

<p>DISTRICT COURT, WATER DIVISION NO. 2, COLORADO, STATE OF COLORADO</p> <p>Pueblo County Judicial Building 320 West 10th Street Pueblo, CO 81003</p>	<p>FILED IN THE OFFICE OF THE CLERK, DISTRICT COURT WATER DIV. NO. 2, STATE OF COLORADO</p> <p>RECEIVED CO Pueblo County Water Court 10th JD Filing Date: Oct 20 2006 4:10PM MDT Filing ID: 1269825 Review Clerk: Mardell Didomenico ▲ COURT USE ONLY ▲</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF CHAFFEE COUNTY</p> <p>IN CHAFFEE COUNTY, COLORADO</p>	
<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE OF THE COURT</p>	
<p>Case Number: 04CW129 Division: 2</p>	

This matter comes before the Court by Application of Chaffee County, Colorado. The matter was referred to the Water Referee and re-referred to the Water Judge for Water Division No. 2, State of Colorado, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes. The undersigned Water Judge, having considered all matters raised by the application, and having made such investigations as are necessary to become fully advised with respect to the subject matter of the application, does hereby make the following Findings of Fact, Conclusions of Law, and Decree of the Water Court in this matter:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Application.** The above-captioned application was filed in this Court on December 30, 2004. The Applicant is Chaffee County ("County"), with the following address: c/o Chaffee County Engineer, Chaffee County, 104 Crestone Ave., Salida, CO 81201. The Court finds that the application is complete, covers all matters required by law, and that the statements therein are true.
2. **Objectors.** Timely statements of opposition were filed by Southeastern Colorado Water Conservancy District, City of Aurora acting by and through its Utility Enterprise, Arkansas River Outfitters Association, Upper Arkansas Water Conservancy District, Pueblo West Metropolitan District, City of Salida, Lower Arkansas Valley Water Conservancy District, Colorado Water Conservation Board, Colorado Division of Parks & Outdoor Recreation, Colorado Division of Wildlife, Colorado Division of Water Resources, Colorado Department of Natural Resources, City of Colorado Springs, acting through Colorado Springs Utilities, Trout Unlimited, Castle Pines North Metropolitan District, Board of County Commissioners of Lake County and the Board of Water Works of Pueblo, Colorado. The time for filing additional statements of opposition has expired.

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Colorado Water Conservancy Board

Frank McNulty
Steve Kastner
Dick Wolfe
Paul Flack
Grady McNeill
Ted Kowalski

3. Application Summary. The County seeks separate water rights for each of the in-channel diversion structures located in the City of Salida and each of the in-channel diversion structures located in the Town of Buena Vista, all within Chaffee County. These structures divert, capture and control the flow of the Arkansas River to create features that provide a reasonable recreation experience in and on the water for boating and related recreational uses and the Court finds that the requested water rights qualify as recreational in-channel diversions ("RICDs") as defined at C.R.S. § 37-92-103(10.3) (2004). Both the Town of Buena Vista and the City of Salida have passed resolutions supporting this application.

4. Stipulations with Objectors: Stipulations between the Applicant and the following Objectors were entered into and filed with the Court: Southeastern Colorado Water Conservancy District, City of Aurora acting by and through its Utility Enterprise, Arkansas River Outfitters Association, Upper Arkansas Water Conservancy District, Pueblo West Metropolitan District, City of Salida, Lower Arkansas Valley Water Conservancy District, Colorado Division of Parks & Outdoor Recreation, Colorado Division of Wildlife, Colorado Division of Water Resources, Colorado Department of Natural Resources, Colorado Water Conservation Board, City of Colorado Springs, acting through Colorado Springs Utilities, Trout Unlimited, Castle Pines North Metropolitan District, Board of County Commissioners of Lake County and the Board of Water Works of Pueblo, Colorado. The aforementioned Objectors have consented to entry of this Decree and the Stipulations were approved by Order of the Court. The separate stipulations survive and are enforceable outside of this decree.

5. Name of Structures:

- (a). City of Salida Boating Park Structures ("Salida Park"). The Salida Park consists of two existing in-channel diversion structures in the channel of the Arkansas River within the City of Salida.
- (b). Town of Buena Vista Boating Park Structures ("B.V. Park"). The B.V. Park currently consists of one in-channel diversion structure in the channel of the Arkansas River within the Town of Buena Vista. The Town intends to construct up to 3 additional structures in the river channel (one or more of the 3 additional structures were constructed while the application was pending) as described below.

Salida Park and B.V. Park are collectively referred to herein as "Parks" or "Boating Parks."

6. Legal Description of Structures:

- (a). The Salida Park is located within the channel of the Arkansas River. The locations of the two recreational in-channel diversion structures in the Salida Park are as follows:

- i. Structure No. 1. A recreational in-channel diversion structure located in the Southeast quarter of Section 32, T 50 N, R 9 E of the New Mexico Principal Meridian, Chaffee County, Colorado, the centerline of which is more particularly described as follows:

Beginning at a point on the Southwesterly bank of the Arkansas River from whence the East quarter corner of said Section 32, marked by a 2 $\frac{1}{2}$ " U.S.G.L.O. brass cap, bears North 33°03'11" East, a distance of 1712.25 feet;

Thence Northeasterly and deflecting to the right a distance of 93.01 feet along the arc of a curve having a radius of 238.43 feet, a delta angle of 22°21'05", a chord of 92.43 feet and a chord bearing of North 44°26'54" East to a point on the Northeasterly bank of the Arkansas River from whence said East quarter corner of Section 32 bears North 32°24'29" East, a distance of 1621.74 feet.

- ii. Structure No. 2. A recreational in-channel diversion structure located in the Southeast quarter of Section 32, T 50 N, R 9 E of the New Mexico Principal Meridian, Chaffee County, Colorado, the centerline of which is more particularly described as follows:

Beginning at a point on the Southwesterly bank of the Arkansas River from whence the East quarter corner of said Section 32, marked by a 2 $\frac{1}{2}$ " U.S.G.L.O. brass cap, bears North 20°59'55" East, a distance of 1799.35 feet; Thence Northeasterly and deflecting to the right a distance of 106.07 feet along the arc of a curve having a radius of 81.32 feet, a delta angle of 74°43'49", a chord of 98.71 feet and a chord bearing of North 34°42'24" East to a point on the Northeasterly bank of the Arkansas River from whence said East quarter corner of Section 32 bears North 20°12'42" East, a distance of 1703.61 feet.

The distance between the two structures in the Salida Park is approximately 400 feet. A map depicting the location of the structures is attached as Exhibit A.

(b). The B.V. Park is located in the channel of the Arkansas River. The location of the existing recreational in-channel diversion structure in the B.V. Park is as follows:

- i. Structure No. 1. A recreational in-channel diversion structure located in the Southwest quarter of Section 9, T 14 S, R 78 W of the Sixth Principal Meridian, Chaffee County, Colorado, the centerline of which is more particularly described as follows:

Beginning at a point on the Southwesterly bank of the Arkansas River from whence the Southwest corner of said Section 9, marked by a 2" aluminum cap stamped LS 20152, bears South 26°43'24" West, a distance of 3260.51 feet;

Thence Northeasterly and deflecting to the right a distance of 115.63 feet along the arc of a curve having a radius of 87.36 feet, a delta angle of 75°50'03", a chord of 107.37 feet and a chord bearing of North 51°10'19" East to a point on the Northeasterly bank of the Arkansas River from whence said Southwesterly corner of Section 9 bears South 27°28'54" West, a distance of 3358.55 feet.

ii. Structure Nos. 2-4. Applicant's intent is to extend the B.V. Park with up to three additional structures in the channel of the Arkansas River. The current planned location for these structures is in the channel of the Arkansas River as follows: Structure No. 2, approximately 2000 feet downstream of the existing structure; Structure No. 3, approximately 2150 feet downstream of the existing structure; and Structure No. 4, approximately 2300 feet downstream of the existing structure. One or more of these structures were constructed while the application was pending. The exact legal descriptions for these structures shall be identified at the time they are made absolute.

A map depicting the location of the existing Structure No. 1 and the approximate location of Structure Nos. 2-4 is attached hereto as Exhibit B.

7. Source. The source for all structures in the Parks is the Arkansas River.
8. Appropriation Date. December 31, 2004, based upon the intent to appropriate coupled with acts demonstrating that intent. The Court finds that the County possessed the requisite intent to appropriate for the amounts and time periods set forth in paragraph 9 below. The RICD water rights for Structure No. 1 and 2 in the Salida Park and Structure No. 1 in the B.V. Park are decreed absolute and the RICD water rights for Structure Nos. 2 – 4 are decreed conditional, as further described in paragraph 12.d below.
9. Amount of RICD Water Rights. For each structure in the Salida Park and the B.V. Park, the RICD water rights shall be for the amounts and for the time periods set forth below, as measured at the Wellsville gage below the City of Salida pursuant to paragraph 12(h), below.

Time Period	March 15- Thursday before the last Monday in May	Friday before the last Monday in May - June 30	July 1 - Aug 15	Aug 16 - Nov 15
Flows (cfs)	250	700-1,800 (adjustable)	700	250

The time period from the Friday before the last Monday in May through June 30 ("High Flow Period") corresponds to a portion of the time when flows are typically the highest at the Wellsville gage and when the Boating Parks attract the greatest number of users of all abilities, including experts. The adjustable flow rate for the High Flow Period shall be determined by the Applicant each year, at its sole discretion, but in consultation with the City of Salida and the Town of Buena Vista, and subject to the limitations set forth in this paragraph and paragraph 10 below. Specifically, on or before April 1 of each year, the County shall notify in writing the Division Engineer, and any party hereto that has requested such notice, of 8 days in June during the High Flow Period when the water rights for the RICDs shall be 1,800 cfs ("Event Days"). Similarly, on or before May 10 of each year, the County shall notify in writing the Division Engineer (and any party hereto that has requested such notice) of up to 30 consecutive days

within the High Flow Period during which the RICD water rights shall be limited to 1,400 cfs (30-Day Period”), except for the 8 Event Days which shall fall within that 30-Day Period. Event Days do not need to be consecutive, but must occur on days when boating events are scheduled for one or both Boating Parks and/or on any day preceding such events, and must occur in the month of June. During the remainder of the High Flow Period that is not part of the 30-Day Period, the RICD water rights shall be limited to 700 cfs.

Once the Event Days and 30-Day Period are designated for a given year, they are not subject to change regardless of available flows. If written notice is not provided to the Division Engineer by the dates provided above, the Division Engineer is not required to honor a call placed by the County for the 30-Day Period and the Event Days for that year. The above water rights are absolute for both structures at the Salida Park and Structure No. 1 at the B.V. Park, and are conditional for Structure Nos. 2-4 at the B.V. Park.

By way of compromise settlement with Objectors, Applicant has withdrawn its claim for a RICD water right from November 16 through March 14.

10. Reduced RICD Calls. By settlement agreement, the County has agreed that under certain defined circumstances, it shall reduce its call under the RICD water rights decreed herein in order to facilitate certain future exchanges by some of the Objectors (“Reduced RICD Calls”), as further described below. Circumstances requiring Reduced RICD Calls are (a) certain water shortfall conditions requiring exchanges in addition to existing senior rights in order to refill depleted reservoirs (“Recovery Year Exchanges”); and (b) certain limited exchanges currently anticipated to be necessary to allow for future water supply needs upstream and downstream of the Boating Parks (referred to herein as “Limited Future Exchanges”). The specific circumstances in which the County has agreed to implement Reduced RICD Calls to facilitate Recovery Year Exchanges and Limited Future Exchanges, as well as the conditions and limitations placed upon such exchanges and reduced calls, are more specifically set forth in the Memorandum of Understanding between many of the parties hereto, dated July 24, 2006 (“MOU”), a copy of which is attached to this Decree as Exhibit C, and in separate stipulations between Applicant and certain Objectors.

