

Homestake Scoping Comments on proposed Camp Hale Restoration and Enhancement Project

Exhibit 2: Case No. 95CW272



Granted

The moving party is hereby ORDERED to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

James B. Boyd
District Court Judge
Date of Order attached

DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO

Garfield County Courthouse
109 8th Street, Suite 104
Glenwood Springs, CO 81601-3303

CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY OF COLORADO SPRINGS, COLORADO, AND THE CITY OF AURORA, COLORADO, ACTING BY AND THROUGH ITS UTILITY ENTERPRISE, IN THE EAGLE RIVER AND CERTAIN TRIBUTARIES THEREOF, IN EAGLE COUNTY, COLORADO, AND PITKIN COUNTY, COLORADO

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▲ COURT USE ONLY ▲

Case Number: 95CW272-A

JUDGMENT AND DECREE
(Surface Components)

This matter has come before the Court on the application of the Cities of Aurora and Colorado Springs (hereinafter "Cities" or "Applicants") for conditional water rights, for changes of water rights, and for approval of a plan for augmentation, including exchange. The Court having

considered the pleadings, the stipulations between the parties, and the evidence presented, and otherwise being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law and enters a Judgment and Decree as set forth below.

FINDINGS OF FACT

1. Procedural Matters

1.1 Application:

The City of Colorado Springs and the City of Aurora, acting by and through its utility enterprise, filed the Application in this case on December 12, 1995. The names and addresses of the Applicants are:

City of Colorado Springs
c/o Colorado Springs Utilities Chief Operating Officer
121 South Tejon Street
Colorado Springs, Colorado 80903
Phone: (719) 668-8000

City of Aurora, Colorado, acting by and through
its Utility Enterprise
Utilities Department
15151 E. Alameda Parkway, Suite 3600
Aurora, Colorado 80012
Phone: (303) 739-7370

1.2 Jurisdiction:

Timely and adequate notice of the Application was given in the manner required by law. The time for filing Statements of Opposition and for seeking leave to intervene has expired. The court has jurisdiction over all persons who have standing to appear herein whether they have appeared or not.

1.3 Statements of Opposition:

1.3.1 Statements of Opposition were timely filed in this case by the Board of County Commissioners of Summit County; David Jones; Gary F. Hall and Sara E. Hall; the City of Grand Junction; Vail Associates, Vail Valley Consolidated Water District, and Upper Eagle Regional Water Authority; the City of Englewood; Mobil Oil Corporation; Middle Park Water Conservancy District; the United States of America; the Eagle County Board of County Commissioners; Union Oil Company of California d/b/a Unocal; Hydro West/Eric Johnson; Public Service Company of Colorado; the Town of Minturn; City and County of Denver, acting by and through its Board of

Water Commissioners; Colorado River of Water Conservation District; Ute Water Conservancy District, acting by and through its Ute Water Activity Enterprise; Steven J. Pittel and Gregory A. Caretto; the Town of Gypsum; Kensington Partners, Stag Gulch Partners, Galena Partners and Squaw Creek Metropolitan District; Clifton Water District; Orchard Mesa Irrigation District; the Town of Avon; Colorado Water Conservation Board (“CWCB”); State and Division Engineers; Cyprus Climax Metals Company; Ruth P. Hutchins; and Adams Rib Ranch Corporation.

1.3.2 Statements of Opposition were withdrawn as follows: Ruth P. Hutchins (deceased), on May 14, 1997; Vail Associates, Vail Valley Consolidated Water District, and Upper Eagle River Regional Water Authority on November 13, 1998; the Colorado River Water Conservation District on December 1, 1998; Cyprus Climax Metals Company on January 11, 1999; Ute Water Conservancy District acting by and through its Ute Water Activity Enterprise on February 16, 2000; City of Grand Junction on March 26, 2001; and City and County of Denver, acting by and through its Board of Water Commissioners on January 14, 2008.

1.4 Stipulations: Stipulations herein were filed as follows:

- 1.4.1 City of Englewood, filed on December 11, 2000.
- 1.4.2 Mobil Oil Corporation, filed on April 16, 2001.
- 1.4.3 Clifton Water District, dated June 29, 2001.
- 1.4.4 Orchard Mesa Irrigation District, dated June 29, 2001.
- 1.4.5 Middle Park Water Conservancy District, filed August 6, 2001.
- 1.4.6 Town of Gypsum, filed December 20, 2001.
- 1.4.7 Adams Rib Ranch Corporation, filed December 31, 2001.
- 1.4.8 Steven J. Pittel and Gregory A. Coretto, filed February 19, 2002.
- 1.4.9 Hydro West, Inc./Eric Jacobson, dated May 21, 2002.
- 1.4.10 Union Oil Company of California, d/b/a Unocal, filed June 13, 2002.
- 1.4.11 Town of Minturn, filed July 1, 2002.
- 1.4.12 Town of Avon, filed July 9, 2002.
- 1.4.13 United States of America, filed June 30, 2003.

1.4.14 Public Service Company of Colorado, filed January 30, 2004.

1.4.15 Kensington Partners, Galena Partners, and Stag Gulch Partners, filed April 21, 2004.

1.4.16 Squaw Creek Metro District, filed May 7, 2004.

1.4.17 Board of County Commissioners of Summit County, filed March 9, 2009.

1.4.18 Board of County Commissioners of Eagle County, filed March 22, 2010.

1.4.19 State and Division Engineers and Colorado Water Conservation Board, filed June 4, 2010.

1.5 Bifurcation The Application herein comprises claims for, and involving, surface water rights and diversions, and claims for and involving groundwater rights and diversions. Pursuant to stipulation, the Applicants and Objectors the State and Division Engineers and the Colorado Water Conservation Board (“State Objectors”), have jointly moved to bifurcate the case into two parts, one addressing the surface water rights and operations, and the other addressing the groundwater rights and operations, with the surface water component of the case to be adjudicated before the groundwater component, which will be adjudicated separately. This Decree is accordingly entered to adjudicate the surface water right claims herein.

2. Background

2.1 Integrated System: Operation of Decrees. Applicants are the owners of numerous absolute and conditional water rights within Water Division No. 5, including those rights associated with what is known as the Homestake Project, a joint venture of the Cities. The water rights that are the subject of this Application are to be part of a single water system, consisting of absolute and conditional surface and underground water rights, exchanges, and plans for augmentation including exchanges, including the water rights originally decreed to the Homestake Project by the Eagle County District Court in CA 1193, as such rights have been previously corrected and/or modified by subsequent decrees of the Division 5 Water Court, including those in Cases No. 85CW151, 85CW582, 85CW583 and 06CW225, (the “Homestake Project Decrees”); the rights decreed in Case No. 88CW449; and those in this Decree and in the decree to be entered in the bifurcated groundwater component of this case, which are all within a reasonably compact geographic location within the Eagle River basin upstream of Minturn, Colorado. The system will use water of the Eagle River and certain of its tributaries as identified in the Homestake Project Decrees, in Case No. 88CW449, and in this Decree and in the decree to be entered in the bifurcated groundwater component of this case. The development of the water rights decreed herein and to be decreed in the bifurcated groundwater component of this case is closely associated with the development of the rights decreed in Case No. 88CW449, and the Applicants intend to operate the decrees in an integrated manner.

2.2 Integrated System: Diligence. Diligence in the development of any conditional water rights or any portion of this single water system shall be considered in determining diligence as to all conditional water rights and portions of this single water system.

2.3 Eagle River MOU. In 1998 the Applicants entered into a Memorandum of Understanding with the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, Cyprus - Climax Metals Company, the Eagle River Water and Sanitation District and Vail Associates (the "Eagle River MOU" or "MOU"), a copy of which is attached hereto as Appendix A. Pursuant to the MOU, the Western Slope signatories are to receive "up to 10,000 a-f of firm dry year yield" from the phased joint use project identified therein. See MOU Paragraph iv(b)(1). The Cities are to receive 20,000 a-f of yield on a 25 year rolling average, MOU Paragraph iv(b)(2), with the possibility of receiving an additional increment of yield as allowed under MOU Paragraph IV.C.3.D, i.e., up to approximately 3,500 a-f. This "Cap" applies to the Cities' diversions to be made from the Eagle River Basin under the remaining conditional water rights decreed to the Homestake Project by the Homestake Project Decrees, the water rights decreed in Case No. 88CW449, and the water rights in this Decree and in the decree to be entered in the bifurcated groundwater component of this case. It serves to limit the total amount of water available under such conditional water rights to the "capped" amount.

The water exchange that is referred to in Paragraph VIII(b)(3) and (4) of the MOU, and that is the subject of Case No. 98CW270, is independent of the "Cap" and has no direct application thereto.

The water rights adjudication in this matter results in part from the MOU, and the Applicants' operations under this Decree and in the decree to be entered in the bifurcated groundwater component of this case, will be consistent with the MOU.

2.4 Purpose of Rights. The water rights sought herein and in the decree to be entered in the bifurcated groundwater component of this case are designed to develop and enlarge the Applicants' water supplies and to maximize the beneficial use of those supplies in a manner that will accommodate land-use preferences, including new water development outside the boundaries of the Holy Cross Wilderness Area established in 1980, and environmental concerns, including visual impact reduction, wetland creation and enhancement, and protection of decreed instream flow water rights, while preventing injury to the vested water rights of others.

2.5 Vicinity Map. A Vicinity Map depicting the general location of facilities involved in this Application is attached hereto as Appendix B.

3. Conditional Surface Storage Right: Blodgett Reservoir

3.1 Name of Reservoir: Blodgett Reservoir

3.2 Legal Description: The centerline of the dam axis is located on Homestake Creek within the NE¼ of the NE¼ of Section 6, T7S, R80W of the 6th P.M. at a point approximately 1,050 feet south of the north section line and 800 feet west of the east section line, Eagle County, Colorado.

3.3 Source: Homestake Creek. (Water that is initially diverted from the Eagle River, Cross Creek, Fall Creek, Peterson Creek, or Turkey Creek may also be stored in Blodgett Reservoir pursuant to the remaining provisions of this Decree.)

3.4 Date of Appropriation: November 27, 1995

3.5 Amount Claimed: 9,316 acre feet, CONDITIONAL.

3.6 Uses:

3.6.1 Exchange, augmentation, aquifer recharge, municipal, irrigation, commercial, domestic, industrial, snowmaking, recreation, fishery, wetland creation and irrigation, wildlife and including delivery to the Cities of Aurora and Colorado Springs, Colorado, for all such uses, and for reuse and successive use to extinction by the Cities of all such water delivered to the Eastern Slope.

3.6.2 Description of Non-Irrigation Purposes: Applicants may utilize the storage rights for purposes of developing their vested or conditionally decreed water rights, including those for the Homestake Project; for transmountain diversions directly to the Eastern Slope; and for meeting federal, state and local permit conditions that necessitate the use of water resources. Applicants may also use or transport water from this source for municipal, commercial, domestic, industrial, snowmaking, recreation, fishery, wildlife, exchange, and augmentation uses in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District as they now or hereafter exist, and of Cyprus-Climax Metals Company and Vail Associates, as they now exist.

Water delivered to the Eastern Slope may be used within any area capable of being served by these diversion and storage points and the Applicants' municipal water supply systems for any water supply obligations of Applicants for municipal and domestic purposes including, but not limited to, fire protection, irrigation of lawns, gardens, parks, private and municipal facilities, sanitary, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable instream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, reservoir evaporation replacement, augmentation, exchange, and replacement purposes, and for use, reuse for successive uses, disposition following initial use, and reuse until extinction.

3.6.3 Total Number of Acres Proposed to be Irrigated: Up to 275 acres within Eagle Park as described in Section 3.6.4 below. Applicants also reserve the right to use the water decreed herein for irrigation purposes within their respective water service areas.

3.6.4 Legal Description of Acreage Irrigated or to be Irrigated: The acreage to be irrigated on the Western Slope is located entirely within T7S, R80W of the 6th P.M in an area comprising approximately 1,450 surface acres, in the following sections, commonly known as Eagle Park or Camp Hale (“Eagle Park”):

- Section 3: Part of the SW¹/₄ of the SW¹/₄
- Section 4: Part of the SE¹/₄
- Section 9: Part of the E¹/₂
- Section 10: Part of the W¹/₂ of the NW¹/₄
Part of the NW¹/₄ of the SW¹/₄
Part of the S¹/₂ of the SW¹/₄
Part of the SW¹/₄ of the SE¹/₄
- Section 15: Part of the W¹/₂
Part of the W¹/₂ of the NE¹/₄
Part of the SE¹/₄
- Section 16: Part of the E¹/₂ of the NE¹/₄
Part of the NW¹/₄ of the NE¹/₄
- Section 22: Part of the E¹/₂
Part of the E¹/₂ of the NW¹/₄
Part of the NE¹/₄ of the SW¹/₄
- Section 23: Part of the S¹/₂
Part of the S¹/₂ of the NW¹/₄
Part of the SW¹/₄ of the NE¹/₄
- Section 24: Part of the SW¹/₄

(See map attached hereto as Appendix C and incorporated herein by this reference.)

3.6.5 Delivery: Pipelines and/or one or more pumping stations may be constructed to deliver water from Blodgett Reservoir to other facilities referred to in this Decree, including existing facilities, or to such newly constructed facilities as may be conducive for storage and transport to the final place of use by Applicants on the Eastern Slope of Colorado.

3.7 Surface Area of Reservoir at High Water Line: 252 acres.

3.8 Maximum Height of Dam in Feet: 110 feet.

3.9 Length of Dam in Feet: 1,600 feet.

3.10 Total Capacity of Reservoir in Acre Feet: 9,316 acre feet

Active Capacity: 8,816 acre feet
Dead Storage: 500 acre feet

3.11 Storage Capacity: The storage capacity claimed and decreed herein is the maximum volume that can be constructed at the claimed location outside the current boundaries of the Holy Cross Wilderness Area.

3.12 Conditions:

3.12.1 Augmentation Use. Reservoir releases may be made to augment or replace out of priority depletions as set forth in the Augmentation Plan described in Section 8 below, or to augment or replace out of priority depletions at other diversion facilities in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District, as they now or hereafter exist and of Cyprus-Climax Metals Company and Vail Associates, as they now exist; provided that augmentation use of the water, except as specified in Section 8 below, shall only be made as provided in agreement with the owners of the water rights, and in accordance with the terms of a separately decreed augmentation plan providing for such use for the structures to be augmented.

3.12.2 Storage and Accounting. Water will be stored only when the storage right is in priority or has been fully augmented in accordance with Section 9 below. Appropriate instrumentation will be installed, as approved by the Division Engineer, to allow determination of inflow, storage content, and outflow and documentation of all reservoir operations, including bypasses necessary to meet the CWCB instream flow decrees described in Paragraph 10.4.1 below, and releases for augmentation as provided in Section 8 below. The Applicants shall develop appropriate accounting procedures and forms to document the operations of Blodgett Reservoir, which forms shall be incorporated into the Accounting and Monitoring Plan developed and approved in accordance with Paragraphs 10.1 and 10.2 below.

4. Conditional Surface Diversion: Homestake Creek Intake

4.1 Name of Structure: Homestake Creek Intake.

4.2 Legal Description of Point of Diversion: The proposed diversion facility will be located within the NE¼ of the SE¼ of Section 31, T6S, R80W of the 6th P.M. Eagle County, Colorado, at a point on Homestake Creek approximately 1,900 feet North of the South section line and 75 feet West of the East section line.

4.3 Source: Homestake Creek.

4.4 Date of Appropriation: November 27, 1995.

4.5 Amount: 400 cubic feet per second, CONDITIONAL.

4.6 Use: direct flow and storage for municipal, irrigation, exchange, augmentation, commercial, domestic, industrial, wetland creation and irrigation, recreation, fishery, wildlife uses, and including delivery to the Cities of Aurora and Colorado Springs, Colorado, for all such uses and for reuse and successive use to extinction by Applicants of all such water delivered to the Eastern Slope.

