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January 17, 2024

*Via Email*

Blue Valley Metropolitan District  
c/o Buck McNichols  
P.O. Box 492  
Kremmling, CO 80459  
[buck@bvmd.biz](mailto:buck@bvmd.biz)

RE: CASE NO. 22CW3086, APPLICATION FOR SURFACE WATER RIGHT, UNDERGROUND WATER RIGHT, AND PLAN FOR AUGMENTATION – SUMMARY OF CONSULTATION REPORT.

Dear Buck:

The water judge has confirmed the referee's ruling as the final decree in this matter. A copy of the decree is attached. The water judge has granted the relief requested in the Application for Surface Water Right, Underground Water Right, and Plan for Augmentation filed by Blue Valley Metropolitan District ("BVMD"). The following water rights have been decreed as follows:

- **Blue Valley Metropolitan District Pump and Pipeline, 1<sup>st</sup> Enlargement:** 250.0 g.p.m., conditional, for a use enlargement for domestic for use inside up to 27 residences. BVMD must obtain a well permit with the Division of Water Resources for this water right before operating the water right.
- **Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1<sup>st</sup> Enlargement:** 250.0 g.p.m., conditional, for a use enlargement for domestic for use inside up to 27 residences. BVMD must obtain a well permit with the Division of Water Resources for this water right before operating the water right.
- **Blue Valley Metropolitan District Ruedi Exchange and Wolford Exchange:** 0.8 g.p.m., not to exceed 0.953 AF per year, conditional, to implement the plan for augmentation as described in the Decree. BVMD is required to provide advanced notice to the Division Engineer's Office prior to the operation of the two exchange rights.

The water judge further approved the plan for augmentation described in paragraph 27 of the decree. BVMD will be required to keep Colorado River Engineering ("CRE") updated on the build-

out of the additional houses so CRE can keep an appropriate account under the plan for augmentation.

The next application for a finding of reasonable diligence or to make the conditional water rights absolute must be filed in **January 2030**. We have put this date in our calendar system and will use our best efforts to remind BVMD of this diligence requirement; however, it is BVMD's primary responsibility to ensure this deadline is met. If BVMD's mailing address changes, it should advise the clerk of the water court accordingly, so she can ensure you receive a copy of the diligence notice, see paragraph 30 of the decree.

During the diligence period, we recommend that BVMD develops the conditional water rights. If this is completed, BVMD can file a water court application confirming that the water rights have been made absolute in its entirety. The application can be filed at any time during the next six years. If circumstances prevent BVMD from completely developing the water right, we recommend that BVMD still act to develop the water right and keep records of these activities.

Please let us know if you would like to discuss any of these options further. We are happy to assist BVMD with evaluating and discussing its options. The issuance of the final decree in this case concludes our representation of BVMD in this matter. It was a pleasure.

Sincerely,

BALCOMB & GREEN, P.C.

By: 

Scott Grosscup  
Blake Peterson

SG / BP / ls  
CC: Wendy Ryan  
Attachment: Ruling of the Referee

DISTRICT COURT, GARFIELD (GLENWOOD SPRINGS) COUNTY, COLORADO	
Court Address: 109 8TH STREET, STE. 104, GLENWOOD SPRINGS, CO, 81601	DATE FILED: January 8, 2024 CASE NUMBER: 2022CW3086
In the Interest of: BLUE VALLEY METROPOLITAN DISTRICT	<p style="text-align: center;">△ COURT USE ONLY △</p>
	Case Number: 2022CW3086 Division: E                      Courtroom:
<b>Order: Proposed Decree of the Water Court</b>	

The motion/proposed order attached hereto: SO ORDERED.

Any future diligence application shall be filed no later than January 2030.

Issue Date: 1/8/2024



CHRISTOPHER GILES SELDIN  
District Court Judge

DISTRICT COURT, WATER DIVISION 5, COLORADO 109 8 <sup>TH</sup> STREET, SUITE 104 GLENWOOD SPRINGS, CO 81601 PHONE NUMBER: (970) 928-3065	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p style="text-align: center;"><b>CASE No. 22CW3086</b></p> <p style="text-align: center;">WATER DIVISION 5</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</p> <p><b>BLUE VALLEY METROPOLITAN DISTRICT</b></p> <p>IN GRAND COUNTY, COLORADO.</p>	
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE AND          DECREE OF THE WATER COURT</b>	

Applicant, Blue Valley Metropolitan District (“Applicant”) filed an Application for Surface Water Right,<sup>1</sup> Underground Water Right, and Plan for Augmentation (“Application”) in this case. The Water Judge referred the Application to the undersigned Water Referee for Water Division 5, State of Colorado, in accordance with C.R.S. § 37-92-101, *et seq.*, known as the Water Right Determination and Administration Act of 1969.

The undersigned Referee, having made such investigations as are necessary to determine whether the statements in the Application are true and having been fully advised in the subject matter of the Application, does hereby make the following determination and Ruling as the Referee in this matter.

**FINDINGS OF FACT**

1. The statements in the Application are true, except as may be otherwise stated herein.
2. Applicant and Applicant’s Contact Information: Blue Valley Metropolitan District, c/o Buck McNichols, General Manager, P.O. Box 492, Kremmling, CO 80459. Balcomb & Green, P.C. represented Applicant in this matter, PO Drawer 790, Glenwood Springs, CO 81601; (970) 945-6546.
3. Notice and Jurisdiction. The Water Clerk properly published the Application the resume for Water Division 5. All notices required by law have been properly made, including as required under C.R.S. § 37-92-302(3). Applicant paid all costs of publication of the Application. The Court has jurisdiction over the Application and over all entities or persons

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<sup>1</sup> As identified in the Division Engineer’s Summary of Consultation, and Applicant’s Response thereto, the Application more properly describes this water right as an underground water right.

who had standing to appear, even though they did not do so.

4. Summary of Consultation. The Court has given due consideration to the Division Engineer's Summary of Consultation Report dated November 29, 2022, C.R.S. § 37-92-302(4), and Applicant's Response thereto.
5. Opposition. No Statements of Opposition to the Application were filed. The time for filing such statements has expired.

**FIRST CLAIM:  
CONDITIONAL UNDERGROUND WATER RIGHT**

6. Structure: Blue Valley Metropolitan District Pump and Pipeline, 1st Enlargement.

- 6.1. Legal Description: A well/infiltration gallery located in the NW1/4 SW1/4, Section 34, Township 1 South, Range 80 West of the 6th P.M. at a point 2,363 feet from the South line and 831 feet from the West section line of said Section 34.

Case No. 11CW37 and Well Permit No. 49622-F describe this location as being located in the NW1/4 SW1/4, Section 34, Township 1 South, Range 80 West of the 6th P.M. at a point 831 feet from the West line and 2,363 feet from the South line of said Section 34 as depicted on the map attached as **Figure 1**.

- 6.2. Source: Blue River Alluvium, tributary to Blue River, tributary to Colorado River.
- 6.3. Date of Appropriation: August 29, 2022.
- 6.4. Amount: 250.0 gallons per minute ("g.p.m."), conditional.
- 6.5. Uses: Domestic for use inside up to 27 residences.
- 6.6. Depth: Approximately 20 feet.
- 6.7. Remarks:

- 6.7.1. The cumulative diversion rate under any combination of the Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, the Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement, the Blue Valley Metropolitan District Pump & Pipeline, and the Blue Valley Metropolitan District Pump & Pipeline, 1st Enlargement, shall not exceed 250.0 g.p.m. at one time, in accordance with the plan for augmentation approved in Case No. 96CW286, as amended in Case No. 98CW27 and the plan for augmentation approved herein.

- 6.7.2. The cumulative annual diversion amount under any combination of the Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement and the Blue Valley Metropolitan District Pump & Pipeline, 1st Enlargement, shall not exceed 9.527 acre feet (“AF”), in accordance with the plan for augmentation approved herein
- 6.7.3. The Blue Valley Metropolitan District Pump & Pipeline is operated pursuant to Well Permit No. 49622-F and in accordance with the plan for augmentation approved in Case No. 96CW286, as amended in Case No. 98CW27, and is not a part of the plan for augmentation approved herein.

**SECOND CLAIM:  
CONDITIONAL UNDERGROUND WATER RIGHTS**

7. **Structure: Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement.**

7.1. Legal description of each decreed point of diversion:

7.1.1. Well No. 1: A well located in the NW1/4 SW1/4 Section 34, Township 1 South, Range 80 West of the 6th P.M., a distance of 777 feet from the West line and 2,454 feet from the South line of said Section 34, as depicted on the map attached as **Figure 1**.

7.1.2. Well No. 2: A well located in the NW1/4 SW1/4 Section 34, Township 1 South, Range 80 West of the 6th P.M., a distance of 740 feet from the West line and 2,546 feet from the South line of said Section 34, as depicted on the map attached as **Figure 1**.

7.2. Source: Blue River Alluvium, tributary to Blue River, tributary to Colorado River.

7.3. Date of Appropriation: August 29, 2022.

7.4. Amount: 250.0 g.p.m., conditional.

7.5. Uses: Domestic for use inside up to 27 residences.

7.6. Depth: Approximately 20 feet.

7.7. Remarks:

7.7.1. The cumulative diversion rate under any combination of the Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, the Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement, the Blue Valley Metropolitan District Pump & Pipeline, and the Blue Valley Metropolitan District Pump & Pipeline, 1st

Enlargement shall not exceed 250.0 g.p.m., in accordance with the plan for augmentation approved in Case No. 96CW286, as amended in Case No. 98CW27 and the plan for augmentation approved herein.

7.7.2. The cumulative annual diversion amount under any combination of the Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement, and the Blue Valley Metropolitan District Pump & Pipeline, 1st Enlargement shall not exceed 9.527 AF, in accordance with the plan for augmentation approved herein.

7.7.3. The Blue Valley Metropolitan District 1998 Well Nos. 1 & 2 will be operated pursuant to the plan for augmentation decreed in Case No. 96CW286, as amended in Case No. 98CW27, and are not a part of the plan for augmentation approved herein.

7.7.4. The Blue Valley Metropolitan District 1998 Well Nos. 1 & 2 are to be constructed within 100 feet from the Blue River unless Applicant augments delayed impacts in an amount and upon a schedule acceptable to the Division Engineer.

**THIRD CLAIM:  
REQUEST FOR APPROVAL OF PLAN FOR AUGMENTATION**

8. Name of Structures to be Augmented:
  - 8.1. **Blue Valley Metropolitan District Pump & Pipeline, 1st Enlargement**, as claimed in paragraph 6 above.
  - 8.2. **Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement**, as claimed in paragraph 7 above.
  
9. Water rights to be used for augmentation: Applicant's water uses will be augmented during an administrative call by releases from Green Mountain Reservoir, and/or Wolford Reservoir, and/or Ruedi Reservoir. Applicant holds Contract No. 239E65002 from the United States Department of the Interior, Bureau of Reclamation ("BOR") for 1.0 AF annually from Green Mountain Reservoir (the "BOR Contract"), attached as **Exhibit A**. Applicant holds Contract No. CW22008 from the Colorado River Water Conservation District ("CRWCD") for an alternate supply of required augmentation water of up to 1.0 AF from Wolford Reservoir and/or Ruedi Reservoir (the "CRWCD Contract"), attached as **Exhibit B**.

9.1. BOR Supply:

9.1.1. Green Mountain Reservoir:

9.1.1.1. Legal Description of Place of Storage: Located approximately 16 miles southeast of the Town of Kremmling in Summit County, Colorado, and more particularly in all or parts of Sections 11, 12, 12, 14, 15, and 24 of Township 2 South, Range 80 West of the 6th P.M. and in Sections 17, 18, 19, 20, 21, 28, 29, and 34, Township 2 South, Range 79 West of the 6th P.M.

9.1.1.2. Legal Description of Place of Storage: Located approximately 16 miles southeast of the Town of Kremmling in Summit County, Colorado, and more particularly in all or parts of Sections 11, 12, 12, 14, 15, and 24 of Township 2 South, Range 80 West of the 6th P.M. and in Sections 17, 18, 19, 20, 21, 28, 29, and 34, Township 2 South, Range 79 West of the 6th P.M.

9.1.1.3. Source: Blue River.

9.1.1.4. Date of Initiation of Appropriation: August 8, 1935.

9.1.1.5. Date of Adjudication: October 12, 1955.

9.1.1.6. Decreed Amount: 154,645 AF.

9.1.1.7. Previous Decrees: CA 2782, CA 5016, CA 5017 (consolidated) United States District Court, District of Colorado.

9.1.1.8. Uses: In accordance with paragraph 5(a), (b), and (c) of the section entitled "Manner of Operation of Project Facilities and Auxiliary Facilities" in Senate Document 80.

9.2. CRWCD Supply:

9.2.1. Wolford Mountain Reservoir. CRWCD owns and operates Wolford Mountain Reservoir (f/k/a Gunsight Pass Reservoir) which has the following water rights.

9.2.1.1. Case No. 87CW283:

Decree Date: November 20, 1989.

Name of Structure: Gunsight Pass Reservoir.

Legal description of place of storage: The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M.



The intersection of the dam axis with the right abutment will occur at a point which bears S. 54°54'20" E. a distance of 3,716.46 feet from the NW Corner of said Section 25.

Source: Muddy Creek and its tributaries, all tributary to the Colorado River.

Amount: 59,993 acre feet conditional; of this amount, 32,986 acre feet were made absolute for piscatorial and recreational uses by decree entered in Water Court Case No. 95CW251, and the full amount was made absolute for all purposes by decree entered in Water Court Case No. 02CW107.

Appropriation Date: December 14, 1987.

Use: All beneficial uses, including but not limited to domestic, municipal, agricultural and recreational uses, which uses satisfy the requirements of the Windy Gap Settlement made with the Municipal Subdistrict of the Northern Colorado Water Conservancy District; use to meet the water requirements of the inhabitants of CRWCD for all uses, including uses in the Middle Park area; and use to meet the terms of a lease agreement executed March 3, 1987 between CRWCD and the City and County of Denver.

9.2.1.2. Case No. 95CW281:

Decree Date: August 26, 1997.

Name of Structure: Wolford Mountain Reservoir Enlargement.

Legal description of place of storage: The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The as-built intersection of the dam axis (Sta. D19+35.61) with the West Access Road (Sta. WR50+55.05), as shown on the Colorado River Water Conservation District, Wolford Mountain Project, Ritschard Dam construction drawing "Dimensional Dam Layout" sheet 8 of 94, occurs at a point which bears S. 53°24'56" E. a distance of 3,395.51 feet from the NW Corner of said Section 25; the bearing of said dam axis from Sta. 19+35.61 to Sta. 0+00 being S. 75° 28' 29" E.

Source: Muddy Creek and its tributaries, all tributary to the Colorado River.

Amount: 6,000 acre feet, conditional.

Appropriation Date: January 16, 1995.

Use: All beneficial uses by and for the benefit of the inhabitants of the Colorado River Water Conservation District, including but not limited to domestic, municipal, industrial, irrigation, agricultural, piscatorial and recreational; such uses will include environmental mitigation, including environmental mitigation requirements associated with the Wolford Mountain Project; such uses will be made directly or by substitution, augmentation, or exchange. None of the water stored in the exercise of the right will be delivered directly or by exchange, substitution, or otherwise for use outside of Colorado Water Division No. 5.

9.2.1.3. Case No. 98CW237:

Decree Date: July 6, 2000.

Name of Structure: Wolford Mountain Reservoir.

Legal Description of place of storage: Same as for 95CW281.

Source: Muddy Creek and its tributaries, all tributary to the Colorado River.

Amount: 30,000 acre feet conditional, with 15,895 acre feet being absolute for recreational and piscatorial and flood control.

Appropriation Date: November 17, 1998.

