



**ATTORNEY REPORT
JOINT QUARTERLY MEETING
GENERAL and ENTERPRISE
October 2017**

TO: CRWCD BOARD OF DIRECTORS

FROM: PETER C. FLEMING, GENERAL COUNSEL *P.C.F.*
JASON V. TURNER, SENIOR COUNSEL

Dear Directors:

This report identifies matters for discussion at the October 17-18, 2017, joint quarterly meeting of the River District and its Enterprise. A separate Confidential Report addresses confidential matters. The information in this report is current as of October 5, 2017, and will be supplemented as necessary before or at the Board meeting.

I. EXECUTIVE SESSION.

The following is a list of matters that qualify for discussion in executive session pursuant to C.R.S. §§ 24-6-402(4)(b) and (e).

- A. Colorado River Cooperative Agreement Implementation Matters.
- B. Windy Gap Firming Project and Windy Gap Connectivity Channel.
- C. Remand of Grand Valley Water Users Association v. Busk-Ivanhoe, Inc., Case No. 09CW142, Water Division 2.
- D. CWCB Application for Dolores River Instream Flow, Case No. 15CW3111, Water Division 4.
- E. Diligence Application of Colorado Springs, Case No. 15CW3019, Water Division 5.
- F. Water Administration Matters.
- G. Colorado River Compact, Interstate and International Negotiation Matters.

II. GENERAL MATTERS.

A. **Extension of Common Interest/Cost Share Agreement between the Colorado River District, Grand Valley Water Users Association, and The Nature Conservancy.**

We request Board action to authorize a seventh extension of the common interest/cost share agreement with the GVWUA and TNC to December 31, 2018, including authorization for a contribution of up to \$15,000 to reimburse the GVWUA for one-half of its legal costs related to the common-interest.

Over the past several years, we have helped the GVWUA and TNC sort through numerous legal and technical issues associated with the Grand Valley Conserved Consumptive Use Pilot Project. Our involvement has provided assistance to a major River District constituent and also helps to maintain the River District's leading role related to West Slope demand management actions. The River District has contributed in-kind assistance as well as reimbursed one-half of the GVWUA legal costs associated with the project. TNC has contributed in-kind services as well and also has paid GVWUA the other one-half of its costs.

The current sixth-amendment to the cost-share agreement is set to expire on December 31, 2017. We expect that there may be additional work needed in 2018 for the project and therefore request that the River District extend the agreement to December 31, 2018, and authorize a total expenditure of up to \$15,000 to reimburse one-half of the GVWUA out of pocket costs incurred in 2018. Although this authorization would allow that amount of expenditures, we do not expect the costs to be that high. For example, out of a total of \$15,000 authorized for River District contributions in 2017, the GVWUA has sought reimbursement for less than \$2,000 (for the River District's 50% obligation during 2017 through the end of September).

We request Board action to authorize a seventh extension of the common interest/cost share agreement with the GVWUA and TNC to December 31, 2018, including authorization for a contribution of up to \$15,000 to reimburse the GVWUA for one-half of its legal costs related to the common-interest.

B. **River District Policy Direction on Tax-Increment Financing Projects.**

Board members will recall that the River District has faced two proposals for the River District to forego tax revenue associated with tax-increment financing of urban renewal authorities. In July, Board members requested that staff propose a policy guidance statement to support staff in future TIF proposals. As discussed previously, we interpret Colorado law to require that urban renewal authorities must obtain the consent of local taxing districts for the inclusion of agriculture land within the boundaries of a proposed project. When no agricultural land is included within the proposed project area, local taxing entities must negotiate sharing of tax increment revenue with the urban renewal authority. If those negotiations do not result in an agreement, the parties must submit to binding arbitration based on a number of factors but primarily related to the ability of the taxing district to serve the project area without the incremental tax revenue created by the project.

On the basis of the applicable law and the River District’s past discussions of TIF projects, we recommend that the Board adopt the following general policy guidance by motion (the policy would not rise to the level of a formal River District policy statement such as those considered by the Board on a triennial basis):

1. *The River District will generally oppose tax increment financing projects within the River District’s boundaries.*
2. *If agriculturally-assessed lands are located within the TIF project boundaries, the River District will consent to the inclusion of the agriculturally-assessed lands within the project if the subject urban renewal authority agrees to refund all of the applicable tax-increment revenue within the project boundaries to the River District (with the exception of a reasonable administrative fee, generally about 3% of the tax increment revenue).*
3. *If no agriculturally-assessed land is located within the project area, the River District will seek to negotiate the return of as much tax increment revenue as possible to the River District, weighing the costs of such negotiations, the costs of mandatory arbitration, the risks of an adverse decision by an arbitrator, and the potential impact to the River District of the loss of the tax-increment revenue.*
4. *The River District will reconsider this policy guidance at the request of any Board director appointed by the county within which the subject TIF project is located.*

C. Colorado River Ecosystem/Deep Green Resistance v. the State of Colorado, Case No. 17-cv-02316, U.S. District Court, Colorado.

Information only.

Board members may have read recent news reports about a novel lawsuit that seeks to declare the Colorado River ecosystem as a “person” with standing to bring a lawsuit on its own behalf. The lawsuit was filed by the environmental group, Deep Green Resistance, as a “next friend”¹ of the Colorado River Ecosystem. The complaint seeks a declaration from the court that the Colorado River Ecosystem is a “person” with standing to sue in court to protect its right to “exist, flourish, regenerate, be restored, and naturally evolve.” Additionally, the complaint alleges that the State of Colorado can be held liable for violating the River’s rights.

The premise of this lawsuit is certainly unique in Colorado (as well as the nation) but it is not completely without precedent. As noted in the complaint, Ecuador has amended its constitution to recognize the rights of ecosystems. Likewise, jurisdictions in Columbia and India have found rivers to have certain rights that warrant protection.

¹ A “next friend” is an individual, or in this case organization, who acts on behalf of another who does not have the legal capacity to represent his or her (or its) self.

If successful, the lawsuit would be precedential not only in Colorado but throughout the country. Thus, we expect the State of Colorado will receive lots of help from others in opposing the lawsuit (we have already offered the River District's help). A ruling granting the requested relief could totally upend environmental litigation. A key question would be why any specific group of individuals should be entitled to serve as an ecosystem's "next friend" as opposed to any other group of individuals, organizations, municipalities, or States. The fights over the right to be appointed "next friend" status alone would be chaotic – not even taking into consideration the unique claims that could be asserted. The Attorney General's Office will be taking the lead on Colorado's behalf. We will continue to be in contact with the AG's office as it prepares Colorado's defense of the lawsuit – hopefully with a swift and successful motion to dismiss. The complaint is quite interesting to read. A copy is included as Attachment A to this Report.

III. RIVER DISTRICT WATER MATTERS.

A. Colorado River Cooperative Agreement – Implementation Issues.

Update only.

A separate confidential legal and negotiations update memo from Peter Fleming and Dan Birch is included with your Board material on CRCA-related implementation items.

The Board may wish to discuss these matters in executive session.

B. Windy Gap Firing Project and Windy Gap Connectivity Channel.

We request that the Board ratify the joint application filed by the River District and the Municipal Subdistrict, Northern Colorado Water Conservancy District in Case No. 17CW3176, Water Division 5, and the stipulation between the River District and the Municipal Subdistrict related to the application entered September 29, 2017.

Consistent with the Board's direction in July, the River District filed a joint application with Northern Water's Municipal Subdistrict to incorporate the Windy Gap Firing Project IGA into the Windy Gap water rights. Additionally, the application seeks a determination regarding the operation of the proposed Colorado River Connectivity Channel. A copy of both the application and stipulation is included as Attachment B to this Report.

These matters are discussed in the Confidential Report. We request that the Board take the action requested above, following any discussion in executive session.

C. Remand of Grand Valley Water Users Assoc., et al. v. Busk-Ivanhoe, Inc., Case No. 09CW142, Water Division 2.

Update only.

Our negotiations with Busk-Ivanhoe, Inc. (City of Aurora) regarding the Supreme Court's remand and disposition of the Busk-Ivanhoe change case continue. We have received an additional

extension of time from the Division 2 Water Court. The parties now have until February 26, 2018 to submit a settlement agreement or if no agreement is reached by that time, the West Slope parties and the State and Division Engineer must submit a proposed decree consistent with the Supreme Court's ruling. Aurora will have until March 19, 2018 to file any objections to the proposed amended decree. Judge Schwartz, the Division 2 Water Judge, also informed the parties that no further extensions should be anticipated.

This matter is discussed in the Confidential Report. We request that the Board discuss this matter in executive session.

D. CWCB Application for Dolores River Instream Flow, Case No. 15CW3111, Water Division 4.

Update only.

As we discussed with the Board in July, the River District and our co-objector, the Southwestern Water Conservation District, developed a settlement proposal which was not accepted by the CWCB. On September 7, 2017 the case was referred from the referee to the Water Judge in Division 4. The Division 4 Water Judge will hold a trial setting conference on November 29, 2017. It is possible that a trial date will be set in the relatively near time frame.

This matter is discussed in the Confidential Report. We request that the Board discuss this matter in executive session.

E. Application for Finding of Reasonable Diligence of Colorado Springs Utilities, Case No. 15CW3019, Water Division 5.

Update only.

Settlement negotiations in this case have picked-up speed in recent months. We continue to work on the same West Slope settlement goals that we previously have discussed with the Board but we have renewed hope that a path forward exists for a positive resolution for both sides (Colorado Springs and the West Slope objectors).

This case is discussed in the Confidential Report. The Board may wish to discuss it in executive session if time permits.

F. Water Administrative Matters.

This matter is discussed in the Confidential Report.

III. COLORADO RIVER COMPACT, INTERSTATE, AND INTERNATIONAL NEGOTIATION MATTERS.

Eric Kuhn's confidential negotiations memo (included with your Board material) contains a discussion on interstate and compact matters.

The Board may wish to discuss any sensitive negotiation items related to these and other compact and interstate matters in executive session.

Attachments:

- A. Case No. 17-cv-02316, USDC Colorado, Complaint for Declaratory Relief, dated 9/25/2017
- B. Case No. 17CW3176, Water Division 5, Application for Amendment and Determination of Decrees . . . and for Determination regarding the Colorado River Connectivity Channel & Stipulation for Entry of Decree between Applicants Municipal Subdistrict, Northern Colorado Water Conservancy District and Colorado River Water Conservation District, dated 9/29/2017

ATTACHMENT A
JOINT QUARTERLY MEETING
GENERAL AND ENTERPRISE
OCTOBER 2017

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

THE COLORADO RIVER
ECOSYSTEM,

a/n/f

DEEP GREEN RESISTANCE, THE
SOUTHWEST COALITION,
DEANNA MEYER, JENNIFER
MURNAN, FRED GIBSON, SUSAN
HYATT, WILL FALK.

Plaintiff,

vs.

STATE OF COLORADO

Defendant.

Case No.: [Number]

**COMPLAINT FOR
DECLARATORY RELIEF**

1 **I. INTRODUCTION**

2
3 Our system of law has failed to stop the degradation of the natural environment, and
4 consequently, has failed to protect the natural and human communities which depend on it for
5 their survival and livelihood. Environmental law has failed to protect the natural environment
6 because it accepts the status of nature and ecosystems as property, while merely regulating the
7 rate at which the natural environment is exploited. Its failure can be seen from the worsening of
8 climate change, the continued pollution of ground and surfacewater, and the decline of every
9 major ecosystem on the continent.
10

11 The Colorado River is one such ecosystem. Climate change is worsening Colorado River
12 droughts, many of its tributaries have receded, and the River has been prevented from making its
13 way to the sea. The Colorado River’s continuing existence, let alone its ability to continue to
14 provide sustenance for both human and natural communities, is now at issue.
15

16 Faced with similar threats to important ecosystems, courts and legislatures around the
17 globe have begun to create a new kind of environmental law, one which recognizes that
18 ecosystems themselves possess certain rights, and which allows communities to sue on their
19 behalf for damages caused to the ecosystem. By recognizing standing on behalf of the ecosystem
20 itself, injuries caused to the ecosystem are directly recoverable, rather than being dependent
21 solely on harms caused to the users of those ecosystems. Much in the same way that African-
22 Americans and women became “visible” to courts in the 1800’s, courts and legislatures now are
23 making ecosystems visible to the institutions of government.
24
25

26 Through this action, the Plaintiffs are asking this Court to recognize and declare that the
27 Colorado River is capable of possessing rights similar to a “person,” and that as part of that
28 declaration, that the Colorado River has certain rights to exist, flourish, regenerate, and naturally

1 evolve. In the absence of such a finding, Plaintiffs contend that existing environmental laws will
2 continue to fail to protect the Colorado River, and thus, continue to fail to protect the human and
3 natural communities that are dependent on the River.
4

5
6 **II. PARTIES**

7 **A. THE COLORADO RIVER**

- 8
- 9 1. No ecosystem is more responsible for the facilitation of life - human and non-human - in
10 the arid Southwest than the Colorado River.
 - 11 2. Human language lacks the complexity to adequately describe the Colorado River
12 Ecosystem. Any attempt to define it or account for the sheer amount of life made possible
13 by it will necessarily be arbitrary
14
 - 15 3. Nevertheless, we are asked to bring an accurate description of the Colorado River from
16 the vastness of the real, physical world into the small confines of a courtroom. We shall
17 start with this: The Colorado River Ecosystem is best understood as a complex collection
18 of relationships.
 - 19 4. These relationships are nearly infinite. The most fundamental include the attraction
20 between hydrogen and oxygen; the liquid, ice, and gas that water and heat create
21 together; the irresistible paths fashioned by the interplay of mountain and gravity; and the
22 climate born from the intercourse of the Sun's energy and Earth's atmospheric gasses.
23
 - 24 5. If we begin with water, we see - high in the sky - water dancing as vapor on wind
25 currents. When the dance brings enough water together, clouds form. As clouds pass over
26 the high Colorado Rockies, water freezes and falls as snow. Over the course of winter,
27 clouds contribute their stores of water and snowpack builds. In Spring, snowmelt forms
28

1 creeks and streams who are guided by mountains through canyons and valleys. Rare
2 summer rains do what they can to join the snowmelt.

