

WGFP

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement"), is entered into by and between the Municipal Subdistrict, Northern Colorado Water Conservancy District ("Subdistrict") and Raymond C. and Carol J. Petersen; Charles Eugene Petersen Trust; Penny Lynn Petersen Trust; Shepardsbend Colorado, LLC; Martha Shepard Revocable Trust; Colorado River Cattle Ranch, LLC; Riverside Ranch Company, LLLP; McElroy Ranch, LLC; Grand Colorado Ranch, LLC; and Bruchez & Sons, LLC (individually and collectively referred to in this Agreement as "Ranchers"). For purposes of this Agreement, the Subdistrict and the Ranchers may be collectively referred to herein as the "Parties."

The Parties enter into this Agreement in order to avoid future litigation relating to the Systems and System Lands as defined in paragraph 1(b) and 1(c) below. In consideration of the mutual promises, conditions, covenants, and agreements below, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged and confessed, the Parties hereby agree as follows:

1. Definitions.

- (a) "1980 Agreement" refers to the "Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project" dated April 30, 1980 (attached as **Exhibit A**).
- (b) "Systems" are the physical infrastructure necessary to irrigate the lands historically and/or presently irrigated by the following twelve pumps and/or diversion structures, including replacements at the existing or an alternate location:
 - (1) Ennis Pump & Ditch System with a capacity of 8 cfs;
 - (2) Orr Pump No. 1 with a capacity of 4 cfs;
 - (3) Petersen Pump with a capacity of 1 cfs;¹
 - (4) Orr Pump No. 2 with a capacity of 8 cfs;
 - (5) McElroy State Pump with a capacity of 8 cfs;
 - (6) Thompson No. 1 with a capacity of 13.84 cfs;
 - (7) TA Engle Ditch No. 1 with a capacity of 10 cfs;
 - (8) TA Engle Ditch No. 2 with a capacity of 2 cfs;
 - (9) TA Engle Ditch No. 4 (aka TA Engle Ditch No. 1 in District 50) with a capacity of 4 cfs;
 - (10) McElroy Ditch No. 1 with a capacity of 12 cfs;
 - (11) McElroy Ditch No. 2 with a capacity of 12 cfs; and
 - (12) Martin Pump No. 1 with a capacity of 6 cfs.
- (c) "System Lands" are the parcels of land historically and/or presently irrigated by the Systems, more particularly described in the attached **Exhibit B**. System Lands are included within the description of "lands in the vicinity of Kremmling" as used in Senate Document No. 80 and are located within the natural basin of the Colorado

¹ The Petersen Pump was historically part of the Orr Pump No. 1, which originally had a capacity of 5 cfs.

River for purposes of § 37-45-118(1)(b)(II), C.R.S. (2012). System Lands do not include lands irrigated by any other water rights and/or diversion structures owned by the Ranchers that do not utilize the Systems. To the extent there are lands owned by the Ranchers that are irrigated by both the Systems and other water rights and/or diversion structures, those lands are included within the defined term of System Lands. System Lands are only included in this Agreement as expressly referenced herein.

- (d) "Stream Restoration Work" means (i) any work associated with the Systems at their existing or any future locations; (ii) any work related to historic or future impacts of the rock and/or check structures identified in paragraph 1(d)(iii) below; or (iii) any work needed to replace, correct, restore or otherwise repair the five rock and/or check structures at the following locations:

| | Longitude* | Latitude* |
|------------------|-------------|-----------|
| Structure No. 1 | -106.327323 | 40.045188 |
| Structure No. 2 | -106.374941 | 40.043467 |
| Structure No. 3A | -106.373689 | 40.045191 |
| Structure No. 3B | -106.372809 | 40.045895 |
| Structure No. 4 | -106.395253 | 40.043987 |

*North American Datum 1983 (NAD83)

- (e) The "Ranchers' Authorized Representative." William H. Thompson, Jr. shall be the sole authorized representative of the Ranchers for purposes of this Agreement. The Ranchers may, by written notice to the Subdistrict executed by each Rancher, designate a different sole representative of the Ranchers for the purposes of this Agreement.

2. Payments.

- (a) In consideration of the release set forth below and the other consideration described herein, the Subdistrict hereby agrees to pay Ranchers the sum of FOUR MILLION and 00/100 Dollars (\$4,000,000.00), the receipt and sufficiency of which is hereby acknowledged by the Ranchers (the "Payment"). This Payment shall be made as follows: (i) a cash payment of \$100,000 is due five business days after the date the Subdistrict has received from Ranchers an original of this Agreement executed by each Rancher and their legal counsel; and (ii) the remainder of the Payment shall be made in three equal installments with the first installment due 30 days after the delivery of the fully executed Agreement pursuant to paragraph 2(a)(i) above and each installment thereafter due on April 15th of each subsequent year. Except for compliance with the express requirements of paragraphs 3, 9 and 10 of this Agreement, the Payment shall not be contingent on anything, including, but not limited to, whether the Subdistrict receives all necessary permits, decrees, and/or other approvals to move forward with its proposed Windy Gap Firming Project.
- (b) The Payment due under this Agreement shall be made by the Subdistrict by wire transfer to the account identified in writing by the Ranchers' Authorized Representative.

3. Account.

The Payment shall be made to the account established by the Ranchers pursuant to paragraph 2 above. The obligation of the Subdistrict with respect to a Payment shall be fully discharged upon the transfer of the funds required for a Payment to the account, and the Subdistrict shall have no obligation or liability for administration of the account or the disbursement of funds from the account to the Ranchers. Funds from the account shall only be used for payment and/or reimbursement of expenses incurred for the replacement, repair, and other costs, including legal fees, associated with the Systems, Stream Restoration Work, or other expenses or expenditures that will enable the Systems to operate more efficiently. The Municipal Subdistrict shall not be in breach of this Agreement for failure to make a Payment if there is no authorized account at the time of a Payment.

4. Release.

In consideration of the Payment, the Ranchers, both individually and collectively, agree to release, forgive, and discharge the Subdistrict and Northern Colorado Water Conservancy District ("Northern Water") from any and all past, present, or future liability or claim of liability or causes of action regarding the operation of or the obligation to provide, maintain, repair, or replace the Systems, regardless of whether any such claim is brought pursuant to or relying on (a) the first and third sentences of paragraph (j) of the Manner of Operation of Project Facilities and Auxiliary Features of Senate Document Number 80, Seventy-fifth Congress, 1st Session; (b) Part V, paragraph 16 of the 1980 Agreement, along with the individual contracts entered into in order to meet the requirements of said paragraph; (c) the statutory provision set forth in §37-45-118(1)(b)(II), C.R.S. (2012) of the Colorado Water Conservancy Act on the basis that the Systems are required in order to not impair or increase in cost the diversion of water by the Ranchers; (d) any Grand County 1041 Permit and/or Special Use Permit or other authorization for the Windy Gap Project or Windy Gap Firming Project; (e) the Stream Restoration Work; (f) any other agreement, regulatory requirement, or statute; or (g) the allegations relating to the Systems contained in the letters and accompanying affidavits dated August 21 2012, from the Ranchers to the Grand County Commissioners and Grand County Manager, and September 6, 2012, from the Ranchers to the Grand County Planning Director. The Ranchers also agree to not sue the Subdistrict or Northern Water regarding claims within the scope of this Release. To the extent that any of the Ranchers or any related or affiliated entity acquires or leases the TA Engle Ditch No. 3 and/or the Thompson No. 2 pump or diversion structures, these facilities shall also be included within the scope of this Release.