Use: Certain of the beneficial uses previously adjudicated for Wolford Mountain Reservoir in Case No. 87CW283, District Court for Colorado Water Division No. 5 (November 20, 1989 Judgment and Decree), and Case No. 95CW281, District Court for Colorado Water Division No. 5 (August 26, 1997 Judgment and Decree).

87CW283: The reservoir will be used to satisfy the requirements of the Windy Gap Settlement made with the Municipal Subdistrict of the Northern Colorado Water Conservancy District. This will involve all uses, including but not limited to domestic, municipal, agricultural, and recreational uses. The reservoir will also be used to meet the water requirements of the inhabitants of CRWCD for all uses, including uses in the Middle Park area.

95CW281: All beneficial uses by and for the benefit of the inhabitants of the Colorado River Water Conservation District, including but not limited to domestic, municipal, industrial, irrigation, agricultural, piscatorial and

recreational; such uses will include environmental mitigation, including environmental mitigation requirements associated with the Wolford Mountain Reservoir Project; such uses will be made directly or by substitution, augmentation, or exchange.

Remarks: The Refill Right described herein will be exercised to provide supply for the Western Slope uses of water from Wolford Mountain Reservoir described above, including flood control, other operational purposes, and environmental mitigation and enhancement for the benefit of uses within the District. The Refill Right will not be used in conjunction with the Reservoir capacity (24,000 a.f.) which is allocated for the supply of water to the Denver Board of Water Commissioners under Applicant's contractual relationship with Denver, or the Reservoir capacity (6,000 AF) which is allocated for Colorado River endangered fish releases.

9.2.1.4. Case No. 03CW302:

Decree Date: October 19, 2014.

Name of Structure: Wolford Mountain Reservoir Second Enlargement.

Legal description of place of storage: The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The as-built intersection of the dam axis (Sta. D19+35.61) with the West Access Road (Sta. WR50+55.05), as shown on the Colorado River Water Conservation District, Wolford Mountain Project, Ritschard Dam construction drawing "Dimensional Dam Layout" sheet 8 of 94, occurs at a point which bears S. 53 24'56" E. a distance of 3,395.51 feet from the NW Corner of said Section 25; the bearing of said dam axis from Sta. 19+35.61 to Sta. 0+00 being S. 75 28' 29" E.

Source: Muddy Creek and its tributaries, all tributary to the Colorado River.

Amount: The amount is 9.775 acre feet, for the initial fill, with the right to refill when in priority subject to a maximum amount of 9,775 acre feet, conditional.

Appropriation Date: November 17, 2003.

Uses:

The WMR Second Enlargement storage right may be used

for the purposes previously decreed to the Wolford Mountain Reservoir, including uses consistent with the Windy Gap Settlement made with the Municipal Subdistrict of the Northern Colorado Water Conservancy District; meeting the water requirements of the inhabitants of CRWCD for all uses; and uses consistent with the terms of a lease agreement executed March 3, 1987, between CRWCD and the City and County of Denver, as amended.

The WMR Second Enlargement storage right also may be used for all beneficial uses, including but not limited to municipal, commercial, industrial, domestic, irrigation, agricultural, livestock, hydro-power production, evaporation, piscatorial and recreational (including in-reservoir and in-river fish habitat and river flow maintenance and enhancement uses, and uses in furtherance of the Upper Colorado River Basin Fishes Recovery Program) with the right to reuse and successively use the water to extinction; such uses will include environmental mitigation, including environmental mitigation requirements associated with the Wolford Mountain Reservoir Project; such uses will be made directly or by substitution, augmentation, replacement or exchange in Water Divisions 1, 2, and/or 5.

Agreed Constraints on Use. Pursuant to the February 12, 2014, stipulation entered in this case between CRWCD and the GVWUA, the UWCD, and the OMID, CRWCD agrees that it will make water stored pursuant to the WMR Second Enlargement storage right available for uses within or to facilitate the diversion of water from Water Division No. 5 into Water Division No. 1 or Water Division 2 only pursuant to, and subject to the terms, of the express written consent of the GVWUA, the UWCD, and the OMID. Pursuant to paragraph III.E.19 of the CRCA, any use of the WMR Second Enlargement storage right for the benefit of Denver Water will require the prior approval of the Grand County Commissioners and CRWCD.

9.2.1.5.PLSS: The dam is located in the SW1/4 of the NE1/4 of Section 25, T. 2 N., R. 81 W., 6th P.M. The as-built intersection of the dam axis (Sta. D19+35.61) with the West Access Road (Sta. WR50+55.05), as shown on the Colorado River Water Conservation District, Wolford Mountain Project, Ritschard Dam construction drawing "Dimensional Dam Layout" sheet 8 of 94, occurs at a point 1,940 feet South of North section line and 2,760 feet East of the West section line of said Section 25.

9.2.2. Ruedi Reservoir: CRWCD holds Contracts No. 009D6C0111 (500 AF), 009D6C0118 (700 AF), 039F6C0011 (530 AF), 079D6C0106 (5,000 AF), and 139D6C0101 (4,683.5 AF) from the United States Bureau of Reclamation for 11,413.5 acre feet of annual supply from Ruedi Reservoir. This water will be used in addition to and substitution for Wolford Mountain Reservoir water in appropriate circumstances where Ruedi water is physically equivalent to Wolford water.

9.2.2.1. Legal description of place of storage: Ruedi Reservoir is located in Sections 7, 8, 9, 11 and 14 through 18, T. 8 S., R. 84 W., 6th P.M., in Eagle and Pitkin Counties. The dam axis intersects the right abutment at a point whence the SW corner of Section 7, T. 8 S., R. 84 W. of the 6th P.M. bears N. 82°10'W. a distance of 1,285 feet.

9.2.2.2. Source: Fryingpan River.

9.2.2.3. Previous storage decrees:

9.2.2.3.1. Civil Action No. 4613:

Decree Date: June 20, 1958.

Court: Garfield County District Court.

Amount: 140,697.3 acre feet, reduced to 102,369 acre feet pursuant to order of the Water Court in Case No. W-789-76. The full amount was made absolute in Case No. 88CW85.

Appropriation Date: July 29, 1957.

Use: Domestic, municipal, irrigation, industrial, generation of electrical energy, stock watering and piscatorial.

9.2.2.3.2. Case No. 81CW34:

Decree Date: April 8, 1985.

Court: District Court, Water Div. No. 5.

Amount: 101,280 acre feet (refill); of this amount, 44,509 acre feet were made absolute in Case No. 95CW95 and 25,257 acre feet were made absolute in Case No. 01CW269, for a total of 69,766 acre feet absolute.

Appropriation Date: January 22, 1981.

Use: Irrigation, domestic, municipal, generation of electrical energy, stock watering, industrial, piscatorial, recreation and maintenance of sufficient storage reserves to fulfill contractual obligations and provide stored water for recreation in times of drought.

9.2.2.3.3. PLSS: Ruedi Reservoir is located in Sections 7, 8, 9, 11 and 14 through 18, T. 8 S., R. 84 W., 6th P.M., in Eagle and Pitkin Counties. The dam axis intersects the right abutment at a point 130 feet South of the North section line and 1,280 feet East of the West section line of Section 7, T. 8 S., R. 84 W. of the 6th P.M.

- 9.3. Pursuant to C.R.S. § 37-92-305(b), Applicant reserves the right to use additional or alternative sources of water for replacement on a temporary or permanent basis, subject to approval by the Water Court and/or the State Engineer's Office.
- 9.3.1. No additional or alternative sources of replacement water right may be used in this plan for augmentation as discussed in paragraph 9.3 unless Applicant first provides notice as described in this paragraph 9.3.1. Such additional or alternative sources of replacement water must be decreed or lawfully available for such use as a part of a substitute water supply plan approved pursuant to C.R.S. § 37-92-308, and use of such additional or alternative sources of replacement water shall be in accordance with C.R.S. § 37-92-305(8)(c). If the Applicant seeks to add such additional or alternative sources of replacement water, Applicant shall give thirty-five (35) days written notice of the use of additional replacement water to the Court and the Division Engineer, which notice shall describe: (1) the replacement water to be used by name and decree; (2) the projected annual and monthly amounts of water available to Applicant from the replacement source, the period that such replacement water is available, and the stream location(s) at which the water will be available; (3) the date of proposed initial use of such water and the proposed duration of use; (4) how Applicant will utilize the additional replacement water, including whether such water will be delivered to the stream downstream of the

location of depletions, and, if so, identification of the depleted reach of the stream from the location of depletions to the location where replacement water will be delivered to the stream; (5) how the additional replacement water will replace out-of-priority depletions from the [depleting structure(s)] in time, location, and amount necessary to prevent injury, including any relevant terms and conditions on the use of such water to prevent injury to other water rights; (6) evidence demonstrating Applicant's lawful ability to use such additional water supply, including evidence that such water supply is not already dedicated for use by another water user; and (7) the manner in which Applicant will account for use of the noticed replacement water.

If the Division Engineer for Water Division 5 wishes to object to the addition of the noticed water in this plan for augmentation, a written objection setting forth with particularity the reasons for such objection shall be filed with the Court within thirty-five (35) days after the date on which the notice is served by Applicant. Applicant shall bear the initial burden of proof that no injury to vested water rights and decreed conditional water rights will result from the use of such additional substitute water supplies. If no objection is so filed, Applicant may use the noticed water in this plan in the manner stated in the notice, immediately and without further action by the Court. If an objection is filed and not resolved between Applicant and the Division Engineer, Applicant may not use the noticed water until the Court has determined whether any terms and conditions are necessary to meet all legal requirements, including without limitation to prevent injury to vested water rights and decreed conditional water rights, including any period of retained jurisdiction for the added replacement source.

Where the use of any new source requires the operation of any new exchanges, including the expansion of any existing exchange reach, Applicant must obtain approval of the Division Engineer and Water Commissioner prior to operating such exchanges. Applicant must submit a separate water Court application if seeking to adjudicate such exchanges.

10. Description of Plan for Augmentation: The existing plan for augmentation described in Case Nos. 96CW286 and 98CW27 cover depletions for up to 150 residences. Applicant has expanded its service area to include domestic in-house uses for an additional 27 residences. Applicant will replace all out-of-priority depletions resulting from the augmented structures described above, pursuant to Applicant's BOR Contract and CRWCD Contract depending on the location of the calling water right. Whenever a valid and administered call occurs that would otherwise prevent Applicant from diverting water

through the Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement, and the Blue Valley Metropolitan District Pump & Pipeline, 1st Enlargement, Applicant will augment or administer the structures under this plan for augmentation. The plan for augmentation described herein shall not affect the terms and conditions of the existing plan for augmentation previously approved in Case Nos. 96CW286 and 98CW27.

10.1. Water Requirements: Applicant's specific water uses and replacements under this plan for augmentation assumes 27 residences use 315 gallons per day with a depletion rate of 10% and total depletions of 0.953 AF per year (once return flows from its leach fields reach a steady-state condition as referenced in paragraph 10.4) are summarized in the table below:

<b>BVMD Water Use and Replacement Summary</b>						
(a) # Residences	27					
(b) Indoor Use (gpd)	315					
(c) Consumption	10%					
(d) Transit Loss <sup>1</sup>	5%					
<sup>1</sup> Assume 1% per mile						
Month	(1) In-house Diversion P&PL (AF)	(2) In-house Consumption (AF)	(3) Leachfield Deliveries (AF)	(4) Steady-State Lagged Return Flows (AF)	(5) Total Depletion (AF)	(6) Total Replacement (AF)
Jan	0.809	0.081	0.728	0.715	0.094	0.098
Feb	0.731	0.073	0.658	0.716	0.015	0.016
Mar	0.809	0.081	0.728	0.716	0.093	0.098
Apr	0.783	0.078	0.705	0.715	0.068	0.071
May	0.809	0.081	0.728	0.714	0.095	0.100
Jun	0.783	0.078	0.705	0.714	0.069	0.073
Jul	0.809	0.081	0.728	0.714	0.096	0.100
Aug	0.809	0.081	0.728	0.714	0.096	0.100
Sep	0.783	0.078	0.705	0.714	0.069	0.072
Oct	0.809	0.081	0.728	0.714	0.095	0.099
Nov	0.783	0.078	0.705	0.715	0.068	0.071
Dec	0.809	0.081	0.728	0.715	0.094	0.098
<b>Total</b>	<b>9.527</b>	<b>0.953</b>	<b>8.574</b>	<b>8.574</b>	<b>0.953</b>	<b>0.998</b>
(1) = (a)*(b)*days per month/325851						
(2) = (1)*(c)						
(3) = (1)-(2)						
(4) = lagged return flows using URF developed in 22CW3086						
(5) = (1)-(4)						
(6) = (5)/(1-d)						



- 10.2. Downstream Call: If the calling water right is at or below the confluence of Muddy Creek and the Colorado River, Applicant will augment out-of-priority depletions by using water rights owned or controlled by CRWCD in either Ruedi Reservoir or Woford Reservoir, as described above, or by using water rights owned or controlled by BOR in the Green Mountain Reservoir, as described above. The augmentation will be administered through the BMVD Exchange Project.
- 10.3. Local Call: If the calling water right is above the confluence of Muddy Creek and the Colorado River, Applicant will augment out-of-priority depletions by using water rights owned or controlled by BOR in Green Mountain Reservoir, as described above. Releases will be made upstream of the point of depletions.
- 10.4. Alternative Replacement Supplies: Applicant recognizes the steady-state return flows from its leach fields contemplated in column 4 of the replacement table above will take approximately 39 months to return to the Blue River, and the plan for augmentation decreed herein is to serve additional residences that have not yet been developed. To prevent injury in the time prior to the leach field return flows reaching a steady-state condition, Applicant may cover those river depletions not yet offset through the excess capacity in its existing Green Mountain Reservoir water contract for 150 AF, decreed in Case Nos. 96CW286 and 98CW27, so long as excess capacity is available. In the event Applicant's depletions are not covered by excess capacity in its existing contract and this plan for augmentation then it may replace supplies with additional and alternative sources of augmentation water under this plan for augmentation pursuant to paragraphs 9.3 and 9.3.1, including water leased or otherwise acquired by the Applicant, if such sources are decreed and lawfully available for augmentation use, if such sources are part of a substitute water supply plan approved pursuant to C.R.S. § 37-92-305(8), or if such sources are part of an interruptible water supply agreement approved pursuant to C.R.S. § 37-92-309. In addition, such sources must be of the quality and quantity required by C.R.S. § 37-92-305(5).
- 10.5. Instream Flow Rights: Applicant recognizes that the Colorado Water Conservation Board's existing instream flow water right ("ISF") decreed in Case No. 87CW299 on the Blue River was decreed prior to the filing of this case. To prevent injury to the ISF, Applicant shall operate the subject water right and plan for augmentation as agreed to in the previous plan for augmentation decreed in Case No. 96CW286, as amended in Case No. 98CW27, under the following terms and conditions:
- 10.5.1. At times when the ISF decreed in Case No. 87CW299 is not satisfied immediately below Applicant's diversion structure, Applicant agrees to:

10.5.1.1. Curtail its out-of-priority depletions under this plan for augmentation, or;

10.5.1.2. Replace said out-of-priority depletions with a release of augmentation water from Green Mountain Reservoir.

11. Integrated System: As described in Case Nos. 04CW42 and 04CW130, the Court confirmed the water rights decreed in Case No. 96CW286, and as amended in Case No. 98CW27, are components of Applicant's integrated water supply system. Similarly, the water rights described in paragraphs 6-9 herein are part of Applicant's integrated water supply system. "When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system." C.R.S. § 37-92-301(4)(b).