3 6. Beneath the Earth’s surface, springs pull groundwaters to form their own creeks and
4 streams. Snowmelt, rain, and spring waters intermingle with gravity. And, gravity gathers
5 these waters as they tumble down stone faces, run across tree roots, and seep into sand
6 and soil. The snowmelt, spring water, and gravity build in power as they mix. They
7 soften mountainsides, carve through red rock, and brave the deserts who seek to exhaust
8 them.
9

10 7. The moving waters that create the Colorado River and sustain countless species of flora
11 and fauna cover much more expansive distances than the space between riverbanks
12 commonly understood as the “Colorado River.”
13

14 8. The traditional conception of the Colorado River locates the river’s headwaters in La
15 Poudre Pass, in Colorado’s Rocky Mountains. Before the construction of dams and large-
16 scale diversion, the Colorado flowed 1,450 miles into the Pacific Ocean near Sonora,
17 Mexico. Since the completion of the Glen Canyon Dam in 1963, the Colorado has rarely
18 connected with the sea.
19

20 9. The Colorado River Drainage Basin is the seventh largest drainage basin in North
21 America, covering 246,000 square miles. Ninety-seven percent (97%) of the drainage
22 basin is in the United States. Twenty-five significant tributary rivers join the Colorado
23 River, including the Green, Gila, San Juan, Little Colorado, Dolores, Gunnison, and
24 Virgin Rivers.
25

26 10. Fourteen native fish lived in the Colorado River when European settlers arrived in the
27 West, including four fish that are now endangered: the humpback chub, Colorado
28

1 pikeminnow, razorback sucker, and bonytail. Only six known humpback chub
2 populations persist. Colorado pikenminnow are no longer found below the Glen Canyon
3 Dam. Wild populations of bonytail no longer exist. Endangered fish species with
4 restricted ranges in Colorado tributaries include the Little Colorado spinedace, Kendall
5 Warm Springs dace, desert pupfish, and springfish.
6

7 11. Springs that feed the Colorado, and the Colorado's tributaries, support several species of
8 very rare snails including the Overton assiminea, Grand Wash springsnail, Pahranaagat
9 pebblesnail, Moapa pebblesnail, and Hot Creek pebblesnail.
10

11 12. The Colorado River's natural communities include a diversity of forest and flora
12 including dense spruce-fir, pinyon-juniper, and mixed broadleaf and cottonwood forests;
13 moist mountain grasslands where tufted hair grass, Thurber's fescue, and blue joint grass
14 flourish; prolific willow carrs; desert scrublands; and sparse saltbush-greasewood basins.
15

16 13. The Colorado River's riparian communities are among the most important habitats for
17 winged creatures in the Western United States. One hundred and thirty-nine (139)
18 confirmed butterfly species can be found in Rocky Mountain National Park, alone.
19 Iconic, and endangered or threatened, birds like the bald eagle, greater sage grouse,
20 Gunnison sage grouse, peregrine falcon, yellow-billed cuckoo, summer tanager, and
21 southwestern willow flycatcher make their homes in the Colorado River watershed.
22

23 14. The scarcity of water in the deserts of the Southwest make the Colorado River Watershed
24 vital for several amphibian species including the Colorado River toad, lowland leopard
25 frog, and the relict leopard frog. Development and water diversion endanger these rare
26 desert amphibians.
27
28

1 15. Many of the West’s most recognizable mammals depend on the Colorado River
2 Watershed for water and to sustain adequate food sources. Gray wolves, grizzly bear,
3 black bear, mountain lions, coyotes, and lynx walk the banks of the Colorado. Elk, mule
4 deer, and bighorn sheep live in the Basin’s forests. Beavers, river otters, and muskrats
5 live directly in the River’s flow as well as in streams and creeks throughout the Colorado
6 River Basin.
7

8 16. The Colorado River provides water for close to 40 million people and irrigates nearly 4
9 million acres of American and Mexican cropland.
10

11 17. In 1922, the Colorado River Compact allocated the River’s water between 7 states
12 (Colorado, New Mexico, Utah, Wyoming, Nevada, Arizona, and California). The
13 Compact set the River’s annual average at 15 million acre feet (“maf”) and used this
14 number to distribute water among the states. Between 1914-1923, the River’s annual
15 average was 18.8 million acre feet which is the wettest recorded ten-year period of the
16 last 100 years. The River now averages 14.7 million acre feet annually.
17

18 18. Thirty-four (34) Native American reservations exist within the Colorado River Basin,
19 many of whom seek new water rights not contemplated in the Colorado River Compact.
20 In 1944, the International Boundary Water Commission facilitated a treaty between the
21 United States and Mexico which granted Mexico 1.5 million maf annually.
22

23 19. Agriculture uses the vast majority of the Colorado’s water. In 2012, 78% of the
24 Colorado’s water was used for agriculture alone. Forty-five percent (45%) of the water is
25 diverted from the Colorado River Basin which spells disaster for Basin ecosystems.
26 Major cities that rely on these trans-Basin diversions include Denver, Los Angeles, and
27 Salt Lake City.
28

1 **B. DEEP GREEN RESISTANCE AND DEEP GREEN RESISTANCE MEMBERS AS**
2 **NEXT FRIENDS**

3 20. Members of DEEP GREEN RESISTANCE (“DGR”) serve as “next friends,” for, and
4 guardians of, the Colorado River Ecosystem. DGR is a worldwide, membership-based,
5 grassroots organization rooted in the truth that all life is sustained by soil, air, water, and
6 countless natural communities of living creatures. Because ecosystems sustain life, DGR
7 recognizes that the needs of ecosystems are primary and DGR is committed to protecting
8 vulnerable ecosystems across the planet. DGR, as shown infra, has exemplified a long-
9 standing history of responsible care for the Colorado River Basin.
10

11 21. Next Friend and Guardian DEANNA MYER is a member of DGR and DGR’s Southwest
12 Coalition and resides at 1680 M Hwy 67 Sedalia, CO 80135.
13

14 22. Next Friend and Guardian JENNIFER MURNAN is a member of DGR and DGR’s
15 Southwest Coalition and resides at 5125 Ute Hwy Longmont, CO 80503.
16

17 23. Next Friend and Guardian FRED GIBSON is a member of DGR and DGR’s Southwest
18 Coalition and resides at 6830 Dream Weaver Dr Colorado Springs, CO 80923
19

20 24. Next Friend and Guardian SUSAN HYATT is a member of DGR and DGR’s Southwest
21 Coalition and resides at 457 Walker St Moab, UT 84532.
22

23 25. Next Friend and Guardian WILL FALK is a member of DGR and DGR’s Southwest
24 Coalition and resides at 371 N 200 E Heber City, Utah 84032.
25

26 26. DEEP GREEN RESISTANCE (DGR) is a social and environmental justice organization
27 formed in 2011. Over the past 6 years, DGR has grown to include members across the
28 nation and worldwide.

27 27. DGR is committed to the principle that the soil, the air, the water, the climate, and the
28 food we eat, are created by complex communities of living creatures like those creating

1 the Colorado River. The needs of these living communities, worldwide, are primary.

2 Similarly, the needs of the Colorado River, in the American Southwest, are primary.

3 Local, state, and national jurisprudence must emerge from a humble relationship with the
4 living communities which give us life.
5

6 28. DGR engages in a diversity of tactics to protect ecosystems. This includes building public
7 awareness of the interconnectedness of life, the creation and distribution of ecological
8 and political analysis in media worldwide, fundraising to support grassroots campaigns,
9 organizing conferences to bring the most talented minds of the environmental and social
10 justice movements together to discuss strategy, developing activist training programs, and
11 conducting non-violent, civil disobedience to confront ecological violence.
12

13 29. Aside from legal definitions, DGR conducts itself as an organization by: (1) publishing
14 by-laws which govern its activities; (2) operating a process for gaining membership
15 which includes a written application and interview; and by (3) conducting an active
16 membership maintenance program where members must either pay monthly dues or file a
17 quarterly written proposal detailing the work the member plans on doing within DGR's
18 mission.
19

20 30. SOUTHWEST COALITION is a subcommittee of Deep Green Resistance specifically
21 focused on preserving the Colorado River and the Colorado River Ecosystem.
22

23 31. A number of DGR members live in the Colorado River's drainage basin, or live in
24 communities who depend on the Colorado. These include members who live in Moab,
25 UT; Heber City, UT; Boulder, CO; Colorado Springs, CO; and Sedalia, CO. These
26 members form the majority of DGR's SOUTHWEST COALITION.
27
28

1 32. Relevant SOUTHWEST COALITION Members are listed individually herein as “next
2 friends” of the natural communities creating the Colorado River: Deanna Meyer, Jennifer
3 Murnan, Fred Gibson, Michael Carter, Susan Hyatt, and Will Falk.

4
5 33. In 2015, DGR SOUTHWEST COALITION officially committed to protecting water as
6 its primary focus in a public document titled, “Water: Southwest Coalition Statement of
7 Commitment and Call for Allies.” The health of the Colorado River was prioritized in
8 this document.

9
10 34. The document states, “More than any other area of North America, the Southwest faces
11 water shortages just as demands for water increase...Deep Green Resistance chapters
12 across the Southwest recognize the imminent catastrophe. We view the protection of
13 ground and surface water as critically important. We declare water preservation and
14 justice as our primary focus...”

15
16 35. In 2013, prior to DGR SOUTHWEST COALITION’s publication of this document, DGR
17 formed an alliance with members of the Ely Shoshone Tribe and the Great Basin Water
18 Network to oppose the Southern Nevada Water Authority’s (SNWA) Groundwater
19 Development Project. The Project, which has still failed to gain the necessary permits,
20 would pump 27 billion gallons of groundwater from southeastern Nevada and transport it
21 by pipeline to service Las Vegas. A significant portion of this water naturally flows into
22 the Colorado River through the White and Moapa Rivers. Stopping SNWA protects
23 billions of gallons of the lower Colorado’s water.

