Joyce Thompson, David Howard Thompson, Joseph McElroy, Isabel McElroy, John H. McElroy, Mary K. McElroy, John Sheriff, Ida L. Sheriff. H. Grady Culbreath, Richard P. Doucette, Christine O. Doucette, Gene Ritschard, William Henry Thompson, Anita Lewis Thompson, Stanley Broome.

West slope objections centered on the Subdistrict's failure to prepare a compensation plan as required by the Water Conservancy District Act. Whenever facilities are constructed by a conservancy district that diverts water from the Colorado River a compensation plan is required. Key elements of the 1980 Agreement are:

- Commitment by the Subdistrict to fund the construction of the Azure or a replacement Reservoir and Power Plant, or if infeasible, fund an alternative project or a cash payment to the CRWCD.
- Payment of \$25,000 to Grand County for salinity studies of the Colorado River.
- Payment of \$150,000 to the Town of Hot Sulphur Springs for assistance in improving its water treatment facility and \$270,000 for improving its wastewater treatment facility.
- Payment of \$500,000 to plan, construct, and design facilities needed for ranchers to maintain their diversion structures on the Colorado River.
- An agreement by the Subdistrict to subordinate its Windy Gap decrees to all present and future in-basin irrigation, domestic, and municipal uses, excluding industrial uses, on the Colorado and Fraser rivers and their tributaries above the Windy Gap Reservoir site.
- An agreement by the Subdistrict to volumetric limits on diversions, which included a maximum single-year diversion of 90,000 AF/year and a maximum of 65,000 AF during any consecutive 10-year period. Per the 1985 Supplement to the 1980 Azure Settlement Agreement, these diversion limitations apply to deliveries through the Adams Tunnel, as opposed to diversions at Windy Gap Reservoir.
- An agreement by the Subdistrict to bypass flows necessary to meet senior downstream water rights.
- An agreement by the NCWCD to allow Grand County's use of a rock and Gravel quarry on their property.
- An agreement by the Subdistrict to cooperate with CDOW and others to allow public use for recreation at Windy Gap Reservoir.

The parties to the 1980 Agreement also agreed that:

3. "Implementation of the provisions of this Agreement will constitute compliance with all objections to the Draft Environmental Impact Statement for the Windy Gap project by any Party hereto, furnishes satisfactory mitigation measures for the development of the Windy Gap Project and following a hearing and decision of the Grand County Commissioners under paragraph 36 (assuming the decision is favorable) will constitute compliance with all valid permitting requirements imposed by any of the Parties". 1980 Agreement Part IV, paragraph 3.

All parties to the 1980 Agreement, paragraph #35, agreed that *"All environmental concerns among the Parties have been resolved by this Agreement regardless of whether none, all or only one facility is constructed and operated"* The parties further recognized the Windy Gap project and the Azure Reservoir and Power Plant Project were separate and that if the Azure Project could not be built for any reason, that an alternative project could be selected. Both Windy Gap and the alternate to the Azure Project, Wolford Mountain, were constructed. **(Paragraph #35 was deleted and superseded by the 1985 Supplement).**

In 1985, under Resolution 1985-3-5, the 1980 Agreement was supplemented to amend and/or deleted parts of the 1980 agreement (1985 Supplement). The Rock Creek Reservoir was originally considered as the replacement source for the Azure Power Project. The 1985 Supplement resulted in the construction of the Wolford Mountain Project instead.

The 1985 Supplement had two purposes 1) It provided western Colorado with financial assistance (\$10,000,000) to enable the Colorado River Water Conservation District to construct a water storage facility in Water Division No. 5 (the Wolford Mountain Project was permitted by Grand County in 1990 with both a 1041 Permit and Special Use Permit); 2) It remove the Subdistrict from any obligation under the April 30, 1980 Agreement to construct the Azure Reservoir and Power Project or alternate facility and removed the restriction on Windy Gap diversions stated in paragraph 15 of the 1980 Agreement which restricted Windy Gap from diverting any water from the west slope of Colorado through Windy Gap prior to the initiation of construction of Azure Reservoir and Power Project or an alternate reservoir agreed to by the River District. The 1985 Supplement designated the measuring point for diversion as the Adams Tunnel (previously it was measured at Windy Gap).

2. Volumetric Limitations on Windy Gap Water Rights.

The 1980 Agreement, paragraph #34, states that the *"Subdistrict may divert under its decrees an amount of water not in excess of 90,000 acre feet in any one year, and not to exceed an average of 65,000 acre feet per year in any consecutive ten year period. It is anticipated by the parties that the long term annual yield of water to the Subdistrict will be approximately 54,000 acre feet"*.

The Final EIS for the Windy Gap project also states under Purpose and Need that *"current and prospective West Slope water rights and users of Colorado River water would be compensated for loss of an annual average depletion of 54,000 acre-feet of water"*. The average annual firm yield expected of the Windy Gap project was 48,000 AF delivered to the east slope, 3000 AF to Middle Park Water Conservancy District (Middle Park), and "shrink" charges of 10%. Shrink is attributable to evaporation and system losses during storage and delivery.

The Record of Decision (ROD) issued by the Reclamation and a Record of Decision Permit Application No. 6520 issued by the U. S. Army Corp of Engineers (Corps) for the Windy Gap Project also refers to volumetric limitation.

The ROD (Paragraph II. A. 2.) states that

"the Windy Gap Project would divert a long term annual average of about 56,000 acre-feet from the Upper Colorado River Basin near Granby, Colorado. The diverted water would be pumped from the West Slope through Colorado-Big Thompson Project facilities to the East Slope cities of Estes Park, Boulder, Longmont, Greeley, Loveland, and Platte River Power Authority."

The 1980 Agreement documented the amount that could be diverted at Windy Gap Reservoir as a means of limiting the Windy Gap Project. The Subdistrict states that it can pump whatever water is in priority from the Colorado River, subject to storage capacity in Granby, as long as the

amount of water transported through the Adams Tunnel is within the decreed limits. As previously stated, the 1985 Supplement designated the measuring point for diversion as the Adams Tunnel (previously measured at the Windy Gap Reservoir).

3. Mitigation for Original Windy Gap Project.

The 1980 Agreement contained some mitigation for the impacts of the Windy Gap Project. The ROD for the original Windy Gap Project incorporates the 1980 Agreement and refers to additional mitigation.

Section V of the ROD provides in pertinent part:

"The following mitigation measures have been agreed to by the sub district: (1) about 11,000 acre-feet of the average annual project yield of 56,000 acre-feet will be committed to maintain minimum "instream flows; (2) existing and some future water rights will be protected; (3) disturbed soil and vegetation will be reclaimed; (4) various commitments by the sub district to West Slope interests will protect prospective West Slope uses of Colorado River water; and (5) threatened and endangered fish will be protected by resolution of the sub district to provide certain conservation measures".

The Record of Decision Permit No. 6520 states under paragraph 2. "... and current and prospective West Slope water rights and users of Colorado River water would be compensated for loss of an annual average depletion of 54,000 acre-feet of water". The permit goes on to apply mitigation.

"All practicable means to avoid or minimize environmental harm from the project have been adopted. As identified in the EIS, the following mitigation measures will be incorporated to substantially reduce impacts associated with the project:

A minimum flow agreement between Northern Colorado Water Conservancy District and the Division of Wildlife was signed 23 June 1980. The terms of the agreement will lessen the adverse impacts of the project on aquatic life.

The pipeline route will be revegetated and vegetation will be planted around the reservoir to minimize impacts on vegetation.

A plan to mitigate wetlands inundated by the reservoir will be prepared and coordinated with the Environmental Protection Agency.

Reservoir operations and architectural controls on structures are being utilized to lessen the impacts of aesthetics.

Impacts on cultural resources are being mitigated through controlled surveys and data gathering.

Roads will be permanently and temporarily relocated to reduce interference with normal traffic flow.

Conservation measures to aid recovery of endangered fishes in the Colorado River will be accomplished.

Mitigation associated with salinity increases and reduced flows downstream is being handled by the Colorado River Salinity Control Project.

Monitoring of pre- and post-project water temperatures will occur to direct and possibly correct and post-project temperature changes."

The instream flows were implemented through a Memorandum of Understanding between the Subdistrict, Northern and Division of Wildlife, Colorado Department of Natural Resources, Relating to Minimum Stream Flow in Association with the Windy Gap Diversion Project, it was agreed to the following fixed rates of flows:

- From Windy Gap Diversion Point to the mouth of the Williams Fork River: 90 cfs.
- From the mouth of Williams Fork River to the mouth of Troublesome Creek: 135 cfs.
- From the mouth of Troublesome Creek to the mouth of the Blue River: 150 cfs.
- In addition, once in every three years, if equivalent flushing flows do not otherwise occur pas the Windy Gap Diversion Point, sub district shall release on call by the Colorado Water conservation Board, on the recommendation of the Division of Wildlife, a total of 450 cfs of water for fifty hours, or its equivalent, during the period of April 1 through June 30, for flushing flow purposes.

Colorado Water Conservation Board (CWCB) decrees for instream flows in these amounts were issued under 80CW446, 80CW447 and 80CW448 dated September 24, 1982.

4. The Windy Gap Project 1041 Permit.

The Windy Gap Project was permitted in 1980 by the Grand County Board of County Commissioners acting as the 1041 Permit Authority by Resolution 1980-6-1. The permit was reviewed and issued under Chapter 5 of the Grand County 1041 Regulations for Municipal and Industrial Water Projects. Grand County also issued a Special Use Permit for the Windy Gap Project under Board of Commissioner Resolution 1980-6-4. Grand County's Zoning Regulations required a Special Use Permit for reservoirs impounding 100 acre feet or more of water.

The 1041 Permit that was issued by Grand County relied upon the Draft EIS and the 1980 Agreement. The Purpose and Need stated in the Final EIS was "*to supply the municipal and industrial water needs of the cities of Estes Park, Boulder, Loveland, Longmont, and Greeley; and Platte River Power Authority. The Project would supply all of the additional municipal and industrial water needs of the service area projected for the year 2000*". It further relied on the outcome of a Final EIS in substantial accord with the Draft EIS as well as the ROD issued by Reclamation and Record of Decision Permit issued by the Corps.

Grand County's 1041 permit allowed the design, construction and operation of the Windy Gap Project, Reservoir and Pipeline, as proposed and described in the Environmental Impact Statement. The permit also requires the Subdistrict to comply with all terms and provisions of Senate Document 80.

The 1041 Permit was amended in 1985 to recognize the 1985 Supplement.

5. Special Use Permit.

The County also issued a Special Use Permit for the project. Recent case law clarifies that the County does not have jurisdiction to require that the Subdistrict obtain a Special Use Permit for the 2012 WGFP. See *Board of County Commissioners of the County of Boulder vs. Hygiene Fire Protection District* dated December, 2009. This decision says that no County zoning or land use regulations (other than 1041) apply to special districts or governmental entities. When a project is proposed to a county by a governmental entity, the C.R.S. § 30-28-110(1)(c) "location and extent" controls.

6. Other Agreements

In 1988, Grand County entered into a Water Allotment Contract with Middle Park. This allotment was based on Grand County's desire to obtain a portion of Middle Parks' water designated to be stored in Granby Reservoir. The allotment contract was specifically subject to and described in the Windy Gap Agreement and Supplemental Agreement. Grand County was responsible for obtaining whatever Court proceedings were necessary to transfer the rights to the location and use necessary for the County. Middle Park agreed to convey to Grand County 15 acre feet per year of water free of charge which was transferred to the County in the form of a Quit Claim Deed.

PROPOSED WINDY GAP FIRING PROJECT INTERGOVERNMENTAL AGREEMENT

The Subdistrict first approached Grand County prior to the Preliminary EIS for the 2012 WGFP to discuss possible enhancements to the existing conditions in the Colorado River. The existing Windy Gap Project has had impacts to the aquatic environment of the Colorado River that were not predicted in the original EIS or ROD. Over the past several years, County staff, Middle Park, and the River District have been negotiating a draft Intergovernmental Agreement (WGFP IGA) with the Subdistrict and Northern that would address some of these exiting impacts.

The benefits that would be provided as a result of the WGFP IGA are referred to as “enhancements” and are not intended to mitigate the new impacts caused by the 2012 WGFP. The Subdistrict has included a copy of the draft WGFP IGA in the application packet. This WGFP IGA is still in draft form as the Board of County Commissioners has not approved the WGFP IGA. If approved, some of the contents may have to be modified depending on the outcome of the 1041 permit review and hearings, as well as State of Colorado’s finding on the legality of implementation strategies for some of the offerings.

The WGFP IGA provides enhancements to Grand County and Middle Park as well as certain assurances to the River District in its mission to protect the Colorado River.

A summary of the negotiated enhancements for the Colorado River in Grand County include:

- An opportunity for Grand County to pump and store water in Granby Reservoir for release to the environment as directed through the effort termed Learning by Doing. This effort assesses the stresses on the river systems in Grand County and utilizes the resources provided by Denver Water in the Colorado Cooperative Agreement as well as those offered in the WGFP IGA, if executed, to address and minimize existing impacts. Most of the current stresses to the river occur in the late summer and early fall, typically when Windy Gap or the proposed 2012 WGFP would not be pumping. The proposed WGFP IGA provides water for Grand County under three scenarios.
 - a. Transfer Water. Middle Park calls for water for its contractees at the beginning of the pumping season. Any water not released for Middle Park at the end of the season reverts back to the Subdistrict and is transported to the east slope. Under the WGFP IGA, the water that Middle Park does not use at the end of the season is transferred to Grand County to be released to the environment or stored for the next season in space provided in Granby Reservoir. Grand County is provided with 4500 AF of storage space and Middle Park 3000 AF for a total of 7500 AF, which can be shared between the two entities. If the Subdistrict is issued all of the necessary permits for construction of Chimney Hollow Reservoir and accepts the permits, the transfer water will be available to Grand County on a shared basis until Chimney Hollow is constructed.
 - b. Variable Water. Grand County would have an opportunity to pump water on completion of WGFP. Grand County would receive 3.8% of the 2012 WGFP pumping after the project pumps 15,000 AF up to a net credited storage of 1500 AF. If the 2012 WGFP participants stop pumping prior to the time Grand County has received 1500 AF

and the rights are still in priority, Grand County can elect to continue pumping to attain the 1500 AF if there is storage available.

c. Year End Pumping. After the 2012 WGFP ceases to pump, Grand County can elect to continue pumping Windy Gap water constrained only by the carryover storage available.

- The WGFP IGA firms water for Middle Park Water Conservancy District and describes how that firm water will be delivered to Middle Park.
- Public access and protection of open space. Jasper Water rights will be abandoned. There will be a pump fund established for the Meadow Pumpers above Kremmling to assist with repair and replacement of pumps. A flow measuring fund will be established, however if not used in ten years, will be split between the Subdistrict and Learning by Doing.
- Future water acquisition, appropriation and development of projects in Grand County are curtailed unless approved by Grand County and the River District. Shoshone outage protocol is included for the Subdistrict, participation in Learning by Doing and study of a bypass though Windy Gap Reservoir is provided. A complete draft of the WGFP IGA is included in the application packet and is made an exhibit to this permit application review.

List of Agreements to be Executed together with WGFP IGA (closing documents)

- Agreement with Northern Water
- Grand Lake Clarity Agreement
- Appraisal Study now know as Alternates Development Report
- Processed Materials Agreement
- Windy Gap Decree
- Grand County RICD Stipulation
- Learning by Doing Cooperative Effort
- Green Mountain Reservoir Administration
- Contracts for Delivery of Water to Grand Valley
- Guidelines for Meadow Pumpers Fund
- Guidelines for Measuring Devices Fund
- Form of Easement for Access for Telemetry
- Agreement Among Middle Park, Grand County and River District on Operating and Administering Water Apportionments and Carryover Balances
- Amendatory Contract (Carriage Contract)
- Side letter from Subdistrict to River District re: no opposition to use of WG water for uses incidental to irrigation such as fish screen, fish ladder, etc.

DESCRIPTION OF THE PROPOSED 2012 WINDY GAP FIRING PROJECT APPLICATION

The Subdistrict has requested that the original Windy Gap 1041 Permit remain in effect with no changes as a vested right regardless of the outcome of the 2012 WGFP 1041 permit, however it also states that if the 2012 WGFP Permit conflicts with 1980 Windy Gap Permit, the 2012 WGFP provisions will control. This request raises legal issues that will be evaluated during the course of permit hearings. The County Attorney will consider and respond to the relationship between the two permits and advise the Permit Authority.

The Subdistrict acting by and through the Windy Gap Firing Project Water Activity Enterprise, has applied for a permit utilizing Grand County's regulations of Areas and Activities Designated as Matters of State Interest (1041) for the 2012 WGFP. The 2012 WGFP proposes to firm 30,000 AF with the construction of a 90,000 AF. Chimney Hollow Reservoir, which is the preferred alternative identified in the Final EIS for the project. The Final EIS for the 2012 WGFP identifies the relationship with the original Windy Gap EIS and the 2012 WGFP EIS in section 1.4.2.2 on page 1-7. This section states:

The proposed Firing Project would not exceed the average annual diversion of 56,000 AF evaluated in the 1981 EIS and ROD or any other diversion-related limitations or water rights.

The Windy Gap Project has not met the firm yield expectation of the Subdistrict nor the original participants. Because Windy Gap must rely on space in Granby Reservoir and delivery capability of the C-BT Project through the Adams Tunnel, there has been many times when delivery and space available for Windy Gap water was not possible, especially in wet years. The original Windy Gap Project was estimated to delivery about 48,000 AF of firm yield following conveyance and evaporation losses (shrink) and allocations to Middle Park Water Conservancy District (3000 AF). Each Windy Gap participant was entitled to 1/480th share (units) of the annual yield which was expected to provide 100 AF per year. According to the Final EIS for the Windy Gap Firing Project (WGFP Final EIS) between 1985 and 2004, Windy Gap was only able to deliver an average of less than 10,000 AF per year or 20 AF per unit. (See Section 1.5.2, WGFP EIS).

Table ES-2 of the WGFP Final EIS shows that, on average, the project has delivered 36,532 AF and would anticipate delivering on average 46,084 if the project is permitted, therefore only increasing diversions by 9500 AF. The 9500 AF projected increase is somewhat misleading; actual deliveries for a 19 year period averaged 10,000 AF with the largest deliveries occurring in the last seven years of 14,700 AF on average.

To address the Windy Gap Project's problems, the 2012 WGFP contemplates constructing Chimney Hollow Reservoir in Larimer County and "prepositioning" which was not part of the original project.

The WGFP IGA, if approved, "allows for the construction of a 90,000 AF Chimney Hollow Reservoir or any reservoir or reservoirs on the East Slope that are constructed as an alternative or

in addition to the reservoir identified in the Final Environmental Impact Statement (Alternative Reservoir) provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet as long as the environmental footprint in Grand County is not affected.

The WGFP Final EIS proposes mitigation for impacts of the 2012 WGFP that were identified in the EIS process. Comments submitted to the Corps and the Reclamation on the 2012 WGFP DEIS and Final EIS question whether the proposed mitigation is adequate to address the new impacts to the Colorado River, Grand Lake, and Willow Creek. The County received copies of those concerns. They are part of the record of this proceeding and will be introduced at the public hearing.

The Subdistrict submitted a Wildlife Mitigation and Enhancement Plan to the Colorado Wildlife Commission that proposed substantially the same mitigation that was proposed in the WGFP Final EIS. The Commission approved this mitigation plan as submitted by the Subdistrict. The 2012 WGFP application to Grand County does not propose any additional mitigation to satisfy Grand County 1041 criteria.

The Subdistrict also submitted an enhancement plan to the Wildlife Commission which includes money from the Subdistrict and Denver Water to address stream restoration in the Colorado River. No specific restoration projects have been proposed at this time. The Subdistrict may demonstrate at the hearing that the proposed WGFP IGA and/or the Enhancement Plan will benefit the aquatic environment in a way that addresses some of the County 1041 criteria.

DISCUSSION OF COMPLIANCE OF GRAND COUNTY'S REGULATIONS FOR AREAS AND ACTIVITIES DEEMED AS MATTERS OF STATE INTEREST

According to Grand County's Regulations for Areas and Activities Deemed as Matters of State Interest, Chapter 5, Municipal and Industrial Water Projects, section 5-103 Definitions:

"Municipal and industrial water project" means a system and all integrated components thereof through which a municipality or industry derives its water supply from either surface or subsurface sources. This includes a system and all integrated components thereof through which a municipality or industry derives water exchanged or traded for water it uses for its own needs".

The source development area for the project means, "that geographic area or region wholly or partially within this County which will be developed or altered in connection with the development of a municipal or industrial water project as these terms are defined in §5-102(3).

*§5-102(3) is in the Purpose and Intent for the project, and reads as follows:
"Insure that municipal and industrial water projects are developed in such a manner so as not to pollute rivers, streams, lakes, reservoirs, ponds and aquifer recharge areas within the source development area".*

Section 1-305 Approval or Denial of Permit Application

- (1) If the Permit Authority finds that there is not sufficient information concerning any material feature of a proposed development or activity, the Permit Authority may deny the application or it may continue the hearing until the additional information has been received. However, no such continuance may exceed sixty (60) days unless agreed to by the applicant.*
- (2) The Permit Authority shall approve an application for a permit to engage in development in an area of state interest or development for the conduct of an activity of state interest if the proposed development or activity complies with the provisions of the regulations governing such area or activity. If the proposed development does not comply with such regulations, the permit shall be denied.*
- (3) The Permit Authority conducting a hearing pursuant to this section shall state, in writing, reasons for its decision and its findings and conclusions.*
- (4) The Permit Authority shall reach a decision on a permit application within one hundred twenty (120) days after the completion of the permit hearing, or the permit shall be deemed approved.*

Review of the EIS for the 2012 WGFP, associated information, studies and permits included in the application packet and other pertinent information, along with public testimony will determine if the source development area will be adequately protected given the additional diversions and method of storage and transfer contemplated.

5-306 Approval of Permit Application. A permit application for development of a municipal or industrial water project shall be approved if the proposed development complies with the following criteria (County criteria is in **bold** type):

(a) The need for the proposed water project can be substantiated.

The application substantiates the need for the project at pages 8-14, and 53 of the application. A new need that is not defined in the Purpose and Need but is disclosed on page 19 of the application causes concern.

New industrial uses such as “fracking” for water on the front range can expand without limitation thereby increasing the likelihood of future diversions from Grand County. The draft WGFP IGA (IV. J. 2.) attempts to address this concern by stating that Grand County “*will not allow Subdistrict or the WGFP Enterprise, without prior express written consent of Grand County and the Colorado River Water Conservation District to acquire any existing water rights in Grand County, construct additional water supply facilities in Grand County, appropriate new water rights in Grand County, or appropriate any new water rights in Water Division No. 5 that will result in depletions of water from Grand County*”.

RECOMMENDATION: This criterion 5-306(a) appears to be satisfied.

(b) Assurances of compatibility of the proposed water project with federal, state, regional and county planning policies regarding land use and water resources.

1. Identified Plans. The application lists the applicable plans, permits, and approvals at page 53 of the application:

- Clean Water Act 404 permit
- CDPHE 401 certification
- Fish and Wildlife Mitigation Plan, C. R. S. § 37-6-122.2
- Water Conservancy Act, C.R.S. § 37-45-101 et seq.
- Clean Water Act 208 Plan (NWCCOG 208 Plan)
- Grand County 1041 Permit
- Grand County Stream Management Plan.

The proposed WGFP IGA is intended to satisfy section 37-45-118(1)(b)(II) of the Water Conservancy Act. *See* WGFP IGA Section VI F.

The Fish and Wildlife Mitigation Plan has been approved by the Colorado Wildlife Commission. As a matter of federal law, the 2012 WGFP cannot be constructed until the 404 permit has been issued by the Corps of Engineers and Colorado Water Quality Control Commission has issued the 401 Certification.

The Stream Management Plan will guide the Learning By Doing process in which the Subdistrict will participate.

2. Other Plans Not Included in Application. The following applicable plans, permits and approvals are not identified in the application:

Grand County Master Plan. Grand County Master Plan was last updated in 2011. This plan had broad community input and support. The Plan contains seven elements which are considered the core of the plan. Those elements include Natural Resources; Land Use – Growth and Development, Development: the Build Environment; Community and Public Facilities; Transportation; Economic Base; and Administration & Process. Each section contains a number of subsections. Grand County's 1041 process incorporates these Master Plan provisions into the permit process through reference to plans in 5-306b. Sections of the Master Plan relevant to this application are Natural Resources, Land Use-Growth and Development, Community and Public Facilities, and Economic Base.

Natural Resources

Natural Resources include several subsections, but those under which this application will be reviewed are wildlife, wetlands, and water resources, and visual resources:

Wildlife: The quality, integrity and interconnected nature of critical wildlife habitat in Grand County should be preserved and protected. In order to accomplish this goal, there has to be recognition of the economic, recreational, environmental and cultural importance of hunting, fishing, and wildlife watching in Grand County, and the minimization of impacts to critical wildlife habitat and/or corridors.

The 2012 WGFP application, and the WGFP IGA and closing documents, contain elements that would address these requirements are the stream restoration and temperature requirement in the Fish and Wildlife Mitigation Plan. Participation in the Learning by Doing sustain this effort for the future.

Wetlands: Provide for the long-term protection of wetland functions and values.

The 2012 WGFP application addresses wetlands, but does not address long term protection as could be associated with the stream depletions. There will be conditions recommended to address this goal under criterion (f).

Water Resources: The long term protection of water resources and water quality in Grand County is the goal.

This section includes working with entities and other parties to maximize water levels in the Colorado River and, other water bodies while exploring the feasibility of in-stream flows for environmental and recreational purposes, maintaining optimum flows in streams and rivers, working to retain and protect existing water rights for use in Grand County, and supporting projects that restore stream channels and natural conditions, and improve fish and wildlife habitat.

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These goals could be met by the additional water to Grand County provided in the proposed WGFP IGA and through the endangered fish releases from Granby Reservoir. Also, protection of water rights in Grand County from future transbasin diversion by the Subdistrict and Northern, and restoration of stream channels through the approved State Fish and Wildlife Enhancement Plan, could help to achieve this goal. Participation in Learning by Doing would support this goal.

Visual Resources: Visual resources play a major role in the county's character, quality of life and economy. Recognition of the importance of visual resources by maintaining those resources to promote overall rural character, quality of life and the tourist and recreation based economy.

The 2012 WGFP could meet this goal with the WGFP IGA and associated documents which would work to improve the water clarity in Grand Lake, maintain lake levels for recreation, provide additional public access around Willow Creek and specify development of Subdistrict land to the Grand County Rural Land Use Process.

Land Use, Growth and Development

Land Use, Growth and Development include several subsections, but those under which this application will be reviewed are Pattern of Development, Rural and Open Land Pattern:

Generally under all of the subsections mentioned, Grand County's goal is to direct development so as to preserve economic success by striking a balance between quality of life, preservation of the environment and the County's rural character.

The 2012 WGFP application and WGFP IGA with associated documents will require that future development of lands held by the Subdistrict would proceed under the Rural Land Use Process. The WGFP IGA provides water for the environment, restoration opportunities through the Fish and Wildlife Mitigation Plan, and lake level preservation. Through Learning by Doing, the Subdistrict and Northern participate in ongoing efforts to maintain the environment.

Community and Public Facilities

Community and Public Facilities include several subsections, but the one associated with this application is Recreation Facilities:

Recreation Facilities: Develop recreational resources within the county to meet the needs of all age and interest groups.

The WGFP IGA and associated documents requires the Subdistrict and Northern to remove their objections to the Recreational Instream Channel Diversion that Grand

County is pursuing. Additional water released for the endangered fish as well as Grand County environmental water will help preserve existing recreational resources.

Economic Base

Economic Base includes numerous subsections, but those appropriate to this review are Recreation & Tourism Based Industry and Natural Resource Based Industry.

Recreation and Tourism Based Industry: *Encouragement and support of year-round recreation while making effort to retain Grand County's unique rural, western and scenic character that is so appealing to tourists.*

The 2012 WGFP IGA and closing documents will help support the year-round recreation by providing water resources, a process for improving clarity in Grand Lake and protection of the rural, western and scenic character by committing to development of it properties under the Rural Land Use Plan.

The WGFP IGA also provides that the Subdistrict will arrange with Northern to allow for public access along Willow Creek, and the designated area is to be managed by the Colorado Parks and Wildlife or other agency approved by Northern. However, the public access could be revoked if Northern were to sell its property. If this provision is to be considered to help address the requirements of the Master Plan, then the Subdistrict must provide a plan for how it would replace the value of the public access that would be lost if Northern sells its property and revokes the public access.

Natural and Resource Based Industry: *Encouragement and support of natural resource based industry and renewal energy such that it compliments and/or enhances the County's rural character and natural setting and sustains quality of life for County residents.*

The 2012 WGFP IGA and associated documents provide funding for irrigators above Kremmling to repair and replace pumps necessary to access agricultural water. The agricultural base of Grand County is essential to sustaining the quality of life for County residents.

Compliance with the Grand County Master Plan could be satisfied with the following conditions:

1. The WGFP IGA and closing documents are executed and made a part of any permit issued by the County.
2. The Subdistrict provide a plan for how public access will be compensated if the public access provided in the WGFP IGA were to be revoked due to the sale of the property by Northern.

Senate Document 80. The 2012 WGFP must comply with Senate Document 80. This is also a requirement of the WGFP IGA. The requirement to comply with Senate Document 80 also applies to the on-going operations of the C-BT.

Grand Lake is Colorado's largest natural lake and was conscripted into the C-BT Project as a conduit for water. Senate Document 80 provided assurances from the C-BT Project to both the East and West Slope. There are five primary purposes stated in Senate Document 80 under which the project must be operated. Those five purposes are:

To preserve the vested and future rights in irrigation.

To preserve the fishing and recreational facilities and the scenic attractions of Grand Lake, the Colorado River, and Rocky Mountain National Park.

To preserve the present surface elevations of the water in Grand Lake and to prevent a variation in these elevations greater than their normal fluctuation.

To so conserve and make use of these waters for irrigation, power, industrial development, and other purposes, as to create the greatest benefit.

To maintain conditions of river flow for the benefit of domestic and sanitary uses of this water.

2012 WGFP compliance with Senate Document 80 is covered in detail in Section 5-306(d), below.

Bureau of Land Management Resource Management Plan. The 2012 WGFP was considered to be included in the Wild and Scenic portion of the BLM Resource Management Plan and has been agreed to by all parties participating. Northern will make a contribution to this effort as described in the WGFP IGA.

Arapahoe National Recreation Area Policies (ANRA) – The ANRA was created in 1978:

"...so as to Protect the area's enduring scenic and historic wilderness character and its unique wildlife and to preserve the areas' scientific, educational, recreational, and inspirational resources and challenges; and

So as to preserve and protect the natural scenic, historic, pastoral, and wildlife resources of the area and to enhance recreational opportunities.

Administration of the ANRA provides that

the Secretary shall administer the area in accordance with laws and regulations applicable to the national forests so as to protect recreation and enjoyment, conservation and development of the scenic, natural, historic and pastoral values; utilize and dispose of natural resources that will not impair the purposes for the recreation area; and manage for water quality.

The Secretary shall develop an overall management plan for the ANRA.

Compliance with the ANRA policies could be met with the provisions provided WGFP IGA and closing documents. If the U. S. Forest Service requires additional mitigation, these measures will be included in any permit issued by Grand County.

Amendatory Contract with the Bureau of Reclamation. The 2012 WGFP will require an amendment or new contract for the operation contemplated.

Additional Reviews:

There are several review agencies that are allowed to comment on this project. They include Northwest Colorado Council of Governments (NWCCOG) with regard to the 208 Water Quality Plan, Colorado Department of Public Health and Environment, and Colorado Parks and Wildlife. The comments by these agencies are due July 12, 2012, so will not be included in the Planning Commission Review of the 2012 WGFP, but will be made part of the review before the Permitting Authority.