**FOURTH CLAIM:  
REQUEST FOR EXCHANGE PROJECT RIGHT**

12. Name of Exchange: **Blue Valley Metropolitan District Ruedi Exchange** ("Ruedi Exchange").

12.1. Location:

12.1.1. Upper Terminus: The point of depletion on the Blue River from cumulative diversions of the Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement and Blue Valley Metropolitan District Pump and Pipeline, 1st Enlargement as described as NW1/4 SW1/4, Section 34, Township 1 South, Range 80 West of the 6th P.M. (Grand County UTM NAD 83 coordinates: Northing – 4419811.2, Easting – 385212.5, Zone 13).

12.1.2. Lower Terminus: The confluence of the Roaring Fork and Colorado Rivers located in the SE1/4 of the NW1/4 of Section 9, Township 6 South, Range 89 West, of the 6th P.M. at a point 2,940 feet from the East section line, and 3,150 feet from the South section line.

12.2. Source: Ruedi Reservoir waters owned or controlled by CRWCD, as more fully described in the above paragraph 9.2.2, the use for which Applicant holds the CRWCD Contract, as more fully described in the below paragraph 12.6.2.

12.3. Date of appropriation: August 29, 2022.

12.4. Amount: 0.8 g.p.m., conditional, not to exceed 0.953 AF per year, cumulative with

the Blue Valley Metropolitan District Wolford Exchange (“Wolford Exchange”).

12.5. Uses: Exchange.

12.6. Remarks:

12.6.1. Whenever a valid and administered call is made by a senior water right with a point of diversion on the mainstem of the Colorado River below its confluence with Muddy Creek, Applicant may utilize its CRWCD Contract for 1.0 AF to augment by exchange all out-of-priority domestic depletions from the Blue Valley Metropolitan District Pump & Pipeline, 1st Enlargement, and Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement with release from Wolford Mountain Reservoir and/or Ruedi Reservoir, as depicted in **Figure 2**.

12.6.2. The CRWCD Contract provides replacement supplies for both the Ruedi Exchange and Wolford Exchange (collectively the “BVMD Exchanges”). The BVMD Exchanges share the same upstream terminus. The Ruedi Exchange’s lower terminus is downstream of the Wolford Exchange’s lower terminus. Because the Wolford Exchange reach is wholly contained within the Ruedi Exchange reach, operation of the Ruedi Exchange shall be considered operation of the Wolford Exchange to the extent Applicant can provide evidence that the source of replacement water associated with the Wolford Exchange was available on the claimed date of beneficial use for the Ruedi Exchange.

**FIFTH CLAIM:  
REQUEST FOR EXCHANGE PROJECT RIGHT**

13. Name of Exchange: **Blue Valley Metropolitan District Wolford Exchange.**

13.1. Location:

13.1.1. Upper Terminus: The point of depletion on the Blue River from cumulative diversions of the Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement and Blue Valley Metropolitan District Pump and Pipeline, 1st Enlargement as described as NW1/4 SW1/4, Section 34, Township 1 South, Range 80 West of the 6th P.M. (Grand County UTM NAD 83 coordinates: Northing – 4419811.2, Easting – 385212.5, Zone 13).

13.1.2. Lower Terminus: The confluence of the Blue and the Colorado Rivers located at NW1/4 of NE1/4, Section 19, Township 1 North, Range 80 West, of the 6th P.M., at a distance approximately 275 feet from North section line and 1,900 feet from East section line.

- 13.2. Source: Wolford Reservoir waters owned or controlled by CRWCD, as more fully described in the above paragraph 9.2.1, the use of which Applicant holds the CRWCD Contract, as more fully described in the below paragraph 13.6.2.
- 13.3. Date of Appropriation: August 29, 2022.
- 13.4. Amount: 0.8 g.p.m., conditional, not to exceed 0.953 AF per year, cumulative with the Ruedi Exchange.
- 13.5. Use: Exchange.
- 13.6. Remarks:
- 13.6.1. Whenever a valid and administered call is made by a senior water right with a point of diversion on the mainstem of the Colorado River below its confluence with Muddy Creek, Applicant may utilize its CRWCD Contract for 1.0 AF to augment by exchange all out-of-priority domestic depletions from the Blue Valley Metropolitan District Pump & Pipeline, 1st Enlargement, and Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement with release from Wolford Mountain Reservoir and/or Ruedi Reservoir, as depicted in **Figure 2**.
- 13.6.2. The CRWCD Contract provides replacement supplies for both BVMD Exchanges. The BVMD Exchanges share the same upstream terminus. The Ruedi Exchange's lower terminus is downstream of the Wolford Exchange's lower terminus. Because the Wolford Exchange reach is wholly contained within the Ruedi Exchange reach, operation of the Ruedi Exchange shall be considered operation of the Wolford Exchange to the extent Applicant can provide evidence that the source of replacement water associated with the Wolford Exchange was available on the claimed date of beneficial use for the Ruedi Exchange.

#### CONCLUSIONS OF LAW

14. To the extent they constitute legal conclusions, the foregoing Findings of Fact are incorporated herein.
15. All notices required by law have been properly made, including as required under C.R.S. § 37-92-302(3). The Court has jurisdiction over the Application and over all entities or persons who had standing to appear, even though they did not do so.
16. The Application is complete, covering all applicable matters required pursuant to the Water Right Determination and Administration Act of 1969. C.R.S. §§ 37-92-101 through 602.

17. Applicant has met its burden of proof on all matters it is required to establish in these proceedings.
18. Applicant has fulfilled all legal requirements for a decree for the requested water rights.
19. A complete description of the plan for augmentation was provided which adequately describes all water rights involved, was duly published, and adequate notice was provided as required by law under C.R.S. § 37-92-302.
20. The plan for augmentation is within the scope of a plan for augmentation as defined in C.R.S. § 37-92-103(9), in finding that it provides a detailed program to increase the supply of water available for beneficial use by providing substitute supplies of water.

**RULING OF REFEREE**

21. The Findings of Fact and Conclusions of Law, as set forth above, are incorporated herein by reference and are hereby modified as necessary to constitute part of the Ruling and Final Judgment and Decree.
22. The Court GRANTS a conditional water right for the Blue Valley Metropolitan District Pump and Pipeline, 1st Enlargement, in the amount of 250.0 g.p.m., for a use enlargement for domestic for use inside up to 27 residences.
  - 22.1. Applicant must obtain a well permit issued pursuant to C.R.S. § 37-90-137(2) before using the Blue Valley Metropolitan District Pump and Pipeline, 1st Enlargement.
23. The Court GRANTS a conditional water right for the Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement, in the amount of 250.0 g.p.m., for a use enlargement for domestic for use inside up to 27 residences.
  - 23.1. Applicant must obtain a well permit issued pursuant to C.R.S. § 37-90-137(2) before using either Blue Valley Metropolitan District 1998 Well Nos. 1 & 2, 1st Enlargement.
24. The Court GRANTS a conditional exchange project right for the Blue Valley Metropolitan District Ruedi Exchange in the amount of 0.8 g.p.m., not exceed 0.953 AF per year, to implement the plan for augmentation described above.
  - 24.1. Applicant shall provide notice to the Division Engineer prior to the operation of the Blue Valley Metropolitan District Ruedi Exchange decreed herein.
25. The Court GRANTS a conditional exchange project right for the Blue Valley Metropolitan

District Wolford Exchange in the amount of 0.8 g.p.m., not exceed 0.953 AF per year, to implement the plan for augmentation described above.

- 25.1. Applicant shall provide notice to the Division Engineer prior to the operation of the Blue Valley Metropolitan District Wolford Exchange decreed herein.
26. The transit losses associated with replacement releases in this decree are only for the purposes of establishing that the plan can operate and may be sufficient to prevent injury. Actual transit losses will be determined and assessed at the time releases are made and may be modified per C.R.S. §§ 37-80-102(7) and 37-83-104 as determined necessary by the Division Engineer.
27. The Court approves the plan for augmentation described herein:
  - 27.1. In conformance with C.R.S. § 37-92-305(8), the State Engineer shall curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.
  - 27.2. The plan for augmentation will operate at times by exchange. When an individual exchange project right is out of priority, the plan for augmentation shall only operate if (1) other exchange project rights are in priority and can provide adequate substitute water, and/or (2) if adequate replacement water is released to the Blue River at or above the upstream terminus.
  - 27.3. Applicant shall install measuring devices, provide accounting, and supply calculations regarding the timing of depletions as required by the Division Engineer for the operation of this plan. Applicant shall also file a monthly report with the Division Engineer by the 10th of the month following each preceding month, or as required by the Division Engineer, summarizing diversions and replacements made under this plan.
  - 27.4. The Division Engineer must approve Applicant's accounting forms before Applicant's operations approved in this Decree may proceed. The accounting forms may be changed from time to time so long as all information required by the decree in this case is included in the accounting forms. The Division Engineer must approve any changes to the accounting forms.
  - 27.5. Applicant shall replace all out-of-priority depletions that occur after pumping of the augmented wells cease.
  - 27.6. Retained Jurisdiction. In consideration of the specific findings and conclusions made herein, and in conformance with C.R.S. § 37-92-304(6), the plan for

augmentation decreed herein shall be subject to reconsideration by the Water Judge on the question of injury to the vested water rights of others for a period of 15 years after the Applicant has provided notice to the Division Engineer, the Court, and all parties to this proceeding that the plan for augmentation is fully operational. Such notice shall confirm that the decreed augmenting sources are in place, that the terms and conditions necessary to operate the plan as required by the decree have been met, and that the augmented uses and augmentation have been initiated. If no petition for reconsideration is filed within said 15 years, retention of jurisdiction for this purpose shall automatically expire. Any party who wants the Court to reconsider the question of injury must file a verified petition with the Court, setting forth the facts that cause such injury and explaining the claimed injury. The party filing the petition shall have the burden of going forward to establish the prima facie facts alleged in the petition. If the Court finds those facts to be established, the Applicant shall thereupon bear the burden of proof to show (a) that any modification sought by the Applicant will avoid injury to other water rights, or (b) that any modification sought by the petitioner is not required to avoid injury to other water rights, or (c) that any term or condition proposed by Applicant in response to the petition does avoid injury to other water rights.

28. Review of determinations made by the Division Engineer or the State Engineer in the administration of the Subject Water Rights are water matters over which the Water Court has exclusive jurisdiction.
29. Should the Applicant desire to maintain the conditional water rights continued herein, an Application for Finding of Reasonable Diligence shall be filed in the same month six years from the date of the Water Judge's order, unless a determination has been made prior to that date that such conditional rights have been made absolute by reason of the completion of the appropriation or are otherwise so disposed.
30. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or transfer of the conditional water rights as described herein, transferees shall file with the Division 5 Water Court a notice of transfer which shall state:
  - 30.1. The title and case number of this Case No. 22CW3086;
  - 30.2. The description of the conditional water rights transferred;
  - 30.3. The name of the transferor;
  - 30.4. The name and mailing address of the transferee; and

- 30.5. A copy of the recorded deed.
31. The owner of said conditional water rights shall also notify the Clerk of the Division 5 Water Court of any change in mailing address. The Clerk shall place any notice of transfer or change of address in the case file of this Case No. 22CW3086 and in the case file in which the Court first made a finding of reasonable diligence.
32. A copy of the Ruling shall be filed with the Division Engineer for Water Division No. 5 and with the State Engineer.
33. It is further ORDERED that this Ruling shall be filed with the Water Clerk, subject to judicial review.

Dated this 7<sup>th</sup> day of December, 2023.

BY THE REFEREE:



---

Holly K. Strablizky, Water Referee  
Water Division No. 5, State of Colorado



**JUDGMENT AND DECREE**

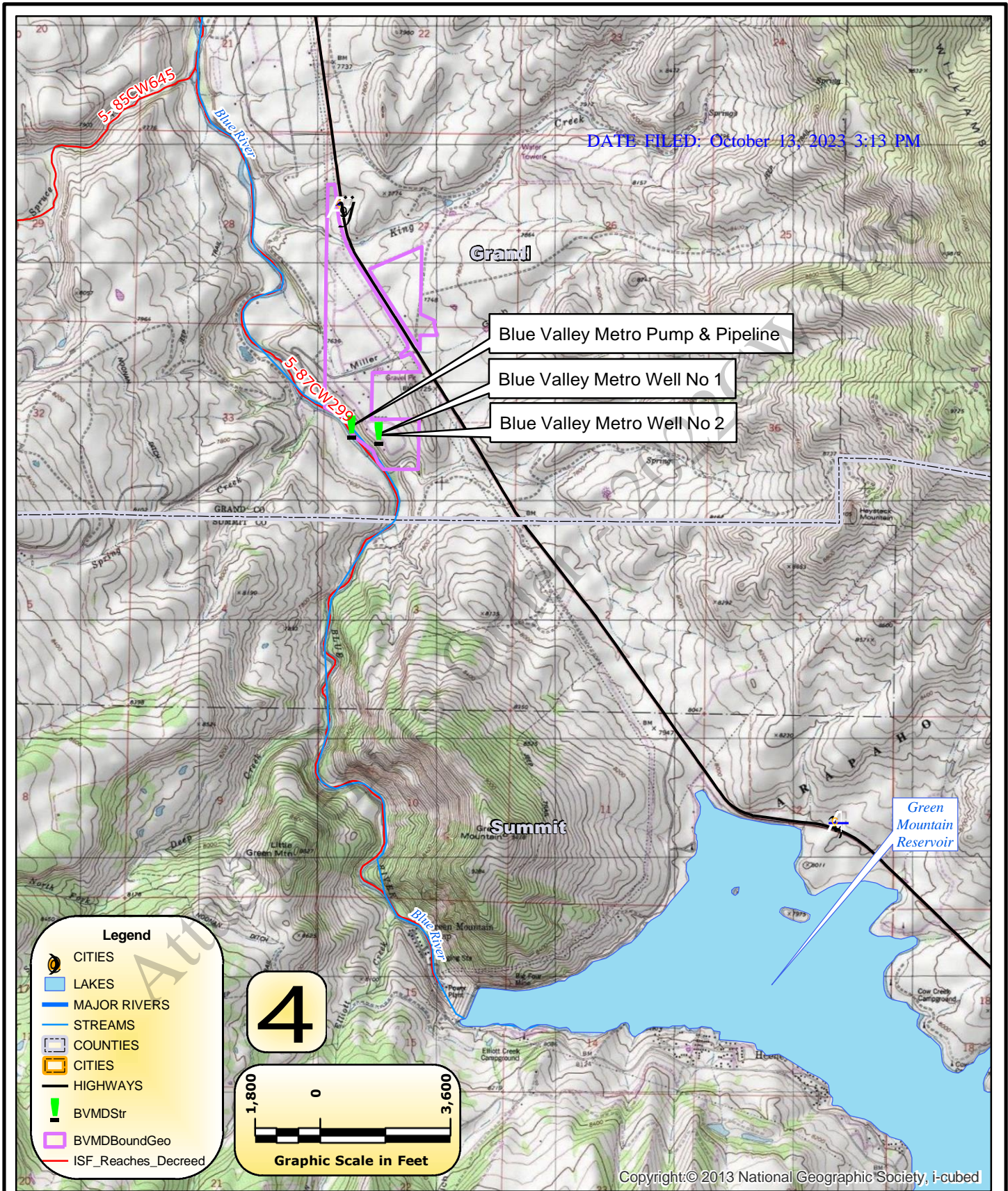
No protest was filed in this matter. The foregoing Ruling of Referee is confirmed and approved, and is made the Judgment and Decree of this Court. The conditional water rights described herein shall be in full force and effect until the end of the month six years from the date of this Decree. If the Applicant wishes to maintain the conditional water rights thereafter, Applicant shall file an application for finding of reasonable diligence on or before that date, or make a showing on or before then that the conditional water rights have become absolute water rights by reason of the completion of the appropriation.