24
25 36. In opposition to the SNWA Groundwater Development Project, DGR members organize
26 an annual Sacred Water Tour to show the public the natural and human communities that
27 will be destroyed if the Project is approved. Included on this tour are several areas within
28

1 the Colorado River Drainage Basin. The 2017 Sacred Water Tour was the event's 4th
2 edition. Additionally, DGR members have engaged in a public awareness campaign
3 about the Project with news and opinion articles in local and national media platforms;
4 and through radio interviews and podcasts, videos, and photo journals.
5

6 37. In 2015, in conjunction with DGR SOUTHWEST COALITION's Water Statement,
7 several DGR members formed the Pinyon-Juniper Alliance to oppose the Bureau of Land
8 Management's and U.S. Forest Service's "pinyon-juniper treatment projects." These
9 projects, happening across the Colorado River Basin, clearcut millions of acres of old-
10 growth pinyon-juniper forests to open rangeland for livestock grazing and to clear the
11 way for mine expansions. Pinyon-juniper deforestation contributes to desertification and
12 causes precious high desert topsoil and surface pollution to wash into the Colorado River.
13

14 38. The Pinyon-Juniper Alliance circulated a petition asking BLM to place a moratorium on
15 pinyon-juniper treatment projects while conducting additional research into how, among
16 other things, deforestation affected the Colorado River. The petition gained over 61,787
17 signatures. DGR members are also involved in organizing experts in the scientific and
18 ecologic communities to speak out against pinyon-juniper deforestation. DGR members
19 wrote a widely-shared essay series about pinyon-juniper deforestation, made videos, and
20 gave radio interviews on the topic.
21

22 39. DGR SOUTHWEST COALITION recently approved a plan to build a water protection
23 and climate change action campaign in Northeastern Utah. The plan targets oil and
24 natural gas hydraulic fracturing (fracking) processes around the Duchesne River which is
25 a major tributary of the Colorado River. Fracking is known to pollute ground and surface
26 water sources. The plan also targets the yellow crude oil refining process in Northeastern
27
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1 Utah which involves heated oil tanker trucks carrying volatile, toxic oil along highways
2 running near creeks, streams, and the Duchesne River, which all empty into the Colorado
3 River. An educational component of the plan seeks to illustrate how climate change
4 threatens the snowpack that feeds the Colorado River and how fracking produces toxic
5 runoff that may find its way to the River.
6

7 40. Defendant John Hickenlooper is the Governor of the State of Colorado, and is being sued
8 in his official capacity as the executive of the State. The Governor's Office is located at
9 136 State Capitol Building, Denver, Colorado 80203.
10

11 **III. JURISDICTION and VENUE**
12

13 30. Diversity is extant between Plaintiff and Defendant so that jurisdiction is proper pursuant
14 to 28 U.S.C. § 1332.
15

16 31. This Court is vested with original jurisdiction over these federal claims by operation of
17 28 U.S.C. §§ 1331 and 1343.
18

19 32. This Court is vested with authority to grant the requested declaratory judgment by
20 operation of 28 U.S.C. §§ 2201 and 2202, and pursuant to Federal Rule of Civil
21 Procedure 57.

22 33. Venue is proper in the United States District Court for the District of Colorado under 28
23 U.S.C. § 1391(b), in that the events giving rise to the claim occurred within the district.
24

25 **IV. BACKGROUND OF CLAIMS**
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28

1 35. Life is created by complex natural communities of living creatures in ecosystems. Water,
2 air, soil, climate, and the food we eat depend on natural communities. The needs of these
3 communities are primary; individual morality, institutional morality, and Law must
4 emerge from a humble relationship with these natural communities. True sustainability is
5 impossible without such a relationship.
6

7 36. For the vast majority of human history, humans lived in humble relationships with natural
8 communities. We developed traditional cultures that were rooted in the radical
9 interconnectedness of all living beings. Along with other teachings, these cultures
10 insisted upon the inherent worth of the natural communities who give us life.
11

12 37. The dominance of a culture that defines Nature as property enables its destruction.
13 Meanwhile, the planet is on the verge of total collapse. To avert collapse, the destruction
14 must stop. For the destruction to stop, institutions within the dominant culture must
15 recognize the inherent worth of the natural communities who give us life. If American
16 courts do not recognize the inherent worth of natural communities, the dominant culture
17 will not change, and collapse will only intensify. American courts must recognize the
18 legally enforceable rights of ecosystems and nature for those reasons.
19

20 38. The concept that nature should have the right to sue for its own protection has been
21 recognized by members of the United States Supreme Court. In his dissenting opinion in
22 the landmark environmental law case, *Sierra Club v. Morton*, 405 U.S. 727 (1972),
23 Justice Douglas argued that "inanimate objects" should have standing to sue in court:
24

25 Contemporary public concern for protecting nature's ecological equilibrium
26 should lead to the conferral of standing upon environmental objects to sue for
27 their own preservation.
28

1 39. As a practical matter, the difficulty in recognizing this equitable concept (of conferring
2 standing and rights on Natural entities) arises from the fact that nature--which any of us
3 who have spent a day in the Rockies or along The Colorado would never describe as
4 "inanimate"—does not have the ability to hire a law firm, actively participate in its
5 representation or testify in Court. (One shudders at the idea of nature testifying against
6 us. That said, in many real ways, it *is* testifying against us right now.)
7

8 40. But as Justice Douglas stated in his dissent, inanimate objects who do not have the
9 ability to testify themselves are commonly parties in litigation. A ship has a legal
10 personality, a fiction found useful for maritime purposes. The corporation sole - a
11 creature of ecclesiastical law – has been deemed to be an acceptable adversary and large
12 fortunes ride on its cases. The ordinary corporation has been repeatedly recognized as a
13 "person" for purposes of constitutional protection and enforcement.
14

15 41. Corporate rights provide an instructive analogy. The Colorado is 60 to 70 million years
16 old and has enabled, sustained, and *allowed* for human life for as long as human life has
17 been extant in the Western United States, yet the Colorado has no rights or standing
18 whatsoever to defend itself and ensure its existence; while a corporation that can be
19 perfected in fifteen minutes with a credit card can own property, issue stock, open a bank
20 account, sue or defend in litigation, form and bind contracts, claim Fourth Amendment
21 guarantees, due process, equal protection, hold religious beliefs and perhaps most
22 famously invest unlimited amounts of money in support of its favorite political candidate.
23
24 See *Citizens United v. Federal Election Commission*, 130 S. Ct. 876, 903 (2010). See
25 also, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2759 (2014).
26
27
28

1 42. The American system of law is replete with doctrines, examples and solutions with
2 regard to when a party cannot bring suit itself and requires another to stand in its stead,
3 including *guardian ad litem*s, *parens patriae*, executors who can bring suits on behalf of
4 an estate, and trustees. The fiduciary relationship in which one party can litigate in the
5 best of interests of another party has long been recognized by U.S. courts.
6

7 43. One does not have to wax poetic to reasonably assert that a natural entity that has existed
8 for millions of years as a complex ecosystem, and which created the Grand Canyon
9 through its natural flow has, in many ways, respectfully, more volition or will than some
10 of the dependent persons and entities that are currently represented by *guardian ad litem*s
11 and executors in our courts of law.¹
12

13 44. For that reason and others, courts around the world have come to legally recognize that
14 natural entities on which life depends have the right to exist, which in our law is cognized
15 as the standing, and the right, to bring actions to be heard before our courts.
16

17 45. On July 27, 2014, Te Urewera, an 821-square mile area of New Zealand, was designated
18 as a legal entity with “[A]ll the rights, powers, duties and liabilities of a legal person.”
19 Section 11(1), Te Urewera Act of 2014.
20

21 46. Te Urewera can now bring causes of action on its own behalf without having to prove
22 direct injury to human beings.
23

24 ¹ In his 1797 Transaction of the American Philosophical Society, Thomas Jefferson, the chief framer of our
25 constitutional rights, stated:

26 The movements of nature are in a never ending circle. The animal species which has once been put into a
27 train of motion, is still probably moving in that train. For if one link in nature's chain might be lost, another
28 and another might be lost, till this whole system of things should vanish by piece-meal; a conclusion not
warranted by the local disappearance of one or two species of animals, and opposed by the thousands and
thousands of instances of the renovating power constantly exercised by nature for the reproduction of all
her subjects, animal, vegetable, and mineral.

1 47. In 2008, the country of Ecuador amended its national constitution to establish the rights
2 of ecosystems within the country to exist, regenerate, evolve, and be restored. Those
3 constitutional provisions have triggered several enforcement cases protecting the rights of
4 rivers and other ecosystems in the country.
5

6 48. In November of 2016, Colombia’s Constitutional Court found that
7 the Atrato River, including its tributaries and watershed, is “an entity subject to rights to
8 protection, conservation, maintenance and restoration.” In addition, the Court decreed
9 that the Colombian State shall “exercise legal guardianship and representation of the
10 rights of the river in conjunction with the ethnic communities that inhabit the Atrato river
11 basin.” In its ruling, the court explained
12

13 *that human populations are those that are interdependent on the natural world –*
14 *not the other way around- and that they must assume the consequences of their*
15 *actions and omissions in relation to nature. It’s about understanding this new*
16 *socio-political reality with the aim of achieving a respectful transformation with*
17 *the natural world and its environment, just as has happened before with civil and*
18 *political rights...economic, social and cultural rights...and environmental*
19 *rights...Now is the time to start taking the first steps towards effectively protecting*
20 *the planet and its resources before it is too late or the damage is irreversible, not*
21 *only for future generations but for the entire human species.*

22 Const. Ct. of Colombia, Judgment T-622 DE 2016.

23 49. On March 20, 2017, the High Court of Uttarakhand at Nainital, in the State of
24 Uttarakhand in northern India, issued a ruling declaring that the Ganges and Yamuna
25 Rivers are “legal persons/living persons.” This comes after numerous rulings by the
26 court which found that while the rivers are “central to the existence to half of Indian
27 population and their health and well being,” they are severely polluted, with their very
28 existence in question. The court declared that throughout India’s history, it has been
necessary to declare that certain “entities, living inanimate, objects or things” be declared

1 as “juristic person[s].” In the case of the Ganga and Yamuna, the court explained that the
2 time has come to recognize them as legal persons “in order to preserve and conserve” the
3 rivers. (Writ Petition (PIL) No.126 of 2014).
4

5 50. Over three dozen municipalities within the United States, including the City of
6 Pittsburgh, have adopted municipal laws recognizing the legally enforceable rights of
7 ecosystems and nature, and the authority of municipal residents to bring suits in the name
8 of individual ecosystems.
9

10 51. The Court will rightly concern itself with the question of judicial efficiency with regard
11 to the possibility, which opposing party will almost certainly present, of an unwieldy
12 amount of law suits suddenly being brought on behalf of the Colorado River and the
13 Colorado River Ecosystem by individuals who are well-intentioned and rightly
14 concerned, but who lack the direct relationship and stewardship of the Colorado.
15

16 52. This concern is easily addressed by requiring that the filer of the suit evidence a
17 relationship to The Colorado, so that the filer is provably capable of representing its best
18 interests. The same operation of law occurs in class action certifications with regard to
19 certifying representative plaintiffs and class counsel as well as in any adjudication in
20 which a person is appointed *guardian ad litem*.²
21

22 **V. COUNTS IN THE NATURE OF DECLARATORY JUDGMENT**

23 **COUNT ONE**

24 **DECLARATORY JUDGMENT**
25
26

27 ² For purposes of judicial economy, Fed. R. Civ. P 53 empowers the Court to appoint a special master. In cases
28 where identifiable natural entities such as the Colorado are being threatened or facing extinction, an R.53
appointment could be in place to screen claims brought in the name of the Colorado River Ecosystem.

1 53. All prior paragraphs of this Complaint are incorporated herein.

2 54. The Colorado River Ecosystem is essential to life – human and non-human – in the
3 American Southwest.

4 55. Threats to the Colorado River Ecosystem are threats to life.

5 56. Because threats to the Colorado River Ecosystem are threats to life, the Colorado River
6 Ecosystem must possess the ability to protect itself from threats to its survival.

7 57. The ability to protect itself requires that the Colorado River Ecosystem have access to the
8 courts, and that the courts recognize that the Colorado River Ecosystem possesses rights.

9 58. Recognition of the capacity of Colorado River Ecosystem to possess rights requires a
10 recognition that the Colorado River Ecosystem is a “person” for purposes of asserting
11 those rights.

12 59. Recognition as a “person” requires that courts find that “next friends,” or guardians, may
13 defend and enforce those rights on behalf of the Colorado River Ecosystem.

14 60. Therefore, the “next friend” Plaintiffs, request that this Court declare that the Colorado
15 River Ecosystem is a “person” capable of possessing rights and securing those rights
16 through enforcement and defense of those rights, and that the Plaintiffs may serve as
17 “next friends” to seek that relief.

18
19
20
21 **COUNT TWO: DECLARATORY JUDGMENT RELIEF:**
22 **THE COLORADO RIVER ECOSYSTEM’S RIGHTS**

23 61. All prior paragraphs of this Complaint are incorporated herein.

24 62. As a “person” pursuant to the law, the Colorado River Ecosystem must possess certain
25 specific rights to protect and defend itself.
26
27
28

1 63. Basic rights necessary for the protection of the Colorado River Ecosystem inherently
2 include the Colorado River Ecosystem’s right to exist, the right to flourish, the right to
3 regenerate, the right to be restored, and the right to naturally evolve.

4 64. Lacking those basic rights, the Colorado River Ecosystem’s status as a “person” would be
5 meaningless, because it would be unable to secure and protect those basic rights, and
6 thus, would be unable to protect its life and existence.

7 65. Therefore, the Plaintiffs ask this Court to declare that the Colorado River Ecosystem has
8 a right to exist, flourish, regenerate, be restored, and naturally evolve.
9

10
11 **COUNT THREE: DECLARATORY JUDGMENT:**
12 **STATE ACTIONS VIOLATING ECOSYSTEM RIGHTS**

13 66. All prior paragraphs of this Complaint are incorporated herein.

14 67. The Colorado River Ecosystem possesses the right to exist, flourish, regenerate, be
15 restored, and naturally evolve.