RECOMMENDATION: *This criterion would be satisfied if the following conditions are met:*

1. The 2012 WGFP project requires federal and state approvals and cannot go forward without them. Consequently if the County issues a 1041 permit for the project, all the terms and conditions on those permits and approvals will become County conditions, and any permit issued by the County will not become effective until all those permits are issued and Grand County is provided copies of same.
2. The County recognizes that Grand Lake water quality is already a problem, however evidence on the record indicates that additional pumping by the 2012 WGFP is likely to exacerbate the issue. This condition is likely to be satisfied if the proposed WGFP IGA and all other documents and agreements associated with the WGFP IGA are executed, and the 2012 WGFP project is operated in compliance with that WGFP IGA and related documents, permits, and approvals at all times.

3. The WGFP IGA and closing documents are executed and made a part of any permit issued by the County.
4. The Subdistrict provide a plan for how public access will be compensated if the public access provided in the WGFP IGA were to be revoked due to the sale of the property by Northern.
5. If the U. S. Forest Service requires additional mitigation or information to comply with the policies of the ANRA, that mitigation and/or information will become part of any permit issued by Grand County.

(c) Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of storm water and sanitation systems shall be accompanied in a manner that will prevent the pollution of aquifer recharge areas.

The application describes efficient use of the water, recycling and reuse of water at pages 17-20 of the application. The Subdistrict also indicates that some of the water will be used for fracking in the oil and gas industry.

Fracking water is typically injected into the ground and not reused or recycled.

Efficient use of water also is discussed in the Final EIS as well as specific mitigation required to guarantee efficient use is detailed in Table 3-164 (1b) of the Final EIS. One of the mitigation measures stated is the need for all project participants to have conservation plans prior to the delivery of water.

According to the 1041 application (at pg 18)

“ nine of the participants, Broomfield (City and County), Erie, Greeley, Evans, Fort Lupton, Central Weld, Lafayette, Little Thompson Water District, and Longmont have approved Colorado Water Conservation Board (CWCB) conservation plans since the passage of the Water Conservation Act of 2004 (Colorado House Bill 04-1365). Louisville anticipates completing its plan in 2012. Platte River is an industrial water user not covered by HB 04-1365, but implements measures for efficient use and reuses its water supply to extinction. As a component of the Water Conservation Act, project participants would update their conservation plans approximately every seven years”.

The application states, at pg 18, that the Subdistrict is a raw water provider and cannot enforce water conservation through its allotment contracts, but the mitigation in the EIS does not recognize that distinction. In order to meet the mitigation required, the Subdistrict will be need to

verify that not only does every participant comply with the conservation plan requirement of the EIS as well as the Water Conservation Act, as currently in effect or which may be amended in the future, but also that each project participant updates their plans approximately every seven years. The Subdistrict may have to amend its allotment contracts to comply with law and mitigation requirements.

The Subdistrict has stated that according to its policies, the project participants are allowed to sell or lease their shares (units). Because of the mitigation requirement for conservation as well as compliance with the Water Conservation Act, no sale or lease of participant shares to other municipalities will be allowed unless the new owner or lessee has a valid conservation plan in place and updates every seven (7) years as required.

The current participants own 440 of the 480 shares (units). The remainder is owned by some of the original Windy Gap Participants or other entities that have since purchased them. The City of Boulder and the Town of Estes Park collectively own 40 Windy Gap shares (units). These two Windy Gap participants currently have other sources of water supply and/or storage for Windy Gap water.

According to the EIS, (pg 1-3) delivery of 40 shares of water will be similar to current operation and may increase over time as demand grows. The EIS states "*the amount of water delivered to these entities will not be expanded or diminished by WGFP*".

The WGFP IGA reaffirms the 1980 and 1985 Agreements as they relate to volumetric limits and state that those limits apply to both the Windy Gap Project and the 2012 WGFP. To be clear, those limits, 90,000 AF of diversion in any one year, and not to exceed an average of 65,000 in any ten year running average, apply cumulatively to both projects and NOT to each one individually. The WGFP IGA also does not allow the expansion of the C-BT project storage with the combination of water stored in Chimney Hollow and Granby Reservoir. As previously discussed, the Subdistrict states that it can pump whatever water is in priority from the Colorado River, subject to storage capacity in Granby, as long as the amount of water transported through the Adams Tunnel is within the decreed limits.

Any permit issued by Grand County should be clear that volumetric limits and their application to both the Windy Gap and 2012 WGFP participant's use of water is in compliance with the Windy Gap decrees and Colorado law.

There is no construction within Grand County so there will be no effect on storm water and sanitation systems or pollution of aquifer recharge systems.

RECOMMENDATION: This criterion would be satisfied if the following conditions are met:

1. Subdistrict shall provide the County with documentation of conservation plans for all municipal project participants prior to delivery of water through the 2012 WGFP, and that participants are complying with the Water Conservation Act with regard to updating the conservation plans every seven years.

2. Subdistrict shall provide written notice to the County when shares of the 2012 WGFP are sold or leased and verification that the new owner or lessee has complied with conservation requirements.

3. Within 30 days of acceptance of an approved 1041 permit, the Subdistrict shall provide the County with written documentation of how use of water for fracking satisfies this criterion.

4. Any permit issued by Grand County is subject to the volumetric limits of the WGFP IGA and the requirements of the 1980 Agreement or 1985 Supplement that may remain in effect if not changed by the WGFP IGA.

(d) Provisions to insure the proposed water project will not contaminate surface water resources.

The application, at p. 55, states that the 2012 WGFP water will not contaminate surface water resources as it will be transported through existing facilities. The County disagrees with this statement because the transport of water through the C-BT system will exacerbate the water quality in the Three Lakes (Granby Reservoir, Shadow Mountain Reservoir and Grand Lake) by increasing introductions of lower quality water from Windy Gap into Granby Reservoir, and increased diversions of particulate-laden water through Shadow Mountain Reservoir and Grand Lake. Although the Subdistrict has proposed mitigation of nutrient loading, no mitigation is proposed for the non-algal particulates.

The clarity in Grand Lake has been an issue since the C-BT Project began pumping. The first documented concern was in 1952 from the City of Loveland to the Bureau of Reclamation complaining about algae in its water supply after the Farr Pumping Plant began to transport water into the C-BT. Reporting on water quality from both east and west slopes continued intermittently until the late 1990's when a group of citizens around Grand Lake worked to heighten awareness and sought Grand County's support to rectify the loss of Grand Lake's scenic attraction as protected in Senate Document 80. For the last decade, there has been a concerted effort to bring the clarity in Grand Lake back to its pre-C-BT project clarity of 9 meters.

In 2006, Northern Water, Grand County, and several other entities began participation in the Nutrient Study for the Three Lakes System (Grand Lake, Shadow Mountain and Granby Reservoirs). A spin off from this study group is the Three Lakes Technical Committee which focuses primarily on west slope water quality. In 2006, it was thought that nutrient loading was the root cause of most of the water quality issues in the Three Lakes, including Grand Lake clarity, but years of additional study, monitoring and reporting have proven that nutrients are not the only cause of reduced clarity.

In 2008, the Colorado Water Quality Control Commission adopted two standards for clarity in Grand Lake: a narrative standard supporting "the highest level of clarity attainable, consistent with the exercise of established water rights and the protection of

aquatic life”, along with a numeric standard of 4 meter Secchi disk depth with 85% compliance in any given year for the months of July, August and September. The numeric standard becomes effective January 1, 2015.

Pumping from Granby Reservoir to Shadow Mountain Reservoir, and subsequent water transfer to the east slope via the Adams Tunnel, causes decreased clarity in Grand Lake, as evidenced by stop-pump trials, water quality monitoring, and photographic records. Two two-week stop pump trials (2008 and 2009), as well as a seven-week stop pump in 2011 made possible by extremely high runoff and full storage all resulted in improved clarity: the 2011 “gift of nature” resulted in the best clarity in Grand Lake since the C-BT became operational.

Recent studies have identified non-algal particulate matter as being considerably more important to clarity as nutrient loading. The source of the non-algal organic particulates is currently under investigation.

The Subdistrict is proposing that reductions in nutrient loading will come from a combination of wastewater treatment improvements to reduce point source nutrient loading above Windy Gap as well as land use changes that would reduce non-point source nutrient loading. Wastewater treatment plants above Windy Gap were evaluated to determine which, if any, treatment plants, would be capable of achieving the level of nutrient loading reduction required to meet the 1:1 (nutrient neutral) standard applied in the Final EIS. The Fraser Valley Consolidated Plant is the only one capable of meeting a portion of the reduction necessary. By financing improvements to the Fraser Valley Consolidated Plant, it is expected that 822 kg/year of Nitrogen and 774 kg/year of Phosphorus will be removed. The cost of the plant improvements is estimated to be \$3.3M with increased annual operating costs ranging from \$120,000 to \$230,000/year.

Part of the non-point source reduction proposed by the Subdistrict will come from two ranches in the Willow Creek drainage above Windy Gap. The 265 acre E-Diamond H Ranch is currently irrigated and periodically fertilized. To reduce nutrient discharges from run-off, the ranch will no longer be irrigated or fertilized. It is estimated that this will reduce total nitrogen loading by 685 kg/year and total phosphorus by 117 kg/year. C Lazy U Ranch would implement best management practices on 300 acres by a reduction in chemical fertilizer application, use of vegetated buffer strips adjacent to Willow Creek and stream bank restoration to reduce erosion. This action is estimated to produce a reduction of total nitrogen loading of 1,836 kg/year and 237 kg/year of total phosphorus loading.

Even with these actions, the Subdistrict notes that the total nitrogen loading must be reduced by another 2,785 kg/year to be nutrient-neutral. The Subdistrict is proposing that the additional reduction in total nitrogen loading will be met prior to construction of the 2012 WGFP in cooperation with Reclamation and Corps of Engineers. Grand County must be provided with documentation of how the Subdistrict intends to meet the additional reductions in nitrogen.

According to the Final EIS (Table ES-6, p. ES16), and the application (p. 24 and 25) manganese and chlorophyll- α are predicted to increase, and dissolved oxygen (DO) would decrease in the

entire Three Lakes System. The lower DO levels would contribute to continued exceedance of manganese standard in the Three Lakes. Secchi disk depth would decrease in Grand Lake.

In addition to increasing nutrients, a report titled *2010 Water Quality Report Flowing Sites* prepared by Northern identifies higher conductivity and total organic carbon in flows pumped from Windy Gap, meaning that dissolved constituents in additional pumped flows are likely to increase under the 2012 WGFP. A report titled *Factors Controlling Transparency in Grand Lake, Colorado* prepared for Three Lakes Technical Committee documents that non-algal particulates are also a contributing factor to reduced water quality in Grand Lake. While this information was not available in time for publication of the Final EIS, it is also not mentioned or provided in the application. It is relevant to the impact of the 2012 WGFP.

The application states that the 2012 WGFP impact on particulate transfer is not currently known but that the flow increase through the C-BT project is relatively small when compared to the C-BT diversions. To date, the amount of Windy Gap water than has been pumped through the C-BT system is relatively small, but if the 2012 WGFP is approved, this will no longer be insignificant when compared to the C-BT overall volume.

The application further states that it is possible that the particulates are substantially moved during the "first flush" of pumping and/or natural runoff into the lakes, in which case 2012 WGFP would have no additional effect (at pg 30 of the application). These statements are not supported by the conclusions in *Operational and Water Quality Summary Report for Grand Lake and Shadow Mountain Reservoir: 2010* prepared for Northern, Reclamation, and Grand County, which shows that turbidity is highest in Grand Lake at high rates of reverse flow through Shadow Mountain Connecting Channel, and that many of the native inflows to the Three Lakes are pristine even in high flow conditions.

The Subdistrict has identified other ongoing processes related to Grand Lake water clarity on page 29 of the application:

Reclamation, Grand County, and Northern Water have entered into a separate MOU to finance and begin an Appraisal Study, the first step in Reclamation's Planning Process (Reclamation has since determined that the Planning Process is not the appropriate avenue in which to contemplate corrections to the C-BT Project, and this report has been retitled the Preliminary Alternatives Formulation Report);

Grand County, Reclamation, and Northern Water are continuing to move ahead with Reclamation's process by participating in a Contributed Funds Act Agreement for executing a C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study; and

Grand County and Northern Water have agreed to enter into the Memorandum of Understanding, known as the Grand Lake Clarity project.

The C-BT Project is a Reclamation Project and it is imperative to solicit its cooperation in addressing the Grand Lake clarity issue. The Memorandum of Understanding known as the Grand Lake Clarity project must also gain the approval of the Reclamation, and the draft agreed to by Grand County and Northern has been sent to Reclamation, hopefully for approval and execution.

The application, at pg 55, states that "Although not specifically related to the WGFP, Northern Water and Grand County have agreed to enter into an agreement with Reclamation (Grand Lake Clarity MOU) to identify causes and potential solutions to Grand Lake clarity issues". Grand County does not agree that clarity is not related to the 2012 WGFP because the FINAL EIS discloses that Secchi disk depth will be reduced.

RECOMMENDATION: This criterion 5-306(d) would be satisfied if the following conditions are met:

1. The 1041 permit, if issued, will not be effective until the Clarity Project MOU and the C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study are executed.
2. Prior to the beginning of construction for Chimney Hollow Reservoir, Grand County must be provided with a copy of an executed agreement between the Subdistrict and the wastewater treatment provider(s) who will be contracted with to remove some of the nutrient loading. This agreement must include the cost of improvements required plus whatever operation and maintenance costs the provider(s) require for the future.
3. The Subdistrict shall submit the Nutrient Reduction Plan to Grand County for review and approval at the same time it is submitted to Reclamation and the Corps but no later than the execution of the WGFP IGA and related documents and agreements.
4. The Subdistrict must submit a robust monitoring plan to assure that nutrient loading from the 2012 WGFP for total nitrogen and total phosphorus are adequately reduced to meet the 1:1 level; that manganese, mercury, and chlorophyll a do not increase; that DO does not decrease; and that Secchi disk depth does not decrease in Grand Lake. The monitoring plan shall include a schedule for monitoring and reporting. Grand County must be included in all reporting. The project must be operated in compliance with the Nutrient Reduction Plan and monitoring plan.

(e) The proposed water project is capable of providing water pursuant to standards of the Colorado Department of Health.

The application, at pg 55, states that the 2012 WGFP provides raw water to a number of municipal users. The water will be treated by those end users as required by Colorado law.

RECOMMENDATION: This criterion appears to be satisfied.

(f) The proposed diversion of water from the source development area will not decrease the quality of peripheral or downstream surface and subsurface water resources in the source development area below that designated by the Colorado Water Quality Control Division on January 15, 1974 and effective June 19, 1974 or below stricter standards subsequently adopted.

Granby Reservoir is currently on the State of Colorado's 303(d) list for impaired waters due mercury. This likely occurs from atmospheric deposition from coal fired power plants. The application, at pg 55, states that the 2012 WGFP does not affect this impairment. As with manganese (p. 25 app.), lower dissolved oxygen (DO) levels would contribute to continued exceedance of the mercury standard in Granby Reservoir.

Sections of the Colorado River are also on the Colorado Water Quality Control Commission 303(d) list for existing temperature exceedances. In Grand County this includes the mainstem from Granby Reservoir to the where the Colorado River leaves Grand County (this exceedance extends to the Roaring Fork River). Exceedances are especially critical in the reach from Windy Gap to the Williams Fork where chronic and acute temperature standards are being exceeded especially during the summer months.

The 2012 WGFP is predicted to exacerbate these exceedances of temperature standards. The federal Clean Water Act prohibits a permitted project from causing or contributing to the violation of a water quality standard. Mitigation for the impacts of the WGFP on temperature has been proposed in the Fish and Wildlife Mitigation Plan approved by the Colorado Wildlife Commission. The Army Corps of Engineers may add additional requirements or adopt the mitigation proposed in the State plan.

According to the State Fish and Wildlife Mitigation Plan, the Subdistrict, working with Denver Water, will install, operate and maintain two continuous real time monitoring stations on the Colorado River, one at Windy Gap gage and one upstream of the confluence of the Williams Fork River. The Fish and Wildlife Mitigation Plan provides that the Subdistrict will implement the following mitigation for temperature:

Temperature Thresholds: The threshold temperatures will be the following, as measured at the temperature monitoring stations identified above:

MWAT Chronic Threshold: 18.2°C (64.8° F), based on the Water Quality Control Commission

current Maximum Weekly Average Temperature (MWAT) Chronic Standard

DM Acute Threshold: 23.8°C (74.8° F), based on current Water Quality Control Commission Daily Maximum (DM) Acute Standard.

Mitigation for MWAT Chronic Threshold Exceedances – The Fish and Wildlife Mitigation Plan proposes that for the period after July 15th of each year:

At such times as the Weekly Average Temperature (WAT) exceeds the MWAT Chronic Threshold, the Subdistrict will reduce or curtail WGFP pumping at the Windy Gap diversion to the extent necessary to maintain temperatures within the MWAT Threshold. Reduced pumping may not be sufficient to maintain temperatures below the threshold.

The Fish and Wildlife Mitigation Plan defines “WGFP pumping” as “pumping that occurs at such times as the Northern Colorado Water Conservancy District determines, based on its most probable forecasts of inflows to Lake Granby, that a spill of water from Lake Granby is reasonably foreseeable.” All other pumping will be considered to be for the original Windy Gap Project.

Nonetheless, no project can cause or contribute to a violation of a water quality standard.

What this limitation means is that the Subdistrict will not reduce or curtail exceedances of the MWAT unless 2012 WGFP is pumping, and whether WGFP is pumping will be based on whether Northern forecasts that a spill is probable from Lake Granby. However, as stated above, **no project can cause or contribute to a violation of water quality standards.** Therefore, any violation of this standard, whether 2012 WGFP or original Windy Gap project is operating, pumping must be curtailed to not exceed the temperature standards.

Mitigation for DM Acute Threshold Exceedances - The Fish and Wildlife Mitigation Plan proposes that:

“At such times as the Daily Maximum temperature is within 1°C of the DM Acute Threshold, the Subdistrict will reduce or curtail pumping for the original Windy Gap Project or the WGFP at the Windy Gap diversion to the extent necessary to maintain temperatures within the DM Threshold. “Reduced pumping may not be sufficient to maintain temperatures below the threshold. In the future, the 1 degree buffer may be altered, based on experience, to maintain compliance with the DM Threshold.”

According to the Fish and Wildlife Mitigation Plan, the temperature mitigation measures will be suspended when there is “no material causal relationship between Windy Gap Project or Windy Gap Firing Project operations and any exceedance of the MWAT Chronic threshold or DM Acute threshold at the monitoring stations identified above.”

The Plan defines a “material causal relationship” as “either an actual measureable impact on temperature using readily available monitoring technology or a modeled impact on temperature

that is not de minimus and is based on a computer model or studies accepted "by the Colorado Division of Wildlife."

This limitation is problematic because it leaves it up to the Division of Wildlife (now Parks and Wildlife) to make a judgment on impacts to water temperature. The proper entity for approving of such a model should be the Water Quality Control Commission. The Management Committee to the Stream Management Plan also should be consulted.

Other than the proposed mitigation, other actions could have a positive effect on temperature in the Colorado River below Windy Gap. The first is the 5412.5 AF of water for the Endangered Fish (10825 FONSI in application) that will be released from Granby Reservoir. According to the Programmatic Biological Opinion (Opinion) for the Endangered Fish, 5412.5 AF of water will be released for each of the east slope and west slope diversions. For the first ten years of the Opinion, Denver Water released for the east slope diverters and the River District for the west. The Opinion calls for a permanent source of water as Denver and the River District would not commit to releasing water after their committed period. The permanent source of 5412.5 AF of water for the east slope is from Granby Reservoir provided by Red Top Valley Ditch water owned by Northern. The west slope contribution will come from Ruedi Reservoir. If for some reason the endangered fish water is no longer required in the future, Northern, by separate agreement, has guaranteed this water for release to the Grand County environment for perpetuity.

As early as 2013, this 5412.5 AF of water could be released during the later part of the summer and early fall. If the U. S. Fish and Wildlife Service do not call for the water for the endangered fish, Grand County, through Learning by Doing, could call for the water for environmental purposes. When the water arrives at the confluence of the Blue River, it would be booked back into Green Mountain Reservoir for release at such time as the U. S. Fish and Wildlife Service call for the water.

Secondly, Grand County, through the proposed WGFP IGA, could have up to 4500 AF of water stored in Granby Reservoir to be used for the environment. This amount of stored water could be increased by sharing the 3000 AF of storage space with Middle Park. Again, through Learning by Doing, this water could be released to offset temperature exceedances.

RECOMMENDATION: This criterion would be satisfied if the following conditions are met:

1. Installation and maintenance of real time temperature gauges. The Fish and Wildlife Mitigation Plan requires the installation of real time temperature gauges below Windy Gap Reservoir and above the confluence of the Colorado and Williams Fork. This installation will also be a condition to any permit issued by Grand County, but in addition, the Subdistrict must verify every spring, before the beginning of pumping, that these gauges are in good working order, that they remain so during each annual pumping season, and that they are replaced or repaired when necessary and timely to their need in reporting temperature.

2. Grand County feels the bypass study should begin immediately and that if proven beneficial, the alteration within the Windy Gap Reservoir should commence upon acceptance by the Subdistrict of the 1041 permit so as to address ongoing conditions below Windy Gap.
3. Curtailment of Pumping in the Event of Threshold Exceedances. In addition to the proposed temperature mitigation in the Fish and Wildlife Mitigation Plan and other terms and conditions to address temperature that may be imposed as part of the 401 Certification or federal approvals for the WGFP, the Subdistrict shall reduce or curtail pumping at the Windy Gap Diversion if the MWAT Threshold is exceeded after July 15th of any year as long as WGFP is pumping during that time period. If the MWAT is exceeded, the Subdistrict shall immediately notify the County, and the County and the Subdistrict will determine whether WGFP is pumping. Temperature mitigation may be suspended when there is no material causal relationship between Windy Gap Project or Windy Gap Firing Project operations. The determination of a causal relationship shall be based upon a model approved by the Colorado Parks and Wildlife, Grand County, and the Water Quality Control Division.
4. The delivery of 10825 endangered fish water from Granby Reservoir must be approved.
(g) The proposed development and the potential diversions of water from the source development area will not significantly deteriorate aquatic habitats, marshlands and wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitat, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreational areas, and unique areas of geologic, historic or archaeological importance.

Aquatic Habitat

The application states, at pgs 8, 37, 42-43 and 57, the greatest decrease in fish habitat would occur from Windy Gap to Williams Fork with the greatest decrease in July and August. In this section there could be a decrease of 34% in the adult Rainbow population and 8% in the Brown Adult in August. Diversions, according to the modeling, would increase in August from 6 times in 47 years to 15 times in 47 years. Decreased habitat of up to 15% is predicted below Williams Fork for juveniles of both Rainbow and Brown Trout. No adverse impacts are expected for spawning.

The impacts predicted by diversions in August are stated to be infrequent in the application and offset by considerations in the Fish and Wildlife enhancement plan which includes habitat improvement below Windy Gap, additional water committed to Grand County for the environment and to be used through Learning by Doing as well as the 10825 endangered fish water. However there is no way to know if these enhancements and improvements will actually address the loss of aquatic habitat and no mitigation has been proposed.

The Nehring Report, *Colorado River Aquatic Resources Investigation Federal Aid Project F-237R-18* identifies a relationship between hydrologic modifications and macro invertebrates and concludes that the 2012 WGFP and Denver's Moffat Firming Project combined are likely to exacerbate these problems.

The additional water from the WGFP IGA along with the 10825 endangered fish water could help maintain the riparian habitat when coupled with the downstream restoration proposed by the Fish and Wildlife Mitigation Plan.

The Fish and Wildlife Mitigation Plan requires an increase in flushing flows from 450 c.f.s. for 50 hours, 1 out of 3 years, to 600 c.f.s., if at any time in the previous two years the flows have not exceeded 600 c.f.s for 50 hours. However it carries the caveat that storage in the Subdistrict's Chimney Hollow and Granby Reservoirs must exceed 60,000 AF. on April 1st and then the Subdistrict will cease pumping for 50 consecutive hours to enhance peak flows below Windy Gap.

Previous to the Windy Gap project, the median flushing flows May through June were 1145 and 1795 c.f.s. respectively according to Grand County's Stream Management Plan (SMP) (p. CR4-7). The SMP recommends a **minimum** flow of 600 c.f.s. every other year, and this flow would only move spawning gravel and not larger cobble needed to maintain stream health. Channel maintenance flows are unknown and there is conflicting data around this issue.

Grand County has requested Reclamation, in the decision for the Carriage Contract for the 2012 WGFP, to apply a shrink lesser than 10% to water stored on the western slope in the C-BT Project and not transported through the system to the east slope. The Subdistrict has requested the same. If this is granted, the Subdistrict will gain water to the project.

If the Subdistrict were to "bank" this additional water for a five year period, and in the 6th year provide a flushing flow of 1145 c.f.s. for 72 hours, it would not lose yield anticipated with this project. For example, 5% instead of 10% of 56,000 AF annual yield results in 2800 AF average annual or 1400 c.f.s. In five years, depending on conditions, this could more than provide the 1145 c.f.s. for 72 hours plus not interfere with the County's possible year-end pumping. This would not be tied to reservoir levels as the release could be planned for in a five year period.

In the proposed WGFP IGA, the Subdistrict has offered \$250,000 to study a bypass/through of Windy Gap Reservoir when not pumping. The intent of this study is to determine if re-establishing a natural channel through the reservoir when not pumping could benefit the aquatic environment. The Subdistrict is currently negotiating an agreement with the Department of Natural Resources, Trout Unlimited and certain landowners to address implementation of the study if a bypass is proved beneficial to the aquatic environment.

RECOMMENDATION: This criterion pertaining to aquatic habitat would be satisfied if the following conditions are met:

1. The Subdistrict shall prepare and submit to Grand County a fish and aquatic invertebrates monitoring plan to determine if the enhancements for habitat restoration and additional water provided in the WGFP IGA would prevent the predicted loss of aquatic habitat. This information will assist the Learning by Doing effort in making decisions for the future of the aquatic habitat. The monitoring will continue as long as the Learning by Doing effort requires this information. If the bypass/through is constructed, this monitoring plan can be adapted as necessary to analyze the benefits of the bypass/through.
2. The original Windy Gap 1041 permit does not allow the creation of mud flats at Windy Gap Reservoir. If the bypass/through were to be implemented, mud flats are likely to be created at the time the channel would be operating. The Subdistrict shall prepare and submit to the County an aquatic vegetation/revegetation plan to minimize mudflats protect against blowing dust.
3. If, during a five (5) year period, natural conditions meet or exceed flows of 600 c.f.s. as recommended by the SMP so that the Subdistrict is not required to make releases to achieve recommended stream conditions, then in the sixth year, Subdistrict shall provide a 1145 c.f.s. flow for 72 hours to move large cobble and dearmour the stream. This condition is not tied to reservoir levels as is the Fish and Wildlife Mitigation Plan.

Marshlands and Wetlands

The application states, on pgs 22 and 23, that changes in stream stage is unlikely to adversely affect riparian and wetland vegetation along Colorado River and Willow Creek. However there are reductions in stream flow and bank full conditions that could affect riparian vegetation.

RECOMMENDATION: This criterion pertaining to marshlands and wetlands would be satisfied if the following condition is met:

1. Vegetation Monitoring Plan for Colorado River and Willow Creek. Subdistrict shall prepare and submit to the County for approval a monitoring plan for vegetation along the Colorado River and Willow Creek within thirty days of issuance of the ROD by the Corps of Engineers. Monitoring will continue until the LBD management team has determined that riparian and wetland vegetation has not been adversely affected, or has recovered due to mitigation or other efforts. At a minimum this monitoring must continue at least ten (10) years after commencing of pumping for the 2012 WGFP.

Groundwater Recharge Areas

The application states, at pgs 23 and 56, that there will be no effects on groundwater levels and groundwater quality.

RECOMMENDATION: This criterion pertaining to groundwater recharge areas appears to be satisfied.

Steeply Sloping and Unstable Terrain

The application states, at pg 23 and 56, impacts are considered minimal or non-existent and are not discussed. Most of this impact will be associated with the Chimney Hollow construction.

RECOMMENDATION: This criterion pertaining to slopes and terrain appears to be satisfied.

Forest and Woodlands

The application states, at pgs 23 and 56, impacts are considered minimal or non-existent and not discussed. Most of this impact will be associated with Chimney Hollow construction.

RECOMMENDATION: This criterion pertaining to forest and woodlands appears to be satisfied.

Critical Wildlife Habitat, Big Game Migratory Routes, Calving Grounds

The application states, at pgs 23 and 56, the only critical habitat affected is in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and are not discussed in the application.

The Watchable Wildlife Area associated with Windy Gap is the only wildlife habitat in Grand County that would be affected by the 2012 WGFP, and then only if the bypass/through is constructed.

Critical wildlife habitat affected is the Threatened and Endangered Fish in the 15 mile reach in the Grand Valley. The EIS has applied mitigation in the form of monetary compensation to address the Subdistrict's responsibility.

The 10825 water designated for the Threatened and Endangered Fish will be released from Granby Reservoir in the future, and be shepherded through Grand County and the Colorado River to the fish. This water will do double duty in Grand County by helping address temperature and flow issues and protecting aquatic habitat on its way to its main purpose.

The Northern District has provided guarantees, in the form of an agreement (closing document), that if the water for the endangered fish is not required in the future, that the 5412.5 AF will be perpetual to Grand County and will be used to protect and enhance the aquatic environment in Grand County. Northern has offered to provide Grand County with written verification of their ability to provide this water if not needed for the endangered fish.

There are no big fame migratory routes or calving grounds impacted by the 2012 WGFP in Grand County.

RECOMMENDATION: This criterion pertaining to Critical Wildlife Habitat, Big Game Migratory Routes, Calving Grounds appears to be satisfied if the following conditions is met:

1. The Northern Agreement (closing document) that provides the 10825 water must be executed and Northern must provide Grand County written verification that it is able to provide the water in perpetuity if no longer required for the endangered fish.

Migratory Ponds, Nesting Areas

The application states, at pgs 23 and 56, that the only migratory ponds and nesting areas affected are in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and not are discussed in the application.

As previously discussed, if the bypass/through becomes a reality in the future, the function of the Windy Gap Reservoir as a migratory pond and nesting area could be diminished for a certain part of the year. This is not addressed in the EIS as it was not considered as mitigation for the proposed project. If it were to be instituted, it would be considered an enhancement.

When Windy Gap was reviewed, the Subdistrict agreed to allow public access above the reservoir if it did not interfere with the operation of the facility. This has never occurred, but the Subdistrict did allow the construction of the Watchable Wildlife Area at the reservoir. This project was funded by Colorado Department of Transportation funds through a grant written by Grand County. It is a popular area and enjoyed by the public in viewing many varieties of waterfowl. The type of variety of waterfowl could change with a bypass/through and that could be an issue with some people, however, there might also be different types of wildlife to view when the reservoir is drawn down to accommodate the bypass/through.

Changes in variety of number of water fowl associated with re-establish a channel through the reservoir shall not be deemed a violation of the County's 1041 regulations.

The lost of any nesting areas and the function of Windy Gap as a migratory pond would be minimal due to the proximity of the Three Lakes area, Williams Fork Reservoir, Wolford Mountain Reservoir and the migratory bird pond established on the Division of Wildlife Kemp/Breeze Units below Parshall.

RECOMMENDATION: This criterion pertaining to migratory ponds and nesting areas appears to be satisfied.

Habitats for Rare and Endangered Species

The application states, at pg 57, that the only habitats for rare and endangered species affected are in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and are not discussed in the application.

The endangered fish in the 15 mile reach of the Colorado River above Grand Junction are addressed in the EIS. Mitigation has been established in the form of a monetary contribution.

This mitigation meets the requirements of the Programmatic Biological Opinion for the fish. The delivery of water from Granby Reservoir also meets the requirements of this opinion.

RECOMMENDATION: This criterion pertaining to rare and endangered species appears to be satisfied.

Public Outdoor Recreational Areas

Please see section (b) and (d) of this certificate.

Areas of Geologic, Historic or Archaeological Importance

The application states, at pgs 30 and 56, those impacts are considered minimal or non-existent and are not discussed in the application.

There is no deterioration of unique areas of geologic, or archaeological importance associated with the 2012 WGFP in Grand County. Any such impacts could be associated with the construction of Chimney Hollow Reservoir.