DONE this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
Christopher G. Seldin, Water Judge  
Water Division No. 5

Attachment to Order - 2022CW3086



DATE FILED: October 13, 2023 3:13 PM

Blue Valley Metro Pump & Pipeline

Blue Valley Metro Well No 1

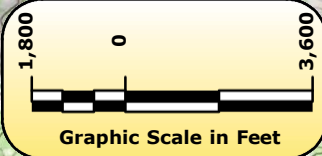
Blue Valley Metro Well No 2

Green Mountain Reservoir

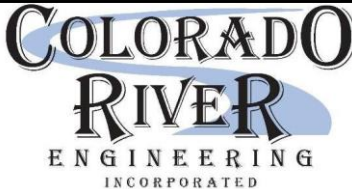
**Legend**

- CITIES
- LAKES
- MAJOR RIVERS
- STREAMS
- COUNTIES
- CITIES
- HIGHWAYS
- BVMDStr
- BVMDBoundGeo
- ISF\_Reaches\_Decreed

4



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PO Box 1301  
Rifle, CO 81650  
Tel 970-625-4933

**Water Rights Location Map**

Blue Valley Metro District

1

Document Name: Vicinity Map.mxd

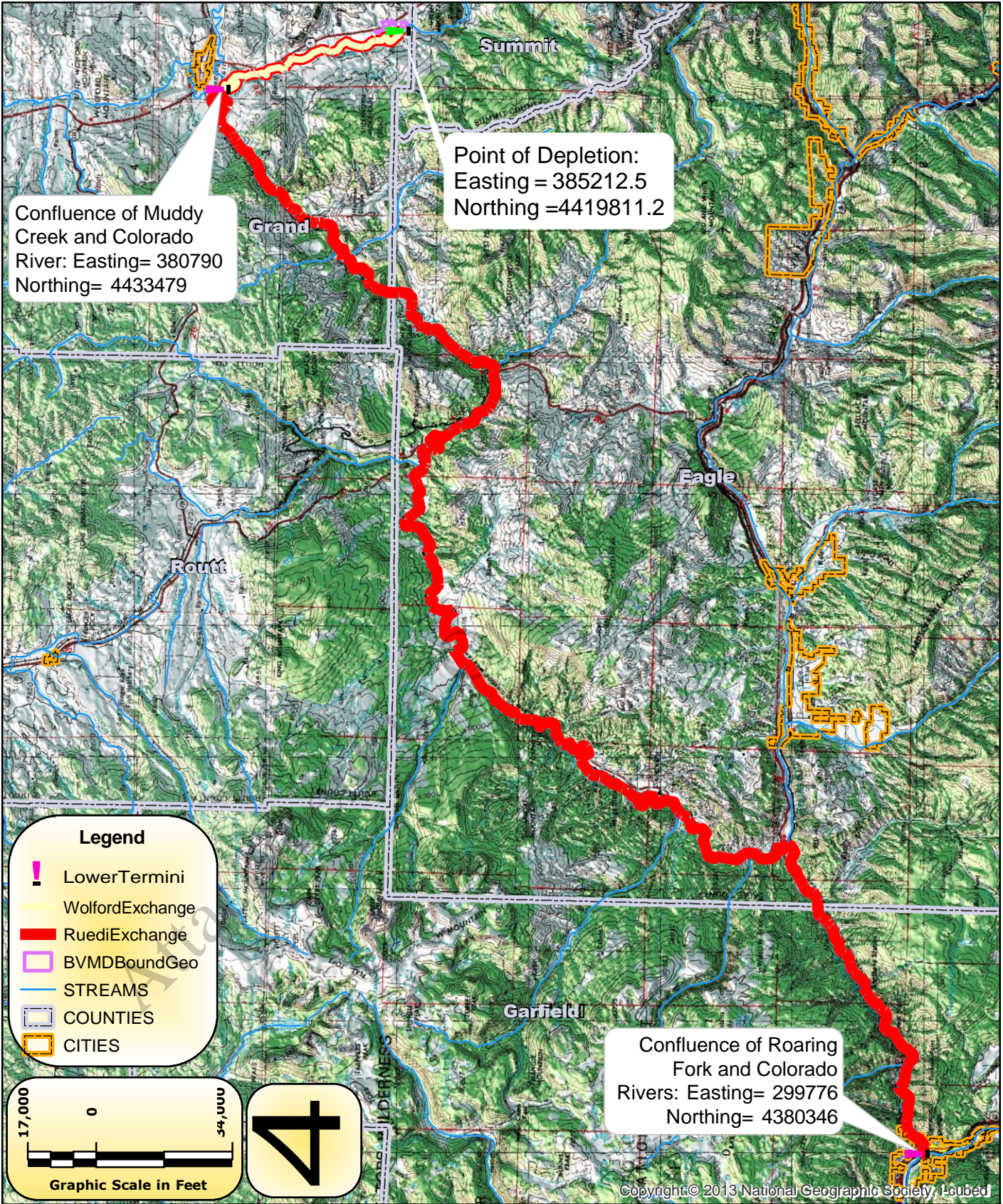
Client:

Drawn by: JT

Approved by: WR

Date: 7/7/2022

Add Client



**EXHIBIT A**

**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION**

**Colorado-Big Thompson Project, Colorado**

**CONTRACT BETWEEN THE UNITED STATES AND  
BLUE VALLEY METROPOLITAN DISTRICT  
FOR WATER SERVICE FROM GREEN MOUNTAIN RESERVOIR**

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**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION**

**Colorado-Big Thompson Project, Colorado**

**CONTRACT BETWEEN THE UNITED STATES AND  
BLUE VALLEY METROPOLITAN DISTRICT  
FOR WATER SERVICE FROM GREEN MOUNTAIN RESERVOIR**

THIS CONTRACT, executed on the date identified in the Contracting Officer's digital signature, pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, and particularly the Act of August 9, 1937 (50 Stat. 564, 595), and the Act of August 4, 1939 (53 Stat. 1187), as amended and supplemented, is between the UNITED STATES OF AMERICA, acting through the Bureau of Reclamation, hereinafter referred to as the "United States," represented by the Contracting Officer executing this contract, and Blue Valley Metropolitan District hereinafter referred to as the "Contractor."

WITNESSETH, THAT:

WHEREAS, The following statements are made in explanation:

**EXPLANATORY RECITALS**

a. Green Mountain Dam and Reservoir were constructed as a feature of the Colorado-Big Thompson (CBT) Project as recommended by the Secretary of the Interior and approved by the President on December 21, 1937, pursuant to Section 4 of the Act of June 25, 1910 (36 Stat. 835), and Subsection B of Section 4 of the Fact Finders' Act (Act of December 5, 1924 (43 Stat. 672)). The Reservoir is operated and maintained by the United States in accordance with S. Doc. 80; the Act of August 9, 1937 (50 Stat. 564, 595), as decreed in the Consolidated Cases (Civil Action Nos. 2782, 5016, and 5017) United States District Court for the District of Colorado; and the Operating Policy for Green Mountain Reservoir (hereinafter referred to as the "Operating Policy") as published in the Federal Register on December 22, 1983, which became effective January 23, 1984, and as amended September 3, 1987, as published in the Federal Register on September 11, 1987. The Reservoir was authorized to provide replacement water for senior downstream diversion rights in western Colorado when water is diverted to or stored for use in eastern Colorado through the CBT Project. Additional capacity was provided for hydroelectric power generation and beneficial uses in western Colorado including irrigation, municipal/domestic, and industrial uses. In accordance with the Operating Policy, 66,000 acre-feet of water annually is deemed adequate to satisfy irrigation and domestic consumptive uses perfected by use prior to October 16, 1977. Reclamation has determined that 20,000 acre-feet of the remaining capacity is available for beneficial use by West Slope water user contractors.

b. The Contractor desires to contract with the United States, pursuant to Federal Reclamation laws and the laws of the State of Colorado, for water service from Green Mountain Reservoir.

c. The United States desires to provide such water service from the marketable yield of Green Mountain Reservoir in accordance with S. Doc.80, the Consolidated Cases, the Operating Policy, and other applicable Federal law.

d. The 20,000 acre-foot marketable yield of Green Mountain Reservoir is based on the assumptions and conditions incorporated in the supporting hydrology studies documented in the report entitled, "Green Mountain Water Sales Hydrology," dated September 15, 1988.

e. During certain conditions including drought, the United States may be unable to fully meet the water delivery needs of Project beneficiaries (including all current Contractors) out of Green Mountain Reservoir. To alleviate this concern, beginning September 1, 2010, each new Green Mountain water service contract will require the Contractor to obtain an additional water service contract from a source of water upstream of the confluence of the Colorado and Gunnison Rivers within the Colorado River Basin other than Green Mountain Reservoir. The source of water must be approved by the Contracting Officer.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the United States and the Contractor agree as follows:

**1.**

**DEFINITIONS**

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

a. "Colorado River Basin" shall mean the geographical area of the natural basin of the Colorado River, including all tributaries thereof, in western Colorado upstream from the Colorado-Utah State line.

b. "Contracting Officer" shall mean the Secretary of the Interior or a duly authorized representative.

c. "Project" shall mean the CBT Project, Colorado.

d. "Year" shall mean the period beginning July 1 and ending the following June 30.

e. "Operating Policy" shall mean the operating policy for Green Mountain Reservoir as published in the Federal Register on December 22, 1983, as amended September 3, 1987, as published in the Federal Register on September 11, 1987.

f. "Reservoir" shall mean the dam, reservoir, and related facilities known as "Green Mountain Reservoir" as presently constructed and operated on the Blue River, a tributary of the Colorado River, in north-central Colorado, as a feature of the CBT Project.

g. "Replacement pool" shall mean the 52,000 acre-feet of water available under S. Doc. 80 annually to provide replacement water for western Colorado when water is diverted out of priority to the Eastern Slope through the CBT Project.

h. "Power pool" shall mean the Reservoir's remaining capacity of approximately 100,000 acre-feet, including the 6,316 acre-foot refill right, which to the extent feasible will be released through the powerplant, and following release will be available either directly or by exchange for other beneficial uses in western Colorado.

i. "Marketable yield" shall mean the 20,000 acre-foot water supply available from the Reservoir based on the assumptions and conditions incorporated in the supporting hydrology studies documented in the report entitled, "Green Mountain Water Sales Hydrology," dated September 15, 1988. The marketable yield may vary depending on changes in future operating conditions.

j. "Municipal/domestic use" shall mean the use of water by individuals, cities, towns, public or quasi-public districts, private corporations, homeowners' associations, or other entities for domestic, municipal, and miscellaneous related purposes as those terms are traditionally and commonly construed, excepting only irrigation and industrial uses of water as defined below. The meaning of this term includes the irrigation of municipal and/or quasi-governmental-owned or operated golf courses whether or not water is delivered through a municipal system.

k. "Irrigation use" shall mean the use of water for the commercial production of agricultural crops and livestock and other uses consistent with any water right decreed for irrigation purposes.

l. "Industrial use" shall mean the use of water for the purposes of producing or processing a product or service for sale, including without limitation such uses as manufacturing, food processing, mining, milling, land reclamation, snowmaking, non-hydroelectric power generation, and golf course irrigation except as provided in Subarticle 1.j. above. There shall be two categories of industrial water service as follows:

(1) "Category A" industrial water service which is reserved for those contractors who are existing customers for water from the Reservoir or have previously used water service from the Reservoir, who are currently operational, and who are unable to utilize Ruedi Reservoir as an alternative source for water service. Such entities' entitlement to Category A water service shall not exceed the quantities requested by those entities on or before August 15, 1988.

(2) "Category B" water service which is available to all other industrial contractors who are not covered in (1) above.

m. "Operation, Maintenance, and Replacement" (OM&R) costs shall mean those expenditures incurred in connection with the operation and maintenance of the Reservoir, excluding facilities used solely for hydroelectric power production. Such expenditures shall include those required to remedy conditions brought about by the ordinary use of the Reservoir or to restore or replace components of the existing facilities and shall not include expenditures to

increase the Reservoir's capacity or to enlarge the purposes for which it was originally authorized and constructed.

n. "Standby charge" shall be that annual charge to reserve the right for delivery of water annually pursuant to Subarticle 5.d.

o. "Delivery charge" shall be that annual charge for the amount of water requested for delivery by the Contractor and delivered by the United States pursuant to Subarticle 5.d. For purposes of this contract, the Contractor shall be deemed to have requested for delivery at least the minimum quantity set forth in Subarticle 5.d.(1).

p. "Alternative Source Contract" shall mean an additional contract or contracts for water service from a water source other than the Reservoir and upstream of the confluence of the Colorado and Gunnison Rivers within the Colorado River Basin, executed for no less than the amount of water specified in Article 3 of this contract. Alternative Source Contracts are to be attached as Exhibit C.

**2.**

**TERM OF THE CONTRACT**

a. This contract becomes effective on the date of execution and shall remain in effect for a period of 40 years thereafter, unless terminated sooner in accordance with the provisions of Article 8.

b. This contract may be renewed for an additional term of 40 years upon written request to the Contracting Officer on or before 2 years prior to the expiration of this contract and mutual agreement of the parties hereto. Prior to renewal of this contract, all terms and conditions, including the amount of water service contracted for in Article 3 and the water service charges set forth in Article 5, will be renegotiated by the parties hereto subject to applicable Federal and State laws and Reclamation policy in effect or as established by the Secretary of the Interior at that time; Provided, That the Contractor shall have a first right for the purposes stated herein to the quantity of water set forth in Article 3 below, or to such lesser amount of water that is available, as determined by the Contracting Officer.

**3.**

**CONTRACTED SERVICE**

a. The Contractor hereby contracts for 1 acre-feet of water service annually from the Reservoir as follows:

- (1) 0 acre-feet of water for irrigation use.
- (2) 1 acre-feet of water for municipal/domestic use.
- (3) 0 acre-feet of water for Category A industrial use.
- (4) 0 acre-feet of water for Category B industrial use.

The United States agrees to provide such water service subject to the terms and conditions of this contract. The United States shall not enter into any contract that will result in the total amount of water marketed from the Reservoir exceeding the marketable yield in effect at that time;



Provided, That the United States reserves the right to make short-term sales of water from the Reservoir as long as such sales do not impinge upon the Contractor's entitlement to take delivery of the water contracted for herein. There shall be no right to carryover storage of undelivered water contracted for herein from year to year.

b. The 20,000 acre-foot marketable yield of the Reservoir is based on the assumptions and conditions incorporated in the supporting hydrology studies documented in the report entitled, "Green Mountain Water Sales Hydrology," dated September 15, 1988. The marketable yield may vary, depending on changes in future operating conditions. In the event any of the assumptions and conditions incorporated in the supporting hydrology studies prove to be incorrect and revised hydrology studies change the marketable yield, the United States may either increase or decrease the volume of future water sales.

