

AGENDA
UPPER YAMPA WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS MEETING
WEDNESDAY, MAY 15, 2019 (1:30 PM)
MOUNTAIN VALLEY BANK COMMUNITY ROOM
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO

- (1) Establishment of Quorum and Call to Order;
- (2) Consent Agenda; action item
 - a) Approval of Disbursements
 - b) Budget Comparison
- (3) Approval of Agenda for Meeting; action item
- (4) Public Input and Comment;
- (5) *1:40 PM* Report of the General Manager;
 - a) Stagecoach firming – AECOM
 - b) Environmental Recreation Water Program – Stakeholder’s Presentation
 - c) 360 Assessment Follow-up
- (6) *3:10 PM* Report from District Engineer;
 - a) Reservoir Water Status
 - b) Capital Projects Plan for 2019
 - c) UYWCD-CPW Bear Lake Agreement action item
- (7) *3:40 PM* Report from General Counsel;
 - a) Water Resumes
 - b) Status of other Water Cases, if any
 - c) Peabody Energy Contract action item
- (8) *4:10 PM* Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, and Contract Negotiations. Mere presence or participation of an attorney at an executive session of the local politic body is not sufficient to satisfy the requirements of this subsection (4).
- (9) New Business;
- (10) Adjournment.



a)



Upper Yampa Water Conservancy District
Cash Disbursement Report
As of May 3, 2019

Date	Name	Memo	Amount
03/20/2019	Gas Station	Gas, travel & meetings	7.53
03/21/2019	Mountain Temp Services	Clerical work, 3-17-19	112.00
03/21/2019	Wild Plum	Board meeting supplies	195.00
03/22/2019	Best Buy	Small printer	214.79
03/22/2019	UPS	Shipping; Yamcolo O&M	119.41
03/23/2019	US Postal Service	Postage	59.95
03/23/2019	Adobe	Software	24.99
03/23/2019	Amazon	Civil Engineering PE Practice Exam	52.63
03/27/2019	SmartVault	Software, interphase with quickbooks	34.60
03/29/2019	Amazon	Microwave oven, ink for printer, coffee maker	287.65
03/29/2019	Amazon	Coffee, Keurig supplies	47.99
03/29/2019	Walmart	Folding Tables, temporary desks	211.38
04/02/2019	NDS Northwest Data Services	Admin: Computer Services - Monthly LabTech and Virus Checker	80.00
04/02/2019	Walmart	Stagecoach maintenance, supplies	26.42
04/02/2019	PPI/Kaplan	Engineering Test	15.00
04/03/2019	Downtown Conoco	Gas, travel & meetings	4.00
04/03/2019	Gas Station	Travel & meetings	4.67
04/04/2019	Conoco Universal WEX	Gasoline	47.64
04/04/2019	YVEA	Electric Service, Stagecoach Powerhouse and Shed	519.66
04/04/2019	CenturyLink	SC Telephone.	138.63
04/04/2019	Restaurant.	TST Smok Denver, Travel & Meetings	41.42
04/04/2019	Restaurant.	Travel & Meetings, Littleton	9.91
04/04/2019	Restaurant.	Travel & Meetings, Denver	4.78
04/04/2019	Natural Grocers	Supplies, travel & meetings	44.36
04/04/2019	Hotel	The source hotel	22.10
04/05/2019	ACE Hardware	Keys, new office	10.35
04/05/2019	Restaurant.	Travel & Meetings, Denver	26.95
04/05/2019	CrashPlan Code42	Software, cloud backup	9.99
04/05/2019	Restaurant.	Travel & Meetings, Denver	22.38
04/05/2019	Natural Grocers	Supplies, travel & meetings	19.24
04/05/2019	Hotel	Travel & meetings	483.84
04/05/2019	Hotel	Travel & meetings	5.56
04/05/2019	Hotel	Parkwell, Denver	40.00
04/10/2019	Colorado SDA Property and Liab Pool	Workers Comp Insurance.	840.00
04/11/2019	Ski Town Moving & Delivery Incorporated	New office, moving expenses	1,878.00
04/11/2019	Colorado Parks & Wildlife	OHV Registration Renewal	25.25
04/11/2019	Amazon	Labor Law poster	14.99

Subtotal

5,703.06

Upper Yampa Water Conservancy District
Cash Disbursement Report
As of May 3, 2019

Date	Name	Memo	Amount
04/12/2019	Jeffrey D Erickson, Lynx	SC O&M: Snow Removal March 3 to March 14, 2019.	1,562.50
04/14/2019	Amazon	Coffee maker, supplies for Board meetings	51.24
04/19/2019	AECOM	Stagecoach firming project. Services from Dec 29, 2018 to March 29, 2019	65,586.70
04/19/2019	NORCAN Hydraulic Turbine, Inc	Stagecoach Hydroplant Equipment	3,872.94
04/25/2019	Metlife	Dental & Life Insurance	1,007.88
04/25/2019	Western Slope Health Care	Health Insurance	10,363.33
04/29/2019	Colorado Department of Revenue	Quarterly employee tax withholdings	4,256.00
04/29/2019	Internal Revenue Service	Federal Tax Liabilities. April payroll.	11,211.78
02/28/2019	Quickbooks Payroll Service	April Payroll	29,096.98
02/28/2019	Expense Reimbursements	Mileage, Phone, Travel and Training	212.33
05/01/2019	NWCC Inc	Yamcolo capital. Rip Rap Replacement	3,432.00
05/01/2019	Community Agriculture Alliance Inc	Support of Ag Water Network May 6th Training	150.00
05/01/2019	Verizon Wireless	SC cell phones	103.71
05/01/2019	Mount Werner Water.	Oct-Dec office rent, postage & misc expenses	4,788.05
05/01/2019	Flat Tops Ranch Supply	Stagecoach, Gorilla Glue, 9' 16/2 Cube Tap Ext., Duracell batteries, Chilly Grip	28.96
05/02/2019	ICMA	Retirement Accounts	7,840.69
05/02/2019	Conoco Universal WEX	Gasoline	346.13
05/02/2019	Scott Myller, Architect	New office design	4,787.01
05/02/2019	CBI - Consensus Building Institute	Annual Retreat, service 11/1/18 to 12/31/18; UY 360 Assessment, March	2,880.00
05/03/2019	CenturyLink	SC Telephone.	138.84

Subtotal **151,717.07**

Total **157,420.13**

b)



UPPER YAMPA WATER CONSERVANCY DISTRICT - APRIL 30, 2019 BUDGET COMPARISON REPORT

	2018 ACTUALS	2019 BUDGET	2019 YTD ACTUALS	2019 PROJECTIONS
Fund Opening Balance including Encumbered Funds	12,683,250	14,263,919	14,263,919	14,263,919
Encumbered Funds	919,734	919,734	919,734	919,734
Stagecoach Wetlands Mitigation Reserve	419,734	419,734	419,734	419,734
Routt County Road #14 Contribution	500,000	500,000	500,000	500,000
Unencumbered Funds	11,763,516	13,344,185	13,344,185	13,344,185
Revenues				
Facilities				
Stagecoach Reservoir				
Power Sales	129,492	200,000	32,220	200,000
Water Sales	505,201	403,144		427,790
Yamcolo Reservoir				
Water Sales	130,760	133,410		121,052
Stillwater Ditch & Reservoir Company	7,744	7,965		7,965
Property taxes	2,269,399	2,284,084	844,197	2,284,084
Interest earned	249,892	284,500	105,260	284,500
Other income				
	revenues	3,292,487	3,313,103	981,677
Expenditures				
Operating				
Facilities				
Stagecoach Reservoir - Power Generation	171,623	248,954	57,329	248,954
Stagecoach Reservoir - Water storage	279,641	266,927	60,103	266,927
Yamcolo Reservoir	132,790	144,594	33,663	144,594
Stillwater Ditch & Reservoir Company	12,550	45,065	3,269	45,065
Administration	139,144	203,198	60,607	203,198
Board of Directors	64,906	83,105	23,864	83,105
External Affairs	58,016	129,754	19,211	129,754
Finance	99,340	132,880	32,701	132,880
Legal	166,889	178,567	28,951	178,567
Planning	136,625	432,927	83,292	432,927
Grants, Scholarships & Public Information	39,021	257,588	33,974	257,588
Treasurer fees	72,507	73,786	27,149	73,786
	Subtotal Operating	1,373,053	2,197,345	464,112
Capital				
Stagecoach Reservoir - Power Generation	3,967	102,900	8,328	102,900
Stagecoach Reservoir - Water storage	27,462	62,900	0	62,900
Yamcolo Reservoir	302,537	108,900	15,055	108,900
Stillwater Ditch & Reservoir Company		40,300	0	40,300
Elk River Augmentation				
Office Space	4,800	130,000	27,370	130,000
	Subtotal Capital	338,766	445,000	50,753
	expenditures	1,711,818	2,642,345	514,865
	net income (loss)	1,580,669	670,759	466,812
Ending Fund Balance	14,263,919	14,934,678	14,730,731	14,946,966

REPORT OF GENERAL MANAGER



a)





BOARD COMMUNICATION FORM

From: Kevin McBride

Date: May 15, 2019

Item: Stagecoach Reservoir Firming Project

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

To provide a status of Task 1 for the proposed Stagecoach Reservoir Firming Project:

Purpose and Need

- A draft report has been prepared by the AECOM Team and is currently under review. Although the basic structure and outline is complete there is need for additional work in areas that are currently pending in other venues. These include additional work coordinating with Colorado Water Plan products (SWSI) and framing of discussion of non-consumptive purpose and need.