The Court hereby incorporates herein paragraphs 2 - 5 of the MOU and the aforementioned separate stipulations, so that under the defined circumstances set forth therein, and subject to the conditions and limitations contained therein, the County shall be required to implement Reduced RICD Calls to the extent necessary in order to help facilitate the Recovery Year Exchanges and Limited Future Exchanges. For Limited Future Exchanges, the Reduced RICD Call shall not be required to drop below 1200 cfs during the 30-Day Period that is not one of the 8 Event Days (Events Days remain at 1800 cfs). For Recovery Year Exchanges, the Reduced RICD Call shall not be required to drop below 1500 cfs during the 8 Event Days and 1000 cfs during the remainder of the 30-Day Period, except for Saturdays and Sundays during the 30-Day Period that are not Event Days, during which the Reduced RICD Call for Recovery Year Exchanges shall not be required to drop below 1100 cfs.

The Reduced RICD Call for Limited Future Exchanges and Recovery Year Exchanges is not cumulative, so that even if Limited Future Exchanges and Recovery Year Exchanges are

both being operated at the same time by multiple entities, the County shall never be required to call for less than 1500 cfs for Event Days or less than 1100 cfs on weekend days during the 30-Day Period that are not Event Days, or less than 1000 cfs for the remainder of the 30-Day Period that is not an Event Day or weekend day. Exchange capacity made available by the Reduced RICD Call shall be available to any water user in priority.

The Court finds the above compromise both reasonable and practicable in addressing the concerns of water supply providers while reasonably protecting the recreational use and values sought to be protected by the RICDs. The Court recognizes that the State and Division Engineer are not a party to the MOU or to the separate Stipulations and those documents are only incorporated herein with respect to operation of the Reduced RICD Call for Limited Future Exchanges and Recovery Year Exchanges. In order for the Division Engineer to administer the Reduced RICD Call, the Applicant shall provide written notice to the Division Engineer of the Reduced RICD Calls and any changes to the Reduced RICD Call that may occur during the 30-Day Period in a timely fashion.

11. Beneficial Uses. The decreed beneficial uses for the RICDs at each structure in the Parks are boating, kayaking, tubing, rafting, floating, and canoeing.

12. Additional Findings of the Court in Support of Water Rights.

(a). Diversion and Control. The design capacities of the existing Salida Park and B.V. Park Structures corresponds to at least 1,800 cfs when measured at the Wellsville gage, which allows flows of that amount to be fully captured by the high flow channel constructed into each structure without overtopping. Flows up to the design capacity are efficiently controlled, concentrated and diverted, without waste, to create waves and jets of water, self-scouring pools, hydraulic holes, large changes in current direction, and whitewater features that are used by kayakers and other boaters for the intended recreational purposes. A low flow channel constructed into each structure controls and concentrates water at low flow to allow passage of boats through each structure at lower flows.

In view of the foregoing, the Court finds that the structures in Salida Park and B.V. Park control, concentrate and direct the flow of water though the Parks in a manner that constitutes a diversion under C.R.S. § 37-92-103(7)(2004), at all flow rates up to the maximum claimed at paragraph 9, above. *See Colorado Water Conservation Board v. Upper Gunnison River Water Conservancy District, 109 P.3d 585, 591 (Colo. 2005).*

Accordingly, the Court finds that the Boating Park structures are capable of efficiently diverting and controlling the water flows without waste for the claimed conditional amounts as identified above.

(b). Beneficial Use. Recreation is a beneficial use of water in Colorado and this includes RICDs. C.R.S. § 37-92-103(4) (2004). The Court finds that the amounts of water described in paragraph 9 above, subject to the terms and conditions of this Decree and the MOU described in paragraph 10 above, are reasonable and appropriate to provide for the recreational uses set forth in paragraph 11. Chaffee County, including the City of Salida and the Town of Buena Vista,

have and will continue to derive substantial economic benefits from the recreational use of the Salida Park and B.V. Park.

(c). Minimum Flows for Reasonable Recreation Experiences. Pursuant to C.R.S. § 37-92-103(10.3) (2004) and *Colorado Water Conservation Board v. Upper Gunnison River Water Conservancy District*, 109 P.3d 585 (Colo. 2005), a RICD is limited to the minimum flow for the intended reasonable recreation experience in and on the water. The Court finds that the claimed flows set forth above are the minimum necessary to accomplish the reasonable recreation experiences during each time interval.

(i). Reasonable Recreation Experience. The County seeks water rights to sustain reasonable recreation experiences in and on the water during three time periods.

During the 30-Day Period, the County desires to maintain world-class, expert Boating Parks that will attract elite boaters and attract a larger number of boaters and tourists during a period when the claimed flows have historically been available. The 8 Event Days during the 30-Day Period allow for world-class competitions and events at the Boating Parks, while still providing recreational experiences for less skilled boaters. During the remainder of the 30-Day Period, the Boating Parks create water features at the varying decreed rates that are attractive to all levels of boaters and users of the Park. The decreed flows during the 30-Day Period attracts the greatest number of users and spectators to the Parks and consequently generate the most economic value from the Parks.

From July 1 - August 15, and the period within the High Flow Period that is not part of the 30-Day Period, the County seeks to maintain the Boating Parks in a manner that will especially accommodate beginner to intermediate boaters, attract boaters and tourists, and allow for whitewater boating on the structures at flows that have historically been maintained during that time period. This time period still attracts a large number of users to the Boating Parks and generates significant economic value for the County.

The remainder of the year included in the RICD water rights, the County has claimed a low flow that allows boating play in and around the structures, and passage through the structures at flows that are historically available and still allows for economic value associated with the Parks.

Stream flows measured at the Wellsville gage demonstrate that the flows claims in paragraph 9 are typically available. The Arkansas River is over-appropriated and subject to senior calls located downstream from the Boating Parks. Even when there is a downstream call, however, water is typically available for the non-consumptive uses claimed by the County before the water reaches the downstream calling rights.

Having weighed the evidence, the Court concludes that the appropriations sought by Chaffee County, viewed objectively, and as limited and conditioned in this Decree and the MOU, are for reasonable recreation experiences in and on the water

considering the available stream flow during the time periods claimed, the economic value to be derived, existing uses during those time periods and other factors.

(ii). Minimum Flows. Having weighed the evidence presented, the Court further concludes that the stream flows set forth in paragraph 9 above are the minimum amounts necessary to accomplish the intended reasonable recreation experiences. The Court finds that by allowing differing flows during different periods of use, and providing for Reduced RICD Calls to accommodate certain exchanges as described in paragraph 10 above and the MOU, the County provides for varying reasonable recreational experiences in and on the water, at minimum flows for such experiences, while preserving greater exchange potential for the future to enhance maximum utilization of the water available.

The ability to continue to attract world-class competitions, elite boaters and a larger number of total boaters and tourists during the 30-Day Period, and to maintain the reputation of the Boating Parks, depends upon flows being available at a minimum of 1,800 cfs. By way of compromise, the County has agreed to limit the 1,800 cfs to only 8 days for specific events and boating festivals and that flow is found to be the minimum for that reasonable use as contemplated on the Event Days. The recreational experience during the 30-Day Period is correlated to flows, so that the type of recreational experience at the Parks (and the economic value associated therewith) changes as flows decrease below 1,800 cfs. The varying decreed flow rates below 1,800 cfs during the 30-Day Period represent minimum flows for the intended recreational uses during that time that will provide a variety of reasonable recreation experiences, while achieving a compromise with Objectors that helps preserve greater exchange potential for the future.

The Court also finds that 700 cfs measured at the Wellsville gage is the minimum flow for the reasonable recreation experience sought during July 1 - August 15 and during the High Flow Period that is not part of the 30-Day Period. The Court further finds that 250 cfs measured at the Wellsville gage is the minimum flow for the reasonable recreation experience sought during the remainder of the year to the extent covered by the RICD water rights.

(d). Can and Will. The Court finds that Chaffee County can and will perfect the conditional portions of the claimed amounts (Structure Nos. 2-4 in the B.V. Park) within a reasonable time consistent with C.R.S. § 37-92-305(9)(b)(2004). Structure No. 1 for the B.V. Park has already been constructed and is in operation. Structure Nos. 2-4 in the B.V. Park have either recently been constructed or are in the planning process. As part of this finding, the Court concludes that water is available in sufficient quantities and on sufficiently frequent occasions to complete the conditional appropriations with diligence within a reasonable time. The Salida Park structures and Structure No. 1 for the B.V. Park have been constructed and have diverted and controlled the water for the intended beneficial use consistent with C.R.S. § 37-92-305(9)(a), based upon flows available during the time periods reflected in paragraph 9 (since the structures were built) and evidence of the use of said structures during those time periods. It is the CWCB's position that pursuant to C.R.S. § 37-92-103(10.3) a RICD water right should be for

the minimum stream flow as it is diverted, captured, controlled and placed to beneficial use between specific points defined by physical control structures, and should not be made absolute for only one structure. Because Chaffee County has agreed to a single point of administration for both Boating Parks, and the B.V. Park already has at least two structures built, among other reasons, the CWCB has agreed it is not necessary to resolve that issue in this case. By stipulation with Chaffee County, which was approved by this Court, the CWCB and Chaffee County agreed that the decree does not constitute precedent on this issue and does not waive the CWCB's position in any other cases

(e). Statutory RICD Provisions. Pursuant to § 37-92-102(6)(a), the CWCB held a timely public hearing regarding Chaffee County's application and considered the five statutory factors found in C.R.S. § 37-92-102(6)(b)(I)-(V), and made a final recommendation to the Court on those factors. Based upon the evidence presented, the Court finds that Chaffee County is entitled to conditional and absolute water rights for the RICDs given consideration of the five factors set out below:

- (i). Compact Impairment: Based upon the evidence, the Court finds that the adjudication and administration of the claimed RICDs, under the conditions contained in this Decree and the MOU, will not impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements. C.R.S. § 37-92-102 (6)(b)(I).
- (ii). Stream Reach Appropriateness: Based upon the evidence, the Court finds that the Boating Parks are located in appropriate reaches of the stream required for the intended use. C.R.S. § 37-92-102 (6)(b)(II). The location of the Boating Parks are appropriate for many reasons, including providing recreation and drawing economic activity to the City of Salida and the Town of Buena Vista. The Parks are located near each entity's downtown and are accessible by city roads and may be entered through property owned by the Town and City or, in the case of the additional structures contemplated for the B.V. Park, by way of easements sought to be reserved for that purpose.
- (iii). Access for Recreational Use: The Court finds that, for the reasons stated above, there is access for the contemplated recreational use. C.R.S. § 37-92-102 (6)(b)(III).
- (iv). Instream Flow Rights Injury: The Court finds that the RICDs will not cause material injury to instream flow water rights. C.R.S. § 37-92-102 (6)(b)(IV). There are no instream flow rights in these reaches and the Boating Parks will be entirely non-consumptive.
- (v). Maximum Utilization: Based upon the evidence, the Court finds that the adjudication and administration of the RICDs, subject to the terms of this decree and the MOU, will promote maximum utilization of waters of the state, by placing a new, valuable beneficial use on the water of an over-appropriated stream, while allowing for continued utilization and development of the waters of the State for both consumptive and non-consumptive uses, including the Recovery Year Exchanges and Limited

Future Exchanges, without causing any reduction in flow or injury to downstream water rights, and without causing injury to upstream senior water rights. C.R.S. § 37-92-102 (6)(b)(V). *See also ¶ 12(f).*

(f). Reasonableness and Waste. The Court concludes that the amounts of water decreed for the RICDs are reasonable and appropriate, under reasonably efficient practices, to accomplish without waste the purpose for which the appropriation is lawfully made. C.R.S. § 37-92-103(4)(2000). The Boating Parks divert, capture and control the full amount of the claimed appropriations, with varied recreational experiences associated with the varied flow levels and diversions, and increasing beneficial use and economic value associated with increasing flow levels and diversions, within the design capacity of the structures. Reasonableness of the appropriations is also reflected by the compromise settlement with other water users so as to allow for Reduced RICD Calls to facilitate certain future exchanges and by limiting the claimed appropriation during much of the year to levels sought to be protected by the voluntary flow management program ("VFMP"). The VFMP, which was also addressed in the MOU, provides for the timing of downstream deliveries of water imported into the Arkansas River basin so as to augment flows to help achieve target flow levels for the benefit of the fishing and boating industries. The VFMP benefits the RICDs decreed herein when augmenting flows, and the RICDs benefit the VFMP by limiting future exchanges against native flows that could increase the need for augmentation.