4.6.1 Description of Non-Irrigation Purposes: Applicants may utilize the water rights for purposes of developing their vested or conditionally decreed water rights, including those for the Homestake Project; for transmountain diversions directly to the Eastern Slope; and for meeting federal, state and local permit conditions that necessitate the use of water resources. Applicants may also use or transport water from this source for municipal, commercial, domestic, industrial, snowmaking, recreation, fishery, wildlife, exchange, and augmentation uses in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District as they now or hereafter exist, and of Cyprus-Climax Metals Company and Vail Associates, as they now exist.

Water delivered to the Eastern Slope may be used within any area capable of being served by these diversion and storage points and the Applicants' municipal water supply systems for any water supply obligations of Applicants for municipal and domestic purposes including, but not limited to, fire protection, irrigation of lawns, gardens, parks, private and municipal facilities, sanitary, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable instream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, reservoir evaporation replacement, augmentation, exchange, and replacement purposes, and for use, reuse for successive uses, disposition following initial use, and reuse until extinction.

4.6.2 Delivery: Water diverted at this site may be delivered by pipeline to the Eagle Park Reservoir; to the Resolution Creek Reservoir; to the Lower East Fork Reservoir; to Homestake Reservoir, to Blodgett Reservoir, or to the Eastern Slope for storage and use by Applicants.

4.7 Conditions: All diversions shall be subject to the provisions of Paragraph 10.4 below, and any out-of-priority diversions shall be fully augmented as provided in Section 9 below. The maximum capacity of the Homestake Creek Intake shall be limited to 400 c.f.s. for diversions on the Homestake Diversion Rights diverted at the intake pursuant to the change of water rights in Section 7 below and on this water right. Diversions on this water right shall be subject to the volumetric limitations imposed in Paragraph 6.7.1 below.

4.8 Augmentation Use. Augmentation use of the water diverted on this right on the Western Slope may be made in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District, as they now or hereafter exist and of Cyprus-Climax Metals Company and Vail Associates, as they now exist, pursuant to agreement with the Applicants and in accordance with the terms of separately decreed augmentation plans providing for such use for the structures to be augmented.

4.9 Accounting. The Applicants shall develop appropriate accounting procedures and forms to document the operations of the Homestake Creek Intake, which forms shall be incorporated into the Accounting and Monitoring Plan developed and approved in accordance with Paragraphs 10.1 and 10.2 below.

5. Conditional Surface Diversion: Turkey Creek Intake

5.1 Name of Structure: Turkey Creek Intake.

5.2 Legal Description: The proposed diversion facility will be located within the SW¼ of the NW¼ of Section 20, T6S, R80W of the 6th P.M., Eagle County, Colorado at a point on Turkey Creek approximately 1,500 feet South of the North section line and 880 feet East of the West section line.

5.3 Source: Turkey Creek.

5.4 Date of appropriation: November 27, 1995.

5.5 Amount Claimed: 200 cubic feet per second, conditional.

5.6 Use: Direct flow and storage for municipal, irrigation, exchange, augmentation, commercial, domestic, industrial, wetland creation and irrigation, recreation, fishery, wildlife uses including delivery to the Cities of Aurora and Colorado Springs, Colorado, for all such uses, and for reuse and successive use to extinction by Applicants of all such water delivered to the Eastern Slope.

5.6.1 Description of Non-Irrigation Purposes: Applicants may utilize the water rights for purposes of developing their vested or conditionally decreed water rights, including those for the Homestake Project; for transmountain diversions directly to the Eastern Slope; and for meeting federal, state and local permit conditions that necessitate the use of water resources. Applicants may also use or transport water from this source for municipal, commercial, domestic, industrial, snowmaking, recreation, fishery, wildlife, exchange, and augmentation uses in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District as they now or hereafter exist, and of Cyprus-Climax Metals Company and Vail Associates, as they now exist.

Water delivered to the Eastern Slope may be used within any area capable of being served by these diversion and storage points and the Applicants' municipal water supply

systems for any water supply obligations of Applicants for municipal and domestic purposes including, but not limited to, fire protection, irrigation of lawns, gardens, parks, private and municipal facilities, sanitary, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable instream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, reservoir evaporation replacement, augmentation, exchange, and replacement purposes, and for use, reuse for successive uses, disposition following initial use, and reuse until extinction.

5.6.2 **Delivery:** Water diverted hereunder may be delivered by pipeline to the Eagle Park Reservoir; to the Resolution Creek Reservoir; to the Lower East Fork Reservoir; to Blodgett Reservoir, to Homestake Reservoir; or to the Eastern Slope for storage and use by Applicants.

5.7 **Conditions:** All diversions shall be subject to the provisions of Paragraph 10.4 below, and any out-of-priority diversions shall be fully augmented as provided in Section 9 below. The maximum capacity of the Turkey Creek Intake shall be limited to 200 c.f.s. for diversions on the Homestake Diversion Rights diverted at the intake pursuant to the change of water rights in Section 7 below and on this water right. Diversions on this water right shall be subject to the volumetric limitations imposed in 6.7.1 below.

5.8 **Augmentation Use.** Augmentation use of the water diverted on this right on the Western Slope may be made in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District, as they now or hereafter exist and of Cyprus-Climax Metals Company and Vail Associates, as they now exist, pursuant to agreement with the Applicants and in accordance with the terms of separately decreed augmentation plans providing for such use for the structures to be augmented.

5.9 **Accounting** The Applicants shall develop appropriate accounting procedures and forms to document the operations of the Turkey Creek Intake, which forms shall be incorporated into the Accounting and Monitoring Plan developed and approved in accordance with Paragraphs 10.1 and 10.2 below.

6. Conditional Surface Diversion: Eagle-Cross Pump and Pipeline

6.1 **Name of Structure:** Eagle-Cross Pump and Pipeline.

6.2 **Legal Description of Each Point of Diversion:**

6.2.1 **Cross Creek Intake:** located within the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 36, T5S, R81W of the 6th P.M. at a point on Cross Creek approximately 2,000 feet East of the West section line and 1,250 feet North of the South section line.

6.2.2 Fall Creek Intake: located within the SW¼ of the NW¼ of Section 13, T6S, R81W of the 6th P.M. at a point on Fall Creek approximately 4,300 feet East of the West section line and 2,400 feet South of the North section line.

6.2.3 Peterson Creek Intake: located within the NW¼ of the NE¼ of Section 24, T6S, R81W of the 6th P.M. at a point on Peterson Creek approximately 1,400 feet West of the East section line and 1,100 feet South of the North section line.

6.2.4 Eagle River Diversion: located within the SE¼ of the SW¼ of Section 19, T6S, R80W of the 6th P.M. at a point on the Eagle River approximately 1,100 feet North of the South section line and 1,750 feet East of the West section line.

6.3 Source: Cross Creek, Fall Creek, Peterson Creek, and the Eagle River in the Eagle River Basin.

6.4 Date of Appropriation: November 27, 1995.

6.5 Amounts: 300 c.f.s. CONDITIONAL, as follows:

6.5.1: Cross Creek intake: 300 c.f.s. CONDITIONAL

6.5.2: Fall Creek Intake: 250 c.f.s. CONDITIONAL

6.5.3 Peterson Creek intake: 70 c.f.s. CONDITIONAL

6.5.4 Eagle River intake: 300 c.f.s. CONDITIONAL

6.6 Use: Direct flow and storage for municipal, irrigation, exchange, augmentation, commercial, domestic, industrial, wetland creation and irrigation, recreation, fishery, wildlife uses, and including delivery to the Cities of Aurora and Colorado Springs, Colorado, for all such uses, and for reuse and successive use to extinction by Applicants of all such water delivered to the Eastern Slope.

6.6.1 Description of Non-Irrigation Purposes: Applicants may utilize the water rights for purposes of developing their vested or conditionally decreed water rights, including those for the Homestake Project; for transmountain diversions directly to the Eastern Slope; and for meeting federal, state and local permit conditions that necessitate the use of water resources. Applicants may also use or transport water from this source for municipal, commercial, domestic, industrial, snowmaking, recreation, fishery, wildlife, exchange, and augmentation uses in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District as they now or hereafter exist, and of Cyprus-Climax Metals Company and Vail Associates, as they now exist.

Water delivered to the Eastern Slope may be used within any area capable of being served by these diversion and storage points and the Applicants' municipal water supply systems for any water supply obligations of Applicants for municipal and domestic purposes including, but not limited to, fire protection, irrigation of lawns, gardens, parks, private and municipal facilities, sanitary, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable instream uses, if any, snowmaking, revegetation, storage and maintenance of storage resources, reservoir evaporation replacement, augmentation, exchange, and replacement purposes, and for use, reuse for successive uses, disposition following initial use, and reuse until extinction.

6.6.2 **Delivery:** Water diverted on this right may be delivered by pipeline to the Eagle Park Reservoir; to the Resolution Creek Reservoir; to the Lower East Fork Reservoir; to Homestake Reservoir; to Blodgett Reservoir, or to the Eastern Slope for storage and use by Applicants.

6.7 **Conditions:**

6.7.1 Diversions will be subject to the provisions of Paragraph 10.4 below, and any out of priority diversions shall be fully augmented as provided in Section 9 below. The maximum capacity of the Eagle Cross-Pump and Pipeline will be limited to 400 c.f.s., and average daily diversions at the individual intakes, on both the Homestake Conditional Diversion Rights diverted at the Pipeline intakes pursuant to the changed and alternate points of diversion in Section 7 below and these water rights, will be limited to the following rates of flow:

6.7.1.1 Cross Creek intake: 300 c.f.s. or 600 acre-feet per day

6.7.1.2 Fall Creek intake: 250 c.f.s. or 500 acre-feet per day

6.7.1.3 Peterson Creek intake: 70 c.f.s. or 140 acre-feet per day

6.7.1.4 Eagle River intake: 300 c.f.s. or 600 acre-feet per day

Cumulative diversions at the Homestake Creek Intake, the Turkey Creek Intake, and the Eagle-Cross Pump and Pipeline on both the Homestake Conditional Diversion Rights diverted at such intakes pursuant to the changed and alternate points of diversion in Section 7 below and these water rights, will be limited in accordance with the limits in Paragraph 2.3 above and to a volume of 280,000 acre-feet over any ten year period.

6.8 **Augmentation Use.** Augmentation use of the water diverted on this right on the Western Slope may be made in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District, as they now or hereafter exist and of Cyprus-Climax Metals Company and Vail Associates, as they now exist, pursuant to agreement with the Applicants and in accordance with the terms of separately decreed augmentation plans providing for such use for the structures to be augmented.

6.9 Accounting The Applicants shall develop appropriate accounting procedures and forms to document the operations of the Eagle-Cross Pump and Pipeline, which forms shall be incorporated into the Accounting and Monitoring Plan developed and approved in accordance with Paragraphs 10.1 and 10.2 below.

7. Changes of Conditional Water Rights.

7.1 Background: Applicants seek herein alternate places of storage and additional uses and places of use for a part of the conditional portion of the Homestake Reservoir water storage right, which was originally decreed in CA 1193 for a total of 126,843.68 acre feet annually. Of that amount, 43,504.7 acre-feet was made absolute in Cases No. 85CW151, 85CW582, and 85CW583 (Consolidated), Water Division No. 5, leaving 83,338.98 acre-feet conditional. Applicants seek to change 9,316 acre-feet of the conditional portion of the water right; they do not seek any change of the absolute portion of the storage right.

In addition, Applicants seek approval of: (1) alternate points of diversion for certain of the conditional portions of the water rights that were decreed to the Homestake Conduit, the East Fork Conduit, and the Eagle-Arkansas Ditch (the “Homestake Conditional Diversion Rights”) by the Homestake Project Decrees; and (2) changed points of diversion outside the boundaries of the Holy Cross Wilderness Area for other Homestake Conditional Diversion Rights. The Applicants do not seek any change for any of the absolute portions of the water rights in the Homestake Project Decrees, or for the water right decreed to the Homestake Tunnel.

7.1.1 Description of the Homestake Project Water Rights:

The component parts of the Homestake Project as described below were awarded priorities as of the date September 22, 1952, and ditch or reservoir numbers and priority numbers as follows:

Number of Ditch	Name of Ditch or Reservoir	Original Construction or Enlargement	Priority No.	Water Allowed
358 ½ A	Homestake Conduit	Original	536 ½ A	179.8 cfs A* 1660.2 cfs C*
358 ½ B	East Fork Conduit	Original	536 ½ B	70.8 cfs A* 189.2 cfs C*
358 ½ C	Homestake Tunnel	Original	536 ½ C	300.0 cfs A* 10.0 cfs C* (10 cfs is seepage & percolation)
358 ½ D	Homestake Reservoir	Original	536 ½ D	43,504.7 AF A* 83,338.98 AF C*
358 ½ E	Eagle-Arkansas Ditch	Original	536 ½ E	530.0 cfs C*

- * A = ABSOLUTE
- * C = CONDITIONAL

7.1.1.1 Homestake Conduit. The Homestake Conduit receives and delivers appropriated water to Homestake Reservoir for conveyance to Homestake Tunnel or storage in the reservoir from the following sources:

Stream or Other Source of Supply	Point of Diversion	Amount Cubic Feet Per Second of Time
Unnamed Creek	Alternate Point: S 86° 25'E 35,177 ft. to NW cor 6-7S-80W S 86° 4.7'E, 35,286 ft. to NW cor 6-7S-80W	60 C*
West Cross Creek	Alternate Point: N 81° 58'E 36,256 ft. to NW cor 6-7S-80W N 79° 52.5'E 38,572 ft. to NW cor 6-7S	200 C*
Cross Creek	Alternate Point: N 81° 26'E 36,064 ft. to NW cor 6-7S-80W N 75° 59.9'E 36,569 ft. to NW cor 6-7S-80W	300 C*
East Cross Creek	Alternate Point: S 74° 11'E 26,649 ft. to NW cor 6-7S-80W S 74° 52.9'E 25,882 ft. to NW cor 6-7S-80W	130 C*
Fall Creek	Alternate Point: S 82° 55'E 12,812 ft. to NW cor 6-7S-80W S 83° 01.8'E 14,320 ft. to NW cor 6-7S-80W	260 C*
Peterson Creek	Alternate Point: S 64° 05'E 6,822 ft. to NW cor 6-7S-80W S 76° 2.9'E 6,474 ft. to NW cor 6-7S-80W	50 C*
Unnamed Creek	Alternate Point: S 76° 45'E 10,572 ft. to SW cor 18-7S-80W S 73° 26.5'E 10,896 ft. to SW cor 6-7S-80W	50 C*
Whitney Creek	Alternate Point: N 81° 42'E 13,489 ft. to SW cor 18-7S-80W N 83° 27.8'E 13,879 ft. to SW cor 18-7S-80W	80 C*
French Creek	S 82° 18.3'E 20,988 ft. to NW cor 31-7S-80W	60.1 A* 119.9 C*
Fancy Creek	N 85° 10.5'E 25,280 ft. to NW cor 31-7S-80W	38.6 A* 81.4 C*
Missouri	N 77° 12.4'E 28,800 ft. to NW cor 31-7S-80W	39.8 A* 80.2 C*
Sopris Creek	N 74° 7.6'E 29,848 ft. to NW cor 31-7S-80W	41.3 A* 118.7 C*

Small unnamed streams, springs, seeps, flows and ground waters along Homestake Conduit	120 C*
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* A = Absolute	Total	179.8 A*
C = Conditional		1,660.2 C

Said amounts from any and all sources are limited by the capacity of the Homestake Conduit from its lowest diversion to Homestake Reservoir to 1,530 cubic feet per second of time.