**4.**

**ALTERNATIVE SOURCE CONTRACT**

a. Prior to the execution of this contract, the Contractor shall obtain an Alternative Source Contract for water service from a source of water other than the Reservoir. The Alternative Source Contract shall be executed for water service in at least the quantities and designations for use as set forth in Subarticle 3. The Alternative Source Contract shall be in full force and effect throughout the term of this contract. A copy of the Alternative Source Contract is attached as Exhibit C. If the Contractor desires to use a different source of water other than the Alternative Source Contract attached as Exhibit C, the Contractor must provide the replacement Alternative Source Contract to the Contracting Officer for approval. Upon the Contracting Officer's approval the replacement Alternative Source Contract will supersede and replace the original Alternative Source Contract as Exhibit C.

b. During the term of this contract, the Contractor shall make available to the United States, by assignment or otherwise, at no cost to the United States, all rights to use and/or control for any reason the amount of water specified in Article 3 of this contract, together with the difference, if any, between stream transit loss uniformly assessed by the Division Engineer on deliveries from the Alternative Source reservoir and stream transit loss uniformly assessed by the Division Engineer on deliveries from the Reservoir to a common point on the Colorado River, provided through the Alternative Source Contract. In the event that the Contractor obtains an Alternative Source Contract for a greater amount of water than the amount specified in Article 3.a, only that portion of the Alternative Source water that is equal to the amount of contracted Reservoir water service, together with the difference, if any, between stream transit loss uniformly assessed by the Division Engineer on deliveries from the Alternative Source reservoir and stream transit loss uniformly assessed by the Division Engineer on deliveries from the Reservoir to a common point on the Colorado River, will be made available to the United States. Upon termination of this contract, the right of the United States to use the Alternative Source water shall also terminate, and all right, title, and interest in and to the Alternative Source water shall automatically revert back to the Contractor.

c. During the term of this contract, any changes to the Alternative Source Contract including, but not limited to, modifications, amendments, supplements, and other changes or additions of any kind, must be approved, in writing, by the Contracting Officer prior to the

execution of those changes. The Contractor shall provide, within 30 days, copies of any executed documents associated with the Alternative Source Contract.

d. In the event the Alternative Source Contract is terminated for any reason, or the water is unavailable for any reason, the Contractor shall immediately notify the Contracting Officer of the termination or unavailability of water as well as the reason(s) for either the termination or unavailability of the water. Upon notification, the Contracting Officer has the right to immediately suspend water delivery until alternate source water becomes available or a new Alternative Source Contract is executed. The Contracting Officer also has the right to terminate this contract upon notification to the Contractor, in writing, that the Contractor has failed to abide by the terms and conditions of this Article, in accordance with the provisions of Article 8.

**5.**

**WATER SERVICES CHARGES**

a. In accordance with paragraph 5 of the Operating Policy, the United States will charge its Contractors differential rates for irrigation, municipal/domestic, and industrial water service. These rates include an appropriate share of the Reservoir's actual annual OM&R costs. The rates shall be adjustable by the United States to cover OM&R costs if such costs exceed the rates set forth herein.

b. The charge for irrigation water service will be an annual charge of \$18.76 per acre-foot for the amount of water contracted for herein, and which the United States is capable of delivering to the Contractor. Payment of this charge shall be due on July 1 for water to be delivered during the succeeding year. No water shall be delivered prior to payment.

c. The charge for municipal/domestic water service shall be an annual charge of \$18.76 per acre-foot for the amount of water contracted for herein, and which the United States is capable of delivering to the Contractor. Payment of this charge shall be due on July 1 for water to be delivered during the succeeding year. No water will be delivered prior to payment.

d. The annual charge for Category A and Category B industrial water service contracted for herein shall be as follows:

(1) \$55 per acre-foot applied to 100 percent of all water up to 100 acre-feet plus 50 percent of all water over 100 acre-feet up to 2,000 acre-feet, for a total of 0 acre-feet of water.

(2) \$15 per acre-foot standby charge and \$40 per acre-foot delivery charge applied to the remaining 50 percent of all water over 100 acre-feet up to 2,000 acre-feet, for a total of 0 acre-feet of water.

(3) \$15 per acre-foot standby charge and \$60 per acre-foot delivery charge applied to all water from 2,001 to 4,000 acre-feet, for a total of 0 acre-feet of water.

(4) \$15 per acre-foot standby charge and \$80 per acre-foot delivery charge applied to all water above 4,000 acre-feet, for a total of 0 acre-feet of water.

e. The industrial water standby charge shall be paid annually for the amount of water service in d.(2), d.(3), and d.(4) above. The industrial water delivery charge in d.(2), d.(3), and d.(4) above shall be in addition to the standby charge and shall be paid for each acre-foot of water actually delivered. Payments for all water service charges, except the delivery charge in d.(2), d.(3), and d.(4) above, shall be due on July 1 for water to be delivered during the succeeding year. No water will be delivered prior to payment of such charges. Payment for the delivery charges in d.(2), d.(3), and d.(4) above shall be based on the delivery schedule submitted by the Contractor pursuant to Subarticle 6.a. The Contracting Officer will provide the Contractor with a statement based on said projected schedule, whereupon payment of such additional delivery charges shall be made by the Contractor within 30 days of the date of such statements. In the case that the United States is not capable of delivering water, adjustments in payment for any differences between actual and scheduled deliveries of water will be made with the succeeding year's payment; whether or not the Contractor requests or takes delivery pursuant to Article 6, the Contractor is required to pay annually the charges in d.(1) above and the standby charges in d.(2), d.(3), and d.(4) above.

f. The minimum annual payment for water service under this contract will be the greater of \$250 or the charge established in b., c., and d. above.

g. Water delivered by exchange upstream from the Reservoir pursuant to this contract shall be subject to an annual power interference charge of \$9.80 per acre-foot. Said charge shall be due within 30 days after the date of the bill each year of this contract, based on the delivery schedule provided pursuant to Subarticle 6.a. Any excess advance payments will be applied to succeeding annual payments. All power interference charges are in addition to the other charges as set forth in this Article 5. Power interference charges shall be adjustable pursuant to 5.h. below.

h. Water service and power interference charges set forth in this article shall be adjusted by the Contracting Officer, based upon applicable Federal and State laws and Reclamation policies in effect or as established by the Secretary of the Interior at that time.

i. Payments pursuant to this contract shall be made to a certain bank by a medium specified by the Contracting Officer, i.e., by check to a certain lock box, or by wire transfer to the United States Treasury, or to such other locations and by such other methods as the Contracting Officer may specify.

j. In the event that this contract is terminated, or the water is otherwise unavailable for any reason, the United States shall not be responsible for any provisions of, or related to, the Alternative Source Contract, including but not limited to, water service charges, fees, or associated costs.

**6.**

**DELIVERY OF WATER**

a. Before June 1 of each year, the Contractor may submit to the Contracting Officer a written schedule of its anticipated monthly demand for the delivery of water during the succeeding 12-month period from July 1 through June 30, and the Contractor may periodically

revise said schedule as necessary. If no schedule is provided, the Contracting Officer shall use the last schedule provided by the Contractor. The Contractor shall be entitled to a change in scheduled delivery of water under this contract at any time upon 24 hours written notice to the Contracting Officer. All notices requesting delivery or a change in the delivery schedule shall be in writing; email is acceptable. Water delivered under this Contract shall be accounted as delivered per the schedule provided herein, regardless of river administration status. Schedule changes shall not be made in arrears. The Contractor shall send copies of all schedule requests to the Division No. 5 Engineer, Colorado Division of Water Resources.

b. The Contracting Officer shall notify the Division No. 5 Engineer, Colorado Division of Water Resources, in Glenwood Springs, Colorado, of the date, time, and amount of the water released from the Reservoir for delivery pursuant to this contract.

c. In the event the Contractor fails or is unable to use the quantities of water delivered by the United States pursuant to the delivery schedule or as otherwise requested by the Contractor, said inability, failure, or refusal shall not relieve the Contractor of its obligation to make the required payments pursuant to the terms of this contract.

d. The delivery of water under this contract shall be made into the Blue River at the outlet works of Green Mountain Dam or by exchange with other sources of supply; Provided, That the delivery of water from a source other than the Reservoir shall not reduce the Contractor's ability to beneficially use said water in the same location and manner, at the same times, and for the same purposes specified in this contract and the delivery schedules. All such exchanges shall be in accordance with State and Federal laws and regulations including, if required, approval by the Division No. 5 Engineer.

e. All delivery of water into the Blue River shall be subject to the limitations of the outlet capacity of Green Mountain Dam. All water delivered to the Contractor from the Reservoir shall be measured at the outlet works of Green Mountain Dam by the Contracting Officer with equipment furnished, operated, and maintained by the United States. The United States shall not be responsible for the control, carriage, use, handling, or distribution of water delivered to the Contractor beyond the outlet works of Green Mountain Dam or other point of delivery, and the Contractor shall hold the United States harmless from and against all claims, demands, and causes of action of any nature whatsoever on account of property damage, personal injury, or death resulting from the control, carriage, use, handling, or distribution of water delivered to the Contractor provided such water is delivered at the outlet works of Green Mountain Dam or other point of delivery in a safe and reasonable manner.

f. No delivery of water pursuant to this contract shall be made until the Contractor is in compliance with the terms and conditions contained in the attached Exhibit B. Exhibit B may include, but is not limited to, any special terms and conditions required by individual contractors as a result of the National Environmental Policy Act (NEPA) compliance requirements for this contract. The Contractor's failure to comply with the terms and conditions of Exhibit B after initial delivery of water may result in discontinuance of water deliveries under this contract, in whole or in part, until the Contractor is in compliance with the terms and conditions of Exhibit

B. Such noncompliance may also result in the termination of this contract pursuant to Article 8. Exhibit B may be amended upon the mutual agreement of the parties hereto.

g. No delivery of water pursuant to this contract shall be made until the Contractor is in compliance with the terms and conditions contained in the Alternative Source Contract. To the extent that water provided through the Alternative Source Contract is unavailable for use by the United States for any reason including, but not limited to, termination of the Alternative Source Contract or water shortage, the Contractor's rights to water service from this contract shall be reduced by a like amount. To the extent that water is available under Contractor's Alternative Source Contract as required by Article 4 and can be utilized by the United States to offset any water shortages in the Reservoir then water service to Contractor will not be curtailed as a result of a water shortage to the Reservoir.

h. The Contractor shall not be responsible for the storage of water in or the operation and maintenance of the Reservoir, and the United States agrees to be responsible for all claims, demands, and causes of action of any nature whatsoever resulting from the storage of water in or the operation and maintenance of the Reservoir, as authorized by the terms and conditions of the Federal Tort Claims Act (28 U.S.C., Sections 2671-2680).

i. Excess capacity storage will be provided on the condition that it will not interfere with the operation of the Reservoir as set forth in Senate Document 80, 75 Cong., 1st Sess., and the Act of August 9, 1937 (50 Stat.564). The provisions of storage under this contract will require coordination of the release of water from the Reservoir for power generation by releasing additional water for power generation during the summer when the Reservoir is full. This is in lieu of winter power generation without providing storage for the Contractor.

**7.**

**CONTRACTOR'S USE OF WATER**

a. Water delivered to the Contractor under this contract shall be used by the Contractor for municipal/domestic purposes either directly, by exchange, or through augmentation in connection with NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 34, Township 1 South, Range 80 West of the 6<sup>th</sup> P.M., a distance of 777 feet from the West line and 2,454 feet from the South line of said Section 34. It shall be the Contractor's responsibility to obtain the necessary approvals, permits, and/or rights to carry out exchanges and to develop any necessary augmentation plans. To the extent that the water service contracted for herein is being used to prevent injury to the water rights of the City and County of Denver, hereinafter "Denver," acting by and through its Board of Water Commissioners, pursuant to the terms of the Agreement dated September 18, 1985, hereinafter "Summit County Agreement," between Denver and the Board of County Commissioners of Summit County, Colorado, the July 21, 1992 Clinton-Reservoir – Fraser River Water Agreement, the May 15, 2012 Colorado River Cooperative Agreement, and agreements executed prior to the date of this contract which implement the above agreements, then such water shall be delivered into the Blue River at the outlet works of Green Mountain Dam or delivered by exchange. Before June 1 of each year, the Contractor shall report to the Contracting Officer the amount of water service contracted for herein, which will be used in the following year to prevent injury to Denver's water rights pursuant to the terms of such agreements.

b. No lease, sale, donation, transfer, or other disposition of any of the water contracted for herein may be made without the prior written approval of the Contracting Officer; Provided, That if the Contractor's facilities are sold and this contract is assigned under Subarticle 11.b., the right to delivery of the water contracted for herein may be transferred so long as the water will be used in the same location, at the same time(s), and for the same purpose(s) as contemplated by the Contractor under this contract. Should unauthorized dispositions occur, the Contractor's right to delivery of the quantity of water under contract so disposed of shall be terminated by the Contracting Officer.

**8. TERMINATION OF THE CONTRACT OR ADJUSTMENT IN THE CONTRACTED SERVICE**

a. Notwithstanding the provisions of Article 8.c. below, the United States may, at any time, terminate this contract and cease water service hereunder for failure of the Contractor: to make payments as required by this contract; to abide by the terms and conditions of this contract; or to abide by any lawful notice, order, or final administrative or judicial determination that the Contractor has violated a law, rule, or regulation of the United States or the State of Colorado directly relating to and affecting water service hereunder; Provided, That this contract shall not be terminated unless such failure or violation continues 60 days after the United States gives the Contractor written notice to correct the problem.

b. The Contractor may terminate the contract or reduce the amount of water contracted for herein on July 1 of any year by giving written notice to the Contracting Officer at least 90 days prior to that date.

c. After 5 years from the date of execution of this contract, the United States may terminate this contract or adjust the amount of water service provided for in Article 3 if all of the following conditions are met:

(1) The Contracting Officer has determined, after consultation with the Contractor, that the Contractor has not yet made and is not capable of making, during the remaining term of the contract, beneficial use of the water service contracted for herein, and that the Contractor has no reasonable and legitimate future beneficial use for the water;

(2) The Contracting Officer has provided evidence to the Contractor that the United States has requests from other users to make, and who are capable of making, beneficial use of all or a portion of the water service contracted for herein;

(3) There is no other water available from the marketable yield of the Reservoir to fulfill such requests from other users; and

(4) The Contracting Officer has given written notice to the Contractor at least 1 year in advance of the proposed termination or adjustment.

A Contractor shall be considered capable of making beneficial use of the contracted water service if such water will serve future growth or development; Provided, That the projections for

such future growth or development are, in the judgment of the Contracting Officer, supported by credible development plans and/or growth projections.

d. The amount of water service contracted for in Article 3 above may also be adjusted, as determined necessary by the Contracting Officer, to provide for the furnishing of water for the purposes set forth in Article 6.i. above.

e. In the event the contracted service is reduced by the Contractor or the United States pursuant to Subarticles 8.b., 8.c., or 8.d. above, then the annual water service charges set forth in Article 5 shall be reduced accordingly.

**9.**

**ENVIRONMENTAL COMPLIANCE**

a. NEPA compliance for the cumulative environmental impacts associated with the marketing of water from the Reservoir is documented in the “Green Mountain Reservoir, Colorado Water Marketing Program, Final Supplement to the Final Environmental Impact Statement, Colorado-Big Thompson Windy Gap Projects, Colorado” (EIS-88-10). NEPA compliance for the site-specific impacts associated with the Contractor’s use of the water pursuant to this contract are documented in Categorical Exclusion Checklist (CEC) No. ECAO 2022- 065. NEPA compliance for this contract has resulted in a requirement to implement certain measures to avoid, minimize, or mitigate the environmental impacts associated with the Contractor’s use of the water pursuant to this contract. These requirements are described in Exhibit B attached hereto and by this reference made a part hereof, and the Contractor agrees to abide by and comply with the terms and conditions stated therein.

b. The Contractor shall give notice to the United States concerning any changes in location of diversions, return flows, places or type of use, or diversion rates. The Contractor shall be responsible for any additional NEPA compliance that may be necessary as the result of these changes and any mitigation measures which may be required by the United States as the result of such changes. All costs associated with such additional NEPA compliance, including costs incurred by the United States, shall be the responsibility of the Contractor.

c. The Contractor shall not be liable for the payment of any costs associated with the preparation of EIS-88-10 for the Reservoir water marketing program and costs associated with the “Biological Opinion Round II Water Sale from Ruedi Reservoir and Green Mountain Reservoir Water Sale.”