Alternatives

- A Draft Alternatives Report (Initial Screen though Preliminary Alternatives) has been developed and key points are being presented to the Board.
- A presentation describing the alternatives screening and development process is attached to this form for reference.

II. Summary and Alternatives:

N/A

III. Staff Recommendation:

N/A

IV. Legal Issues:

N/A

V. Consistency with Board Goals and Policies:

Yes – evaluating firming Stagecoach Reservoir to help achieve the District’s mission

Attachments: PowerPoint presentation that described alternatives screening and development

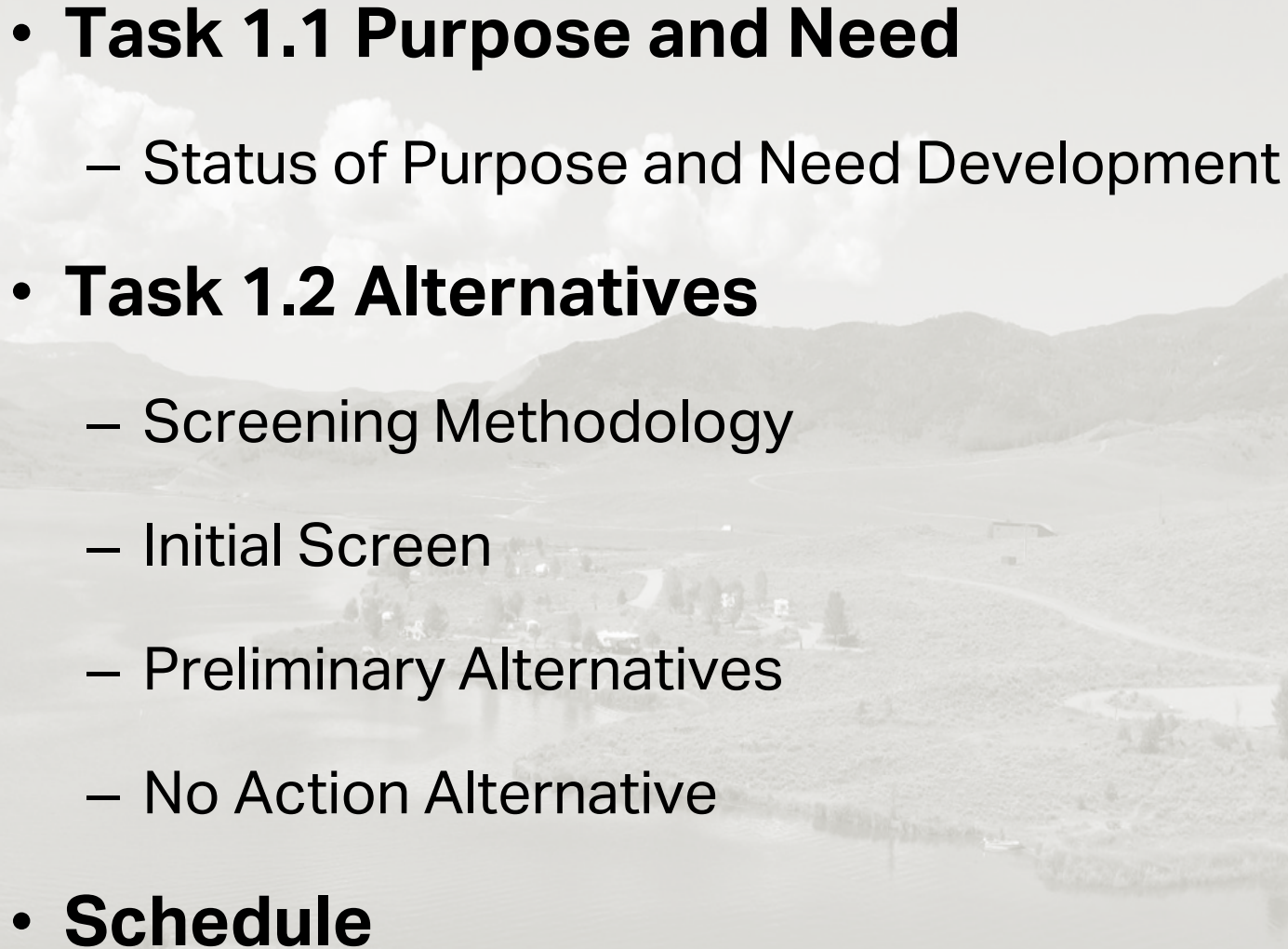
Stagecoach Reservoir Firming Project Board Work Session

Upper Yampa Water Conservancy District

May 15, 2019



Agenda

- **Task 1.1 Purpose and Need**
 - Status of Purpose and Need Development
 - **Task 1.2 Alternatives**
 - Screening Methodology
 - Initial Screen
 - Preliminary Alternatives
 - No Action Alternative
 - **Schedule**
- 

Task 1.1 Purpose and Need



Purpose and Need Status

Draft Report Under Review by Project Team

- Provides structure for Draft Final Report with placeholders for remaining analysis
- Further refine multiple needs:
 - Pending SWSI 2019
 - On-going contract discussions – agricultural, municipal, industrial and environmental

Refining District's StateMod model allocation of water to various storage pools in Stagecoach

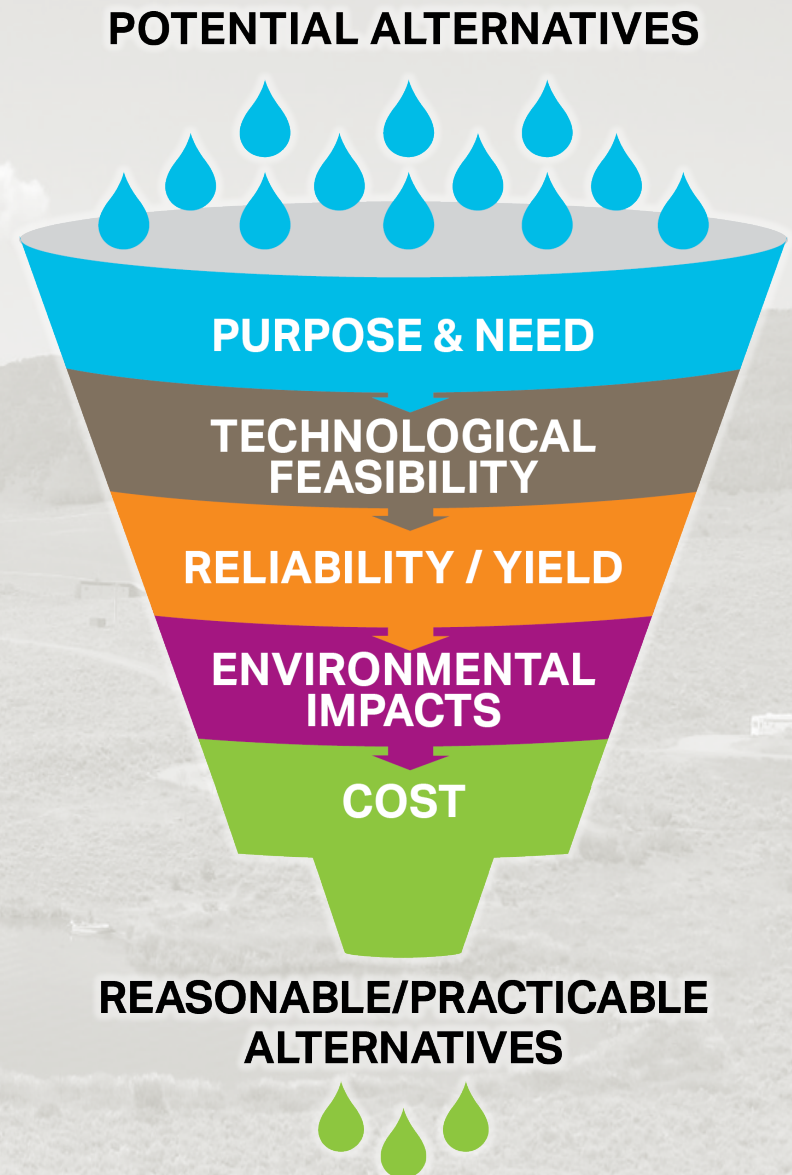
- Results of modeling will be incorporated in Draft Final Report

Task 1.2 Alternatives



Screening Methodology

- Ties to Purpose and Need
- Meets NEPA and Clean Water Act Section 404(b)(1)
- Pass/Fail Initial Screen
- Develop Preliminary Alternatives
- No Action Alternative
- Score Preliminary Alternatives
- Suite of Action Alternatives



Initial Screen

- Broad spectrum of water supply concepts and components
- **Concept** = structural and non-structural water supply strategies (e.g., expand existing reservoir; effluent reuse and exchange)
- **Component** = specific water infrastructure elements (e.g., Morrison Creek Reservoir) and non-structural elements (e.g., treated effluent from treatment plants in Craig) that could be used to implement a concept.
- Pass/Fail screen through a series of criteria