7.1.1.2 East Fork Conduit. The East Fork Conduit diverts water from the East Fork of Homestake Creek pursuant to its appropriation of 70.8 cubic feet per second of time ABSOLUTE and 189.2 cubic feet per second of time CONDITIONAL therefrom and conveys these waters to Homestake Reservoir for conveyance to Homestake Tunnel or storage in the reservoir, said East Fork Conduit having a capacity of 260 cubic feet per second of time and a total length of approximately 3093 feet. The point of diversion of said conduit is on East Fork Homestake Creek at a point whence the Northwest Corner of Section 31, T7S, R80W bears North 55° 40.5' East, 22,917 feet.

7.1.1.3 Homestake Tunnel. Homestake Tunnel under the Continental Divide for the conveyance of water into the Arkansas River Basin with its intake located at a point under Homestake Reservoir whence the Northwest corner of Section 10, T9S, R81 W of the 6th P.M. bears South 15° 27'08" East 26,173.03 feet appropriates a maximum amount of 10 cubic feet per second of time CONDITIONAL of water seeping and percolating into Homestake Tunnel from former Water District No. 37 areas and 300 cubic feet per second of time ABSOLUTE from Middle Fork of Homestake Creek, at its said Northerly portal, its point of diversion; said tunnel has a length of 27,400 feet and a capacity of 700 cubic feet per second of time. The tunnel will convey out of former Water District No. 37 up to 700 cubic feet per second of time of waters appropriated by the tunnel from the Middle Fork of Homestake Creek, together with water appropriated by the tunnel from the Homestake Creek and East Fork Conduits and Homestake Reservoir, to an outlet at a point from where the Northwest corner of Section 10, T9S, R81W of the 6th P.M. bears North 6°40'52" East, a distance of 2,173.54 feet.

7.1.1.4 Homestake Reservoir. Homestake Reservoir, also known as Elliott-Weers Reservoir, has a capacity of 83,338.98 acre feet CONDITIONAL, is located on Homestake Creek with a dam whence Homestake Peak bears South 73° 26' East 10,477 feet from the easterly end thereof and South 74° 57' East 13,347 feet from the westerly end thereof, said dam having a maximum height of 411.5 feet and a length of 3,380 feet. The sources of supply of said reservoir are Homestake Conduit (the sources of this conduit as set forth in Paragraph 8.1.1.1), East Fork Conduit (the source of this conduit as set forth in Paragraph 8.1.1.2), the Middle Fork of Homestake Creek and Homestake Creek and said reservoir has appropriated for storage 83,338.98 acre feet annually from said sources. Homestake Reservoir also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel. Existing Homestake Reservoir has a storage capacity of 43,504.7

acre feet ABSOLUTE and is located on Homestake Creek with a dam whence the NW Corner of Section 31, T7S, R80W of the 6th P.M. bears North 58° 30.6' East 24,659 feet from the East dam abutment and North 62° 25.8' East 25,746 feet from the West dam abutment; said dam has a maximum height of 265.0 feet and a length of 1,996 feet. The sources of supply of said existing Homestake Reservoir are Homestake Conduit, East Fork Conduit, the Middle Fork of Homestake Creek and Homestake Creek. Existing Homestake Reservoir has appropriated 43,504.7 acre feet annually from said sources and also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel.

7.1.1.5 Eagle-Arkansas Ditch. The Eagle-Arkansas Ditch receives and delivers into the Tennessee Pass Tunnel for conveyance under the Continental Divide and out of former Water District No. 37 into the Arkansas River Basin the water appropriated from the following sources:

Stream or Other Source of Supply	Point of Diversion	Amount Cubic Feet Per Second of Time**
Cataract Creek	S 54° 46'35"W 3,147.15 ft. to E/4 ¹ cor Sec 24-7S-80W	90 C*
Sheep Gulch	S 61° 59'03"W 262.66 ft. to NW cor Sec 29-7S-79W	20 C*
East Fork Eagle River	N 27° 54'39"E 1,328.12 ft. to E/4 cor Sec 32-7S-79W	230 C*
Jones Gulch	N 29° 19'38"E 826.82 ft. to E/4 cor Sec 26-7S-80W	90 C*
Fiddler Creek	N 83° 20'47"W 1,360.22 ft. to NW cor Sec 2-8S-80W	30 C*
Taylor Gulch	S 9° 66'55"W 6,128.68 ft. to SW cor Sec 11-8S-80W	20 C*
Piney Creek	S 52° 18'04"W 2,193.82 ft. to SW cor Sec 11-8S-80W	20 C*
Small unnamed streams, springs, seeps, sheet flows and ground water along Eagle-Arkansas Ditch, one of which is located at a point on an unnamed tributary of the East Fork of The Eagle River whence the S¼ cor of S¼ cor of Sec 29-7S-79W of the 6 th P.M. bears S60°9'47"W, a distance of 1,551.06 ft.		30 C*
Total		530 C*

* C = CONDITIONAL

¹A topographical error in the legal description of this water right was corrected by Change of Water Rights entered in Case No. 06CW225.

******(Bearing and distance to land corners of the Sections, Ranges and Townships indicated, all refer to 6th P.M.)

7.2 Change of Conditional Storage Right: Homestake Reservoir.

7.2.1 Amount Changed: 9,316 acre feet.

7.2.2 Alternate Place of Storage: The changed conditional storage right for Homestake Reservoir may be stored in Blodgett Reservoir as described in Section 3 above as an alternate place of storage to the originally-decreed storage location (e.g. Homestake Reservoir). Pursuant to this change of water right, Applicants may divert and store 9,316 a-f annually on the changed storage right in Blodgett Reservoir, or, alternatively, in Homestake Reservoir.

7.2.3 Additional Uses and Places of Use: The changed conditional storage right may be used for the uses, and at the places of use, described in Paragraph 3.6 above, as well as for its originally-decreed uses at the originally-decreed places of use; except that the changed storage right may not be used for “all other beneficial uses” as decreed in CA1193.

7.2.4 Reuse and Successive Use to Extinction: The water rights changed herein were appropriated and intended for transbasin diversion. Water diverted on the water rights as changed herein and imported to the Eastern Slope may be used, reused, successively used, and fully consumed on the Eastern Slope. The parties have agreed not to litigate in this proceeding whether the water rights changed herein may be used, reused, or successively used to extinction on the Western Slope. Therefore the Applicants agree that no reuse or successive use of the water rights changed herein shall be made on the Western Slope, without a subsequent proceeding confirming such reuse or successive use. This Decree shall neither preclude the Applicants or their privies in interest from claiming a right of reuse of the changed water rights on the Western Slope, nor confirm a right to reuse or successive use of such water on the Western Slope, create any presumption, shift the burden of proof, or serve as a defense in such subsequent proceeding.

7.3. Change of Conditional Water Rights: Homestake Conditional Diversion Rights

7.3.1 Alternate Points of Diversion: The following Homestake Conditional Diversion Rights:

7.3.1.1 East Fork Conduit for 189.2 c.f.s.;

7.3.1.2 Eagle-Arkansas Ditch for 530 c.f.s.;

7.3.1.3 French Creek intake for 119.9 c.f.s.;

7.3.1.4 Fancy Creek intake, for 81.4 c.f.s.;

7.3.1.5 Missouri Creek intake for 80.2 c.f.s.;

7.3.1.6 Sopris Creek intake for 118.7 c.f.s.;

7.3.1.7 Peterson Creek intake for 50 c.f.s:

may be diverted at the following alternate points of diversion, in addition to the originally decreed points of diversion: Blodgett Reservoir, described in Paragraph 3.2 above; at the Homestake Creek Intake, described in Paragraph 5.2. above; at the Turkey Creek Intake, described in Paragraph 5.2. above; or at Cross Creek intake, Fall Creek intake, Peterson Creek intake, or Eagle River intake for the Eagle-Cross Pump and Pipeline, as described in Paragraph 6.2. above.

7.3.2 Changed Points of Diversion: The following Homestake Conditional Diversion Rights, which were originally decreed for diversion within the boundaries of the Holy Cross Wilderness Area established in 1980:

7.3.2.1 Unnamed Creek (near Cross Creek below West Cross confluence-Homestake Conduit) for 60 c.f.s;

7.3.2.2 West Cross Creek intake (Homestake Conduit) for 200 c.f.s.;

7.3.2.3 Cross Creek (Homestake Conduit) for 300 c.f.s;

7.3.2.4 East Cross Creek (Homestake Conduit) for 130 c.f.s.;

7.3.2.5 Fall Creek (Homestake Conduit) for 260 c.f.s.;

7.3.2.6 Unnamed Creek (Tributary to Homestake Creek-Homestake Conduit) for 50 c.f.s.;

7.3.2.7 Whitney Creek (Homestake Conduit) for 80 c.f.s.;

7.3.2.8 Inflow to Homestake Conduit for 120 c.f.s.

may be diverted at the following changed points of diversion: Blodgett Reservoir, described in Paragraph 3.2 above; the Homestake Creek Intake, described in Paragraph 4.2. above; the Turkey Creek Intake, described in Paragraph 5.2. above; or Cross Creek intake, Fall Creek intake, Peterson Creek intake, or Eagle River intake for the Eagle-Cross Pump and Pipeline, as described in Paragraph 762. above, and not at their originally-decreed points of diversion.

7.3.3 Additional Uses and Places of Use: The Homestake Conditional Diversion Rights may be used directly or stored for the uses, and at the places of uses, described in Paragraph 3.6 above, as well as for their originally-decreed uses at the originally-decreed places of use; except

that the water rights changed in use by this Decree may not be used for “all other beneficial uses” as decreed in CA1193.

7.3.4 Reuse and Successive Use to Extinction: The water rights changed herein were appropriated and intended for transbasin diversion. Water diverted on the water rights as changed herein and imported to the Eastern Slope may be used, reused, successively used, and fully consumed on the Eastern Slope. The parties have agreed not to litigate in this proceeding whether the water rights changed herein may be used, reused, or successively used to extinction on the Western Slope. Therefore the Applicants agree that no reuse or successive use of the water rights changed herein shall be made on the Western Slope, without a subsequent proceeding confirming such reuse or successive use. This Decree shall neither preclude the Applicants or their privies in interest from claiming a right of reuse of the changed water rights on the Western Slope, nor confirm a right to reuse or successive use of such water on the Western Slope, create any presumption, shift the burden of proof, or serve as a defense in such subsequent proceeding.

7.4. Terms and Conditions:

7.4.1 Alternate Points of Storage: Applicant shall install and maintain such water measuring devices as may be required to administer this change of water right so as to prevent injury to the vested water rights of others. The amount of water stored on the changed rights at the alternate place of storage shall not exceed the amount physically and legally available for diversion and storage at the original decreed location. Further, the cumulative amount stored annually by this water right at its original and alternate places of storage shall not exceed the total amount decreed. Applicants may only “call” for water to be stored at the alternate point of storage to the same extent that they could “call” for water to be stored at the original point of storage, so that a water right that would not be subject (e.g. because of its location) to an administrative call for water by the storage right at its original point of storage may not be called out to make water available for storage at the alternate point of storage.

7.4.2 Changed Points of Diversion: Establishment of the changed and alternate points of diversion may not cause injury to the rights of any other appropriator. Diversions pursuant to the changed water rights at the changed and alternate points sought herein shall be limited to the amount of water physically and legally available under the original decrees at the original points of diversion, and Applicants may only “call” for delivery of water at a changed or alternate point of diversion to the same extent that they could “call” for delivery of water at the original point of diversion, so that a water right that would not be subject (e.g. because of its location) to an administrative call for water by the Homestake Conditional Diversion Rights at their original points of diversion may not be called out to make water available for diversion at a changed or alternate point of diversion.

7.4.2.1 Determination of Amounts Available. For purposes of the change of water rights, the amounts of water physically available at the original points of diversion for the Homestake Conditional Diversion Rights shall be determined as set forth in Appendix E attached

hereto. The foregoing Appendix shall be incorporated into the Accounting and Monitoring Plan provided for in Paragraph 10.1, and may be modified as directed by the Accounting Group in accordance with the procedures set forth in Paragraph 10.2 below .

7.4.3 Protection of CWCB Instream Flow Rights. Diversions of the changed water rights at the changed or alternate points of diversion, alternate place of storage or by exchange herein shall be subject to the provisions of Paragraph 10.4 below.

7.4.4 Augmentation Use. Augmentation use of the water diverted on the changed rights on the Western Slope may be made in the service areas of the Colorado River Water Conservation District, the Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District, as they now or hereafter exist and of Cyprus-Climax Metals Company and Vail Associates, as they now exist, pursuant to agreement with the Applicants and in accordance with the terms of separately decreed augmentation plans providing for such use for the structures to be augmented.

8. Plan for Augmentation Including Exchange: Applicants' diversions on the Homestake Project Water Rights and the 88CW449 Surface Rights.

8.1 Water Rights to be Augmented: All rights absolutely or conditionally decreed to the Homestake Project as more specifically described in Paragraph 7.1.1 above, and all rights decreed to the Resolution Creek Reservoir, the Lower East Fork Reservoir, and the Eagle Park Wetland Irrigation System in Case No. 88CW449.

8.2 Sources of Augmentation or Exchange: Water stored in Blodgett Reservoir, and available for release therefrom.

8.3 Statement of Plan for Augmentation, Including Exchange: To the extent that Applicants divert, deplete, or store water out of priority for their use on the water rights decreed in the Homestake Project Decrees at Homestake Reservoir; the Homestake Conduit; the East Fork Conduit; the Homestake Tunnel, or the Eagle Arkansas Ditch (as described in Paragraph 7.1.1 above) or at the Homestake Creek Intake, Turkey Creek Intake, or Eagle-Cross Pump and Pipeline (as described in Paragraphs 4.2, 5.2, and 6.2 above), or on the water rights decreed in Case No. 88CW449 for the Eagle Park Wetland Irrigation system; the Resolution Creek Reservoir; or the Lower East Fork Reservoir, when there is a lawful call placed that could result in curtailment of those rights, Applicants will release water to the Eagle River from storage in Blodgett Reservoir in an amount, up to the amount depleted by the Applicants' out-of-priority diversions, storage, or depletions, so as to prevent injury to downstream water rights exercising a lawful call for water. Replacement may be by direct release or exchange as set forth in Paragraph 8.4 below.

8.4 Exchange Reaches: The exchange reaches for operation of the exchanges herein extend from the confluence of the Eagle River and Cross Creek (most downstream point) upstream to: (1) Homestake Reservoir on Homestake Creek; (2) the diversion points of the Homestake Conduit on

tributaries to Homestake Creek and the Eagle River; (3) the diversion point of the East Fork Conduit on the East Fork; (4) the diversion points of the Eagle-Arkansas Ditch on tributaries to the South and East Forks of the Eagle River; (5) Resolution Creek Reservoir on Resolution Creek; and (6) the Turkey Creek Intake (most upstream points) and are as follows:

8.4.1 From Blodgett Reservoir described in Section 3 above upstream to Homestake Reservoir;

8.4.2 From Blodgett Reservoir to the diversion points of the Homestake Conduit described in Paragraph 7.1.1.1 above;

8.4.3 From Blodgett Reservoir to the diversion points of the East Fork Conduit described in Paragraph 7.1.1.2 above;

8.4.4 From Blodgett Reservoir to the diversion points of the Eagle Arkansas Ditch described in Paragraph 7.1.1.5 above;

8.4.5 From Blodgett Reservoir to Resolution Creek Reservoir located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 11, T.7S., R. 80 W. of the 6th P.M. in Eagle County.

8.4.6 From Blodgett Reservoir to the Turkey Creek Intake described in Paragraph 5.2 above.

8.4.7 From Blodgett Reservoir to Lower East Fork Reservoir located in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 24, T.7S., R. 80 W. of the 6th P.M. in Eagle County, Colorado.

Exchanges may be operated to and from all points of diversion decreed in this case, in the Homestake Project Decrees, and in Case No. 88CW449, that are located within the stream reaches described above; provided, however, that nothing in this Section will permit actual diversions of water to be made at the original decreed points of diversion of those Homestake Conditional Diversion Rights described in Paragraph 7.3.2 above. Each of the exchanges is further described in Appendix F which is incorporated herein by this reference.