5. Water Rights.

Nothing in this Agreement alters, amends, or modifies the priority of or right to enforce the use of the water rights associated with the Systems or the language contained in the second sentence of paragraph (j) of the Manner of Operation of Project Facilities and Auxiliary Features of Senate Document No. 80, which provides that "the rights to the use of water for the irrigation of lands in the vicinity of Kremmling shall be considered to have a date of priority earlier than that of the rights to the use of water to be diverted through the works of this project

to the eastern slope.” Moreover, the water rights which have not been historically diverted by the Systems are not a part of this Agreement.

6. Amendment of the 1980 Agreement.

This Agreement amends and supersedes only Part V, paragraph 16 of the 1980 Agreement with regard to the Systems, along with the individual contracts entered into in order to meet the requirements of said paragraph 16, and extinguishes any and all rights, claims, complaints, demands, or causes of action under Part V, paragraph 16 of the 1980 Agreement, along with the individual contracts entered into in order to meet the requirements of said paragraph. This Agreement does not modify, supersede, or otherwise alter paragraphs 13, 14, 18, 20, 24, 26, 34, 38, and 42 of the 1980 Agreement and these paragraphs remain valid and enforceable.

7. Compliance with Senate Document No. 80.

Except as expressly provided in paragraph 4(a) of this Agreement, nothing in this Agreement (a) allows the Subdistrict to change its obligations to operate the Windy Gap Project and/or the Windy Gap Firing Project in compliance with the provisions of Senate Document No. 80, or (b) allows Northern Water to change its obligations to operate the Colorado-Big Thompson Project in compliance with the provisions of Senate Document No. 80.

8. Taxes.

The Ranchers agree that the Subdistrict is not responsible for any taxes associated with the Payment.

9. No Opposition.

The Ranchers agree to not file a statement of opposition to or otherwise oppose the Subdistrict's application to water court that seeks to incorporate the terms of the Intergovernmental Agreement among the Subdistrict, Grand County, Middle Park Water Conservancy District, Colorado River Water Conservation District, and the Northwest Colorado Council of Governments, as executed by Grand County on December 4, 2012, into the decrees for the Windy Gap water rights. The Ranchers agree to not file comments regarding, request the inclusion of conditions in, or oppose the granting or issuance of federal, state or local permits or authorizations for the Windy Gap Firing Project. The Ranchers will not be required to provide any other assistance to the Subdistrict with regard to the Windy Gap Project or the Windy Gap Firing Project.

10. Dismissal of Action.

Upon the execution of this Agreement by the Parties, the Ranchers also agree to withdraw, with prejudice, and not refile their complaint to the Grand County Board of Commissioners alleging that the Subdistrict is in violation of its 1041 Permit and Special Use Permit associated with the Windy Gap Project with regard to the Systems.

11. No Admission of Liability.

Nothing in this Agreement is an admission of liability, or waiver, or relinquishment of any legal or factual claim or defense on the part of the Subdistrict or Northern Colorado Water Conservancy District with respect to the Systems or System Lands, or pursuant to any existing federal, state, or local statutory, regulatory, or contractual obligations or requirements related to the Windy Gap Project, Windy Gap Firing Project, or Colorado-Big Thompson Project.

12. Perpetual Agreement and Release.

This Agreement shall be perpetual in nature and constitute a covenant running with the Systems and System Lands, and shall inure to the benefit of and be binding on the heirs, successors, administrators, and assigns of the Ranchers, irrespective of any change in ownership of the Systems or System Lands. This Agreement shall be recorded in the real property records in Grand County, Colorado.

13. Warranty of Capacity to Execute Agreement.

- (a) The Parties expressly warrant and represent that they are legally competent and authorized to execute this Agreement. The Parties further expressly warrant and represent that, before executing this Agreement, they have been fully informed of its terms, contents, conditions, and effect of this Agreement.
- (b) The Parties hereto acknowledge that the Parties have, through their respective counsel, participated in the preparation of this Agreement and it is understood that no provision hereof shall be construed against any party by virtue of the activities of such party or such party's counsel in the preparation of this Agreement.

14. Entire Agreement.

This Agreement embodies the entire agreement among the Parties and may be amended only by an instrument in writing executed jointly by the Parties hereto. The Parties agree that signatures on facsimile or other copies of this Agreement shall be treated as if they were the original signature for all purposes. This Agreement may be executed in counterparts.

15. Specific Performance.

The terms of this Agreement are specifically enforceable. The obligations of the Ranchers are only enforceable against them severally, not jointly.

16. Construction.

This Agreement was negotiated and drafted with the assistance of counsel for all of the Parties. The Parties agree that the prior drafts of this Agreement are not relevant to the construction or implementation of this Agreement.

17. Governing Law.

This Agreement is intended to be performed in the State of Colorado and the substantive law of the State of Colorado shall govern the validity, construction, enforcement, and interpretation of this Agreement.

18. Notice.

If to the Subdistrict:

Municipal Subdistrict, Northern Colorado Water Conservancy District
220 Water Avenue
Berthoud, Colorado 80513
Telephone: 1-800-369-7246
Fax: 970-532-0942
Attention: General Manager

If to the Ranchers' Authorized Representative:

William H. Thompson, Jr.
P.O. Box 826
Kremmling, CO 80459
Telephone: 970-724-3853

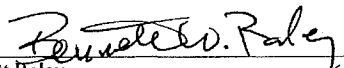
THIS AGREEMENT shall inure to and be binding upon the Parties, their successors, and assigns.

Dated and signed this 21 day of May, 2013.

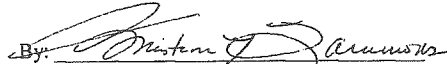
MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

By: 
Eric Wilkinson, General Manager

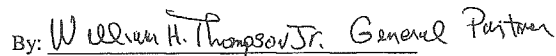
TROUT, RALEY, MONTAÑO, WITWER & FREEMAN, PC

By: 
Bennett Raley
Peggy Montaña
Attorneys for the Municipal Subdistrict

MCELROY RANCH, LLC

By: 
Christina M. Sammons, Member & Manager
McElroy State Pump and McElroy Ditch Nos. 1 and 2

RIVERSIDE RANCH COMPANY, LLLP

By: 
William H. Thompson, Jr., General Partner
Thompson No. 1 and TA Engle Ditch Nos. 1, 2, and 4

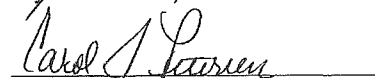
SHEPARDSBEND COLORADO, LLC

By: _____
Martha C. Shepard, Sole Member
Orr Pump No. 1 (aka Holdcroft Pump No. 1)

MARTHA SHEPARD REVOCABLE TRUST

By: _____
Martha C. Shepard, Trustee
Orr Pump No. 2 (aka Holdcroft Pump No. 2)


Raymond C. Petersen


Carol J. Petersen
Petersen Pump and 6 cfs of the Ennis Pump & Ditch System

MCELROY RANCH, LLC

By: _____
Christina M. Sammons, Member & Manager
McElroy State Pump and McElroy Ditch Nos. 1 and 2

RIVERSIDE RANCH COMPANY, LLLP

By: _____
William H. Thompson, Jr., General Partner
Thompson No. 1 and TA Engle Ditch Nos. 1, 2, and 4

SHEPARDSBEND COLORADO, LLC

By: 
Martha C. Shepard, Sole Member
Orr Pump No. 1 (aka Holdcroft Pump No. 1)

MARTHA SHEPARD REVOCABLE TRUST

By: 
Martha C. Shepard, Trustee
Orr Pump No. 2 (aka Holdcroft Pump No. 2)