**10.**

**NOTICES**

a. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Bureau of Reclamation, Missouri Basin Region, P.O. Box 36900, Billings, Montana 59107-6900, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Blue Valley Metropolitan District, c/o Buck McNichols, P.O. Box 492, Kremling, CO 80456. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

**11. ASSIGNMENT OF THE CONTRACT**

a. The United States reserves the right to enter into agreements with third party agents for administration of this contract; Provided, That such agreements shall not adversely affect the rights of the Contractor under this contract.

b. No assignment or transfer of this contract or any rights or interests therein shall be valid until approved in writing by the Contracting Officer; Except, That this contract may be assigned by the Contractor without the prior approval of the Contracting Officer where such assignment is to any affiliate of the Contractor or to any successor owners of the facilities for which the water is being furnished; Provided, That any such assignee assumes all obligations of the Contractor and uses the water contracted for herein in the same location, manner, and times for the purposes contemplated by the Contractor under this contract.

c. For purposes of this article, an “affiliate” of a corporation or entity shall be deemed to include any corporation or entity which is controlled by, is under common control with, or controls said corporation or entity.

**12. CHANGE IN CONTRACTOR’S ORGANIZATION**

a. The Contractor shall notify the Contracting Officer whenever there is any change in the Contractor’s organization through dissolution, consolidation, merger, or otherwise.

**13. CONTRACT NULL AND VOID IF OPERATING POLICY RULED INVALID**

a. In the event the Operating Policy is ruled invalid by a Court of competent jurisdiction, this contract shall become null and void. Should a Court of competent jurisdiction require such modification of the Operating Policy as in the Contracting Officer’s judgment would substantially affect the ability of the United States to perform its obligations under this contract, then this contract may be terminated at the option of the Contracting Officer.

**14. STANDARD CONTRACT ARTICLES**

The standard contract articles applicable to this contract are listed below. The full text of these standard articles is attached as Exhibit A and is hereby made a part of this contract by this reference.

- A. Contract Drafting Considerations
- B. Charges for Delinquent Payments
- C. General Obligation--Benefits Conditioned Upon Payment
- D. Contingent Upon Appropriation or Allotment of Funds
- E. Officials Not to Benefit
- F. Books, Records, and Reports
- G. Rules, Regulations, and Determinations
- H. Protection of Water and Air Quality



- I. Contamination or Pollution of Federal Property
- J. Clean Air and Water
- K. Water Conservation
- L. Equal Employment Opportunity
- M. Compliance With Civil Rights Laws and Regulations
- N. Privacy Act Compliance
- O. Medium for Transmitting Payments
- P. Constraints on the Availability of Water

IN WITNESS WHEREOF, the parties have executed this contract the day and year indicated in the Contracting Officer's digital signature.

THE UNITED STATES OF AMERICA

By \_\_\_\_\_  
Brent C Esplin  
Regional Director  
Bureau of Reclamation  
Missouri Basin Region

Attachment to Order 2022CW3086

CONTRACTOR

\_\_\_\_\_  
Blue Valley Metropolitan District

ACKNOWLEDGEMENT

STATE OF            )  
                          ) ss.  
COUNTY OF        )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_  
appeared \_\_\_\_\_,  
the person(s) whose name(s) (is)(are) subscribed to the within instrument and known to me to  
have executed the same.

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

(SEAL)

\_\_\_\_\_  
Notary Public  
My commission expires:

Attachment to Order - 2022CW3086

**EXHIBIT A**  
**STANDARD CONTRACT ARTICLES**

**A.**                                 **CONTRACT DRAFTING CONSIDERATIONS**

a. This Contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains.

**B.**                                 **CHARGES FOR DELINQUENT PAYMENTS**

a. The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

b. The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

c. When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

**C. GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT**

a. The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligation to the Contractor.

b. The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Colorado-Big Thompson Project facilities during any period in which the Contractor is in arrears in the advance payment of water rates or OM&R charges due the United States. The Contractor shall not deliver water under the terms and conditions of this Contract for lands or parties that are in arrears in the advance payment of water rates or OM&R charges as levied or established by the Contractor.

**D. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

a. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

**E. OFFICIALS NOT TO BENEFIT**

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

**F. BOOKS, RECORDS, AND REPORTS**

a. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the Contractor's financial transactions; water supply data; Project operation, maintenance, and replacement logs; Project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

**G. RULES, REGULATIONS, AND DETERMINATIONS**

a. The parties agree that the delivery of water or the use of Federal facilities pursuant to this Contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

b. The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with its expressed and implied provisions, the laws of the United States and the State of Colorado, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

**H. PROTECTION OF WATER AND AIR QUALITY**

a. The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

b. The Contractor will comply with all applicable water and air pollution laws and regulations of the United States and the State of Colorado; and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and will be responsible for compliance with all Federal, State or local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or Project water provided by the Contractor within its Project Water Service Area.

c. This article will not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

**I.**

**CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY**

a. The Contractor shall not allow contamination or pollution of Federal Project lands, Project waters, or Project works of the United States or administered by the United States and for which the Contractor has the responsibility for care, operation, and maintenance by its employees or agents. The Contractor shall also take reasonable precautions to prevent such contamination or pollution by third parties.

b. The Contractor shall comply with all applicable Federal, State, and local laws and regulations and Reclamation policies and instructions existing, or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, released, or disposed of on or in Federal Project lands, Project waters, or Project works.

c. "Hazardous material" means (1) any substance falling within the definition of "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. § 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution, refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal, State, local, or Tribal law.

d. Upon discovery of any event which may or does result in contamination or pollution of Federal Project lands, Project water, or Project works, the Contractor shall immediately undertake all measures necessary to protect public health and the environment, including measures necessary to contain or abate any such contamination or pollution, and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is an emergency and the first working day following discovery in the event of a non-emergency.

e. If violation of the provisions of this Article occurs and the Contractor does not take immediate corrective action, as determined by the Contracting Officer, the Contractor may be subject to remedies imposed by the Contracting Officer, which may include termination of this contract.

f. The Contractor shall be liable for any response action or corrective measure necessary to protect public health and the environment or to restore Federal Project lands, Project waters, or Project works that are adversely affected as a result of such violation, and for all costs, penalties or other sanctions that are imposed for violation of any Federal, State, local, or Tribal laws and regulations concerning hazardous material. At the discretion of the Contracting Officer, the United States may also terminate this Contract as a result of such violation.

g. The Contractor shall defend, indemnify, protect and save the United States harmless from and against any costs, expenses, claims, damages, demands, or other liability arising from or relating to Contractor's violation of this article.

h. Reclamation agrees to provide information necessary for the Contractor, using reasonable diligence, to comply with the provisions of this Article.

**J.**

**CLEAN AIR AND WATER**

a. The Contractor agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. § 7414), and section 308 of the Clean Water Act (33 U.S.C. § 1318), relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in those sections, and all applicable regulations and guidelines issued thereunder.

(2) That no portion of the work required by this Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was executed unless and until the Environmental Protection Agency eliminates the name of such facility or facilities from such listing.

(3) To use its best efforts to comply with clean air standards and clean water standards at the facility where the contract work is being performed.

(4) To insert the substance of the provisions of this article into any nonexempt subcontract, including this subparagraph a.(4).

b. The following definitions apply for purposes of this article:

(1) The term "Clean Air Act" means the Act enacted by Pub. L. 88-206 of Dec. 17, 1963, and amendments thereto, as codified at 42 U.S.C. § 7401, et seq.

(2) The term "Clean Water Act" means the Act enacted by Pub. L. 92- 500 of Oct. 18, 1972, and amendments thereto, as codified at 33 U.S.C. § 1251, et seq.

(3) The term "clean air standards" refers to all enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, and other requirements which are contained in, issued under, or otherwise adopted pursuant to the Clean Air Act

or Executive Order 11738, an applicable implementation plan as described in section 110 of the Clean Air Act (42 U.S.C. § 7410), an approved implementation procedure or plan under subsection 111(c) or subsection 111(d) of the Clean Air Act (42 U.S.C. § 7411(c) or (d)), or an approved implementation procedure under subsection 112(d) of the Clean Air Act (42 U.S.C. § 7412(d)).

(4) The term “clean water standards” refers to all enforceable limitations, controls, conditions, prohibitions, standards, and other requirements which are promulgated pursuant to the Clean Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a state under an approved program, as authorized by section 402 of the Clean Water Act (33 U.S.C. § 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Clean Water Act (33 U.S.C. § 1317).

(5) The term “comply” refers to compliance with clean air or water standards. It also refers to compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency in accordance with the requirements of the Clean Air Act or Clean Water Act and regulations issued pursuant thereto.

(6) The term “facility” means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or supervised by a Contractor or subcontractor to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

**K.**

**WATER CONSERVATION**

a. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

**L.**

**EQUAL EMPLOYMENT OPPORTUNITY**  
**(Federal Construction)**

a. The following language is required by Executive Order No. 11246 of September 24, 1965, in all government contracts unless and until it is superseded or amended.

During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or

national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract



may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **M. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS**

a. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

b. These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

c. The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

d. Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

**N.**

**PRIVACY ACT COMPLIANCE**

a. The Contractor shall comply with the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act (43 C.F.R. § 2.45, et seq.) in maintaining landholder certification and reporting records required to be submitted to the Contractor for compliance with sections 206, 224(c), and 228 of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43 C.F.R. § 426.18.

b. With respect to the application and administration of the criminal penalty provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's employees who are responsible for maintaining the certification and reporting records referenced in paragraph a. above are considered to be employees of the Department of the Interior. See 5 U.S.C. § 552a(m).

c. The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Department of the Interior Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of information contained in the landholders' certification and reporting records.

d. The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager responsible for making decisions on denials pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

e. The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless the requester elects to cite the Privacy Act as authority for the request.

**O.**

**MEDIUM FOR TRANSMITTING PAYMENTS**

a. All payments from the Contractor to the United States under this Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

b. Upon execution of the Contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the

Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

**P.**

**CONSTRAINTS ON THE AVAILABILITY OF WATER**

a. In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

b. If there is a condition of shortage because of inaccurate runoff forecasting or other similar operational errors affecting the Project; drought and other physical or natural causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

Attachment to Order - 2023-01-23-239E650002

**EXHIBIT B**

CONTRACT NO. 2022-065  
ENVIRONMENTAL COMPLIANCE

1. The site specific National Environmental Policy Act (NEPA) compliance for water service pursuant to this contract was evaluated and documented by Categorical Exclusion Checklist (CEC) No. ECAO-2022-065. This CEC is for the release of up to 1 acre-foot of municipal/domestic water annually from Green Mountain Reservoir to replace out-of-priority water to senior water rights on the Blue River, for municipal/domestic water, located NW1/4SW1/4 of Section 34, Township 1 South, Range 80 West, 6th P.M. Diversions will be made through Willow Creek at a rate not to exceed 9.6 gpm.

a. The delivery of water pursuant to this contract is subject to Colorado Water Conservation Board minimum instream flow appropriations. In the event the diversion of water pursuant to this contract results in the flow of the Blue River adjacent to or immediately downstream of the contractor's point of diversion to the confluence of the Blue River in the NW1/4SW1/4 of Section 34, Township 1 South, Range 80 West, 6th P.M. to be less than the decreed minimum flow of 60 cfs from May 1 through July 15 and 85 cfs from July 16 through April 30, the diversion of water may be curtailed up to the total amount of diversion.

b. The Contractor agrees to comply with all the requirements of Section 404 of the Clean Water Act including completion of the appropriate 404 compliance prior to construction of any facilities that may be necessary for the use of Green Mountain water pursuant to this contract.

c. The Contractor agrees to obtain applicable well permits through the State Water Engineer.

CW22008

## WATER SUPPLY CONTRACT

This Contract is made between the COLORADO RIVER WATER CONSERVATION DISTRICT (herein the "River District"), a political subdivision of the State of Colorado acting by and through its Colorado River Water Projects Enterprise, and BLUE VALLEY METROPOLITAN DISTRICT (herein "Contractor") effective as of the date of the River District's execution indicated below.

### RECITALS

A. The River District is authorized to contract to deliver water for beneficial use from River District water projects pursuant to provisions of C.R.S. § 37-46-101, *et seq.* (herein "River District Organic Act").

B. The River District is the owner and operator of the Wolford Mountain Reservoir Project located on the Muddy Creek drainage near Kremmling, Colorado, having obtained necessary decrees from the District Court in and for Colorado Water Division No. 5 (herein "Water Court") and permits from governmental agencies, and the River District is entitled to deliveries of water from Ruedi Reservoir under its Contracts with the U.S. Bureau of Reclamation.

C. The River District's Board of Directors has adopted a Water Marketing Policy, as revised by the Board from time to time, to provide for the use of water available from the River District's sources of supply pursuant to contracts, and that Water Marketing Policy is to be implemented through the River District's Water Projects Enterprise.

D. Contractor has a need for wholesale water supply, demonstrated in its submittal to the River District pursuant to the Water Marketing Policy's contracting process, in the amount of 1.0 acre feet of Colorado River Supply below the Roaring Fork Confluence annually for municipal/industrial purposes, which beneficial uses will be accomplished by Contractor generally in the vicinity of Section 34, Township 1 South, Range 80 West of the 6<sup>th</sup> P.M., in Grand County, Colorado by ground water diversions from or within the Blue River drainage, which is a tributary to the Colorado River.

E. Contractor is aware of the "Hydrology Assumptions" which are part of the Water Marketing Policy and is satisfied that, based on its review and investigations, Contractor legally and physically can make use for its intended purposes of the Contracted Water, which are the subject of this Contract and that such use will comply with the Water Marketing Policy.

### AGREEMENT

The foregoing Recitals are incorporated into this agreement between the River District and Contractor.

### DEFINITIONS

In this Contract certain terms will have definitions as stated below:

- The “River District” means the Colorado River Water Conservation District created and existing pursuant to the River District Organic Act defined in Recital A and acting by and through its Colorado River Water Projects Enterprise which is currently described and memorialized in the Resolution of the Colorado River Water Conservation District’s Board of Directors dated April 20, 2005.
- The “Project” means the River District’s “Colorado River Supply” from: (1) Wolford Mountain Reservoir, for which storage water right decrees were obtained by the River District in Cases No. 87CW283, 95CW281 and 98CW237 in the District Court for Colorado Water Division No. 5, and for which additional storage water right decrees may be obtained in the future by the River District in other cases; (2) the River District’s contractual right to water deliveries from Ruedi Reservoir; and (3) other supplies that the River District may acquire suitable for use in its Water Marketing Program.
- “Agricultural” means the use of water for commercial production of agricultural crops and livestock and other uses consistent with any right decreed for irrigation purposes, which uses are made on a parcel of land of at least ten acres.
- “Municipal and Industrial” means the use of water by individuals, cities, towns, public or quasi-public districts, private corporations, homeowners associations, or other entities for domestic, municipal, and miscellaneous related purposes as those terms are traditionally and commonly construed, including the use of water for purposes of producing or processing a non-agricultural product or service for sale, including without limitation, such uses as manufacturing, mining, milling, land reclamation, golf course irrigation, snowmaking, and non-hydroelectric power generation; and including the use of water for environmental mitigation purposes associated with such uses; but excepting the agricultural use of water defined herein.
- “Contracted Water” means the water which is the subject of this Contract which is to be released and delivered by the River District and used by Contractor. The Contracted Water is 1.0 acre feet of Colorado River Supply below the Roaring Fork Confluence available during each Project Year during the term of this Contract, subject to the provisions hereof, for Contractor’s use without right of carryover of any amount not used in any Project Year.
- “Project Year” means a period of time from July 1 through and including the subsequent June 30.
- “Water Marketing Policy” means the River District’s policy statement as revised and readopted as of the execution date of this Contract and as the same may be amended in the future.
- “Project Hydrology Assumptions” or “Hydrology Assumptions” means the document attached as Appendix “A” to the Water Marketing Policy adopted on October 17, 2006.