8.5 Appropriation Date for Augmentation Plan including Exchange: November 27, 1995.

8.6 Conditions:

8.6.1 Intervening Rights. Applicants shall insure that replacement water, up to the amount of their out-of-priority depletions, is made available during the operation of the Plan to any vested or conditionally decreed water rights senior to November 27, 1995 lawfully calling for water that are located in stream reaches between the diversion points for the water rights being augmented

and Blodgett Reservoir, and shall comply with Paragraph 10.4 below. No injury to instream vested or conditionally decreed water rights senior to November 27, 1995 may occur by operation of this plan for augmentation.

8.6.2 Determination of Wetland Depletions. The consumptive use and return flows of water used for Eagle Park wetland creation and irrigation shall be quantified in accordance with Paragraph 10.3 below, with the Glover formula applied to determine the timing of such return flows, using the following aquifer characteristics:

Hydraulic Conductivity will equal 158 ft/day unless site specific wetland area hydraulic conductivity tests are performed. If site specific hydraulic conductivity tests are performed the site specific hydraulic conductivity value will be used.

Specific Yield will equal 0.20.

Saturated aquifer thickness for the wetland area will equal the average depth to the base of layer 1 plus the pre-wetland area depth to ground water. The average depth to the base of layer 1 will equal the average depth to the base of layer 1 over the wetland area as represented in the Eagle Park groundwater model. The pre-wetland area depth to ground water will be measured at the center of the wetland area.

Transmissivity will equal hydraulic conductivity times saturated aquifer thickness.

The wetland distance parameter will be measured as the shortest straight line distance between the center of the wetland area and the Eagle River.

The aquifer width parameter will be measured as the perpendicular line distance between the Eagle River and the edge of the Eagle Park aquifer as measured through the center of the wetland area.

The allocation of return flows between surface and groundwater returns shall be 70% surface water returns and 30% groundwater returns, unless modified based on site-specific data by agreement between the applicants and the Division Engineer.

As provided in the decree in Case No. 88CW449, the Eagle Park Reservoir and Eagle Park Wetland Irrigation System water rights will not be exercised until such time as the accounting and monitoring procedures required by that decree are in place.

8.6.3 Accounting. Applicants shall install and maintain such water measuring and recording devices and implement such accounting procedures as may be required by the Division 5 Engineer to verify that the amount released and, as necessary, exchanged, for augmentation equals the amount needed to prevent injury to downstream water rights exercising a lawful call for water, including the CWCB water rights described in paragraph 10.4.1 below, up to the amount of water diverted, depleted, or stored out of priority at the points of diversion or structures described in Paragraph 7.1.1 above (e.g Homestake Project original diversion points), in Paragraph 7.3 above (e.g. alternate points of diversion and storage), and in the decree in Case No. 88CW449 (e.g. Resolution Creek Reservoir; Lower East Fork Reservoir; and Eagle Park Wetland Irrigation System). Such

accounting shall be incorporated into the Accounting and Monitoring Plan developed and approved in accordance with Paragraphs 10.1 and 10.2 below. Applicants shall record measurements daily and submit accounting to the Division Engineer at least monthly.

8.6.4 **Notification.** The Applicants shall notify the Water Commissioner and, in accordance with and to the extent of normal water rights administration practice in Water Division No. 5, the Division Engineer, prior to the operation of the plan and exchanges.

8.6.5 **Water Available.** The water released from the sources described in Paragraph 8.2 above shall be available, either directly or by exchange, to prevent injury to downstream water rights exercising a lawful call for water, including the CWCB water rights described in paragraph 10.4.1 below.

8.6.6 **Transit Losses.** Transit losses, if any, shall be determined (and modified from time to time as appropriate) and assessed by the State Engineer in accordance with §§ 37-83-101; 37-83-104, and 37-87-102(4).

8.7 **Water Quality:** The water to be exchanged shall be of a quality and quantity to meet the requirements for which the water of downstream senior appropriations have normally been used in compliance with Section 37-92-305(5) C.R.S.

9. **Plan for Augmentation Including Exchange:** New Facilities

9.1 **Water Rights to be Augmented:** Applicants' diversions on those rights identified in Sections 3 through 6, (e.g.: Blodgett Reservoir; Homestake Creek Intake; Turkey Creek Intake; Eagle-Cross Pump and Pipeline).

9.2 **Sources of Augmentation or Exchange:** Water stored in Homestake Reservoir as described in Paragraph 7.1.1 above; in Resolution Creek Reservoir as described in Paragraph 7.1.2 above; or in Lower East Fork Reservoir as described in Paragraph 7.1.3 above.

9.3 **Statement of Plan for Augmentation Including Exchange:** To the extent that Applicants divert or store water out of priority for their use at the points of diversion or storage described in Sections 3 through 6 above when there is a lawful call placed that could result in curtailment of those rights, Applicants will release water to the Eagle River from storage in Homestake Reservoir; Resolution Creek Reservoir; and/or Lower East Fork Reservoir in an amount, up to the amount depleted by the Applicants' out-of-priority diversions, storage, or depletions, so as to prevent injury to downstream water rights exercising a lawful call for water. Replacement may be by direct release or exchange as set forth in Paragraph 9.4 below.

9.4 **Exchange Reaches:** The exchange reaches for operation of the exchanges herein extend from the confluence of the Eagle River and Cross Creek (most downstream point) upstream to: (1) Homestake Reservoir on Homestake Creek, (2) the diversion points of the Eagle-Cross Pump and

Pipeline on tributaries to Homestake Creek and the Eagle River; (3) Resolution Creek Reservoir on Resolution Creek, (4) Lower East Fork Reservoir on East Fork; and (5) Turkey Creek Intake (most upstream points) and are as follows:

- 9.4.1 From Homestake Reservoir, described in Paragraph 7.1.1. above to the diversion points of the Eagle-Cross Pump and Pipeline described in Paragraph 6.2 above;
- 9.4.2 From Homestake Reservoir to the Turkey Creek Intake described in Paragraph 5.2 above;
- 9.4.3 From Resolution Creek Reservoir to the diversion points of the Eagle-Cross Pump and Pipeline;
- 9.4.4 From Resolution Creek Reservoir to Blodgett Reservoir;
- 9.4.5 From Resolution Creek Reservoir to the Turkey Creek Intake;
- 9.4.6 From Lower East Fork Reservoir to the diversion points of the Eagle-Cross Pump and Pipeline;
- 9.4.7 From Lower East Fork Reservoir to Blodgett Reservoir;
- 9.4.8 From Lower East Fork Reservoir to the Turkey Creek Intake.

Exchanges may be operated to and from all points of diversion decreed in this case, in the Homestake Project Decrees, and in Case No. 88CW449, that are located within the stream reaches described above. Each of the exchanges is further described in Appendix G which is incorporated herein by this reference.

9.5 Appropriation Date for Exchange: November 27, 1995

9.6 Conditions:

9.6.1 **Intervening Water Rights.** Applicants shall insure that replacement water, up to the amount of their out-of-priority depletions, is made available during the operation of the Plan to any vested or conditionally decreed water rights senior to November 27, 1995 lawfully calling for water that are located in stream reaches between the diversion points for the water rights being augmented (e.g., those described in Sections 3, 4, 5, and 6) and the points of release of the augmentation sources (e.g., Homestake Reservoir, Resolution Creek Reservoir, Lower East Fork Reservoir) and shall comply with Paragraph 10.4 below. No injury to instream senior vested or conditionally decreed water rights may occur by operation of this plan for augmentation.

9.6.2 **Determination of Wetland Depletions.** The consumptive use and return flows

of water used for Eagle Park wetland creation and irrigation shall be quantified in accordance with Paragraph 10.3 below, with the Glover formula applied to determine the timing of such return flows, using the aquifer characteristics set forth in Paragraph 8.6.2 above. The allocation of return flows between surface and groundwater returns shall be 70% surface water returns and 30% groundwater returns, unless modified based on site-specific data by agreement between the Applicants and the Division Engineer.

9.6.3 Accounting. Applicants shall install and maintain such water measuring and recording devices and implement such accounting procedures as may be required by the Division 5 Engineer to verify that the amount released for augmentation and, as necessary, exchanged, by exchange at the points described in Paragraph 9.2 equals the amount needed to prevent injury to downstream water rights exercising a lawful call for water, including the CWCB water rights described in paragraph 10.4.1 below, up to the amount of water diverted, depleted, or stored out of priority at the points of diversion or structures described in Paragraph 9.1 above (e.g rights described in Sections 3, 4, 5, and 6 above). Such accounting shall be incorporated into the Accounting and Monitoring Plan developed and approved in accordance with Paragraphs 10.1 and 10.2 below. Applicants shall record measurements daily and submit accounting to the Division Engineer at least monthly.

9.6.4 Notification. The Applicants shall notify the Water Commissioner and, in accordance with and to the extent of normal water rights administration practice in Water Division No. 5, the Division Engineer, prior to operation of the plan and exchanges.

9.6.5 Water Available. The water released from the sources described in Paragraph 9.2 above shall be available, either directly or by exchange, to prevent injury to downstream water rights exercising a lawful call for water, including the CWCB water rights described in paragraph 10.4.1 below.

9.6.6 Transit Losses. Transit losses, if any, shall be determined (and modified from time to time as appropriate) and assessed by the State Engineer in accordance with §§ 37-83-101; 37-83-104, and 37-87-102(4).

9.7 Water Quality: The water to be exchanged shall be of a quality and quantity to meet the requirements for which the water of downstream senior appropriations have normally been used in compliance with Section 37-92-305(5) C.R.S.

10. General Conditions

10.1. Accounting and Monitoring Plan: Prior to the diversion of any water pursuant to this Decree, the Applicants will develop and implement an Accounting and Monitoring Plan that is acceptable to the Division Engineer.

10.1.1 The Plan, at a minimum, will provide the following accounting:

10.1.1.1 The amount of diversions and/or storage by each water right and structure including, for storage rights, inflows, storage content and outflows, with the diversions and storage allocated to and distributed among each water right diverted at each structure;

10.1.1.2 The amount, location, and timing of total stream depletions associated with the project facilities;

10.1.1.3 Augmentation or release requirements to prevent injury to downstream water users;

10.1.1.4 The amount of water stored or released pursuant to all plans for augmentation including exchange associated with this application;

10.1.1.5 Estimates and/or measurements of evaporation and evapotranspiration, using techniques acceptable to the Division Engineer;

10.1.1.6 The amount of water in storage at all developed storage facilities, including groundwater facility storage estimates, if applicable;

10.1.1.7 To the extent the project involves groundwater pumping, groundwater accounting as developed and decreed in the groundwater component of this case, and, in addition, stream flow in (1) the Eagle River downstream of Eagle Park; (2) the East Fork Eagle River upstream of Eagle Park; (3) the South Fork Eagle River upstream of Eagle Park; and (4) Resolution Creek upstream of Eagle Park; or at alternate locations as determined by the Accounting Group, for at least three years prior to groundwater diversions;

10.1.1.8 Amounts of water legally and physically available at the originally-decreed points of diversion and storage for the water rights changed pursuant to Section 7 herein.

10.1.1.9 Amounts of water diverted on the water rights and at the structures herein for the Applicants' use.

10.1.2 The Accounting and Monitoring Plan shall include accounting and administration procedures and forms developed in consultation with and acceptable to the Division Engineer to reflect the data and calculations required for operation of this Decree and to set forth a time frame for the collection and submission thereof, which forms shall, in general, contain the information set forth in Paragraph 10.1.1 above. At least 45 days prior to finalizing the Plan, the Applicants will provide a copy thereof, and of the accounting or administration forms incorporated therein, to the Objectors for examination and approval through the Accounting Group procedures set forth in Paragraph 10.2 below. Accounting forms and procedures may be modified to reflect any subsequent change in conditions as disclosed by future data collection efforts, or any additional requirements imposed by the Division Engineer. So long as the Accounting Group provided for in

paragraph 10.2 below continues to function, such modification shall be in accordance with the provisions of Paragraph 10.2 below.

10.2. Accounting Group: The Applicants and the Objectors acknowledge that the accounting and administration issues associated with the exercise of the water rights contemplated hereunder may prove to be complex and must be adequately examined to ensure that no injury occurs to the vested water rights of the Objectors. In order to accommodate the information needs of the Objectors and ensure that the water rights are appropriately administered, the following shall occur:

10.2.1 An informal Accounting Group shall be established, which shall consist of representatives from the Division Engineer's Office and State Engineer's Office, the Colorado River Water Conservation District, and any of the other Objectors in this case and in Case No. 88CW449, Water Division No. 5, that may desire to participate.

10.2.2 The group shall meet at least once annually on a date established by agreement of the group participants until such time as the Objectors no longer desire to meet or the period of retained jurisdiction has expired, whichever occurs first. The initial such meeting date shall be set by Applicants and be held within six (6) months of the date of entry of the final Decree herein.

10.2.3 The Division Engineer's Office and each Objector shall be provided at least 30 days' written notice of each such meeting. The notice shall include a copy of the data and other materials to be discussed at the meeting to the extent then available. A copy of all notices and accompanying information shall be provided to each Objector, regardless of its participation in the Accounting Group, until such time as Applicants receive a written request from an Objector to be removed from the mailing list.

10.2.4 At such meetings, Applicants' representatives shall disclose, explain and answer any questions regarding, all information submitted to the Accounting Group, including pertinent monitoring and testing data and accounting information, data from test holes or well drilling, any gauging/diversion records, groundwater measurements, or new modeling information gathered since the date of the last meeting, and any proposed accounting, measurement, estimation and modeling techniques or approaches or revisions to the Accounting and Monitoring Plan. Applicants shall also identify any project configurations that Applicants have removed from consideration based upon the collection of additional data and other information.

10.2.5 To the extent that the Division Engineer's Office determines that there exists a need for additional engineering evaluation of the accounting issues identified herein and/or monitoring of the on-the-ground operation of the proposed project, he shall disclose such determinations at the next Accounting Group meeting and Applicants shall assist the Division Engineer's Office in the development of modifications to the Accounting and Monitoring Plan to provide the information, evaluation, or monitoring needed. Such modifications to the plan will be adopted pursuant to Paragraph 10.2.6 below.

10.2.6 Any party may propose modifications for the Accounting and Monitoring Plan provided for in Paragraph 10.1 above, which shall be discussed at the next Accounting Group meeting; if the parties disagree regarding the reasonableness thereof, the proposal shall be referred to the Division Engineer for his determination thereon, which determination shall be made within 3 months of such referral and shall be final absent utilization of the provisions of Paragraph 10.2.7 below.

10.2.7 Any monitoring, accounting, or related administration concerns, including disputes with regard to the Accounting and Monitoring Plan that are not satisfactorily resolved pursuant to Paragraph 10.2.6 above within 3 months of their identification, shall be subject to the retained jurisdiction provisions set forth in Section 22 below; provided that any party that disagrees with the Division Engineer's determination pursuant to Paragraph 10.2.6 must invoke such retained jurisdiction within 90 days of the Division Engineer's determination, or of his failure to make such determination within the time provided in Paragraph 10.2.6.

10.3 Measurement of Wetland Augmentation Requirements: Appropriate monitoring devices and techniques, as approved by the Division Engineer and Federal Land Manager, will be installed to measure the increase in evaporation and evapotranspiration that occurs from the establishment of wetlands at Eagle Park, also known as Camp Hale. The monitoring system will provide a basis for determining the timing and amount of any augmentation releases required to augment out of priority depletions by wetlands created at the site. Potential consumptive use through wetland irrigation will be calculated using the Blaney-Criddle method. The consumptive use coefficient employed to compute wetland evapo-transpiration will be determined by the formula: $k = 1.08 \times 1/.70 \times 1.27 = 1.96$. The monthly distribution of this k value shall be as set forth in the attached Appendix H, which may be modified by agreement of the Applicants and the Division Engineer.