Initial Screen - Reservoirs

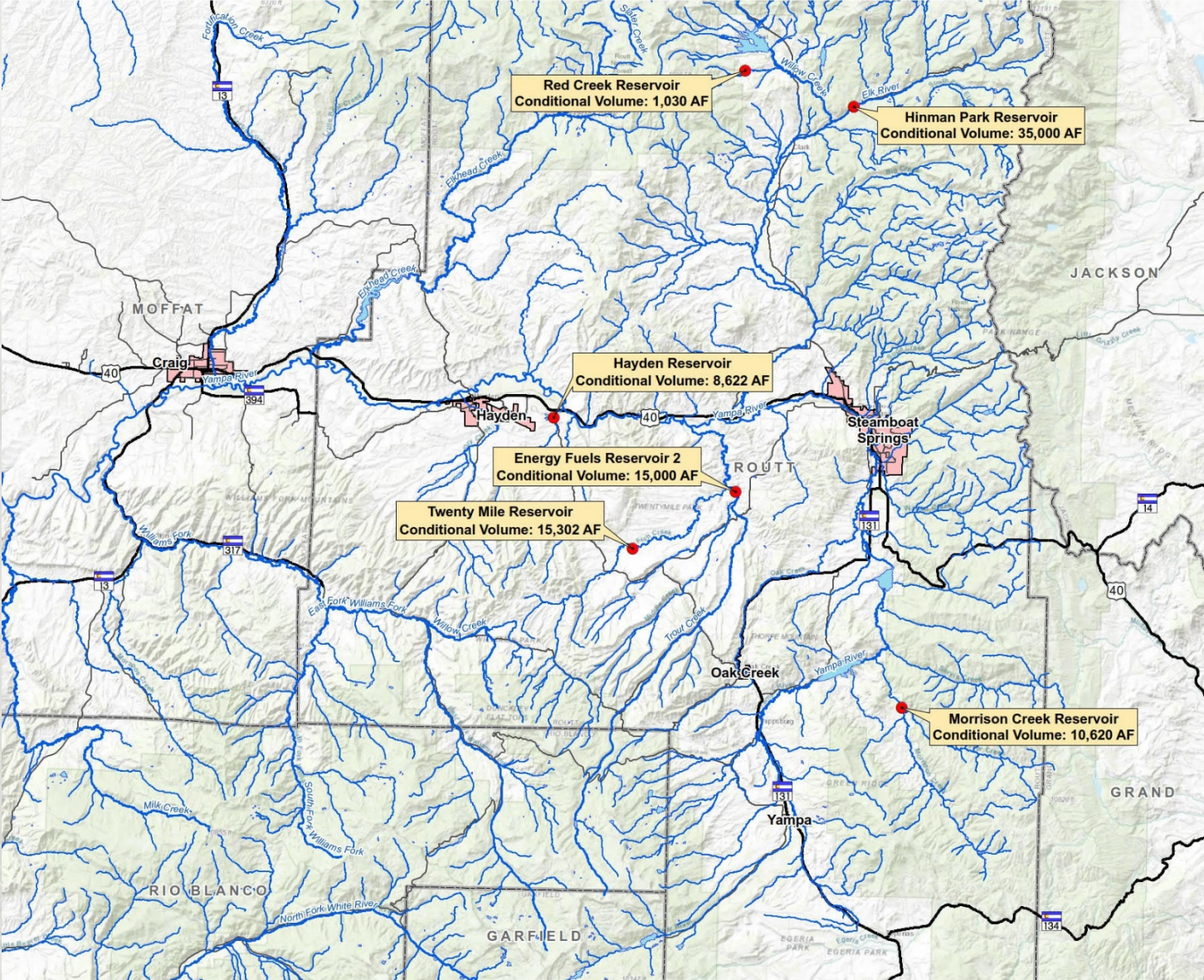
Concepts

- New reservoir construction
- Expansion of existing reservoirs
- Storage within existing reservoirs

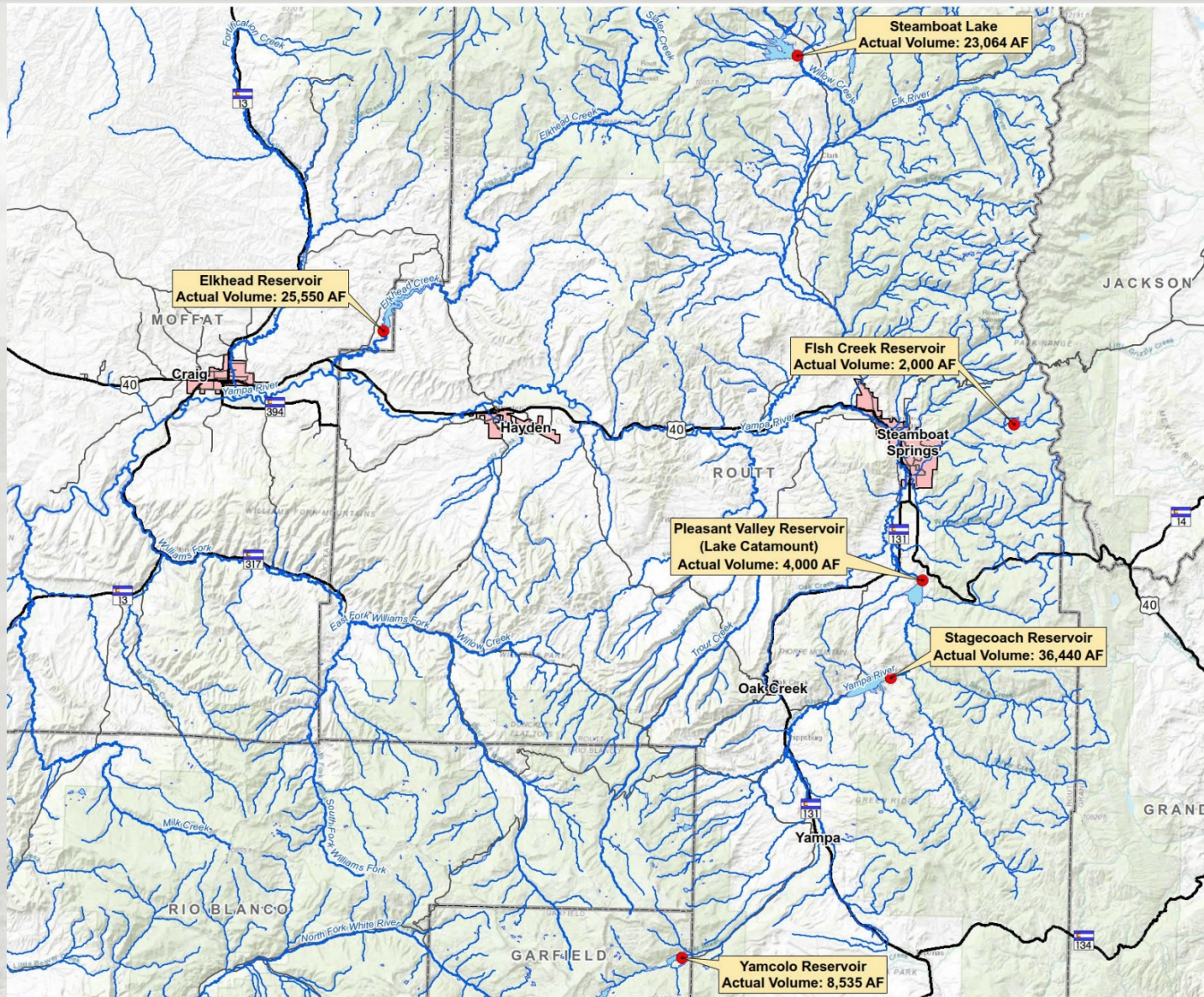
Components

- Storage sites in the middle and upper Yampa Basin

Reservoirs with Storage Decreases 1,000 AF



Enlargement of Existing Reservoirs



Initial Screen – Other Concepts /Components

Concepts	Components
Wastewater effluent reuse and exchange	<ul style="list-style-type: none">• Treated effluent from treatment plants in Craig, Steamboat, and Hayden
Alternative Transfer Mechanisms (ATM)	<ul style="list-style-type: none">• Convert ag water rights to M&I• Ag rotational fallowing in Yampa Valley
Groundwater supplies and storage	<ul style="list-style-type: none">• Aquifer storage and recovery• Develop groundwater resources
Conservation	<ul style="list-style-type: none">• Work with municipal providers to promote conservation• Ag irrigation and efficiency improvements

Initial Screen – Other Concepts /Components

Concepts	Components
Diversion into Stagecoach Reservoir from Adjacent Drainages	<ul style="list-style-type: none">• Divert direct flow from Morrison Creek into Stagecoach Reservoir to enhance yield in dry years
Forestry Management Changes	<ul style="list-style-type: none">• Selective logging within the Routt National Forest to enhance runoff
Cloud Seeding	<ul style="list-style-type: none">• Participation in an enlarged regional program to enhance snowfall, primarily during average to above average years

Initial Screen Criteria

Purpose and Need

- PN1 Must provide new firm yield during 3-year critical drought
- PN2 Continuous supply of water to consumptive uses in the basin
- PN3 Must produce a solution within projected growth scenario
- PN4 Water quality (e.g. stream standards)
- PN5 Must not impact hydropower at Stagecoach

Existing Technology

- ET1 Must use proven technology and management practices
- ET2 Must not require extreme or extraordinary technical effort to overcome conditions at a site

Environmental Consequences

- EC1 Must provide water of sufficient quality to meet downstream augmentation demands
- EC2 Must not have any known environmental or permitting fatal flaws

Initial Screen Criteria

Logistics - Geographic

LG1 Must be in Yampa River Basin above Steamboat Springs

LG2 Must be outside national and state parks, designated wild and scenic or wilderness areas, and Superfund sites

LG3 Must be outside lands integral to development plans of other entities

Logistics - Institutional

LI1 Must conform to federal, state, and local laws, rules, and ordinances

LI2 Must not require relocation of critical infrastructure

LI3 Must not conflict with District's mission to preserve agriculture in the Yampa Basin