However, historic irrigation could be affected by the 2012 WGFP. The importance of irrigation to the County is documented in a report prepared for Grand County by Coley Forrest documenting the impacts of water diversions on the County. Water levels are predicted to decrease 4 inches to 1 foot due to the 2012 WGFP. The Subdistrict is providing additional funds to compensate the irrigators for pump repairs and replacement, but this does not address the access to water from a drop in flow.

RECOMMENDATION: This criterion pertaining to areas of historic importance -would be satisfied if the following condition is met:

1. Plan for Access to Headgates. Prior to execution of the WGFP IGA, the Subdistrict shall submit to Grand County for approval a plan for regular maintenance of the rock structures above each pump site for the irrigators above Kremmling (defined in the WGFP IGA) that allows higher water to be captured and held so the pumps can reach the irrigation water more effectively.

STAFF RECOMMENDATION:

Grand County's regulations for Areas and Activities Designated as Matters of State Interest provide for approval of a Municipal and Industrial Water Project if the proposed development complies with the criteria of 5-306. The Permit Authority is charged with deciding if all of criterion has been met, and its decision will be based on staff's review as well as public testimony and information provided during the public hearing.

Staff's review finds that the criterion stated under Section 5-306 would be met for the 2012 WGFP if the following conditions are applied to any permit issued by Grand County (there will be various timeframes recommended for certain conditions):

GENERAL CONDITIONS

1. The County Attorney will consider and respond to the relationship between the two permits and advise the Permit Authority. The Permit Authority will make a determination on the validity of one vs. two permits.
2. The permit for the 2012 WGFP will be in effect for the life of the project and considered a vested right as long as it meets the conditions applied to the permit.
3. The permit for the 2012 WGFP is not transferrable to any other entity unless the County approves such transfer by Resolution.
4. Any permit issued by Grand County would recognize the construction of a 90,000 AF Chimney Hollow Reservoir or any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the Final Environmental Impact Statement (Alternative Reservoir) provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet as long as the environmental footprint in Grand County is not affected.
5. Any permit issued by Grand County is subject to the volumetric limits stated in the IGA and their application to both the Windy Gap and 2012 WGFP participant's use of water is in compliance with the Windy Gap decrees and Colorado law.
6. The permit for the 2012 WGFP is contingent upon the approval and execution of WGFP IGA and all closing documents. This list is provided in section Proposed Windy Gap Firing Project Intergovernmental Agreement on page 10 of this certificate.
7. The construction of the 2012 WGFP shall not be commence until the water court approves the decree and attached WGFP IGA and Grand County has been provided copies of same.

Criterion (a) appears to be satisfied.

Conditions to satisfy Criterion (b):

8. The permit for the 2012 WGFP shall not be effective until issuance of necessary State and federal permits and approvals for the 2012 WGFP. If there is a conflict between a term and/or condition in the 1041 Permit and a state or federal permit or approval, the condition that is the more protective of the environment shall control. The Grand County 1041 permit is contingent upon compliance with all terms and conditions of all State and Federal Permits and approvals. All State and Federal permits and approvals will become part of any permit issued by Grand

County and incorporated therein. It is the responsibility of the Subdistrict to provide Grand County with copies of all approved Federal and State permits and approvals issued for the project. Following is a list of anticipated State and Federal permits and approvals (this may not be a complete list):

- Clean Water Act 404 permit
- CDPHE 401 certification
- Fish and Wildlife Mitigation Plan, C. R. S. § 37-6-122.2
- Water Conservancy Act, C.R.S. § 37-45-101 et seq.
- Clean Water Act 208 Plan (NWCOG 208 Plan)
- Compliance with Senate Document 80
- Amendatory Contract
- Record of Decision issued by Reclamation
- Record of Decision issued for Corps

9. The 2012 WGFP will terminate and be in no force and effect if construction of Chimney Hollow Reservoir, or other alternate reservoir(s), have not begun within 10 years of issuance of the Record of Decision for the WGFP by Reclamation and the Corps.
10. The 2012 WGFP is contingent upon the Subdistrict's continuing compliance with the WGFP IGA and closing documents. A breach of the WGFP IGA or any closing documents shall constitute a violation of the 1041 Permit.
11. Diversions and pumping for Grand County associated with the 2012 WGFP must cease if the water provided by the Subdistrict to Grand County is not released and available for use by Grand County in accordance with the WGFP IGA and closing documents.
12. To show compliance with the Master Plan, the Subdistrict must provide a plan for how public access will be compensated if the public access provided in the WGFP IGA was to be revoked due to the sale of the property by Northern.
13. If the U. S. Forest Service requires additional mitigation, these measures will be included in any permit issued by Grand County.
14. The Clarity MOU (closing document) as well as C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study must be executed and compliance with these documents met.

Conditions to satisfy Criterion (c):

15. Subdistrict shall provide the County with documentation of conservation plans for all municipal project participants prior to delivery of water through the 2012 WGFP, and that participants are complying with the Water Conservation Act with regard to updating the conservation plans every seven years.

16. Subdistrict shall provide written notice to the County when shares of the 2012 WGFP are sold or leased and verification that the new owner or lessee has complied with conservation requirements.
17. Within 30 days of acceptance of an approved 1041 permit, the Subdistrict shall provide the County with written documentation of how use of water for fracking satisfies this criterion, if at all.
18. Any permit issued by Grand County is subject to the volumetric limits of the WGFP IGA and the requirements of the 1980 Agreement or 1985 Supplement that may remain in effect if not changed by the WGFP IGA.

Criterion to satisfy Criterion (d):

19. The 1041 permit, if issued, will not be effective until the Clarity Project MOU and the C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study are executed.
20. Prior to the beginning of construction for Chimney Hollow Reservoir, Grand County must be provided with a copy of an executed agreement between the Subdistrict and the wastewater treatment provider(s) who will be contracted with to remove some of the nutrient loading. This agreement must include the cost of improvements required plus whatever operation and maintenance costs the provider(s) require for the future.
21. The Subdistrict shall submit the Nutrient Reduction Plan to Grand County for review and approval at the same time it is submitted to Reclamation and the Corps but no later than the execution of the WGFP IGA and closing documents.
22. The Subdistrict must submit a robust monitoring plan for nutrient reduction to assure that nutrient loading from the 2012 WGFP for total nitrogen and total phosphorus are adequately reduced to meet the 1:1 level; that manganese, mercury, and chlorophyll a do not increase; that DO does not decrease; and that Secchi disk depth does not decrease in Grand Lake. The monitoring plan shall include a schedule for monitoring and reporting. Grand County must be included in all reporting. The project must be operated in compliance with the Nutrient Reduction Plan and nutrient monitoring plan.

Criterion (e) appears to be satisfied.

Condition to satisfy Criterion (f)

23. This installation of the real time gauges required by the Fish and Wildlife Mitigation Plan will also be a condition to any permit issued by Grand County, but in addition, the Subdistrict must verify every spring, before the beginning of pumping, that these gauges are in good working

order, that they remain so during each annual pumping season, and that they are replaced or repaired when necessary and timely to their need in reporting temperature.

24. In addition to the proposed temperature mitigation in the Fish and Wildlife Mitigation Plan and other terms and conditions to address temperature that may be imposed as part of the 401 Certification or federal approvals for the WGFP, the Subdistrict shall reduce or curtail pumping at the Windy Gap Diversion if the MWAT Threshold is exceeded after July 15th of any year as long as WGFP is pumping during that time period. If the MWAT is exceeded, the Subdistrict shall immediately notify the County, and the County and the Subdistrict will determine whether WGFP is pumping. Temperature mitigation may be suspended when there is no material causal relationship between Windy Gap Project or Windy Gap Firming Project operations. The determination of a causal relationship shall be based upon a model approved by the Division of Wildlife, Grand County, and the Water Quality Control Division.
25. The bypass study should begin immediately and that if proven beneficial, the alteration within the Windy Gap Reservoir should commence as soon as possible after acceptance of any permit issued by Grand County so as to address ongoing conditions below Windy Gap.

Conditions to satisfy Criterion (g)

Aquatic

26. The Subdistrict shall prepare and submit to Grand County a fish and aquatic invertebrates monitoring plan to determine if the enhancements for habitat restoration and additional water provided in the WGFP IGA would prevent the predicted loss of aquatic habitat. This information will assist the Learning by Doing effort in making decisions for the future of the aquatic habitat. The monitoring will continue as long as the Learning by Doing effort requires this information. If the bypass/through is constructed, this monitoring plan can be adapted as necessary to analyze the benefits of the bypass/through.
27. The original Windy Gap 1041 permit does not allow the creation of mud flats at Windy Gap Reservoir. If the bypass/through were to be implemented, mud flats are likely to be created at the time the channel would be operating. The Subdistrict shall prepare and submit to the County an aquatic vegetation/revegetation plan to minimize mudflats protect against blowing dust.
28. If, during a five (5) year period, natural conditions meet or exceed flows of 600 c.f.s. as recommended by the SMP so that the Subdistrict is not required to make releases to achieve recommended stream conditions, then in the sixth year, Subdistrict shall provide a 1145 c.f.s. flow for 72 hours to move large cobble and dearmour the stream. This condition is not tied to reservoir levels as in the Fish and Wildlife Mitigation Plan.

Marshlands and Wetlands:

29. Subdistrict shall prepare and submit to the County for approval a monitoring plan for vegetation along the Colorado River and Willow Creek within thirty days of issuance of the ROD by the Corps of Engineers. Monitoring will continue until the Learning By Doing management team has determined that riparian and wetland vegetation has not been adversely affected by the 2012 WGFP, or has recovered due to mitigation or other efforts. At a minimum this monitoring must continue at least ten (10) years after commencing of pumping for the 2012 WGFP.

Groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands:

Appear to be satisfied.

Critical wildlife habitat, big game migratory routes, calving grounds migratory ponds, nesting areas and habitats of rare and endangered species:

30. The 10825 water for the endangered fish must be approved and delivered from Granby Reservoir and Northern must provide Grand County written verification that it is able to provide the water in perpetuity if no longer required for the endangered fish.

Public Outdoor Recreation Areas:

Satisfied by conditions applied under (b) and (d) above.

Unique areas of geologic, historic and archeological importance:

31. Prior to execution of the WGFP IGA, the Subdistrict shall submit to Grand County for approval a plan for regular maintenance of the rock structures above each pump site for the irrigators above Kremmling (defined in the WGFP IGA) that allows higher water to be captured and held so the pumps can reach the irrigation water more effectively.

DOCUMENTS RELIED UPON FOR 1041 REVIEW

Board of Commissioner Resolution 1980-6-1
Board of Commissioner Resolution 1985-3-5
1980 Agreement
1985 Supplemental Agreement
Final EIS Windy Gap Project
Final EIS WGFP
Fish and Wildlife Enhancement Plan
Fish and Wildlife Mitigation Plan
FONSI – 10825 endangered fish water
Draft Windy Gap Firing Project IGA and closing documents
Grand County Stream Management Plan
Clean Water Act - 404 and 401 (b)
Grand County Master Plan
Senate Document 80
Arapaho National Recreation Public Law 95-450
Communication to Reclamation with regard to decreased water clarity 1952 forward
Comments on Preliminary, Draft, and Final EIS for WGFP
Report - *2010 Water Quality Report Flowing Sites*
Report - *Factors Controlling Transparency in Grand Lake, Colorado*
Report - *Operational and Water Quality Summary Report for Grand Lake and Shadow Mountain Reservoir: 2010*
Nehring Report - *Colorado River Aquatic Resources Investigation Federal Aid Project F-237R-18*

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BY:

Northwest Colorado
COUNCIL OF GOVERNMENTS

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July 6, 2012

Ms. Lurline Curran
Grand County Manager
PO Box 264
Hot Sulphur Springs, CO 80451

Re: Grand County 1041 Permit for the Windy Gap Firing Project

Dear Lurline,

This letter is in response to your referral of the Windy Gap Firing Project ("WGFP") to Northwest Colorado Council of Governments ("NWCCOG") for review. As you know, NWCCOG is the designated water quality management agency for the region of the state that includes the portions of the Upper Colorado River that will be impacted by the WGFP. On behalf of NWCCOG I have reviewed the WGFP. My review focused on whether the proposed project complies with the Areawide Water Quality Management Plan (208 Plan) for the NWCCOG region and provides for adequate water quality protection. My review is based on the information provided to me by Grand County in the 1041 permit application.

Based on my understanding of the proposed project, WGFP would require additional measures in order to comply with the policies of the 208 Plan. In addition I have also made certain recommendations intended to assist Grand County document the project effects. I have summarized my findings under the six 208 Plan Policies below.

208 Plan Policy 1. Protect and Enhance Water Quality

The surface and ground waters of the region shall be protected to minimize degradation of existing water quality and maintain existing and designated uses of those waters; waters not currently supporting designated uses shall be restored as soon as is financially and technically feasible.

Findings: The primary water quality issues associated with WGFP are:
1) water quality in the Three Lakes; 2) temperature in the Colorado River

downstream from the WG diversion.

1) Water quality in Three Lakes is potentially affected by increased nutrient loading from increased pumping of Colorado River water which would increase the nutrient stimulation of algae growth; by decreased DO concentrations as a consequence of increased algal growth and, associated with reductions in DO concentration is the likelihood of increased metals concentrations; and, most significantly, the impact on water clarity resulting from increased pumping of very fine non-algal organic matter and other detritus.

The applicant has proposed mitigation for increased nutrient loads by offsetting this load with improvements to the Fraser Valley regional WWTP to reduce nitrogen and phosphorus concentrations from the facility's discharge and reductions in nonpoint source nutrient loads associated with several agricultural operations. The concept is to make the increased volumes pumped to Three Lakes from the WGFP neutral from a nutrient loading perspective. These efforts are laudable and NWCCOG supports this nutrient neutral concept but has concerns about the implementation of the nonpoint source controls. Our concerns are that in spite of considerable effort and cost by the applicant to identify mitigation approaches to make the WGFP nutrient neutral measures to reduce about 2,785 kg/year or about 45% of total nitrogen mitigation load have not even been identified. Further, NWCCOG is skeptical that verification of the total loads of nitrogen and phosphorus removed from the changes in management at the two ranches is realistic to verify.

- In order for this aspect of the WGFP to comply with 208 Policy 1 Grand County must review and approve the monitoring plan used to verify compliance with the nutrient removal goal including the proposed agricultural nonpoint source nutrient control projects. In addition, the County should review and approve future mitigation measures intended to remove the remaining 2,785 kg/yr of total nitrogen, including the monitoring plan necessary to verify permanent removal of this additional load.

Water clarity in Three Lakes, specifically Shadow Mountain Reservoir and Grand Lake, is affected by C-BT pumping from Granby Reservoir. The negative effect of pumping on Grand Lake clarity appears to be the result of increased loads of non-algal organic matter and other detritus. The source of this material is currently being studied, but its role in diminishing clarity and increasing turbidity has been found to be more significant than algae growth associated with nutrient concentrations. WGFP will increase the level of this pumping. Therefore control of this

material is imperative to ensure compliance with the narrative and pending numeric clarity standards for Grand Lake, and to comply with the 208 Plan.

As part of the Enhancement Measures the applicant has indicated they intend to continue to provide substantial funding for monitoring and studies of this issue and to work with Grand County and the Bureau of Reclamation on the clarity issue, as outlined in the draft Grand Lake Clarity Project MOU. Some objectives of this MOU are to explore options and identify measures to attain the clarity standard and to identify and evaluate operational, structural and nonstructural alternatives that can be implemented without adversely impacting the C-BT project. However, there is no commitment to implement any appropriate measures that might be identified in the MOU process. This water quality problem is largely a C-BT issue, but it will be aggravated by the increased pumping associated with WGFP.

- In order to comply with 208 Plan Policy 1, the applicant must commit to participating in the implementation of the proportional share of any measure to reduce clarity impacts identified through the Grand Lake Clarity MOU in order to offset the impact to Grand Lake clarity associated with WGFP pumping.

2) Temperature in the Colorado River is projected to be effected by WGFP in about 5 of the 15 years modeled in the FEIS (page 3-147). Although the applicant states that the primary increases in stream temperature due to WGFP would occur between Windy Gap and the confluence with the Williams Fork, the State of Colorado has placed the Colorado River from CR 578 to the Blue River confluence on the 303(d) for temperature based on data indicating exceedances of both MWAT and DM in this reach. In other words, the aquatic life use is currently impaired for this entire reach of the river due to elevated water temperatures and the proposed WGFP is projected to cause or contribute to additional exceedances of water quality standard for temperature. On the positive side, a comparison of the modeled project impacts and cumulative impacts demonstrates that flow releases from Granby Reservoir as provided for in the voluntary stream flow enhancements and the cooperative endangered fish flow releases can result in measurable stream temperature improvements. In addition, the aquatic habitat improvement measures will likely benefit stream temperatures if the stream channel downstream of Windy Gap is improved.

The applicant proposes to mitigate the projected temperature impact by providing real time temperature monitoring of the Colorado River in

conjunction with Denver Water at Windy Gap and upstream of the Williams Fork confluence. Then, if after July 15 the MWAT standard is exceeded the Subdistrict will reduce or curtail WGFP pumping to the extent it will maintain compliance with the MWAT standard under certain conditions. In addition, the Subdistrict will reduce or curtail pumping for both WG and WGFP when a temperature is within 1° C of the daily maximum (DM) standard.

Limitations on this proposed mitigation include: a) that it only takes effect after July 15, b) the curtailment must demonstrate actual or modeled impact on water temperature, and c) for compliance with the MWAT standard, the only pumping that would be reduced or curtailed is pumping that would occur when Granby Reservoir is expected to spill (see definition of WGFP pumping, page 41 of 1041 application). NWCCOG is opposed to a) and c) above for reasons stated below.

First, WGFP should not cause or contribute to the exceedance of the temperature standard, regardless of the time of year or reservoir storage conditions. Policy 1 clearly states that waters not supporting designated uses, as is the case when a waterbody is on the 303(d) list, it should be restored, not exacerbated by the project. Second, the definition of WGFP pumping provided in this proposed mitigation measure is unique and not found in the modeling of operations in the FEIS or elsewhere. It is also completely counter to how WGFP will actually operate, indeed the 1041 application itself states on page 47 that WGFP operations will result in reduced water levels in Granby Reservoir. Since WGFP would not ever pump water that would spill from Granby Reservoir the proposed definition serves only to prevent any mitigation of exceedances of the MWAT standard. A more appropriate response would be when the proposed real time temperature monitoring indicates an exceedance of the MWAT temperature standard, simply take measurements just upstream and downstream of the diversion to determine if it is causing or contributing to exceedance of this standard and whether reduction or curtailment of diversions would result in a "material causal relationship", that is, reduce or eliminate the impact.

- In order to comply with 208 Plan Policy 1, the proposed mitigation of temperature should not be limited either by the July 15 date or by the definition of WGFP pumping proposed in paragraph 2 under "MWAT Chronic Threshold Exceedances – Reduction or Curtail of WGFP Pumping" on page 41 of the 1041 permit application.

208 Plan Policy 2. Water Use and Development

The impacts to water quality and the aquatic environment caused by water projects shall be mitigated by the project developer.

Findings: The temperature and Three Lakes water quality issues discussed under Policy 1 above apply under this Policy 2 as well. Those projected impacts must be mitigated to comply with Policy 2.

In addition, the existing conditions of the aquatic environment downstream of Windy Gap are compromised and declining. This conclusion is based on the recent CDOW reports as well as the recent Water Quality Control Commission inclusion of the Colorado River downstream of Windy Gap on the Monitoring and Evaluation list for Aquatic Life concerns and uncertainty about the macroinvertebrate data used in the State of Colorado's Multi Metric Index (MMI). The CDOW concludes that sedimentation and interstitial clogging is the overarching problem. The FEIS also projects a loss in trout habitat primarily in early spring and mid-summer as a result of WGFP. (FEIS pages 3-216 to 3-225). There are also times when habitat is projected to increase due to WGFP, however this occurs primarily when peak flows are reduced and so does not recognize the offsetting need for higher flushing flows to address the habitat degradation issues identified by CDOW.

In response to the existing habitat conditions the applicant is proposing to provide \$4 million toward habitat restoration and improvements for 14.4 miles of the Colorado River downstream of Windy Gap and \$250,000 for a study to assess a bypass around Windy Gap to improve fish and sediment issues. Additional flows provided for in the WGFP IGA, endangered fish releases from Granby Reservoir, and participation in the Learning by Doing process may also help ameliorate the existing habitat and declining aquatic species problems.

The applicant has proposed mitigation for WGFP by increasing the required flushing flows from 450 cfs for 50 hours once every three years to 600 cfs for 50 hours once every three years.

The aquatic habitat, macroinvertebrate and fish populations, and hydrology combine to establish the aquatic environment that is the focus of Policy 2. Uncertainty and even disagreement exists related to existing aquatic environment conditions, the net improvements associated with the proposed enhancement measures and the impact of WGFP. To address this situation NWCCOG recommends that the Subdistrict provide and implement a monitoring plan for fish and aquatic invertebrates. The purpose of the plan would be to assess the benefits of the proposed habitat

enhancements and additional flows provided in the WGFP IGA, the effect of the increased flushing flows, and aquatic life trends associated with the MMI.

208 Plan Policy 3. Land Use and Disturbance

Land uses and disturbance shall not result in significant degradation of water quality nor impair the natural protection and/or treatment processes provided by wetlands, floodplains, shorelines, and riparian areas.

Findings: The project will not be constructed in Grand County so erosion control during construction of facilities and other stormwater management concerns are not relevant. The 1041 application states (page 22) that impacts to wetlands and riparian areas are unlikely. However a slight decrease in bankfull flows in both Willow Creek and the Colorado River are projected in the FEIS. Bankfull flows are generally seen as necessary for recruitment and abundance of riparian species. Riparian functions are integral to the adjoining aquatic environment and may be tied to issues with the MMI. NWCCOG recommends the Subdistrict implement a monitoring plan to document potential degradation of riparian areas. The plan should include species inventory and photo documentation at a minimum.

208 Plan Policy 4. Domestic, Municipal, and Industrial Water and Wastewater Treatment Facilities

Decisions to locate water supplies, wastewater treatment systems, and other water and wastewater facilities shall be made in a manner which protects water quality and the aquatic environment. Where growth and development requires the need for additional facility capacity, existing facilities should be expanded in lieu of developing new facilities, unless expansion is not feasible because of technical, legal or political reasons.

Findings: The proposed project does not involve siting of new wastewater systems and the water supply facilities for the preferred alternative located in Region 12 are already in place. WGFP would be in compliance with 208 Plan Policy 4.

208 Plan Policy 5. Chemical Management

The uses of pesticides, fertilizers, algacides, road deicing and friction materials, and other chemicals which would temporarily or permanently cause a significant degradation of water quality or impair the current or designated uses of these waters should be regulated to the extent allowed by law.

Findings: This policy does not appear to apply to the aspects of the proposed WGFP project in Region 12.

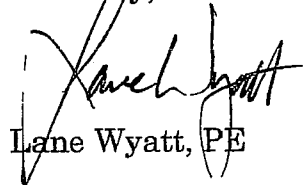
208 Plan Policy 6. Management System

The waters of the region shall be protected by a management agency structure within the existing governmental and regulatory framework that allows decisions to be made at the most appropriate level of control. For nonpoint source pollution control the recommended level of management is at the watershed level.

Findings: The proposed project is a nonpoint source pollution issue associated with hydrologic modifications. Grand County is the 208 Management Agency with appropriate jurisdiction over the proposed project under the 208 Plan through its 1041 permitting authority. The existing Windy Gap Project was permitted by Grand County. The proposed WGFP is a change in operations and facilities for that project and will therefore require a new or amended 1041 Permit. This approach complies with 208 Plan Policy 6.

I hope this review is useful. If my interpretation of the 208 Plan is disputed then these comments and recommendations can be appealed to the NWCCOG Board of Directors for review.

Sincerely,



Lane Wyatt, PE

CC: Liz Mullen, NWCCOG
Barbara Green, SullivanGreenSeavy

Carol Sidofsky

From: Carol Sidofsky [fsds@rkymtnhi.com]
Sent: Monday, July 09, 2012 12:25 PM
To: lwebb@co.grand.co.us
Subject: Letter to Grand Co. Planning Commission; put into official public comment record & read aloud at Wed. 7/11/2012 meeting.
Importance: High

Dear Lisa,

Fax with our signatures will follow this email.

Sincerely,
Carol Sidofsky and Dave Hazelrigg.

From:
Carol Sidofsky and Dave Hazelrigg
P.O. Box 362
Winter Park, CO 80482
Monday, July 9, 2012

To : Grand County Planning Commission:

Please put our letter into the official public comment record, and please read our letter out loud, at the Wednesday, July 11, 2012 Grand County Planning Commission meeting in Hot Sulphur Springs, Colorado:

Ideally, Grand County should just say NO to granting a 1041 permit, that would sell or lease water to or for any additional entity, because Grand County's water is already being taken away (water diversion) from us and from downstream users, in way too large an amount!

Both Grand County and the east slope water users must learn how to SAVE (conserve) water, instead of lavishly wasting it. Educating both sides of the continental divide users, regarding where water comes from, and where it goes, must be required. All new front range construction projects must prohibit/forbid "required" watering. Lawns, front and back yards, etc., should be composed of grasses &/or other plants that don't require watering, other than natural rain.

This project would result in too many negative impacts for Grand county.

The project must take into account the cumulative effects of all other water diversion projects, already existing, planned or proposed, on the entire river basin. It would be foolhardy for Grand County to wear

7/9/2012

See p 2 & 3 ↴

"blindness", &/or to put fingers in ears, while saying, "La, la, la, la, I can't hear you!", when considering this project.

Grand County should require provisions to reduce turbidity of water, especially in waters such as Grand Lake.

Grand County should monitor and take steps to decrease rising water temperatures that were increasing due to the continually decreasing water flows.

Grand County should prevent other negative impacts while complying with Senate Document 80.

Mitigation (allowing bad things to happen, while making feeble attempts to deal with the bad things) is a poor substitute for doing good things, that would reverse and prevent future damage. Mitigation makes us--Grand County--end up being a loser.

Because decreased river flows and increased pumping to the eastern slope has already caused serious problems for our environment, and because it would be highly irresponsible to allow an increase in water diversion activities, Grand County must, instead, INCREASE river flows here, and DECREASE PUMPING water to the eastern slope.

If a 1041 permit were to be granted (and I am opposed to it), the permittee must be required to pay for staff salaries and expenses, court and legal expenses and commissioners' expenses in dealing with this project. The tax payers of Grand county should not be forced to pay the bill.

The permit applicant, if granted the permit, should also do the following:

- pay for improving water clarity of Grand Lake,
- pay for sewer plants to reduce their nutrient loading,
- be responsible for reversing future damages, because just as all the harmful impacts weren't anticipated with the first permit, neither would they be anticipated with a second permit, or renewed permit,
- provide money for monitoring negative impacts, and provide money for preventing future negative impacts, and for reversing present negative impacts,
- pay Colorado Parks and Wildlife for public access at Willow Creek.

It appears that the supposed basis of need for this project, other than an increase in the number of entities using the water, is that Windy Gap has been

found to NOT function well enough, in either dry or wet years.

Also, it is a very bad idea, that some west slope water may be used for fracking. Why?

Because precious drinking and irrigation water would be lost, and resulting contamination of drinking water by both poisonous hydrocarbons (oil & gas) and toxic fracking chemicals, would make well water unusable, dangerous to our health to drink, and even flammable!

Allowing fracking could cause even more demand for west slope water. Therefore, the applicant must provide Grand County with a written document banning fracking, before any permit were to be granted.

Sincerely,
Carol Sidofsky and Dave Hazelrigg

Carol Sidofsky and Dave Hazelrigg

P.O. Box 362
Winter Park, CO 80482
970-531-5000 (cell)
fsds@rkymtnhi.com

p. 3 of 3

Melanie Zwick
Box 367
Winter Park, CO 80482

July 9, 2012

Re: Windy Gap Firming Project 1041 Application

Grand County Planning Commission:

As I am unable to attend this hearing, please include these comments as part of the official public hearing on July 11, 2012.

I am opposed to allowing more water be diverted to the east slope. There is nothing good about it. This 1041 permit would be detrimental to the health and welfare of the people and environment of Grand county.

If entities can continue to increase their customer base and continue to need more and more water, a never ending cycle of increasing demand is created. Grand county water is already sucked dangerously dry. Any permit issued by Grand County must address and disallow sales or leases of water to or for additional entities.

Conserve, conserve, conserve. An education program for east slope water users about where their water comes from and how it gets to them must be mandated. Landscapes that require watering must be prohibited on all new front range construction projects.

This project would result in a number of negative impacts for Grand county. The project must absolutely consider the cumulative effects of all other water diversion projects, in place, planned or proposed on the entire river basin. It is wrong to be looking through a "peephole" when considering this project.

I support that Grand County is stipulating provisions to reduce the increase in turbidity of especially, Grand Lake and monitor and mitigate the increased water temperatures due to the yet again decreased water flows, mitigation of other negative impacts and complying with Senate Document 80. Mitigation has never been enough. Grand county comes out the loser. Mitigation requirements must be specific and strong. The current decreased river flow and pumping has already caused serious problems for our environment and it is irresponsible to allow an increase in those activities.

The permittee must be required to pay for staff salaries and expenses, court and legal expenses and commissioners expenses in dealing with this project. The tax payers of Grand county should not be footing the bill. The permittee should also pay for improving the water clarity of Grand Lake, pay for sewer plants to reduce their nutrient loading, be responsible for future mitigation because just as all the detrimental impacts were not anticipated with the first permit, neither would they be with a second permit, provide

funds for monitoring impacts and pay Colorado Parks and Wildlife for public access at Willow Creek. No expense of this project must be borne by the constituents, customers of affected entities or tax payers of Grand County.

It seems that the main basis of need for this project, other than such an increase in the number of entities receiving the water, is the fact that Windy Gap does not function well in either dry or wet years. Another "oversight" of this nature must not be allowed to occur and there should be consequences in place for such.

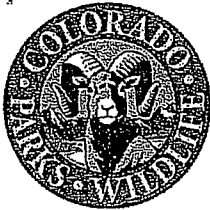
It is extremely bothersome that some west slope water may be used for fracking. Not only that water is lost, but other water and soils it eventually comes in contact with will become unusable. Consider that this could be a cause for even more demand for west slope water. Instead of within 30 days after signing, permittee must provide the County with a written document of how use for fracking satisfies the criteria of the permit before the permit will be granted, or better yet, no permit will be granted if it is used for fracking.

I am opposed to granting a permit that will allow decrease of our stream flows yet again. Mitigation does not restore that and does a disservice to the other areas of impact. Mitigation is, in fact, mostly a joke. The east slope requests for west slope water have to stop somewhere and this is a good place to do that. If this cycle is not broken, there would be reservoir after reservoir built with no flowing water in the direction gravity intended. Look how dry Grand county is now. This will be nothing if these requests continue. If you can't say NO, at the least, tighten up the conditions of the permit terms.

Sincerely,

Melanie Zwick

cc: Lurline Curran



COLORADO PARKS & WILDLIFE

Northwest Regional Service Center
711 Independent Ave., Grand Junction, CO 81505
Phone (970)255-6100 • FAX (970)255-6111
wildlife.state.co.us • parks.state.co.us

cc: *Ann
Fres
Jila*

RECEIVED
JUL 12 2012

BY: _____

July 9, 2012

Grand County Manager's Office
Attn: WGFP Comments
P.O. Box 264
Hot Sulphur Springs, CO 80451

RE: Windy Gap Firing Project 1041 Permit Application

Dear Ms. Curran:

Thank you for the opportunity to provide comments on the Windy Gap Firing Project 1041 permit application for Grand County. Colorado Parks and Wildlife (CPW) has been actively involved in this water supply project for many years. The Colorado Wildlife Commission has reviewed and approved plans designed to mitigate impacts and perform enhancement projects including the *Windy Gap Firing Project Fish and Wildlife Mitigation Plan* and the *Windy Gap Firing Project Fish and Wildlife Enhancement Plan*.