16 68. The rights of the Colorado River Ecosystem establish duties on behalf of the State of
17 Colorado, and all other governments, to respect those rights.

18 69. Actions taken by Defendant State of Colorado, to approve permits and issue other
19 regulatory approvals for certain actions regarding the Colorado River Ecosystem, may
20 violate those rights.
21

22 70. In August 2015, the portal of the Gold King Mine was breached, releasing an estimated
23 three million gallons of mine wastewater and 880,000 pounds of heavy metals down the
24 Animas and San Juan rivers (two of the Colorado’s tributaries). This waste flowed into
25 the Colorado River and injured downriver communities. The spill is part of decades of
26 toxic drainage from mines at the headwaters of the Animas River near Silverton, Co.
27
28

1 71. Before the spill, the State of Colorado and Sunnyside Gold Corporation reached a
2 decision to shut down a water treatment plant in favor of placing bulkheads at the
3 entrance of Sunnyside’s drainage point, the American Tunnel. Most researchers familiar
4 with the Animas watershed believe the bulkheads caused the mine pool of the Sunnyside
5 Mine to back up and cause other mines including the Gold King to discharge acidic
6 water.
7

8 72. Recently, the United States Supreme Court denied the State of New Mexico’s motion for
9 leave to file a bill of complaint against the State of Colorado for harms caused. The Court
10 did not write an opinion with the denial. EPA decided to list the Upper Animas Mining
11 District on the Superfund National Priorities list. Apparently, the Court believes that
12 EPA’s decision to list the District on the NPL completely resolves the harms that EPA,
13 Colorado, and others wrought on the Animas River, the Colorado River, and downstream.
14

15 73. The underlying policy problem here is the American legal system’s insistence that the
16 EPA provides adequate protections, and is the only proper mechanism for gaining
17 recourse for injuries to ecosystems.
18

19 74. Over-Allotment: One reason the Colorado River rarely reaches the sea is the compacts
20 and laws that regulate how much water can be diverted from the river allow humans to
21 take more water from the river than physically exists. The State of Colorado takes more
22 water from the river than any of the other jurisdictions, save California.
23

24 75. The State of Colorado is party to the 1922 Colorado River Compact, the 1948 Upper
25 Colorado River Compact, and a related set of laws, court decrees and an international
26 treaty collectively known as the “Law of the River.” The parties to the 1922 compact
27 assumed that the river’s flow would remain at a reliable 17 million acre-feet of water per
28

1 year. But, hydrologists now know this 17 million acre-feet per year standard represented
2 an unusually high flow and was a mistake. Streamflow records showed that the Colorado
3 River's flow was only 9 million acre-feet in 1902, for example. From 2000-2016, the
4 River's flow only averaged 12.4 million acre-feet per year.

5
6 76. Regardless, the 1922 Compact was enacted over calls for time-limited allocations that
7 would allow for the parties to reassess allotments. The Compact's framers divided, in
8 perpetuity, 15 million-acre feet. So, for most of the last 16 years, the States are legally
9 allowed to use more of the Colorado River's water than actually exists.

10
11 77. This 15 million-acre feet was further divided with 7.5 million acre-feet allocated to the
12 lower basin states (Arizona, California, and Nevada) and 7.5 million acre-feet allocated
13 to the upper basin states (Colorado, New Mexico, Utah, and Wyoming).

14
15 78. In the negotiations, Colorado and the other upper basin states succeeded in barring the
16 application of the Doctrine of Prior Appropriation across states lines to allocation of
17 Colorado River water. The Doctrine of Prior Appropriation is commonly known as "first
18 in time, first in right." In 1948, the Upper Colorado Basin Compact was enacted between
19 Colorado, New Mexico, Utah Wyoming, and Arizona (a small part of Arizona lies in the
20 upper basin) with Colorado receiving most of the Upper Basin's allotted 7.5 million acre-
21 feet. Colorado was allowed 51.75 percent, Utah 23 percent, Wyoming 14 percent, and
22 New Mexico 11.25 percent. The small part of Arizona received 50,000 acre-feet.

23
24 79. Dams: Another reason the Colorado River rarely reaches the sea is the presence of dams
25 that block the river's flow. The State of Colorado operates dams on the Colorado River
26 including the Price-Stubb Dam, Grand Valley Diversion Dam, Windy Gap Dam, Granby
27 Dam, and Shadow Mountain Dam. The State also operates dams on major tributaries of
28

1 the Colorado River including the Blue Mesa Dam and the Morrow Point Dam on the
2 Gunnison River, the Dillon Dam and Green Mountain Dam on the Blue River, and the
3 McPhee Dam on the Dolores River.

4
5 80. The State of Colorado has constructed these dams in an effort to seize a larger share of
6 dwindling water supplies before that water flows downstream.

7 81. In addition to choking up the Colorado River, dams are disasters for downstream
8 ecosystems and endemic species. Dams are leading cause of the population collapses of
9 the Colorado River's four species of endangered fish, the humpback chub, bonytail chub,
10 Colorado pikeminnow, and razorback sucker. Farther downstream, the world's most rare
11 marine mammal, the vaquita porpoise who calls the Gulf of California home, is
12 dangerously close to extinction because the Colorado River rarely reaches the Gulf of
13 California.
14

15 82. The Plaintiffs are asking this Court to declare these and other actions taken by the State
16 of Colorado, and certain inaction by the State of Colorado, capable of violating the rights
17 of the Colorado River Ecosystem.
18

19
20 **VI. REQUEST FOR HEARING**

21
22
23 83. Plaintiffs request that this Honorable Court, pursuant to FRCP 65, grant an evidentiary
24 hearing as the issues herein are of importance to the public interest.
25

26 **VII. NOTICE OF NO RELATED CASES PURSUANT TO D.C.COLO.L**
27 **Civ R 3.2.**
28

1 84. Pursuant to D.C.COLO.L Civ R 3.2, there are no related or similar cases before any
2 courts. This is a matter of first impression.

3
4 **VIII. DECLARATORY RELIEF SOUGHT**

5
6 85. Plaintiff the Colorado River Ecosystem seeks a declaration from this Court that:

- 7 a. The Colorado River Ecosystem is a “person” capable of possessing rights;
8 b. The Colorado River Ecosystem possesses the rights to exist, flourish, regenerate, be
9 restored, and naturally evolve;
10 c. That DGR may serve as guardians, or “next friends,” for the Colorado River
11 Ecosystem; and
12 d. That certain activities permitted by, or carried out by, the State of Colorado, may
13 violate the rights of the natural communities creating the Colorado River, and that the
14 Plaintiffs may proceed to file for injunctive relief to enjoin the State of Colorado from
15 taking action related to those activities, or to force the State of Colorado to take
16 certain actions, as violations of the rights of the Colorado River Ecosystem.
17
18

19
20 Respectfully submitted this the **26th** day of **September** 2017,

21
22
23 s/ Jason Flores-Williams, Esq.
24 *Counsel for Plaintiff*
25 Phone: 303-514-4524
26 Email: Jfw@jfwlaw.net
27 1851 Bassett St.
28 #509
Denver, Colorado 80202

**ATTACHMENT B
JOINT QUARTERLY MEETING
GENERAL AND ENTERPRISE
OCTOBER 2017**

<p>DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601 (970) 928-3065</p>	<p>DATE FILED: September 29, 2017 5:29 PM FILING ID: C72030B12A8E8 CASE NUMBER: 2017CW3176</p>
<p>CONCERNING THE APPLICATION OF MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT, AND COLORADO RIVER WATER CONSERVATION DISTRICT FOR AMENDMENT AND DETERMINATION OF DECREES ENTERED IN CASE NOS. CA1768, W-4001, 80CW108, 85CW135, 88CW169, AND 89W298</p>	<p>▲ COURT USE ONLY ▲</p>
<p>In Grand County, Colorado</p>	<p>Case Number: 17CW _____ (CA1768, W-4001, 80CW108, 85CW135, 88CW169, 88CW170, 88CW171, 89CW298)</p> <p>Div. Courtroom:</p>
<p>Attorneys for Municipal Subdistrict, Northern Colorado Water Conservancy District:</p> <p>Bennett W. Raley, #13429 Peggy E. Montañó, #11075 William Davis Wert, #48722 TROUT RALEY 1120 Lincoln Street, Suite 1600 Denver, CO 80203 Telephone: 303-861-1963 Fax: 303-832-4465 E-mail: braley@troutlaw.com, pmontano@troutlaw.com, dwert@troutlaw.com</p> <p>Attorneys for Colorado River Water Conservation District:</p> <p>Peter C. Fleming, #20805 Jason V. Turner, #35665 P.O. Box 1120 Glenwood Springs, CO 81602 Telephone: 970-945-8522 E-mail: pfleming@crwcd.org, jturner@crwcd.org</p>	
<p>APPLICATION FOR AMENDMENT AND DETERMINATION OF DECREES ENTERED IN CASE NOS. CA 1768, W-4001, 80CW108, 85CW135, 88CW169, AND 89CW298 AND FOR DETERMINATION REGARDING THE COLORADO RIVER CONNECTIVITY CHANNEL</p>	

1. This Application is filed by the Municipal Subdistrict, Northern Colorado Water Conservancy District (“Municipal Subdistrict”), and, with respect to matters pertinent to the relief requested in Paragraphs 2.A and 2.B, the Colorado River Water Conservation District (“River District”) (collectively, “Applicants”) (“Application”). The addresses and contact information for Applicants are as follows:

Municipal Subdistrict, Northern Colorado Water Conservancy District
Attn: Jeff Drager
220 Water Avenue
Berthoud, CO 80513
jdrager@northernwater.org
1-800-369-7246

Colorado River Water Conservation District
Attn: General Counsel
201 Centennial, Suite 200
Glenwood Springs, CO 81601
pfleming@crwcd.org
970-945-8522

The Application relates to the following “Windy Gap Decrees” for the “Windy Gap Water Rights”:

- A. Civil Action No. 1768, District Court, Grand County, State of Colorado, and Case Nos. W-4001 and 80CW108, District Court, Water Division No. 5, entered on October 27, 1980;
- B. Case No. 85CW135, District Court, Water Division No. 5, entered on August 26, 1985;
- C. Case Nos. 88CW169, 88CW170, and 88CW171, District Court, Water Division No. 5, entered on February 6, 1989; and
- D. Case No. 89CW298, District Court, Water Division No. 5, entered on July 19, 1990.
- E. All other decrees entered regarding the above water rights, including, without limitation, decrees entered in Case Nos. 84CW110, 84CW111, 84CW112, 95CW033, 01CW203, and 08CW92.

Descriptions of the Windy Gap Water Rights decreed therein are as follows:

A. Name of structure: Windy Gap Reservoir, a part of the Windy Gap Water System.

- i. Relevant Decrees: CA1768; 84CW112; 88CW169; 95CW33; 01CW203; 08CW92.
- ii. Decreed appropriation date and amounts: June 22, 1967: 445 acre-feet, absolute; 1,101.14 acre-feet conditional.
- iii. Decreed beneficial uses: municipal, irrigation, industrial, and recreational.
- iv. Legal description of reservoir location and initial point of survey: An onstream reservoir located in Sections 25 and 26, T. 2 N., R 77 W. of the 6th P.M. The northwest corner of the dam is located at a point which bears S. 52°00' W. 1660 feet from the N.E. corner of section 26, T. 2 N., R. 77 W. of the 6th P.M. (See Exhibit 1, attached hereto.)
- v. Sources: Colorado River.

B. Name of structure: Windy Gap Pump, Pipeline, and Canal, a part of the Windy Gap Water System.

- i. Relevant Decrees: CA1768; 84CW112; 88CW169; 89CW298.
- ii. Decreed appropriation date and amount: June 22, 1967: 300 cfs, absolute.
- iii. Decreed beneficial uses: municipal, irrigation, industrial, and recreational.
- iv. Legal descriptions of river points of diversion: A point on the north bank of the Colorado River whence the northwest corner of Section 25, T. 2 N., R. 77 W. of the 6th P.M. bears north 17°30' west a distance of 2,380 feet. (See Exhibit 1, attached hereto.)
- v. Sources: Colorado River through the Windy Gap Reservoir.

C. Name of structure: Windy Gap Pump, Pipeline, and Canal, First Enlargement

- i. Relevant Decrees: W-4001; 84CW110; 88CW170; 89CW298.
- ii. Decreed appropriation date and amount: July 9, 1976: 100 cfs, absolute.
- iii. Decreed beneficial uses: municipal, irrigation, industrial, and recreational.
- iv. Legal descriptions of river points of diversion: At a point on the north bank of the Colorado River whence the northwest corner of Section 25, Township 2 North, Range 77 West of the 6th P.M. bears north 17°30' West a distance of 2,380 feet. (See Exhibit 1, attached hereto.)
- v. Sources: Colorado River.