Logistics – Practicability

LP1 A storage component must be capable of storing at least 1,000 AF in a surface impoundment (three-year critical drought)

LP2 Water must be available (physically and legally) from a sustainable source in amounts sufficient to be practicably developed

Results of Initial Screen - Pass

Morrison Creek Reservoir

- Location and Purpose and Need (LG1; PN1 – PN5)

Agricultural Rotational Fallowing

- Purpose and Need (PN1), but with limitations due to minimal amount of uses above Steamboat
- Dry year nature of this practice without storage limits timing and yield

Conservation

- Partially meets a portion of the Purpose and Need (PN1)

Divert direct flow from Morrison Creek into Stagecoach

- Location and Purpose and Need LG1; PN1 – PN5)

Results of Initial Screen - Fail

5 of 6 new reservoirs

- Location (LG1)

All existing reservoirs for expansion or storage space use

- Location and land use conflicts (LG1, LG2, LG3)
- Lack of sufficient yield to be practicability developed (LP2)
- Lake Catamount - lack of legally available water rights (LI1)

Reuse and Treatment

- Location (LG1)
- Water rights administration (LP2)
- Purpose and Need (PN1)

Conversion of Ag to M&I

- Does not support the District's mission (LI3)

Results of Initial Screen - Fail

Groundwater Supplies and Storage

- Can not be practicability developed (LP2)

Ag Irrigation / Efficiency Improvements

- Purpose and Need (PN1)

Forestry Management Changes

- May not be institutionally feasible (LP2)
- May not be permittable (EC2)

Cloud Seeding

- Purpose and Need (PN1)

Preliminary Alternatives

Combined concepts and components that passed the Initial Screen into alternatives – **where we are now**

Refined screen will use criteria focused on:

- Practicability factors
- Potential environmental impacts
- Cost

Score and rank to compare alternatives

No Action Alternative compared to Preliminary Alternatives

Preliminary Alternatives

Alternative 1 – Divert from Upper Morrison Creek into Little Morrison Creek and Stagecoach Reservoir

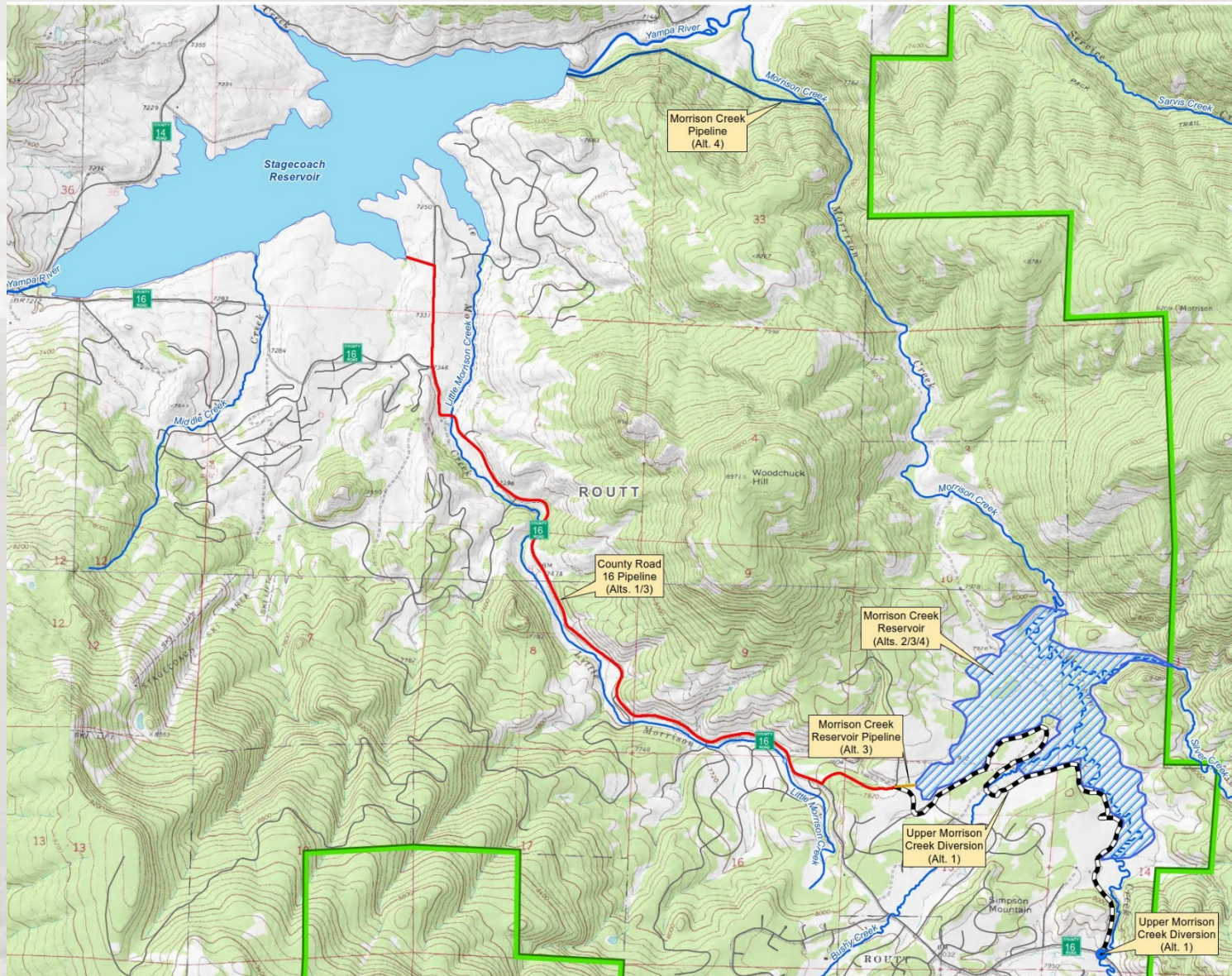
Alternative 2 – Morrison Creek Reservoir

Alternative 3 – Morrison Creek Reservoir / Pipe and Pump into Stagecoach Reservoir

Alternative 4 – Morrison Creek to Stagecoach Reservoir Siphon

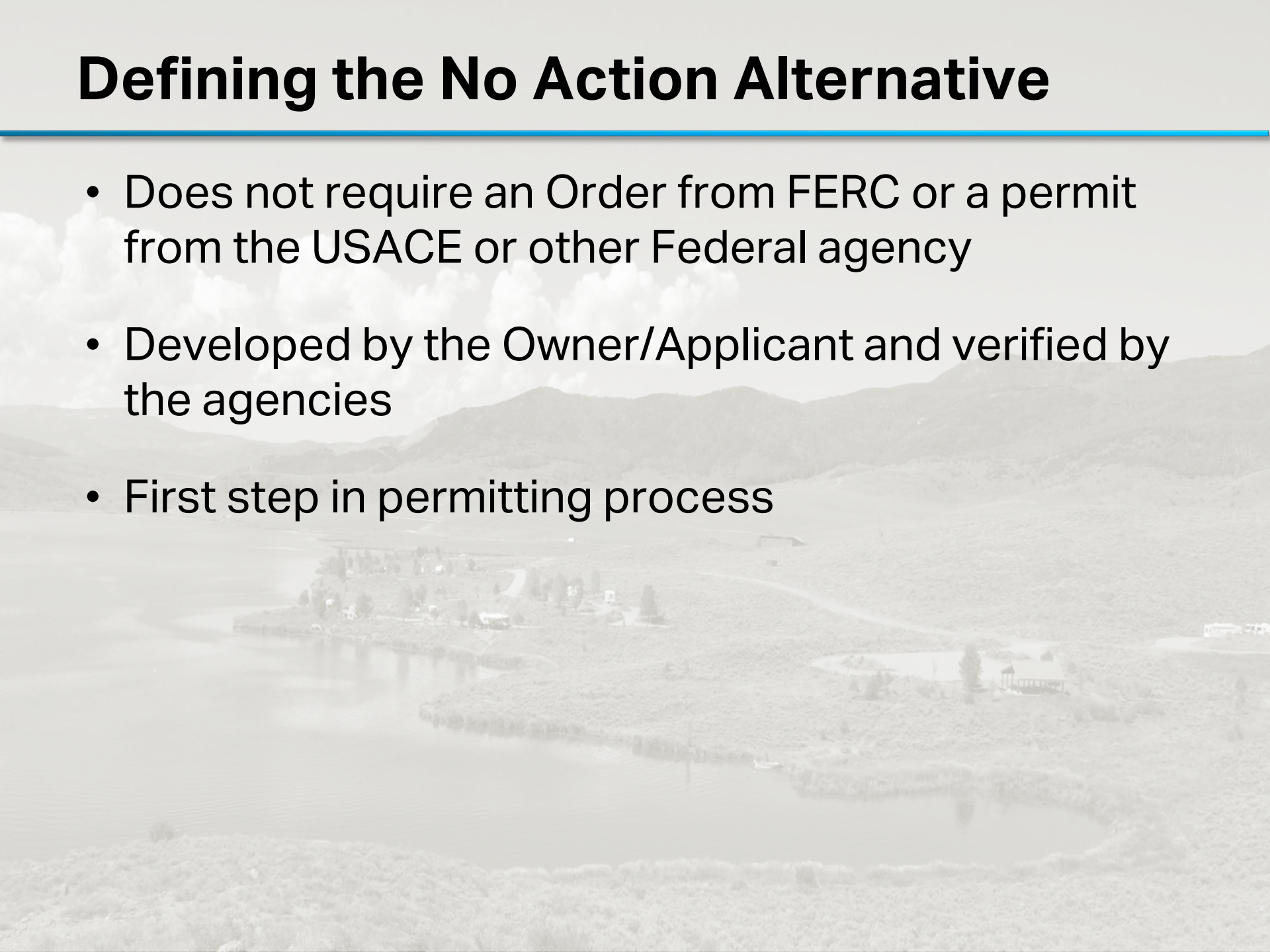
*Conservation may be implicit in the action alternatives through SWSI future demand scenarios

Preliminary Alternatives - Layouts



Defining the No Action Alternative

- Does not require an Order from FERC or a permit from the USACE or other Federal agency
- Developed by the Owner/Applicant and verified by the agencies
- First step in permitting process



Preliminary No Action Alternative

May include the following actions:

- Greater and longer drawdowns on Stagecoach during drought
- Reduce availability of contract water from Stagecoach
- Impact conservation pool in Stagecoach, or other storage reservoirs
- Drought restrictions by M&I contractors on their customers
- Rotational fallowing with senior water rights on tributaries that augment new demands
- Dry year leasing of senior Yampa River water rights to reduce or eliminate the mainstem call on Yampa River
- Agricultural Buy-and-Dry

Will be refined with input from the District.....