The Colorado River through Grand County offers a highly valuable public fishery resource nationally known as a quality trout stream which provides a significant economic contribution to local communities. CPW appreciates Grand County's efforts to maintain the County's aquatic and riparian environments and considers the *Grand County Stream Management Plan* an important document towards maintaining the health of the Upper Colorado River System. CPW and Northern Water addressed recommended Colorado River flushing flows in the Windy Gap Mitigation Plan where Northern agreed to increase the flow component from 450 cfs to 600 cfs. This and other flow related provisions were accepted by the proponents and endorsed by the CPW Commission.

West Slope stakeholders and CPW have expressed concerns that Windy Gap reservoir has caused changes in water quality and sediment transport which may be related to changes in populations of macroinvertebrates (Pteronarcys and other species) and sculpin below the reservoir. In addition, some stakeholders have expressed a desire for structural modifications that would allow free migration of fish around the Windy Gap dam. CPW secured \$250,000 in funding from the project proponents to identify potential modifications that would provide tangible benefits to aquatic resources below Windy Gap Reservoir. Issues to be studied include sediment transport, water quality (effects on temperature and /or nutrients) and fish passage. If studies identify significant, measurable benefits and there is stakeholder consensus to pursue the project, we would encourage Grand County's further participation in bypass construction discussions.

STATE OF COLORADO

John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources
Rick D. Cables, Director, Colorado Parks and Wildlife
Parks and Wildlife Commission: David R. Brougham • Gary Butterworth, Vice-Chair • Chris Castilian
Dorothea Farris • Tim Glenn, Chair • Allan Jones • Bill Kane • Gaspar Perricone • Jim Pribyl • John Singletary
Mark Smith, Secretary • Robert Streeter • Lenna Watson • Dean Wingfield
Ex Officio Members: Mike King and John Salazar

CPW has been an active participant in the 10,825 proposal discussions and requested additional temperature modeling work be performed by the USBR to examine temperature impacts associated with the operation of Windy Gap. The modeling results suggested the release of 5,412.5 AF of endangered fish water from Granby Reservoir would benefit the Colorado River through Grand County and reduce temperature exceedence issues in some years.

CPW is proceeding in the belief that the "Learning By Doing" Cooperative Effort Intergovernmental Agreement as modified to include CPW membership on the LBD committee will be signed by all stakeholders.

Application Attachment B. (proposed Intergovernmental Agreement) contains several elements that we believe have the potential to benefit the ecological health of the river, such as the Grand County Transfer Water and the Shoshone Outage Protocol. We look forward to discussing possible public access to that portion of Willow Creek located on Northern Water lands and a possible agreement for land management between Northern Water and CPW. We commend the participants in this IGA for their hard work in drafting this agreement.

CPW appreciates Grand County's efforts to maintain these important aquatic and riparian environments and would like to thank you for the opportunity to comment on the 1041 permit application for this project.

Sincerely,



Ron Velarde
Northwest Regional Manager

cc: Dean Riggs, Assistant NW Regional Manager
Lyle Sidener, Area Wildlife Manager
Sherman Hebein, Senior Aquatic Biologist, NW Region
Ken Kehmeier, Senior Aquatic Biologist, NE Region

Attachments:

Windy Gap Firming Project Fish and Wildlife Mitigation Plan
Windy Gap Firming Project Fish and Wildlife Enhancement Plan

*Trout, Raley, Montañño,
Witwer & Freeman, P.C.*

JUN 11 2012

BY:.....

Attorneys at Law
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Denver, Colorado 80203-2141
(303) 861-1963 • Fax (303) 832-4465
www.troutlaw.com

pmontano@troutlaw.com
Direct: 303-339-5833

June 11, 2012

Lurline Underbrink Curran,
County Manager
PO Box 264
308 Byers Ave.
Hot Sulphur Springs, CO 80451

RE: Application for 1041 Permit

Dear Ms. Underbrink Curran,

The enclosed notebooks contain an application for a 1041 Permit (§24-65.1-101(2) C.R.S.) for the Windy Gap Firming Project. I am enclosing 15 copies of the Application and all of its attachments together with 15 copies of the November 2011 Final Environmental Impact Statement and its technical appendices on two compact discs. The Subdistrict will pay the actual cost of processing the Permit Applications and hearings held in connection therewith. Please indicate how this payment should be made. Jeff Drager, Project Manager, and I expect to present this Application at the Grand County Planning Commission on July 11, 2012 and thereafter at the Board of County Commissioners on August 1 and 2, 2012.

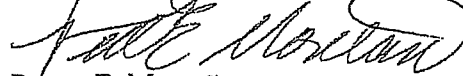
While no land use or construction for the Windy Gap Firming Project will occur in Grand County and the dam and reservoir will be located in Larimer County, the Municipal Subdistrict, Northern Colorado Water Conservancy District, ("Subdistrict") has agreed, subject to a reservation of rights as set forth in the Application Section 12, to submit this Application for a 1041 Permit from Grand County. The Subdistrict is in the final stages of the federal process and expects a Record of Decision from the Bureau of Reclamation in late 2012. We anticipate that this submittal should provide sufficient time for the County to hear and determine the Permit.

The Application follows the structure of the Grand County 1041 Submittal Requirements for Municipal and Industrial Water Projects as those are set out in 5-303 to 5-306. We have endeavored to specify the actions proposed by the Subdistrict which address the effects set out in

the County Regulations which are the result of the Windy Gap Firing Project and not effects of other water projects. The record will clearly show the mitigation proposed by the Subdistrict addresses those effects. The Subdistrict has also put forth additional measures in other processes which are the enhancement measures which reach beyond the effects of the Windy Gap Firing Project. To complicate matters further, other entities proposals in the Upper Colorado River, such as Denver Water's Moffat Expansion Project, are relevant in context of additional commitments and are discussed in this Application in order to provide a complete picture to Grand County of the activities surrounding the Windy Gap Firing Project.

We look forward to presenting this Application to you.

Respectfully Submitted,



Peggy E. Montañó

for

Trout, Raley Montañó
Witwer & Freeman P.C.

cc: Jeff Drager
Eric Wilkinson
Bennett W. Raley
Rebecca Mitchell

[Draft]
[Intergovernmental Agreement]

The Municipal Subdistrict, Northern Colorado Water Conservancy District and its Windy Gap Firming Project Water Activity Enterprise, Board of County Commissioners of Grand County, Colorado, Middle Park Water Conservancy District, Colorado River Water Conservation District and Northwest Colorado Council of Governments enter into this Windy Gap Firming Project Agreement ("WGFP Agreement") as of the latest date of execution of this WGFP Agreement by the Parties.

D) Definitions.

- A. Municipal Subdistrict, Northern Colorado Water Conservancy District, ("Subdistrict") is a political subdivision of the State of Colorado, and formed under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein and as created by the Decree dated July 6, 1970, Weld County District Court, State of Colorado.
- B. Municipal Subdistrict, Northern Colorado Water Conservancy District, Windy Gap Firming Project Water Activity Enterprise ("WGFP Enterprise") is a water activity enterprise of the Subdistrict organized under and pursuant to Article X, Section 20 of the Colorado Constitution and C.R.S. §§ 37-45.1-101 et seq.
- C. Grand County - ("Grand County") is a county of the State of Colorado created by Article XIV of the Colorado Constitution and C.R.S. § 30-5-128, for the purposes stated therein.
- D. Middle Park Water Conservancy District ("Middle Park") is a political subdivision of the State of Colorado, created under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein.
- E. Colorado River Water Conservation District, ("River District") is a political subdivision of and a body corporate under the laws of Colorado, created by the provisions of C.R.S. §§ 37-46-101, et seq., for the purposes stated therein.
- F. Northwest Colorado Council of Governments ("NWCCOG") is a regional planning commission organized pursuant to C.R.S. § 30-28-105, and an association of local governments contracting pursuant to Article XIV, Section 18 of the Colorado Constitution and C.R.S. §§ 29-1-201, et seq., comprising municipalities and counties within the geographic boundaries of the Colorado counties of Grand, Eagle, Summit, Jackson, Routt, and Pitkin.

WGFP IGA July 3

- G. "West Slope Parties" are Grand County, Middle Park, the River District, and NWCCOG.
- H. United States Bureau of Reclamation, Department of the Interior ("Reclamation") is referenced in but not a party to this WGFP Agreement.
- I. United States Army Corps of Engineers ("USACE") is referenced in but not a party to this WGFP Agreement.
- J. Northern Colorado Water Conservancy District ("Northern Water") is a political subdivision of the State of Colorado, created under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated herein, and is referenced in but not a party to this WGFP Agreement.
- K. "Windy Gap Project" is an existing water supply system that diverts Windy Gap Project Water from the Colorado River just below its confluence with the Fraser River.
- L. "Windy Gap Water Rights" are the water rights for the Windy Gap Project as defined in the Decree entered on October 22, 1980 in Civil Action No. 1768, District Court, Grand County, State of Colorado and Case Nos. W-4001, 80CW108, and 85CW135, District Court, Water Division No. 5; [*add recent diligence cases?] the Decree entered on February 6, 1989 in Case No. 88CW169, District Court, Water Division No. 5, State of Colorado, and the Decree entered on July 19, 1990, in Case No. 89CW298, District Court, Water Division No. 5, State of Colorado ("Windy Gap Decrees") and any amendments thereto.
- M. "Amendatory Contract" is the Amendatory Contract for the Introduction, Storage, Carriage, and Delivery of Water for Municipal Subdistrict, Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado dated March 1, 1990 among Reclamation, the Subdistrict and Northern Water and any amendments, replacements, or supplements thereto necessary to implement the WGFP.
- N. "Windy Gap Project Water" is any water stored or diverted pursuant to the Windy Gap Water Rights.
- O. "1980 and 1985 Agreements" are the April 30, 1980 "Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project" ("1980 Agreement") and the March 29, 1985 "Supplement to Agreement of April 30, 1980" ("1985 Agreement").

WGFP IGA July 3

- P. Windy Gap Firming Project ("WGFP") is a proposed project that is described in the Final Environmental Impact Statement and Record(s) of Decision.
- Q. WGFP Participants ("WGFP Participants") are those entities identified in the Final Environmental Impact Statement for the Windy Gap Firming Project, and also their successors and assigns, that hold a water allotment contract for the Windy Gap Project and own or are otherwise allocated a portion of the storage capacity of Chimney Hollow Reservoir.
- R. "Windy Gap Project Participants" are those entities that hold a water allotment contract for the Windy Gap Project.
- S. "Net Credited Storage," is the amount of Windy Gap Project Water pumped at the Windy Gap Pumping Plant and conveyed to Granby Reservoir less any losses charged pursuant to the Amendatory Contract.
- T. Chimney Hollow Reservoir ("Chimney Hollow Reservoir") is that reservoir located on the East Slope identified in the Final Environmental Impact Statement for the Windy Gap Firming Project as the proposed action and any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the Final Environmental Impact Statement ("Alternative Reservoir"), provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet.
- U. "Pumping Costs" incurred by Middle Park or Grand County pursuant to this Agreement are 100% of the average electrical power costs of pumping for the Windy Gap Project for that year on a per acre-foot basis for Net Credited Storage.
- V. "Active Storage" for Chimney Hollow Reservoir is that reservoir capacity contained between the invert of the reservoir outlet works and the normal high water line in Chimney Hollow Reservoir, or in the case of Alternative Reservoirs, the total capacity available for storage and release for the benefit of the WGFP.
- W. "Prepositioning" is the manner of integrated operations of the C-BT Project and WGFP described in the Final Environmental Impact Statement for the WGFP and as may be authorized by Reclamation in the Amendatory Contract and/or Reclamation's Record of Decision for the WGFP.
- X. "WGFP Completion" is the first time that the combined volume of Windy Gap Project water stored in Chimney Hollow Reservoir and Windy Gap

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Project water stored on behalf of WGFP Participants in Granby Reservoir is equal to 32% of the Active Storage of the constructed capacity of Chimney Hollow Reservoir.

- Y. The "WG Volumetric Limits" shall be those limitations set forth in Paragraph 34 of the 1980 Agreement, as modified by Paragraph 2 of the 1985 Supplemental Agreement. The WG Volumetric Limits are not affected or modified by this WGFP Agreement.
- Z. "Water Apportionment" is Windy Gap Project Water that is made available for use by West Slope Parties pursuant to this WGFP Agreement.
- AA. "Carryover Balance" is a portion of a Water Apportionment that is available for use pursuant to this WGFP Agreement that can be stored for multiple years.
- BB. "Carryover Balance Limitation" is the maximum total Carryover Balance that can be credited to Middle Park or Grand County at any point in time.
- CC. "Accounting Year" for the Middle Park Water Apportionment will begin on August 1st and end on July 31st the following calendar year. Middle Park's Accounting Year shall become effective on August 1 following execution of this WGFP Agreement.

II) Relationship to 1980 and 1985 Agreements. This Agreement supplements and partially amends the 1980 Agreement and the 1985 Agreement. The 1980 and 1985 Agreements remain valid and enforceable except as explicitly modified by this WGFP Agreement and noting that the 1985 Agreement deletes and supersedes Paragraphs 6, 7, 8, 9, 10, 11, 12, 17, 29, 30, 31, 33, 34, 35 and 39 of the 1980 Agreement. The specific provisions of the 1980 and 1985 Agreements that are modified by the WGFP Agreement are [This section needs to be verified]:

- Paragraph 2 of the 1985 Agreement is superseded and replaced, in part by III.3. B(1)(c), (2), 3(a)(b)(c)(d)(e), 4, 5; F(1)(2); H
- B. Paragraph 25 of the 1980 Agreement is superseded and replaced by Paragraph IV.B.
- C. Paragraph 34 of the 1980 Agreement is superseded and replaced by IV.E, but only to the extent of Jasper Reservoir;
- D. Paragraph V.C. supersedes and replaces in part Paragraph 41(f) of the 1980 Agreement;
- E. Paragraph VI.D. replaces Paragraph 2 of the 1980 Agreement; and,
- F. Paragraph IV.E. replaces Paragraph 14 of the 1980 Agreement.

III) Terms of the Agreement

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- A. Enhancements. The benefits provided in this WGFP Agreement are in addition to and are not a substitute for the mitigation required by governmental agencies with jurisdiction over the WGFP.
- B. Notification of Intent to Proceed with Windy Gap Firing Project.
- 1) The Subdistrict will proceed as expeditiously as reasonably possible using its best efforts to cause the construction of Chimney Hollow Reservoir. The Subdistrict shall notify the West Slope Parties in writing whether or not it intends to proceed with the Windy Gap Firing Project within 10 years of the issuance of the 404 Permit for the WGFP by the United States Army Corps of Engineers ("USACE") or upon execution of construction contracts for Chimney Hollow Reservoir, whichever occurs first.
 - 2) This Agreement shall terminate upon written notice to the West Slope Parties that the Subdistrict does not intend to proceed with the WGFP.
 - 3) If the Subdistrict notifies the West Slope Parties that it intends to proceed with the WGFP, then it shall have the right under this Agreement, but not the obligation, to construct and operate a total of 90,000 acre feet of storage on the Front Range. If the Subdistrict proceeds with the WGFP, then it shall provide all of the West Slope mitigation required by the Records of Decision for the WGFP and satisfy all of the obligations set forth in this WGFP Agreement, regardless of the storage capacity that is authorized by the 404 Permit issued by the USACE, or the storage capacity that is ultimately constructed or utilized for the WGFP.
- C. Except as necessary to ensure compliance with this WGFP Agreement, all parties agree not to take any official action that results in a restriction of the right of the Subdistrict to construct, operate and use the full 90,000 acre feet of storage capacity of the Chimney Hollow Reservoir or Alternative Reservoir.
- 1) In the event of a breach of this obligation by Grand County, Paragraph IV. J. 2) of this Agreement shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP Agreement and to Middle Park pursuant to Paragraph III.E. of this WGFP Agreement shall be subject to the proportional reduction determined using the methods described in III.D.1.
 - 2) In the event of a breach of this obligation by the River District, Paragraph IV. J. 2) of this Agreement shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP Agreement and to Middle Park pursuant to Paragraph

III.E. of this WGFP Agreement shall be subject to the proportional reduction determined using the methods described in III.D.1.

- 3) In the event of a breach of this obligation by Middle Park, Paragraphs III.E. of this Agreement shall terminate and Middle Park shall receive water pursuant to the 1980 and 1985 Agreements, and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP Agreement shall be subject to the proportional reduction determined using the methods described in III.D.1 .
- 4) In the event of a breach of this obligation by NWCOG, Paragraph IV. J. 2) of this Agreement shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP Agreement and to Middle Park pursuant to Paragraph III.E. of this WGFP Agreement shall be subject to the proportional reduction determined using the methods described in III.D.1.
- 5) The consequences provided for in Paragraphs III.C.1), III.C.2), III.C.3), and III.C.4) shall be suspended in the event that the Subdistrict later obtains the right to construct, operate, and use the full 90,000 acre feet of storage capacity of the Chimney Hollow Reservoir or Alternative Reservoir.

D. Proportional Reduction.

- 1) If a binding regulatory event, judicial determination, other implementation of existing or future legal requirements or restrictions, or other formal action of any entity causes or results in a permanent reduction in firm yield of the WGFP, other than a prohibition on prepositioning, then the West Slope Parties agree that the amount of water they receive pursuant to Paragraph III of this Agreement will be subject to proportional reduction. The Parties agree to jointly determine the amount of said proportional reduction at the time the event takes effect or, as an alternative to the proportional reduction, identify measures that can be implemented to mitigate the reduction in firm yield of the WGFP. A proportional reduction shall be made to the Middle Park Water Apportionment and in the Grand County Water Apportionment under this Agreement. In the event that the Parties cannot jointly determine what the proportional reduction should be, the issue of what constitutes a proportional reduction shall be resolved by a panel of three experts, one selected by the West Slope Parties, one selected by the WGFP Enterprise, and the third selected by the experts selected by the West Slope Parties and the WGFP Enterprise. If the determination of the expert panel is not acceptable, any Party may pursue any available judicial remedies.

- 2) If a binding regulatory event, judicial determination, other implementation of existing or future legal requirements or restrictions, or other formal action of any entity causes or results in a prohibition of prepositioning, then the West Slope Parties agree that the amount of water they receive pursuant to Paragraph III of this Agreement shall be reduced in accordance with this Paragraph III.D.2).
 - (a) Middle Park Variable Water Supply will be reduced by reducing the 700 acre-feet option in spill years in proportion to the amount of Windy Gap water stored on August 1 in Chimney Hollow and Granby Reservoir, combined, as compared to the full storage capacity of Chimney Hollow Reservoir. If Middle Park elects to receive its portion of pumping in spill years, there shall be no reduction.
 - (b) Grand County Variable Water Supply shall not be subject to reductions.
 - (c) Middle Park Annual Water Supply shall not be subject to reductions.
 - (d) Grand County annual amount of Transfer Water shall be reduced by 15%.

E. Middle Park Water Apportionment.

1) Middle Park Election to Receive Water.

- (a) Middle Park shall continue to receive water pursuant to the 1980 and 1985 Agreements until WGFP Completion. Middle Park shall have the right, within one year of WGFP Completion, to make a one-time and irrevocable election as to whether it will receive water pursuant to this WGFP Agreement or receive water pursuant to the 1980 and 1985 Agreements.
- (b) If a binding regulatory event, judicial determination, or other implementation of existing or future legal requirements or restrictions occurs as provided in Paragraph III. D. then Middle Park shall have the right to make an election as to whether it will receive water pursuant to this WGFP Agreement, or receive water pursuant to the 1980 and 1985 Agreements. Subdistrict shall notify Middle Park within 60 days of each event or determination and shall explain to Middle Park its effect on water available to Middle Park pursuant to this WGFP Agreement. If Middle Park has not made this election pursuant to a previous event, this election will be made by Middle Park within one year after written notification of each event.

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- (c) In the event that Middle Park elects to continue to receive water pursuant to the 1980 and 1985 Agreements following WGFP Completion, such water shall be available for use on August 1 of the Accounting Year immediately following pumping (except that any water pumped in August will be credited to the current Accounting Year), and any such water, which is unused on July 31st of that Accounting Year shall be transferred to Grand County on August 1st for use in accordance with Paragraph III. F. 2) and Paragraph III.F.4).
- 2) If Middle Park elects to receive water in accordance with this WGFP Agreement, its apportionment will consist of the Middle Park Annual Water Supply and the Middle Park Variable Water Supply.
- 3) Middle Park Annual Water Supply.
- (a) For the purposes of this WGFP Agreement, Middle Park's Annual Water Supply is the combination of the 850 Acre Feet of Water defined in Section III.E.3)(b) and the 1450 Acre Feet of Water defined in Section III.E.3)(c). Middle Park's Annual Water Supply is not eligible to become a part of or contribute to the Middle Park Carryover Balance.
- (b) 850 Acre Feet of Water. The Subdistrict and WGFP Enterprise will dedicate and set aside annually, but not cumulatively, at no cost to Middle Park, 850 acre-feet of Windy Gap Project Water, which shall be available each and every year.
- (c) 1450 Acre Feet of Water.
- (i) If the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir at any time between the start of pumping of the Windy Gap Project and August 1st of any year is equal to or greater than 32% of the constructed capacity of Chimney Hollow Reservoir, the Subdistrict and WGFP Enterprise will dedicate and set aside at no cost 1450 Acre Feet of Water for Middle Park.
- (ii) If the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project water stored on behalf of WGFP Participants in Granby Reservoir at any time between the start of pumping of the Windy Gap Project and August 1st of any year does not equal or exceed 32% of the constructed capacity of Chimney Hollow Reservoir, the 1450 Acre Feet of Water will be reduced at the same proportion as the maximum amount of storage of Windy Gap

Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of the WGFP Participants in Granby Reservoir during the period between the start of pumping and August 1 is to 32% of the constructed capacity of Chimney Hollow Reservoir.

- (iii) The Subdistrict and WGFP Enterprise shall provide Middle Park with the April 1st water supply forecast and any subsequent forecasts, which shall be used for planning purposes to estimate the amount, if any, of the reduction in the 1450 Acre Feet of Water.
- (iv) In the event that Middle Park receives less than 1450 Acre Feet of Water pursuant to paragraph III.E.3)(c)(ii), Middle Park may retain and use any unused Annual Water Supply from the prior Accounting Year to make up the difference between the amount which it receives pursuant to paragraph III.E.3)(c)(ii) and 1450 Acre Feet of Water.
- (d) The Middle Park Annual Water Supply is available to Middle Park during the Accounting Year. Unused water from the Middle Park Annual Water Supply from the prior Accounting Year will transfer on August 1st to Grand County pursuant to Paragraph III.F.2) unless some portion of the water from the prior year is required to make up for the reduction in the 1450 Acre Feet of Water pursuant to Paragraph III.E.3)(c)(ii). Grand County shall, subject to the limitations in Paragraph III.F.4), have the right to use Middle Park Annual Water Supply transferred from Middle Park to Grand County in accordance with this Paragraph III.F.3)(d).
- (e) Middle Park's Annual Water Supply will not be reduced by any losses charged pursuant to the Amendatory Contract.

4) Middle Park Variable Water Supply.

- (a) Middle Park's Variable Water Supply is the water supply defined in this Paragraph III.E.4). Only Middle Park's Variable Water Supply is eligible to become part of or contribute to Middle Park's Carryover Balance and will be credited immediately upon pumping.
- (b) The Subdistrict and WGFP Enterprise will provide a water supply forecast to Middle Park on April 1st.
- (c) If the April 1st forecast does not anticipate a spill of Windy Gap Project Water, Middle Park may, on May 1st of that year, elect to receive 3.8% of the Windy Gap Project Water that will be diverted in

the current water year in excess of 15,000 acre-feet Net Credited Storage, up to a maximum of 1,500 acre-feet Net Credited Storage as further limited by Middle Park's Carryover Balance Limitation. If the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Middle Park has received 1,500 acre feet of Variable Water Supply, and the Windy Gap water rights are still in priority, Middle Park may request that the Subdistrict continue diversions of Windy Gap Project Water up to the 1,500 acre feet maximum, as limited by Middle Park's available Carryover Balance Limitation.

(d) If the April 1st forecast anticipates a spill of Windy Gap Project Water or if a spill has actually occurred, Middle Park shall by May 1st, elect whether it will:

(i) Receive 3.8% of the Windy Gap Project Water diverted and stored in the current water year in excess of 15,000 acre-feet Net Credited Storage, up to a maximum of 1,500 acre-feet of Net Credited Storage, and as further limited by Middle Park's available Carryover Balance Limitation. If the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Middle Park has received 1,500 acre feet of Variable Water Supply, and the Windy Gap water rights are still in priority, Middle Park may request that the Subdistrict continue diversions of Windy Gap Project Water up to 1,500 acre feet maximum, as limited by Middle Park's Carryover Balance Limitation; or

(ii) Receive from the Subdistrict and WGFP Enterprise by substitution such additional amount of Windy Gap Project Water stored in Chimney Hollow Reservoir as is required to result in a total Carryover Balance of 700 acre feet of Middle Park Variable Water Supply, which 700 acre feet shall not be subject to spill; or

(iii) Middle Park may elect to not receive any Middle Park Variable Water Supply.

(e) Middle Park shall pay to the Subdistrict the Pumping Costs for pumping the Middle Park Variable Water Supply which it elects to receive pursuant to Paragraph III.E.4).

5) The Subdistrict will release Middle Park Annual Water Supply and Middle Park Variable Water Supply at the request of Middle Park for all beneficial uses allowed by the 1980 Agreement and 1985 Agreement.

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Such uses shall include direct use or use by substitution, augmentation, or exchange, including but not limited to, exchange into Wolford Mountain Reservoir or replacement to Denver Water by entities that have Middle Park Contracts, and any other use authorized in a subsequent written agreement between Middle Park, the Subdistrict, and WGFP Enterprise.

F. Grand County Water Apportionment.

- 1) For the purposes of this WGFP Agreement, the Grand County Water Apportionment consists of the Grand County Transfer Water, the Grand County Interim Transfer Water, and the Grand County Variable Water Supply described in this Paragraph III.F. The Grand County Water Apportionment shall be used as directed by Grand County and consistent with this WGFP Agreement.
- 2) Grand County Transfer Water.
 - (a) Grand County Transfer Water is any of the Middle Park Water Apportionment received by Middle Park which is transferred to Grand County on August 1st of each year pursuant to Paragraph III.E.1)(c) and Paragraph III.E.3)(d).
 - (b) Commencing on the first day of August, but no less than 12 months after the execution of this WGFP Agreement, the Subdistrict shall make available for Grand County's use 50% of any of Middle Park's unused water from the previous year (the "Grand County Interim Transfer Water"). Upon WGFP Completion, the Grand County Interim Transfer Water shall vest as 100% of the water provided by Paragraph III.E.1)(c) and Paragraph III.E.3)(d). In the alternative, the Subdistrict's provision of the Grand County Interim Transfer Water will cease upon notice pursuant to III.B.2) that the Municipal Subdistrict does not intend to proceed with the WGFP.
 - (c) Grand County Transfer Water must be either: (1) used between August 1st and October 15th of the then current water year, or (2) on October 15th become Grand County Carryover Balance, as limited by Grand County's available Carryover Balance Limitation.
 - (d) Grand County's Transfer Water shall not be subject to any losses charged pursuant to the Amendatory Contract until such water is transferred to Grand County's Carryover Balance, at which time it will be assessed the appropriate losses, if any, specified in the Amendatory Contract.
- 3) Grand County Variable Water Supply shall include the following elements:

(a) Concurrent Pumping.

- (i) Grand County Concurrent Pumping shall become available at WGFP Completion.
- (ii) Grand County may, by May 1st of each year, elect to receive 3.8% of the Windy Gap Project Water diverted and stored in the current water year in excess of 15,000 acre-feet Net Credited Storage, up to a maximum of 1,500 acre-feet Net Credited Storage, and as further limited by Grand County's available Carryover Balance Limitation.

(b) Additional Pumping.

- (i) Grand County Additional Pumping shall become available at WGFP Completion.
- (ii) If Windy Gap Project Participants and WGFP Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Grand County has received 1,500 acre-feet of water from Concurrent Pumping and the Windy Gap Water Rights are still in priority, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions up to a combined maximum of 1,500 acre-feet of Concurrent and Additional Pumping, as further limited by the available Grand County Carryover Balance Limitation. The Subdistrict and WGFP Enterprise will make best efforts to provide five (5) days advance notice of the anticipated end of pumping for Windy Gap Project Participants and WGFP Participants.

(c) End of Year Pumping.

- (i) Prior to WGFP Completion, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions if the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping and the Windy Gap Project Water Rights are in priority, as limited by the Grand County Carryover Balance Limitation.
- (ii) After WGFP Completion, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions if the Windy Gap Project Participants, WGFP Participants, and Middle Park have a need for additional water but do not wish

to pay for the costs of additional pumping and the Windy Gap Project Water Rights are in priority, as limited by the Grand County Carryover Balance Limitation.

- (d) Grand County's Variable Water Supply shall be credited to Grand County's Carryover Balance immediately upon pumping.
 - (e) Grand County shall pay pumping costs for the Grand County Variable Water Supply provided pursuant to Paragraph III.F 2).
- 4) The Subdistrict will release the Grand County Water Apportionment from Granby Reservoir at the request of Grand County or its designee for diversion for irrigation, domestic, municipal or industrial uses on the West Slope allowed under the Windy Gap Water Rights provided that such uses will not require a change of water rights. The Parties acknowledge that Grand County intends to time such releases for beneficial use in a manner that results in optimizing the benefits to aquatic and recreation resources within the County and furthering the goals of the Learning by Doing Cooperative Effort (Attachment). The Parties intend that the Grand County Water Apportionment not be diverted for irrigation, domestic, municipal or industrial uses upstream of the confluence of the Colorado River and Blue River by any person.
- (a) The Parties intend for the reservoir releases of the Grand County Water Apportionment to increase the flow of water through the County above flows that would otherwise exist. To accomplish these objectives, the River District will make good faith efforts to arrange for the delivery of the Grand County Water Apportionment for diversion and beneficial use for irrigation, domestic, municipal or industrial uses on the Colorado River or its tributaries, below the confluence of the Blue and Colorado Rivers. Unless otherwise directed by Grand County, the River District's efforts will be focused on diversion and beneficial use downstream of the confluence of the Colorado and Roaring Fork Rivers but upstream of the Utah State Line.
 - (b) Grand County and the Subdistrict may request annual reports of the beneficial use made of the Grand County Water Apportionment. Any dispute regarding such use will be resolved in accordance with the Conflict Resolution provisions of this WGFP Agreement (Paragraph VI.L.). Regardless of the outcome of any dispute regarding this paragraph, the Parties agree that the River District shall not bear any liability regarding the beneficial use of, or the failure to arrange for the beneficial use any of, the Grand County Water Apportionment.

- (i) Following is a list of representative, but not exclusive, beneficial uses that the Parties agree satisfy the intent of this paragraph III.F.4):

Diversion for irrigation (including agriculture, lawn watering, parks, and stock-water), domestic, municipal, or industrial uses by: the Grand Valley Irrigation Company (irrigation, including uses incident of irrigation); Grand Valley Water Users Association (including irrigation, power generation, and uses incident to those uses); Orchard Mesa Irrigation District (irrigation, irrigation lift/pumping, power generation, and exchanges incident to such uses); Palisade Irrigation District (irrigation); Mesa County Irrigation District (irrigation); Ute Water Conservancy District (including municipal); Town of Clifton (municipal); Silt Water Conservancy District (irrigation and domestic); Town of Silt (municipal); Town of New Castle (municipal); City of Silt (municipal); Battlement Mesa (municipal); diversions at the Bluestone or Town of DeBeque intakes (municipal, irrigation, and industrial); substitutions in lieu of releases from Wolford Mountain Reservoir or Ruedi Reservoir for municipal, irrigation or industrial uses under the River District's water marketing program; substitutions in lieu of releases from, or exchanges into, Williams Fork Reservoir to increase the amount of, or flexibility of use, of water in Grand County's account in Williams Fork Reservoir; transit losses attributable to such uses as may be assessed by the State Engineer.