D. Name of structure: Windy Gap Pump, Pipeline, and Canal, Second Enlargement

- i. Relevant Decrees: 80CW108; 84CW111; 88CW171; 89CW298.
- ii. Decreed appropriation date and amount: April 30, 1980: 200 cfs, absolute.
- iii. Decreed beneficial uses: municipal, irrigation, industrial, and recreational.
- iv. Legal descriptions of river points of diversion: At a point on the north bank of the Colorado River whence the northwest corner of Section 25, Township 2 North, Range 77 West of the 6th P.M. bears north 17°30' West a distance of 2,380 feet. (See Exhibit 1, attached hereto.)
- v. Sources: Colorado River.

E. Name of structure: Jasper Reservoir, a part of the Windy Gap Water System.

- i. Relevant Decrees: CA1768; 84CW112; 88CW169; 95CW33; 01CW203; 08CW92.
- ii. Decreed appropriation date and amount: June 22, 1967: 11,292.58 acre-feet, conditional.
- iii. Decreed beneficial uses: municipal, irrigation, industrial, and recreational.
- iv. Legal description of reservoir location and initial point of survey: A proposed onstream reservoir located in Sections 8, 16, 17 and 21, T. 2 N., R. 76 W. of the 6th P.M. The southwest corner of the proposed dam is located at a point which bears S. 55°30' E. 1800 feet, from the N.W. corner of Section 21, T. 2 N., R. 76 W. of the 6th P.M. (See Exhibit 2, attached hereto.)
- v. Sources: Colorado River and Willow Creek, a tributary of the Colorado River.

F. Name of structure: Jasper Pump and Pipeline, a part of the Windy Gap Water System.

- i. Relevant Decrees: CA1768; 84CW112; 88CW169; 95CW33; 01CW203; 08CW92.
- ii. Decreed appropriation date and amount: June 22, 1967: 300 cfs, conditional.
- iii. Decreed beneficial uses: municipal, irrigation, industrial, and recreational.
- iv. Legal descriptions of river points of diversion: A point on the north bank of Willow Creek whence the southeast corner of Section 16, T. 2 N., R. 76 W. of the 6th P.M. bears south 62°30' east a distance of 2,730 feet. (See Exhibit 2, attached hereto.)
- v. Sources: Willow Creek, a tributary to the Colorado River, through Jasper Reservoir.

The common terms in this Application are the same as the definitions for those same terms in the 2012 Windy Gap Firing Project Intergovernmental Agreement (the “2012 WGFP IGA”), a copy of which is attached as Exhibit 3. All exhibits included with this Application may be obtained from the Court or from Applicant Municipal Subdistrict.

2. This Application seeks an amendment of the Windy Gap Decrees and other relief that constitute a “determination of a water right” within the meaning of C.R.S. § 37-92-302(1) and the approval of a plan required by C.R.S. § 37-45-118(1)(b)(II). In particular, this Application requests that:

- A. The Windy Gap Water Rights be amended to incorporate the 2012 WGFP IGA as an integral and non-severable part of the Windy Gap Decrees, pursuant to the 2012 WGFP IGA Articles V.D and VI.I, which is further described in Paragraphs 23 and 24 of this Application;
- B. This Court decree that the “Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project” dated April 30, 1980, and attached hereto as Exhibit 4 (the “1980 Agreement”), as supplemented and amended by the “Supplement to Agreement of April 30, 1980,” dated March 29, 1985, and attached hereto as Exhibit 5 (the “1985 Agreement”), and the 2012 WGFP IGA, constitutes full and complete satisfaction of the requirements of C.R.S. § 37-45-118(1)(b)(II) and *Colorado River Water Conservation District v. Municipal Subdistrict, Northern Colorado Water Conservancy District*, 198 Colo. 352, 610 P.2d 81 (1979), for the “Windy Gap Project” and for the “Windy Gap Firing Project” (“WGFP”) as a component of the Windy Gap Project;
- C. This Court decree that the Windy Gap Water Rights may be exercised and shall be administered in accordance with the Windy Gap Decrees for the Windy Gap Water Rights, including and as further described in this Application, *inter alia*, the operation of the Windy Gap Project and Windy Gap Firing Project as a component of the Windy Gap Project pursuant to the 2012 WGFP IGA and the 2014 Contract between the Municipal Subdistrict and the United States for the Introduction, Storage, Conveyance, Exchange, Substitution and Delivery of Water for Municipal Subdistrict, Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado, 2014 Contract No. 15XX650003, dated December 19, 2014 (the “2014 Contract”), attached hereto as Exhibit 6. Both the 2012 WGFP IGA and the 2014 Contract contain

provisions which address among other things: (i) storage on the east slope of the continental divide of water diverted under the Windy Gap Water Rights; (ii) the exchange of diverted “Windy Gap Project Water” for C-BT Project Water stored in “Chimney Hollow Reservoir” pursuant to “Prepositioning” operations; and (iii) the delivery to and use by the “Middle Park Water Conservancy District” and “Grand County” of water diverted under the Windy Gap Water Rights;

- D. This Court decree that the Colorado River Connectivity Channel, as defined herein, may be operated as is further described in Paragraphs 33.D and 33.F of this Application without the need for a plan for augmentation, and that such operation does not change the Windy Gap Water Rights or the Windy Gap Decrees, modify or change the point of diversion of the Windy Gap Project, or change the location of the Colorado River.

3. The Municipal Subdistrict is a quasi-municipal subdivision of the State of Colorado created pursuant to the provisions of C.R.S. § 37-45-101 et seq.

4. The River District is a political subdivision of and a body corporate under Colorado law, created by the provisions of C.R.S. § 37-46-101 et seq., for the purposes stated therein.

5. The River District and the Municipal Subdistrict were co-applicants in the May 28, 1985, Application for Approval of Modification and Change to Plan of Municipal Subdistrict under C.R.S. § 37-45-118(1)(b)(IV) in Connection with the Windy Gap Project and including in said Modification and Change as an Additional Stipulation Incorporated as an Integral Part of the Windy Gap Decrees, for which a decree was entered on January 28, 1988, in Case No. 85CW135, Water Division No. 5. The River District participates as a co-Applicant in this proceeding for similar purposes as in Case No. 85CW135, specifically for the limited purpose of the relief sought in Paragraphs 2.A and 2.B, above.

6. Grand County is a signatory to the 2012 WGFP IGA, issued a 1041 permit for the operation of the Windy Gap Project and the Windy Gap Firing Project, and is a recipient of the “Grand County Water Apportionment” pursuant to the 2012 WGFP IGA.

7. Middle Park Water Conservancy District (“Middle Park”) is a political subdivision of the State of Colorado, created under the provisions of C.R.S. § 37-45-101, et seq., for the purposes stated therein. Middle Park is a signatory to the 2012 WGFP IGA and is a recipient of the “Middle Park Water Apportionment” pursuant to the 2012 WGFP IGA.

The Windy Gap Project.

8. The Municipal Subdistrict is the owner of the Windy Gap Project, which diverts water from the Colorado River and its tributaries in Grand County, Colorado. The Windy Gap Project may store water in Windy Gap Reservoir or divert water directly from the Colorado River pursuant to the Windy Gap Water Rights. Windy Gap Project Water that has been stored or diverted is conveyed through the Windy Gap Pipeline into Granby Reservoir, a facility of the Colorado-Big Thompson Project (“C-BT Project”). C-BT Project facilities are located in Grand, Summit, Larimer, Weld, and Boulder Counties, Colorado. Portions of the C-BT Project facilities are owned by the United States of America, and ownership of portions of C-BT Project facilities, known as the single purpose water facilities, have been transferred by act of the United States Congress to the Northern Colorado Water Conservancy District (“Northern Water”). C-BT Project facilities have in the past and will in the future be used to store, convey, and deliver, including by substitution and exchange, water diverted pursuant to the Windy Gap Water Rights in accordance with such contracts as required by federal law. The most recent contract between Northern Water, the Municipal Subdistrict, and the United States is the 2014 Contract. The 2014 Contract is attached to this Application for reference purposes.

9. Windy Gap Project Water is water that is diverted pursuant to the Windy Gap Decrees for the Windy Gap Water Rights. Windy Gap Project Water is delivered to “Windy Gap Project Participants” (also referred to in this Application as the “Windy Gap Allottees”) of the Municipal Subdistrict. Windy Gap Allottees may, with the approval of the Board of Directors of the Municipal Subdistrict and subject to the requirements of the Water Conservancy Act, lease Windy Gap Project Water or transfer an Allotment of Windy Gap Project Water. Windy Gap Project Water will also be delivered from Granby Reservoir to Middle Park and to Grand County in accordance with the terms and conditions of the 2012 WGFP IGA and in accordance with the Decree sought by this Application.

10. The purpose of the Windy Gap Project and the WGFP is to meet the existing and future demands for water for municipal, irrigation, industrial and recreational uses within the existing and future boundaries of the Municipal Subdistrict for the purposes and in a manner that satisfies the requirements of section 37-45-118(1)(b)(II) of the Water Conservancy Act and the 2012 WGFP IGA. These demands occur throughout the water year, which requires that Windy Gap Project Water be diverted by the Municipal Subdistrict when the Windy Gap Water Rights are in priority and legally entitled to divert, and then delivered to Windy Gap Project Allottees for beneficial use at times when the Windy Gap Water Rights may or may not be in priority. Windy Gap Project Water is either (i) delivered directly to a Windy Gap Project Allottee, (ii) stored in Granby Reservoir for subsequent delivery to a Windy Gap Project Allottee for

beneficial use or for storage and subsequent beneficial use by a Windy Gap Project Allottee, or (iii) stored in Granby Reservoir for delivery to Middle Park and Grand County to meet the requirements of Section 37-45-118(1)(b)(II) of the Water Conservancy Act and the 2012 WGFP IGA. Windy Gap Project Water is and may in the future be used to generate hydroelectric power prior to and after delivery.

Windy Gap Water Rights.

11. Conditional water rights for the Windy Gap Water Rights were originally confirmed in decrees entered in Case Nos. CA1768, W-4001, and 80CW108. The Decree entered in Case No. 85CW135 amended the decrees entered in CA1768, W-4001, and 80CW108.

12. Diligence decrees for the Windy Gap Water Rights were entered in Case Nos. 84CW110, 84W111, 84CW112, 88CW169, 88CW170, 88CW171, 95CW033, 01CW203, and 08CW92.

13. Decrees to make portions of the Windy Gap Water Rights absolute were entered by this Court on February 6, 1989, in Case No. 88CW169 and on July 19, 1990, in Case No. 89CW298. These Decrees found that Windy Gap Project Water was “subsequently delivered to Windy Gap Participants through the storage, carriage and delivery facilities of the Colorado-Big Thompson Project. . . .” 88CW169 Decree at 6; *see also* 89CW298 Decree at 5–6 (similar language). The C-BT Project includes storage facilities on both the west slope and the east slope of the continental divide.

14. The absolute decrees for the Windy Gap Water Rights include the right to the “reuse and successive uses of the water to extinction.” 88CW169 Decree at 8, ¶ 20. “The Subdistrict has also asserted and exercised its right to use, reuse, and successively use to extinction all water diverted pursuant to the Windy Gap Decrees.” 89CW298 Decree at 6, ¶ 11.k. Accordingly, this Court decreed that “Absolute water rights are hereby awarded to the Subdistrict . . . , including reuse, successive use and use to extinction of such waters . . .” 89CW298 at 6–7, ¶ 14.

15. The absolute decrees for the Windy Gap Water Rights include “municipal” and “industrial” uses, both of which include the generation of hydropower. 88CW169 Decree at 4, 16; 89CW298 Decree at 3, ¶ 10.E. Windy Gap Project Water is used to generate hydroelectric power after diversion through the Adams Tunnel, and may be used to generate hydroelectric power before or after delivery to Middle Park and Grand County in accordance with the 2012 WGFP IGA.

16. The 1980 Agreement and the 1985 Agreement have been incorporated as an integral part of the Windy Gap Water Rights in prior water court proceedings and Decrees. For example, the Decree entered in 89CW298 found, *inter alia*, that:

“The decrees entered in Case Nos. C.A. 1768, W-4001, 80CW108 and 85CW135 approved, and incorporated as an integral part of these decrees, the “Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project”, dated April 30, 1980, as modified in part by the “Supplement to Agreement of April 30, 1980, dated March 29, 1985,” which agreements “constitute[] a full and complete plan which satisfies the requirements of C.R.S. § 37-45-118(1)(b)(IV) for the diversion by the Windy Gap Project under its decrees of up to 65,000 acre feet annually on a ten-year running average with no more than 90,000 acre feet in any given year, as measured through the Alva B. Adams Tunnel of the C-BT Project. In addition, up to 3,000 acre feet of water shall be diverted annually by the Windy Gap Project for Middle Park Water Conservancy District upon the request of that District.” 89CW298 Decree at 4.