Schedule



Phase 1 Tasks

Task 1.1 Purpose and Need

- Sept 2019

Task 1.2 Alternatives

- Oct 2019

Task 1.3 Permitting Process

- Nov 2019

Task 1.4 Costs for Project Alternatives

- Jan 2020

Based on collective information from Phase 1, Board will determine if they will proceed with Phase 2 licensing/permitting...



b)



BOARD COMMUNICATION FORM

From: Kevin McBride, General Manager

Date: May 3, 2019

Item: Environmental/Recreation Water Program, Stakeholder/Contractee Communication

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

- I. Request/Issue and Background Information:** The Board has recently instructed staff to schedule time to discuss potential pricing and general contract terms for the purpose of developing a program for the sale of stored water for environmental and recreational purposes. Environmental and Recreational Contracts (ERC's).

In order to continue transparent communication and collaboration with stakeholders, staff has met with representatives of the Colorado Water Trust, The Nature Conservancy, and the City of Steamboat and invited this presentation to the Board. We have provided the background information from previous Board meetings to the presenters and they are included again as attachments to this form.

II. Summary and Alternatives:

The following is a brief outline of the points in the email: Bold is added for emphasis of topic

- A. Definition of an Environmental Recreational Contract (ERC).
- B. **Who** may Contract an ERC
- C. **Type** of Contract (i.e. Take or Pay Contract), Contract **Term** (Years)
- D. **Pricing** (costs based on % of other contract types, CPI adjustment factors, point of delivery considerations, secondary contracting, firmness etc..)
- E.- F Pricing (relative to **Length of Term**)
- G.- H Pricing (relative to **Administrative Distance**, aka delivery point)
- H. **Yamcolo** Reservoir and ERC's
- I. customary protections regarding maximum rate of flow delivery out of the dam, risk of transit loss on the allottee, advance notice for delivery requests & maximum frequencies of adjustment of release rates, etc.

In addition to the above, questions on the State and Division Engineers administration of ERC water releases and questions related to the applicability of the Districts water rights to ERC releases have been raised.

III. Staff Recommendation: The technical and legal considerations pertinent to policy decisions should be fully discussed before drafting contracts for ERCs. This matter is timely due to the discussions at the Yampa Water Fund meetings where one of the fund's objectives would be purchase of stored water. It is also timely due to the Purpose and Need for firming Stagecoach Reservoir. Staff believes discussion with stakeholders will benefit all parties. This informational item will aid in coming discussions as the Board Directs staff in preparing policies and contracts. We expect continue these discussions at the June Board meeting.

IV. Legal Issues: Counsel Weiss will be prepared to discuss legal questions regarding ERC water.

V. Consistency with Board Goals and Policies: The UYWCD Board should set policy for sale of ERC water.

VI. Fiscal Impact: ERC water could be additional revenue source for the District. Pricing of ERC water will have an impact on the District's finances. To answer legal questions regarding ERC releases the District it is expected the District would incur additional engineering and legal costs.

Attachments:

Attachment 1: E-mail chain

Letter from Mickey O'Hara, Colorado Water Trust



COLORADO WATER TRUST

1420 Ogden Street, Suite A2, Denver, CO 80218
Tel: 720.570.2897 | www.coloradowatertrust.org

Tuesday, May 7, 2019

Board of Directors
Upper Yampa Water Conservancy District
2220 Curve Plaza Ste. 201
Steamboat Springs, Colorado
80477-5529

Re: Environmental Water Contracts in Stagecoach Reservoir

Dear UYWCD Board of Directors,

Colorado Water Trust would like to thank Upper Yampa Water Conservancy District for its collaboration over the past seven years. Staff at both organizations have worked together closely since 2012 to enable the release of water from Stagecoach Reservoir for in-channel uses on the Yampa River. This collaborative project to support the health of the Yampa River has been a resounding success, generating significant multi-purpose benefits for the natural environment and project partners, including:

- Hydropower production at Stagecoach Dam
- Increased operational flexibility at Stagecoach Reservoir
- Increased habitat availability for important populations of coldwater fish
- Increased water availability for water users downstream of defined in-channel uses
- Increased flow to meet decreed instream flow rates downstream of Stagecoach Reservoir
- Removed or held-off river closures to recreational use on multiple segments of the Yampa River during dry years
- Decreased water temperatures to the benefit of the river and the City of Steamboat Springs
- Increased awareness of river health issues locally and statewide

Stagecoach Reservoir releases for in-channel uses over the past seven years have occurred under two separate delivery mechanisms – releases for instream flow under a Temporary Instream Flow Loan to the Colorado Water Conservation Board (the first ever use of the statute in 2012, then again in 2013 and 2017), and releases for nonconsumptive municipal use by the City of Steamboat Springs at its wastewater treatment facility outfall (2015-2018). From 2012-2018 releases have increased flows on the Yampa for a total of 342 days at rates up to 30 cfs. The project, in total, has restored over 11,200 acre-feet of water to the Yampa River, provided over \$450,000 of revenue to UYWCD, and benefitted the regional community and economy.

The Water Trust desires to continue purchasing water for release to the Yampa River in future years, but we have met the maximum number of years allowed for utilizing the Temporary Instream Flow Loan initiated in 2012, and there are obstacles ahead. We hope that UYWCD can help to maximize our ability to contract for Stagecoach Reservoir water by considering fair and transparent pricing for environmental water, as well as a broader set of legal mechanisms for release and delivery of environmental water.



COLORADO WATER TRUST

1420 Ogden Street, Suite A2, Denver, CO 80218

Tel: 720.570.2897 | www.coloradowatertrust.org

The lack of decreed instream flow (ISF) water in Stagecoach Reservoir means the release options for in-channel uses are somewhat limited. There are numerous legal tools that would provide more flexibility and certainty for both UYWCD and the Water Trust, but many of them require some degree of quantification of existing water rights. These options include, but are not limited to:

- A Substitute Water Supply Plan (SWSP) for instream flow use.¹ This would entail a quantification of water rights to gain the State Engineer's administrative approval for a temporary change, and would not establish legal precedent for future water court change cases. Additionally, an SWSP could protect water through a longer reach of the Yampa beyond the bounds of the current instream flow reach decreed in 01CW106. This approach could allow for up to five years of releases for ISF use.
- An instream flow augmentation plan.² An ISF augmentation plan could protect water through a longer reach of the Yampa beyond the bounds of the current instream flow reach decreed in 01CW106, and it could use changed and quantified water rights that are already decreed for augmentation to boost streamflow.
- A permanent change of water rights to add instream flow or ISF augmentation use.³ This would require a water court change case including quantification and would create a reliable and permanent source of environmental water in the upper Yampa River basin.

While it is likely the Water Trust's project can rely on nonconsumptive municipal releases in the near-term, it is important that we look to the future to identify options that increase flexibility and certainty, not only for the Water Trust, but also for UYWCD. Ultimately, it will be Upper Yampa Water Conservancy District that decides the future of environmental releases on the Yampa River.

Thank you for your consideration. Please do not hesitate to contact staff at the Water Trust with questions.

Sincerely,

Mickey O'Hara
Water Resources Engineer
Colorado Water Trust

Kate Ryan
Staff Attorney
Colorado Water Trust

¹ C.R.S. 37-92-305(8)

² C.R.S. 37-92-102(3), see also H.B. 19-1271

³ C.R.S. 37-92-305

Yampa River Fund Goals & Key Messages

April 2019

1) Water Fund Goals

Establish a sustainable, voluntary water fund for the Yampa River funded by the local community, corporate partners and visitors to the Valley in order to:

- Enhance water security for communities, agriculture, the economy, and the natural environment in the Yampa Valley;
- Support a healthy, flowing river and enhance critical low flows through water leases from reservoirs, and;
- Maintain or improve river function through a holistic approach to restoration of riparian and/or in-channel habitat.

The Yampa River Fund will provide sustainable funding for these activities:

1. Voluntary, market-based water leases and releases from reservoirs that will enhance river flows.
2. Restoration actions (on private and public land) that will improve riparian, in-channel, streambank, and aquatic habitat, with a special focus on addressing temperature issues.
3. Agricultural infrastructure improvements that will generate combined agricultural, environmental, and recreational benefits.

2) Key Messages

What is the Yampa River Fund?