10.4 CWCB Instream Flow Protection.

The CWCB holds decreed instream flow water rights for the Upper Eagle River and other local tributaries potentially influenced by the rights decreed herein. The CWCB instream flow rights are identified as follows:

	<u>Summer*</u>	<u>Winter**</u>	<u>Case No.</u>
East Fork of Eagle River above Cataract Creek	1.5 cfs	1.5 cfs	85CW262
Cataract Creek	1.0 cfs	1.0 cfs	W-3804
East Fork of Eagle River between Cataract Creek and South Fork Eagle River	2.0 cfs	2.0 cfs	85CW263
South Fork Eagle River	3.0 cfs	3.0 cfs	W-3801
Eagle River from East Fork to Resolution Creek	12.0 cfs	6.0 cfs	W-3805
Eagle River from Resolution Creek to Homestake Creek	15.0 cfs	7.0 cfs	W-3811
Resolution Creek from Pearl Creek to Eagle River	3.0 cfs	3.0 cfs	W-3810
Rule Creek	0.5 cfs	0.5 cfs	W-3806

Yoder Gulch	1.0 cfs	1.0 cfs	W-3807
Turkey Creek from Wearyman Creek to Eagle River	7.0 cfs	7.0 cfs	W-3815
Eagle River from Homestake Creek to Cross Creek	25.0 cfs	11.0 cfs	W-3788
Eagle River from Cross Creek to Gore Creek	50.0 cfs	20.0 cfs	W-3796
Eagle River from Gore Creek to Lake Creek	85.0 cfs	35.0 cfs	80CW134
Eagle River from Lake Creek to Brush Creek	110.0 cfs	45.0 cfs	80CW126
Eagle River from Brush Creek to the Colorado River	130.0 cfs	50.0 cfs	80CW124
Cross Creek from East Cross Creek to Eagle River	20.0 cfs	8.0 cfs	W-3795
Fall Creek	5.0 cfs	5.0 cfs	W-3789

* May 1 through September 30

** October 1 through April 30

The above existing water rights are senior to the water rights in Paragraphs 3, 4, 5, and 6 above, and the Applicants will not divert water pursuant to those water rights to the extent that such diversions will cause the instream flow rights described above to be unsatisfied, unless the Applicants augment or replace their depletions affecting those instream flow rights. Applicants shall not exercise those water rights described in Section 7 above at the changed or alternate points of diversion or storage or by exchange if the instream flow rights described above are unsatisfied after having placed a call for water, unless the Applicants augment or replace their depletions affecting those instream flow rights at a location upstream of the unsatisfied instream flow rights. Finally, Applicants will operate the Augmentation Plans including Exchange in Sections 8 and 9 to protect the instream flow rights described above by augmenting and replacing water to the stream system in an amount, up to the amount depleted by the Applicants' out-of-priority diversions, storage, or depletions carried out pursuant to those augmentation plans, needed to satisfy the instream flow rights described above. The Applicants are not, however, required to satisfy any instream flow rights that may be appropriated in the future in or below the affected stream reaches in order to operate the water rights decreed herein.

10.5 United States Forest Service.

10.5.1 The United States Forest Service holds senior decrees for water rights in the Upper Eagle River Basin as identified below. The water rights decreed herein shall not call or cause a call to be placed upon such rights so as to injure the same.

Yoder Ditch, 3.2 cfs, diverted out of Resolution Creek (a.k.a. Elk Creek) at an approximate elevation of 9,310 feet.

Camp Hale Pond, 60 acre-feet, located within the SE 1/4 of Section 9, T76 S, R 80W

Camp Hale Pond diversion ditch, 6.0 cfs diverted out of the west bank of the south fork of the Eagle River at an approximate elevation of 9,380 feet.

Camp Hale Pond No. 1 and Camp Hale Pond No. I, first enlargement, total of 19 acre

feet, water sources are the Camp Hale Pond diversion ditch and Rule Gulch.

10.5.2 Public Lands Provisions.

10.5.2.1 Various water facilities associated with Applicants' requested conditional water rights are proposed to be located on lands of the United States administered by the Forest Service ("National Forest System lands").

10.5.2.1 Applicants acknowledge that they must apply for and obtain permits and possibly other approvals from the Forest Service before they can construct the water facilities they propose to locate on National Forest System lands.

10.5.2.3 Applicants recognize that the consideration of and action on requests for necessary federal approvals and authorizations shall be carried out pursuant to all pertinent statutes, regulations and guidelines concerning the occupancy and use of National Forest System lands, including, but not limited to, the National Environmental Policy Act and the Endangered Species Act. Applicants agree that the entry of the conditional water rights decree requested by Applicants shall not in any way limit or affect the authority of the Forest Service with respect to the agencies' consideration of and action on such requests for approvals, permits or authorizations. Applicants recognize that the authority of the Forest Service to impose terms and conditions and/or to deny such requested approvals, permits or authorizations, pursuant to their lawful regulatory authorities, is not in any way limited or affected by the entry of the requested conditional water rights decree.

10.5.2.4 Applicants acknowledge that they cannot construct the water facilities necessary to divert, store and use water as contemplated under Applicants' requested conditional water rights until and unless they apply for and obtain the approvals, permits and/or authorizations of the Forest Service necessary to allow them to construct facilities on National Forest System lands. Applicants acknowledge and agree that the conditional water rights requested by Applicants are contingent on and subject to the ability of Applicants to obtain the necessary approvals, permits and authorizations of the Forest Service and to satisfy the terms and conditions imposed by such approvals, permits and/or authorizations. Applicants agree that the lawful imposition of terms and conditions and/or the lawful denial of such requested approvals or authorizations, and the consequent limitation on or elimination of the ability of Applicants to divert, store or use water and to perfect their requested conditional water rights, shall not be construed to be a taking, in whole or in part, of the conditional water rights decreed herein.

10.5.2.5 Applicants agree that, in the event the Applicants are unable to obtain approvals and authorizations necessary to allow Applicants to construct water facilities to divert, store and use water and to perfect their conditional water rights at the locations, in the flow rates or in the volumes contemplated under Applicants' requested conditional water rights, Applicants' subsequent applications for findings of reasonable diligence or to make absolute their conditional water rights shall conform the remaining conditional or absolute rights to reflect any such eliminated locations,

reductions in flow rates or reductions in volumes to the extent such rates or volumes are related to a particular project configuration. The United States agrees that nothing herein shall preclude Applicants from filing applications for changes in the locations, flow rates or volumes of their decreed conditional water rights or for new conditional water rights.

10.6 Post-Decree Determination of Project Components and Operations: At such time as Joint Use Project components are constructed and hydrologic conditions have occurred that would allow Applicants lawfully to divert in priority 25,000 a-f of transbasin water in any given calendar year on the water rights, including changes of water rights, decreed in this case and in Case No. 88CW449, Applicants shall serve upon all parties a written identification of all project components and methods of operation referenced in Cases No. 88CW449 and 95CW272 that have not yet been constructed or utilized and shall demonstrate the continued need for and feasibility of any such components and methods of operation to reach the diversion cap established in the MOU (referred to in this Paragraph as “maximum project yield”). To the extent that Applicants and Objectors agree on components and methods of operation, that are no longer necessary to achieve the maximum project yield, a list of the same shall be submitted to the court and such components and methods of operation shall be deemed abandoned. To the extent that Applicants and Objectors disagree on components and methods of operation to be retained by Applicants, any Objector may file a petition to invoke the court’s retained jurisdiction. In any such proceeding, the Applicants shall have the burden of proving the continued need for and feasibility of such components and methods of operation to achieve the maximum project yield. To the extent that the Court determines that such project components and methods of operation are not necessary to achieve the maximum project yield, it shall order relinquishment of the same. Likewise, to the extent the water rights related to such relinquished project components or methods of operations are not needed or used for the project, (including for environmental mitigation pursuant to Paragraph VIII.D of the Eagle River MOU), such related water rights shall also be relinquished.

10.7 Notification of Diversions. In accordance with, and to the extent of normal water rights administration practice in Water Division No. 5, the Division Engineer shall be notified prior to any diversions pursuant to this Decree of the specific water right or rights being exercised.

10.8 Reuse of Transmountain Return Flows. In order to minimize the amount of water diverted from the Colorado River Basin, the City of Colorado Springs and the City of Aurora shall exercise due diligence within legal limitations and subject to economic feasibility to reuse their return flows from water imported from the Eagle River Basin pursuant to this Decree.

10.9 Diversion Limitations. Diversions for the joint use project described in the Eagle River MOU described in Paragraph 2.3 above shall be limited as set forth in the Eagle River MOU.

11. Applicant’s Water Demands and Financial Capacity. Based on the evidence of record, including substantiated population projections based on a normal rate of growth, and considering reasonable water conservation measures, reasonably expected land use mixes, and reasonably attainable per capita water usage requirements and consumptive use reasonably necessary to serve the

increased population, using a 50 year planning period, the Applicants reasonably project an anticipated need for potable water by 2060 (e.g. using a 50 year planning period) in excess of 148,600 a-f for the City of Colorado Springs, and 116,800 a-f for the City of Aurora. These amounts of water exceed the Applicants' respective current water supplies, both absolute and conditionally-decreed. Applicants have, in addition, demonstrated that they possess the financial capacity to finance and construct the infrastructure that will be required to divert, store, carry and deliver the water, and develop the water rights that are the subject matter of this application within a reasonable time.

CONCLUSIONS OF LAW AND JUDGMENT AND DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

12. Incorporation by Reference. The Findings of Fact set forth above are hereby incorporated into the terms of this Decree.
13. Prosecution of Case and Settlement. Applicants have proceeded with diligence in performing the necessary engineering, obtaining information, gathering evidence, and reaching accommodations with Objectors in connection with the prosecution of this case.
14. Need for Water Rights. Applicants have demonstrated non-speculative intent, need and necessity for the water rights, changes of water rights, and plans for augmentation including exchange to be decreed herein. Applicants have the intention, the authority, and the financial capacity to, and can and will, within a reasonable time, divert, capture, possess, control, and beneficially use the water rights herein requested.
15. Approval of Stipulations. The Stipulations between Applicants and Objectors filed herein are hereby approved. Such stipulations are binding upon the parties thereto, but are not a part of this Decree except to the extent that their terms are set forth verbatim herein.
16. Conditional Water Rights, Changes of Water Rights, and Plans for Augmentation Including Exchange. Applicants are entitled to and by this Decree are awarded the relief requested herein, and the water rights described in Paragraphs 3, 4, 5, 6, 7, 8, and 9 above are hereby adjudicated, subject to the terms and conditions set forth in those Paragraphs, in Paragraph 10, and elsewhere in this Decree. The Applicants have withdrawn their claim herein for an enlargement of the Eagle Park Reservoir decreed in Case No. 88CW449 with prejudice on the grounds that they would be unable, in view of data, information, and technology available at this time, to establish compliance with statutory standards for such additional storage. The Applicants and State Objectors have bifurcated the case into surface water and groundwater components; this Decree adjudicates the surface water components of the case, while the groundwater components will be separately adjudicated in proceedings on the groundwater component of the case.
17. Beneficial Uses. Applicants are entitled to use the water rights decreed herein for the

beneficial uses identified herein.

18. Reuse of Diversions. The water rights herein were appropriated and intended for transbasin diversion. Water diverted on the water rights herein and imported to the Eastern Slope may be used, reused, successively used, and fully consumed on the Eastern Slope. The parties have agreed not to litigate in this proceeding whether the water rights herein may be used, reused, or successively used to extinction on the Western Slope. Therefore the Applicants agree that no reuse or successive use of the water rights herein shall be made on the Western Slope, without a subsequent proceeding confirming such reuse or successive use. This Decree shall neither preclude the Applicants or their privies in interest from claiming a right of reuse of the water rights on the Western Slope, nor confirm a right to reuse or successive use of such water on the Western Slope, create any presumption, shift the burden of proof, or serve as a defense in such subsequent proceeding.

19. Development of Conditional Rights. The Court finds that operation of the conditional water rights decreed herein will depend upon the water demands of the cities and will fluctuate from year to year and vary with the availability of water supplies. Therefore, the timing of development of the rights herein shall be treated as provided in C.R.S. §37-92-301(4).

20. No Injury. Grant of this Decree and the exercise of water rights pursuant thereto will not cause injury to the water rights of others, including the owners of, or persons entitled to use, water pursuant to vested water rights or decreed conditional water rights. The terms and conditions as set forth in this Decree are adequate to prevent any such injury.

21. Decree Administration. This Decree is administrable by the State Engineer's Office provided that Applicants furnish to the Division Engineer or its representative appropriate accounting forms as required herein.

22. Retained Jurisdiction.

22.1 In order to ensure that the water rights of others are not injured by the use of the water rights decreed herein, the Court shall retain jurisdiction in this matter for the periods identified below, such being sufficient to satisfy the requirements of Section 37-92-304(6) C.R.S.:

22.1.1 Until 10 years after the date of the "maximum use" of each of the new storage and/or diversion rights as referenced in Sections 3 through 6.

22.1.2 Until 10 years after the date of the "maximum use" of each alternate place of storage and alternate or changed point of diversion as described in Section 7.

22.1.3 Objectors herein shall have the right to assert injury as a result of operations of the plans for augmentation including exchange herein for a period of 10 years after the "maximum use" of those plans.

22.1.4 For such period of time as is necessary to afford Objectors the opportunity to seek judicial review of remaining components and methods of operation as referenced in Paragraph 10.8 above.

22.1.5 As used herein, the term “maximum use” shall mean either the full amount of storage and/or diversion allowed under this Decree or such lesser amount as Applicants notify Objectors and the Court, in writing, is all of the water that they intend to divert and/or store at any point in time under the claim in question.

22.2 In no event, however, shall the period of retained jurisdiction extend beyond a period of 10 years after Applicants have reached the yield cap identified in the Eagle River MOU and have notified Objectors and the court, in writing, that no additional development options shall be pursued hereunder.

22.3 Any person entitled to invoke the retained jurisdiction of the Court shall file a verified petition with the Court setting forth with particularity the factual basis upon which the requested reconsideration is premised, together with proposed decretal language to remedy any alleged injury. The person filing the petition shall have the burden of going forward to establish the prima facie facts alleged in the petition; provided, however, that if the court finds such facts to be established, Applicants shall bear the burden of proof to show (a) that any modification sought by the Applicants 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 Applicants in response to the petition avoids injury to other water rights.

23. State Engineer. Pursuant to Section 37-92-305(8) C.R.S., this Decree requires that the State Engineer curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

24. Diligence. If Applicants desire to maintain the conditional water rights awarded herein, an Application for Sexennial Finding of Reasonable Diligence or to Make Absolute shall be filed on or before _____.

25. No Precedent. The Findings of Fact, Conclusions of Law and Decree herein are entered as a result of substantial discussion, negotiations, and compromises by, between, and among the Applicants and Objectors pertaining to all parts of the Findings, Conclusions and Decree. The parties stipulating to the entry of a decree herein do not intend the Findings, Conclusions and Decree to have the effect of precedent or preclusion on any factual or legal issue in any other matter. Such parties further reserve the right to propose or to challenge any legal or factual position in any other matter filed in this or any other court without limitation by the Findings of Fact, Conclusions of Law, Judgment and Decree entered herein. It is found and concluded by the Court that the acquiescence of parties to the Decree under the specific factual and legal circumstances of this contested matter and upon the numerous and interrelated compromises reached by the parties, shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, *stare decisis*, *res judicata*,

estoppel, laches or otherwise, or to any administrative or judicial practice or precedent, by or against any of the parties herein in any other matter, case, or dispute, and that testimony concerning such acquiescence of any party to a stipulated decree herein shall not be allowed in any other matter, case, or dispute.