Raymond C. Petersen

Carol J. Petersen
Petersen Pump and 6 cfs of the Ennis Pump & Ditch System

CHARLES EUGENE PETERSEN TRUST

(aka Charles Eugene Petersen Trust Under Agreement dated December 29, 1988)

By: Carol J. Petersen, Trustee
Carol J. Petersen, Trustee
Petersen Pump and 6 cfs of the Ennis Pump & Ditch System

PENNY LYNN PETERSEN TRUST

(aka Penny Lynn Petersen Trust Under Agreement dated December 29, 1988)

By: Carol J. Petersen, Trustee
Carol J. Petersen, Trustee
Petersen Pump and 6 cfs of the Ennis Pump & Ditch System

COLORADO RIVER CATTLE RANCH, LLC

By: Robert G. Young
Robert G. Young, Manager
Martin Pump No. 1

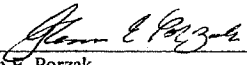
GRAND COLORADO RANCH, LLC

By: Arthur L. Bruchez, Manager
Bruchez & Sons, LLC, Manager
By Arthur L. Bruchez, Its Manager
2 cfs of the Ennis Pump & Ditch System

BRUCHEZ & SONS, LLC

By: Arthur L. Bruchez, Manager
Arthur L. Bruchez, Manager
2 cfs of the Ennis Pump & Ditch System

PORZAK BROWNING & BUSHONG LLP

By: 
Glenn E. Porzak
Karen L. Henderson
Attorneys for the Ranchers

Accepted and agreed to this 21 day of May, 2013.

NORTHERN COLORADO WATER CONSERVANCY DISTRICT

By: 
Eric Wilkinson, General Manager



AGREEMENT CONCERNING THE WINDY GAP PROJECT
AND THE AZURE RESERVOIR AND POWER PROJECT

PART I

MAY 2 1980

PARTIES

COLORADO RIVER WATER
CONSERVATION DISTRICT

The following named entities and persons are the
Parties to this Agreement:

A. Municipal Subdistrict, Northern Colorado Water Conservancy District, herein designated as "Subdistrict" is a political subdivision of the State of Colorado, created under the provisions of C.R.S. 1973, 37-45-101, et seq., for the purposes stated therein, and by Order of the Weld County District Court, pursuant to said statute, on July 6, 1970.

B. Colorado River Water Conservation District, herein designated as "River District," is a political subdivision of and a body corporate under the laws of Colorado, created by the provisions of C.R.S. 1973, 37-46-101, et seq., for the purposes stated therein. The River District was the only protestant in the hereinafter referred to proceedings in Civil Action No. 1768.

C. Northwest Colorado Council of Governments, herein designated as "NWCCOG," is a regional planning commission organized pursuant to C.R.S. 1973, 30-28-105, and an association of local governments contracting pursuant to Article XIV, Section 18 of the Constitution of Colorado and C.R.S. 1973, 29-1-201 et seq., encompassing the Colorado counties of Grand, Eagle, Summit, Jackson, Routt and Pitkin.

D. Grand County is a county of the State of Colorado created by Article XIV of the Colorado Constitution and C.R.S. 1973, 30-5-128, for the purposes stated therein.

E. Middle Park Water Conservancy District, herein designated as "Middle Park" is a political subdivision of the State of Colorado, created under the provisions of C.R.S. 1973, 37-45-101, et seq. for the purposes stated therein.

F. Three Lakes Water and Sanitation District, herein designated as "Three Lakes" is a special district created under the provisions of and for the purposes set forth in C.R.S. 1973, 32-10-101, et seq.

G. Ritschard Cattle Co., Inc.; Joseph McElroy; Isabel McElroy; Olga Hill; Clayton Hill; Howard K. Schmuck, Jr.; Richard P. Doucette; Christine O. Doucette; Jacques Ranch I and Jacques Ranch II, Illinois limited partnerships; Gene Ritschard; David Mayhoffer; John H. McElroy; Mary K. McElroy; Edna L. Palmer; Lloyd A. Palmer; Leo Marte; Eunice Marte; Jessie Joyce Thompson; David Howard Thompson; John Sheriff; Ida L. Sheriff; H. Grady Culbreath; J. Gail Culbreath; John L. Kemp; Crockett C. Kemp; William Henry Thompson; Anita Lewis Thompson; Skylark Ranch Company, a Colorado corporation; Charles G. Broady; Phyllis Broady; Blanche Cowperthwaite dba Gore Canyon, Ltd.; Colorado River Land Corporation; Sunset Associates, a partnership; (herein designated as "Ranchers,"), their successors and assigns, are, among others, owners of ranches on the Colorado River below its confluence with the Fraser River and above its confluence with the Blue River, which in some manner may be affected injuriously by the construction of the Subdistrict's Windy Gap Project.

H. The Town of Granby, the Town of Hot Sulphur Springs, Stanley Broome, Richard P. Doucette and Winter Park Water and Sanitation District and several of the Ranchers are objectors or have entered their appearance in Case No. W-4001, Water Division 5.

PART II

DEFINITIONS

A. Windy Gap Project. A water diversion storage and conveyance system commencing at a point on the Colorado River just below its confluence with the Fraser River and

terminating at Lake Granby, which lake is a part of the Colorado - Big Thompson Project.

B. Azure Reservoir and Power Project. A proposed water storage and hydroelectric power project located on the main stem of the Colorado River approximately 8-1/2 miles west of the Town of Kremmling.

C. Una Reservoir. A proposed water storage and hydroelectric project on the mainstem of the Colorado River located in DeBeque Canyon near the Town of DeBeque.

PART III

RECITALS

A. In 1968, Ralph H. Price, as trustee for the cities of Boulder, Longmont, Estes Park, Loveland, Fort Collins, and Greeley filed claims for certain conditional water rights for the Windy Gap Water System, hereinafter termed the "Windy Gap Project" in the District Court for Grand County in a supplemental water adjudication, Civil Action No. 1768, and under the provisions of the 1943 Adjudication Act. The claims were subsequently assigned and deeded to Subdistrict upon its creation.

B. In April, 1972, hearings on the claims were held by Michael D. White, a Referee, appropriately appointed to conduct such hearings. On April 8, 1974, Referee White entered his findings, conclusions of law and recommendations, and subsequently, after several additional hearings before both Charles F. Stewart and George E. Lohr, Water Judges for Water Division 5, Judge Lohr by Order dated February 23, 1978, granted the conditional decrees sought by Subdistrict.

C. Upon the granting of the conditional decrees for Subdistrict's Windy Gap Project, River District appealed Judge Lohr's decision to the Supreme Court of Colorado, Docket No. 28417, where on September 14, 1979, the Supreme Court reversed Judge Lohr's decision and remanded the action

to the Water Court of Water Division 5 for further proceedings. Upon Petition of the Parties, the Supreme Court has now extended the time for filing petitions for rehearing to May 1, 1980.

D. Since the decision of the Supreme Court on September 14, 1979, representatives of Subdistrict, River District, NWCCOG, Grand County, Middle Park, and the Ranchers have met upon numerous occasions to resolve the differences existing between the Parties in an effort to reach an agreement which would permit Subdistrict to construct its Windy Gap Project by devising a plan for the design, construction and operation of the Project which would comply with the provisions of C.R.S. 1973, 37-45-118(1)(b)(IV) and to mitigate any and all adverse impacts thereof.