5) The Parties agree that if Grand County determines then-current stream flow conditions in the County are sufficient to satisfy the purposes of the releases of water as described in Paragraph III.F.4), including downstream of the confluence of the Colorado and Blue Rivers, then the Grand County Water Apportionment may be exchanged or substituted for water that otherwise would be released from Wolford Mountain Reservoir, Green Mountain Reservoir or Williams Fork Reservoir in order to assist Front Range and West Slope water users in managing limited water supplies for use in the upper Colorado River basin.

G. Priority of Pumping. The right of Middle Park and Grand County to pump additional water pursuant to Paragraphs III.E.4)(c), III.E.4)(d)(i) and III.F.3)(b)(ii) shall be shared on an equal basis between Middle Park and Grand County.

H. Middle Park and Grand County Water Apportionments, Carryover Balances, and Carryover Balance Limitations.

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- 1) Subject to the provisions of this Paragraph III.H., Middle Park and Grand County may each have a Carryover Balance derived from Water Apportionments made available pursuant to Paragraphs III.E.4), III.F.2) and III.F.3). The maximum Carryover Balance available to Middle Park and Grand County shall not exceed their respective Carryover Balance Limitation.
- 2) Middle Park shall have the right to a Carryover Balance Limitation of 3,000 acre feet for its Variable Water Supply for use in the then current or subsequent water years.
- 3) Grand County Carryover Balance Limitations.
 - (a) Upon execution of this WGFP Agreement and until WGFP Completion, Grand County shall have the right to accrue a maximum of 7,500 acre feet of Carryover Balance for use in the then current or subsequent water years.
 - (b) Grand County's Carryover Balance Limitation shall be reduced to 6,000 acre feet upon WGFP Completion.
 - (c) Grand County's Carryover Balance Limitation shall be reduced to 4,500 acre feet at such time as the Windy Gap Project Water stored in Chimney Hollow Reservoir has reached at any point in time, 85% of the constructed active storage capacity of Chimney Hollow Reservoir.
 - (d) The permanent Grand County Carryover Balance Limitation shall be 4,500 acre feet. If Chimney Hollow Reservoir construction begins but is not completed as a result of actions by the West Slope Parties, any water stored in this account will revert to the Subdistrict.
- 4) Except during the first fill of Chimney Hollow, during which Paragraphs III.H. controls, Middle Park and Grand County can share a combined Carryover Balance Limitation of 7,500 acre feet. Middle Park and Grand County shall notify the Subdistrict before or during pumping of their intent to share the Carryover Balances and the respective amounts of water to be stored for each.
- 5) Any Carryover Balance of Middle Park or Grand County shall be reduced by any losses, if any, charged pursuant to the Amendatory Contract. Middle Park and Grand County shall be provided with documentation of such charges before any such reductions.
- 6) Any Variable Water Apportionment and any Carryover Balance made available to Middle Park or Grand County pursuant to this WGFP Agreement shall be subject to a pro rata share of monetary charges,

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payable by Middle Park or Grand County as applicable, for storage of Windy Gap Project Water in Granby Reservoir, if any, assessed pursuant to the Amendatory Contract. The Parties will advocate to Reclamation that no monetary charges be assessed for storage of Windy Gap Project Water in Granby Reservoir.

- 7) The Parties will advocate that Reclamation adopt specific and different shrink charges for introduction and storage of Windy Gap Project Water on the West Slope and conveyance and delivery of Windy Gap Project Water to the east slope.
- 8) All Carryover Balances referred to in this paragraph III.H. shall be Net Credited Storage.

I. Spill Criteria:

- 1) 1st to spill - Grand County Carryover Balance over 1,500 acre feet.
- 2) 2nd to spill - Any remaining Grand County Carryover Balance, any Middle Park Carryover Balance, and any Windy Gap Project Water stored on behalf of the WGFP Participants proportionally, based on Carryover Balances and Windy Gap Project Water in storage on behalf of the WGFP Participants as of the date(s) of spill.
- 3) 3rd to spill - Windy Gap Project Water stored on behalf of Windy Gap Project Participants that are not WGFP Participants.

J. No Paper Spills. In the event that Middle Park or Grand County have a Carryover Balance and the total amount of C-BT water in active storage in Granby Reservoir and Chimney Hollow Reservoir, combined, reaches 46,500 acre feet, Middle Park's and Grand County's Water Apportionments will only spill in the event of a physical spill from Granby Reservoir. Any physical spill will be allocated between WGFP Participants, Middle Park, and Grand County in accordance with Paragraph III.I.

K. Minimum Pumping. If the Windy Gap Project Water is not already being pumped, the Subdistrict shall not be required to pump Variable Water Supply for any party unless the Subdistrict's water supply forecasts predict that there will be a minimum of 1,000 acre feet of water available for diversion and storage under the Windy Gap Water Rights at the time of the proposed pumping during the current pumping season.

L. Pumping Costs. Pumping Costs shall be payable 30 days after the submission of an invoice by the Subdistrict at the end of the then current pumping season to the appropriate entity. The invoice shall include the actual bills from the power provider. In the event of a delinquency or failure to pay Pumping

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Costs by Middle Park or Grand County, the Subdistrict shall suspend release of any Variable Water Supply held by the Subdistrict for that entity and all future pumping for the delinquent Party pursuant to this WGFP Agreement until any delinquent payments have been made in full.

IV) Additional Provisions

- A. **Wolford Protection.** The Subdistrict, and the WGFP Enterprise agree that the Windy Gap Project and the WGFP will be operated in a manner that does not diminish the ability of the Colorado River Water Conservancy District to capture the natural flow of Muddy Creek up to a maximum of 65,998 acre-feet pursuant to the water rights, applicable permits, and operating criteria for Wolford Mountain Reservoir.
- B. **Future Uses.** The Subdistrict and WGFP Enterprise agree to not place a call under the Windy Gap Decrees on any present or future water rights on the Colorado and Fraser Rivers and their tributaries above Windy Gap Reservoir; Provided, however, the Windy Gap Project and WGFP may divert any water which can be diverted in priority at the decided point of diversion without placing a call as described above except for water provided as described in paragraph IV. O. of this Agreement.
- C. **Open Space.** Upon execution of this WGFP Agreement, the Subdistrict agrees to negotiate with Grand County in good faith regarding the protection of open space on Subdistrict lands, including compliance with the existing Grand County Rural Land Use Process that allows cluster development in conformance with C.R.S. § 30-28-403 as exists now or may be amended in the future, provided, however, that nothing in this Agreement or in the deed restriction shall affect or preclude the sale or development of such parcel(s) pursuant to provisions of existing or future law that allow the sale or development of lands in a manner that is not within the definition of a "subdivision" or "subdivided land".
- D. **Public Access.** Upon execution of this WGFP Agreement, the Subdistrict will make arrangements with Northern Water to provide public access to that portion of Willow Creek located on Northern Water's lands for as long as Northern Water owns the lands adjacent to Willow Creek, if and to the extent that the public access will be managed by the Colorado Division of Parks and Wildlife or other entity acceptable to Northern Water.
- E. **Jasper Reservoir Conditional Water right.** The Subdistrict will abandon the conditional water right for Jasper Reservoir upon WGFP Completion.
- F. **Grand County Pump Fund.** Although the Subdistrict and Grand County have no existing obligation to do so, upon execution of this WGFP Agreement, the

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WGFP Enterprise will establish a \$120,000 fund for the repair, maintenance or replacement of the following pumps and related equipment:

Table A
ELIGIBLE PUMPS AND MEADOW PUMPERS

Eligible Pump/Water Right	Structure ID	Location (roughly Upstream to Down)	Meadow Pumper/Current Owner
1. Ennis Pump Ditch System	566		Carol Petersen Ad Bruchez??
2. Holdcroft Pump No. 2	1275		Grady Culbreath??
3. Holdcroft Pump No. 2	1274		Carol Petersen
4. Thompson Pump No. 2	1149		Sam
5. TA Engle Ditch No. 3	927		Bl
6. McElroy State Pump	755		Sammons
7. McElroy No. 2 Ditch	613		Sammons
8. Thompson Pump No. 1	1148		Thompson
9. TA Engle Ditch No. 2	926		Thompson
10. TA Engle Ditch No. 1	651		Thompson
11. TA Engle Ditch No. 1	925		Thompson
12. McElroy Ditch No. 1	612		Sammons
13. Martin Pump No. 1 Ditch	694		Sammons 2 cfs Grand River 6 cfs??
14. McElroy Ditch No. 3	614	On Muddy Creek	Sammons

WGFP Enterprise will administer the fund with payments to, or as directed by, Grand County. Once the fund has been depleted for its purpose, the Subdistrict, WGFP Enterprise, and Grand County have no further responsibility or claims for maintenance, replacement, or rehabilitation of

G. Flow Measuring Device Fund. The Upon execution of this Agreement the WGFP Enterprise will establish a \$380,000 fund for the reimbursement of the costs of installation of flow measuring devices on all surface water diversions capable of diverting 5 c.f.s. or more from the main stem of the Colorado River between Granby Reservoir and the confluence of the Colorado and Blue Rivers. The WGFP Enterprise shall use this fund to reimburse costs incurred for such purposes if and at such time as measuring devices have been installed, and approved by the Colorado State Engineer in writing, on all surface water diversions capable of diverting 5 c.f.s or more from the mainstem of the Colorado River below Granby Reservoir to the confluence of the Colorado and Blue Rivers, and Grand County has obtained the necessary permanent access agreements for installation, operation, maintenance, and replacement of the recording and telemetry devices.

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- 1) If measuring devices have not been installed pursuant to the necessary permanent access agreements and approved in writing by the Colorado State Engineer on all such surface water diversions within 10 years of the date of this WGFP IGA, one-half of the funds shall be transferred for use in the Learning by Doing Cooperative Effort and one-half of the funds shall be returned to WGFP Enterprise.
- 2) If measuring devices have been installed pursuant to the necessary permanent access agreements and approved in writing by the Colorado State Engineer on all such surface water diversions within 10 years of the date of this WGFP IGA and there are funds which remain in the Flow Measuring Device Fund, one-half of the funds shall be transferred for use in the Learning by Doing Cooperative Effort and one-half of the funds shall be returned to WGFP Enterprise.

H. Recording and Telemetry Devices. Recording and telemetry devices for flow measuring devices approved by the Colorado State Engineer pursuant to Paragraph IV.G. will be acquired, installed, operated, maintained and replaced by and at the expense of the WGFP Enterprise pursuant to permanent access agreements obtained by Grand County, as described in Paragraph IV.G. above.

I. Water Accounting. The Subdistrict agrees to submit detailed daily water accounting to the State of Colorado Division Engineer as required by the Division Engineer and provide copies to the West Slope Parties.

J. Future Water Development.

- 1) Compact Curtailment Plan. The Signatories agree to cooperate in good faith toward the development of a plan to avoid and address a potential curtailment of existing Colorado water rights under the provisions of the 1922 Colorado River Compact and the 1948 Upper Colorado River Compact. The Signatories agree to meet and confer before the Municipal Subdistrict or WGFP Enterprise take any action pursuant to Paragraph IV.J.3. of this WGFP Agreement.
- 2) The Subdistrict and WGFP Enterprise agree that, without the prior express written consent of Grand County and the Colorado River Water Conservation District, they will not (a) acquire any existing water rights in Grand County; (b) construct additional water supply facilities in Grand County; (c) appropriate new water rights in Grand County; or (d) appropriate any new water rights in Water Division No. 5 that will result in depletions of water from Grand County.

3) Compact Curtailment Actions.

- (a) To the extent, and during such time that the operation of the Windy Gap Project or WGFP, or the exercise of the Windy Gap Project Water Rights, is or may in the future be curtailed, limited, or otherwise restricted as the result of, or for the purpose of, compliance with the 1922 Colorado River Compact or 1948 Upper Colorado River Compact ("Compact Curtailment"), the Municipal Subdistrict or WGFP Enterprise may take any actions or use any existing or future facilities as may be required to provide a water supply to the Municipal Subdistrict or WGFP Enterprise, as limited by and subject to the WG Volumetric Limits ("Compact Curtailment Actions") and the express obligations of the Subdistrict and WGFP Enterprise under this WGFP Agreement. The Municipal Subdistrict or WGFP Enterprise may undertake such Compact Curtailment Actions as may be necessary to prudently plan and prepare in advance of any potential Compact Curtailment; Provided however, that any such Compact Curtailment Actions will be implemented only during such time that the quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of a Compact Curtailment. The West Slope Parties may oppose any Compact Curtailment Actions in any forum. Nothing in this Paragraph IV.J.3 shall affect the obligations of the Subdistrict and WGFP Enterprise under this Agreement.
- (b) Nothing in this WGFP Agreement, including without limitation Paragraphs IV.J.1) and IV.J.2) above, shall affect, limit, or otherwise restrict the right of the Municipal Subdistrict or WGFP Enterprise to take any actions or to use any existing or future facilities as required to provide a water supply to the Municipal Subdistrict or WGFP Enterprise, as limited by and subject to the WG Volumetric Limits, in the event, to the extent, and during such time that the operation of the Windy Gap Project or WGFP, or the exercise of the Windy Gap Project Water Rights, is or may in the future be curtailed, limited, or otherwise restricted as the result of or for the purpose of compliance with the 1922 Colorado River Compact or 1948 Upper Colorado River Compact. Nothing in this WGFP Agreement shall limit or restrict the right of West Slope Parties to oppose any such actions or use of any such existing or future facilities.
- (c) Nothing in this Paragraph IV.J.3 shall be construed to 1) allow the Subdistrict or WGFP Enterprise to increase the yield of the WG Project or WGFP at times other than when the quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of the enforcement of the 1922 Colorado River Compact or 1948 Upper Colorado River Compact, or 2) use any banked or stored water in a manner that causes an increase in the yield of the Windy Gap Project or WGFP at times other than when the

quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of the enforcement of the 1922 Colorado River Compact or 1948 Upper Colorado River Compact. Nothing in this Paragraph IV.J.3) shall affect the obligations of the Subdistrict and WGFP Enterprise under Paragraphs III.D, III.E. and III.F. of this WGFP Agreement.

- 4) Nothing in this Agreement shall affect, limit, or otherwise restrict the right of the Municipal Subdistrict to fully utilize the Windy Gap Water Rights and associated existing facilities in Grand County or any existing or future facilities on the East Slope, or existing or future water rights in Water Division No. 1 in a manner that will not exceed the WG Volumetric Limits. The West Slope Parties reserve the right to oppose any actions taken by the Subdistrict intended to achieve the WG Volumetric Limits using existing or future facilities or water rights that are not expressly authorized by the 1980 Agreement, the 1985 Supplemental Agreement, and this WGFP Agreement.
- 5) Any consent of Grand County under Paragraph IV.J.2) shall not be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action to be taken thereunder by Grand County.
- 6) Nothing in this Agreement shall affect, limit, or otherwise restrict the maintenance, repair, replacement or rehabilitation of the existing Windy Gap Project facilities, replacement facilities, or rehabilitated facilities located in Grand County.

K. CWCB Instream Flow. The Subdistrict and WGFP Enterprise will support the entry of a decree in accordance with applicable law for a CWCB instream flow on the Colorado River mainstem from the confluence of the Blue and Colorado Rivers to a point immediately upstream of the confluence of the Eagle and Colorado Rivers if a) the CWCB instream flow is not used as a basis for imposing restrictions or limitations on the WGFP, b) the West Slope Parties agree that they will never assert in any forum that the CWCB Instream Flow be used as a basis for restrictions or limitations on the WGP or WGFP, and c) the right is subject to substantively the same terms and conditions as are set forth in the Findings of the CWCB in declaring its intent to appropriate dated _____, 2011.

L. Grand County RICD. Subdistrict and WGFP Enterprise will not oppose the entry of a decree in Case No. 10CW298 consistent with the draft decree dated _____ 2012 and stipulation attached as Exhibit * to this Agreement.

M. Shoshone Outage Protocol.

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- 1) For purposes of this Agreement, the Shoshone Outage Protocol means that the Windy Gap Project will operate as described in this paragraph (IV.M.1), (IV.M.2), and (IV.M.3) during periods when the Shoshone Power Plant is shutdown or otherwise not able to divert the full amount of its 1,250 cfs senior water right due to repair, maintenance, or other reasons ("Shoshone Outage"). When the Windy Gap Project's participation in the Shoshone Outage Protocol is in effect pursuant to this WGFP Agreement, the Windy Gap Project will bypass the amount of water that the Windy Gap Project would have been required to bypass if the Senior Shoshone Call had been in effect in order to result in a flow of not more than 1250 cfs at the Dotsero gage on the Colorado River (not including any water released for endangered fish species purposes). For purposes of this WGFP Agreement, a Shoshone Outage does not include a shutdown of the Shoshone Power Plant for regularly scheduled maintenance for a cumulative period of 17-days during the period of November through March 15.
- 2) The Windy Gap Project will operate in accordance with the Shoshone Outage Protocol from July 16-April 14. Prior to WGFP Completion, the Windy Gap Project may operate in accordance with the Shoshone Outage Protocol during the period of April 15-July 15 on a voluntary cooperative basis. Following WGFP Completion, the Windy Gap Project will operate in accordance with the Shoshone Outage Protocol during the period April 15 - July 15 at any time during this period when the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project water stored on behalf of WGFP Participants in Grandy Reservoir is greater than 50% of the Active Capacity of Chimney Hollow Reservoir.
- 3) Participation in the Shoshone Outage Protocol by the Windy Gap Project during the period of April 15-July 15 will be limited to a total maximum volume of foregone pumping equal to 10,000 acre feet (30 days with one pump running) in one year, a total of 20,000 acre feet (60 days with one pump running) in any 3 consecutive year period, and a total of 30,000 acre feet (90 days with one pump running) in any 5 consecutive year period.
- 4) The Subdistrict agrees that it will participate in good faith in negotiations to achieve permanent management of the flow of the Colorado River to address certain flow changes that result during a Shoshone Outage.

N. Cooperative Effort for Aquatic Environment. The Subdistrict and the WGFP Enterprise, Grand County, Middle Park, and the River District agree to participate in the Learning by Doing Cooperative Agreement ("Cooperative Agreement") as defined in the Intergovernmental Agreement for The Learning by, Doing Cooperative Effort which is attached as Exhibit * but which is not a part of or incorporated within this WGFP Agreement. The Cooperative Effort

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may be amended by and with the mutual consent of all parties thereto. Any such amendments shall not require amendment or modification of this WGFP Agreement.

- O. Colorado River Cooperative Agreement. The Subdistrict and the WGFP Enterprise agree not to oppose or otherwise interfere with the efforts to obtain such court decrees and approvals as are necessary for the Colorado River Cooperative Agreement to the extent that the court decrees and approvals do not adversely affect the WGFP or Windy Gap Project. The Subdistrict further agrees that it will not divert water that would not have been available but for the actions of the Management Committee or Grand County pursuant to the Learning by Doing process.
- P. Wild and Scenic. Within one year of issuance of an acceptable permit for the WGFP, the Subdistrict shall pay \$50,000 and the River District shall pay \$25,000 to the Endowment Fund of the Upper Colorado River Wild and Scenic Stakeholder Group for use to protect Wild and Scenic resources identified in the Colorado River from Kremmling downstream to No Name. The Subdistrict's contribution provided herein shall satisfy the obligation of the Subdistrict and WGFP Enterprise to contribute endowment funds for Wild and Scenic purposes under this WGFP Agreement. The Subdistrict agrees that the River District's contribution provided herein shall satisfy the obligation of the River District to contribute endowment funds for Wild and Scenic purposes under the WGFP Agreement. The Subdistrict will contribute 20% of the amount contributed by the River District, not to exceed \$5,000 annually adjusted annually by the Denver-Boulder-Greeley CPI-U, for annual operating costs of the Upper Colorado River Wild and Scenic Stakeholder Group.
- Q. Windy Gap Water Right Diversion at Granby Reservoir. Absent the express written consent of Grand County and the River District, the Subdistrict and WGFP Enterprise agree that neither will divert water at Granby Reservoir under the priority of the Windy Gap Decrees or during free-river conditions.

Bypass of Windy Gap Reservoir. The Subdistrict will enter into an agreement with Colorado Division of Parks and Wildlife to provide up to \$250,000 to study methods for bypass of flows, sediment, and/or fish around or through Windy Gap Reservoir and identify potential modifications that would provide tangible benefits to aquatic resources below Windy Gap Reservoir. Issues to be studied include, but are not limited to sediment transport, water quality (effects on temperature and/or nutrients) and fish passage. The Subdistrict and the WGFP Enterprise will participate with all stakeholders in securing funding from other sources for any solution identified by the study, provided, however, that this WGFP IGA does not require any funding for such solutions. The study will be conducted as the first phase of the Upper Colorado River Habitat Project. The implementation of recommendations

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resulting from the study will not constitute a violation of or require amendment of this WGFP Agreement or the 1980 and 1985 Agreements.

V) West Slope Parties' Commitments

- A. No Opposition to WGFP. The West Slope Parties will not oppose final state and federal approvals of the WGFP, subject to performance of this WGFP Agreement by the Subdistrict and WGFP Enterprise and the performance of such mitigation, requirements, and conditions as are required in those approvals, including but not limited to the Records of Decision by Reclamation and USACE, the Amended Contract, 401 Certification, or the 404 Permit. Nothing herein shall affect any 1041 authority of Grand County.
- B. Reopen Approvals or Authorizations. The West Slope Parties will not request that any governmental approval or authorization of the Windy Gap Project or the WGFP be subject to provisions that have the effect of reopening the governmental approval or authorization. For a period of five years from the date of the first diversions into the constructed Chimney Hollow Reservoir, no party will unilaterally request, or cause others to request, that the United States Army Corps of Engineers or other regulatory agency with jurisdiction and authority over the WGFP, reopen a permit or license for the Windy Gap Project or WGFP for any reason except as may be necessary to preserve the right to undertake such action prior to expiration of any applicable legal deadline or statute of limitation. Each party reserves the right to oppose any such efforts to reopen the permits or licenses for the Windy Gap Project or WGFP. This Paragraph V.B. is not intended to prevent the West Slope Parties from commencing any legal action to enforce this WGFP Agreement or to request enforcement of specific terms of federal permits.
- C. Windy Gap Reservoir Conditional Storage Right. The West Slope Parties will not oppose future applications to make the remaining conditional portion (101.14 acre feet) of the existing Windy Gap Reservoir storage right absolute.
- D. Modification of Windy Gap Decree. The West Slope Parties will consent to the entry of a Decree consistent with the draft decree attached as Attachment * to this Agreement, modifying the existing Windy Gap Decrees to incorporate this WGFP Agreement and will not assert that a change of the water rights for the Windy Gap Project is required for the operations of the Windy Gap Project or WGFP in a manner consistent with this Agreement.

VI) Further Agreements of the Parties

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- A. The Parties reaffirm the validity of the 1980 and 1985 Agreements, agree that those Agreements remain in place except as explicitly modified by this WGFP Agreement, and that in the event of a determination by a governmental entity with jurisdiction that this WGFP Agreement or any provision is invalid or inadequate in any regard, the 1980 and 1985 Agreements shall remain valid and enforceable as if this WGFP Agreement did not exist. The provisions of the 1980 and 1985 Agreements which relate to the operation of the Windy Gap Project and the rights and interests of Middle Park shall remain in place until such time as WGFP Completion, and the approval of this Agreement by the Water Court, Water Division No. 5 by Decree not subject to appeal.
- B. No Party will oppose final state, local and federal approvals of the WGFP, subject to performance of this WGFP Agreement by the Subdistrict and WGFP Enterprise and the performance of such mitigation, requirements, and conditions as are required in those approvals, including but not limited to the Records of Decision by Reclamation and USACE, the WGFP Amended Contract, 401 Certification, or the 404 Permit. Nothing herein shall affect any 1041 authority of Grand County.
- C. The Subdistrict agrees that conditions of the federal authorization for the WGFP will include provisions that substantially conform to the following:
1. the total volume of C-BT Project water stored in the combination of Granby and Chimney Hollow Reservoirs will not exceed 465,568 acre-feet. For the purposes of this Paragraph of the WGFP Agreement, the amount of C-BT Project water in storage in Granby Reservoir shall be the amount of C-BT Project water stored above the invert of the Pumping Plant Intake and below the normal high water line; and
 2. in any year in which the April 1st or subsequent projection by Northern Water anticipates a spill at Granby Reservoir, C-BT Project water then in storage in Chimney Hollow Reservoir shall not be released to satisfy delivery requirements to Colorado-Big Thompson Project Allottees if such release would allow the capture and storage of additional C-BT Project water in Granby Reservoir.
- D. Nothing in this WGFP Agreement shall be construed to limit the discretion of the Northern Colorado Water Conservancy District or Reclamation regarding the operation of the Colorado-Big Thompson Project, including, without limitation the pre-emptive release of Windy Gap Project water from Granby Reservoir that may increase the risk of or result in a spill of water provided to Middle Park or Grand County (any such spill in accordance with Paragraph III.I of this WGFP Agreement).

- E. Except as necessary to comply with the express terms of this WGFP Agreement, nothing in this WGFP Agreement shall be construed to limit the discretion of the Subdistrict or WGFP Enterprise regarding the operation of the Windy Gap Project or Windy Gap Firming Project, including, without limitation, the pre-emptive release of Windy Gap Project Water from Granby Reservoir that may increase the risk of or result in a spill of water provided to Middle Park or Grand County in accordance with Paragraph III.I of this Agreement (any such spill in accordance with Paragraph III.J of this WGFP Agreement).
- F. The Parties agree that performance of this Agreement, compliance with any mitigation requirements for the WGFP imposed by a federal or state agency, and compliance with the requirements of a Grand County 104 permit for the WGFP shall constitute full and complete satisfaction of the obligations of the Subdistrict and WGFP Enterprise to set forth and complete a plan which satisfies 37-45-118(1)(b)(II) of the Water Conservancy Act.
- G. This Agreement does not limit, change or expand the role of or protections afforded to all Parties with interests in the Colorado-Big Thompson Project as described in the Manner of Operation provisions of Senate Document No. 80, the 1961 Principles to Govern the Release of Water from Granby Dam To Provide Fishery Flows Immediately Downstream In The Colorado River ("1961 Principles"), and the Blue River Decrees. Water released from Granby Reservoir pursuant to this WGFP Agreement shall be in addition to the then current bypass of water under the 1961 Principles.
- H. The obligations of the Parties to this WGFP Agreement shall exist upon execution of this Agreement unless otherwise specified in this Agreement.
- I. This WGFP Agreement shall be incorporated within and be a non-severable part of the Windy Gap Decrees.
- J. The West Slope Parties agree to not assert that the WGFP and Moffat Collection System Project are interdependent or interrelated.
- K. This WGFP Agreement is an agreement between the Parties and does not bind or limit the authority or jurisdiction of agencies of the United States of America.
- L. Performance of the portions of this WGFP Agreement that require the expenditure of funds are subject to future budgeting and appropriation of funds by the governing bodies of the Subdistrict, WGFP Enterprise, Middle Park, Grand County, and the River District. The Parties agree to make good faith efforts to appropriate such funds.

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- M. The Parties agree that this Agreement is an intergovernmental agreement pursuant to Article XIV, Sec. 18 of the Colorado Constitution and C.R.S. § 29-1-201 et. Seq. inclusive, among all governmental entities hereto. The Parties further agree that the terms and conditions of this Agreement are enforceable by specific performance and agree not to bring any defense to specific performance based on the doctrine of governmental immunity. The Parties also agree that a breach of this Agreement will cause irreparable harm sufficient for injunctive relief.
- N. The Parties agree to work cooperatively to implement a stipulated resolution of the Green Mountain Reservoir Administrative Fill dispute.
- O. The Parties agree that if a dispute arises on any matter covered by this WGFP Agreement, the Parties will confer in good faith and endeavor to resolve the concern. If the Parties reach an impasse, they will select a neutral third party mediator who would seek an acceptable voluntary solution to the conflict. For conflicts that involve a technical or scientific matter, the neutral third party mediator may select an independent technical or scientific expert, acceptable to the Parties involved in the mediation, to review and make a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, the affected Parties may pursue any available legal or administrative recourse. Nothing herein shall preclude the commencement of any action that would otherwise be barred by a statute of limitations or the timely participation in an official or administrative process.
- P. This WGFP Agreement is the result of negotiations between the Parties and their respective counsel. These negotiations produced numerous drafts which were prepared by one or more of the Parties. The Parties agree that these drafts, including omissions, do not provide or represent evidence of intent of any Party and may not be relied upon for purposes of construction and enforcement of this WGFP Agreement or for any other purpose.

No Waiver

The Parties do not agree:

- 1) Whether amendment of the Blue River Decree or Senate Document No. 80 is required to authorize the storage of C-BT Project water in Chimney Hollow Reservoir,
- 2) Whether a change of water right is required to allow the storage of Windy Gap Firming Project water in Chimney Hollow Reservoir, or
- 3) Whether the Section 390b(d) of the Water Supply Act of 1958 requires Congressional approval for the Windy Gap Firming Project.

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4) Notwithstanding these disagreements, the West Slope Parties will not object to, litigate or otherwise dispute in any forum the storage of C-BT Project water in Chimney Hollow Reservoir or the storage of Windy Gap Firming Project water in Chimney Hollow Reservoir in accordance with, and subject to the following provisions:

(a) The total volume of C-BT Project water stored in the combination of Granby and Chimney Hollow Reservoirs will not exceed 465,568 acre-feet. For the purposes of this Paragraph of the WGFP Agreement, the amount of C-BT Project water in storage in Granby Reservoir shall be the amount of C-BT Project water stored above the invert of the Farr Pumping Plant Intake and below the normal high water line.

(b) In any year in which the April 1st or subsequent projection by Northern Water anticipates a spill at Granby Reservoir, C-BT Project water then in storage in Chimney Hollow Reservoir shall not be released to satisfy delivery requirements of Colorado Big Thompson Project Allottees if such release would allow the capture and storage of additional C-BT Project water in Granby Reservoir.

(c) The implementation of this WGFP Agreement.

(d) The Parties do not waive any rights regarding any other changes to the historical operations of the C-BT Project or Windy Gap Project.

B. No Waiver – C-BT. The Parties agree that the dispute concerning storage of C-BT Project water in Chimney Hollow Reservoir has not been litigated. The Parties agree that, except as provided for in this Agreement, in entering into the agreement and not litigating or otherwise objecting in any forum to the legal issues specified in Paragraph VII.A., above, that this Agreement shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue of claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the parties respective position regarding the storage of C-BT Project water and the Parties' respective interpretations of Senate Document No. 80, the 1961 Principles, the 1938 Repayment Contract, Reclamation Law, the Blue River Decrees, or Colorado law. The parties further agree that they do not intend this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter.

C. No Waiver – WGFP. The Parties agree that the dispute concerning storage of Windy Gap Project Water in Chimney Hollow Reservoir has not been litigated. The parties agree that, except as provided for in this WGFP

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Agreement, in entering into this WGFP Agreement and not litigating or otherwise objecting in any forum to the legal issues specified in Paragraph VII.A, above, that this Agreement shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the parties respective position regarding the storage of Windy Gap Firing Project water in Chimney Hollow Reservoir and the Parties' respective interpretations of federal or Colorado law. The Parties further agree that they do not intend this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter.

D. The Parties do not agree whether Grand County has the authority to regulate the WGFP pursuant to C.R.S. § 24-65.1-101, et seq.