26. **Final Judgment.** There being no just reason for delay, this Decree is a final judgment for appellate purposes as to all issues and claims in this case not excluded from the Decree.

IT IS ORDERED that this Decree shall be filed with the Water Clerk subject to judicial review.

IT IS FURTHER ORDERED that a copy of this Decree shall be filed with the appropriate Division Engineer and the State Engineer.

Dated this ____ day of _____, 2010.

BY THE COURT:

Date: _____

This document constitutes a ruling of the court and should be treated as such.

Court Authorizer

Comments:

Appendices A-H as filed with the proposed decree on October 4, 2010, are incorporated into this Decree. Any request for a further finding of diligence shall be filed in March 2017.

MEMORANDUM OF UNDERSTANDING AMONG THE CITIES
OF AURORA AND COLORADO SPRINGS, COLORADO RIVER WATER
CONSERVATION DISTRICT, CYPRESS CLIMAX METALS COMPANY,
AND THE VAIL CONSORTIUM

This Memorandum of Understanding ("MOU") is between the cities of Aurora and Colorado Springs ("Cities"), the Colorado River Water Conservation District ("River District"); Cypress Climax Metals Company ("Climax"), and the Vail Consortium consisting of the Eagle River Water and Sanitation District, Upper Regional Water Authority, and Vail Associates, Inc. ("Consortium").

I. PARTIES.

- A. Cities of Aurora and Colorado Springs ("Cities").
- B. Colorado River Water Conservation District ("River District")
- C. Cyprus Climax Metals Company ("Climax")
- D. Vail Consortium consisting of Eagle River Water & Sanitation District, Upper Eagle Regional Water Authority, Vail Associates, Inc. ("Consortium").

The Consortium and the River District are collectively referred to as the "Reservoir Company."

II. OBJECTIVE.

- A. Develop a joint use water project in Upper Eagle River basin that minimizes environmental impacts, is cost effective, technically feasible, can be permitted by local, state and federal agencies, and provides sufficient yield to meet the water requirements of project participants as hereinafter defined.

III. PROCESS.

- A. Study four joint use project alternatives.
 - 1. Climax based alternative (Exhibit 1).
 - 2. Homestake Creek based alternative (Exhibit 2).

3. Climax reservoir with Camp Hale groundwater recharge reservoir (Exhibit 3).
4. Mixed Climax and Lower Homestake reservoirs (Exhibit 4).

B. Ruedi Reservoir Alternative

In addition to the four alternatives identified above, interest has been expressed by certain parties in undertaking a preliminary analysis of the feasibility of an alternative that utilizes a pump back from Ruedi Reservoir to the Boustead Tunnel. That analysis will be performed. The parties agree to further discuss not only the feasibility of such an alternative, but whether it can appropriately serve as a substitute for the remaining alternatives.

C. Scope of Study.

1. Hydrology (yield). The parties have prepared a spreadsheet model of the upper Eagle River basin to simulate operations of selected project components. The model uses daily streamflow records from key gages to estimate divertible streamflows at numerous points in the basin. The "Study Period" is 1945 through 1994 (50 years).

Specifically, the hydrological investigations will include:

- a. Defining desirable projects and demand patterns for the parties and identifying project yields.
- b. Modifying the operations model to reflect various demand patterns by the parties and to reflect the project configurations.
- c. Estimating the yield of various project configurations. The yields will be used to compare project costs.

- d. Preparing a memorandum which defines project yield and the demands by the project participants, describes the operations model, presents the results of the model runs, and presents the alternative configurations, including delivery options and potential delivery limitations.
2. Technical feasibility and cost. In general, this portion of the study will include construction cost estimates of project components and various configurations at a reconnaissance grade level. This means that the studies would be conducted using available information and site reconnaissance. Drilling, materials testing and other more intensive efforts are not included at this level.

Specifically, the technical feasibility/cost estimate will include:

- a. Compiling geological maps, reports and other documents with information relevant to the site selection of storage and diversion dams, pumping plants and pipeline corridors.
- b. Reconnoitering the project area, the reservoir sites and pipeline corridors identified to date by a geologist or geotechnical engineer and design engineer.
- c. Preparing reconnaissance level designs and construction cost estimates of the project components and configurations. Multiple estimates for a given component may be needed depending on the capacity of a given configuration.
- d. Recognizing and describing any fatal flaws or structural conditions that would inhibit the construction of a project component.
- e. Preparing a memorandum which describes the investigations and presents the cost estimates for the project components and

configurations. Yield estimates developed by the hydrologic model will be developed for each configuration so that the construction costs can be compared on a dollars per acre-foot basis for both dry and average year yields.

3. Environmental impacts and permitting. The environmental investigations will include identifying wetlands and the costs of mitigating the damage to wetlands for each alternative. Additionally, other possible environmental impacts will be identified qualitatively unless costs for mitigating such impacts can be estimated.

Specifically, the environmental investigations will include:

- a. Compiling reports and other documents with information relevant to existing wetlands, threatened and endangered species and water quality in the vicinity of the project components.
- b. Identifying and quantifying wetlands areas from field reconnaissance and aerial photography for each project component.
- c. Estimating the cost of mitigating wetland areas using the Camp Hale area as a mitigation site. The costs will consider a unit rate in dollars per acre.
- d. Identifying other environmental issues associated with each component, some of which may not be easily converted to a cost, such as visual impacts.
- e. Identifying potential benefits for recreation, fish and wildlife in a qualitative sense.
- f. Preparing a memorandum which describes the investigation and presents the impacts for each component as well as for each configuration.

4. Report. The information and conclusions developed by the hydrological, engineering and environmental investigations described above will be summarized in a report and presented to the participating entities. The report will contain comparisons of the alternatives in graphical and tabular form so that the alternatives can be compared. Additionally, permitting and technical review requirements will be identified and summarized as a section in the report. This will allow the participating entities and the public to be informed about all of the federal, state and local requirements for developing the proposed joint use project.

A preliminary environmental analysis for those alternatives depicted on Exhibits 2 and 4 as referenced in Section III has identified potentially significant environmental concerns associated with wetland inundation along Homestake Creek and encroachment upon wilderness lands. If it is found that there are less environmentally damaging practicable alternatives, either of these two alternatives may prove difficult to permit. Hence, though these alternatives will be evaluated, they will not be considered, in view of current knowledge and based upon the current configurations therefore, the leading or preferred alternatives for purposes of this MOU.

D. Study Parts and Time Frame.

1. Part 1 of the study will identify and rank the feasibility of the alternatives -- to be completed by July 1, 1997.
2. a. Part 2 of the study will develop the requisite level of engineering and environmental detail required to initiate the permit applications for Phase 1 of the Project as identified in Section IV.C.1 below, and support the issuance thereof. The target date for completion of this part will be determined by Climax and the Reservoir Company in consultation with the Cities.

shall be under no obligation to contribute money, land, completed infrastructure, water or water rights to such subsequent project phase or participate in the ditch and reservoir company identified in Section VII with respect to such subsequent project phase. Notwithstanding the foregoing, the remaining provisions of this MOU shall remain in effect.

E. Study Cost Sharing

1. Part 1 -- Cost of outside engineering consultants jointly retained by the parties will be split 25% by the Cities; 25% by Climax, 25% by the Consortium, and 25% by the River District up to a maximum of \$10,000 each. Each party to pay for the costs of their own consultants.
2. Parts 2 and 3 -- Cost of outside engineering consultants jointly retained by the parties to be split according to percentage of project yield to be acquired by the parties.

IV. YIELD.

A. Definition.

1. Firm dry year yield -- available in the 25% driest of years during the Study Period.
2. Average yield -- available for diversion on a 25 year rolling average.

B. Requirements.

1. Reservoir Company -- up to 10,000 acre feet of firm dry year yield.
2. Cities -- up to an average of 20,000 acre feet of yield that is available and diverted for use on a 25 year rolling average, plus such additional increment as allowed under Paragraph IV.C.3.d.
3. Climax -- up to 3,000 acre feet of storage space.

C. Project Phasing.

1. Project Phase 1 -- Reclaimed existing 3,148 acre Foot Dam 4 that is anticipated to provide 2,013 acre feet of firm dry year yield. Water from the East Fork of the Eagle River will be delivered to Dam 4 by a pump and pipeline located within or upstream of Section 32, T. 7S., R. 75W. of the 6th P.M., with a capacity no greater than 6 cubic feet per second. This phase will be purchased by, and all yield will be available to, the Reservoir Company.
2. Phase 2 -- The Reservoir Company and the cities shall jointly have the right to develop, on a 50/50 basis, the next increment of firm dry year yield up to 2000 acre feet. The timing and construction of such increment shall be subject to the provisions of Paragraph III.C.4. The cities agree to subordinate their water rights to the Reservoir Company share of this phase. Should Phase 2 be in excess of 2000 acre feet of firm dry year yield, but less than 4000 acre feet, the cities shall have the right of first refusal to the entire increment of yield above 2000 acre feet. Any project which yields in excess of 4000 acre feet shall be considered a "subsequent project phase" as further identified in Paragraph IV.C.3.
3. Subsequent Project Phases
 - a. At the time of the development of subsequent project phases, defined herein as any project following the completion of phase I which has a firm dry year yield in excess of 4000 acre feet, the Reservoir Company shall have a right of first refusal to purchase any additional project yield over and above that realized under phases I and II up to the maximum Reservoir Company yield as identified in paragraph IV.B.1 in direct proportion to its share of the total yield contemplated hereunder. The cities shall have a right of first refusal to the remaining yield up to

the maximum cities' yield as identified in Paragraph IV.B.2. In making the calculation of entitlement to additional project yield under this subparagraph, the yield realized by the parties in Project Phases 1 and 2 shall be taken into account in determining the proportion of additional yield to which each party is entitled.

- b. Subject to the limits of section IV.B.1 and 2 above, any unexercised first refusal rights shall be made available to the other project participants. The foregoing rights of first refusal shall only be applicable to the initial subscription of an increment of project yield as it becomes available. thereafter, any parties' share of project yield shall be freely assignable. If Climax reclaims Robinson Reservoir and such facility is a component of the joint use project, Climax shall retain up to 3000 acre feet of storage space in any enlargement of Dam 4.
- c. At the time of the completion of construction and the commencement of operation of the subsequent phases, the Reservoir Company shall also have the option to purchase from the cities the cities' portion of yield from Phase 2 of the project, assuming such has been constructed, up to a maximum of 1000 acre feet at the price per acre foot of yield paid by the parties for such phase. The price shall be based upon the total planning, engineering, permitting and construction costs for Phase 2 of the project as adjusted at the date of purchase for inflation based on the ENR Index for water resource projects or the most nearly identical index then published.
- d. To the extent that the Reservoir Company chooses not to exercise its option to acquire water in an amount over and above that realized under Phases 1 and 2, the cities may

utilize such yield to the extent that they release for the reservoir Company (or other West Slope entities or uses identified by the Company) one acre foot of water for each acre foot delivered to the cities in excess of the 20,000 a/f rolling average referenced in Paragraph IV.B.2.

D. Interim Supply.

In the event the construction of the subsequent phases of the Project prevents the use of water from Phase 1 by the Reservoir Company, then during such construction the Cities shall make available to the Reservoir Company an amount of water equal to the displaced use. Such interim supply shall be made available from Homestake Reservoir or other facility acceptable to the Reservoir Company up to a maximum amount of 2,013 acre feet annually.

V. PERMITTING.

A. Phase 1 Permits. Climax and the Reservoir Company shall make application for the necessary federal, state and local permits required to develop phase 1 of the project. Such applications shall proceed independent of any applications for the subsequent phases of the project, and may be initiated at any time desired by Climax and the Reservoir Company. However, in connection with such application, a copy of this MOU shall be submitted to any permitting authorities. The Cities agree not to oppose land use applications for phase 1.

B. Subsequent Phase Permits. Subject to the provisions of Sections III.C.3 and IV.C.2 and 3 above, the parties shall make application as co-applicants for the following permits required to construct any subsequent phases of the project.

1. Federal permits which may be sought for individual project phases.

a. Army Corps of Engineers Section 404 Permit.

- b. Forest Service Special Use Permit which shall include a section 7 consultation with the U.S. Fish and Wildlife Services.

In any event, the parties shall cooperate in the federal permitting and review process in an effort to ensure that each party realizes the project yield contemplated hereunder.

2. State permits which may be sought for individual project phases.
 - a. Section 401 Certification.
 - b. State Engineer design approvals.
3. Eagle County Land Use Permit which shall be sought for the entire project in one application. In connection with the application for such land use permit the parties shall seek the following:
 - a. A permit with a shelf life of no less than 25 years with acknowledgment that work on one project phase constitutes work on the entire project. If constructed within the term, then the permit would be granted in perpetuity.
 - b. The waiver of any financial security or filing fee.
 - c. Limited cross enforcement of any state or federal permit requirements such that local requirements will be met by satisfaction of any overlapping state and federal requirements.
 - d. Agreement by the County that:
 - (1) the parties' analysis of the project alternatives under this Memorandum of Understanding satisfies the need to explore additional alternatives;

- (2) the work of the Eagle River Assembly shall satisfy the requirement to determine the parties' water needs;
 - (3) the regulation of groundwater levels and the parties' water rights shall remain within the exclusive jurisdiction of the State Engineer and Water Court; and
 - (4) the joint use project need only meet existing decreed instream flow levels in affected stream reaches.
- e. Meetings with the County and all parties to identify concerns and mitigation requirements.
4. The parties, as co-applicants, shall diligently pursue such permit approvals, including cooperation in the preparation of supporting written materials and the presentation of oral testimony.
 5. The parties acknowledge that all alternative scenarios cannot be foreseen in detail at this time, and therefore agree that the coordination and cooperation contemplated hereunder shall apply to any project configuration or feature which the parties subsequently agree to substitute for one of the alternatives (or components thereof) set forth herein.
 6. To the extent any party exercises its right not to participate in a subsequent phase as referenced in Section III.C.4, such party shall nevertheless support any application that is consistent with the terms of this MOU. Such support shall consist of providing favorable testimony and letters of support in any permit proceedings, but shall not require any financial contribution.
 7. Should the Reservoir Company fail to meet its obligations hereunder to support the applications for permit approvals, the cities shall have no obligation to subordinate their water rights as

referenced in Paragraphs IV.C.2 and VIII.A.3, or to continue the exchange referenced in Paragraph VIII.B.3. If contested by the Reservoir Company, such determination of failure shall be made through the filing of an action in the Denver District Court, Denver, Colorado.

The dates of filing the foregoing applications under this Section V B. shall be the subject of future negotiations among the parties.

VI. CLIMAX FACILITIES.

In the event the enlargement of Dam 4 is identified in phase 1 of the study as one of the 2 most feasible alternatives, then during the Part 2 study outlined above the parties shall seek to reach an agreement with Climax regarding the enlargement of Dam 4 and the use of water therefrom.

VII. DITCH AND RESERVOIR COMPANY.

A. Formation. In the event the parties pursue development of a joint use water project in the Upper Eagle River basin, then the parties will form a nonprofit mutual ditch and reservoir company pursuant to § 7-42-101 et seq., C.R.S. (Project Company), or such other legal entity as mutually agreeable to the parties, that shall hold record title to all water rights, land, facilities, easements or any other appurtenances or personalty comprising the joint use water project. If the Project Company is formed, the Project Company will issue shares of stock which will represent the yield of the joint use water project. Shares of stock will be issued to Project Company shareholders in direct proportion to the amount of such yield acquired by any shareholder. Separate classes of stock will be created to the extent necessary to recognize Vail Associates' preferential rights to the yield of phase 1 and the rights of the Reservoir Company to the yield realized under Paragraphs IV.C.2 and 3. Moreover, separate series of stock may also be created to the extent necessary to differentiate between dry year and average year yield.