E. On December 12, 1978, Subdistrict filed an application for water right in the Water Court for Water Division 5 (Case No. W-4001) seeking an enlargement of its conditional decree for the Windy Gap Pump, Pipeline and Canal by 100 cubic feet per second. This application has been objected to or entries of appearance made, by NWCCOG, River District, Middle Park, Town of Granby, Jacques Ranch I and Jacques Ranch II, Richard P. Doucette, Town of Hot Sulphur Springs, Winter Park Water and Sanitation District, Board of Grand County Commissioners for Grand County, Ritschard Cattle Co., Inc. and Stanley Broome. The application is presently pending in Water Division 5.

F. The Parties have reached an agreement as a result of such meetings and discussions referred to above in Part III, paragraph D, and now wish to execute this Agreement specifying the terms and conditions thereof.

THEREFORE, in view of the foregoing, the Parties hereby agree as follows:

PART IV

PURPOSE OF AGREEMENT

1. The purpose of this Agreement is (1) to permit the Subdistrict immediately to commence and complete the construction of its Windy Gap Project, as evidenced by its decrees, and (2) to permit the immediate planning of the Azure Reservoir and its power features, herein designated as the "Azure Reservoir and Power Project," in order that the Project may be under construction within fifteen (15) years from the date hereof or sooner.

2. Implementation of the provisions of this Agreement satisfies and constitutes compliance by Subdistrict of its obligations under C.R.S. 1973, 37-45-118(1)(b)(IV), insofar as the Parties hereto are concerned, and is in compliance with all requirements for obtaining valid conditional water rights for all components of the Windy Gap Project.

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.

4. Implementation of the provisions of this Agreement, specifically Part V, paragraph 16, is to insure that Subdistrict will plan, design and construct such facilities as are necessary to allow Ranchers to continue to divert their existing senior decrees at no additional cost other than that which would have occurred had the Windy Gap Project not have been constructed.

5. The Agreement constitutes a desirable and practical method and approach for the financing and construction

of the Azure Reservoir and Power Project for the benefit of the prospective users of Colorado River water for irrigation and other beneficial consumptive uses, and, further implementation of this Agreement by all Parties is a further step in providing continued cooperation of both the East and West Slopes of Colorado in the development of all of Colorado's water resources for the beneficial use of all citizens of the State of Colorado.

PART V

AGREEMENTS OF SUBDISTRICT

6. Subdistrict, as expeditiously as reasonably possible, will use its best efforts to cause the Azure Reservoir and Power Project to be constructed at or near its decreed location on the Colorado River to its maximum feasible capacity at the Subdistrict's sole cost and at no cost to the River District, except as hereinafter provided, or to any citizen or entity of Colorado West of the Continental Divide, including Jackson County. Provided, however, that determination of the maximum feasible capacity of Azure Reservoir (estimated to be 28,000 to 30,000 acre feet) shall include an evaluation of the cost effectiveness of protective works and facilities required to prevent interference with the maintenance and use of the Denver and Rio Grande Railroad. In determining cost effectiveness, if the incremental value (over the life of the Azure Project) of the gain in storage capacity and power production by construction of protective works exceeds the cost of such works, such protective works shall be included as part of the Project. All necessary Federal, State or local permits and licenses required by law shall be obtained by Subdistrict at its sole cost. River District will cooperate and aid, including participation as a joint applicant, Subdistrict in obtaining such permits and licenses. Costs incurred by the River District in cooperating, aiding, or as a joint applicant, in the obtaining of necessary permits or licenses shall be borne by River District.

7. All water released from Azure Reservoir shall, unless impracticable, be released through the power plant, and all power produced from Azure Power Plant shall be marketed upon terms and conditions mutually satisfactory to the Subdistrict and River District by an entity to be selected by the Subdistrict and River District. Revenues produced from the marketing of said power shall be applied in the following order:

First: To payment of all annual operation and maintenance costs associated with Azure Reservoir and Power Project including the maintenance of adequate contingency funds.

Second: To payment of annualized debt service (including therein preconstruction costs and those costs incurred by Subdistrict pursuant to paragraph 16) incurred by the Subdistrict in the construction of Azure Reservoir and Power Plant for the repayment period of any bonds issued to finance the Azure Reservoir and Power Project.

Third: To payment to Middle Park for hydroelectric power produced from Middle Park water released pursuant to paragraph 9, subparagraph First.

Fourth: All sums remaining after the payments contemplated in subparagraphs First, Second and Third (or after retirement of all debt described in subparagraph Second) shall be divided equally between Subdistrict and River District to be utilized as they may individually determine; or, Subdistrict may elect to receive its one half of the revenues in electrical energy or to have its one half of any such revenues applied to the payment of its power costs for the Windy Gap Project.

8. Title to the Azure Reservoir and Power Project facilities or alternate facilities contemplated hereunder will be transferred by Subdistrict to River District upon

repayment of all advance costs incurred by Subdistrict following the date of this Agreement in the development of said Project or as may be provided for or required by any bond covenants entered into by Subdistrict for the financing of the Azure Reservoir and Power Project.

9. The capacity of Azure Reservoir, with due regard being given to Project hydroelectric capabilities, shall be allocated as follows:

First: An amount not to exceed 2000 acre feet of water to Middle Park to be marketed by that entity within the geographic area of Middle Park or as may be authorized by statute. On or before the first day of each water year Middle Park shall notify the entity operating Azure Reservoir and Power Plant, the Subdistrict and the River District, of the quantity of water to be allocated to Middle Park for which Middle Park has or expects contracts for the use thereof in the coming water year. Such quantity of water will be retained to Middle Park's account, to be released as directed by Middle Park. The volume of water, if any, not disposed of by Middle Park up to said 2000 acre feet shall be disposed of pursuant to the provisions of subparagraph Third of this paragraph 9, provided, however, that all power revenues produced from said 2000 acre feet shall be credited to the account of Middle Park pursuant to paragraph 7, subparagraph Third. In the event Middle Park exercises its option upon completion of Azure Reservoir to utilize its additional 1000 acre feet of water in Azure Reservoir as set forth in paragraph 17, then the figure of 2000 acre feet herein shall be changed to 3000 acre feet.

Second: An amount not to exceed 3000 acre feet of water to Subdistrict to be used as replacement for out-of-priority diversions of the Windy Gap Project;

provided, if not so needed on an annual basis on or before October 31 of each year, then such water will be subject to the provisions of subparagraph Third of this paragraph 9. The amount of water herein allocated to Subdistrict may be reduced to 2000 acre feet depending on the election of Middle Park as provided in Paragraph 17.

Third: The balance of the water yield of Azure Reservoir shall be marketed by River District in Colorado for the benefit of western Colorado on terms and conditions to be determined by River District. All revenues derived from the marketing of this water shall be the property of River District. Provided, the allocations herein made shall be subject to the operational priorities established in paragraph 10 hereof. Should a dispute arise between the Parties hereto concerning any conflict between the operating priorities described in paragraph 10 and a specific contract for disposition of Azure water, it shall be resolved by the Water Judge for Water Division 5, subject to appeal as provided by law. The Ranchers to the extent of their interest, if any, shall be represented in any such proceeding by Middle Park and River District pursuant to said District's statutory obligations at no cost to the Ranchers.

10. Azure Reservoir and Power Project shall be operated by an entity to be selected by mutual agreement between Subdistrict and River District. The reservoir shall be operated by the selected entity as nearly as practicable according to the following priorities:

First: To comply with and satisfy the terms and provisions of C.R.S. 1973, 37-45-118(1)(b)(IV).