(g). Nighttime Use. The primary use of the Boating Parks is from sunrise to one hour after sunset, except when nighttime boating events are planned ("Boating Park Hours"). Thus, the RICD water rights shall only call for water during those Boating Park Hours. Nighttime boating events included within Boating Park Hours require notice to the Division Engineer at least one week prior to the event and are limited to the 8 Event Days and up to six additional nighttime events, for a total of fourteen in any given year. Other factors, including the travel time of water from upstream facilities and between the two Boating Parks, will limit the future ability to reduce the flows during other hours without impacting flows during Boating Park Hours at both the B.V. Park and the Salida Park (rather than the Wellsville gage). The parties in this case further recognize that daily fluctuations in flow in excess of ten to fifteen percent of stream flow may have adverse impacts on fish and wildlife habitat, which should be avoided to the extent possible, while still fulfilling all the requirements and rights under this Decree.

(h). Administration. The water rights for the Boating Parks can be administered using currently available gages and may call for water in priority. The County has agreed, as part of compromise negotiations, to have a single point of administration for the RICDs decreed herein at the existing Wellsville gage located just below Salida, which is also the gage used in the VFMP. Since the Arkansas River is a gaining stream, the flows at the Salida Park and B.V. Park will be less than at the Wellsville gage, and that fact was taken into account in all findings by the Court.

In the event that the Wellsville gage ever becomes inoperable, Chaffee County shall provide timely written notice to the counsel of record for the parties in this case of such inoperability, and the operable gage closest to the Wellsville gage, or such other gage or gages as the Division Engineer may reasonably determine, after providing the parties a reasonable

opportunity to comment on any proposal to use an alternate gage, shall be used to administer the RICD water rights until such time as the Wellsville gage becomes operable again. If the Division Engineer reasonably determines that existing gages are inadequate to replace the Wellsville gage if it is inoperable, or changed circumstances cause the Division Engineer to reasonably determine that gages and measuring devices other than the Wellsville gage are necessary to administer this decree, the County shall install, operate and maintain at its expense all gages and measuring devices as the Division Engineer reasonably determines to be necessary to administer this decree, and in any case shall report at reasonable times to the Division Engineer the readings from such gages and measuring devices. If a gage is used to administer the RICDs other than the Wellsville gage, adjustments shall be made based on a comparison of historical flows at the substitute gage with those at the Wellsville gage, which comparison shall be included in notification to the parties in this case and subject to comment by the parties as provided in this paragraph.

The Applicant will be able to place a call for its RICD water rights decreed herein so long as the call will result in at least 90 cfs at the Wellsville gage. Calls placed pursuant to the RICD water rights decreed herein will only be effective for stream reaches that produce water through at least one RICD structure due to the physical location of the stream reaches or tributaries relative to the RICD structures. Adjustments shall also be made to the Wellsville gage readings for any storage releases or exchanges of water rights junior to the RICDs which affect these gage readings but do not impact flow levels at either the B.V. Park or Salida Park. This Decree grants RICD water rights for the B.V. Park and Salida Park, it does not authorize or grant a RICD water right for the reach between the lowest structure constructed in the B.V. Park and Structure No. 1 in the Salida Park. The Applicant recognizes that under the terms of this decree further appropriations could potentially occur that reduce flows at or between the RICD structures. For purposes of administration, the RICD water rights decreed herein are deemed satisfied regardless of such future appropriations so long as the decreed flows are being satisfied at the Wellsville gage or flows are not diminished at the Wellsville gage when the RICD water rights are being partially satisfied, and so long as the other terms of this decree are being satisfied.

13. Additional Conditions. In addition to any conditions incorporated above, the Court does hereby impose the following conditions:

(a). Imported Water. Although water imported into the Arkansas River above the Boating Parks from sources not tributary to the Arkansas River may help satisfy the water rights decreed herein for the Boating Parks when that water is being delivered downstream, Applicant shall not be allowed to call for said water.

(b). Administration in Priority. The RICD water rights decreed herein shall be administered in priority as 2004 water rights, junior to all decreed water rights and exchanges for which an application was pending in this Water Court before December 31, 2004.

RULING AND DECREE

1. The foregoing Findings of Fact and Conclusions of Law are fully incorporated into this Ruling and Decree by this reference.

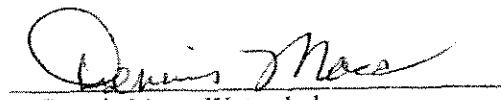
2. The water rights for the structures constituting the Boating Parks are hereby decreed in the amounts as set forth in paragraph 9 above, and subject to the conditions herein.

3. An Application for Finding of Reasonable Diligence shall be filed on or before October 31, 2012, and thereafter in accordance with the provisions of Article 92 of Chapter 37, Colorado Revised Statutes, so long as the County desires to maintain those water rights decreed conditional herein (Structure Nos. 2-4 in the B.V. Park), or until those rights are made absolute.

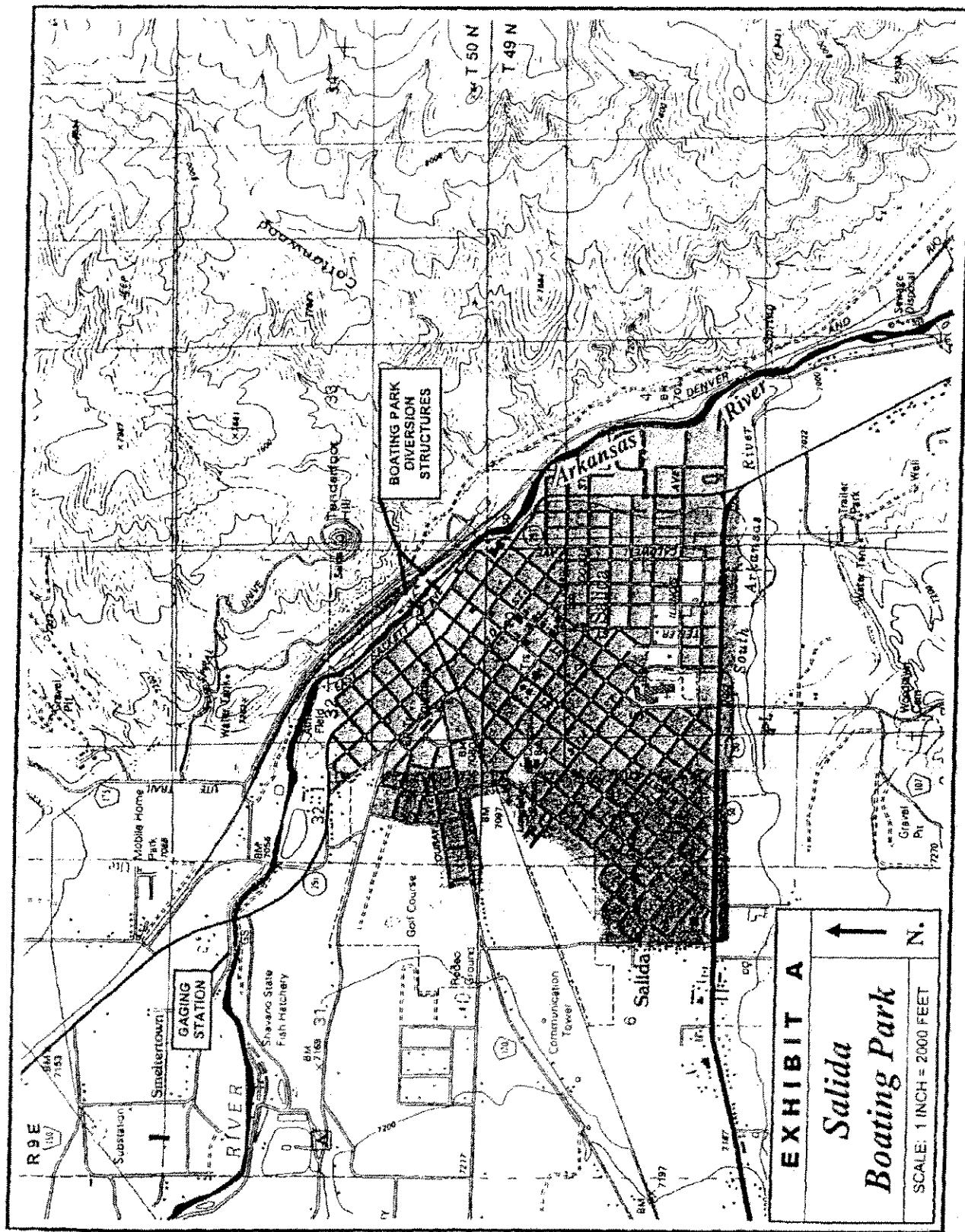
It is ORDERED that a copy of this Decree shall be filed with the Division Engineer for Water Division No. 2 and with the State Engineer.

Dated this 10 day of October, 2006.

BY THE COURT:



Dennis Maes, Water Judge
Water Division No. 2



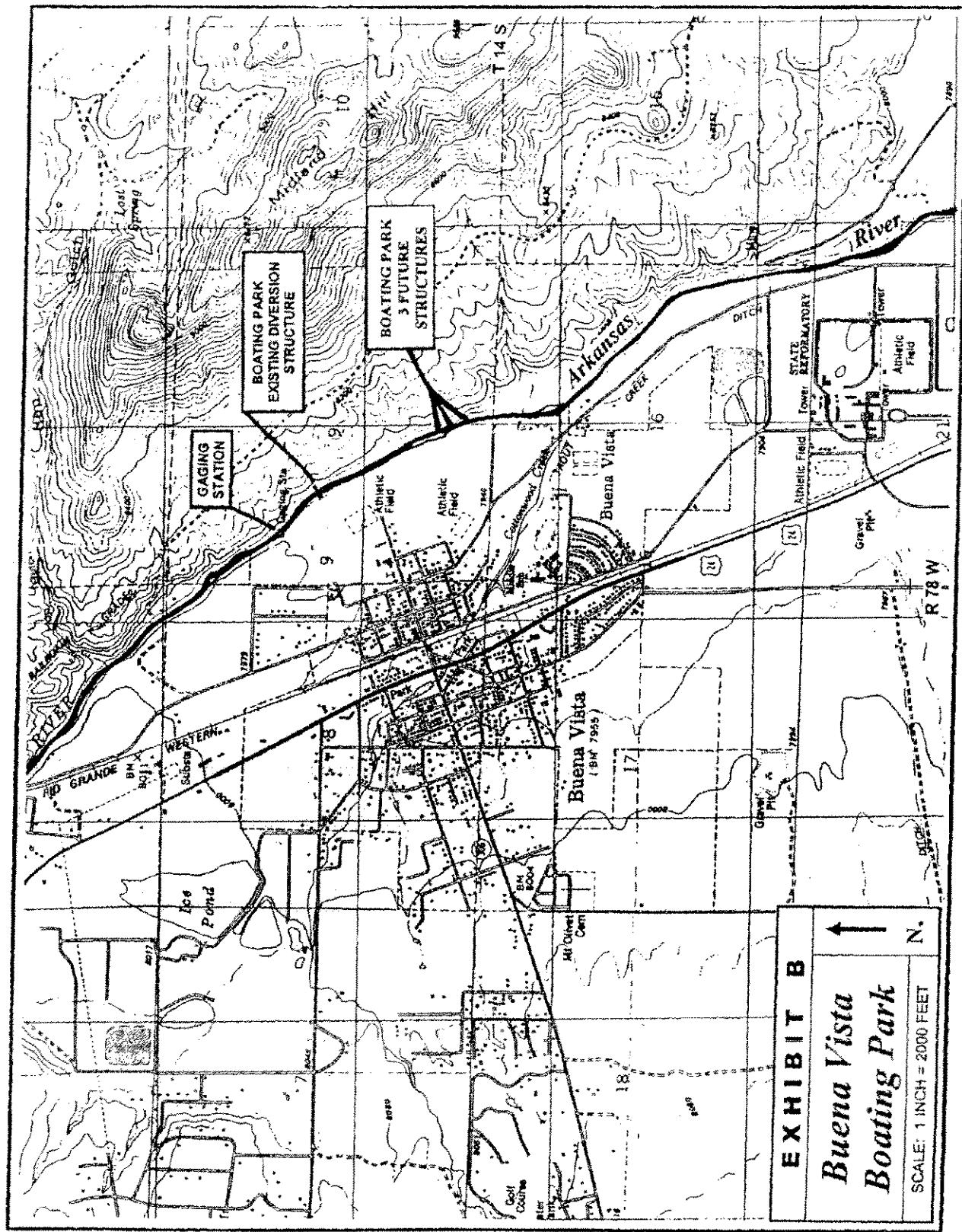


Exhibit C to finding of fact, conclusions of
law and decree of the Court, Case No.
04CW129, Water Division No. 2