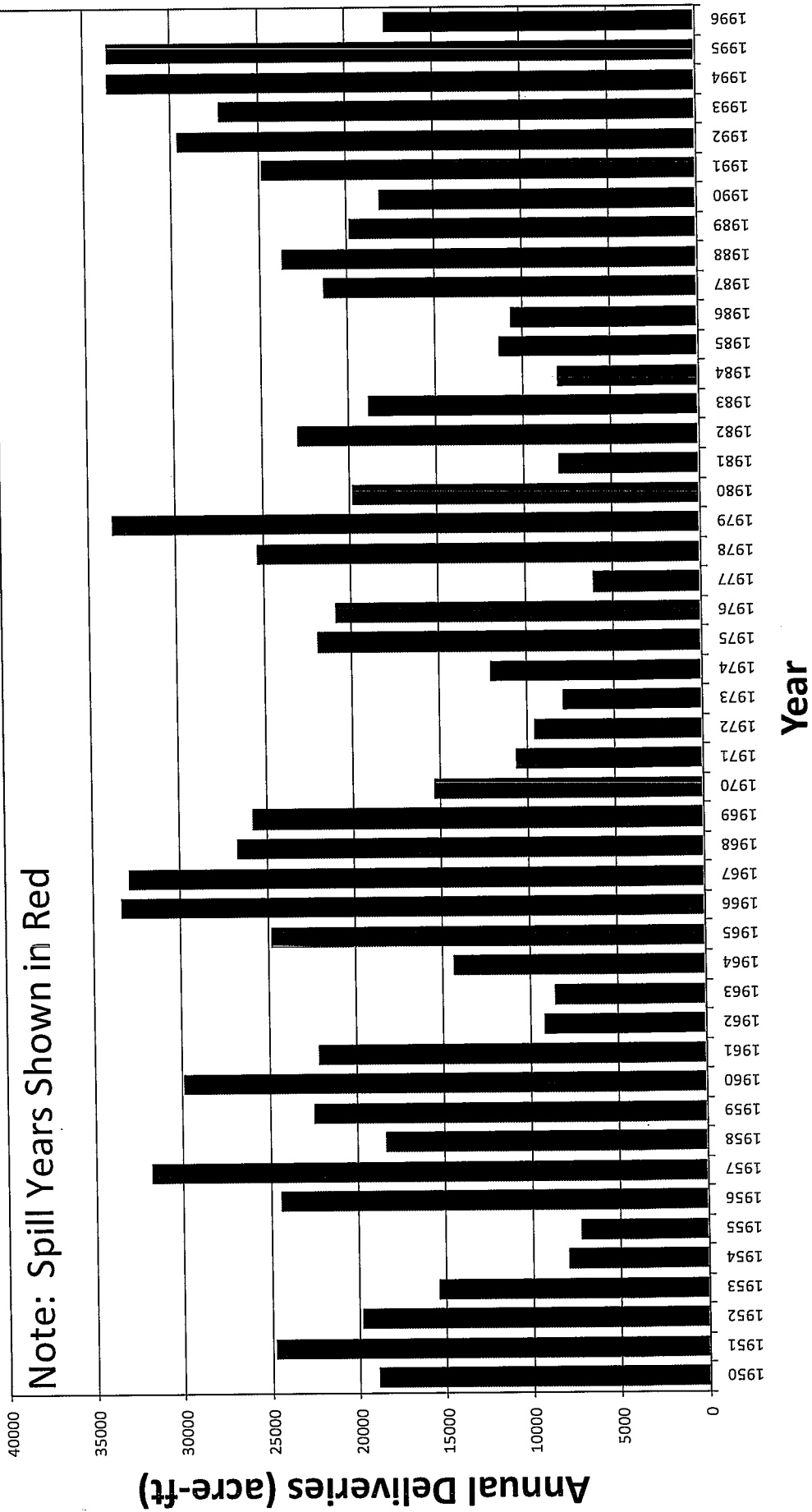
1) Notwithstanding these disagreements, the Subdistrict will not object to, litigate, or otherwise dispute in any forum the authority of Grand County to require a permit for the WGFP issued by Grand County pursuant to C.R.S. § 24-65.1-101, et seq. (1041 Permit), including any terms and conditions thereof once said Permit has been accepted by the Subdistrict.

2) With the exception of a challenge to the County's authority to require a permit for the WGFP, the Subdistrict does not waive or relinquish its rights to raise any defense or assert in any forum that it has fully complied with and is not in violation of the WGFP 1041 Permit.

3) The Subdistrict does not waive or relinquish its rights to object to, litigate, or otherwise dispute in any forum the authority of Grand County to modify, amend or terminate the WGFP 1041 Permit or to require a 1041 Permit or other Grand County Permit or authorization for any other existing or future project, action, or other activity of the Subdistrict.

E. Preservation of Governmental Powers. Except as specifically provided herein, nothing in this Agreement shall be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action taken thereunder, by any governmental or quasi-municipal entity including, without limitation, the regulatory or quasi-judicial power or authority of Grand County.

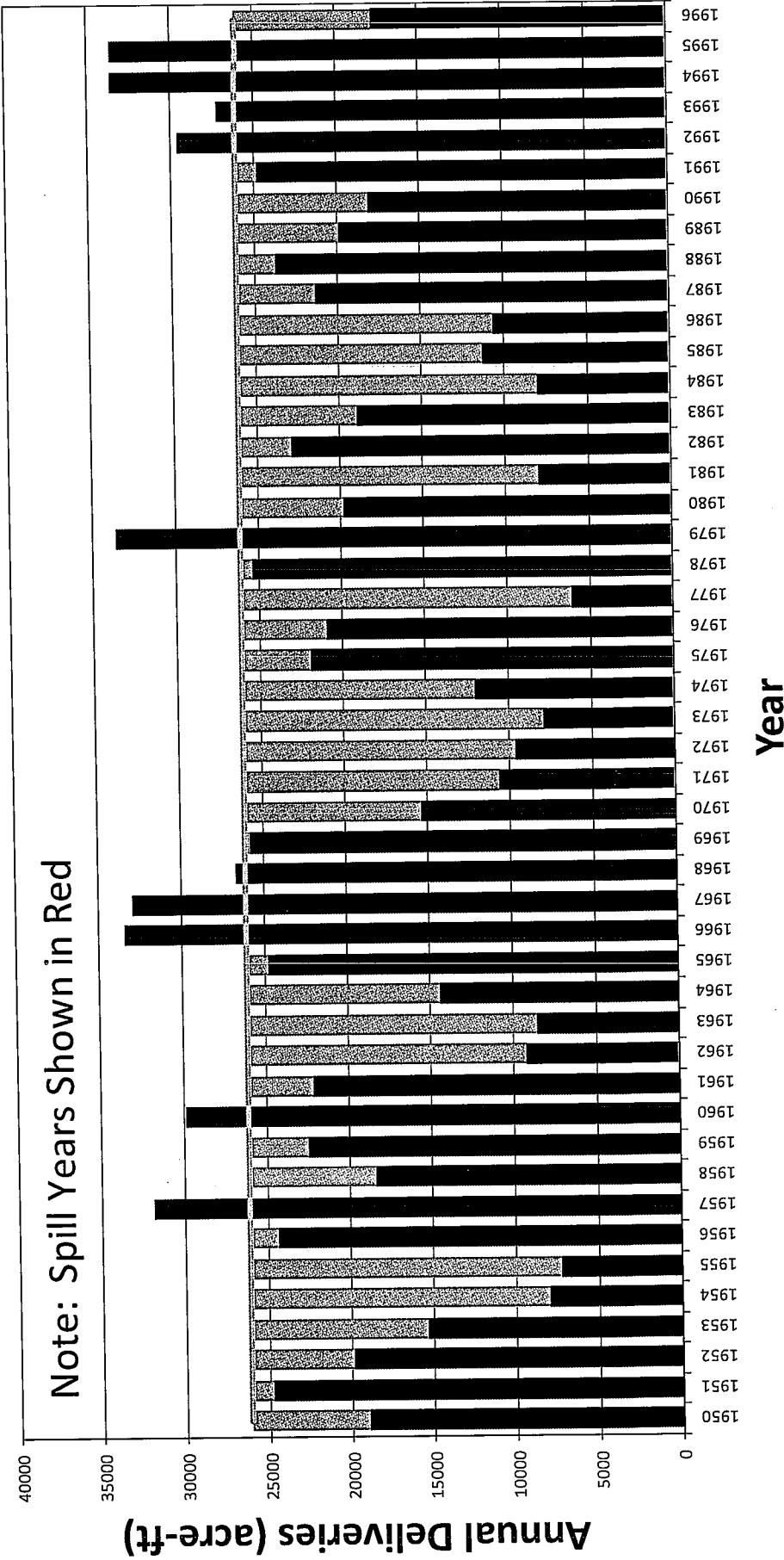
Deliveries to Windy Gap Firing Participants (ac-ft/year)



Deliveries to Windy Gap Firing Participants (ac-ft/year)

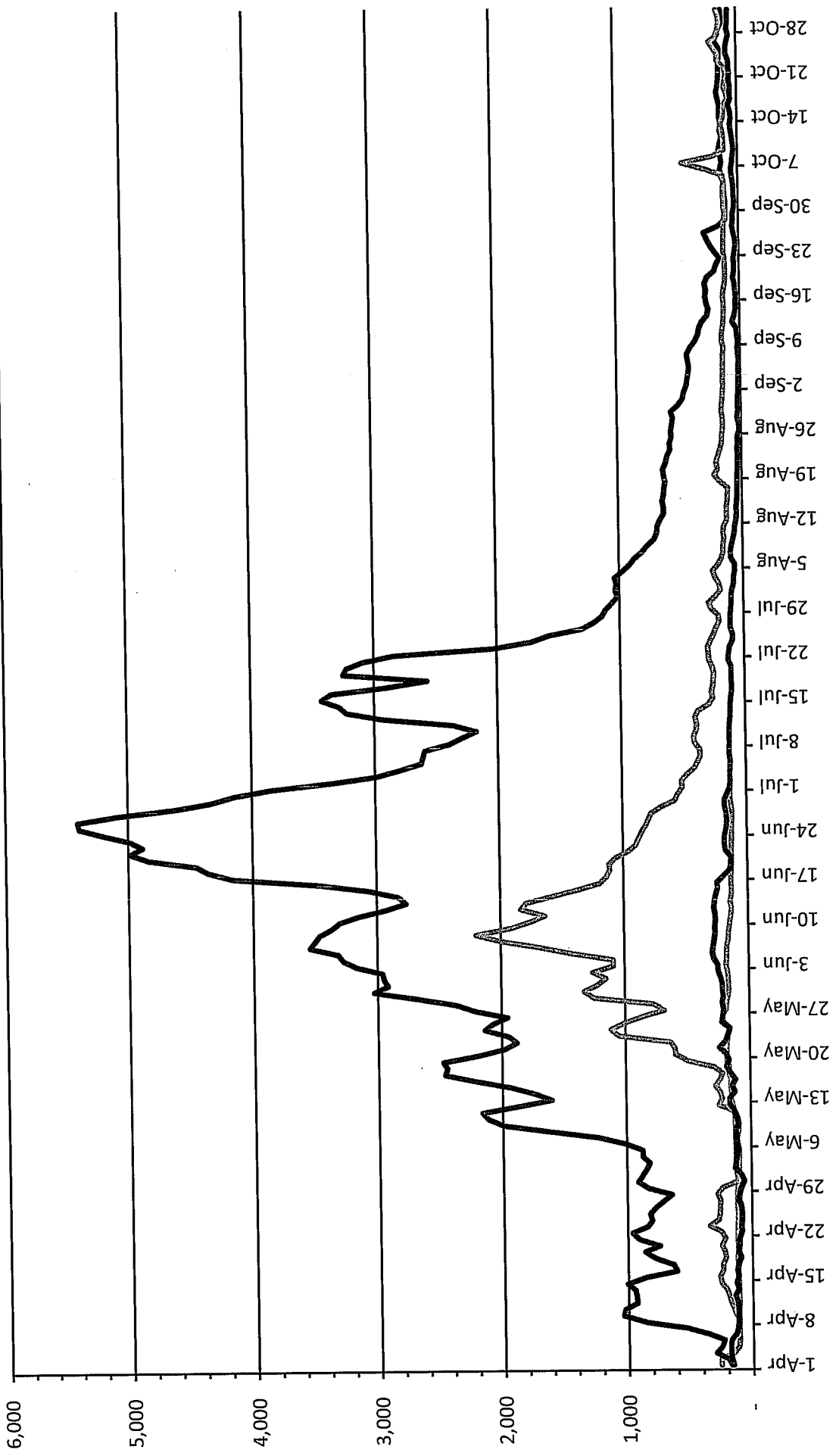
Deliveries w/o WGFP
 Additional Deliveries w/ WGFP
 Total Deliveries w/ WGFP

Note: Spill Years Shown in Red



Colorado River at Windy Gap - Historic Flow Data

— 2012* — 2011 — 2010 — 2002

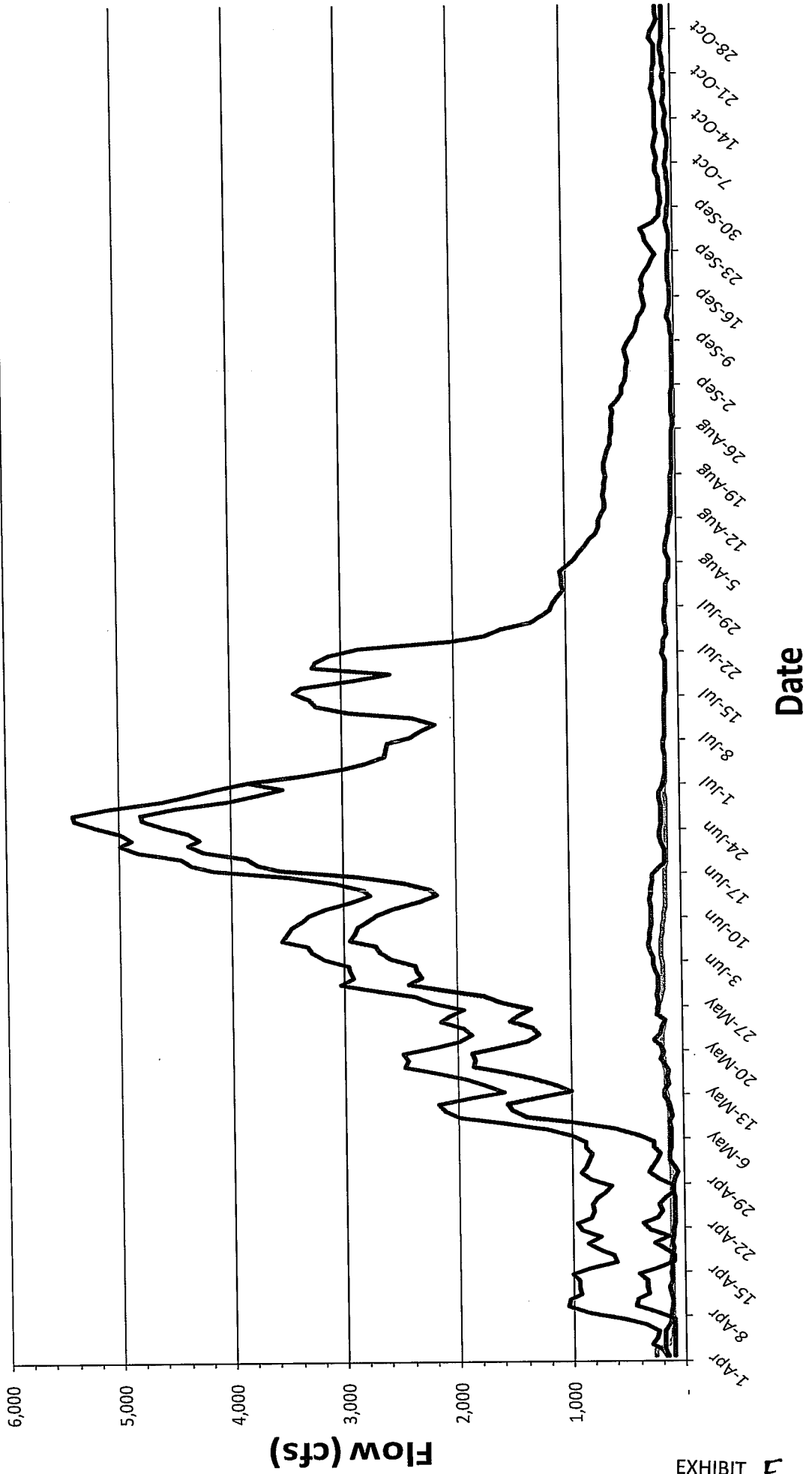


Date

Flow (cfs)

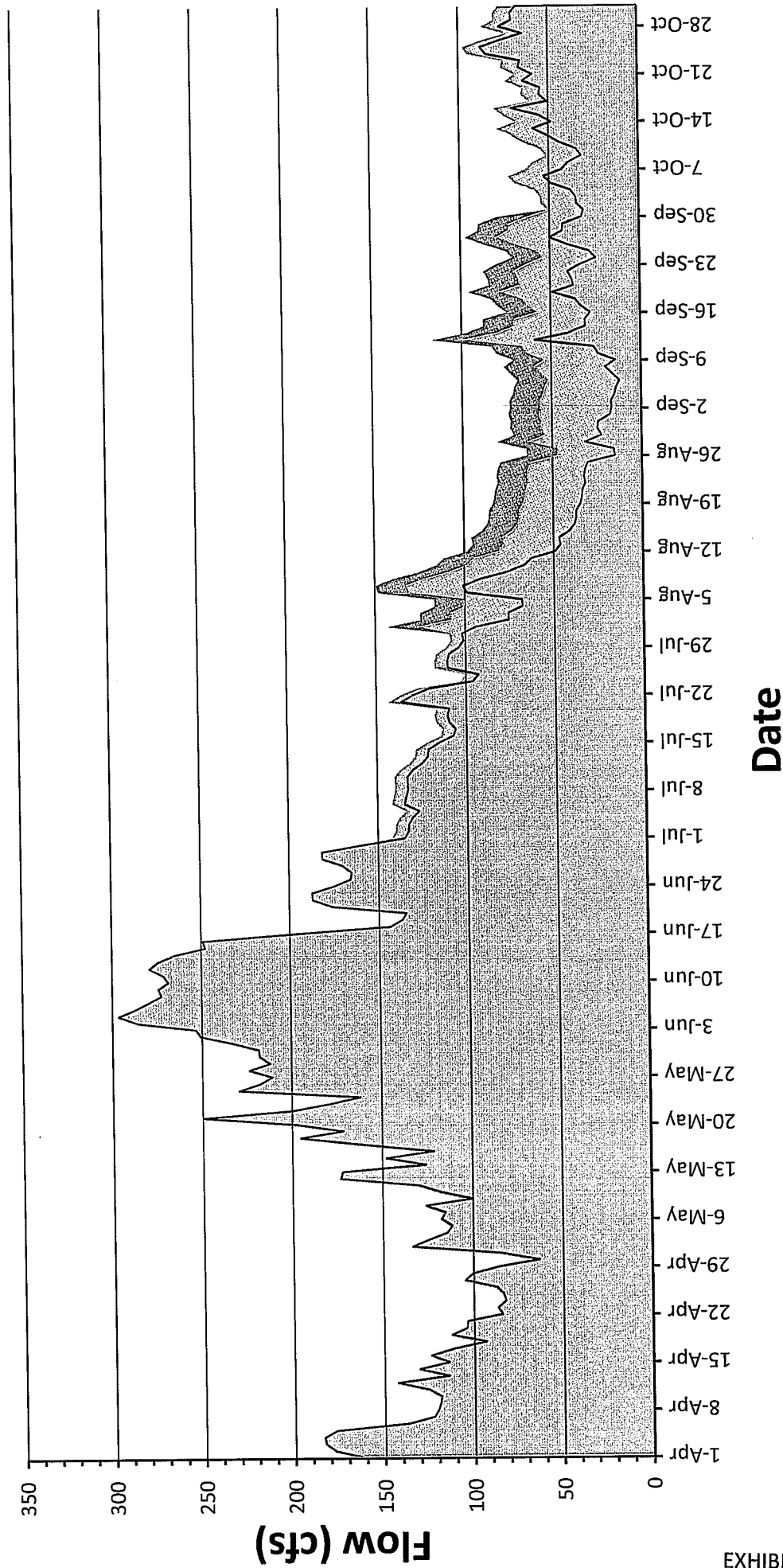
Colorado River at Windy Gap - Estimated 2011 Flows with 100,000 Acre Feet of Pumping

— 2012* — 2011 — 2002 — 2011 Flows with WG Pumping



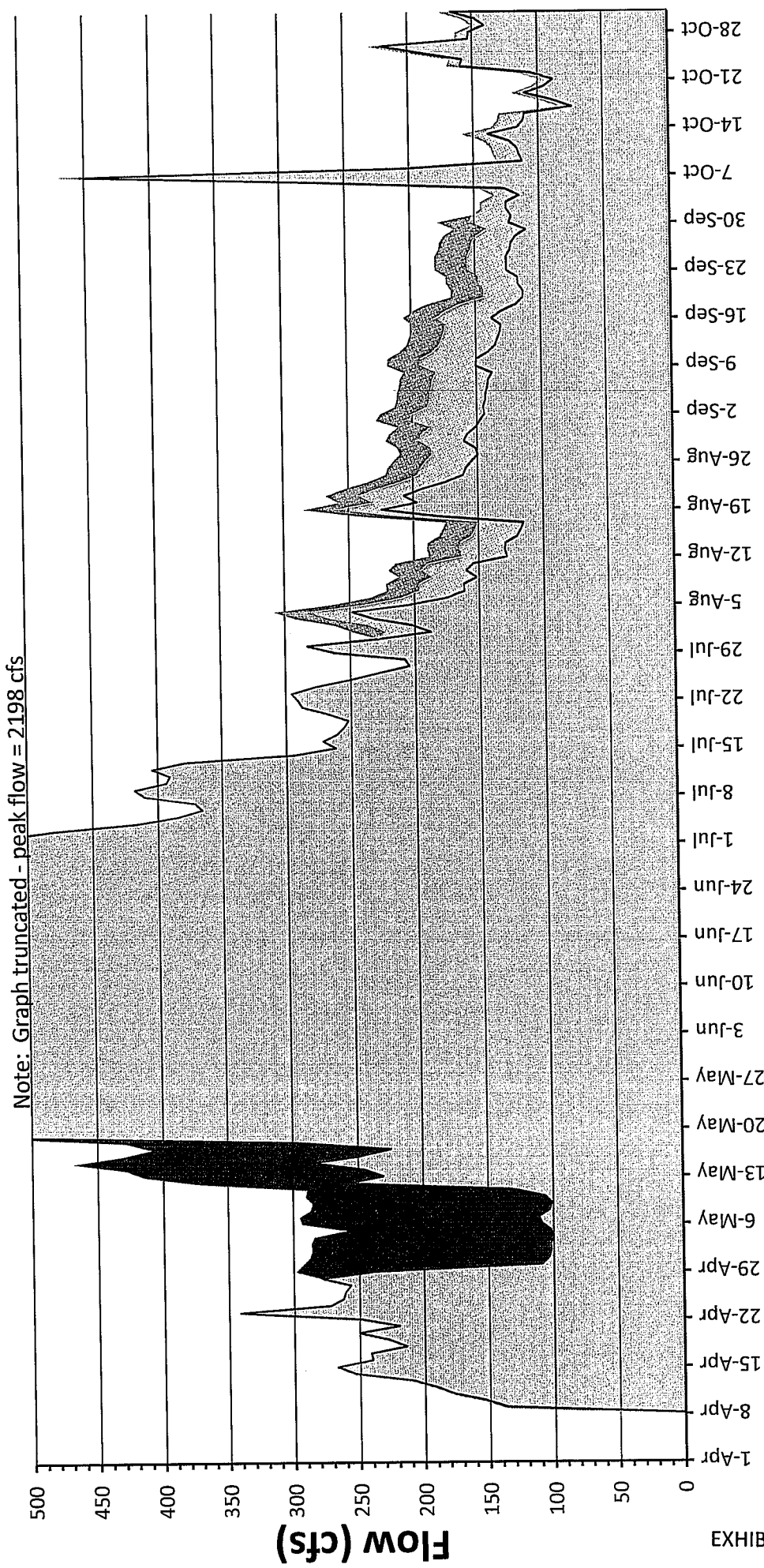
Colorado River at Windy Gap - Estimated 2012 Flows with Enhancements

2012 (estimated)
 10825 Releases for Dry Year
 IGA Enhancements (2000 af MP Transfer Water from 2011)



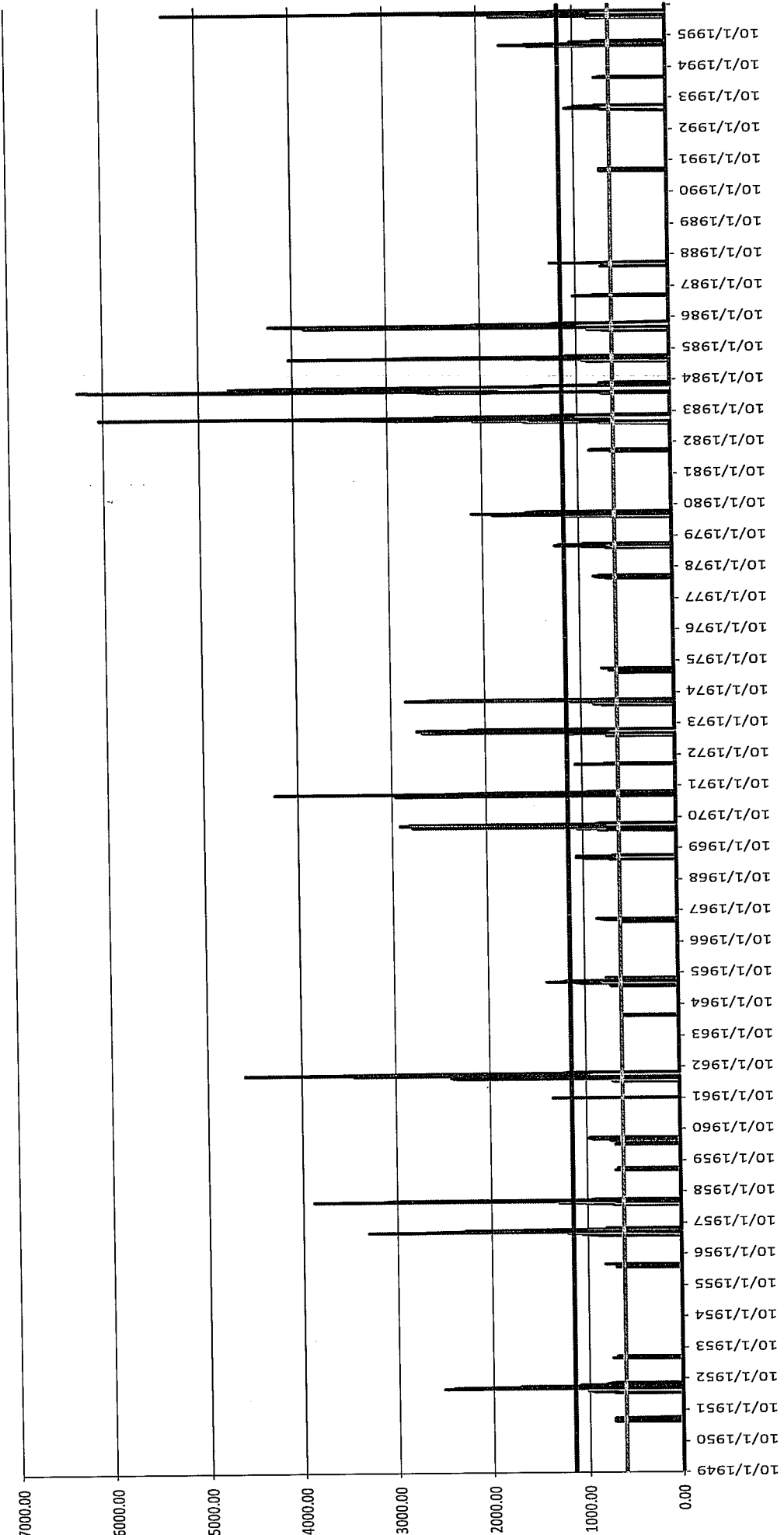
Colorado River at Windy Gap - Estimated 2010 Flows with Enhancements

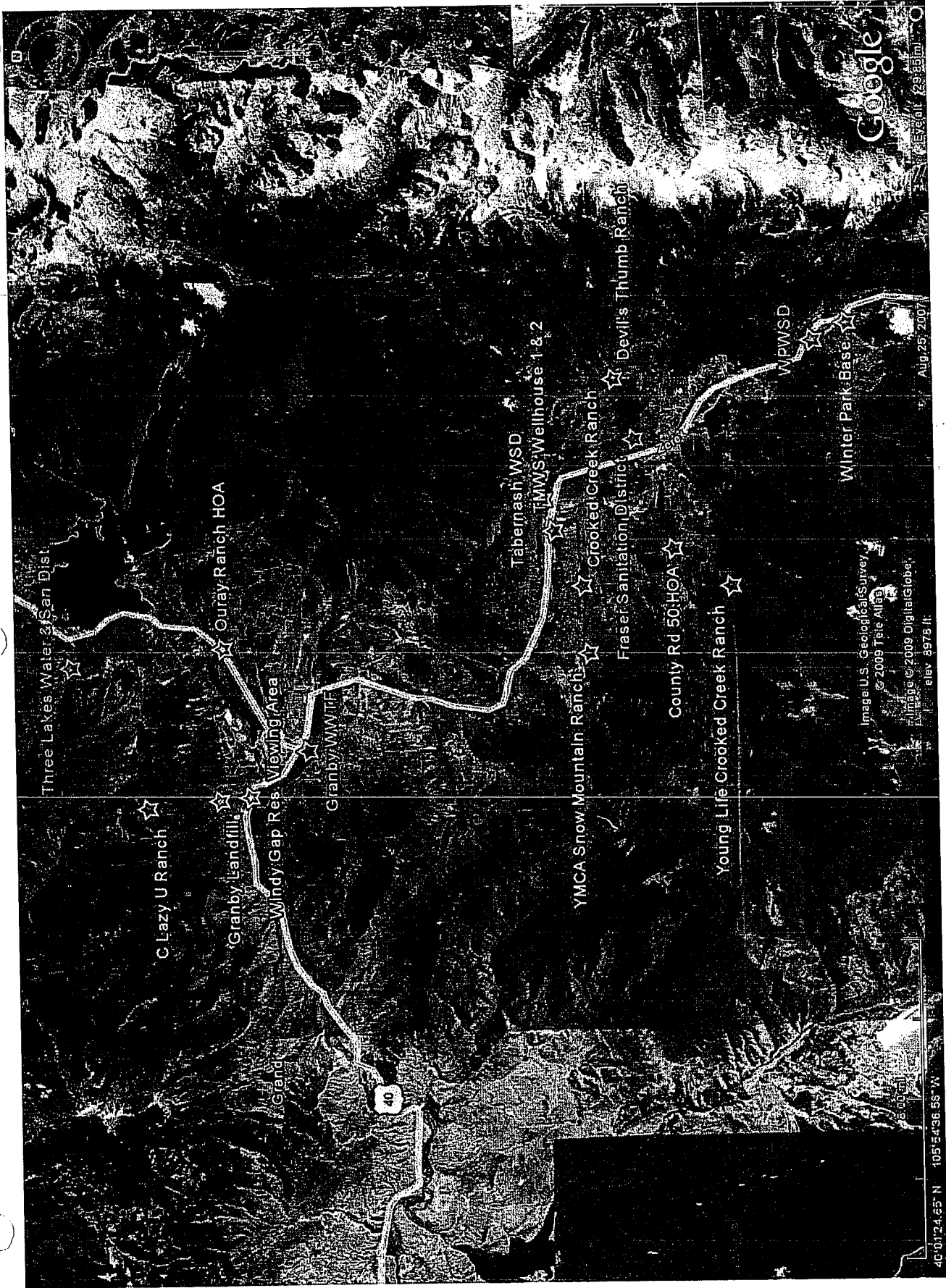
2010 Pumping
 10825 Releases for Average Year
 IGA Enhancements (3000 af)