The Yampa River Fund is a collaborative community-based organization dedicated to identifying and funding activities that protect the water supply, wildlife habitat, and recreational opportunities provided to us by the Yampa River. The Yampa River Fund will invest in conservation and restoration activities that positively impact Yampa River flows to support the livelihoods of recreation outfitters and ranchers throughout the valley, and to ensure that a healthy, flowing Yampa River remains the thriving center of our communities for generations to come.

Who is involved in the Yampa River Fund?

The Yampa River Fund is a collaboration over 20 community partners. Outdoor recreation businesses, the City of Steamboat Springs, the Yampa Valley Community Foundation, Routt and Moffat counties, local NGOs, and many others have created a way for the residents of the Yampa Valley to give back to the Yampa River.

Why is the Yampa Water Fund needed?

The Yampa River is critical to our area's economic vitality and is worth investing in. Agriculture, local businesses, wildlife, and residents rely on the river. There is a widespread desire to plan for a secure future for the Yampa River, and the Yampa River Fund is a critical next step to making those plans a reality.

By investing in projects now to keep the river healthy for future generations, we can help ensure the livelihood and beauty of the Yampa Valley. Activities supported by the fund – extra water for the river, restored streamside habitat, improved irrigation infrastructure – give a way for those who rely on the river, like ranchers and recreation guides, to help the river in return.

Unlike most rivers in Colorado, the Yampa remains free-flowing for much of its journey. The legacy of stewardship by area ranchers, landowners, and agencies has left it as a rare jewel of Western rivers. But worsening drought and increasing development has threatened the river's ability to support our community, and we must take action to ensure it can thrive for decades to come.

The Yampa River Fund will create a clear difference you can see. Projects will reduce how often the river is closed to recreation in drought years, improve fish and streamside habitat conditions, and ensure that Yampa valley ranchers can access the water they need.

Who will benefit from the Yampa River Fund?

Yampa River Fund projects will benefit a wide swath of Valley residents. Ensuring the Yampa flows in the late summer months will help ranchers downstream of Steamboat Springs who rely on water for their operations; fishing and river recreation outfitters who depend on flows to attract tourists and operate their businesses; and residents from Steamboat Springs to Hayden to Craig who turn to the river as a peaceful place to relax and connect with friends and family.

How can you help?

With so many worthy causes, why should you support the Yampa River Fund? The river cannot speak for itself and requires the community's help to thrive. Investment in the Yampa River Fund will create a sustainable way to implement important community projects that currently have no other source of funding. By pooling your resources with those of other community members, the impact of your gift is leveraged. The Yampa River Fund is a long-term, professionally managed fund that will support only the most important and impactful projects as determined by a committee of local residents and experts.

c)





BOARD COMMUNICATION FORM

From: _Kevin McBride _____

Date: _May 3, 2019 _____

Item: _360 Review follow up_ _____

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

SUBCOMMITTEE UPDATE, At its April meeting the Board authorized a Special Committee to draft a proposed Mission/Goals document for the Board's review and refinement, using the Upper Gunnison Water Conservancy District's work as a template. This same Committee will propose options for the Board to address the various 'Board Governance' issues raised by the 360 Assessment. The Subcommittee's first meeting will be May 20 at 9am, with roughly biweekly meetings planned for the next 1-2 months to develop proposals for Board consideration consistent with the Committee's approved Charter.

STAFF RETREAT. A facilitated staff retreat is scheduled for June 13 to begin to address internal issues that were raised by the 360 Assessment. The District is working with CBI to plan and facilitate that meeting, which will include helping the District identify and track relevant follow up actions.

II. Summary and Alternatives:

See above.

III. Staff Recommendation:

Continue the 360 Assessment follow-up process.

IV. Legal Issues:

N/A

V. Consistency with Board Goals and Policies:

Consistent with Board direction.



Relevant documents

The following relevant documents have been attached to Board Communication Forms in previous 2019 meeting packets. They are not being reattached here. Please contact Barbara if you would like any of them emailed to you again.

360 Assessment Report

CBI 360 Assessment Follow-Up Memo (3/12)

Bob Weiss Follow-Up Memo (3/7)

February 2019 meeting packet

March 2019 meeting packet

March 2019 meeting packet

Attachment:

Committee Charter

This Charter was approved by the Board at its 4/24/19 Board meeting. The only revision to the proposed draft was to add Jim Haskins as an additional Board member. This document reflects that addition.

DRAFT CHARTER

UYWCD Special Committee on Mission-Vision and Board Governance Planning

Purpose

At its March 20 meeting, the UYWCD Board requested to hear a proposal at its April meeting to establish a Committee to address key issues raised by the 360 Assessment. These include development of a Vision/Mission/Goals statement and certain Board Governance issues. This Charter defines the parameters for a Special Committee to develop proposals for Board review and action on both topics.

Scope

The Special Committee will have two mandates as set forth below. The Committee will not be empowered to make any decisions on behalf of the Board, but only to develop proposals for Board consideration.

1) Develop a draft Vision-Mission-Goals statement modeled on that of the Upper Gunnison River Water Conservancy District but specifically tailored to the UYWCD.

This statement will help assure alignment between the Board of Directors and the General Manager and the GM's staff. It will help explain to the public what the UYWCD stands for and plans to accomplish. It should include aspirational language (vision/mission) as well as more concrete goals to realize that vision and mission.

2) Propose updates to the UYWCD bylaws and any other governance procedures to address Board issues identified by the Assessment. *(Note this included Board input about strengths, challenges, and suggestions for improvement for the Board itself.)*

The Special Committee will consider the following in developing its proposal(s):

1. Efficiency and productivity of Board meetings, including agenda structure.
2. Inclusivity and openness to diverse perspectives at Board meetings.
3. Procedures for hearing more from staff at Board meetings.
4. Promoting diversity of experience/perspective on the Board to degree possible.
5. Addressing perceived and potential conflicts of interest as needed, including developing procedures for disclosure and recusal.
6. Supporting Board members' participation in other Basin water efforts.
7. Encouraging collaboration in Board meetings and external efforts.
8. In terms of Board operations and governance: clarify roles and responsibilities, including for the Executive Committee, in activities such as external affairs or

This Charter was approved by the Board at its 4/24/19 Board meeting. The only revision to the proposed draft was to add Jim Haskins as an additional Board member. This document reflects that addition.

negotiations, and in providing guidance to staff; communications and decision-making protocols; addressing areas of conflict/concern as they arise.

9. Defining a procedure for bringing policy proposals to the Board for consideration.

Composition

The Special Committee shall consist of the following individuals:

- Web Jones, Board member
- Bob Woodmansee, Board member
- Jim Haskins, Board member
- Ken Brenner, Board President (per the bylaws, the President shall be an ex-officio member of all such committees with specific exceptions for when he/she may vote)
- Kevin McBride, GM (per the bylaws, the General Manager shall be an ex-officio member of each special committee and shall not vote)

Timeframe/Work Plan

1. **Vision-Mission document.** The Committee will have two months to submit an initial proposal for Board review. After seeking and incorporating input from the Board, the Committee will submit a revised draft for preliminary approval. The Committee will propose and, with Board input, implement a process for gathering public/stakeholder comments over a 1-2 month period. The Special Committee will draft an updated version based on public input received, which it will present for Board review (and final input from the public). The Special Committee will make any relevant final edits and present a final draft before to the Board for adoption by the end of 2019.
2. **Bylaws/governance updates.** The Special Committee will have up to four months to submit proposals to the Board. The proposals may include complete recommendations and/or options with identified pros/cons and tradeoffs of each. The Special Committee will seek Board input and submit a revised draft(s) for board approval.

Collaborative Decision-Making

The Special Committee will seek consensus in developing recommendations for the Board by consensus. It will prioritize proposals likely to garner some degree of support from all Board members. In doing so, the Special Committee will be mindful of diversity of Board opinions articulated at past Board retreats and meetings on these topics. In the absence of a consensus recommendation, the Committee may propose more than one option for Board consideration, articulating pros/cons or tradeoffs of each.

This Charter was approved by the Board at its 4/24/19 Board meeting. The only revision to the proposed draft was to add Jim Haskins as an additional Board member. This document reflects that addition.

Dissolution of the Work Group

The Special Committee will dissolve within 12 months unless otherwise determined by the Board in accordance with its bylaws.

REPORT FROM DISTRICT ENGINEER



a)





BOARD COMMUNICATION FORM

From: Andy Rossi

Date: 05/06/19

Item: Reservoir Water Status

<input type="checkbox"/>	DIRECTION
<input checked="" type="checkbox"/>	INFORMATION
<input type="checkbox"/>	MOTION
<input type="checkbox"/>	RESOLUTION

I. Summary and Background Information:

Water storage data for Yamcolo Reservoir and Stagecoach Reservoir are included for reference materials for a summary discussion of the 2019 water year to date.