Second: To satisfy future beneficial consumptive uses of water in Colorado for the benefit of western Colorado and to replace out-of-priority Windy Gap Project diversions as set forth in paragraph 9, subparagraph Second hereof.

Third: To generate hydroelectric power.

Fourth: To the extent compatible with the foregoing primary priorities, for aesthetic, recreational and other nonconsumptive uses, provided, that the operational integrity of the Azure Reservoir and Power Project is maintained and the safety of the public is protected. The governmental entity making use of the Project for these purposes shall assume in a separate agreement with Subdistrict and River District all resulting operational and maintenance costs and all liability of any nature arising from the use of the Project for such public purposes.

11. During preconstruction, design and construction activities, it may be necessary to modify project design or relocate project features. Should such situation arise, decisions related thereto will be made by mutual agreement of Subdistrict and River District with advice of all such changes to Middle Park.

12. At any time during a period of 15 years, or of any extended time mutually agreed upon by Subdistrict and River District, from the date of initiation of construction of the Windy Gap Project, the Subdistrict and the River District may by mutual agreement determine that it is no longer feasible to pursue the construction of Azure Reservoir and Power Project for engineering or other reasons. Should Subdistrict and River District so mutually agree, then likewise by mutual agreement of such parties, an alternate facility shall be selected for construction at the cost of the Subdistrict, which facility shall be located, if practicable, within the geographic area of Middle Park. Said alternate facility shall be comparable to Azure Reservoir in the sense that it can provide substantially similar benefits to the Parties hereto; provided, the hydroelectric features may be omitted if not feasible and the costs and benefits related

thereto likewise may be omitted from the alternate selected. If hydroelectric features are constructed as a part of such alternate facility, the power revenues therefrom shall be distributed and allocated as set forth in paragraph 7. The nonreimbursable costs of construction of such alternate facility shall not exceed, so far as the obligation of Subdistrict is concerned, excluding the costs of compliance with paragraph 16, the sum of \$10,000,000 escalated or deescalated from the date of this Agreement in accordance with the ENR (Engineering News Record) "Irrigation and Hydro Cost Index for the West" to the date of award of contract for the construction of the alternate facility. If said alternate facility has included therein hydroelectric features, Subdistrict shall include in said \$10,000,000 the previously incurred costs relating to the Azure Reservoir and Power Project and the costs of compliance with paragraph 16.

Should construction of the Azure Reservoir and Power Project not be initiated within 15 years from the date of initiation of construction of the Windy Gap Project, or in the case of an alternate facility, within 20 years of said date, and any extension thereof mutually agreed to by River District and Subdistrict, then the Subdistrict shall have the right to apply to the Water Judge for Water Division 5, subject to the right of appeal, for a determination that under the then extant conditions, the Subdistrict's actions hereunder, other than construction of the Azure Project or the alternate facility, constitute adequate compliance with C.R.S. 1973, 37-45-118(1)(b)(IV) to the end that Subdistrict shall be relieved from any further duty in relation to its Windy Gap Project diversions and said statute.

Should the parties hereto agree to forego additional work toward construction of the Azure Reservoir and Power Project or the alternate facility contemplated hereunder, and/or the Water Court should relieve the Subdistrict from any further duty, the Subdistrict shall forthwith assign to

the River District all permits, licenses, engineering plans, drawings, specifications and other material acquired or produced by the Subdistrict or others in connection with the Azure Project or said alternate facility. River District shall have the right to proceed with said Project(s) free of the obligations of this Agreement with respect thereto. To the extent the failure to initiate construction within the periods herein contemplated for Azure Reservoir and Power Plant, or the alternate facility, is due to reasonably avoidable fault or delay on the part of Subdistrict, the time within which construction was to have been initiated shall be extended a like period. For the purposes of this Agreement, the initiation of construction shall be deemed to have occurred on the date construction contracts are signed which result in physical onsite work on the facilities contemplated hereunder. All lands and rights-of-way, if any, acquired by Subdistrict for said Project may be acquired by River District at cost, plus interest thereon at the rate being paid by Subdistrict thereon, if notice of River District's desire to obtain said lands and rights-of-way is given to Subdistrict in writing within six months after any agreement to forego said additional work.

13. Windy Gap Project diversions will be made strictly under the priority system (including exchanges), thus protecting all conditional and absolute water rights senior in priority, unless specifically subordinated to Windy Gap decrees.

14. Subdistrict will comply with all terms and provisions of Senate Document 80 in the design, construction and operation of the Windy Gap Project.

15. The Parties acknowledge and agree that Subdistrict may initiate immediately the construction of its Windy Gap Project prior to the construction of Azure Reservoir and Power Project, which latter facility is intended to comply with the provisions of C.R.S. 1973, 37-45-118(1)(b)(IV);

provided that no water may be diverted from the western slope of Colorado (from streams west of the Continental Divide) through said Windy Gap Project facilities prior to the initiation of construction of such facilities contemplated in paragraphs 6 and 12 hereof, or it is determined that such facilities will not be constructed pursuant to the provisions of paragraph 12; provided, however, that in the event of actual requirements by any or all of the Windy Gap Project participants for water for initial domestic, municipal or power purposes within the boundaries of the Subdistrict, directly or by exchange, diversions to the extent of such requirements may be made with the prior consent of River District and such consent shall not be unreasonably withheld.

Subdistrict shall have the right to make the maximum diversion necessary or possible, pursuant to paragraph 3(d) of that Carriage Contract, Contract No. 14-06-700-7497, between the Northern Colorado Conservancy District, United States of America and Subdistrict, dated October 3, 1973, in any one year only and when the diversion will not interfere with any beneficial consumptive use of water from the Colorado River and its tributaries in western Colorado.

Diversions by the Windy Gap Project prior to completion of adequate facilities for diversion of water by Ranchers shall not interfere with the delivery into Ranchers' diversion facilities of their presently decreed prior rights to water.

16. Subdistrict within one year after initiation of the construction of the Windy Gap Project is under construction, will advance a sum sufficient for the following purposes:
(1) payment of \$25,000 to Grand County for salinity studies of the Colorado River (the results thereof to be made available without cost to all other parties hereto), (2) payment to the Town of Hot Sulphur Springs of \$150,000 for assistance in improving its water treatment facility and \$270,000 for assistance in improving its waste water treatment facility,

and (3) such additional sums as needed for Subdistrict to plan, design and construct facilities needed by the Ranchers for the diversion and delivery of the Ranchers' senior decreed water rights from the Colorado River. Said sums, when paid by the Subdistrict and expended or obligated, shall not be recoverable in the event the Subdistrict voids this Agreement under the terms of paragraph 41 below. Subdistrict shall design and construct such facilities in accordance with specifications approved by the State Engineer. Ranchers agree that the design of any such facility when approved by the State Engineer, constitutes compliance of the design requirements by Subdistrict. Subdistrict agrees to replace and reconstruct such facilities at its own cost if the same prove to be defective at any time within seven (7) years after completion of the Windy Gap Project. If the efficiency or purpose of such facility is rendered ineffective or defective for delivery of existing decreed water to a Rancher because of any action by or operation of Subdistrict, the Subdistrict agrees to correct such defect at its own cost. Subdistrict agrees to process and obtain such permits as necessary to permit construction of Ranchers' facilities.

Individual contracts shall be negotiated with each Rancher in order to meet the requirements of this paragraph, including necessary construction easements, subject, however, to the limitations contained in this Agreement. The contracts for construction of such facilities shall be finalized within 90 days after the Windy Gap Project is under construction, and if not finalized within said period, Subdistrict may proceed to construct said facilities as designed by Subdistrict and approved by the State Engineer.