C.R.S. § 37-45-118(1)(b)(IV) is now codified as C.R.S. § 37-45-118(1)(b)(II). The limitation on diversions by the Windy Gap Project of an annual average of 65,000 acre feet as calculated on a ten-year running average with no more than 90,000 acre feet in any given year is referred to in this Application as the “WG Volumetric Limits.” Other decrees for the Windy Gap Project include similar language. *See, e.g.*, 88CW169 Decree at 5, 7; 88CW170 Decree at 4; 88CW171 Decree at 4–5.

17. The 1980 Agreement that is incorporated in the Decrees for the Windy Gap Water Rights provides that “Within the limits and conditions contained herein, Subdistrict may build and operate such facilities as needed to accomplish the purposes of this Agreement.” 1980 Agreement at 23. The “limits and conditions contained herein” include, *inter alia*, the WG Volumetric Limits. The 2012 WGFP IGA recognizes the right of the Municipal Subdistrict to construct facilities to include the construction and use of Chimney Hollow Reservoir or “Alternative Reservoirs” provided that the cumulative “active storage capacity” in the combination of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre-feet.

18. The Court record for the adjudication of the Windy Gap Water Rights provides confirmation that, subject to the WG Volumetric Limits contained in the 1980 Agreement and 1985 Agreement and subject to the terms and conditions of a Decree entered in this case that is

consistent with this Application, storage of Windy Gap Project Water on the east slope of the continental divide was and is contemplated by the Windy Gap Water Rights.

19. The WG Volumetric Limits for the Windy Gap Project and the terms and conditions for the operation of the Windy Gap Project contained in the 1980 Agreement, 1985 Agreement, 2012 WGFP IGA, and the 2014 Contract protect existing and future water rights on the west slope of the continental divide by ensuring that there will be no expansion of use under the Windy Gap Decrees.

20. The Windy Gap Decrees for the Windy Gap Water Rights approved the Municipal Subdistrict's plan as satisfying the requirements of C.R.S. § 37-45-118(1)(b)(II) and *Colorado River Water Conservation District v. Municipal Subdistrict, Northern Colorado Water Conservancy District*, 198 Colo. 352,610 P. 2d 81 (1979), for the Windy Gap Project. See 89CW298 Decree at 4, 88CW169 Decree at 5, 88CW170 Decree at 4, 88CW171 Decree at 4-5; 85CW135 Decree at 3. The Municipal Subdistrict's plan confirmed by the decrees cited above, as supplemented and partially amended by the 2012 WGFP IGA, protects present appropriations of water and prospective users of water on the west slope of the continental divide from injury or expanded use of Windy Gap Project Water for the Windy Gap Project as authorized by the Windy Gap Decrees.

The Windy Gap Firming Project.

21. The Municipal Subdistrict plans to construct and operate the Windy Gap Firming Project as a component of the Windy Gap Project. The Windy Gap Firming Project includes the construction of Chimney Hollow Reservoir, which will be located in Sections 4, 5, 8, and 9, T4N, R70W, and Sections 33 and 34, T5N, R70W, 6th P.M., Larimer County, Colorado, or an Alternative Reservoir as described in the 2012 WGFP IGA and 2014 Contract.

22. The 2012 WGFP IGA was entered into by the Municipal Subdistrict, River District, Middle Park, Grand County, and the Northwest Colorado Council of Governments on July 12, 2016. The 2012 WGFP IGA is attached to and incorporated within this Application. The Municipal Subdistrict and the River District subsequently executed a letter confirming their mutual understanding of the means by which water in storage in Granby Reservoir will be calculated.

23. As was the case with the 1985 Agreement, the 2012 WGFP IGA is an Additional Stipulation in this case. The 2012 WGFP IGA provides, *inter alia*, for the construction by the Municipal Subdistrict of up to 90,000 acre feet of cumulative active storage capacity in the

combination of Chimney Hollow Reservoir and any Alternative Reservoirs constructed pursuant to Paragraph I.G of the 2012 WGFP IGA as a part of the Windy Gap Firming Project (the “Authorized WGFP Reservoir Capacity”). The 2012 WGFP IGA also provides, *inter alia*, that “Except to the extent and unless it is terminated, this WGFP IGA shall be incorporated within and be a non-severable part of the Windy Gap Decrees.” 2012 WGFP IGA Paragraph VI.I. The 2012 WGFP IGA includes, *inter alia*, operational constraints regarding the operation of the Windy Gap Project and Windy Gap Firming Project that are intended to protect water uses on the west slope of the continental divide. The Windy Gap Firming Project also includes the exchange of Windy Gap Project Water for C-BT Project Water stored in Chimney Hollow Reservoir pursuant to Prepositioning operations described in the 2012 WGFP IGA and the 2014 Contract.

24. Operation of the Windy Gap Firming Project as a component of the Windy Gap Project will result in Windy Gap Project Water being (i) delivered directly to Windy Gap Project Allottees for beneficial use, (ii) stored in Granby Reservoir for subsequent delivery to Windy Gap Project Allottees, (iii) stored in Granby Reservoir for subsequent delivery to and use by Middle Park pursuant to and for the uses provided in the 1980 Agreement, 1985 Agreement, and 2012 WGFP IGA (“such uses shall include direct use or use by substitution, augmentation, or exchange, including but not limited to, exchange into Wolford Mountain Reservoir or replacement to Denver Water by entities that have Middle Park Contracts, and any other use authorized in a subsequent written agreement between Middle Park, the Municipal Subdistrict, and WGFP Enterprise”), (iv) stored in Granby Reservoir for subsequent delivery to and use by Grand County in the Colorado River or downstream of Grand County pursuant to the 2012 WGFP IGA, (v) delivered directly for storage by Windy Gap Project Allottees in Chimney Hollow Reservoir pursuant to the 2012 WGFP IGA and the 2014 Contract for subsequent release for beneficial use or, subject to the provisions of the Decree sought by this Application, subsequent storage and beneficial use, and/or (vi) stored in Granby Reservoir and delivered for subsequent storage either directly, by exchange, or by substitution by Windy Gap Project Allottees in Chimney Hollow Reservoir pursuant to the 2012 WGFP IGA and the 2014 Contract for subsequent release for beneficial use or, subject to the provisions of the Decree sought by this Application, subsequent storage and subsequent beneficial use.

25. Windy Gap Project Water that is delivered directly to a Windy Gap Project Allottee, or stored in Granby Reservoir and subsequently delivered to a Windy Gap Project Allottee, or delivered to, stored in, and released from Chimney Hollow Reservoir may also be stored in (i) any Existing Local Storage facilities (facilities owned, controlled, or used pursuant to contract by a Windy Gap Project Allottee as of July 12, 2016) on the east slope, (ii) any Windy Gap Project Allottee’s Operational Storage (structures used as terminal storage for water supply

system management, the operation of which when analyzed on a first-in-first-out (FIFO) basis verifies that water retention does not exceed 12 months) on the east slope, and (iii) any Reuse Storage (storage on the east slope following delivery to and initial beneficial use by a Windy Gap Participant of Windy Gap Project Water for subsequent reuse, successive use, or other disposition to its extinction). For purposes of this definition of Reuse Storage in this Application only, a beneficial use for non-consumptive hydropower generation before or after delivery to a Windy Gap Participant shall not be considered an initial beneficial use.

26. Except as described in Paragraph 24 and Paragraph 25 of this Application or precluded by Paragraph 30.B of this Application, Applicants seek a decree that does not either preclude or permit storage of Windy Gap Project Water in reservoirs on the east slope that are constructed, owned, controlled, or used pursuant to contract or agreement by a Windy Gap Project Allottee after July 12, 2016, and the doctrines of issue preclusion and claim preclusion shall not affect any future litigation on the issue of storage of Windy Gap Project Water in reservoirs on the east slope constructed after July 12, 2016 that are not authorized by Paragraph 24 and Paragraph 25 of this Application, or precluded by Paragraph 30.B of this Application.

27. The Municipal Subdistrict will, on an annual basis, provide to Grand County and the River District a list identifying the location and amount of any Windy Gap Project Water in storage on the east slope that is not stored in Operational Storage or Reuse Storage.

28. Applicants Municipal Subdistrict and the River District have entered into the Stipulation for Entry of Decree attached to this Application as Exhibit 7. The Stipulation for Entry of Decree addresses all issues and claims that the Parties to the Stipulation for Entry of a Decree would otherwise assert in this case. The Parties to the Stipulation for Entry of a Decree also expressly agreed that the Stipulation for Entry of Decree and the entry of a Decree pursuant to this Application do not provide any legal or factual precedent for, or waiver of claims and defenses related to, any other projects, water rights, or agreements.

29. The 2012 WGFP IGA supplements and partially amends the 1980 Agreement and the 1985 Agreement.

30. The Stipulation for Entry of Decree attached to this Application contains the following provisions that interpret the 2012 WGFP IGA, which provisions are incorporated into and made a part of this Application:

- A. For the purpose of the calculation required by Article III.E.3.c. (i) and (ii) of the 2012 WGFP IGA, Windy Gap Project Water that is in any local east slope

storage used by a WGFP Participant shall be added to the amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Granby Reservoir on behalf of WGFP Participants. The Subdistrict will provide Middle Park with a list of storage facilities where WGFP Participants' Windy Gap Project Water is stored and an accounting of the calculation referenced above prior to any reduction in delivery to Middle Park. Storage for the purposes of this paragraph does not include Reuse Storage.

- B. For the purposes of preventing an expansion of Prepositioning under the 2012 WGFP IGA and the 2014 Contract, any water delivered to WGFP Participants through Chimney Hollow Reservoir, either directly or by exchange, will not be placed in New Local Storage on the east slope. "New Local Storage" is storage, other than Operational Storage or Reuse Storage, constructed after July 12, 2016.

31. This Application seeks a Court determination that the 2012 WGFP IGA, in combination with the 1980 Agreement and 1985 Agreement, satisfy the requirements of C.R.S. § 37-45-118(1)(b)(II). The 2012 WGFP IGA includes, *inter alia*, the following elements:

- A. A requirement that "the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoir does not exceed 90,000 acre feet." (Authorized WGFP Reservoir Capacity) (2012 WGFP IGA, ¶ I.G).
- B. Preservation of certain benefits and measures for the benefit of water rights and water users on the west slope of the continental divide in the event that the Windy Gap Firming Project is not completed. (2012 WGFP IGA, II).
- C. The Apportionment of Windy Gap Project Water to Middle Park. (2012 WGFP IGA, III. E, G, H, I, J and K).
- D. The Apportionment of Windy Gap Project Water to Grand County. (2012 WGFP IGA, ¶ III. F, G, H, I, J and K).
- E. Protection of the water supply for Wolford Mountain Reservoir. (2012 WGFP IGA, IV.A).
- F. Protection of present and future water rights on the Colorado and Fraser Rivers above Windy Gap Reservoir. (2012 WGFP IGA, ¶ IV.B.).
- G. An agreement to abandon the conditional water right held by the Municipal Subdistrict for Jasper Reservoir, as is decreed in Case No. CA 1768 and the subsequent diligence decrees in Case Nos. 84CW112, 88CW169, 95CW33,

01CW203, and 08CW92, upon completion of the Windy Gap Firming Project. (2012 WGFP IGA, ¶ IV.E).

- H. Requirements for water accounting for the Windy Gap Project and Windy Gap Firming Project. (2012 WGFP IGA, ¶ IV. G).
- I. Limitations on the Municipal Subdistrict’s acquisition of existing water rights, construction of additional water supply facilities, appropriation of new water rights in Grand County and appropriation of new water rights in Water Division No. 5 that will result in depletions of water from Grand County. (2012 WGFP IGA, IV.H.2).
- J. Execution of an agreement regarding the “Shoshone Outage Protocol” and the obligation to participate in future negotiations regarding Colorado River management. (2012 WGFP IGA, IV.K).
- K. Limitations on the diversion of water by the Windy Gap Project and Windy Gap Firming Projects during free-river conditions. (2012 WGFP IGA, IV.O).
- L. Agreement to conditions of the federal authorization for the Windy Gap Project and Windy Gap Firming Project including:
 - i. A Provision relating to the active storage and total combined volume of C-BT Project Water in both Granby and Chimney Hollow Reservoirs of 465,568 acre feet of water. (2012 WGFP IGA, VI.C.1), and
 - ii. Provisions relating to spills and releases from Granby Reservoir.
- M. A provision that states that: “The Parties agree that performance of this WGFP IGA, compliance with any mitigation requirements for the WGFP imposed by a federal or state agency, and compliance with the requirements of a Grand County 2012 Windy Gap Firming Project ("1041 ") Permit for the WGFP shall constitute full and complete satisfaction of the obligations of the Subdistrict and WGFP Enterprise to set forth and complete a plan with respect to the WGFP which satisfies the requirements of C.R.S. § 37-45-1 18(1)(b)(II) of the Water Conservancy Act.” (2012 WGFP IGA, ¶ VI.F)

This is a partial list of elements of the 2012 WGFP IGA. The 1980 Agreement, the 1985 Agreement, and the 2012 WGFP IGA are incorporated in whole within and made a non-severable part of the Windy Gap Water Rights and this Application. This partial list and the omission of other elements or aspects of these Agreements does not modify or affect the validity or enforceability of any of the provisions of the 1980 Agreement, the 1985 Agreement, and the 2012 WGFP IGA.