II. Alternatives:

NA

III. Staff Recommendation:

NA

IV. Legal Issues:

NA

V. Consistency with Board Goals and Policies:

NA

Attachments:

Yamcolo Water Storage Data
Stagecoach Water Storage Data

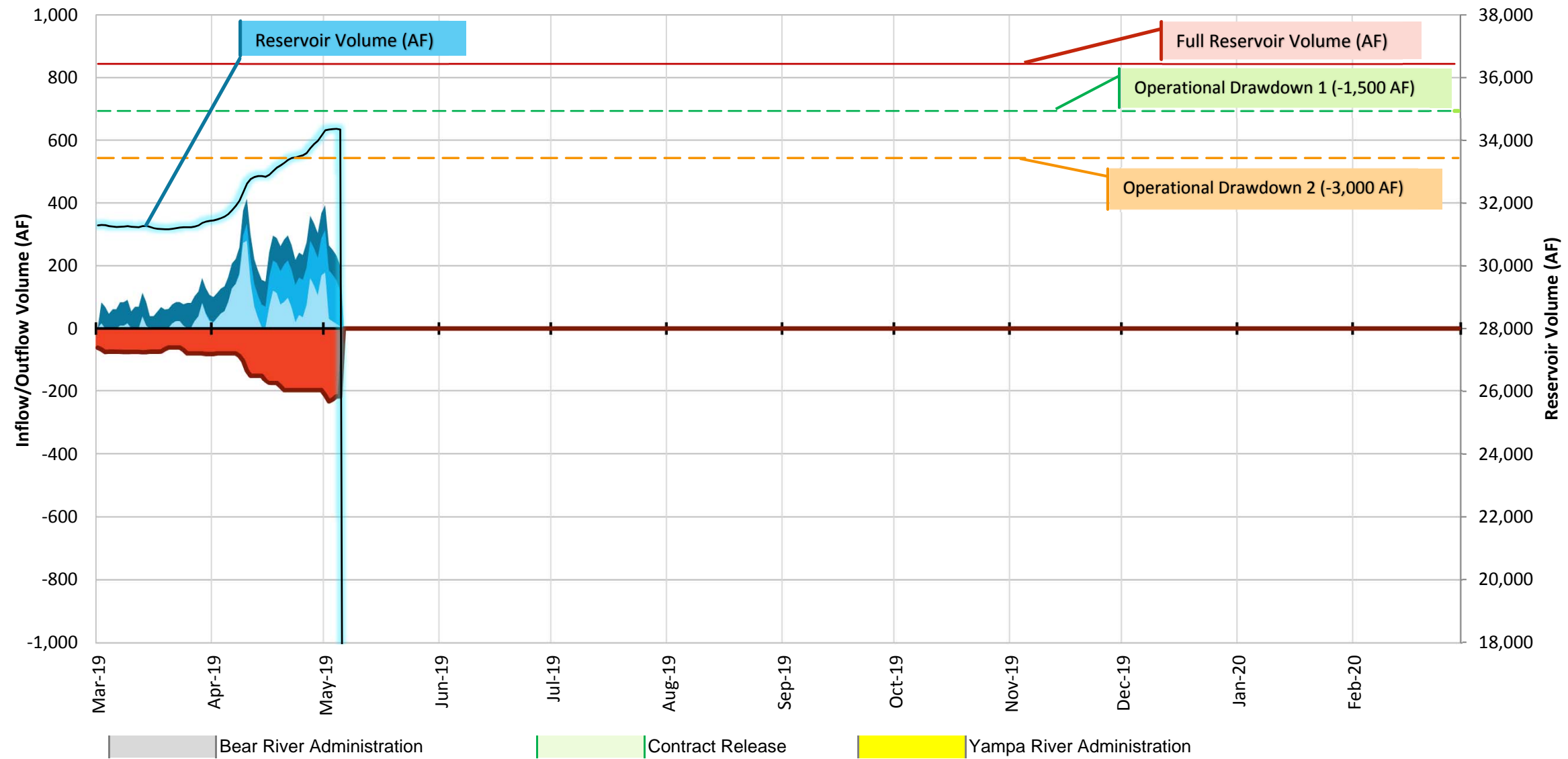
Stagecoach Reservoir Operations

Total Monthly Volume (AF)

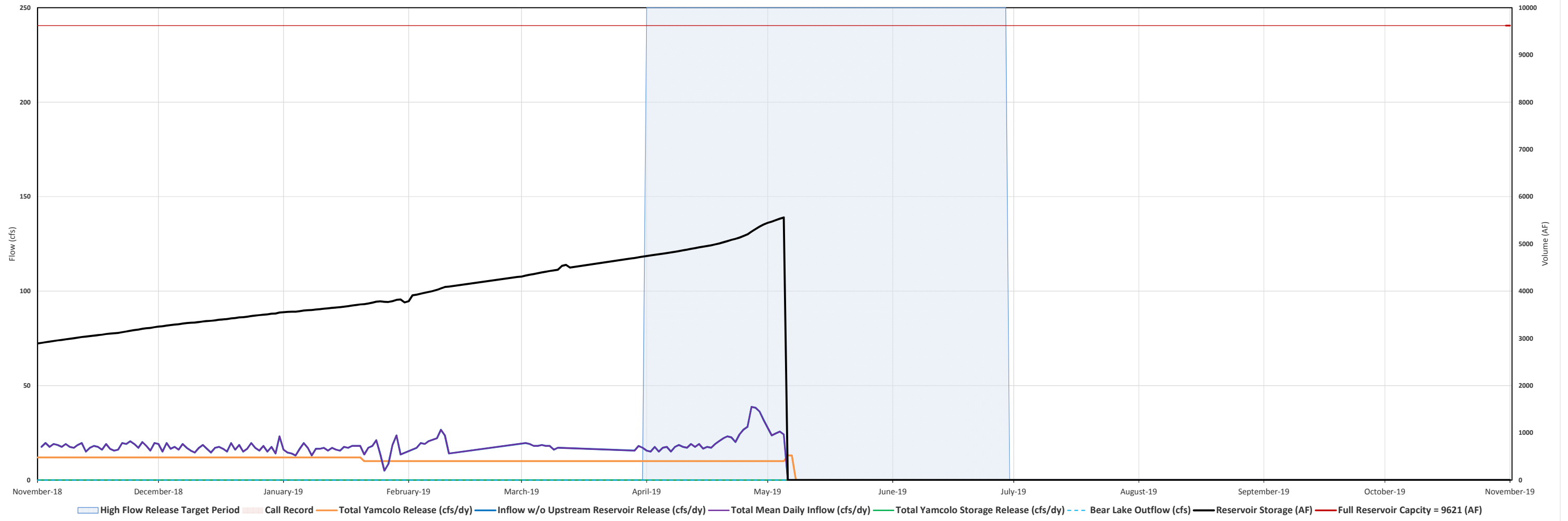
Accounting Year 2019

INFLOW	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Total
Physical	2,397	7,391	1,344										11,132
Storable	396	5,011	947										6,354
Stored	388	2,869	254										3,511

OUTFLOW	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Total
Operator	-2,258	-4,544	-1,113										-7,915
Spill	0	0	0										0
Gage	-2,254	-4,544	-1,113										-7,911

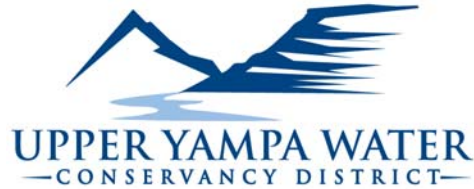


Yamcolo Reservoir: WY 2019 (Provisional Data)



b)





BOARD COMMUNICATION FORM

From: Andy Rossi

Date: 05/06/19

Item: Facilities Capital Projects

<input type="checkbox"/>	DIRECTION
<input checked="" type="checkbox"/>	INFORMATION
<input type="checkbox"/>	MOTION
<input type="checkbox"/>	RESOLUTION

I. Summary and Background Information:

The Upper Yampa Water Conservancy District (UYWCD) continues to invest in the construction and installation of multiple facilities maintenance projects. At the request of the District Manager, Kevin McBride, this memo presents information about these efforts for 2019.

The ongoing maintenance projects at the UYWCD facilities are contributing to the organization's operational effectiveness by improving the cleanliness, orderliness, functionality and safety of these facilities. The UYWCD staff will continue to identify facilities maintenance priorities proactively rather than reactively to extend the operational lifespan of the UYWCD infrastructure.

Regular maintenance activities at all facilities will continue as needed and as determined by the UYWCD staff. The UYWCD will also dedicate time towards completing upgrades and expansions to automated data collection and remote connectivity for UYWCD facilities.

Summary information about the planned facilities maintenance projects for 2019 is presented in the table attached with this memo.