1. River District Water Delivery Obligations and Responsibilities.

- a. Delivery. The River District will deliver the Contracted Water at the outlet works of the Contracted Water's sources of supply into the receiving natural streams in quantities provided herein. Unless otherwise agreed to by the River District's General Manager based upon written request of Contractor, the River District will make releases or request that releases be made for Contractor, based upon Contractor's written schedule of anticipated demand, adjusted as necessary by the ongoing status of river administration *vis-a-vis* the priority status of Contractor's diversions, provided that the releases can be made within the operational limitations of the River District's project facilities as determined by the River District in its sole discretion. Contractor shall be solely responsible after delivery for the legal and physical delivery and use of the Contracted Water.
- b. Delivery Contingencies. The River District's delivery of Contracted Water shall be subject to Contractor's payments pursuant to paragraph 3 below, and the provisions for curtailment of deliveries in paragraph 5 below.
- c. Water Measurements. The River District shall measure at the outlet works of the Contracted Water's sources of supply all Contracted Water and shall notify the Division Engineer of Colorado Water Division No. 5 of the date, time and amount of Contracted Water released pursuant to this Contract. Copies of such records shall be provided to Contractor upon request.
- d. Water Quality. The River District shall have no obligation to Contractor or any other person regarding and makes no warranties or representations to Contractor concerning the quality of Contracted Water delivered pursuant to this Contract by releases of raw water to natural streams.
- e. Maintenance of Facilities. The River District, to the extent that it has ownership and maintenance control, shall use its best efforts to maintain in good working condition the water storage and release facilities of the Contracted Water.
- f. Withholding of Delivery. The River District may withhold deliveries of Contracted Water in the event of Contractor's nonpayment for Contracted Water or any other breach of this Contract by Contractor. Such remedy shall not be the River District's exclusive remedy in the event of any such breach.
- g. Delivery from Primary or Alternate Sources. The River District will deliver the Contracted Water from the sources of Colorado River Supply below the Roaring Fork Confluence described herein, which will meet the Contractor's need to satisfy calls by senior water rights or the Contractor's physical need for any direct delivery of Contracted Water to Contractor's diversions. Subject to meeting those objectives, the River District reserves the right to provide all or any of the Contracted Water to Contractor from alternate reservoirs for Contractor's use, provided that the alternate sources are suitable to physically satisfy calls by senior

water rights or Contractor's need for direct delivery.

2. Contractor's Water Use Obligations and Responsibilities.

- a. Scheduling of Use. Contractor has provided the River District a preliminary written schedule of its anticipated monthly demands for the Contracted Water during the current Project Year (July 2022 - June 2023). The schedule provided by Contractor in its application for this Contract shall serve as the schedule to be used until it is modified in a written notice given by Contractor to the River District, or as necessary in response to river administration of the Contractor's diversions. The schedule shall identify the volume of any Contracted Water anticipated by Contractor not to be needed by it during any particular Project Year. Contractor shall update said schedule periodically during the Project Year as conditions require and give the River District written notice of all such revisions.
- b. Carriage Losses. Contractor shall bear carriage losses in such amount as is determined by the Division Engineer for Colorado Water Division No. 5, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.
- c. Use per Contract and Law. Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of the Project, the Water Marketing Policy, as it may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Contractor is not authorized to apply for or secure any change in the water rights for or associated with any of the sources of supply of the Contracted Water.
- d. Legal Approvals. Contractor shall at its sole expense adjudicate a plan or plans for augmentation or exchange and/or secure administrative approvals of any temporary substitute supply plans which are needed for Contractor to use its Contracted Water. Any such plans shall identify Wolford Mountain Reservoir and Ruedi Reservoir as the sources of supply. If Contractor intends to make any application(s) for any augmentation or exchange plan(s) or substitute supply plan(s) needed for Contractor to use its Contracted Water, Contractor shall submit the proposed application(s) to the River District within a reasonable time before Contractor proposes to file such application(s). The River District shall grant written approval of such applications before they are submitted or filed, and the River District's approval shall not be unreasonably withheld. The River District may in its discretion become a co-applicant in the prosecution of any such applications for the purpose of protecting its water rights and related policies. Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of a River District contract.
- e. Limitation on Disposition.
  - i. Contractor shall not sublet, sell, donate, loan, assign or otherwise dispose



of any of its rights to this Contract or to Contracted Water without prior written notice to, and the written approval of, the River District and the payment of a transfer fee at the prevailing rate set forth in the Water Marketing Policy. The River District's approval of such disposition shall be granted in all instances in which the Contractor is transferring the water system which supplies the Contracted Water, or a permanent transfer of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted Water, or where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the River District to be served with the Contracted Water.

- ii. The assignment of a Contract is subject to the Water Marketing Policy as revised as of the effective date of the assignment. In accordance with this subparagraph (ii), any assignee must pay for the Contracted Water at the then-current price determined by the River District Board of Directors.
- f. Contractor's Water Rates. Contractor may charge its water customers who are supplied with Contracted Water such rates and charges as are permitted by Colorado law.
- g. Nondiscrimination. Contractor shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, or national origin or any other criteria prohibited under state or federal law.
- h. Accounting of Use. Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to the River District specifically for the purpose of enabling the River District to prove the use of River District Project water rights and to administer and operate the Project and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to the River District promptly upon request and shall assist the River District as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.
- i. Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, *et seq.*) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species. As of March 1, 2007, designated critical habitat exists from the Garfield County 320 Road

Bridge Crossing of the Colorado River in Rifle downstream to the Colorado State line.

3. Contractor's Payments.

- a. In addition to the application fee already paid by Contractor, in order for the River District's delivery obligation to become effective, Contractor shall pay to the River District on the execution of this Contract the total sum of \$406.50, being \$406.50 for each acre foot of 1.0 acre feet of Contracted Water for the current Project Year (July 2022-June 2023). Thereafter, the River District shall provide Contractor an annual invoice for the Contracted Water, and Contractor shall pay the invoice within thirty (30) days of receipt. The price for each type of water will be reviewed and set annually by the River District's Enterprise Board of Directors (which decision normally will be made prior to March 1 each year). Any annual increase in the contract price shall not exceed the then-current published Consumer Price Index (CPI) plus New Growth Index (NGI).
- b. Contractor also shall pay any special assessment levied by the River District on Contractor to recoup all or a portion of costs attributable to extraordinary maintenance incurred by the River District or assessed upon the River District by its third party water suppliers.

4. Contract Term.

- a. Except in the event of an early termination or partial termination as provided for in paragraph 6 below and subject to the other terms and conditions of this Contract, the term of this Contract shall be for a period of up to forty (40) years from the date of the execution of this Contract (through June 30, 2062).
- b. At the end of the 40-year term of this Contract (June 30, 2062), the Contractor shall have the right to renew this Contract for the same Contracted Water amount for a secondary term of thirty-five (35) years, upon such terms and conditions as the River District is offering at that time, provided that the River District is offering up the full amount of Contracted Water for lease. In the event that the River District, on a non-discriminatory basis, decides not to offer up the full amount of the Contracted Water for lease, Contractor shall have the right to renew for a secondary term of thirty-five (35) years such lesser portion of the Contracted Water as may be offered by the River District. If Contractor desires to so renew this Contract, it shall provide the River District written notice of its intention to do so at least ninety (90) days prior to the expiration of the initial term of this Contract. Thereafter, and prior to the expiration of the initial term, the River District and Contractor shall execute a supplemental agreement of renewal in a form mutually acceptable to the River District and Contractor. If such notice of intention to renew is not provided and such supplemental agreement is not executed, no renewal term shall commence.

5. Water Shortage. In the event that the River District is unable, because of either legal or physical reasons (including, but not limited to, hydrologic shortages and operational

restrictions), to deliver any or all of the full amount of water contracted from the Project, including the Contracted Water, the River District reserves the right to apportion the Project's available water among its several contractors, including Contractor, in the manner provided in paragraph 6 of the Water Marketing Policy.

6. Contract Termination.

a. Termination by River District.

- i. The River District may terminate this Contract for any violation or breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any sum or amount due under this Contract within thirty (30) days after receiving written notice from the River District of such breach.
- ii. The River District also may terminate this Contract if, in its discretion, any judicial or administrative proceedings initiated by Contractor as contemplated in subparagraph 2.d above, threaten the River District's authority to contract for delivery of Project Water or the River District's water rights, permits, or other interests associated with the Project.
- iii. The River District may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

b. Termination by Contractor.

- i. Contractor may terminate this Contract in its entirety for any reason by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment.
- ii. Every fifth year after the year in which this Contract is executed, Contractor may partially terminate this Contract as to the amount of Contracted Water by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment. Partial termination by Contractor shall not exceed more than fifty percent (50%) of the amount of Contracted Water which is then under contract.
- iii. Within thirty (30) days of final approval of the Water Court application contemplated by subparagraph 2.d. above, Contractor may by written notice to the River District partially terminate this Contract as to the amount of Contracted Water which is not needed under that approval.

c. Notice of Termination to Affected Officials. The River District will notify the Division Engineer and any other appropriate governmental officials of any full or partial contract termination except for any partial termination under subparagraph 6.b.(iii).

7. Force Majeure. The River District shall not be responsible for any losses or damages incurred as a result of the River District's inability to perform pursuant to this Agreement due to the following causes if beyond the River District's control and when occurring through no direct or indirect fault of the River District, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to the River District's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.
8. Miscellaneous/Standard Provisions.
- a. Notices.
- i. All notices required or appropriate under or pursuant to this Contract shall be given in writing mailed or delivered to the parties at the following addresses:
- River District:  
Colorado River Water Conservation District  
Attention: General Manager / Secretary  
201 Centennial Street, Suite 200  
Glenwood Springs, Colorado 81601  
Phone: (970) 945-8522  
Fax: (970) 945-8799
- |  |  |
|--|--|
| <u>Contractor:</u>   | with copy to:  |
| Blue Valley Metropolitan District                                    | Balcomb & Green, P.C.  |
| Buck McNichols, General Manager                                      | Scott Grosscup, Esq.   |
| P.O. Box 492   | 818 Colorado Avenue  |
| Kremmling, CO 80459  | Glenwood Springs, CO 81601   |
| (970) 724-3502   | (970) 928-3468   |
| <a href="mailto:buck@bvmd.biz">buck@bvmd.biz</a>                     | <a href="mailto:sgrosscup@balcombgreen.com">sgrosscup@balcombgreen.com</a> |
| <a href="mailto:buckmcnichols@gmail.com">buckmcnichols@gmail.com</a> |  |
- and billing to: Andrea Buller, [bluevalleyacres@gmail.com](mailto:bluevalleyacres@gmail.com)
- ii. Either party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.
- b. Amendments. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.
- c. This Contract is subject to the River District's Water Marketing Policy, as it may be revised from time to time by the River District's Board.

9. Alternative Source Contract.

a. The Contracted Water will be utilized as an Alternative Source as evidenced by the application filed by the Contractor with the United States, Department of the Interior, Bureau of Reclamation (Reclamation), for a Green Mountain Reservoir Contract for 1.0 acre feet. Notwithstanding the Delivery provisions in paragraph 1.a., Contractor agrees that the delivery of all of the Contracted Water shall be made only upon the prior written authorization of Reclamation. Notwithstanding any notice provisions herein Reclamation may authorize the delivery of water as contemplated by this paragraph via electronic mail.

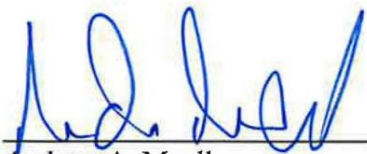
b. The River District will notify Reclamation in a timely manner of any contract modification, partial termination, or termination or any indication that the Contractor will seek a contract modification, partial termination, or termination. Notice shall be sent as soon as practicable to:

Attn: Repayment Specialist (EC-1310)  
Bureau of Reclamation  
11056 West County Road 18E  
Loveland, CO 80537

c. Unless the River District notifies Reclamation prior to July 1 of the Project Year, the Contract Water will be from the River District's Colorado River Supply below the Roaring Fork Confluence. However, consistent with paragraph 1.g. an alternate source can be utilized if both Reclamation and the River District agree in writing that the alternate source is mutually acceptable. Notwithstanding any notice provisions herein Reclamation and the River District may agree to delivery from an alternate source via electronic mail.

COLORADO RIVER WATER CONSERVATION  
DISTRICT acting by and through its Colorado River  
Water Projects Enterprise

DATE: 9/28/2022

By:   
Andrew A. Mueller  
General Manager/Secretary

ATTEST:

  
Audrey Turner, Chief of Operations

Water Supply Contract  
Page 10

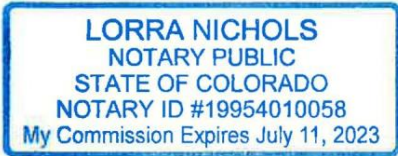
CW22008

**VERIFICATION**

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF GARFIELD )

The foregoing Water Supply Contract was subscribed and sworn to before me by Andrew A. Mueller as General Manager/Secretary and Audrey Turner, Chief of Operations of the Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise this 28 day of September, 2022.


Witness my hand and official seal. My Commission Expires: \_\_\_\_\_



*Lorra Nichols*  
\_\_\_\_\_  
Notary Public

Attachment to Order 2022CW00086

CONTRACTOR:  
BLUE VALLEY METROPOLITAN  
DISTRICT

By:   
\_\_\_\_\_  
Buck McNichols, General Manager

**VERIFICATION**

STATE OF Colorado )  
  ) ss.  
COUNTY OF Summit )

The foregoing Water Supply Contract was subscribed and sworn to before me by Buck McNichols as General Manager of Blue Valley Metropolitan District this 19 day of September, 2022.

Witness my hand and official seal. My Commission Expires: Oct 15, 2024

BRANDIE ELLIOTT  
NOTARY PUBLIC - STATE OF COLORADO  
NOTARY ID 20204036159  
MY COMMISSION EXPIRES OCT 15, 2024

\_\_\_\_\_  
Notary Public

Attachment to Order - 2022CV3086

**WATER SUPPLY CONTRACT**

DATE FILED: October 13, 2023 3:13 PM

This Contract is made between the COLORADO RIVER WATER CONSERVATION DISTRICT (herein the “River District”), a political subdivision of the State of Colorado acting by and through its Colorado River Water Projects Enterprise, and BLUE VALLEY METROPOLITAN DISTRICT (herein “Contractor”) effective as of the date of the River District’s execution indicated below.

RECITALS

A. The River District is authorized to contract to deliver water for beneficial use from River District water projects pursuant to provisions of C.R.S. § 37-46-101, *et seq.* (herein “River District Organic Act”).

B. The River District is the owner and operator of the Wolford Mountain Reservoir Project located on the Muddy Creek drainage near Kremmling, Colorado, having obtained necessary decrees from the District Court in and for Colorado Water Division No. 5 (herein “Water Court”) and permits from governmental agencies, and the River District is entitled to deliveries of water from Ruedi Reservoir under its Contracts with the U.S. Bureau of Reclamation.

C. The River District’s Board of Directors has adopted a Water Marketing Policy, as revised by the Board from time to time, to provide for the use of water available from the River District’s sources of supply pursuant to contracts, and that Water Marketing Policy is to be implemented through the River District’s Water Projects Enterprise.

D. Contractor has a need for wholesale water supply, demonstrated in its submittal to the River District pursuant to the Water Marketing Policy’s contracting process, in the amount of 1.0 acre feet of Colorado River Supply below the Roaring Fork Confluence annually for municipal/industrial purposes, which beneficial uses will be accomplished by Contractor generally in the vicinity of Section 34, Township 1 South, Range 80 West of the 6<sup>th</sup> P.M., in Grand County, Colorado by ground water diversions from or within the Blue River drainage, which is a tributary to the Colorado River.

E. Contractor is aware of the “Hydrology Assumptions” which are part of the Water Marketing Policy and is satisfied that, based on its review and investigations, Contractor legally and physically can make use for its intended purposes of the Contracted Water, which are the subject of this Contract and that such use will comply with the Water Marketing Policy.

AGREEMENT

The foregoing Recitals are incorporated into this agreement between the River District and Contractor.