17. Subdistrict will dedicate and set aside annually, but noncumulatively, the following amounts of water produced from the Windy Gap water supplies to be stored as follows:

(a) Prior to the construction of Azure Reservoir and Power Project, or alternate facility, the Subdistrict will place 3000 acre feet of water in Granby Reservoir for beneficial use, without waste, in Middle Park and will release 2000 acre feet thereof for all beneficial uses, except for instream uses and industrial uses (unless the industrial use is within a municipality and through its municipal water system), and the additional 1000 acre feet of such water for municipal and domestic uses in Middle Park. The release of this 1000 acre feet shall be made only if domestic and municipal uses in Middle Park have not been met adequately from the 2000 acre feet of water previously released.

(b) After the Azure Reservoir and Power Project, or alternate facility, has been constructed, the Subdistrict will place 2000 acre feet of water in Granby Reservoir for beneficial use, without waste, in Middle Park and will release said 2000 acre feet for all beneficial uses, except for instream uses and industrial uses (unless the industrial use is within a municipality and through its municipal water system). Subdistrict will additionally place, at the direction of Middle Park, 1000 acre feet of water in either (1) Azure Reservoir, or the alternate facility, for all beneficial uses in Middle Park and thereby reduce the 3000 acre foot capacity reserved to Subdistrict in paragraphs 9 Second and 29 to 2000 acre feet, or (2) Granby Reservoir for municipal and domestic uses in Middle Park. If said 1000 acre feet is placed in Granby Reservoir, all pumping costs incurred by Subdistrict to store said water in Granby Reservoir shall be reimbursed annually to Subdistrict by Middle Park.

These waters shall be released by Subdistrict, upon request of Middle Park and subject to operational criteria

established by the United States. Any water so stored in Granby Reservoir shall be the last of any Subdistrict water to be spilled from Granby Reservoir, if such spill is required.

18. Subdistrict will not claim the use of Green Mountain Reservoir for replacement purposes for the Windy Gap Project operation.

19. Subdistrict will apply for an NPDES permit for diversion and carriage of water to Granby Reservoir if the same is required by law.

20. Subdistrict will pay its proportionate share of any direct mitigation costs attributable to salinity on the Colorado River which legally may be imposed at a future date by any competent authority and which is proportionately required of all users in Colorado of Colorado River water.

21. Subdistrict agrees to a water classification for Granby Reservoir, Shadow Mountain Reservoir and Grand Lake which will permit all present beneficial uses of these reservoirs or lakes, but reserves its right to contest imposition of water quality regulations on its activities.

22. Subdistrict will not oppose the dredging of Shadow Mountain Reservoir for water quality purposes, provided that such work is scheduled in such a manner as to not interfere with the essential operations of the Colorado-Big Thompson Project and the Windy Gap Project.

23. Subdistrict shall withdraw its opposition to any present River District Water Court proceedings in Water Division 5 and 6. As long as Subdistrict is proceeding diligently in the planning and construction of the Azure Reservoir and Power Project, or its alternate, or the same is constructed, River District agrees not to make a call on Subdistrict water rights for the benefit of any of its present conditional decrees with diversion points on the main stem of the Colorado River above the confluence of the Colorado and Roaring Fork Rivers, nor as to storage below such point on the Colorado

River to the extent the same will probably fill from other sources as determined by mutual agreement between the River District and Subdistrict. In the event of disagreement, such determination shall be made by the Division Engineer, Water Division No. 5. Provided, further, however, that to the extent that vacant capacity in Una Reservoir is created by power releases only, and the water so released not beneficially consumptively used in Colorado, that capacity shall be subordinated to the Windy Gap Project. This Agreement not to call shall become ineffective, except as to the capacity in Una Reservoir created by water releases for power purposes only, in the event of release by the Water Court of Subdistrict's duty to construct Azure Reservoir and Power Project, or its alternate facility. Further, Subdistrict will not oppose any present or future applications of River District in Water Division 5 and 6 unless the same may affect the administration of the Subdistrict's Windy Gap water rights on the main stem of the Colorado River.

24. Subdistrict agrees to bypass at the Windy Gap Reservoir diversion site at all times the lesser of the following: (1) Such amount as may be necessary to satisfy all senior decrees of the Ranchers and to provide such minimum stream flow in that stream segment of the Colorado River below the Windy Gap Project and above the confluence of the Blue River and the Colorado River as may be determined by the Colorado Division of Wildlife and subsequently decreed to the Colorado Water Conservation Board pursuant to C.R.S. 1973, 37-92-102(3), or (2) the natural flow of the river at the Windy Gap Reservoir diversion site if the natural flow is less than (1) hereof. It is the intent of the Parties that the amount of bypass by Subdistrict contemplated herein is based upon valid existing decrees and shall not be increased by future changes in stream regimen caused by changes in point of diversion, changes in type, place or extent of use, or

future junior decrees on this segment of the River, including tributaries thereto. Further, it is not the intent of this provision to preclude Ranchers from exercising their senior rights against any or all junior existing conditional or future rights on the Colorado River or its tributaries or to supersede those rights guaranteed to Ranchers by C.R.S. 1973, 37-86-113.

Further, Subdistrict agrees not to oppose the application for minimum stream flow made by the Colorado Water Conservation Board for this purpose if the same is not in conflict with the provisions hereof, and to assist in supporting the integrity thereof, if necessary.

Subdistrict agrees to the installation, at no cost to Ranchers, of a stream gaging station on the Colorado River in the vicinity of the present diversion structure of the Kinney-Barriger Ditch, and at such other points on the Colorado River as may be necessary as determined by State Engineer and the Colorado Water Conservation Board, to adequately monitor the minimum stream flows as set forth in this paragraph.

25. Subdistrict agrees 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.

26. Subdistrict agrees that no additional water or water supplies will be carried through the Windy Gap facilities unless such conveyance complies with the provisions of C.R.S. 1973, 37-45-118(1)(b)(IV).

27. Subdistrict will cooperate with all parties in permitting public use for recreational purposes of the land owned by Subdistrict at the Windy Gap Reservoir site upstream of the diversion dam, provided that the operational integrity of the Windy Gap Project is maintained and the safety of the public is protected. Grand County, or other responsible

governmental agency, in a separate agreement with Subdistrict shall assume all operation and maintenance costs and all liability of any nature for use of the facility by the public for recreational purposes. Subdistrict will maintain the Windy Gap Reservoir full at all times following the termination of diversions in the fall and prior to the start of diversions in the spring, provided, however, that the reservoir may be temporarily drained during this period for any maintenance or improvements.

28. Three Lakes intends to construct a sewer project that will collect sewage effluent presently discharging into Grand Lake, Shadow Mountain Reservoir and Lake Granby and will carry such effluent to new treatment facilities to be constructed in the Willow Creek drainage. At the request of the Northern Colorado Water Conservancy District, Three Lakes has agreed to construct such ditches and related facilities as are necessary to allow the effluent from its proposed new treatment facilities to flow by gravity to a point on Willow Creek above the headgate of the Bunte Highline Ditch in order to reduce the quantity of water required to be released from Willow Creek Reservoir to meet the call of said ditch. Northern Colorado Water Conservancy District has agreed that the construction of such facilities will satisfy any obligation of Three Lakes that might be asserted to arise because of depletions to Colorado-Big Thompson Project water rights and storage facilities resulting from construction of the Three Lakes project. Except for the costs of the initial construction of the treatment facilities, the ditches and related facilities, and maintenance of them, Subdistrict shall pay any and all costs required to implement the exchange, or incurred as a result of such exchange, of Three Lakes sewage effluent for water that would otherwise be required to be released from Willow Creek Reservoir to meet the call of the Bunte Highline Ditch, including all costs incurred to

obtain any permits or other approvals required by law in order to implement such exchange.