MEMORANDUM OF UNDERSTANDING

**For Settlement of Case No. 04CW129, Water Division 2
(Chaffee County Recreational In-Channel Diversion)**

CDOW Document

CO Pueblo County District Court 10th JD

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This MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and among Chaffee County; Southeastern Colorado Water Conservancy District ("Southeastern"); the Colorado Department of Natural Resources ("CDNR"); Colorado Division of Wildlife ("CDOW"); Colorado Division of Parks and Outdoor Recreation ("DPOR"); Upper Arkansas Water Conservancy District ("Upper Arkansas"); City of Salida ("Salida"); Arkansas River Outfitters Association ("AROA"); City of Colorado Springs, acting through Colorado Springs Utilities ("CS-U"); the Board of Water Works of Pueblo, Colorado ("BWWP"); and Pueblo West Metropolitan District ("Pueblo West") (together referred to as the "Parties"), effective this 24th day of July, 2006.

Explanatory Recitals

A. Chaffee County filed an application for recreational in-channel diversion water rights ("RICD") for boating parks located in the City of Salida and Town of Buena Vista ("Boating Parks"), Case No. 04CW129, Water Division 2, in December 2004 (The "RICD Case"). Southeastern, CDNR, CDOW, DPOR, Upper Arkansas, Salida, AROA, CS-U, BWWP, and Pueblo West (the "Objectors"), among others, filed statements of opposition in the RICD Case.

B. The Colorado Water Conservation Board ("CWCB") held a hearing on May 23, 2005 on the RICD Case (the "CWCB Hearing"). In setting this hearing, the CWCB declined a request of Chaffee County, supported by Southeastern and other Parties, to postpone the CWCB Hearing. On May 24, 2005, the CWCB postponed making findings on the RICD until September, 2005, and invited the Parties to submit any settlement agreement for the CWCB's consideration by September 2, 2005. Thereafter, the CWCB requested and was granted by the Water Court additional extensions of time in which to submit its findings in order to allow the Parties time to reach a settlement. The last extension of time gave the CWCB until April 14, 2006 to submit its findings to the Water Court.

C. The Parties acknowledge that the CWCB and the Division of Water Resources ("DWR") are not parties to this Agreement and that CDNR's participation in this Agreement does not bind the CWCB or the DWR in any respect.

D. For each of the past fifteen years, CDNR (on behalf of CDOW and DPOR) and Southeastern have agreed annually, together with the United States Department of Interior, Bureau of Reclamation ("Reclamation"), to operation of a voluntary flow management program whereby Reclamation operates Twin Lakes and Turquoise Reservoirs so as to manage flows in the Arkansas River above Pueblo Reservoir for recreational and fishery purposes, while fully satisfying the primary purposes of the Fryingpan-Arkansas Project and other existing contractual obligations, pursuant to its concurrence with recommendations made by the CDNR in consultation with Southeastern (the "Upper Arkansas Voluntary Flow Management Program" or

“VFMP”). Southeastern participates in the VFMP as holder of the decreed water rights for the Fryingpan-Arkansas Project, including Twin Lakes and Turquoise Reservoirs, pursuant to contract with Reclamation. Many of the Objectors have also voluntarily operated their water rights and facilities in a manner consistent with the flow recommendations made by CDNR.

E. The Parties acknowledge that the development and adoption into law of certain recommendations of Southeastern’s September 21, 2000 “Preferred Storage Options Plan” (“PSOP”) Report relating to the Fryingpan-Arkansas Project are important to Southeastern, to many municipalities and agricultural interests in the Arkansas River basin (including several of the Parties).

F. Upper Arkansas has filed an application for appropriative rights of exchange (Case No. 04CW096, Water Division 2) (the “Upper Arkansas Exchange Case”). Some of the exchanges described in the Upper Arkansas Exchange Case would exchange water on the Arkansas River, including the same portions of the Arkansas River involved in the RICD Case. Chaffee County, among other Parties, has filed a statement of opposition in the Upper Arkansas Exchange Case.

G. BWWP filed an application for a conditional storage right for enlargement of Clear Creek Reservoir in December of 2004 (Case No. 04CW130, Water Division No. 2). Chaffee County, among other Parties, filed a statement of opposition in that case.

H. Pueblo West has filed an application in Case No. 01CW152 (Water Division 2) for changes to, and exchange of, decreed water rights associated with the Hill ranch in Chaffee County. These water rights are decreed on tributaries entering the Arkansas River between the Buena Vista and Salida Boating Parks. Chaffee County and Pueblo West executed a stipulation in the RICD Case (the “Pueblo West Stipulation”) prior to the execution of this MOU. Pursuant to the Pueblo West Stipulation, under specified circumstances Chaffee County may request Pueblo West to exchange its Hill Ranch water rights upstream, to use those water rights as a direct flow source, or to store the water upstream or downstream.

I. Certain of the Objectors are suppliers of water for municipal and other uses and presently operate and/or contemplate operating exchanges on the Arkansas River. Said Objectors reasonably anticipate they will have the need to operate and/or participate with others in future exchanges on the Arkansas River, which exchanges are critical to the health, safety and welfare of those who receive water service from said Objectors.

J. The Parties desire, by this MOU, to achieve the following ends:

1. To settle the Objectors’ opposition in the RICD Case upon terms, conditions and limitations that will (a) protect the Objectors’ water rights (including water rights sought in applications pending as of December 31, 2004) against injury; (b) protect the future operation of the Fryingpan-Arkansas Project for its authorized purposes, and of the VFMP for its recreational and fishery purposes; and (c) provide an agreed level of protection for native Arkansas River flows for a reasonable recreational experience at the Boating Parks in Buena Vista and Salida, while preserving reasonable opportunities for future water development and exchanges in the Arkansas River basin upstream from Buena Vista and Salida.

2. To provide for future continuing operation of the VFMP in a manner generally consistent with the recent annual VFMP operations, with the cooperation of all the Parties to the extent provided below, and as they may further agree.

3. To establish certain Parties' support for PSOP legislation and related actions consistent with the VFMP and this MOU.

Agreed Understanding

WHEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties confirm their agreement and understanding as follows:

1. Consent Decree. The Parties agree that within ten (10) days following execution of this MOU by all Parties, they will execute stipulations, following the general form attached hereto as Exhibit A, agreeing to the entry of a decree in the RICD Case that is identical to the form attached hereto as Exhibit B (the "Consent Decree"). The Consent Decree includes, but is not limited to, RICD water rights for the Boating Parks during the time period from the Friday before the last Monday in May through June 30 of each year (the "High Flow Period"). Under the Consent Decree, in each year Chaffee County shall elect 30 consecutive days during the High Flow Period in which the RICD water rights shall be 1400 cfs ("30-Day Period"), with the exception of 8 days in June during that 30-Day Period ("Event Days") on which the RICD water rights shall be 1800 cfs, as more specifically described in the Consent Decree. During the remainder of the High Flow Period that is outside the 30-Day Period, the RICD water rights shall be limited to 700 cfs. The Consent Decree further allows for a reduction in the call placed by Chaffee County for the RICD water rights during the 30-Day Period, including the Event Days, ("Reduced RICD Call"), under the circumstances and subject to the conditions and limitations set forth in paragraphs 2 – 5 below.

2. Recovery Year Exchanges. If the shortfall conditions described below are satisfied in any given year for CS-U, BWWP and/or Southeastern (collectively referred to herein as "Senior Exchange Holders" and individually referred to as a "Senior Exchange Holder"), such that one or more of the Senior Exchange Holders require exchanges, in addition to their senior rights, in order to refill depleted reservoirs and Chaffee County's RICDs are preventing the full exercise of such exchanges (collectively and individually referred to herein as "Recovery Year Exchanges"), and the Senior Exchange Holder acquires the additional water or water rights to make such Recovery Year Exchanges, Chaffee County agrees to implement a Reduced RICD Call (as described in paragraph 5 below) during the 30-Day Period in that year.

a. For BWWP, shortfall conditions allowing for Recovery Year Exchanges shall be deemed to exist in a given year when the total amount of water it has stored in the "Upper Basin Reservoirs" is less than 19,100 acre-feet on May 1. For purposes of this provision, Upper Basin Reservoirs shall include Clear Creek Reservoir, Twin Lakes Reservoir, Turquoise Reservoir, or such other new or existing reservoirs, or enlargements thereof, that are utilized by BWWP in the Arkansas River basin above Salida. If a Reduced RICD Call is implemented in a given year pursuant to this provision, and BWWP's total amount of storage in the Upper Basin Reservoirs becomes equal to or greater than 29,400 acre-feet during the 30-Day

Period in that year (or becomes approximately full if BWWP's actual storage capacity is less than 29,400), the Reduced RICD Call shall no longer be required during that 30-Day Period.

- b. For CS-U, shortfall conditions allowing for Recovery Year Exchanges shall be deemed to exist in a given year when any one or more of the following conditions apply: (i) when the Natural Resources Conservation Service's Arkansas Basin Water Supply Outlook Report "most probable" forecast (50% chance of exceedance) for flows on the Arkansas River at Salida is less than 70% as of May 1; (ii) when CS-U reasonably determines that the most probable forecast (50% chance of exceedance) for diversions to its account from the Colorado River basin is less than 70% of average as of May 1, with average being defined as the average of the most recent 20 years of actual diversions by CS-U to its account from Colorado River basin sources; (iii) at anytime any portion of CS-U's trans-basin or Upper Arkansas facilities suffers an unplanned failure that results in the loss of ability to deliver water to the Upper Arkansas Basin above the RICD reach or limits the ability to access water and deliver it to Colorado Springs; or (iv) if on May 1 of any year, the percent of capacity of the combined storage in CS-U's space in Twin Lakes Reservoir, Turquoise Reservoir, the Pikes Peak reservoirs, and in Rampart Reservoir is 25 percentage points below the most recent 20 year average for that date. For CS-U, Recovery Year Exchanges are permitted in the year that the shortfall conditions defined above occur, and in the following year if necessary to recover from the shortfall conditions of the preceding year.
- c. For Southeastern, shortfall conditions for Recovery Year Exchanges shall be deemed to exist in a given year when, on May 1 of that year, either (i) any Turquoise Reservoir Enlargement capacity constructed after the date of this MOU (but not allocated by contract to BWWP, CS-U or any entity outside Southeastern's district boundaries), together with any Clear Creek Reservoir Enlargement capacity constructed after the date of this MOU that is allocated by contract to Southeastern, is less than 70% full; or (ii) the space available that year in the presently existing capacity of Turquoise and/or Twin Lakes Reservoirs for storage under excess capacity contracts held by Southeastern and/or its constituents (other than BWWP and CS-U), after considering Reclamation's most recent forecast of Fryingpan-Arkansas Project imports for that year, is less than 70% full.