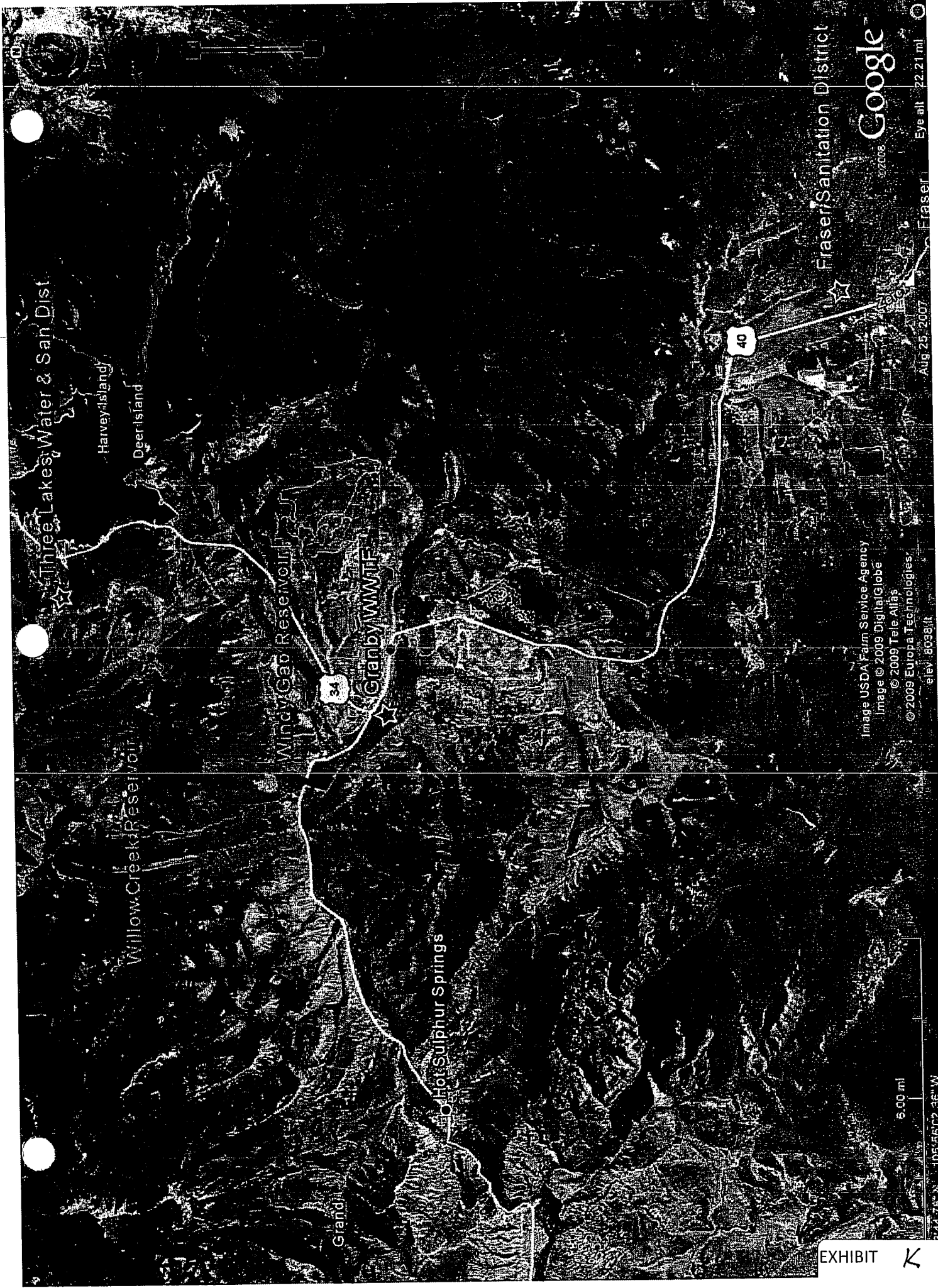


Date

Flushing Flow Above 600 cfs







Three Lakes Water & San Dist

Harvey Island

Deer Island

Willow Creek Reservoir

Windy Gap Reservoir

Granby WWTF

Hot Sulphur Springs

Fraser Sanitation District

Google

Image USA Farm Service Agency
Image © 2009 DigitalGlobe
© 2009 Tele Atlas
© 2009 Europa Technologies
elev. 8036ft

5.00 mi

34.475° N 105.550236° W

Eye alt 22.21 mi

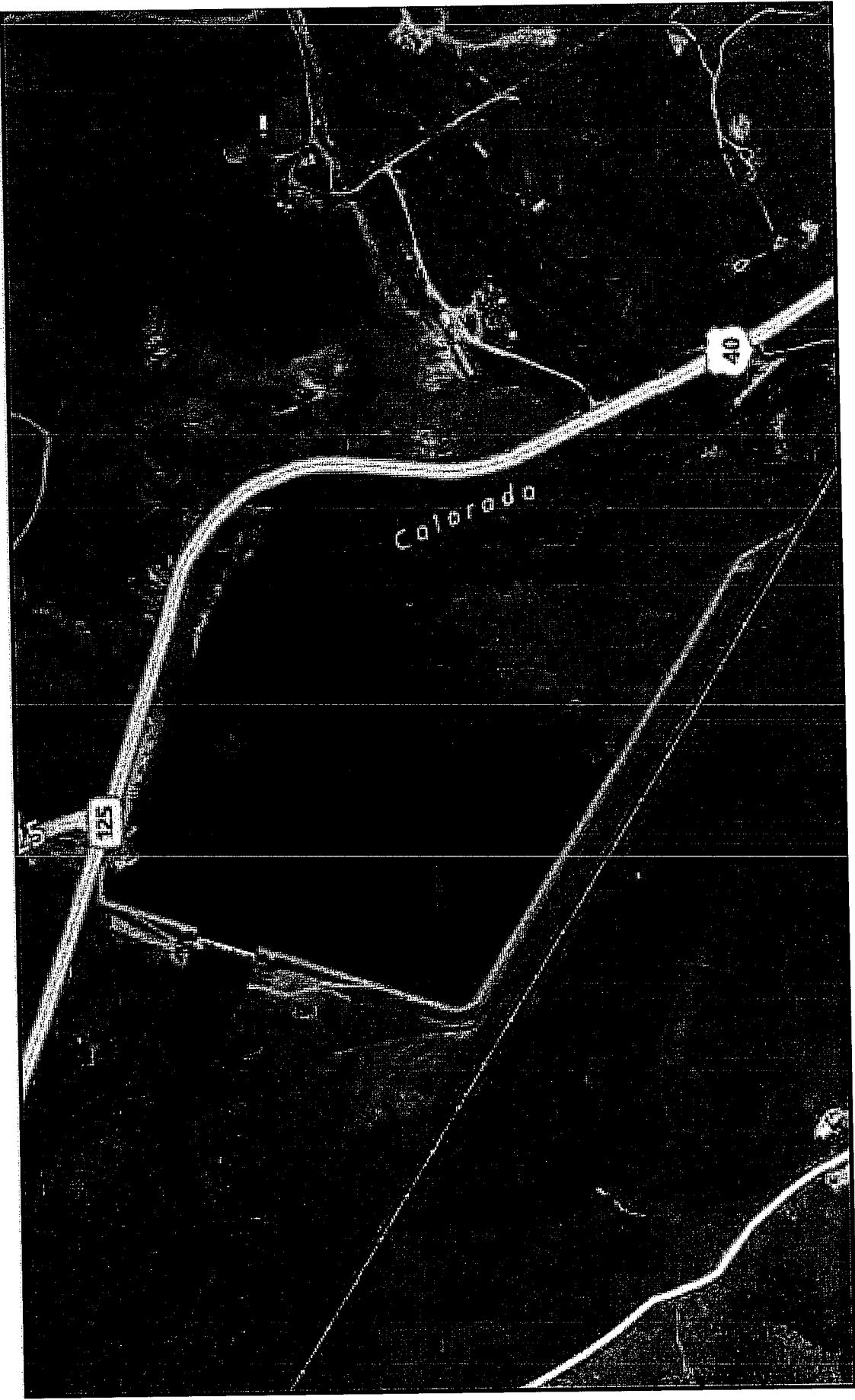
Aug 25 2007

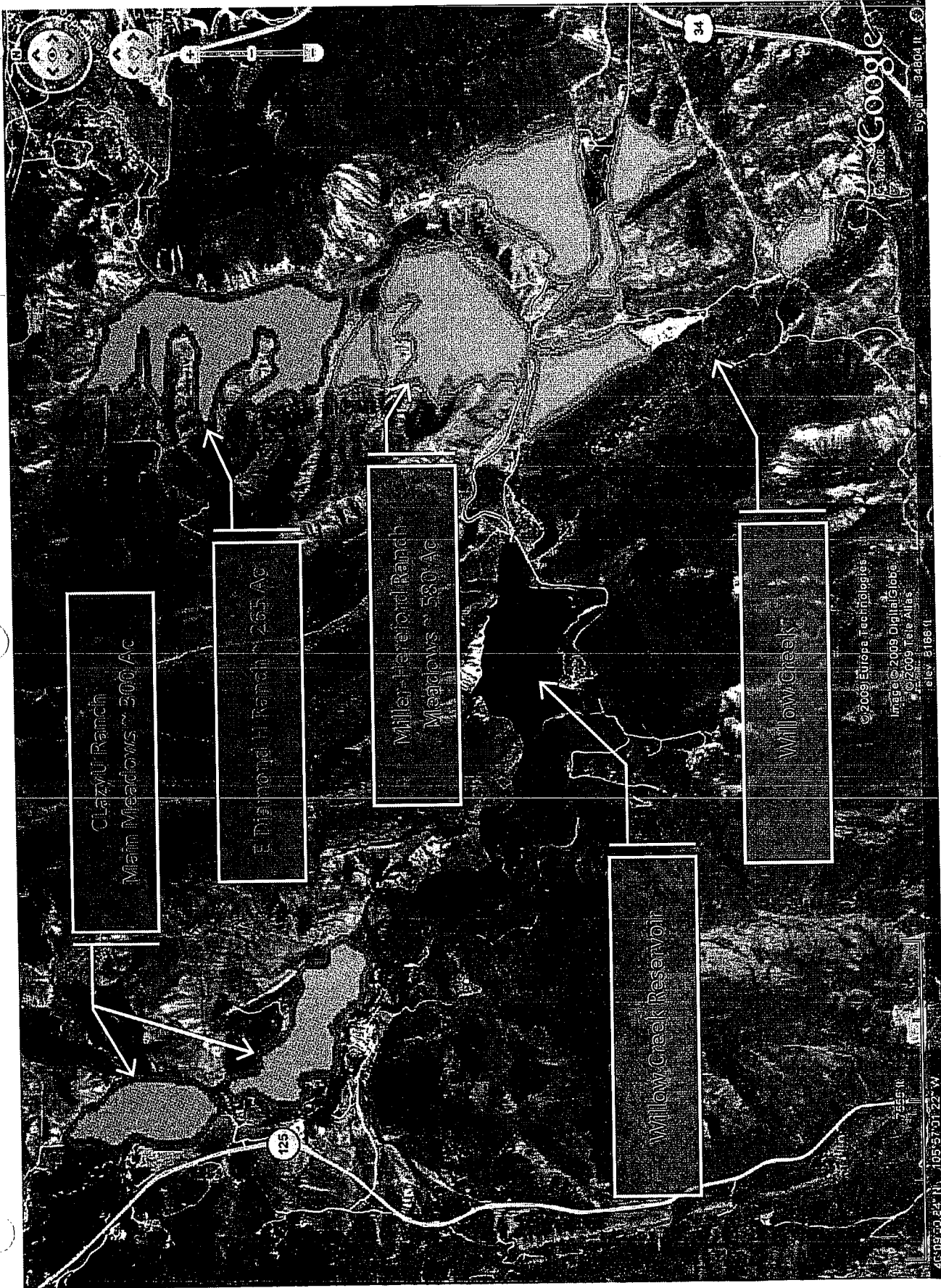
EXHIBIT K

Nonpoint Source Evaluation

- Three operating ranch properties in the Willow Creek Drainage have been evaluated to date
- Proposed modifications include:
 - Taking pasture out of production
 - Constructing buffer strips along stream banks
 - Best Management Practices

Windy Gap Dam and Reservoir Bypass





ClayzU Ranch and Miller-Hereford Agricultural Properties

WINDY GAP FIRING PROJECT

SUMMARY OF MITIGATION AND ENHANCEMENT MEASURES

MITIGATION FOR DIRECT IMPACTS OF WGFP:

Colorado River Streamflow and Aquatic Habitat:

- Stream temperatures – Reduced or curtailed river diversions when stream temperature standards are exceeded (with some limitations), with installation of real-time temperature monitoring devices
- Flushing flows – Required flushing flows increased from 450 cfs to 600 cfs, and increased even more when project water supply exceeds 2/3 capacity

Water Quality in Three Lakes:

- Provide estimated \$4.3 million to reduce nutrient inflow to three lakes to “neutralize” effects of WGFP on Three Lakes water quality and Grand Lake clarity (includes improvements to wastewater treatment facilities and non-point source nutrient reduction)
 - USBR REQUIRES DEMONSTRATED 1:1 REDUCTIONS

Other Required Mitigation:

- Modified Prepositioning to maintain higher water levels in Granby Reservoir
- Colorado River Endangered Species - \$405,000 funding for Upper Colorado River Recovery Program
- \$105,000 for Wetland Mitigation Bank plus re-vegetation and enhancement of disturbed areas

VOLUNTARY ENHANCEMENTS TO ADDRESS CURRENT CONDITIONS:

WGFP IGA with West Slope:

Water supply for West Slope:

- Firm annual water supply for Middle Park WCD – 2,300 AF/year
- Additional pumping for MPWCD providing an average annual supply of 700 AF
- 3,000 acre-feet of carry-over capability

Water for streamflow enhancement:

- Grand County ability to use unused Middle Park WCD supplies– up to 3,000 AF per year
- Grand County share of Windy Gap pumping– 500 AF per year on average
- Grand County ability to pump additional Windy Gap water when available – up to 3,000 AF per year
- 4,500 acre-feet of carry-over capability

Other IGA provisions:

- Participation in Learning by Doing Cooperative Effort with Denver Water and West Slope entities which provides a formal, long-term mechanism to monitor stream conditions and coordinate mitigation, streamflow enhancements and stream restoration work
- No acquisition of new or existing water rights or construction of new water supply facilities in Grand County without West Slope consent
- Provide \$500,000 to Grand County for irrigation pump maintenance fund and funding for water measurement devices on Colorado River diversions
- Windy Gap Project will participate in Shoshone Outage Protocol
- Provisions to protect open space

*Trout, Raley, Montañó,
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pmontano@troutlaw.com
Direct: 303-339-5833

August 1, 2012

Jack DiCola, Esq.
Grand County Attorney
308 Byers Ave.
Hot Sulphur Springs, CO 80451

Re: Conditions on 1041 permit dated August 1 and 2, 2012

Dear Jack,

Some time ago, I agreed to provide you with a response to each condition in the 1041 staff recommended permit. In addition, I request an additional overall provision having reviewed and discussed these conditions with the Subdistrict staff. The conditions are numerous, subject to differing interpretations in many instances and important to both our clients and for these reasons, I suggest adding an overall provision that provides Grand County will give notice to the Subdistrict if the staff believe a violation may occur or is occurring and provide a right to cure within a stated time. The Subdistrict has every intention to adhere to its agreements should we reach closure on a permit the Subdistrict can accept, however, even in that instance it will be to our clients mutual benefit to have a procedure in place that allows discussion and action for a cure to a condition rather than embark on formal and expensive hearing processes if a violation of a condition is suspected or likely. If you would like me to propose language for such a condition I am willing to do so. The conditions I refer to begin on page 44 of the Certificate.

Conditions which are acceptable as written: 1, 2, 11, 17, 18, 21, 23 and 26. Condition no. 3 is acceptable but has a minor typographical error: the word Permit is missing. Please change to read "The 2012 Permit is not transferable..." Condition no. 5 is acceptable but has a minor typographical error: "...is contingent on the participant's use of water *is* ...in compliance with the Windy Gap decrees and Colorado law." The word "is" should be stricken.

Conditions which are acceptable with specific modification to the language:

Condition 4-Modify to insert a period after "does not exceed 90,000 acre feet". The reason the remainder of the sentence is not acceptable is that the term environmental footprint is ambiguous and subject to differing interpretations.

Mr. Jack DiCola
August 1, 2012
Page 2

Condition 6- The first sentence is acceptable as written. The second sentence which begins "A breach..." is not acceptable. The WGFP IGA should have its own independent enforcement provisions. Please add: "A breach of the WFGP IGA by the Subdistrict as determined by a final unappealable decision by a court of competent jurisdiction shall constitute a violation."

Condition 7- Requiring signature by Northern Water is agreeable, however the formal name of the document (which is referred to by yet another title in on page 7 is the "Contributed Funds Act Agreement (CFA Agreement) for executing a Colorado-Big Thompson (C-BT) West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study." Therefore, modifying the provision to read with the formal document name and "has been signed by Northern Water" is acceptable.

Condition 8- The list of closing documents is over inclusive. Those that should be eliminated from the list are: the Windy Gap Decrees which do not get signed by any of the parties; the Green Mountain Administration Agreement which has no connection to the WGFP; the agreement among Middle Park, Grand County and the River District; and Form of Easements. It should be modified to provide for signature by the Subdistrict or Northern as applicable. Requiring signatures of entities outside the control of the Subdistrict or Northern is not acceptable.

Condition 9- Change "The Construction of" to "The storage of water in Chimney Hollow Reservoir shall not commence..." Strike the last sentence which begins "This condition does not preclude..."

Condition 10- Incorporation by reference of all state and federal permits into the 1041 permit is not acceptable. Similarly the term which provides that a conflict is resolved in favor of which term is more protective of the environment is subject to interpretation and is the opposite of the controlling law on preemption. Please see my letter of July 31, 2012 on the issue of pre-emption. Senate Document 80 is not applicable to WGFP. That is a CBT issue and Northern Water is not a permit applicant. Acceptable language reads as follows: "The 2012 Permit shall not be effective until issuance of necessary state and federal permits and approvals for the 2012 WGFP. Grand County will not enforce the requirements of any state or federal permit or approval. The Subdistrict shall provide Grand County with copies of all approved federal and state permits and approvals issued for the 2012 WGFP. Following is a list..." The entry which is not acceptable is Compliance with Senate Document 80.

Condition 12- The "use of water" by Grand County is a problem that can be overcome by substituting the words "for the benefit of" and adding "unless those benefits are precluded by the actions of third parties".

Condition 15 - The requirement of conservation by the water users is of course acceptable. Our concern is that the state law could change from seven years to some other term so we suggest eliminating "every seven years".

Mr. Jack DiCola
August 1, 2012
Page 3

Condition 16- Please add "Water Conservation Act" rather than "conservation requirements". Also change shares to units.

Condition 19- Please see response to Condition 7 above.

Condition 20- The first sentence is acceptable. The second sentence should be stricken.

Condition 22- Grand County will receive copies of all data and the federal permit monitoring plan. The Subdistrict will be in compliance with the state and federal nutrient plans. A separate independent plan is not warranted. This provision is acceptable if modified to track the federal and state monitoring requirements. A condition which reads: "The Subdistrict shall submit copies of all monitoring plans and data required by federal permitting agencies for nutrient mitigation. The monitoring plan shall include a schedule for monitoring and reporting and the Subdistrict shall provide Grand County will all reports and data. The 2012 WGFP shall be operated in compliance the federal nutrient reduction and Nutrient Monitoring Plans."

Condition 24- The WGFP will of course comply with all State and Federal temperature terms and conditions. Additional requirements beyond or in conflict with those State and Federal requirements are not acceptable. Please change the condition to read: "The 2012 WGFP will operate in compliance with the 401 certification and all applicable federal permit requirements concerning temperature."

Condition 25- The temperature monitoring program will be accessible to Grand County and if there is an exceedance Grand County can be notified through the alarm system that will send out notices as preprogrammed. In this way Grand County will get a direct notice without it being relayed through the applicant. The model to be used for a determination of a causal relationship shall be as determined by Colorado Parks and Wildlife. The correction to the first sentence of the word "between" should be corrected to use the word "with".

Condition 27- The applicant will prepare and submit to Grand County a fish and aquatic invertebrates monitoring plan. So the condition would read: "The Subdistrict shall prepare and submit to Grand County a fish and aquatics invertebrates monitoring plan. The monitoring information shall be provided to the Learning by Doing effort and monitoring shall continue as long as the Learning by Doing effort requires this information. If the by pass/through is constructed, this monitoring plan shall be adapted as necessary in consultation with the Management Committee of Learning by Doing."

Condition 29- The bypass study should begin immediately. That sentence is acceptable with a period after "immediately". If the result of the study demonstrates that the bypass/through will benefit the Colorado River, the Subdistrict will put forth its best efforts to work with Grand County and other stakeholders to obtain the funds to construct the bypass/through simultaneously with construction of Chimney Hollow Reservoir.

Condition 30 – Because we believe the provided language is unclear, we provide the following suggestion: "If, during a five (5) year period, natural conditions meet or exceed 600 cfs flushing

Mr. Jack DiCola
August 1, 2012
Page 4

flows as required by the Fish and Wildlife Mitigation Plan approved by the Colorado Wildlife Commission so that the Subdistrict is not required to make releases or bypasses to achieve the required flows, and in the same five (5) year period the flow at the gage below Windy Gap Dam does not exceed 1,200 cfs, the Subdistrict in the sixth year will supplement the natural flows, subject to availability of Windy Gap Project Water in storage and outlet capacity of Granby Reservoir, to provide a flow of 1,200 cfs for a period of 72 hours at the gage below Windy Gap Dam. This condition is contingent upon modifications to the Amendatory Carriage Contract that reduce losses charged for storage of Windy Gap Water on the West Slope to less than the current ten (10) percent.”

Condition 32- This is a Northern Water Agreement not a Subdistrict Agreement. The Northern agreement should be independently enforceable. It is acceptable to require: “The 2012 Permit is not effective until the Northern Water Agreement is signed by Northern Water”.

Unacceptable conditions with a rationale for each:

Condition 13 - The Grand County Master Plan is not imported wholesale into the 1041 Permit by the brief reference noted in the Certificate. I will also say this was never discussed at our several meetings regarding requirements and was included in the Certificate as a completely new issue. Most importantly the Master Plan is not referenced as a requirement in Grand County Regulation 5-306 which lists conditions of approval of a 1041 Permit.

Condition 14 - This condition is clearly subject to preemption by state laws. In addition it attempts to hold the Subdistrict to a different standard than any other water diverter in Grand County by requiring that pumping of water cease only by the Subdistrict. This is not imposed on other upstream municipal water providers in Grand County, nor on water diverters within the reach who divert from the river. This condition reaches beyond the incremental impacts of WGFP and may not solve the issue of temperature raised in the NWCOG letter. The place within the several processes ongoing to address this issue and look for real solutions is the Learning By Doing effort.

Condition 28 - This condition should be determined at the time of the by pass/through design. It may also conflict with state and or federal permitting requirements in the future when the bypass/through is built.

Condition 31 - Monitoring of vegetation is unacceptable as EIS studies indicate there is no impact. The federal Corps of Engineers would be the entity to impose such a permit condition. We suggest this concern be raised in the Learning By Doing process.

Mr. Jack DiCola
August 1, 2012
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Condition 33 - I will initially note that the minimum flow rate in this portion of the river is 150 c.f.s., which should allow a reasonable diversion structure to provide water to these parties. In addition, there is an express provision for \$120,000 (pumper's fund) regarding this issue in the WGFP IGA which should be independently enforceable.

Sincerely,



Peggy E. Montañó
Trout, Raley, Montañó,
Witwer & Freeman, P.C.

cc: Eric Wilkinson, NCWCD
Jeff Drager, NCWCD

Mr. Jack DiCola
August 1, 2012
Page 5

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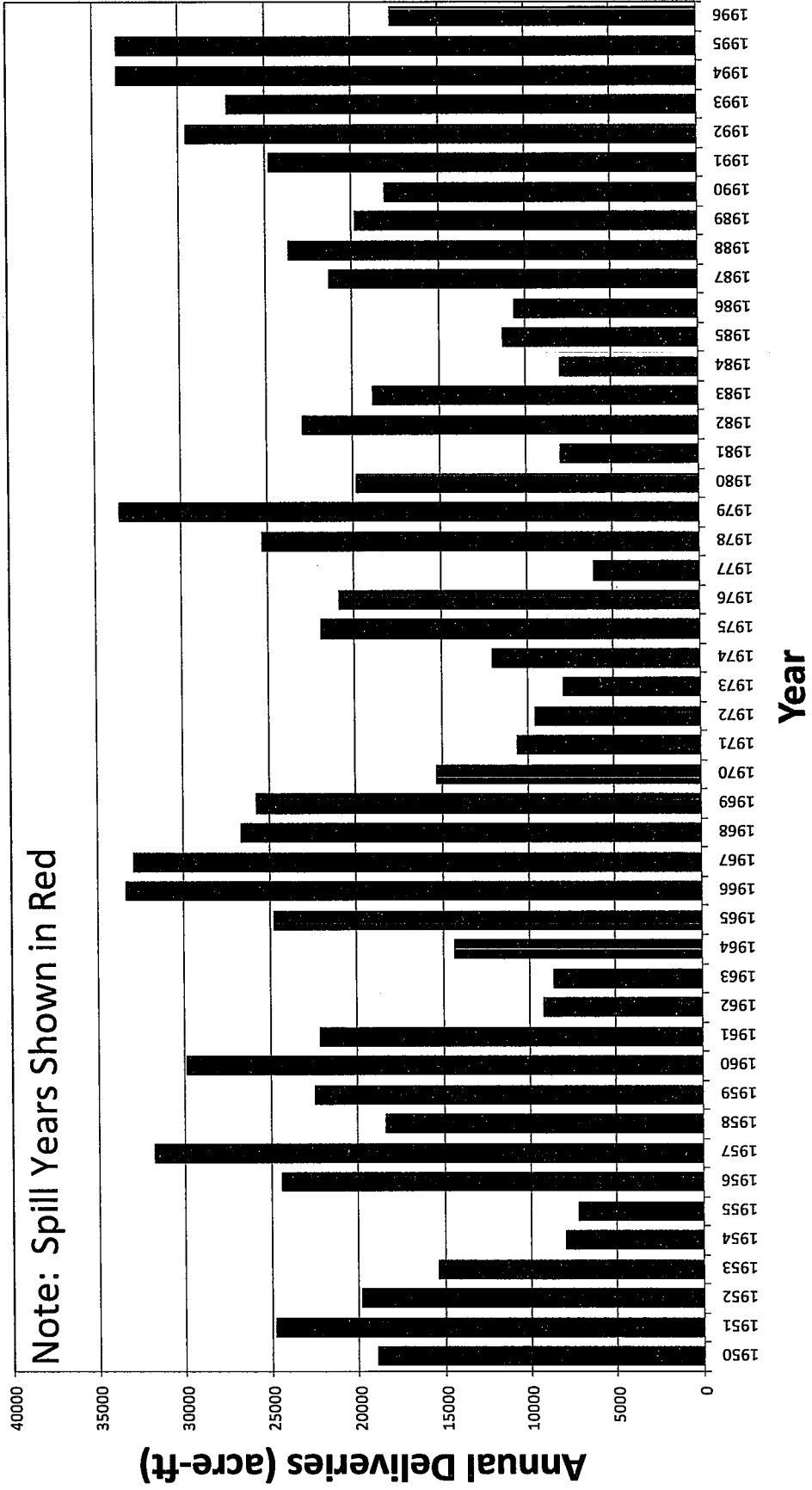
Sincerely,



Peggy E. Montañó
Trout, Raley, Montañó,
Witwer & Freeman, P.C.

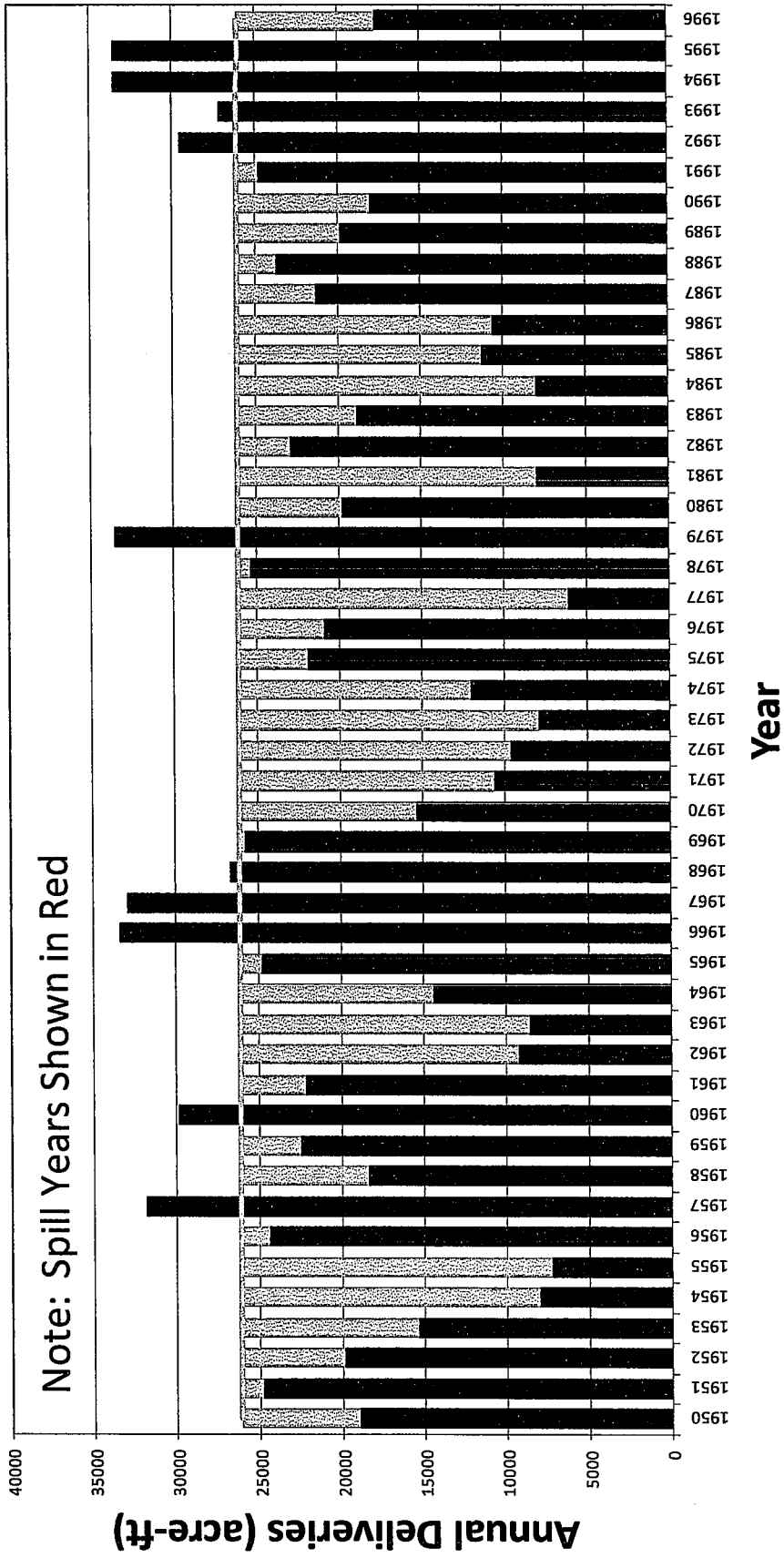
cc: Eric Wilkinson, NCWCD
Jeff Drager, NCWCD

Deliveries to Windy Gap Firming Participants (ac-ft/year)