PART VI

AGREEMENTS OF RIVER DISTRICT

29. River District and Middle Park agree to provide for the purpose and subject to the limitation contained in paragraph 9, subparagraph Second, 3,000 acre feet of capacity in Azure Reservoir or substitute facility built pursuant to this Agreement for the use and benefit of the Subdistrict, thereby reducing the entitlement of Middle Park in Azure Reservoir to 2000 acre feet.

30. River District will make satisfactory arrangements to permit joint or other appropriate use by Subdistrict of its pending Federal Energy Regulatory Commission (FERC) application for a preliminary permit for the Azure Reservoir power features or for such other appropriate arrangement as may be agreed upon by River District and Subdistrict.

31. For the purposes of this Agreement the following decrees for Azure Reservoir and Power Plant shall be utilized:

| <u>Structure</u> | <u>Water District</u> | <u>Case No.</u> | <u>Adjudicated Date</u> |
|---|-----------------------|-----------------|-------------------------|
| a. The Azure Reservoir | 53 | 1277 | 10-19-62 |
| b. First Enlargement of Azure Reservoir | 53 | 1416 | 9-13-67 |
| c. Azure Reservoir Power Conduit and Power Plant, First Enlargement | Division 5 | W-3991 | - |
| d. Such other decrees as may be necessary to operate the Azure Project in accordance with this Agreement. | | | |

| <u>Appropriation Date</u> | <u>Priority No.</u> | <u>Amt. Decreed</u> |
|---------------------------|---------------------|---------------------|
| a. 7-21-58 | 433 | 25,583.6 a.f. |
| b. 7-21-58 | 482 | 63,803.5 a.f. |
| c. 9-29-78 | - | 1,000 c.f.s. |

PART VII

MUTUAL AGREEMENTS OF ALL PARTIES

32. Each Party to this Agreement agrees not to object to the Subdistrict obtaining any and all licenses, permits, rights-of-way or other approvals required to permit the immediate construction of the Windy Gap Project. All such Parties agree to withdraw any former opposition to any such licenses, permits, rights-of-way or other approvals and further to not make any further objections or adverse comments concerning the granting thereof.

33. Each Party to this Agreement will cooperate in obtaining all licenses, permits, rights-of-way, or other approvals necessary or required to permit the construction of the Azure Reservoir and Power Project. If any person or entity not a party to this Agreement should oppose the construction of the Azure Reservoir and Power Project in such a manner that said Project cannot be under construction within 15 years, each Party, to the best of its ability, will do everything possible to encourage the withdrawal of any such objections so as to permit the construction of the Azure Reservoir and Power Project as expeditiously as possible.

34. Each Party hereto will not oppose the granting of Subdistrict's 1967 and 1978 appropriation dates for the various features of the Windy Gap Project and for a new appropriation of not to exceed 200 c.f.s. if such enlargement is necessitated by reason of a need for a bypass imposed by virtue of the provisions of paragraph 24 hereof. 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.

35. All Parties agree that Subdistrict may proceed immediately to construct the Windy Gap Project upon filing of a final Environmental Impact Statement by the Water and Power Resources Service (formerly United States Bureau of Reclamation) for the Windy Gap Project and after the appropriate 30 day waiting period has expired, and each agrees to not request or require that a draft Environmental Impact Statement simultaneously be prepared for the Azure Reservoir and Power Project as each Project is a separate and distinct Project which is not dependent upon any other Project for construction. The Parties recognize that if Azure Reservoir and Power Project cannot be built for any reason, an appropriate alternative project may then be selected under the terms of this Agreement and it is impossible now to determine which project, if any, will be built. The Subdistrict and River District agree that the Subdistrict will furnish all data and information necessary to enable the appropriate federal entity to comply with NEPA requirements for the Azure Reservoir and Power Project, or alternative thereto, as a separate project. All environmental concerns among the Parties regarding the Windy Gap Project have been resolved by this Agreement regardless of whether none, all or only one facility is constructed and operated.

36. Grand County, NWCCOG, and Subdistrict further agree that this Agreement is an intergovernmental agreement pursuant to Article XIV, Sec. 18 of the Colorado Constitution and Sec. 29-1-201 to 203, inclusive, among all governmental entities hereto and contains all standards upon which Grand County will base any or all decisions for the Windy Gap Project, including 1041, zoning and environmental decisions. Each governmental entity, however, reserves the right to contest any 1041 and zoning regulations or actions which at any later time may be adopted or pursued by Grand County or others if such regulations or actions would in any manner affect the construction or operation of any such facility or

facilities. If the decision of Grand County is not in accord with this Agreement, it is understood and agreed to by all parties hereto that the Subdistrict reserves the right to contest the application of any or all Grand County requirements, including 1041, zoning or environmental application, permit or approval requirements as to Subdistrict activities pursuant to this Agreement.

37. Within the limits and conditions contained herein, Subdistrict may build and operate such facilities as needed to accomplish the purposes of this Agreement.

38. All Parties agree that this Agreement shall not bind Ranchers to any financial commitment for implementation thereof.

39. The Parties agree that upon request of any party to this Agreement they will join with Subdistrict, and other interested parties, in the defense of any litigation against the construction or operation of either the Windy Gap Project or Azure Reservoir and Power Project, or alternative project, by persons or entities who are not parties to this Agreement. However, this provision shall not be construed to require any financial participation of any type from Ranchers or Three Lakes.

40. Within 30 days after the issuance of a 1041 permit and any other necessary Grand County approvals pursuant to paragraph 36, Subdistrict and the Northern Colorado Water Conservancy District will withdraw from Civil Action 79CV173, Denver District Court, and from Civil Action 79CV5133, presently pending in the Denver District Court, Denver, Colorado by stipulation of the Northern Colorado Water Conservancy District and Subdistrict and all parties defendant to these actions, which stipulation shall embody the terms of this Agreement, and agree that the actions and claims represented thereby shall not be refiled except in accordance with the rights reserved to Subdistrict under the terms of this Agreement.

41. The Parties hereto agree that this Agreement shall be either void or extended in certain circumstances. Therefore, unless conditions (a) and (b) are met, this Agreement shall be void:

(a) All signatory parties identified herein have validly executed this Agreement by June 30, 1980 unless the necessity thereof has been specifically waived by Subdistrict.

(b) Approval of Agreement by all six of Subdistrict participants by June 30, 1980.

To the extent that the conditions in the following subparagraphs (c), (d), (e) and (f) delay beyond June 30, 1983 the initiation of construction of the Windy Gap Project and the implementation of this Agreement, all time periods provided for in paragraph 12 herein shall be extended for a time equal to the period of delay.

(c) A determination has been made that NEPA compliance for the Azure Reservoir and Power Project is not required as a condition precedent for NEPA compliance for the Windy Gap Project.

(d) Approval is given by Subdistrict Bond Counsel on the legality and appropriateness of Subdistrict issuing revenue bonds for the construction of the Windy Gap Project and Azure Reservoir and Power Project, all as set forth herein, and if necessary, confirmation of this Agreement by the District Court for Weld County, Colorado, pursuant to C.R.S. 1973, 37-45-143, and enactment of such legislation as may be needed to permit Subdistrict to accomplish the purpose and substance of this Agreement.