B. Structure.

1. The precise structure of the Project Company or other legal entity shall be the subject of future negotiations among the parties. If a ditch and reservoir company is the chosen vehicle to carry out the objectives of this MOU, the articles of incorporation and/or bylaws shall, at a minimum, contain provisions which address amendment of the articles, the sale of company assets, establishment of the board of directors, the levy of assessments, and the voting of shares in such a manner as will ensure the equitable treatment of minority shareholders and the continued delivery of water to such shareholders in proportion to their shares in the company.
2. Regardless of the legal entity chosen, the formation agreement shall provide that no party shall object in Water Court to another party's use of water from the project by direct use, augmentation, exchange, replacement or substitution; provided, however, that this provision shall not prevent a party hereto from filing a statement of opposition in Water Court to any other aspect of an application. Likewise, this provision shall not limit any party in the exercise of its governmental functions. Moreover, there shall be no restriction on the place of use within Colorado.

VIII. WATER RIGHTS.

- A. No Opposition. Subject to the Replacement Water Requirement defined in VIII.B below, the parties agree to either withdraw their statements of opposition to or not oppose the following water rights applications.
 1. Climax/Consortium application as amended in Division No. 5 Case No. 92CW340 for the Eagle Park Reservoir storage right and East Fork Pump Back Facility.

2. Consortium application in Division No. 5 Case No. 95CW348 regarding the exchange of water rights to Eagle Park Reservoir.
 3. Reservoir Company application to be filed in Division No. 5 to change 80 c.f.s. of the Pando Feeder Canal water right to storage in Eagle Park Reservoir, up to a maximum of 3,148 acre feet per year. By virtue of this application, the Cities recognize that up to 3,148 acre feet of water can be stored annually in Eagle Park Reservoir (sufficient to produce a firm annual yield of 2013 acre feet) senior to the priority of the Cities' Camp Hale and Homestake II project water rights. The Cities (Colo. Springs) also agree to subordinate the Eagle Arkansas project water rights at the East Fork diversion site to the foregoing use of the Pando Feeder Canal. The agreements of this paragraph are contingent upon the acquisition of phase 1 of the project by the Reservoir Company.
 4. Climax application in Division No. 5, Case Nos. 92CW233 and 92CW336 regarding the readjudication and quantification of its senior water rights.
 5. The Cities' applications in Division No. 5 Cases No. 88CW449 and 95CW272, provided that the River District may continue participation as a technical resource and consultant to Western Slope Opposers in those cases regarding issues of groundwater availability; stream/aquifer relationship, including steam depletions from well pumping and aquifer recharge; and project water rights administration and accounting.
- B. Replacement Water Requirement which shall be contingent upon the Reservoir Company's acquisition of phase 1 of the project.
1. In the event a joint use project is not developed by the parties and the Cities develop their Eagle Arkansas Project, the Reservoir Company will provide up to 150 acre feet of water per year from Green Mountain, Ruedi or Wolford Mountain

Reservoirs (or another source acceptable to the Cities) to replace the reduction in yield to the Eagle Arkansas Project from the operation of phase 1 of the project.

2. In the event a joint use project is not developed by the parties and the Cities proceed to independently develop the Camp Hale Project (Case No. 88CW449), the Reservoir Company will provide up to 225 acre feet of water per year from Green Mountain, Ruedi or Wolford Mountain Reservoirs (or another source acceptable to the Cities) to replace the reduction in yield to the Camp Hale Project from the operation of phase 1 of the project.
3. The parties will extend the existing three year agreement between the City of Aurora and the Consortium for a period of 25 years. The Reservoir Company and the City of Colorado Springs will be parties to the agreement, and during that period the Reservoir Company will annually provide a minimum of 800 af of water from Green Mountain, Ruedi or Wolford Reservoir water, or another source acceptable to the cities, for 500 af of annual Homestake Reservoir releases. The cities and the Reservoir Company will jointly seek to exchange the 800 af of water to the Homestake Project or to other acceptable diversion facilities including the Twin Lakes project and the Blue River project. The 800 acre feet of water will be available for exchange from June through October of each year. The Reservoir Company will provide the cities with a tentative schedule for the release of Homestake Reservoir water by June 30th of each year. Though this schedule may be adjusted at a subsequent date, it will inform the cities of the general pattern of intended reservoir releases. The rate of reservoir releases may be varied no more often than once per week. The maximum rate of release will not exceed 8 cubic feet per second during the period extending from October 1st through April 30th. If the parties, acting jointly, are unable to obtain water court approval for the long term

operation of such an exchange, the cities may, in their discretion, terminate the agreement referenced in this paragraph.

4. There shall be an annual accounting of the amount of water exchanged to the cities and of the amount of Homestake Reservoir water released to the Reservoir Company. If during any 10 year rolling average period, the cumulative amount of water released to the Reservoir Company exceeds the amount of water exchanged to the cities, the parties agree to examine various means by which the cities can be made whole, i.e., arrangements through which the cities receive an amount of water equal to that which has been released for the benefit of the reservoir company. Such examination will include, but not necessarily be limited to, an assessment of the feasibility of annual releases from Wolford Mountain Reservoir in excess of 800 acre feet, or the release of less than 500 acre feet to the Reservoir Company in years where such releases are not found necessary to meet water demands.
5. Should a court of competent jurisdiction determine that the Reservoir Company has breached the provisions of this MOU, such breach shall constitute just cause for the termination of the above-referenced exchange. Should there be no breach of this MOU and the water court approves the long term operation of the exchange contemplated hereunder, the Reservoir Company shall have, subject to the following conditions the perpetual right to extend the exchange referenced in paragraph VIII.B.3 for an additional 25 years, and at the end of each twenty-five year period thereafter. The Reservoir Company agrees that at the end of the 25 year period commencing with the first release of water for the benefit of the Reservoir Company under the provisions of this MOU, it shall make any modifications in the arrangements referenced in paragraph VIII.B.4 as are determined necessary to ensure that the cities will receive the full amount of replacement water

in the future based upon a ten year rolling average.

6. In the event a joint use project is developed by the parties, there shall be no replacement water requirement.
- C. Water Quality. Any water delivered or released from the Dam 4 facility, including any expansion thereof, shall be of a quality which will not interfere with the beneficial uses made of waters developed by the cities under the provisions of this MOU. Such determination of interference shall be based upon compliance, at the point of diversion, storage or exchange by the cities, with the then existing water quality standards for designated or classified uses as established by federal, state or local statute or regulation.
- D. Joint Use Project. In the event the parties pursue development of a joint use project, then the parties shall cooperate to utilize the following water rights to maximize the yield of the subsequent phases of the project:
1. Division No. 5 Case No. 93CW301 regarding the enlargement of Eagle Park Reservoir.
 2. Division No. 5 Case No. 88CW449 regarding the Camp Hale Project.
 3. River District's remaining Red Cliff Project water rights not previously committed to the Bolts Lake Project.
 4. Division No. 5 Case No. 95CW272 regarding the Cities' Eagle River conjunctive use project.
 5. The water rights set forth in VIII A.1,2,3 and 5 above.
 6. THE remaining conditional rights held by the cities pursuant to Case No. 1193, Eagle County District Court, and Case Nos. 85CW151, 85CW582, and 85CW583, Water Division No. 5.

7. Such other applications as may be necessary to effect the chosen alternative.

Such cooperation shall include participation as co-applicants in any required water court applications; provided, however, that this provision shall not constitute an encumbrance or obligate a part to continue the existence of the foregoing water rights.

D. Excess Water Rights.

Upon the development of the full project for the Cities provided for in Section IV.B.2. above, the Cities shall dedicate to the joint use project all of its remaining Eagle River conditional water rights or dedicate such rights for nonconsumptive uses, such as environmental mitigation. There shall be no additional diversions to the cities under these rights and no transfer of the rights for use out of the basin.

IX. PROJECT COST SHARING.

During Phase 2 of the study, the parties shall seek to reach an agreement regarding the sharing of costs for the construction, operation and maintenance of the subsequent phases of the project.

X. MUTUAL COOPERATION.

The parties agree to discuss on an annual basis means to utilize Eagle Park Reservoir or other Reservoir Company facilities in conjunction with the then existing Homestake Project or other facilities owned by the Cities, through exchange or otherwise, for the mutual benefit of the parties.

XI. SUCCESSORS AND ASSIGNS.

The provisions of this MOU shall apply to, and be binding upon, the successors and assigns of the parties hereto. Any assignments of interest hereunder shall be in writing, with notification thereof promptly provided to all parties.

XII. EXECUTED COUNTERPARTS

This MOU may be signed in separate original counterparts, all of which shall be consolidated to make a single contract.

City of Colorado Springs

By _____

Date _____

City of Aurora

By Paul E. Tauer

Paul E. Tauer, Mayor

Date 6-20-98

ATTEST:

James L. Quinn

Approved as to Form

James A. Morava

Colorado River Water Conservation District

By _____

Date _____

Cypress Climax Metals Company

By _____

Date _____

Eagle River Water and Sanitation
District

By _____

Date _____

Upper Eagle Regional Water
Authority

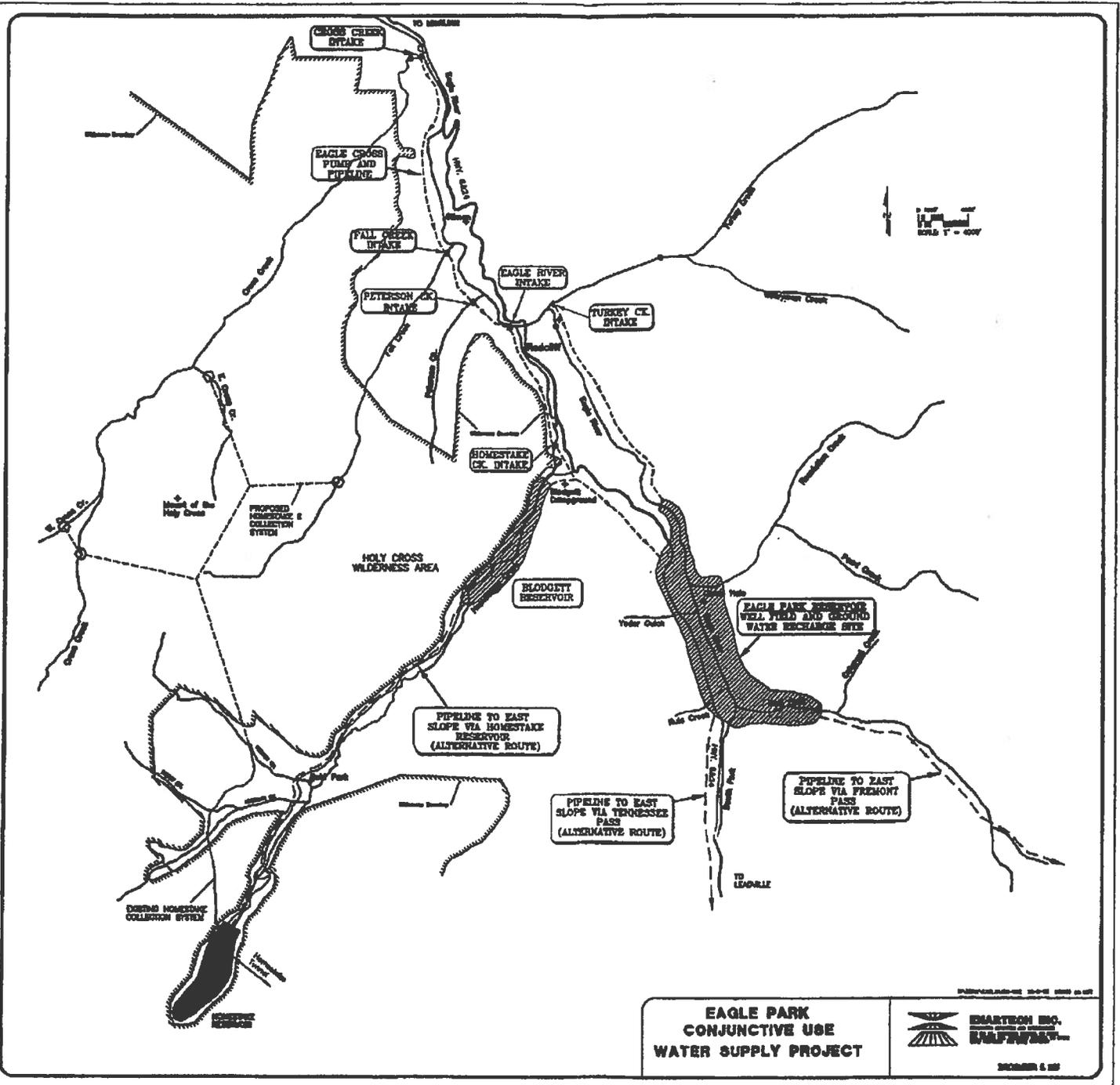
By _____

Date _____

Vail Associates, Inc.

By _____

Date _____

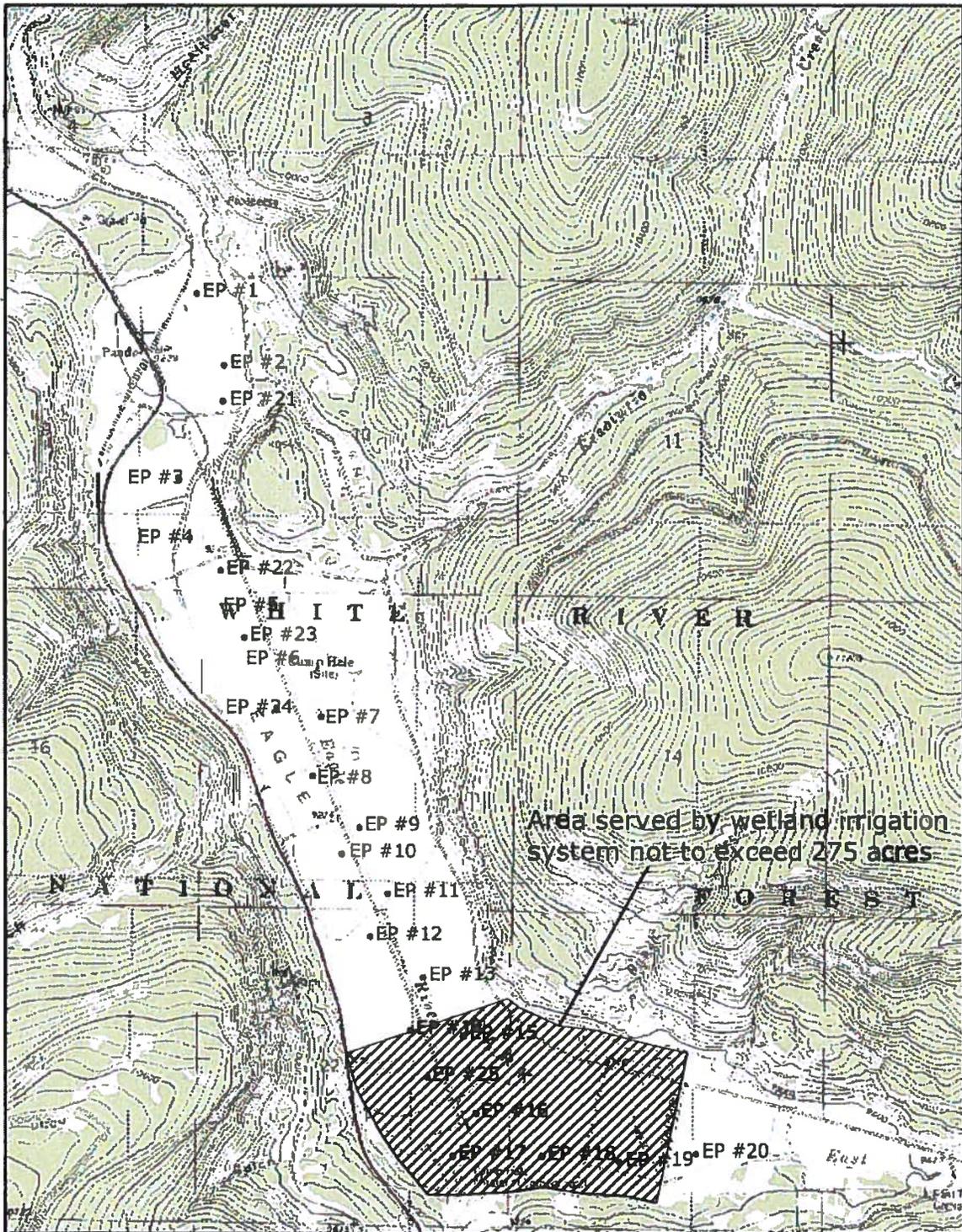


**EAGLE PARK
 CONJUNCTIVE USE
 WATER SUPPLY PROJECT**

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REVISION 4.00

Appendix C
Location of Proposed Production Wells and Wetland Irrigation System



Actual well locations subject to relocation in response to actual field conditions. Changes in well locations will be documented in updated mapping.