If the Flow Coordination Committee (described below at paragraph 6) agrees that a lesser reduction in the RICD call will fully accommodate all Recovery Year Exchanges allowed under this paragraph 2, then the full extent of the Reduced RICD Call as set forth in paragraph 5 below shall not be required and Chaffee County shall only reduce its RICD call to the extent agreed to by the Flow Coordination Committee. All Recovery Year Exchanges are further limited by the conditions set forth in paragraphs 4 and 5 below.

3. Limited Future Exchanges. Certain limited future exchanges described below are currently anticipated to be reasonably necessary to allow for future water supply needs under rights that will be junior to Chaffee County's RICDs (collectively and individually referred to

herein as "Limited Future Exchanges"). In the event Chaffee County's exercise of the RICDs otherwise would reduce the ability to fully exercise the Limited Future Exchanges, Chaffee County agrees to implement a Reduced RICD Call (as described in paragraph 5 below) during the 30-Day Period in order to help facilitate the Limited Future Exchanges. Limited Future Exchanges are further limited by the conditions set forth in paragraphs 4 and 5 below.

a. Southeastern has existing decrees and exchanges for the use and benefit of Fryingpan-Arkansas Project ("Project"), as authorized by Public law 85-590, 87th Congress, and the operation thereof, as decreed in Case 5141 and changed in 80CW6, including rights to exchange Project water and return flows therefrom into Twin Lakes and Turquoise Reservoirs per said decree, which are senior to Chaffee County's RICDs. Southeastern contemplates the need to conduct future exchanges of other (non-Project) water on the Arkansas River into Twin Lakes, Turquoise Reservoir (including any future enlarged capacity thereof) and/or Clear Creek Reservoir (including any future enlarged capacity thereof) for the benefit of public or private entities within Southeastern's District boundaries that will be junior to Chaffee County's RICDs. At any time and to the extent these Limited Future Exchanges by Southeastern are or will be called out by Chaffee County's RICD's, Southeastern may request and Chaffee County shall observe a Reduced RICD Call (described below at paragraph 5), subject to the conditions and limitations set forth below in paragraph 4. A meeting of the Flow Coordination Committee (described below at paragraph 6) will promptly be arranged in order to determine the extent of the needed Reduced RICD Call consistent with this Agreement and to help facilitate such exchanges under the Reduced RICD Call.

b. Projected population growth upstream of Salida in Chaffee County for the year 2030 indicates a possible increase in water demand of 3,890 acre-feet. Water supply entities serving areas within Chaffee County ("Chaffee County Water Suppliers") may need to conduct exchanges or make other new appropriations upstream of the RICDs to meet these anticipated demands within Chaffee County. To the extent these Limited Future Exchanges (or other new appropriations) are to help satisfy this water demand within Chaffee County and are called out by Chaffee County's RICDs, the Chaffee County Water Suppliers needing such upstream diversions may request, and if requested Chaffee County shall observe, a Reduced RICD Call (described below at paragraph 5) to help facilitate such Limited Future Exchanges, subject to the conditions and limitations set forth below in paragraph 4. If needed, a meeting of the Flow Coordination Committee (described below at paragraph 6) will promptly be arranged to determine the extent of the needed Reduced RICD Call consistent with this Agreement to help facilitate such exchanges.

c. BWWP has conditional and absolute exchange rights decreed in Cases No. 84CW177 (sewered and non-sewered phase) and 84CW178 that may affect the flows in the County's RICDs. These exchange rights are senior to the RICDs. To supplement these senior decreed exchanges, BWWP may operate in the future, additional exchanges which will be junior to Chaffee County's RICDs. To the extent that these Limited Future Exchanges by BWWP are called out by Chaffee County's RICDs, BWWP may request and Chaffee County shall observe, a Reduced RICD Call (described below at paragraph 5), subject to the conditions and limitations set forth below in paragraph 4. A meeting of the Flow Coordination Committee (described below at paragraph 6) will promptly be arranged in order to determine the extent of the needed Reduced RICD Call consistent with this Agreement and to help facilitate such exchanges under

the Reduced RICD Call.

d. CS-U has conditional and absolute exchange rights decreed in Case Nos. 84CW202, 84CW203, 86CW118, and 89CW36 (sewered and non-sewered phase) and, as a shareholder of the Colorado Canal Companies, has rights of exchange decreed in Case Nos. 84CW62, 84CW63 and 84CW64. These exchange rights are senior to the RICDs. To supplement these senior decreed exchanges, CS-U may operate in the future additional exchanges which will be junior to Chaffee County's RICDs, including any exchanges decreed pursuant to CS-U's pending application in Case No. 05CW96. To the extent that these Limited Future Exchanges by CS-U are called out by Chaffee County's RICDs, CS-U may request and Chaffee County shall observe a Reduced RICD Call (described below at paragraph 5), subject to the conditions and limitations set forth below in paragraph 4. A meeting of the Flow Coordination Committee (described below at paragraph 6) will promptly be arranged in order to determine the extent of the needed Reduced RICD Call consistent with this Agreement and to help facilitate such exchanges under the Reduced RICD Call.

4. Conditions Upon Recovery Year Exchanges and Limited Future Exchanges. The following limitations and conditions are agreed to for the exercise of Recovery Year Exchanges and Limited Future Exchanges:

a. Appropriative rights of exchange to be used for Recovery Year Exchanges and Limited Future Exchanges must be the subject of one or more Water Court applications filed in Water Division No. 2 on behalf of the benefited Party hereto, no later than six years following the end of the year in which a final decree (after any appeals) is entered in the RICD Case ("Filing Deadline"), except that the Filing Deadline for the Limited Future Exchanges and other appropriations by Chaffee County Water Suppliers as set forth in paragraph 3.b, shall be December 31, 2030. Such applications for Senior Exchange Holders may be filed by the Senior Exchange Holders, or by entities acting on behalf of or in concert therewith, so long as the water is for use by the Senior Exchange Holders or their constituents. Such applications for Chaffee County Water Suppliers may be filed by said Water Suppliers, or by entities acting on behalf or in concert therewith, so long as the water is for use within Chaffee County. In order to request that Chaffee County implement a Reduced RICD Call after the Filing Deadline, said application(s) must either still be pending in Water Court, on appeal, or finally decreed to allow said exchanges; except that any such application not finally decreed within six years after filing shall not be allowed to request a Reduced RICD Call unless approved by Chaffee County, which approval shall not unreasonably be denied. Any such applications filed subsequent to the execution of this MOU shall expressly reference this MOU. Chaffee County shall limit its opposition in Water Court to such applications solely with respect to the appropriative rights of exchange that will be operated as Limited Future Exchanges or Recovery Year Exchanges filed by, or for the benefit of, the Senior Exchange Holders to ensuring compliance with this MOU and to ensuring that such exchanges are otherwise junior and subject to Chaffee County's RICDs. This agreement to limit opposition in Water Court does not limit Chaffee County's ability to oppose any diversion or storage structure associated with said exchanges that an applicant proposes to locate or enlarge within Chaffee County, subject to the limitations in paragraph 13.

b. Southeastern's Limited Future Exchanges shall not exceed a cumulative total of 19,600 acre-feet in any given year and shall not exceed a cumulative total of 400 cfs at any time.

c. BWWP's Limited Future Exchanges shall not exceed a cumulative total of 15,000 acre-feet in any given year and shall not exceed a cumulative total of 1300 cfs at any time.

d. CS-U's Limited Future Exchanges shall not exceed a cumulative total of 50,000 acre-feet in any given year and shall not exceed a cumulative total of 1500 cfs at any time.

e. Limited Future Exchanges for development at or upstream of Salida in Chaffee County shall not exceed a cumulative total of 3,890 acre-feet in any given year.

f. Any Senior Exchange Holder that has the legal obligation to supply, distribute or otherwise provide water at retail to domestic, commercial, industrial or public facility customers may only operate Recovery Year Exchanges during a Reduced RICD Call if it has in place in its service area mandatory watering restrictions, an increasing block rate or disincentive rate, or some other effective mechanism to reduce water demand.

g. Nothing in this MOU or the Consent Decree shall be considered evidence of an intent to appropriate for purposes of establishing priority dates for the Limited Future Exchanges or Recovery Year Exchanges. Likewise, nothing in the MOU or the Consent Decree shall be deemed as consent or a waiver by a Party hereto to object to such applications, with the exception of the limitations imposed upon Chaffee County under paragraph 4.a

5. Reduced RICD Call. In the event Chaffee County's RICDs are limiting the flow available to satisfy the Limited Future Exchanges or Recovery Year Exchanges that are being operated consistent with all conditions and limitations set forth in paragraphs 2-4 above, then, upon request provided to Chaffee County with a copy to the Flow Coordination Committee (described below at paragraph 6) by a Senior Exchange Holder or by any Chaffee County Water Suppliers pursuant to paragraph 3.b, Chaffee County shall implement a Reduced RICD Call as described below. If the full extent of the Reduced RICD Call set forth below is not required to meet the demand of the Limited Future Exchanges and/or Recovery Year Exchanges, and the requesting Party reasonably agrees with that assessment, then the Flow Coordination Committee shall have the discretion to determine the extent and timing (on a daily or longer basis) of the necessary reductions in the RICD call, taking into account Chaffee County's desires to maximize the flow through the Boating Parks. In no event, however, shall Chaffee County be required to implement a Reduced RICD Call that exceeds the following limitations:

a. For any and all Limited Future Exchanges under this MOU or pursuant to any other stipulation approved by the Court in the RICD Case, the Reduced RICD Call shall not be required to drop below 1200 cfs during the 30-Day Period that is not one of the 8 Event Days (Events Days shall remain at 1800 cfs).

b. For any and all Recovery Year Exchanges under this MOU or pursuant to the Aurora Stipulation discussed at paragraph 8 below, the Reduced RICD Call shall not be

required to drop below 1500 cfs during the 8 Event Days and 1000 cfs during the remainder of the 30-Day Period, except for Saturdays and Sundays during the 30-Day Period that are not Event Days, during which the Reduced RICD Call for Recovery Year Exchanges shall not be required to drop below 1100 cfs.

The Reduced RICD Call for Limited Future Exchanges and Recovery Year Exchanges under this MOU and pursuant to any other stipulation approved by the Court in the RICD Case is not cumulative, so that even if Limited Future Exchanges and Recovery Year Exchanges are both being operated in the same year by multiple entities, Chaffee County shall never be required to call for less than 1500 cfs for Event Days or less than 1100 cfs on weekend days during the 30-day period that are not Event days, or less than 1000 cfs for the remainder of the 30-Day Period that is not an Event Day or weekend day, regardless of whether the entities exercising such exchanges are capable of diverting the maximum amounts allowed under paragraph 4 herein or under any stipulation approved by the Court in the RICD Case . Exchange or new appropriation capacity made available by the Reduced RICD Call shall be available to any water user in priority.

6. Flow Coordination Committee. A Flow Coordination Committee (also referred to herein as the "Committee") consisting of representatives for Chaffee County, Senior Exchange Holders, City of Aurora, acting by and through its Utility Enterprise ("Aurora"), and Upper Arkansas shall meet upon the request of any member of the Committee or as required by this Agreement. Meetings shall be held as soon as practicable after a request for a meeting, but in no event more than twenty calendar days after the request. Meetings may be by telephone or electronic means if the Committee so agrees. The Committee may invite participation at a meeting by the Division 2 Engineer, Colorado Department of Natural Resources, U.S. Bureau of Reclamation, Arkansas River Outfitters Association, Lower Arkansas Valley Water Conservancy District and such other participants as the Committee may, from time to time, agree to invite. The Committee shall operate by consensus and shall make a good faith effort to reach such a consensus. If unable to reach a consensus on any matter committed to the Committee for determination by this Agreement, the matter shall be resolved in accordance with the dispute resolution provisions of paragraph 16 below at the request of any Party. Chaffee County shall supply a staff person to assist in administering this MOU as may be directed by the Flow Coordination Committee from May 1 through June 30 of years where there are Reduced RICD Calls.