32. The history of the Windy Gap Water Rights, which includes extensive litigation and negotiations over a period of decades that resulted in the 1980 Agreement, 1985 Agreement, and 2012 WGFP IGA, and the compliance with the requirements of the Water Conservancy Act for the Windy Gap Project and Windy Gap Firming Project, provide a unique factual basis for this Court to confirm that storage of water on the east slope and west slope of the Continental Divide, as described in this Application, is authorized by the Windy Gap Water Rights, and that the Windy Gap Decrees, including the Decree sought by this Application and the 2012 WGFP IGA incorporated herein, contains terms and conditions that insure that the operation of the Windy Gap Project and Windy Gap Firming Project will not result in an expanded use of the Windy Gap Water Rights.

Colorado River Connectivity Channel.

33. Windy Gap Reservoir is an on-channel reservoir on the Colorado River. Consistent with its permits and prior agreements, the Municipal Subdistrict, with the support of the River District, Grand County, Colorado Water Conservation Board, Colorado Parks and Wildlife, Trout Unlimited, the Upper Colorado River Alliance, and other persons and entities, intends to construct and operate the Windy Gap Connectivity Channel from a point on the Colorado River just upstream of Windy Gap Reservoir to a point just downstream from Windy Gap Reservoir in order to provide environmental benefits to the Colorado River as described below (hereinafter the “Colorado River Connectivity Channel” or “CRCC”). As further described below, this Application includes a request for determinations concerning the Windy Gap Water Rights as they pertain to the CRCC pursuant to C.R.S. § 37-92-302(1)(a) and consistent with *Southern Ute Indian Tribe v. King Consolidated Ditch Company*, 250 P.3d 1226, 1234 (Colo. 2011).

- A. CRCC Location. The CRCC will be constructed within a portion of what is now the footprint of the on-channel Windy Gap Reservoir, as depicted in Exhibit 8 hereto, and located in Section 25 and 26, T. 2 N., R 77 W. of the 6th P.M, Grand County, Colorado.
- B. Benefits of the CRCC. Based upon studies completed to date, the CRCC is expected to provide significant environmental benefits for the Colorado River by enhancing sediment transport, reducing streambed armoring, moderating elevated water temperatures, providing connectivity for aquatic life and fish passage, and enhancing aquatic habitat.
- C. Location of Colorado River. The mainstem channel of the Colorado River will remain in its current natural channel, which flows into and through the Windy

Gap Reservoir, and the construction and operation of the CRCC will not modify the location of the mainstem channel of the Colorado River. An on-channel gated structure or similar structure will separate and control the river flow into the mainstem channel and the CRCC.

- D. CRCC Operations. Subject to Paragraph 33.F below, the CRCC will be operated by the Municipal Subdistrict so that water not needed in the mainstem of the Colorado River to satisfy the in-priority needs of the Windy Gap Water Rights and the Schmuck Ditch (decreed on November 7, 1952, in Civil Action No. 814, District Court, Grand County, Colorado), and for compliance with other legally enforceable requirements or the management of water quality in Windy Gap Reservoir, will flow down the CRCC up to its full capacity, including the capacity of the CRCC floodplain. A water right is not sought herein for the CRCC and thus no priority is assigned to the CRCC and it will not be entitled to call for water. Subject to the exceptions identified above, it is intended that water being delivered to water rights downstream of Windy Gap Reservoir and water released from upstream storage will be conveyed through the CRCC, including without limitation, water made available as described in Case No. 11CW152, water released from Lake Granby pursuant to Municipal-Recreation contracts with the City of Grand Junction or other municipal entities in the Grand Valley, and water made available to Grand County and Middle Park pursuant to the 2012 WGFP IGA. Exchanges of water may be made by any water user through the CRCC, subject to the requirements of applicable law. The CRCC will be located within the existing footprint of the on-channel Windy Gap Reservoir, which will reduce the surface area of the on-channel Windy Gap Reservoir. Replacement of evaporation from the CRCC is not required because evaporation from the CRCC will be less than the evaporation that would naturally occur. Evaporation from the re-sized on-channel Windy Gap Reservoir will be less than occurs from the existing on-channel Windy Gap Reservoir, and will be replaced in accordance with the applicable policies of the State Engineer for on-channel reservoirs.
- E. Requests for Determinations of the Water Court. With respect to the CRCC, the Application seeks a ruling regarding the following determinations: (1) that the flow of water through the CRCC as described herein is lawful, will not result in injury to any water rights, and will be allowed to operate by the State Water Officials consistent with the terms and conditions of the Decree sought by this Application; (2) that the mainstem of the Colorado River will remain in its existing natural channel which flows into and through the Windy Gap Reservoir

and that construction and operation of the CRCC consistent with the Decree sought by this Application does not and will not, in any way, modify that location of the Colorado River; (3) the construction and operation of the CRCC consistent with the Decree sought by this Application does not and will not, in any way, modify or change the Windy Gap Water Rights, or result in a change in the point of diversion for the Windy Gap Water Rights from the Colorado River; (4) augmentation or replacement of any evaporative losses associated with the CRCC is not required; and (5) exchanges of water may be made by any water user through the CRCC, subject to the requirements of applicable law.

F. Prior Agreements and Permit Conditions. The Decree sought by this Application does not modify prior agreements and obligations regarding the construction and operation of the CRCC including, without limitation, the instances in which the Municipal Subdistrict is not required to operate the CRCC.

34. This Application requests that the Court incorporate any Findings of Fact in the Conclusions of Law in the Decree sought by this Application.

35. The Court has jurisdiction to make determinations concerning the Windy Gap Water Rights requested in this Application.

36. The Application seeks an amendment of Windy Gap Decrees and other relief that constitute a “determination of a water right” within the meaning of C.R.S. § 37-92-302(1) and the approval of a plan required by C.R.S. § 37-45-118(1)(b)(II). The Court has jurisdiction to amend the Windy Gap Decrees and to grant the relief sought in the Application under C.R.S. § 37-92-302(1) and C.R.S. § 37-45-118(1)(b)(II). The relief sought in the Application and the Decree entered in this case does not constitute a change of the Windy Gap Water Rights.

37. This Application requests that the Court enter a Decree that the Windy Gap Decrees for the Windy Gap Water Rights be amended to incorporate the 2012 WGFP IGA as an integral and non-severable part of the Windy Gap Decrees.

38. This Application requests that the Court enter a Decree that the 1980 Agreement, as supplemented and amended by the 1985 Agreement and 2012 WGFP IGA, constitutes full and complete satisfaction of the requirements of C.R.S. § 37-45-118(1)(b)(II) and *Colorado River Water Conservation District v. Municipal Subdistrict, Northern Colorado Water Conservancy District*, 198 Colo. 352,610 P. 2d 81 (1979), for the Windy Gap Project and Windy Gap

Firming Project.

39. This Application requests that the Court enter a Decree that the Windy Gap Water Rights may be exercised and shall be administered as described in the Decrees entered in Case Nos. CA1768, W-4001 and 80CW108, 85CW135, 88CW169, 89CW298 and the Decree sought by this Application.

40. This Application requests that the Court enter a Decree that the WG Volumetric Limits for the Windy Gap Water Rights, as described in Paragraph 16 of this Application, when combined with the requirements of the 2012 WGFP IGA and all the terms and conditions of the Decree sought by this Application, prevent the unlawful expansion of the Windy Gap Water Rights and prevent injury to other existing and conditional water rights from the operation of the Windy Gap Project and Windy Gap Firming Project in accordance with the Decrees for the Windy Gap Water Rights and the Decree sought by this Application.

41. This Application requests that the Court find that the Decree entered in this case shall not alter or amend Senate Document No. 80, or the Blue River Decrees (Final Judgment entered on October 12, 1955, in Consolidated Cases No. 5016 and 5017, and the Findings of Fact, Conclusions of Law and Final Decree entered on October 12, 1955, in Consolidated Cases Nos. 2782, 5016, and 5017 by the United States District Court, District of Colorado, and all supplemental or amendatory orders, judgments, and decrees in said cases, including, without limitation, the Decree entered on April 16, 1964, therein ("1964 Decree") and the Supplemental Judgment and Decree dated February 9, 1978 ("1978 Judgment")).

42. Applicants request that this Court enter a Decree ordering and determining that:

- A. The 2012 Windy Gap Firming Project Intergovernmental Agreement dated July 12, 2016, and attached as Exhibit 3 be approved as an Additional Stipulation to the Stipulations entered by this Court on October 27, 1981 and August 26, 1985, in Case Nos. CA 1768, W-4001, 80CW108, and 85CW135, and be incorporated as an integral and non-severable part of the Windy Gap Decrees, which include the Decrees entered in this case and in Case Nos. CA 1768, W-4001 and 80CW108, 85CW135, 88CW16, 89CW298, and related diligence decrees, which shall be enforceable by the parties as part of said decrees.
- B. The 1980 Agreement, as amended and supplemented by the 1985 Agreement and the 2012 WGFP IGA, be approved by the Court as full and complete satisfaction of the requirements for a plan for the Windy Gap Project and Windy Gap Firming Project under C.R.S. § 37-45-118(1)(b)(II) and *Colorado River Water Conservation District*

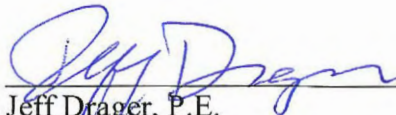
v. Municipal Subdistrict, Northern Colorado Water Conservancy District, 198 Colo. 352, 610 P. 2d 81 (1979).

- C. The Windy Gap Water Rights may be exercised and shall be administered and shall be subject to the terms of the Decrees entered in Case Nos. 1768, W-4001 and 80CW108, 85CW135, 88CW169, 89CW298 and the Decree entered in this Case, including, *inter alia*, (1) use of Windy Gap Project Water by substitution or exchange, and reuse or successive use, (2) subject to the WG Volumetric Limits and the terms and conditions of the Decree entered in this Case, the storage of Windy Gap Project Water in and delivery of water from (a) facilities of the C-BT Project in accordance with the 2012 WGFP IGA and 2014 Contract, or other approvals by the United States including the exchange of Windy Gap Project Water for C-BT Project Water stored in Chimney Hollow Reservoir pursuant to “prepositioning” operations described in the 2012 WGFP IGA and the 2014 Contract, and (b) the storage of Windy Gap Project Water in Chimney Hollow Reservoir on behalf of Windy Gap Project Allottees that are participants in the WGFP, (3) the storage of Windy Gap Project Water as described in Paragraphs 24 and 25 of this Application, (4) the delivery to and use of Windy Gap Project Water by the Middle Park, and (5) the delivery to and use of Windy Gap Project Water to and use by Grand County in the Colorado River or downstream of Grand County pursuant to the 2012 WGFP IGA.
- D. (1) The operation of the CRCC as described herein is lawful, will not result in injury to any water rights, and shall be allowed by State Water Officials consistent with the terms and conditions of the Decree sought by this Application; (2) the mainstem of the Colorado River will remain in its current natural channel which flows into and through the Windy Gap Reservoir and that construction and operation of the CRCC consistent with the Decree sought by this Application does not and will not, in any way, modify that location of the Colorado River; (3) the construction and operation of the CRCC consistent with the Decree sought by this Application does not and will not, in any way, modify or change Windy Gap Decrees for the Windy Gap Water Rights, or result in a change in the point of diversion for the Windy Gap Water Rights from the Colorado River; (4) augmentation or replacement of any evaporative losses associated with the CRCC is not required; and (5) exchanges of water may be made by any water user through the CRCC, subject to the requirements of applicable law.
- E. Any other relief the Court may find is necessary or may provide.

43. The only owner or reputed owner of the land upon which any Windy Gap Project diversion or storage structures have been or will be constructed is the Municipal Subdistrict.

**VERIFICATION AND ACKNOWLEDGEMENT OF APPLICANT OR OTHER
PERSON HAVING KNOWLEDGE OF THE FACTS STATED IN THIS
APPLICATION**

Being first duly sworn, I, Jeff Drager, hereby state that I have read this Application for Amendment and Determination of Decrees Entered in Case Nos. CA1768, W-4001, 80CW108, 85CW135, 88CW169, and 89CW298, that I have personal knowledge of the facts stated therein, and that I verify its contents to the best of my knowledge, information, and belief.