DEFINITIONS

In this Contract certain terms will have definitions as stated below:



- The “River District” means the Colorado River Water Conservation District created and existing pursuant to the River District Organic Act defined in Recital A and acting by and through its Colorado River Water Projects Enterprise which is currently described and memorialized in the Resolution of the Colorado River Water Conservation District’s Board of Directors dated April 20, 2005.
- The “Project” means the River District’s “Colorado River Supply” from: (1) Wolford Mountain Reservoir, for which storage water right decrees were obtained by the River District in Cases No. 87CW283, 95CW281 and 98CW237 in the District Court for Colorado Water Division No. 5, and for which additional storage water right decrees may be obtained in the future by the River District in other cases; (2) the River District’s contractual right to water deliveries from Ruedi Reservoir; and (3) other supplies that the River District may acquire suitable for use in its Water Marketing Program.
- “Agricultural” means the use of water for commercial production of agricultural crops and livestock and other uses consistent with any right decreed for irrigation purposes, which uses are made on a parcel of land of at least ten acres.
- “Municipal and Industrial” means the use of water by individuals, cities, towns, public or quasi-public districts, private corporations, homeowners associations, or other entities for domestic, municipal, and miscellaneous related purposes as those terms are traditionally and commonly construed, including the use of water for purposes of producing or processing a non-agricultural product or service for sale, including without limitation, such uses as manufacturing, mining, milling, land reclamation, golf course irrigation, snowmaking, and non-hydroelectric power generation; and including the use of water for environmental mitigation purposes associated with such uses; but excepting the agricultural use of water defined herein.
- “Contracted Water” means the water which is the subject of this Contract which is to be released and delivered by the River District and used by Contractor. The Contracted Water is 1.0 acre feet of Colorado River Supply below the Roaring Fork Confluence available during each Project Year during the term of this Contract, subject to the provisions hereof, for Contractor’s use without right of carryover of any amount not used in any Project Year.
- “Project Year” means a period of time from July 1 through and including the subsequent June 30.
- “Water Marketing Policy” means the River District’s policy statement as revised and readopted as of the execution date of this Contract and as the same may be amended in the future.
- “Project Hydrology Assumptions” or “Hydrology Assumptions” means the document attached as Appendix “A” to the Water Marketing Policy adopted on October 17, 2006.

1. River District Water Delivery Obligations and Responsibilities.

- a. Delivery. The River District will deliver the Contracted Water at the outlet works of the Contracted Water's sources of supply into the receiving natural streams in quantities provided herein. Unless otherwise agreed to by the River District's General Manager based upon written request of Contractor, the River District will make releases or request that releases be made for Contractor, based upon Contractor's written schedule of anticipated demand, adjusted as necessary by the ongoing status of river administration *vis-a-vis* the priority status of Contractor's diversions, provided that the releases can be made within the operational limitations of the River District's project facilities as determined by the River District in its sole discretion. Contractor shall be solely responsible after delivery for the legal and physical delivery and use of the Contracted Water.
- b. Delivery Contingencies. The River District's delivery of Contracted Water shall be subject to Contractor's payments pursuant to paragraph 3 below, and the provisions for curtailment of deliveries in paragraph 5 below.
- c. Water Measurements. The River District shall measure at the outlet works of the Contracted Water's sources of supply all Contracted Water and shall notify the Division Engineer of Colorado Water Division No. 5 of the date, time and amount of Contracted Water released pursuant to this Contract. Copies of such records shall be provided to Contractor upon request.
- d. Water Quality. The River District shall have no obligation to Contractor or any other person regarding and makes no warranties or representations to Contractor concerning the quality of Contracted Water delivered pursuant to this Contract by releases of raw water to natural streams.
- e. Maintenance of Facilities. The River District, to the extent that it has ownership and maintenance control, shall use its best efforts to maintain in good working condition the water storage and release facilities of the Contracted Water.
- f. Withholding of Delivery. The River District may withhold deliveries of Contracted Water in the event of Contractor's nonpayment for Contracted Water or any other breach of this Contract by Contractor. Such remedy shall not be the River District's exclusive remedy in the event of any such breach.
- g. Delivery from Primary or Alternate Sources. The River District will deliver the Contracted Water from the sources of Colorado River Supply below the Roaring Fork Confluence described herein, which will meet the Contractor's need to satisfy calls by senior water rights or the Contractor's physical need for any direct delivery of Contracted Water to Contractor's diversions. Subject to meeting those objectives, the River District reserves the right to provide all or any of the Contracted Water to Contractor from alternate reservoirs for Contractor's use, provided that the alternate sources are suitable to physically satisfy calls by senior

water rights or Contractor's need for direct delivery.

2. Contractor's Water Use Obligations and Responsibilities.

- a. Scheduling of Use. Contractor has provided the River District a preliminary written schedule of its anticipated monthly demands for the Contracted Water during the current Project Year (July 2022 - June 2023). The schedule provided by Contractor in its application for this Contract shall serve as the schedule to be used until it is modified in a written notice given by Contractor to the River District, or as necessary in response to river administration of the Contractor's diversions. The schedule shall identify the volume of any Contracted Water anticipated by Contractor not to be needed by it during any particular Project Year. Contractor shall update said schedule periodically during the Project Year as conditions require and give the River District written notice of all such revisions.
- b. Carriage Losses. Contractor shall bear carriage losses in such amount as is determined by the Division Engineer for Colorado Water Division No. 5, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.
- c. Use per Contract and Law. Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of the Project, the Water Marketing Policy, as it may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Contractor is not authorized to apply for or secure any change in the water rights for or associated with any of the sources of supply of the Contracted Water.
- d. Legal Approvals. Contractor shall at its sole expense adjudicate a plan or plans for augmentation or exchange and/or secure administrative approvals of any temporary substitute supply plans which are needed for Contractor to use its Contracted Water. Any such plans shall identify Wolford Mountain Reservoir and Ruedi Reservoir as the sources of supply. If Contractor intends to make any application(s) for any augmentation or exchange plan(s) or substitute supply plan(s) needed for Contractor to use its Contracted Water, Contractor shall submit the proposed application(s) to the River District within a reasonable time before Contractor proposes to file such application(s). The River District shall grant written approval of such applications before they are submitted or filed, and the River District's approval shall not be unreasonably withheld. The River District may in its discretion become a co-applicant in the prosecution of any such applications for the purpose of protecting its water rights and related policies. Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of a River District contract.
- e. Limitation on Disposition.
  - i. Contractor shall not sublet, sell, donate, loan, assign or otherwise dispose

of any of its rights to this Contract or to Contracted Water without prior written notice to, and the written approval of, the River District and the payment of a transfer fee at the prevailing rate set forth in the Water Marketing Policy. The River District's approval of such disposition shall be granted in all instances in which the Contractor is transferring the water system which supplies the Contracted Water, or a permanent transfer of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted Water, or where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the River District to be served with the Contracted Water.

- ii. The assignment of a Contract is subject to the Water Marketing Policy as revised as of the effective date of the assignment. In accordance with this subparagraph (ii), any assignee must pay for the Contracted Water at the then-current price determined by the River District Board of Directors.
- f. Contractor's Water Rates. Contractor may charge its water customers who are supplied with Contracted Water such rates and charges as are permitted by Colorado law.
- g. Nondiscrimination. Contractor shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, or national origin or any other criteria prohibited under state or federal law.
- h. Accounting of Use. Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to the River District specifically for the purpose of enabling the River District to prove the use of River District Project water rights and to administer and operate the Project and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to the River District promptly upon request and shall assist the River District as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.
- i. Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, *et seq.*) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species. As of March 1, 2007, designated critical habitat exists from the Garfield County 320 Road

Bridge Crossing of the Colorado River in Rifle downstream to the Colorado State line.

3. Contractor's Payments.

- a. In addition to the application fee already paid by Contractor, in order for the River District's delivery obligation to become effective, Contractor shall pay to the River District on the execution of this Contract the total sum of \$406.50, being \$406.50 for each acre foot of 1.0 acre feet of Contracted Water for the current Project Year (July 2022-June 2023). Thereafter, the River District shall provide Contractor an annual invoice for the Contracted Water, and Contractor shall pay the invoice within thirty (30) days of receipt. The price for each type of water will be reviewed and set annually by the River District's Enterprise Board of Directors (which decision normally will be made prior to March 1 each year). Any annual increase in the contract price shall not exceed the then-current published Consumer Price Index (CPI) plus New Growth Index (NGI).
- b. Contractor also shall pay any special assessment levied by the River District on Contractor to recoup all or a portion of costs attributable to extraordinary maintenance incurred by the River District or assessed upon the River District by its third party water suppliers.

4. Contract Term.

- a. Except in the event of an early termination or partial termination as provided for in paragraph 6 below and subject to the other terms and conditions of this Contract, the term of this Contract shall be for a period of up to forty (40) years from the date of the execution of this Contract (through June 30, 2062).
- b. At the end of the 40-year term of this Contract (June 30, 2062), the Contractor shall have the right to renew this Contract for the same Contracted Water amount for a secondary term of thirty-five (35) years, upon such terms and conditions as the River District is offering at that time, provided that the River District is offering up the full amount of Contracted Water for lease. In the event that the River District, on a non-discriminatory basis, decides not to offer up the full amount of the Contracted Water for lease, Contractor shall have the right to renew for a secondary term of thirty-five (35) years such lesser portion of the Contracted Water as may be offered by the River District. If Contractor desires to so renew this Contract, it shall provide the River District written notice of its intention to do so at least ninety (90) days prior to the expiration of the initial term of this Contract. Thereafter, and prior to the expiration of the initial term, the River District and Contractor shall execute a supplemental agreement of renewal in a form mutually acceptable to the River District and Contractor. If such notice of intention to renew is not provided and such supplemental agreement is not executed, no renewal term shall commence.

5. Water Shortage. In the event that the River District is unable, because of either legal or physical reasons (including, but not limited to, hydrologic shortages and operational

restrictions), to deliver any or all of the full amount of water contracted from the Project, including the Contracted Water, the River District reserves the right to apportion the Project's available water among its several contractors, including Contractor, in the manner provided in paragraph 6 of the Water Marketing Policy.

6. Contract Termination.

a. Termination by River District.

- i. The River District may terminate this Contract for any violation or breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any sum or amount due under this Contract within thirty (30) days after receiving written notice from the River District of such breach.
- ii. The River District also may terminate this Contract if, in its discretion, any judicial or administrative proceedings initiated by Contractor as contemplated in subparagraph 2.d above, threaten the River District's authority to contract for delivery of Project Water or the River District's water rights, permits, or other interests associated with the Project.
- iii. The River District may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

b. Termination by Contractor.

- i. Contractor may terminate this Contract in its entirety for any reason by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment.
- ii. Every fifth year after the year in which this Contract is executed, Contractor may partially terminate this Contract as to the amount of Contracted Water by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment. Partial termination by Contractor shall not exceed more than fifty percent (50%) of the amount of Contracted Water which is then under contract.
- iii. Within thirty (30) days of final approval of the Water Court application contemplated by subparagraph 2.d. above, Contractor may by written notice to the River District partially terminate this Contract as to the amount of Contracted Water which is not needed under that approval.

c. Notice of Termination to Affected Officials. The River District will notify the Division Engineer and any other appropriate governmental officials of any full or partial contract termination except for any partial termination under subparagraph 6.b.(iii).

7. Force Majeure. The River District shall not be responsible for any losses or damages incurred as a result of the River District's inability to perform pursuant to this Agreement due to the following causes if beyond the River District's control and when occurring through no direct or indirect fault of the River District, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to the River District's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.

8. Miscellaneous/Standard Provisions.

a. Notices.

i. All notices required or appropriate under or pursuant to this Contract shall be given in writing mailed or delivered to the parties at the following addresses:

River District:

Colorado River Water Conservation District  
Attention: General Manager / Secretary  
201 Centennial Street, Suite 200  
Glenwood Springs, Colorado 81601  
Phone: (970) 945-8522  
Fax: (970) 945-8799

Contractor:

Blue Valley Metropolitan District  
Buck McNichols, General Manager  
P.O. Box 492  
Kremmling, CO 80459  
(970) 724-3502  
[buck@bvmd.biz](mailto:buck@bvmd.biz)  
[buckmcnichols@gmail.com](mailto:buckmcnichols@gmail.com)

with copy to:

Balcomb & Green, P.C.  
Scott Grosscup, Esq.  
818 Colorado Avenue  
Glenwood Springs, CO 81601  
(970) 928-3468  
[sgrosscup@balcombgreen.com](mailto:sgrosscup@balcombgreen.com)

and billing to: Andrea Buller, [bluevalleyacres@gmail.com](mailto:bluevalleyacres@gmail.com)

ii. Either party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.

b. Amendments. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

c. This Contract is subject to the River District's Water Marketing Policy, as it may be revised from time to time by the River District's Board.

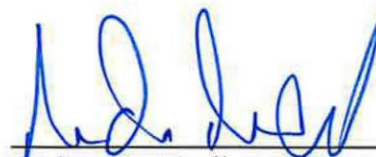
9. Alternative Source Contract.

- a. The Contracted Water will be utilized as an Alternative Source as evidenced by the application filed by the Contractor with the United States, Department of the Interior, Bureau of Reclamation (Reclamation), for a Green Mountain Reservoir Contract for 1.0 acre feet. Notwithstanding the Delivery provisions in paragraph 1.a., Contractor agrees that the delivery of all of the Contracted Water shall be made only upon the prior written authorization of Reclamation. Notwithstanding any notice provisions herein Reclamation may authorize the delivery of water as contemplated by this paragraph via electronic mail.
- b. The River District will notify Reclamation in a timely manner of any contract modification, partial termination, or termination or any indication that the Contractor will seek a contract modification, partial termination, or termination. Notice shall be sent as soon as practicable to:
- Attn: Repayment Specialist (EC-1310)  
Bureau of Reclamation  
11056 West County Road 18E  
Loveland, CO 80537
- c. Unless the River District notifies Reclamation prior to July 1 of the Project Year, the Contract Water will be from the River District's Colorado River Supply below the Roaring Fork Confluence. However, consistent with paragraph 1.g. an alternate source can be utilized if both Reclamation and the River District agree in writing that the alternate source is mutually acceptable. Notwithstanding any notice provisions herein Reclamation and the River District may agree to delivery from an alternate source via electronic mail.

COLORADO RIVER WATER CONSERVATION  
DISTRICT acting by and through its Colorado River  
Water Projects Enterprise

DATE: 9/28/2022

By:



Andrew A. Mueller  
General Manager/Secretary

ATTEST:



Audrey Turner, Chief of Operations



**VERIFICATION**

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF GARFIELD )

The foregoing Water Supply Contract was subscribed and sworn to before me by Andrew A. Mueller as General Manager/Secretary and Audrey Turner, Chief of Operations of the Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise this 28 day of September, 2022.


Witness my hand and official seal. My Commission Expires: \_\_\_\_\_

LORRA NICHOLS  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID #19954010058  
My Commission Expires July 11, 2023

  
\_\_\_\_\_  
Notary Public

Attachment to Order 2022CW00086

CONTRACTOR:  
BLUE VALLEY METROPOLITAN  
DISTRICT

By:   
\_\_\_\_\_  
Buck McNichols, General Manager

**VERIFICATION**

STATE OF Colorado )  
  ) ss.  
COUNTY OF Summit )

The foregoing Water Supply Contract was subscribed and sworn to before me by Buck McNichols as General Manager of Blue Valley Metropolitan District this 19 day of September, 2022.

Witness my hand and official seal. My Commission Expires: Oct 15, 2024

BRANDIE ELLIOTT  
NOTARY PUBLIC - STATE OF COLORADO  
NOTARY ID 20204036159  
MY COMMISSION EXPIRES OCT 15, 2024

\_\_\_\_\_  
Notary Public

Attachment to Order - 2022CW3086