The purpose of this Committee is to establish a forum for communication on the issues set forth below. In no event, however, shall the Committee have the authority to regulate or demand adjustments in operations of the water rights of its members. Should the goal of minimizing the reduction of flow available to the RICDs as referenced in this paragraph 6 conflict with the goal of not diminishing the rights and needs of the Senior Exchange Holders and Upper Arkansas, the latter shall prevail over the former, subject to the other provisions of this Agreement. The issues that the Committee shall consider and provide input regarding include the following:

a. To help coordinate, to the extent practicable, and without diminishing the rights of the Senior Exchange Holders, Aurora or Chaffee County Water Suppliers described in paragraph 3.b, the Reduced RICD Call based upon water availability projections, the needs of

the Senior Exchange Holders, Aurora and/or Chaffee County Water Suppliers, and other pertinent information, to most efficiently assist in the operation of the Recovery Year Exchanges and Limited Future Exchanges, while minimizing the reduction of flow available to the RICDs. This shall include determining the timing and extent of the Reduced RICD Call, within the conditions and limitations set forth in this agreement, if the full Reduced RICD Call is not required to meet the demand of the Limited Future Exchanges and/or Recovery Year Exchanges. The Committee may not require a Reduced RICD Call more stringent on Chaffee County than set forth above in paragraph 5.

b. To help facilitate and coordinate, to the extent practicable, without diminishing or injuring any of the rights of the Senior Exchange Holders and Upper Arkansas, the operation of senior water rights and exchanges owned by the Senior Exchange Holders and Upper Arkansas, and releases from storage, to most effectively provide for the needs of the Senior Exchange Holders and Upper Arkansas, while minimizing the reduction of flows available to the RICDs and, if practicable, to benefit the RICDs. The Senior Exchange Holders and Upper Arkansas retain discretion in exercising their senior rights consistent with their decrees, but agree to cooperate in good faith to exercise those rights in a way that minimizes the reduction of flows available to the RICDs as set forth below in paragraph 19.

c. To help coordinate, whenever practical, modified exchange timing or reductions in diversions by Senior Exchange Holders and Upper Arkansas to help protect the present VFMP target flows and to avoid triggering additional releases for the VFMP (as defined above), all without diminishing or injuring the rights of the Senior Exchange Holders and Upper Arkansas. The Flow Coordination Committee shall coordinate this objective with CDNR and Southeastern in a manner consistent with the VFMP Agreement referenced in paragraph 10 below.

d. To help resolve whether the shortfall conditions described above at paragraphs 2(a), 2(b) and 2(c) are satisfied in a given year using all relevant information available. Senior Exchange Holders shall make available relevant information within their possession to help determine whether said shortfall conditions have been satisfied.

e. To help resolve any disputed issue that arises under this MOU.

f. To help facilitate and coordinate other native flow and exchange management issues on the Arkansas River at and above the Wellsville gage as may arise from time to time, to the extent practicable, without diminishing or injuring any of the rights of the Senior Exchange Holders, Upper Arkansas, Chaffee County Water Suppliers (as referenced in paragraph 3.b) and Chaffee County's RICDs, in order to protect and provide for the interests of water supply providers and Chaffee County's interests in the RICDs.

7. Native Flow. The Parties agree that any decree entered in the RICD Case will provide rights only to native flows of the Arkansas River at the Boating Parks specified in the Consent Decree. Although non-native water and storage releases may flow through and be put to use in the Boating Parks to help satisfy the RICDs, such a decree shall not give Chaffee County any rights to Project water or other trans-mountain water or stored water, nor shall it limit in any way either the amount or pattern of flows or releases of such water, nor provide any basis for any

party to request or demand releases of such water to maintain flows at any level described in the Consent Decree.

8. Aurora Stipulation. The Parties acknowledge that Chaffee County and Aurora have entered into a separate stipulation, attached hereto as Exhibit C, by which Aurora may benefit from the Reduced RICD Call by exercising Recovery Year Exchanges and Limited Future Exchanges in the same manner as the Parties hereto, subject to the terms and conditions contained therein. The Parties hereto agree that Aurora shall be a member of the Flow Coordination Committee in the same manner as the Senior Exchange Holders as noted above in paragraph 6 above. Although the Parties agree not to oppose the Stipulation between Chaffee County and Aurora, nothing herein shall be deemed as consent or agreement by the Parties to any plans or operations that Aurora may exercise to utilize the Reduced RICD Call or to other agreements contained therein that do not apply to using the Reduced RICD Call. Moreover, nothing in this MOU or in Exhibit C modifies, supercedes, interprets or adds to any prior agreement (including any memorandum of agreement or intergovernmental agreement) between the City of Aurora and any Party hereto.

9. Additional Stipulations. Simultaneous with or before the execution of this MOU, Chaffee County will execute (a) a stipulation with Upper Arkansas in the Upper Arkansas Exchange Case; (b) a stipulation with BWWP in BWWP's pending Case No. 04CW130; and (c) an agreement with Pueblo West regarding dry up conditions on the Hill Ranch. Nothing herein shall be deemed as a consent or agreement by the other Parties to any rights granted or plans of operation contained therein.

10. VFMP Agreement. Within ten (10) days following execution of this MOU, CDNR, CDOW, DPOR, Southeastern, Chaffee County, AROA and Trout Unlimited (the "VFMP Parties") will enter into a five-year renewable agreement regarding operation of the VFMP for a minimum of five years in the form attached hereto as Exhibit D (the "VFMP Agreement"). All parties to this MOU consent to the operation of the VFMP in accordance with the terms of the VFMP Agreement during the time said VFMP Agreement remains in effect. The consent to such operation as described in this paragraph does not imply that any party to this MOU (other than the VFMP Parties) is bound by the entire VFMP Agreement, nor does it imply an agreement by any party (other than the VFMP Parties) to operate its water rights or exchanges in a manner that is more restrictive on that party than the conditions agreed to in paragraphs 15 and 19 below. However, the Senior Exchange Holders further agree that, to the extent practicable, they will (i) operate their water releases and exchanges from October 15 to November 15 in an attempt to maintain flows between 250 and 500 cfs at Wellsville, to maintain consistency with the VFMP while allowing greater exchange potential from November 16 to April 30; and (ii) help maintain higher incubation flows between November 16 and April 30, as described in Paragraph 3.C of the VFMP Agreement, if spawning flows from October 15 to November 15 are between 501 cfs and 700 cfs.

11. RICD Legislation. Following execution of this MOU, the Parties agree they shall not seek or support enactment of legislation that would in any way limit, constrain or enhance Chaffee County's rights sought in the RICD Case (as set forth in the Consent Decree), including administration of such rights or future applications by Chaffee County to make absolute or to retain the conditional RICD water rights, in a manner inconsistent with this MOU and the

Consent Decree; provided, however, that CDNR, CDOW, CWCB and DPOR (the "State Agencies") are not parties to nor bound by this paragraph 11. This provision, however, is not applicable to any legislation that would affect only new RICD water rights, including enlargements to existing RICD water rights. This provision is also not applicable to legislation that is not intended to have any direct impact on RICDs, but which could have indirect impacts on water rights generally, including RICDs.

12. PSOP Legislation. Following execution of this MOU, and after consultation with appropriate Parties from this agreement and from other agreements between Southeastern and other parties, Southeastern shall request Members of Congress from Colorado to introduce and support federal legislation to authorize certain recommendations of the September 21, 2000 "Preferred Storage Options Plan" ("PSOP") report relating to the Project. The Parties, except for the State Agencies, shall support Southeastern's request for such legislation. Previous efforts to enact these PSOP recommendations include HR 4691, 108th Congress, 2nd Session. No Party shall request congressional changes to such PSOP legislation unless such changes are mutually agreed to by Southeastern, CS-U, BWWP, Upper Arkansas, and Aurora. The Parties shall not knowingly or intentionally take any actions to impair or impede the ability of a Party to obtain the necessary permits, contracts and/or authorizations for the excess capacity components of the PSOP from Reclamation or any other governmental entity, subject to paragraph 13 below; provided, however, that nothing in this MOU shall preclude the Parties from responding to requests for information from governmental entities, or from commenting on issues of concern unrelated to the quantity of Arkansas River flows through Chaffee County, and not in conflict with the spirit of this MOU. Notwithstanding this paragraph 12, as between the parties to any prior agreement (including any memorandum of agreement or intergovernmental agreement) between Southeastern and any other Party hereto, nothing in this paragraph is intended to supersede, modify, or add to any provision of such prior agreement.

13. 1041 Regulations. Nothing in this MOU shall be interpreted as limiting Chaffee County's discretion in applying its 1041 regulations to any future projects. Notwithstanding, Chaffee County and the Parties agree that they have all received benefits from the terms negotiated herein, including but not limited to the Recovery Year Exchanges and Limited Future Exchanges, the Parties' agreement to the Consent Decree, and protection of the VFMP. Accordingly, Chaffee County agrees that in considering any 1041 application filed by the Senior Exchange Holders or Upper Arkansas related to any absolute or conditional water rights they own that are senior to Chaffee County's RICDs, and/or the Limited Future Exchanges and Recovery Year Exchanges contemplated in this Agreement, Chaffee County shall not consider any impacts to its RICD water rights or boating park structures when determining whether to grant or deny a permit under its 1041 regulations, so long as said rights will be operated consistent with the provisions of this MOU and/or their respective decrees. Chaffee County may, however, consider any other impacts associated with such projects as may be allowed under 1041.

14. Additional Agreements regarding the RICD Case.

a. Chaffee County, Southeastern and certain other Parties hereto submitted a draft of this MOU and the Consent Decree to the CWCB for its consideration at the March, 2006 meeting, in accordance with the procedures set by the CWCB, and requested that the CWCB

support the MOU and Consent Decree in its recommendations. The CWCB's recommendations were filed with the Water Court on April 14, 2006. The Parties hereto shall not take any position and/or action before the CWCB that is inconsistent with this MOU and the Consent Decree.

b. The Parties hereto agree that the Consent Decree and this MOU are consistent with the doctrine of maximum utilization as applicable to these RICDs only. The parties hereto agree not to take any position and/or action with respect to these RICDs before the Water Court, or on appeal, that is inconsistent with the Consent Decree and this MOU.

15. Future Water Rights. Nothing in this MOU shall prevent any Party from hereafter applying for new water rights in the future, subject to Colorado law governing priorities and appropriation dates. However, except as provided below for Upper Arkansas and CS-U, the Parties agree that, so long as the VFMP target flows do not exceed those in the attached Exhibit D-1, they will not operate such future new water rights to exchange against water released from Twin Lakes or Turquoise Reservoir pursuant to the VFMP, nor will they divert or operate such water rights in such a manner as to trigger releases of water from Twin Lakes or Turquoise Reservoir pursuant to the VFMP. Upper Arkansas agrees that any future applications for new or enlarged water rights or exchanges that it files on the Arkansas River main stem above Pueblo Reservoir shall be subject to terms and conditions (with regard to VFMP flows) that are no less protective of Upper Arkansas' rights and the VFMP than those specified in the Stipulation between Chaffee County and Upper Arkansas in the Upper Arkansas Exchange Case, attached hereto as Exhibit E. CS-U agrees that, as to any future applications for new or enlarged water rights or exchanges that it files on the Arkansas River above Pueblo Reservoir, including Case No. 05CW96, CS-U shall operate such water rights or exchanges, to the extent practicable, in a manner that helps satisfy the VFMP target flows listed in exhibit D-1 and is consistent with the VFMP Agreement described above. Nothing in this MOU precludes any party from requesting other terms and conditions on such water rights, exchanges or flows in such future applications that are no less protective of the VFMP.

The Parties further agree that such future new water rights shall be subject to minimum Arkansas River flow requirements of 190.0 c.f.s. at the Fremont Sanitation District Wastewater Treatment Plant, and 240.0 c.f.s. (September through June) and 260.0 c.f.s. (July and August) at the Salida Wastewater Treatment Plant, to the extent such future water rights are for diversion, storage or exchange upstream from one or both of said wastewater treatment plants. The Parties further agree that such future new or enlarged water rights shall be subject and junior to the Consent Decree for the RICDs.