(e) A final Environmental Impact Statement and all necessary federal, state and local permits and clearances for the Windy Gap Project are issued, no litigation is pending, and the Subdistrict is able to proceed with completion and operation of the Windy Gap Project in accordance with the terms of this Agreement.

ATTEST: *Kathleen W. Cyprien*
Secretary

MIDDLE PARK WATER CONSERVANCY DISTRICT
By *Robert Wood*
President

ATTEST: *Shirley Davis*
Town Clerk

TOWN OF HOT SULPHUR SPRINGS,
COLORADO
By *D. L. Lantow*
Mayor

ATTEST: *Thomas D. Grinnell*
Town Clerk

TOWN OF GRANBY, COLORADO
By *Jerry L. Woods*
Mayor

ATTEST: *Miriam R. Ritchard*
Secretary

RITSCHARD CATTLE CO., INC.
By *Miriam R. Ritchard*
President

ATTEST: _____
Secretary

SKYLARK RANCH COMPANY, a Colorado
corporation
By _____
President

ATTEST: _____
Secretary

GORE CANYON, LTD., a Colorado
corporation
By _____
President

ATTEST: *John H. McElroy*
Secretary

COLORADO RIVER LAND CORPORATION
By *Habet A. Ritchard*
President

David Mayhoffer

JACQUES RANCH I, a limited
partnership
By _____
General Partner

Lloyd A. Palmer
Lloyd A. Palmer

JACQUES RANCH II, a limited
partnership

Edna L. Palmer
Edna L. Palmer

By _____
General Partner

Leo Marte
Leo Marte

Joseph McElroy
Joseph McElroy

Eunice Marte
Eunice Marte

Isabel McElroy
Isabel McElroy

Jessie Joyce Thompson
Jessie Joyce Thompson

John H. McElroy
John H. McElroy

David Howard Thompson
David Howard Thompson

Mary K. McElroy
Mary K. McElroy

John Sheriff
John Sheriff

Olga Hill
Olga Hill

Ida L. Sheriff
Ida L. Sheriff

Howard K. Schrack, Jr.
Howard K. Schrack, Jr.

H. Grady Culbreath
H. Grady Culbreath

Richard P. Doucette
Richard P. Doucette

J. Gail Culbreath
J. Gail Culbreath

Christine O. Doucette
Christine O. Doucette

John L. Kemp
John L. Kemp

Gene Ritschard
Gene Ritschard

Crockett C. Kemp
Crockett C. Kemp

Charles G. Broady
Charles G. Broady

William Henry Thompson
William Henry Thompson

Phyllis Broady
Phyllis Broady

Anita Lewis Thompson
Anita Lewis Thompson

Stanley Broady
Stanley Broady

SUNSET ASSOCIATES, a partnership

Blanche Cowperthwaite
Blanche Cowperthwaite

By General Partner

CENTRAL CREEK RANCHES, INC.

John Taussig
John Taussig

By _____

RIGNOR MARION SCHEUCK

By Howard K. Schrack, Jr.
Her Attorney-in-Fact

EXHIBIT B

Grand Colorado Ranch, LLC

THAT PORTION OF THE NW ¼ OF SECTION 13 AND THE NE ¼ OF THE SE ¼ OF THE NE ¼ OF SECTION 14 LYING NORTH OR NORTHWEST OF THE COLORADO RIVER, ALL IN TOWNSHIP 1 NORTH, RANGE 80 WEST, AKA A PORTION OF PARCEL NUMBER 1441-132-00-104.

Raymond & Carol Petersen: Charles Eugene Petersen Trust; & Penny Lynn Petersen Trust

THE NW ¼ OF THE SE ¼, THE SW ¼ OF THE NE ¼, AND THE SOUTH ½ OF THE NW ¼ OF THE NE ¼ ALL IN SECTION 14, TOWNSHIP 1 NORTH, RANGE 80 WEST, AKA PARCEL NUMBER 1441-141-00-103.

THE NE ¼ OF THE NE ¼, THE N ½ OF THE NW ¼ OF THE NE ¼, AND THAT PORTION OF THE NE ¼ OF THE NW ¼ LYING SOUTH OF THE RAILROAD IN SECTION 14, AS WELL AS THAT PORTION OF THE SOUTH ½ OF THE SE ¼ OF THE SE ¼ LYING SOUTH OF THE RAILROAD IN SECTION 11, ALL IN TOWNSHIP 1 NORTH, RANGE 80 WEST, AKA PARCEL NUMBER 1441-141-00-105.

Shepardsbend Colorado, LLC

THAT PORTION OF THE SE ¼ OF THE NW ¼ AND THE NE ¼ OF THE SW ¼ OF SECTION 14 LYING EAST OF THE COLORADO RIVER, IN TOWNSHIP 1 NORTH, RANGE 80 WEST, AKA PARCEL NUMBER 1441-143-00-072.

Martha Shepard Revocable Trust

THAT PORTION OF THE SOUTH ½ OF THE NE ¼ AND THE NORTH ½ OF THE SE ¼ OF SECTION 15, AND THE WEST ½ OF THE WEST ½ OF SECTION 14, ALL LYING BETWEEN THE COLORADO RIVER AND THE RAILROAD, IN TOWNSHIP 1 NORTH, RANGE 80 WEST, AKA PARCEL NUMBER 1441-154-00-179.

Riverside Ranch Company, LLLP

THE SE ¼ OF THE SW ¼ AS WELL AS THE SE ¼ LYING SOUTH OF THE RAILROAD IN SECTION 17, AND THAT PORTION OF THE NORTH ½ OF THE NW ¼ AND THE NORTH ½ OF THE NE ¼ IN SECTION 20 LYING WEST OF CO HWY 9, ALL IN TOWNSHIP 1 NORTH, RANGE 80 WEST, AKA PARCEL NUMBER 1441-202-00-149.

McElroy Ranch, LLC

THAT PORTION OF THE NORTH ½ OF THE SOUTH ½ LYING SOUTH OF THE RAILROAD AND NORTH OF THE COLORADO RIVER IN SECTION 16, TOWNSHIP 1 NORTH, RANGE 80 WEST, AKA PARCEL NUMBER 1441-163-00-077.

THAT PORTION OF THE SOUTH ½ OF THE SOUTH ½ OF THE NW ¼ LYING SOUTH OF THE RAILROAD, THE NORTH ½ OF THE SW ¼, AND THE SW ¼ OF THE SW ¼ OF SECTION 17; THE SE ¼ AND THAT PORTION OF THE NE ¼ IN SECTION 18 LYING SOUTH OF THE RAILROAD AND NORTH OF THE COLORADO RIVER; AND THAT PORTION OF THE NORTH ½ OF THE NW ¼ OF THE NE ¼ OF SECTION 19 LYING NORTH OF THE COLORADO RIVER, ALL IN TOWNSHIP 1 NORTH, RANGE 80 WEST, AKA PARCEL NUMBER 1441-181-00-003 AND A PORTION OF PARCEL NUMBER 1441-184-00-160.

Colorado River Cattle Ranch, LLC

THAT PORTION OF THE SOUTH ½ OF SECTION 13, THE SW ¼ OF THE SW ¼ OF SECTION 18, THE NORTH ½ OF THE NORTH ½ OF SECTION 24, AND THE NW ¼ OF THE NW ¼ OF SECTION 19, ALL LYING SOUTH OF RAILROAD AND NORTH OF THE COLORADO RIVER ALL IN TOWNSHIP 1 NORTH, RANGE 80 WEST, AKA PARCEL NUMBER 1437-134-04-001.