Jeff Drager, P.E.
Assistant General Manager, Engineering Division
Municipal Subdistrict, Northern Colorado Water
Conservancy District

The foregoing instrument was acknowledged before me in the County of Larimer, State of Colorado, this 28th day of September, 2017, by the person whose signature appears above.

ELIZABETH ANN LARMON NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20164023800 MY COMMISSION EXPIRES JUNE 22, 2020
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Elizabeth Ann Larmen
Notary Public

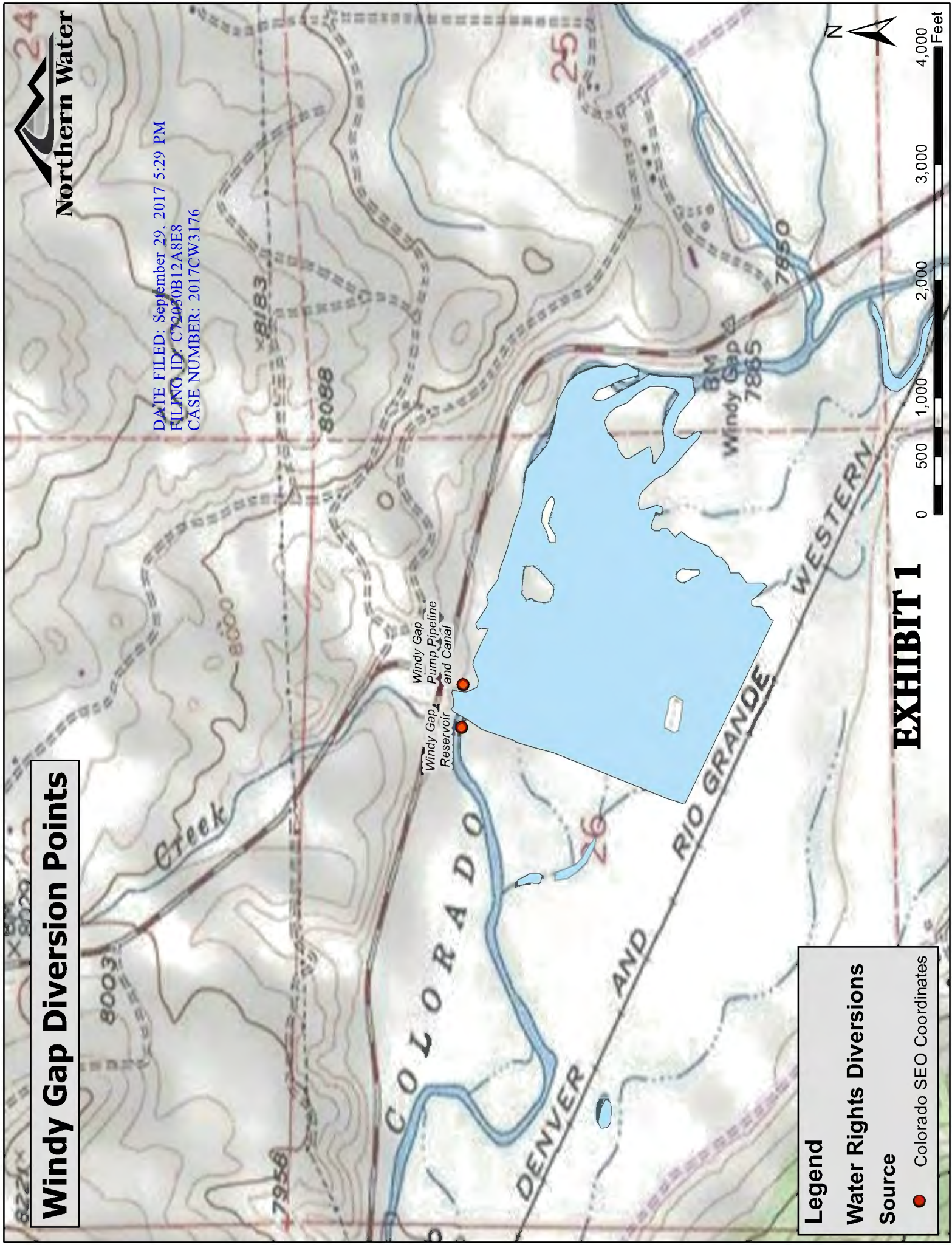
Rachel E. Kuhn

LORRA NICHOLS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #19954010058
My Commission Expires July 11, 2019

Lorra Nichols

DATE FILED: September 29, 2017 5:29 PM
FILING ID: C72080B12A8E8
CASE NUMBER: 2017CW3176

Windy Gap Diversion Points



Legend

Water Rights Diversions

Source

- Colorado SEO Coordinates

EXHIBIT 1

Jasper Reservoir and Pumping Station Diversion Points



DATE FILED: September 29, 2017 5:39 PM
FILING ID: C72030B12A8E8
CASE NUMBER: 2017CW3176

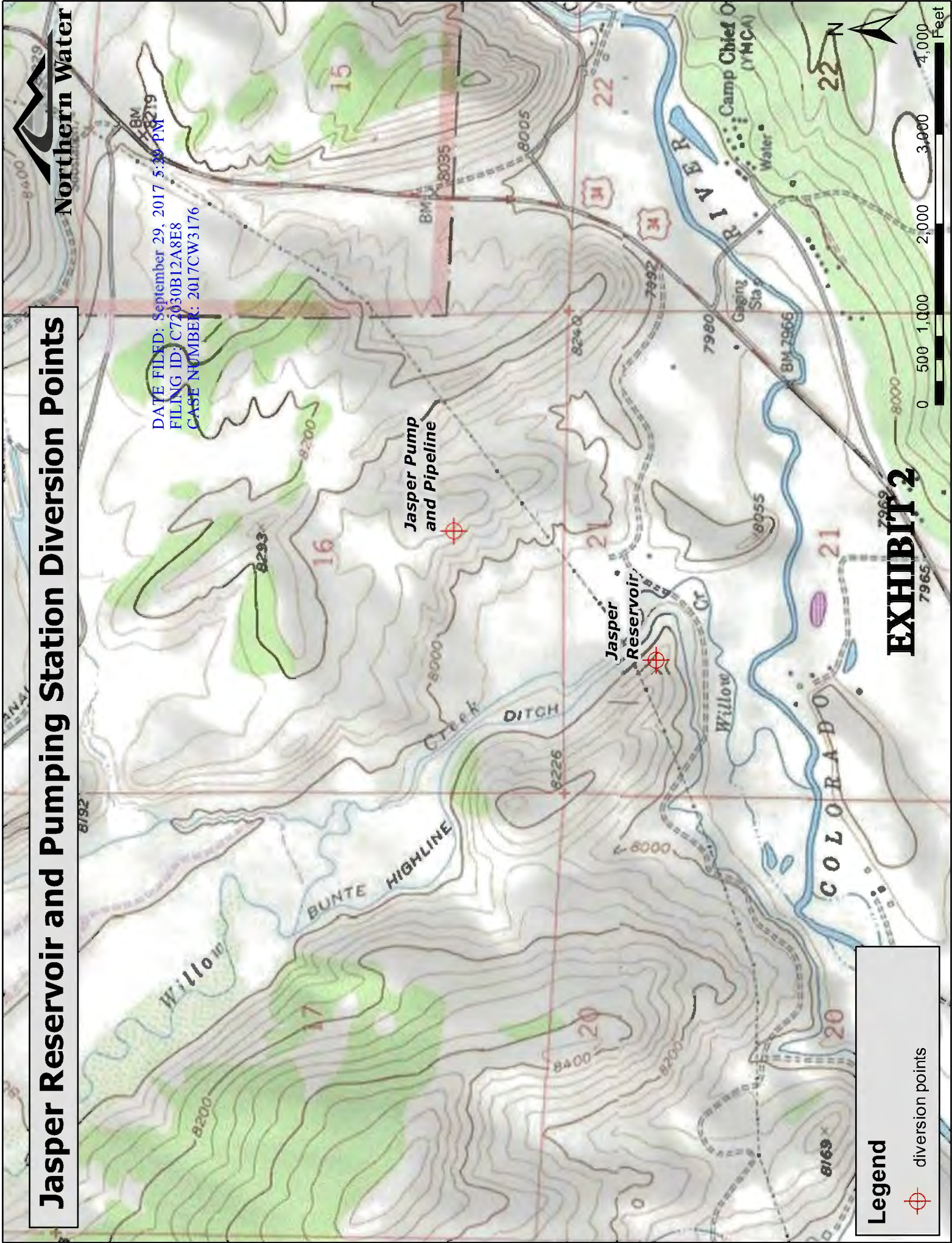



EXHIBIT 2

Legend

-  diversion points

DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601 (970) 928-3065	DATE FILED: September 29, 2017 5:29 PM FILING ID: C72030B12A8E8 CASE NUMBER: 2017CW3176
CONCERNING THE APPLICATION OF MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT, AND COLORADO RIVER WATER CONSERVATION DISTRICT FOR AMENDMENT AND DETERMINATION OF DECREES ENTERED IN CASE NOS. CA1768, W-4001, 80CW108, 85CW135, 88CW169, AND 89W298 In Grand County, Colorado	▲ COURT USE ONLY ▲
Attorneys for Municipal Subdistrict, Northern Colorado Water Conservancy District: Bennett W. Raley, #13429 Peggy E. Montaña, #11075 William Davis Wert, #48722 TROUT RALEY 1120 Lincoln Street, Suite 1600 Denver, CO 80203 Telephone: 303-861-1963 Fax: 303-832-4465 E-mail: braley@troutlaw.com, pmontano@troutlaw.com, dwert@troutlaw.com Attorneys for Colorado River Water Conservation District: Peter C. Fleming, #20805 Jason V. Turner, #35665 P.O. Box 1120 Glenwood Springs, CO 81602 Telephone: 970-945-8522 E-mail: pfleming@crwcd.org, jturner@crwcd.org	Case Number: 17CW _____ (CA1768, W-4001, 80CW108, 85CW135, 88CW169, 88CW170, 88CW171, 89CW298) Div. Courtroom:
STIPULATION FOR ENTRY OF DECREE BETWEEN APPLICANTS MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT, AND COLORADO RIVER WATER CONSERVATION DISTRICT	

Applicants, Municipal Subdistrict, Northern Colorado Water Conservancy District (“Municipal Subdistrict”), and Colorado River Water Conservation District (“River District”), hereby stipulate and agree as follows:

1. Applicants agree to the entry of, and agree to mutually pursue the entry of, a decree in the form of the draft decree attached hereto as Exhibit A, or a decree that is substantially similar to and no less protective of Applicants as that decree attached as Exhibit A.

2. For the purpose of the calculation required by Article III.E.3.c. (i) and (ii) of the 2012 Windy Gap Firming Project Intergovernmental Agreement dated July 12, 2016 (“2012 WGFP IGA”), Windy Gap Project Water that is in any local east slope storage used by a WGFP Participant shall be added to the amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Granby Reservoir on behalf of WGFP Participants. The Subdistrict will provide Middle Park with a list of storage facilities where WGFP Participants’ Windy Gap Project Water is stored and an accounting of the calculation referenced above prior to any reduction in delivery to Middle Park. Storage for the purposes of this paragraph does not include Reuse Storage.

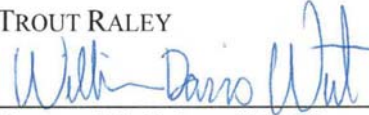
3. For the purposes of preventing an expansion of Prepositioning under the 2012 WGFP IGA and the 2014 Contract, any water delivered to WGFP Participants through Chimney Hollow Reservoir, either directly or by exchange, will not be placed in New Local Storage on the east slope. “New Local Storage” is storage, other than Operational Storage or Reuse Storage, constructed after July 12, 2016.

4. Applicants agree that they shall move for approval of this stipulation by the Court.

5. Applicants further stipulate that each party will bear its own costs and fees associated with appearances in this matter, except that Municipal Subdistrict shall bear any cost relating to publication notice to be given to supplement the resume notice to be given in this case.

Dated this 29th day of September, 2017.

TROUT RALEY



Bennett W. Raley, #13429

Peggy E. Montañó, #11075

William Davis Wert, #48722

*Attorneys for Municipal Subdistrict,
Northern Colorado Water Conservancy
District*



Peter C. Fleming, #20805

Jason V. Turner, #35665

*Attorneys for Colorado River Water
Conservation District*

*Pursuant to C.R.C.P. 121, a printed or printable
copy of the document bearing the original,
electronic, or scanned signatures is on file in the
respective offices of counsel.*



EXHIBIT 8