16. Dispute Resolution. If a dispute arises between the Parties relating to this Agreement, except for disputes arising for the first time during a trial, the Parties shall follow the following procedure:

a. The Administrative Officers shall hold a meeting promptly, but in no event later than 10 calendar days from the written notification of the dispute by any Party, attended by the Administrative Officers or persons designated to exercise the full authority of the Administrative Officers regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. At that meeting, the Administrative Officers will either resolve the dispute or set forth a process by which to negotiate a resolution of the dispute, subject to respective Board

approval within the following twenty (20) calendar day period. No such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties or be deemed a waiver by a party hereto of any remedies to which such party would otherwise be entitled under this Agreement, unless otherwise agreed to by the parties in writing. "Administrative Officers" collectively shall mean the Chair of the Chaffee County Board of County Commissioners, the Chief Executive Officer of Colorado Springs Utilities, the Executive Director of the BWWP, the Executive Director of Southeastern, and the General Manager of Upper Arkansas. As for disputes arising solely from decisions by the Flow Coordination Committee, the Director of Utilities for the City of Aurora shall also be an Administrative Officer.

b. If, during the 20-day period following the meeting described in subparagraph (a) above (or such other time period as the Parties may agree), the Parties have not succeeded in negotiating a resolution of the dispute, the Parties involved in the dispute shall participate in non-binding mediation, and bear equally the costs of that mediation, but with each party to bear their own attorney fees and costs associated therewith. The Parties involved in the dispute agree to participate in good faith in the mediation and related negotiations for a period of 30 calendar days.

c. If the Parties in dispute are not successful in resolving the dispute through mediation, they shall be free to pursue any other available legal remedy. The Parties agree to reasonably expedite any legal proceeding brought hereunder in order to obtain a prompt resolution.

d. Any of the time frames in this paragraph 16 may be extended by agreement of the Parties. The Parties recognize that for certain disputes time is of the essence, in which case the Parties agree to expedite all above time frames in a reasonable manner so as to allow prompt resolution of the disputed issue.

17. Future Applications for Due Diligence or to Make Absolute. Chaffee County agrees not to oppose future diligence applications and/or application to make absolute, for the Senior Exchange Holders' existing decreed water rights set forth in Exhibit F attached hereto, so long as such applications are made subject to and consistent with this MOU; and further subject to Chaffee County's right to assert in opposition to such applications an enlargement of use beyond the scope of the existing decree and/or that the exchanges involved new sources of water not identified in the decree, and/or that the exchanges involved new or enlarged diversion or storage facilities that were not identified in the decree or in paragraph 18 below. The Parties hereto agree not to oppose future diligence applications and/or applications to make absolute the RICD water rights that are the subject of the Consent Decree, so long as such applications are made subject to and consistent with this MOU.

18. Agreement Concerning Senior Exchanges. Senior Exchange Holders have existing decreed water rights (listed in Exhibit F), and Upper Arkansas has the Upper Arkansas Exchange Case pending, some of which include identified exchanges to or from Turquoise Reservoir, Twin Lakes, Clear Creek Reservoir and/or Pueblo Reservoir. Absent an express provision in said existing decrees to the contrary, and subject to such other conditions in the said existing decrees including, but not limited to, source of water limitations, the Parties hereto agree that (a) any said exchanges specifying Turquoise Reservoir and/or Clear Creek Reservoir include

an enlarged capacity of up to 38,161 acre-feet in Turquoise Reservoir and Clear Creek Reservoir combined (the combined amount of proposed enlargements currently pending in Case Nos. 00CW139 and 04CW130); and (b) any said exchanges specifying Pueblo Reservoir include an enlarged capacity not exceeding 75,000 acre-feet in Pueblo Reservoir as contemplated by PSOP. This agreement is expressly limited to the specific reservoir enlargements identified above.

19. Operation of Senior Water Rights. The Senior Exchange Holders agree that, to the extent practicable, and without impairing their senior rights, they will cooperate with Chaffee County to take reasonable measures to operate their senior exchange rights and storage rights in a manner that minimizes the reduction in flows available to the RICDs, and that helps satisfy the VFMP target flows listed in Exhibit D-1 and consistent with the VFMP Agreement described above. Should said goal of minimizing the reduction of flows available to the RICDs conflict with the goal of not impairing the senior rights of the Senior Exchange Holders and Upper Arkansas, the latter shall prevail over the former. The County acknowledges that certain senior Fryingpan-Arkansas Project exchanges are operated by Reclamation, and that Reclamation is not a party to this MOU. Upper Arkansas exchanges applied for in the Upper Arkansas Exchange Case will be operated in a manner consistent with any terms and conditions in the decree ultimately entered in that case.

20. ROY Storage. CS-U, BWWP and Southeastern are parties to the Arkansas River Flow Management Program ("Flow Management Program"). As a result of the Flow Management Program, CS-U, BWWP and Southeastern have agreed to forego certain in-priority diversions that they could make under their existing senior decreed exchange rights ("Foregone Diversions") in order to maintain certain flows through the Pueblo Legacy Project. CS-U, BWWP and Southeastern, among other parties, have agreed to cooperate to provide for the recapture and storage for later use of those Foregone Diversions ("ROY Storage"). Chaffee County agrees that any exchanges by the Senior Exchange Holders of said ROY Storage water to reservoirs upstream of the RICDs will be considered to occur under the existing senior exchange decrees and will be senior to the RICDs.

21. Future In-Stream Flow Rights and RICDs. Chaffee County agrees not to request that the CWCB seek an in-stream flow water right on the main stem of the Arkansas River, or support such a request by another, so long as the VFMP is in place in a manner consistent with the VFMP Agreement. Chaffee County further agrees not to support the Water Court filings by any other entity seeking RICDs on the Arkansas River.

22. Pueblo West Stipulation. Chaffee County agrees that in exercising its discretion to make any request as provided in the Pueblo West Stipulation, it will not request Pueblo West to exchange against water released from Twin Lakes or Turquoise Reservoir pursuant to the VFMP, nor to operate its water rights in such a manner that would trigger releases from storage pursuant to the VFMP or that would reduce flows at Wellsville below those described in the VFMP Agreement.

23. No Precedent. The provisions of this MOU and the Consent Decree are the result of compromise and settlement and may not reflect positions of the Parties hereto concerning facts, law, engineering and other circumstances in situations other than this MOU or this RICD.

Case. Accordingly, the Parties agree that neither this MOU nor the Consent Decree shall be precedent in any future matter outside of the RICD Case.

24. Contract Exchanges. Nothing in this MOU places any constraint upon any Party hereto on any ability they may have to contract with the Bureau of Reclamation for contract exchange agreements.

25. Assignment. This Agreement, and the rights, interests and obligations hereunder, may not be assigned by any Party without the prior written consent of each of the other Parties and any attempted assignment in violation of this provision shall be void.

26. Entire Agreement; Amendments. This Agreement, together with the exhibits hereto, which constitute part of this Agreement and which are hereby incorporated by this reference, constitute the entire agreement among the Parties. This Agreement may be altered, amended or revoked only by an instrument in writing signed by all the Parties

27. Previous Agreements. Other agreements among several of the Parties hereto have previously been reached concerning issues that may be related to those addressed herein. Nothing in this MOU changes or modifies in any way any such previous agreements.

28. Applicable Law. This Agreement shall be governed by and construed according to the law of the State of Colorado.

29. Waiver. The failure of one of the Parties to insist upon the strict performance of any provision of this Agreement or to exercise any right, power, or remedy upon a breach thereof, shall not constitute a waiver of that or any other provision of this Agreement or limit that Party's, or any other Party's, right thereafter to enforce any provision or exercise any right hereunder.

30. Captions. All captions contained in this Agreement are for convenience only and shall not be deemed to be part of this Agreement.

31. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

32. Parties Bound by Agreement. This Agreement is binding upon the Parties hereto and upon their respective successors.

33. Authorizations. The governing bodies of each of the Parties have authorized by resolution or other means the execution of this Agreement and each of the Parties represent and warrant that the individuals that have executed this document on their behalf have authority to do so.

34. Joint draft. The Parties, with each having the opportunity to seek advice of legal counsel and each having an equal opportunity to contribute to its content, drafted this Agreement jointly.

35. No Third Party Beneficiaries. This Agreement is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to confer any rights upon any other persons or entities not named as Parties, nor to limit in any way the powers and responsibilities of the Parties with respect to any other entity not a party hereto, with the limited exception of the right of Chaffee County Water Suppliers to request a Reduced RICD Call subject to the limitations contained herein.

36. Non-Business Days. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

37. Non-Severability. Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties.

38. Effect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to any Party or as to all Parties, the Parties will immediately negotiate valid alternative portion(s) that as nearly as possible give effect to any stricken portion(s).

39. Specific Performance. In the event of any default by any Party hereunder, in addition to other damages or other remedies provided by law or equity, any other non-defaulting Party shall have the right to seek specific performance or injunctive relief.

ATTEST:

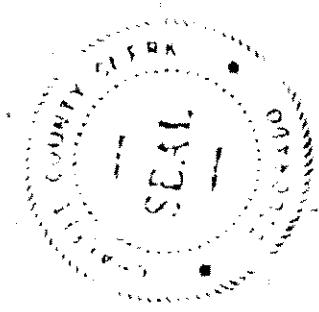
CHAFFEE COUNTY

Name Jeffrey K. (Jeff) K.
Title Supervisory Park

By: Timothy R. Glass
Name: Timothy R. Glass
Title: Chairman, Board

APPROVED AS TO FORM FOR
CHAFFEE COUNTY:

Steven J. Bushong, Legal Counsel for Chaffee County



STATE OF COLORADO)
) ss
COUNTY OF CHAFFEE)

The foregoing instrument was acknowledged before me this 26 day of July, 2006, by Mark Anthony Puglisi, on behalf of Chaffee County.

Witness my hand and official seal.

Notary Public

My commission expires: July 1, 2023

STATE OF OREGON
COUNTY OF CLACKMANNAN
Certified to be full, true and correct
copy of the original in my records,
WITNESS my hand and the Seal of said
County this 1st day of January 2006
JOYCE M RENO
COUNTY CLERK & RECORDER
Billie Jo M. Reno

ATTEST:

SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT

Carl G. Genova
Name Carl G. Genova
Title Secretary

By: Bill Long
Name Bill Long
Title President

APPROVED AS TO FORM FOR
SOUTHEASTERN


Stephen H. Leonhardt, Legal Counsel for Southeastern

STATE OF COLORADO)
)
COUNTY OF PUEBLO)

The foregoing instrument was acknowledged before me this 18 day of
May, 2006, by Bill Long & Carl Genova on behalf of Southeastern Colorado
Conservancy District.

Witness my hand and official seal.


Notary Public

My commission expires: 11/8/06

ATTEST:

COLORADO DEPARTMENT OF NATURAL
RESOURCES

Name Frank McNamee
Title President

By: Russell George
Name Russell George
Title Executive Director

APPROVED AS TO FORM FOR
CDNR

Jennifer Mele, Legal Counsel for CDNR
STATE OF COLORADO)
) ss
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 30 day of June, 2006, by Frank McSweeney, on behalf of Colorado Department of Natural Resources.

Witness my hand and official seal.

Mark E. J.
Notary Public

My commission expires: 4/30/8

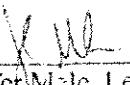
ATTEST:

COLORADO DIVISION OF WILDLIFE


Name Jeffrey M. Steag
Title Asst. Director

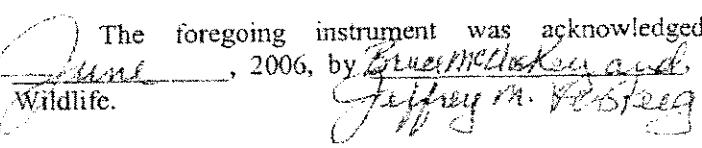
By 
Name Bruce L. McCloskey
Title DIRECTOR

APPROVED AS TO FORM FOR
CDOW



Jennifer M. Steag, Legal Counsel for CDOW

STATE OF COLORADO)
) ss
COUNTY OF Denver)


The foregoing instrument was acknowledged before me this 20th day of
June, 2006, by Bruce McCloskey and, on behalf of Colorado Division of
Wildlife.