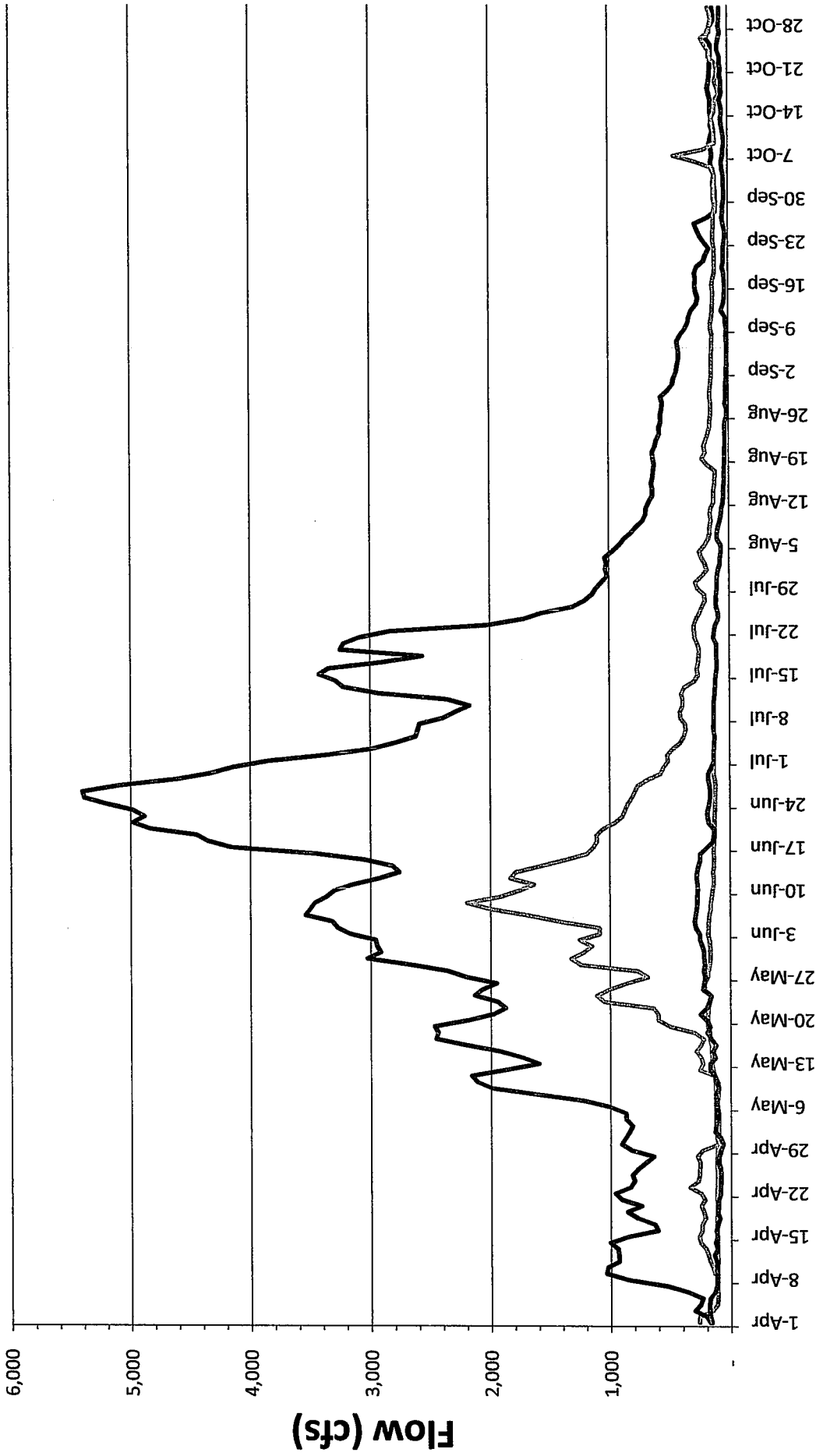
Deliveries to Windy Gap Firing Participants (ac-ft/year)

Deliveries w/o WGFP
 Additional Deliveries w/ WGFP
 Total Deliveries w/ WGFP



Colorado River at Windy Gap - Historic Flow Data

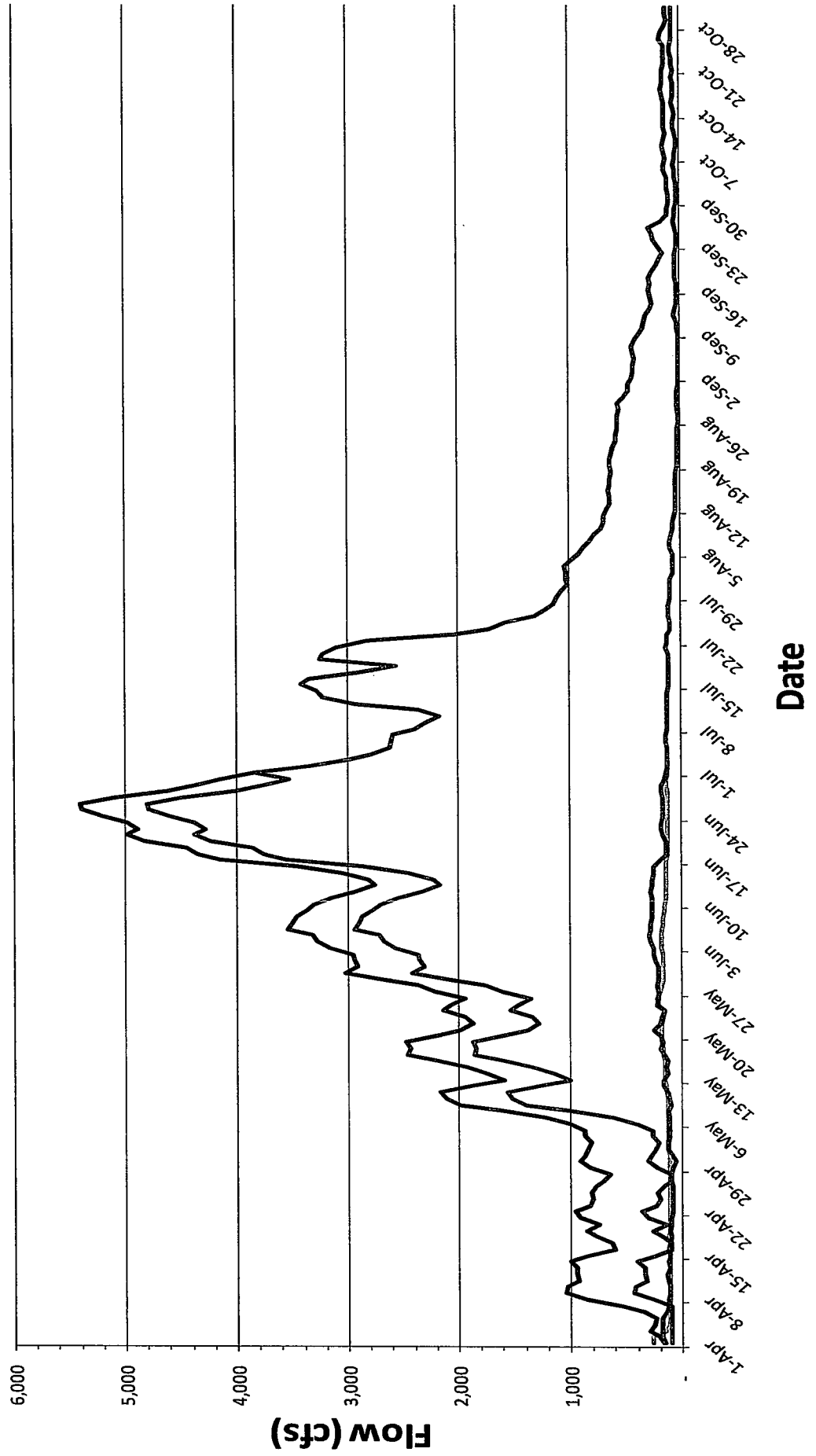
— 2012* — 2011 — 2010 — 2002



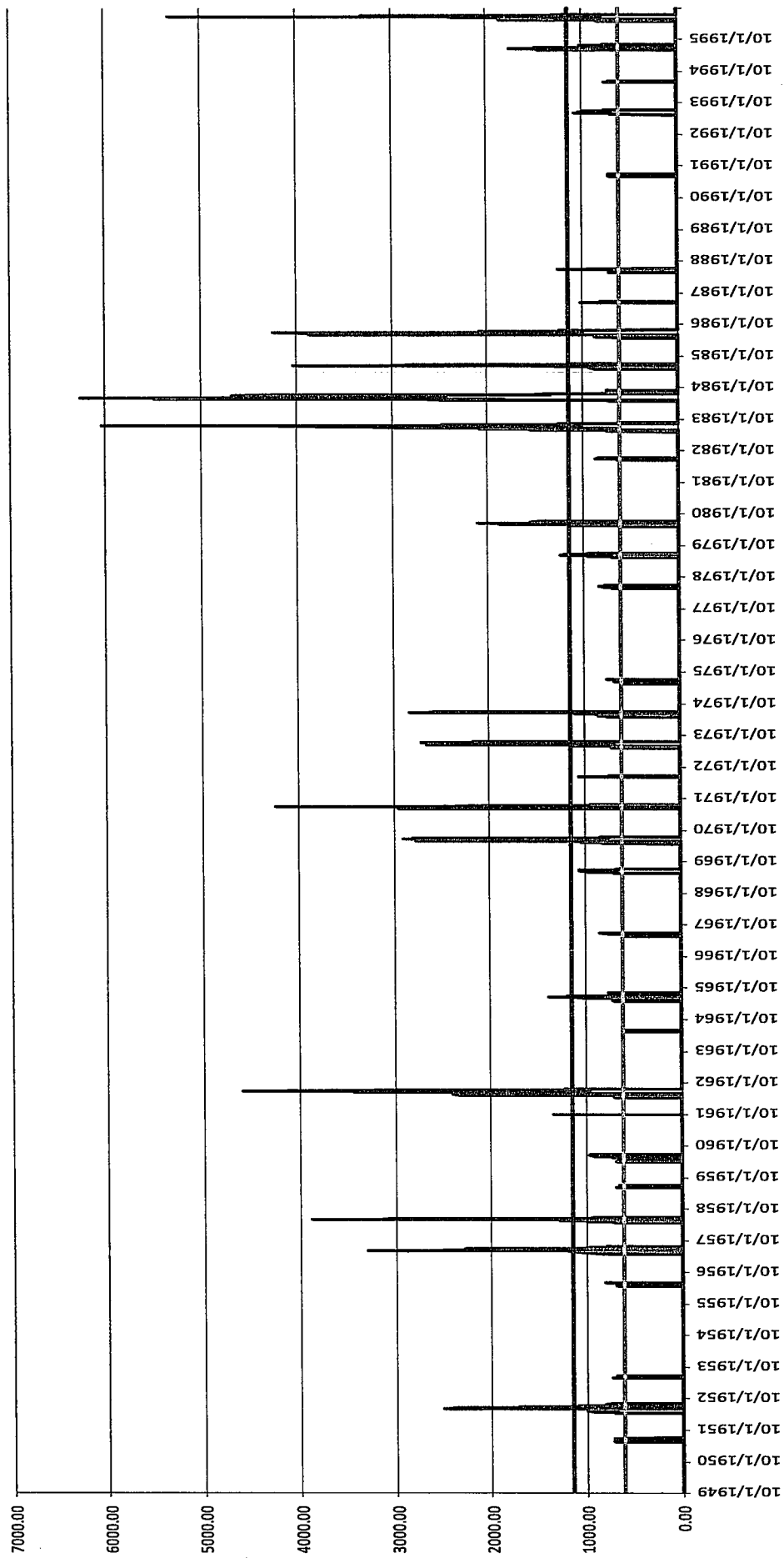
Date

Colorado River at Windy Gap - Estimated 2011 Flows with 100,000 Acre Feet of Pumping

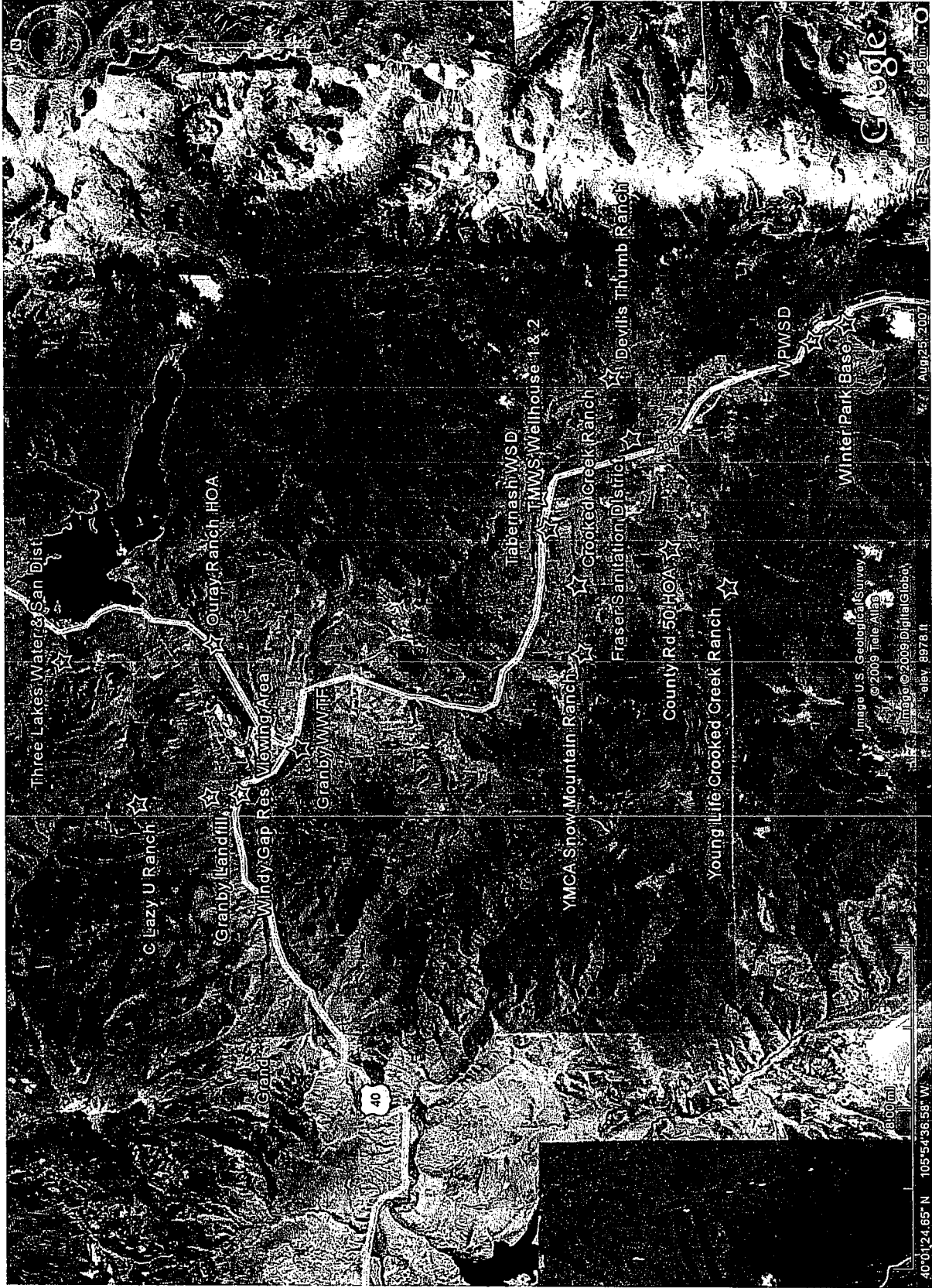
— 2012* — 2011 — 2002 — 2011 Flows with WG Pumping



Flushing Flows above 600 cfs



Flows greater than 600 cfs without WG pumping Modeled flows greater than 600 cfs without mitigation 600 cfs 1145 cfs



40°01'24.65" N 105°54'36.58" W 8100 m

Image U.S. Geological Survey
© 2009 Tele Atlas
Map data © 2009 Digital Globe
elev. 8978 ft

Aug 25, 2007

Google

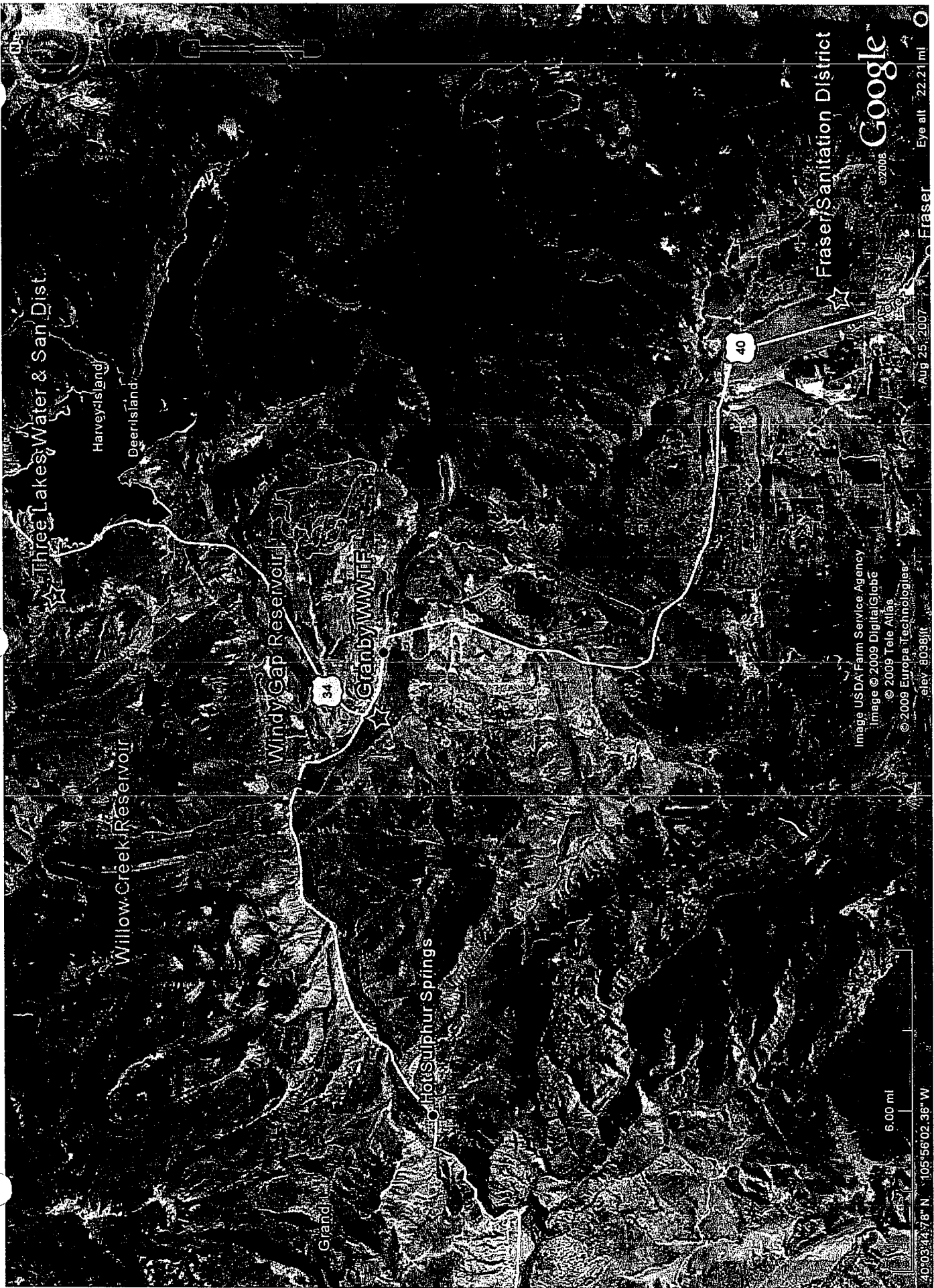


Image USDA Farm Service Agency
Image © 2009 DigitalGlobe
© 2009 Tele Atlas
© 2009 Europa Technologies
elev 3038ft

Google™
32005

Aug 25, 2007 Eye alt: 22.21 mi

40°03'44.78" N 105°56'02.36" W

Nonpoint Source Evaluation

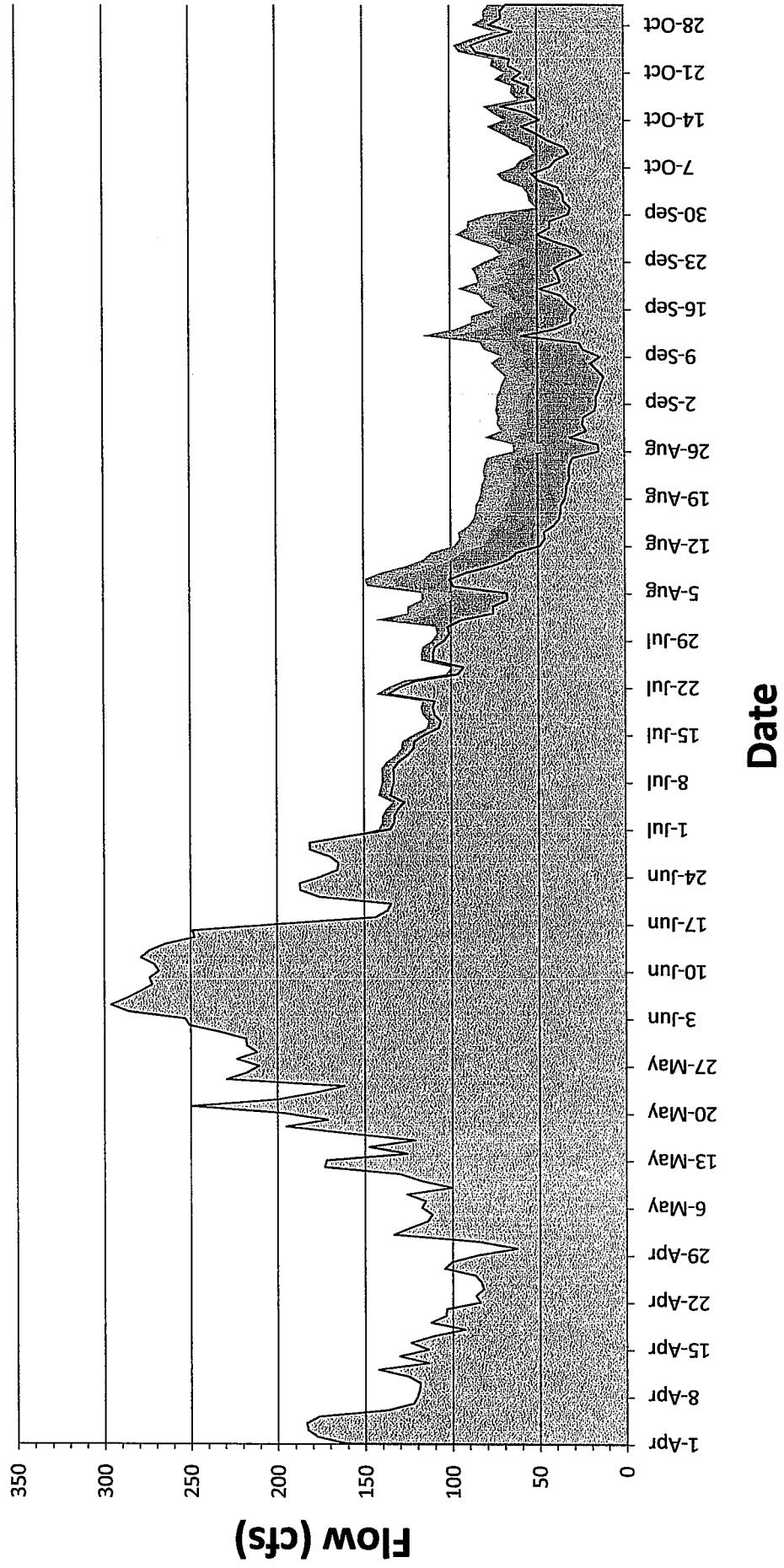
- Three operating ranch properties in the Willow Creek Drainage have been evaluated to date
- Proposed modifications include:
 - Taking pasture out of production
 - Constructing buffer strips along stream banks
 - Best Management Practices



ClazyU Ranch and Miller-Hereford Agricultural Properties

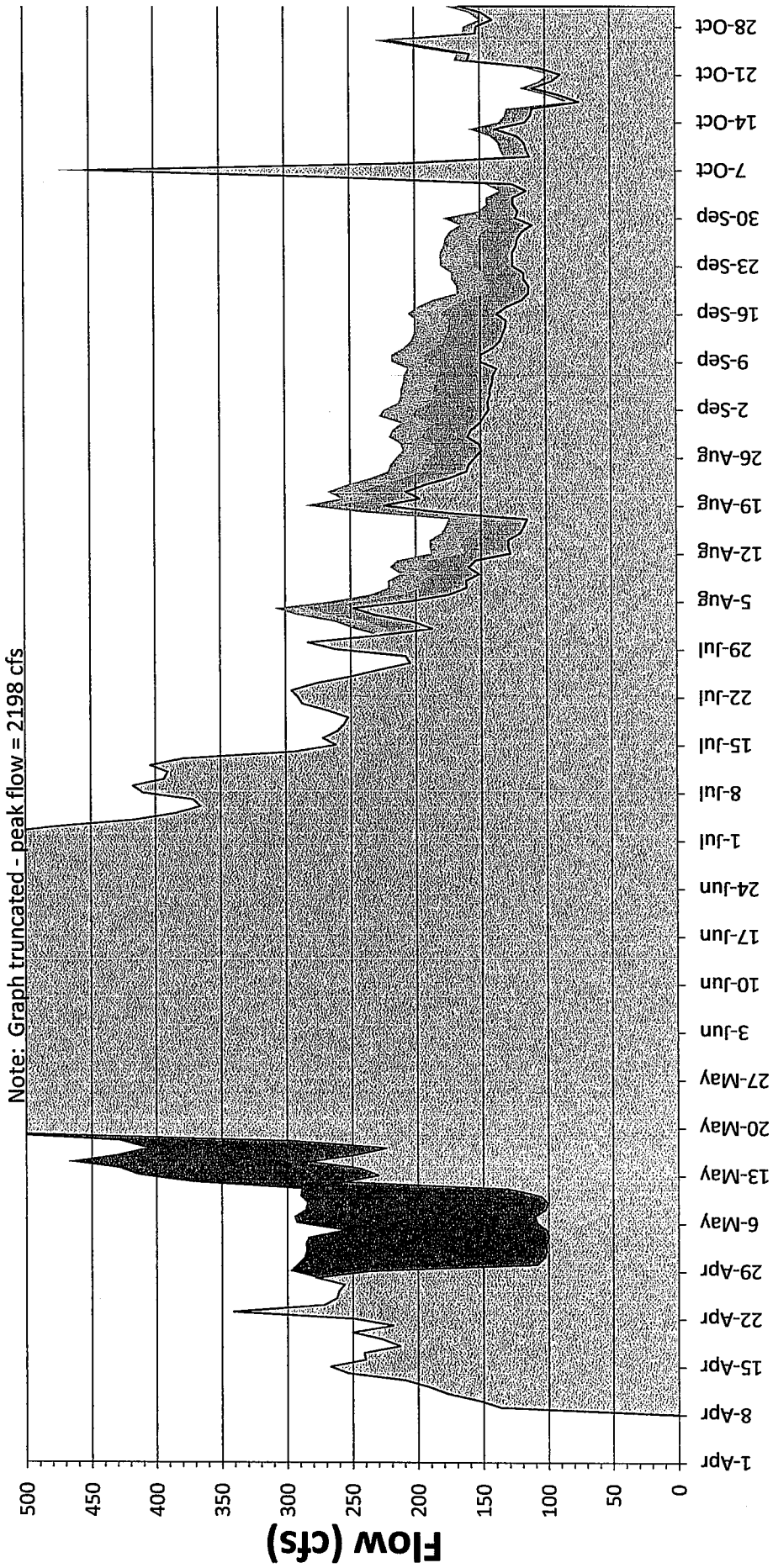
Colorado River at Windy Gap - Estimated 2012 Flows with Enhancements

2012 (estimated) 10825 Releases for Dry Year IGA Enhancements (2000 af MP Transfer Water from 2011)



Colorado River at Windy Gap - Estimated 2010 Flows with Enhancements

2010
 2010 Pumping
 10825 Releases for Average Year
 IGA Enhancements (3000 af)



Date

Windy Gap Dam and Reservoir Bypass



*Trout, Raley, Montañó,
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pmontano@troutlaw.com
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August 23, 2012

Jack DiCola, Esq.
Grand County Attorney
308 Byers Ave.
Hot Sulphur Springs, CO 80451

Re: Responses to Commissioner Inquiries

Dear Jack:

Enclosed is the Closing Argument for the WGFP 1041 Permit application.

In addition, near the conclusion of the hearing for WGFP on August 2, 2012, Commissioner Stuart requested some water usage information from the Subdistrict and Northern Water. The following are the responses to her questions.

Windy Gap Pumping:

The chart below gives the number of days of pumping from Farr Pump Plant through Shadow Mountain to Grand Lake for each of the last 10 years. It is proper to recognize that pumping is based on power generation considerations, as well as water delivery.

Number of Days of Pumping at Farr Pumping Plant (Granby to Shadow Mountain)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Total
2002	31	28	31	26	30	24	29	31	21	5	30	31	317
2003	31	26	21	0	0	0	10	31	27	9	29	31	215
2004	31	29	30	30	18	18	3	12	27	0	18	31	247
2005	31	28	31	7	10	0	4	14	26	15	0	27	199
2006	31	28	31	28	11	16	31	31	28	16	0	31	282
2007	31	28	31	30	0	1	29	31	30	17	30	31	283
2008	31	29	31	30	18	8	26	15	30	31	8	28	285
2009	31	28	31	30	7	0	21	16	30	31	6	30	261
2010	31	28	31	28	8	0	29	29	30	10	21	18	263
2011	28	28	31	30	16	0	0	1	25	31	20	14	224
Monthly Total	307	280	299	239	118	67	176	211	274	165	162	272	
Average	31	28	30	24	12	7	18	21	27	17	16	27	257

Exhibit

R

Mr. Jack DiCola
August 23, 2012
Page 2

Estimated Households:

Population figures were converted to households assuming 2.5 – 2.8 people per household as direct household information are not available. Also the Northern Water and Subdistrict boundaries overlap a great deal so these are not all separate households. Many households receive both Windy Gap and C-BT water. If WGFP is constructed many households will receive all three categories of water, WGFP water, WG water and C-BT water.

WGFP Participants: 440,000 people, 160,000 households
Municipal Subdistrict: 545,000 people, 200,000 households
Northern Water: 842,000 people, 320,000 households

Industries:

Industries are not directly available so these are the industries that could be determined from the data available: Le Prino, JB Swift, Agilent and Hewlett Packard, Platte River Power Authority at Rawhide Power Plant (about 5,000 af per year). Central Weld and Little Thompson water districts provide a large amount of water for dairies (8 to 10 is an estimate for Little Thompson Water District) within their service areas. Others are Con Agra, Amgen and the Ft. St. Vrain Power Plant and Thermo Power Plant. Some participants such as Evans and Lafayette indicate that there no large water users are served.

Certificate Conditions:

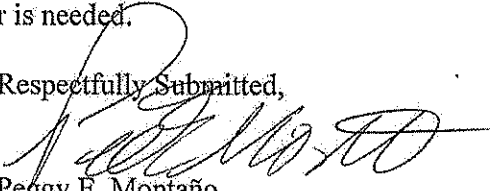
On Monday I did receive a draft revision of revised conditions from the staff. I have not had an opportunity to look closely at them and understand they may yet change. I do want to say however, that a few of them are not workable for a 1041 Permit. The chief example is the condition requiring the WGFP “insure” construction of the by pass or pass through. We well understand the fervor to get a bypass in place, however the 1041 regulations concern the impact of the WGFP- the record makes amply clear that the issues below WG Reservoir that the by pass is to correct are existing conditions, therefore the County Regulations themselves do not support the bypass “insurance” requirement. Also the required “execution” of some matters on the list in the closing documents makes little sense: for example Green Mountain administration is a process primarily driven by the State and Division Engineers. The WGFP has no connection whatsoever to Green Mountain Reservoir or its administration and there is nothing to “execute.” I am sorry to be so blunt, but this is just not possible.

Because what was provided was a draft and what is included may be somewhat different, I will reserve further comment. I also understand that the staff may want to continue a dialog with the applicant in regard to conditions which I wholly support. I look forward to reaching a mutually agreeable set of conditions which are consistent with the WGFP IGA as well.

Mr. Jack DiCola
August 23, 2012
Page 3

Please let me know if anything further is needed.

Respectfully Submitted,



Peggy E. Montañó,

for

Trout, Raley, Montañó,
Witwer & Freeman, P.C.

Enclosure: Closing Argument in Support of a 1041 Permit for a Municipal and Industrial Water Project under Grand County Regulation Chapter 5 (5 copies)

cc: Bennett Raley, TRMWF
Eric Wilkinson, NCWCD
Jeff Drager, NCWCD
Lurline Underbrink Curran, Grand County
Jack DiCola, Grand County Attorney
Barbara Green, Sullivan Green Seavy LLC
David Taussig, White & Jankowski, LLP
Steven Bushong, Upper Colorado River Alliance
David Hook, Town of Grand Lake
Eric Kuhn, Colorado River Water Conservation District
Amelia Whiting, Trout Unlimited