Appendix E- 95CW272 decree 3-19-10

Water Physically Available Homestake Conditional Diversion Rights without existing diversion structures		
	<u>Water Available</u>	<u>Stream Gage</u>
<u>Homestake Conduit</u>		
Un-named Creek (trib. to Cross Ck)	5.9% of Stream Gage	Cross Creek nr Minturn
West Cross Creek (April 1 to May 15)	(Cross Gage ^{1.177})*0.080	Cross Creek nr Minturn
West Cross Creek (May 16 to March 31)	(Cross Gage ^{1.080})*0.176	Cross Creek nr Minturn
Cross Creek (April 1 to May 15)	(Cross Gage ^{1.266})*0.059	Cross Creek nr Minturn
Cross Creek (May 16 to March 31)	(Cross Gage ^{1.161})*0.138	Cross Creek nr Minturn
East Cross Creek	15.8% of Stream Gage	Cross Creek nr Minturn
Fall Creek (April 1 to May 15)	(Cross Gage ^{1.314})*0.022	Cross Creek nr Minturn
Fall Creek (May 16 to March 31)	(Cross Gage ^{0.939})*0.248	Cross Creek nr Minturn
Inflow to Homestake Conduit (Cross Ck)	5.6% of Stream Gage	Cross Creek nr Minturn
Peterson Creek	1.8% of Stream Gage	Homestake Ck nr Red Cliff
Un-named Trib to Homestake Ck	1.8% of Stream Gage	Homestake Ck nr Red Cliff
Whitney Creek	5.8% of Stream Gage	Homestake Ck nr Red Cliff
Inflow to Homestake Conduit (Homestake Ck)	16.2% of Stream Gage	Homestake Ck nr Red Cliff
<u>Eagle-Arkansas Ditch</u>		
Cataract Creek	7% of Stream Gage	Eagle River at Red Cliff
Sheep Gulch	2.3% of Stream Gage	Eagle River at Red Cliff
East Fork Eagle River	10% of Stream Gage	Eagle River at Red Cliff
Jones Gulch	7.5% of Stream Gage	Eagle River at Red Cliff
Fiddler Creek	1.5% of Stream Gage	Eagle River at Red Cliff
Taylor Gulch	1.9% of Stream Gage	Eagle River at Red Cliff
Piney Creek	9.7% of Stream Gage	Eagle River at Red Cliff
Inflow to Eagle-Arkansas Ditch	12.8% of Stream Gage	Eagle River at Red Cliff

APPENDIX F

**LIST OF EXCHANGES
SECTION 9-AUGMENTATION PLAN INCLUDING EXCHANGES, CASE 95CW272**

Many of the distances from section lines provided below are approximate and are based upon an extrapolation of section lines into areas of the White River National Forest that have not been surveyed. Accordingly, these legal descriptions are approximate and may vary from the specific metes and bounds locations identified in the ruling.

No.	Description	Lower Terminus	(1) T	(2) R	(3) S	(4) S of N (ft)	(5) W of E (ft)	Upper Terminus	(1) T	(2) R	(3) S	(4) S of N (ft)	(5) W of E (ft)	Amount
1	Blodgett Reservoir to French Creek	Blodgett Reservoir	7S	80W	6	1,050	800	French Creek Diversion	7S	81W	29	3,300	660	180 cfs
2	Blodgett Reservoir to Fancy Creek	Blodgett Reservoir	7S	80W	6	1,050	800	Fancy Creek Diversion	7S	81W	32	2,640	4,620	120 cfs
3	Blodgett Reservoir to Missouri Creek	Blodgett Reservoir	7S	80W	6	1,050	800	Missouri Creek Diversion	8S	81W	6	1,865	1,980	120 cfs
4	Blodgett Reservoir to Sopris Creek	Blodgett Reservoir	7S	80W	6	150	800	Sopris Creek Diversion	8S	81W	6	3,300	3,300	160 cfs
5	Blodgett Reservoir to Homestake Ck Conduit	Blodgett Reservoir	7S	80W	6	1,050	800	Homestake Creek Conduit Diversion	Numerous sources, see decree for legal description					120 cfs
6	Blodgett Reservoir to East Fork Conduit	Blodgett Reservoir	7S	80W	6	1,050	800	East Fork Conduit Diversion	8S	81W	9	3,960	3,300	260 cfs
7	Blodgett Reservoir to Homestake Tunnel	Blodgett Reservoir	7S	80W	6	1,050	800	Homestake Tunnel Diversion	8S	81W	17	1,980	2,640	700 cfs
8	Blodgett Reservoir to Homestake Reservoir	Blodgett Reservoir	7S	80W	6	1,050	800	Homestake Reservoir	8S	81W	8	1,980	1,435	700 cfs
9	Blodgett Reservoir to Cataract Creek	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Cataract Creek Diversion	7S	79W	19	1,435	3,300	90 cfs
10	Blodgett Reservoir to Sheep Gulch	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Sheep Gulch Diversion	7S	79W	20	5,010	5,010	20 cfs
11	Blodgett Reservoir to East Fork Eagle River	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	East Fork Eagle Diversion	7S	79W	32	3,960	300	230 cfs
12	Blodgett Reservoir to Jones Gulch	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Jones Gulch Diversion	7S	80W	26	3,300	300	90 cfs
13	Blodgett Reservoir to Fiddler Creek	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Fiddler Creek Diversion	8S	80W	2	300	3,960	30 cfs
14	Blodgett Reservoir to Taylor Gulch	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Taylor Gulch Diversion	8S	80W	2	4,620	3,960	20 cfs

APPENDIX F

**LIST OF EXCHANGES
SECTION 9-AUGMENTATION PLAN INCLUDING EXCHANGES, CASE 95CW272**

Many of the distances from section lines provided below are approximate and are based upon an extrapolation of section lines into areas of the White River National Forest that have not been surveyed. Accordingly, these legal descriptions are approximate and may vary from the specific metes and bounds locations identified in the ruling.

No.	Description	Lower Terminus	(1) T	(2) R	(3) S	(4) S of N (ft)	(5) W of E (ft)	Upper Terminus	(1) T	(2) R	(3) S	(4) S of N (ft)	(5) W of E (ft)	Amount
15	Bloodgett Reservoir to Piney Creek	Confl. of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Piney creek Diversion	8S	80W	11	3,960	3,300	20 cfs
16	Bloodgett Reservoir to Eagle-Arkansas Ditch	Confl. of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Eagle-Arkansas Ditch	Numerous sources, see decree for legal description					30 cfs
17	Bloodgett Reservoir to Resolution Creek	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Resolution Creek Reservoir	7S	80W	11	1,510	2,410	5000 AF
18	Bloodgett Reservoir to Lower East Fork Reservoir	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Lower East Fork Reservoir	7S	80W	24	4,215	2,690	2500 AF
19	Bloodgett Reservoir to Peterson Creek	Confluence of Peterson Creek and Eagle River	6S	81W	24	900	1,980	Peterson Creek Diversion	6S	81W	35	3,960	1,865	70 cfs
20	Bloodgett Reservoir to Turkey Creek Intake	Confl. of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Turkey Creek Intake	6S	80W	20	1,500	4,400	200 cfs
21	Bloodgett Reservoir to Cross Creek Intake	Confluence of Cross Creek and Eagle River	5S	81W	36	3,960	2,640	Cross Creek Intake	5S	81W	36	4,030	3,280	300 cfs
22	Bloodgett Reservoir to Fall Creek Intake	Confluence of Fall Creek and Eagle River	6S	81W	13	2,380	4,620	Fall Creek Intake	6S	81W	13	2,400	980	250 cfs
23	Bloodgett Reservoir to Eagle Park Aquifer Well Field, 1 st Enl.	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Eagle Park Aquifer Well Field, 1 st Enl.	7S	80W	*	*	*	4000 AF
24	Bloodgett Reservoir to Eagle Park Aquifer Well Field	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Eagle Park Aquifer Well Field	7S	80W	*	*	*	5000 AF
25	Bloodgett Reservoir to Eagle Park Reservoir	Confl. of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Eagle Park Reservoir	7S	80W	*	*	*	3500 AF
26	Bloodgett Reservoir to Eagle Park Wetland Irrigation System	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Eagle Park Wetland Irrigation System	7S	80W	*	*	*	60 cfs

(1) Township (4) Distance South from North Section Line (ft) (3) Section
 (2) Range (5) Distance West from East Section Line (ft)

* Eagle Park Reservoir is located entirely with in T7S, R80W of the 6th P.M. in an area comprising approximately 1,450 surface acres, in the following section: 3, 4, 9, 15, 16, 22, 23 and 24 (See map attached hereto as Appendix C and incorporated herein by this reference).

APPENDIX G

SECTION 10, AUGMENTATION PLAN INCLUDING EXCHANGES, CASE 95CW272
LIST OF EXCHANGES

Many of the distances from section lines provided below are approximate and are based upon an extrapolation of section lines into areas of the White River National Forest that have not been surveyed. Accordingly, these legal descriptions are approximate and may vary from the specific metes and bounds locations identified in the ruling.

No.	Description	Lower Terminus	(1) T	(2) R	(3) S	(4) S of N (ft)	(5) W of E (ft)	Upper Terminus	(1) T	(2) R	(3) S	(4) S of N (ft)	(5) W of E (ft)	Amount
1	Homestake Reservoir to Eagle Park Aquifer Well Field, 1 st Enl.	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Eagle Park Aquifer Wellfield, 1 st Enlargement	7S	80W	*	*	*	4000 AF
2	Homestake Reservoir to Turkey Creek Intake	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Turkey Creek Intake	6S	80W	20	1,500	4,400	200 cfs
3	Homestake Reservoir to Cross Creek Intake	Confluence of Cross Creek and Eagle River	5S	81W	36	3,960	2,640	Gross Creek Intake	5S	81W	36	4,030	3,280	300 cfs
4	Homestake Reservoir to Fall Creek Intake	Confluence of Fall Creek and Eagle River	6S	81W	13	2,380	4,620	Fall Creek Intake	6S	81W	13	2,400	980	250 cfs
5	Homestake Reservoir to Peterson Creek Intake	Confluence of Peterson Creek and Eagle River	6S	81W	24	900	1,980	Peterson Creek Intake	6S	81W	24	1,100	1,400	70 cfs
6	Eagle Park Reservoir to Bloodgett Reservoir	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,600	Bloodgett Reservoir	7S	80W	6	1,050	800	3500 AF
7	Eagle Park Reservoir to Homestake Creek Intake	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Homestake Creek Intake	6S	80W	31	3,380	75	400 cfs
8	Eagle Park Reservoir to Turkey Creek Intake	Confluence of Turkey Creek and Eagle River	6S	80W	19	2,640	900	Turkey Creek Intake	6S	80W	20	1,500	4,400	200 cfs
9	Eagle Park Reservoir to Cross Creek Intake	Confluence of Cross Creek and Eagle River	5S	81W	36	3,960	2,640	Gross Creek Intake	5S	81W	36	4,030	3,280	300 cfs
10	Eagle Park Reservoir to Fall Creek Intake	Confluence of Fall Creek and Eagle River	6S	81W	13	2,380	4,620	Fall Creek Intake	6S	81W	13	2,400	980	250 cfs
11	Eagle Park Reservoir to Peterson Creek Intake	Confluence of Peterson Creek and Eagle River	6S	81W	24	900	1,980	Peterson Creek Intake	6S	81W	24	1,100	1,400	70 cfs
12	Resolution Creek Reservoir to Bloodgett Reservoir	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Bloodgett Reservoir	7S	80W	6	1,050	800	5000 AF
13	Resolution Ck Res. to Eagle Pk Aquifer Well Field, 1 st Enl.	Confluence of Resolution Creek and Eagle River	7S	80W	10	4,750	4,620	Eagle Park Aquifer Well Field, 1 st Enl.	7S	80W	*	*	*	4000 AF
14	Resolution Creek Reservoir to Homestake Creek Intake	Confluence of Homestake Creek and Eagle River	6S	80W	19	3,960	3,550	Homestake Creek Intake	6S	80W	31	3,380	75	400 cfs
15	Resolution Creek Reservoir to Turkey Creek Intake	Confluence of Turkey Creek and Eagle River	6S	80W	19	2,640	900	Turkey Creek Intake	6S	80W	20	1,500	4,400	200 cfs

APPENDIX G

SECTION 10, AUGMENTATION PLAN INCLUDING EXCHANGES, CASE 95CW272

Many of the distances from section lines provided below are approximate and are based upon an extrapolation of section lines into areas of the White River National Forest that have not been surveyed. Accordingly, these legal descriptions are approximate and may vary from the specific metes and bounds locations identified in the ruling.

16	Resolution Creek Reservoir to Cross Creek Intake	SS 81W 36	3,960	2,640	Cross Creek Intake	SS 81W 36	4,030	3,280	300 cfs
17	Resolution Creek Reservoir to Fall Creek Intake	6S 81W 13	2,380	4,620	Fall Creek Intake	6S 81W 13	2,400	980	250 cfs
18	Resolution Creek Reservoir to Peterson Creek Intake	6S 81W 24	900	1,980	Peterson Creek Intake	6S 81W 24	1,100	1,400	70 cfs
19	Lower East Fork Reservoir to Blodgett Reservoir	6S 80W 19	3,960	3,550	Blodgett Reservoir	7S 80W 6	1,050	800	2,500 AF
20	Lower East Fork Reservoir to Homestake Creek Intake	6S 80W 19	3,960	3,550	Homestake Creek Intake	6S 80W 31	3,380	75	400 cfs
21	Lower East Fork Reservoir to Turkey Creek Intake	6S 80W 19	2,640	900	Turkey Creek Intake	6S 80W 20	1,500	4,400	200 cfs
22	Lower East Fork Reservoir to Cross Creek Intake	5S 81W 36	3,960	2,640	Cross Creek Intake	5S 81W 36	4,030	3,280	450 cfs
23	Lower East Fork Reservoir to Fall Creek Intake	6S 81W 13	2,380	4,620	Fall Creek Intake	6S 81W 13	2,400	980	250 cfs
24	Peterson Creek Intake	6S 81W 24	900	1,980	Peterson Creek Intake	6S 81W 24	1,100	1,400	70 cfs

(1) Township (4) Distance South from North Section Line (ft) (3) Section
 (2) Range (5) Distance West from East Section Line (ft)

* Eagle Park Reservoir and Eagle Park Aquifer Wellfield, Enlargement No. 1 are located entirely within in T7S, R80W of the 6th P.M. in an area comprising approximately 1,450 surface acres, in the following section: 3, 4, 9, 15, 16, 22, 23 and 24 (See map attached hereto as Appendix C and incorporated herein by this reference).

Appendix H-Case No. 95CW272-Surface

Monthly Rantz K values-Paragraph 10.3

May	1.64
June	2.07
July	2.42
August	2.31
September	1.84
October	1.47