Witness my hand and official seal.



Catherine B. Price
Notary Public

My commission expires: August 3, 2007

ATTEST:

COLORADO DIVISION OF PARKS AND
OUTDOOR RECREATION

Paul Flack
Name Paul Flack
Title Hydrologist

By: *Larry J. Kramer*
Name Larry J. Kramer
Title Deputy Director

APPROVED AS TO FORM FOR
DPOR

J. Mele
Jennifer Mele, Legal Counsel for DPOR

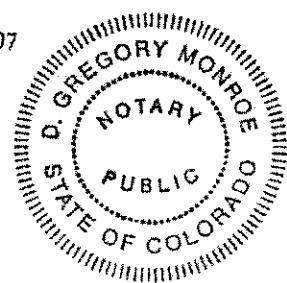
STATE OF COLORADO)
COUNTY OF Denver)ss

July 17th 2006, by Larry Kramer, on behalf of Colorado Division of
Parks and Outdoor Recreation.

Witness my hand and official seal.

My Commission Expires March 19, Notary Public
My commission expires: _____

My Commission Expires March 19, 2007



ATTEST:

UPPER ARKANSAS WATER
CONSERVANCY DISTRICT

Name Ralph L. Scanga, Jr.
Title Secretary

By: Glenn Everett
Name Glenn Everett
Title Chairman

APPROVED AS TO FORM FOR
UPPER ARKANSAS

Julianne M. Woldridge
Julianne M. Woldridge, Legal Counsel for Upper Arkansas

STATE OF COLORADO)
)
) ss
COUNTY OF CHAFFEE)

The foregoing instrument was acknowledged before me this 31st day of
May, 2006, by Glenn Everett, Chmn on behalf of Upper Arkansas Water
Conservancy District.

Witness my hand and official seal.

Leary O'Brien
Notary Public

My commission expires: Oct 21, 2007

ATTEST:

CITY OF SALIDA

Janelle S. Martinez
Name Janelle S. Martinez
Title City Clerk

By: Danny M. Knight
Name Danny M. Knight
Title Notary Public

APPROVED AS TO FORM FOR
CITY OF SALIDA

James R. Montgomery
James R. Montgomery, Legal Counsel for City of Salida

STATE OF COLORADO)
) ss
COUNTY OF Chaffee)

The foregoing instrument was acknowledged before me this 22 day of
May, 2006, by Danny M. Knight, on behalf of City of Salida.

Witness my hand and official seal.

Susan L. Mick
Notary Public

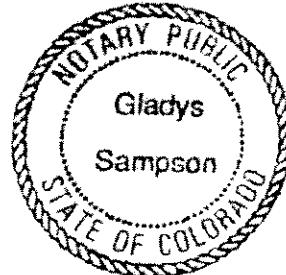
My commission expires: 01-27-2008

ATTEST:

ARKANSAS RIVER OUTFITTERS
ASSOCIATION

Name Miller G. Present
Title Customer Service Representative

By: David L. Harrison
Name David L. Harrison
Title AROA - President



APPROVED AS TO FORM FOR
AROA

David L. Harrison
David L. Harrison, Legal Counsel for AROA

STATE OF COLORADO)
) ss
COUNTY OF BREMEN)

The foregoing instrument was acknowledged before me this 25 day of JUNE, 2006, by ANDREW C. NEINAS, on behalf of Arkansas River Outfitters Association.

Witness my hand and official seal.

Notary Public
Notary Public

My commission expires: 11-26-2006

ATTEST:

CITY OF COLORADO SPRINGS, acting through
COLORADO SPRINGS UTILITIES

Bruce M. Davis
Name Bruce M. Davis
Title Chief Water Resources Officer

By: Jerry Fonte, Jr.
Name Jerry Fonte, Jr.
Title Chief Executive Officer

APPROVED AS TO FORM FOR CITY OF COLORADO
SPRINGS, acting through COLORADO SPRINGS UTILITIES

William A. Paddock

William A. Paddock, Legal Counsel for City of Colorado Springs,
Acting through Colorado Springs Utilities

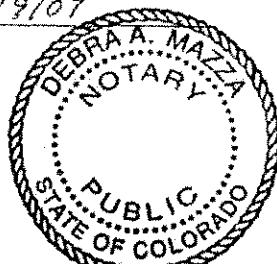
STATE OF COLORADO)
) ss
COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this 27th day of
June, 2006, by JERRY FONTE, JR. on behalf of the City of Colorado
Springs, acting through Colorado Springs Utilities.

Witness my hand and official seal.

My commission expires: 5/19/09

Debra A. Mays
Notary Public



ATTEST:

BOARD OF WATER WORKS OF PUEBLO,
COLORADO

Alan Hamel
Name Alan Hamel
Title Executive Director

By Alan C. Hamel
Name Alan C. Hamel
Title Executive Director

APPROVED AS TO FORM FOR
BWWP

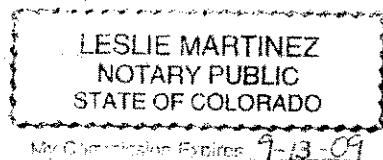
William A. Paddock
William A. Paddock, Legal Counsel for BWWP

STATE OF COLORADO)
) ss
COUNTY OF Pueblo)

The foregoing instrument was acknowledged before me this 24th day of
May, 2006, by Alan C. Hamel, on behalf of the Board of Water Works
of Pueblo, Colorado.

Witness my hand and official seal.

My commission expires: 9-13-09



ATTEST:

PUEBLO WEST METROPOLITAN DISTRICT

Judy Leonard
Name Judy Leonard
Title Administrative Assistant

By: Eugene Montoya
Name Eugene Montoya
Title Chair

APPROVED AS TO FORM FOR
PUEBLO WEST

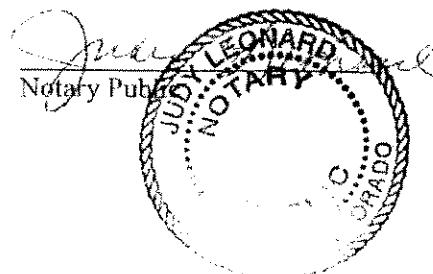
Robert F. T. Krassa
Robert F. T. Krassa, Legal Counsel for Pueblo West

STATE OF COLORADO)
COUNTY OF Pueblo) ss

The foregoing instrument was acknowledged before me this 23 day of
May, 2006, by Eugene Montoya, on behalf of Pueblo West Metropolitan
District.

Witness my hand and official seal.

My commission expires: 2/16/2017



Witness my hand and the seal of this Court this 20th day of October,
2006.

MARDELL R. DiDOMENICO, CLERK
DISTRICT COURT WATER DIVISION 2

By: 
Clerk

DISTRICT COURT, WATER DIVISION 2, COLORADO

Court Address: 320 West 10th Street, #203
Pueblo, CO 81003

FILED IN THE OFFICE OF THE CLERK.
DISTRICT COURT WATER DIV. NO. 2
STATE OF COLORADO

FILED Document **OCT 20 2006**
CO Pueblo County District Court (6th J.D.)
Filing Date: Oct 20 2006 4:10PM MDT
Filing ID: 12693697 **CLERK**
Review Clerk: Mardell Didomenico

CONCERNING THE APPLICATION OF:
CHAFFEE COUNTY
IN CHAFFEE COUNTY, COLORADO.

COURT USE ONLY

Case Number: **04CW129**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served via LexisNexis File and Serve, on the date of this certificate shown below, a true and correct copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE COURT entered October 20, 2006, the original of which is on file herein, to each of the following, to-wit:

<u>ARKANSAS RIVER OUTFITTERS ASSN</u>	Opposer	Harrison, David L	Privately Retained Attorney	Moses Wittemyer Harrison & Woodruff PC
<u>AURORA CITY OF</u>	Opposer	Dingess, John M	Privately Retained Attorney	Duncan Ostrander & Dingess PC
<u>BOARD OF WATER WORKS OF PUEBLO CO</u>	Opposer	Paddock, William A	Privately Retained Attorney	Carlson Hammond & Paddock LLC
<u>CASTLE PINES NORTH METROPOLITAN DISTRICT</u>	Opposer	Haire, Austin	Privately Retained Attorney	Duncan Ostrander & Dingess PC
<u>CHAFFEE COUNTY</u>	Applicant	Holleman, Paul F	Privately Retained Attorney	Porzak Browning & Bushong LLP
<u>CHAFFEE COUNTY</u>	Applicant	Bushong, Steven J	Privately Retained Attorney	Porzak Browning & Bushong LLP

<u>COLORADO SPRINGS UTILITIES</u>	Opposer	Paddock, William A	Privately Retained Attorney	Carlson Hammond & Paddock LLC
<u>COLORADO SPRINGS UTILITIES</u>	Opposer	Huff, Amy N	Privately Retained Attorney	Carlson Hammond & Paddock LLC
<u>COLORADO WATER CONSERVATION BOARD</u>	Opposer	Mele, Jennifer	Attorney General	CO Attorney General
<u>COLORADO WATER CONSERVATION BOARD</u>	Opposer	Schneider, Susan J	Attorney General	CO Attorney General
<u>DIVISION ENGINEER</u>	Division Engineer	Division 2 Water Engineer	Privately Retained Attorney	Division 2 Engineer
<u>LAKE COUNTY BD OF COUNTY COMMISSIONERS</u>	Opposer	Cope, Joseph Adams	Privately Retained Attorney	Frascona Joiner Goodman & Greenstein PC
<u>LOWER ARKANSAS VALLEY WATER CONS DIST</u>	Opposer	Trout, Robert Vernal	Privately Retained Attorney	Trout Raley Montano Witwer & Freeman PC
<u>LOWER ARKANSAS VALLEY WATER CONS DIST</u>	Opposer	Mendenhall, H Barton	Privately Retained Attorney	Mendenhall & Malouff LLP
<u>LOWER ARKANSAS VALLEY WATER CONS DIST</u>	Opposer	Nichols, Peter D	Privately Retained Attorney	Trout Raley Montano Witwer & Freeman PC
<u>NATURAL RESOURCES COLORADO DEPT OF</u>	Opposer	Schneider, Susan J	Attorney General	CO Attorney General
<u>PARKS & OUTDOOR RECREATION DIVISION OF</u>	Opposer	Schneider, Susan J	Attorney General	CO Attorney General
<u>PUEBLO WEST METROPOLITAN DISTRICT</u>	Opposer	Krassa, Robert F T	Privately Retained Attorney	Krassa & Miller LLC
<u>SALIDA CITY OF</u>	Opposer	Montgomery, James R	Privately Retained Attorney	Moses Wittemyer Harrison & Woodruff PC
<u>SOUTHEASTERN COLO WATER CONS DIST</u>	Opposer	Miller, Lee Edward	Privately Retained Attorney	Burns Figa & Will PC
<u>SOUTHEASTERN COLO WATER CONS DIST</u>	Opposer	Joseph, Alix L	Privately Retained Attorney	Burns Figa & Will PC
<u>SOUTHEASTERN COLO WATER CONS DIST</u>	Pending Approval	Leonhardt, Stephen H	Privately Retained Attorney	Burns Figa & Will PC
<u>STATE ENGINEER</u>	State Engineer	State Water Engineer, Colorado	Privately Retained Attorney	Colorado Division of Water Resources
<u>TROUT UNLIMITED</u>	Opposer	Peternell, Andrew	Privately Retained Attorney	Trout Unlimited
<u>UPPER ARKANSAS WATER CONS DISTRICT</u>	Opposer	Woldridge, Julianne M	Privately Retained Attorney	MacDougall Woldridge & Worley PC
<u>WATER RESOURCES COLORADO DIVISION OF</u>	Opposer	Schneider, Susan J	Attorney General	CO Attorney General
<u>WILDLIFE COLORADO DIVISION OF</u>	Opposer	Schneider, Susan J	Attorney General	CO Attorney General