II. Alternatives: NA

III. Staff Recommendation: NA

IV. Legal Issues: NA

V. Consistency with Board Goals and Policies: NA

Attachments

UYWCD Facilities Capital Projects Information

2019 UYWCD Engineering Tasks and Planning

Update: 5/2/2019

Facility	Task	Personnel	Frequency	Status	Cost Estimate
Stagecoach	General Facilities Operation and Management	District Engineer, UYWCD Dam Operators, YVEA	Continuous	Ongoing	Annual budget
Stagecoach	Continued Powerhouse Re-Organization and General Building Upgrades	UYWCD Facilities Operators	On going, as needed	Ongoing	Annual budget
Stagecoach	Operating Procedure Manuals and Written Observation Logs	UYWCD Facilities Operators	Completion Scheduled for September 2019, annual updates (or as needed)	Ongoing	Annual budget
Stagecoach	RedLion Integration to IFix	District Engineer, Facilities Operators	Initial integration of existing hardware, updates as needed	2019 efforts underway	TBD/Annual Budget
Stagecoach	Stem Guide Repair	District Engineer, Outside Contractor	TBD pending design recommendations	Planned for 2018 - 2019, scope of work TBD pending IC inspection	\$80,000
Stagecoach	Turbine Repairs- Replace Wear Rings, W.G.	UYWCD Facilities Operators, Outside Contractor	Annual	New Wear Rings delivered 05/19	\$50,000
Stagecoach	Outflow Real Time Data Acquisition	USGS	One time set-up, continuous agency feedback	Initial gage re-programming complete, agency communication ongoing	Annual budget
Stagecoach	Bank Erosion/Willow Planting	Outside Contractor	One-time, installation 2017	Repair ex if necessary, extend planting area	\$5,000
Stagecoach	Regulatory Agency Reporting and Permit Compliance	District Engineer	Monthly, Annual, as needed	Ongoing	Annual budget
Stagecoach	Regulatory Agency Liaison (FERC, CPW, USFS, BLM, EPA, USACE....)	District Engineer, District Manager	Continuous	Ongoing	Annual budget
Stagecoach	EAP Updates and Exercises	District Engineer	Annual	Updates complete, Exercise to be scheduled 2019	Annual budget
Stagecoach	Inflow Forecasting	District Engineer	Annual for potential fill forecast period	Ongoing	Annual budget
Stagecoach	Water Rights Accounting, Water storage release orders	District Engineer, UYWCD Facilities Operators	Continuous	Ongoing	Annual budget
Stagecoach	FERC Part 12 Inspection and Report	District Engineer, Outside Contractor	5-Year Recurring	Scheduled for July 2019	\$35,000
Stagecoach	Safety Buoys - Hardware replacement	District Engineer, Facilities Operators	One time	Planned for 2019	\$5,000
Stagecoach	Facility Budget Tracking and Individual Project Management	District Engineer	Continuous	Ongoing	Annual budget
Yamcolo	General Facilities Operation and Management	District Engineer, UYWCD Facilities Operators	Continuous	Ongoing	Annual budget
Yamcolo	Flow Measurement Bear River	UYWCD Staff, Outside Contractor, USGS	One-Time, as conditions allow	installation complete 2018, job site clean up and instrumentation calibration 2019	\$50,000
Yamcolo	Butterfly Valve Repair	UYWCD Staff, Outside Contractor	One-Time, TBD based on observed conditions	Project scope and preferred remedy to be developed in 2019	\$15,000
Yamcolo	Existing Dam Toe Drains Clearing and Repair	District Engineer, Outside Contractor	5-Year recurrence interval	Scheduled for summer 2019	Annual Budget
Yamcolo	Regulatory Agency Reporting and Permit Compliance	District Engineer	Monthly, Annual, as needed	Ongoing	Annual budget
Yamcolo	EAP Updates and Exercises	District Engineer	Annual	Updates will be necessary pending final publication of CDWR Dam Safety Rules updates	Annual budget
Yamcolo	Inflow Forecasting	District Engineer	Annual for potential fill forecast period	First Draft of model complete, upgrades as necessary	Annual budget
Yamcolo	Water Rights Accounting, Water storage release orders	UYWCD Staff, Outside Contractor	Continuous	Update to consolidated calculations and tracking needed	Annual Budget
Yamcolo	Regulatory Agency Liaison (FERC, CPW, USFS, BLM, EPA, USACE....)	District Engineer, District Manager	Continuous	Ongoing	Annual budget
Yamcolo	Facility Budget Tracking and Individual Project Management	District Engineer	Continuous	Ongoing	Annual budget
Yamcolo	Riprap Replacement	UYWCD Staff, Outside Contractor	10 - 30 years depending on conditions	Recommended materials specs complete, project schedule and contracting scheduled for June 2019.	\$40,000
Stillwater Ditch	Flow Measurement at SW Ditch	District Engineer, Outside Contractor	10 - 30 years	Design complete, install 2019 pending SUP	\$40,000

c)



BOARD COMMUNICATION FORM

May 15, 2019 Meeting

(Not Confidential and Privileged Attorney-Client Communication)

From: Andy Rossi, District Engineer
Robert Weiss, legal counsel

Date of memo: May 6, 2019

Item: Bear Lake Water Administration Agreement

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information: The District has authorized the release of Yamcolo water to replace out-of-priority evaporative losses from Bear Lake Reservoir during the irrigation season. The attached agreement formalizes this arrangement.

II. Summary and Alternatives: Move to approve the proposed Agreement or table or deny the requested Agreement with CPW.

III. Staff Recommendation: Approve the proposed Agreement.

IV. Legal Issues: Agreement protects the District by requiring CPW to repay the released water promptly on request. The Agreement may be terminated by notice given by March 1 for the upcoming and future years.

V. Consistency with Board Goals and Policies: This matter has been previously discussed with the Board and reflects current practice.

VI. Fiscal Impact: None

Attachments: Contract

STATE OF COLORADO
acting by and through the
Department of Natural Resources
for the use and benefit of the Division of Parks and Wildlife
and the Parks and Wildlife Commission

WATER ADMINISTRATION AGREEMENT

with

UPPER YAMPA WATER CONSERVANCY DISTRICT

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1. PARTIES

This Water Administration Agreement (hereinafter called “Agreement”) is entered into by and between the State of Colorado, acting by and through the Department of Natural Resources for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Commission (hereinafter called “CPW or “the State”), and the Upper Yampa Water Conservancy District (hereinafter called the “District”). The Parties hereby agree to the following terms and conditions.

2. EFFECTIVE DATE and NOTICE of NONLIABILITY

This Agreement shall not be effective or enforceable until the Effective Date as set forth in §4.G. Neither Party shall be liable for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

- i. CPW’s authority to enter into this Agreement exists in C.R.S. §§ 33-1-101 et seq.
- ii. The District’s authority to enter into this Agreement exists in the Water Conservancy Act, C.R.S. § 37-45-101, et seq.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Structure Ownership and Purpose

The District owns and operates Yamcolo Reservoir, located on the main stem of the Bear River in Water Division 6. CPW owns and operates Bear Lake Reservoir, located on the main stem of the Bear River approximately one-quarter mile upstream from Yamcolo Reservoir. CPW operates Bear Lake Reservoir for public recreational purposes and keeps Bear Lake Reservoir full and spilling during the Irrigation Season in order to optimize recreational opportunities for public visitors. This Agreement acknowledges the recreational value of keeping Bear Lake Reservoir full as often as possible during Irrigation Season prior to and including the Labor Day holiday weekend. In recognition of the foregoing public recreation benefits and uses at Bear Lake Reservoir, the Parties have historically agreed to and the Division Engineer has historically administered to allow for: (1) out-of-priority diversions of water from the Bear River to storage in Bear Lake Reservoir during Irrigation Season to compensate for evaporative losses from Bear Lake Reservoir; (2) replacement of such out-of-priority diversions of water to storage in Bear Lake Reservoir through releases of water to the Bear River from Yamcolo Reservoir; and (3) releases of water from Bear Lake Reservoir to be diverted and stored in Yamcolo Reservoir at the conclusion of the Irrigation Season to repay the volume of water released from Yamcolo Reservoir to replace said out-of-priority diversions made during Irrigation Season to Bear Lake Reservoir. CPW and the District desire to formalize this historical arrangement and administrative practice through this Agreement.

D. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Agreement

“Agreement” means this Agreement, its terms and conditions, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments, or references incorporated herein pursuant to Colorado State law, fiscal rules, and State Controller policies.

B. Bear Lake Reservoir

“Bear Lake Reservoir” a/k/a Upper Stillwater Reservoir, means the reservoir, dam, and all associated facilities owned and operated by CPW, located in portions of Sections 19 and 20, T1N, R86W, and Section 24, T1N, R87W, Garfield County, Colorado, WDID 58-03-545, with Priority Number 50 and Priority Date January 5, 1961, pursuant to the decree entered in Case No. CA3538, District Court, Routt County, Colorado.

C. C.R.S.

“C.R.S.” means the Colorado Revised Statutes as amended.

D. CPW

“CPW” means the Colorado Division of Parks and Wildlife and the Parks and Wildlife Commission, also referred to herein as the “State”.

E. District

“District” means the Upper Yampa Water Conservancy District, a statutory water conservancy district and political subdivision of the State of Colorado located in Routt County and a portion of Moffat County, Colorado, created pursuant to the Water Conservancy Act, C.R.S., § 37-45-101, et seq.

F. Division Engineer

“Division Engineer” means the Colorado Division Engineer for Water Division 6.

G. Effective Date

“Effective Date” means the date that the last Party has signed this Agreement.

H. Irrigation Season

“Irrigation Season” means the summer irrigation season, which typically extends from May 1 to September 30.

I. Party or Parties

“Party” means the State or the District, and “Parties” means the State and the District.

J. Yamcolo Reservoir

“Yamcolo Reservoir” means the reservoir, dam, all associated facilities owned and operated by the District and located in portions of Sections 16, 17 and 20, T1N, R86W, Garfield County, Colorado, WDID 58-04-240, with Priority Number 56A and Priority Date February 26, 1963, pursuant to the decree entered in Case No. CA3538, District Court, Routt County, Colorado.

5. TERM and EARLY TERMINATION.

The term of this Agreement shall be 30 years, unless sooner terminated. This Agreement may be terminated by either party by notice to the other in writing given no later than March 1 of the year termination is desired effective for the upcoming Irrigation Season.

6. REPLACEMENT OF BEAR LAKE RESERVOIR EVAPORATION

At all times the Bear River is under administration due to the call of downstream senior irrigation water rights, the Division Engineer shall be authorized to replace out-of-priority evaporative losses from from Bear Lake Reservoir by releases from Yamcolo Reservoir. The rate of release from Yamcolo Reservoir for this purpose shall not exceed 0.4 cfs and the volume of water released shall not exceed 60 acre-feet during any Irrigation Season unless otherwise approved in writing by the manager of the District after consultation with CPW’s Northwest Region Water Resources Specialist.

7. RECORDS

It is expected that the Division Engineer will maintain and periodically make available to the District daily records showing the rate and cumulative out-of-priority diversions of water from the Bear River to storage in Bear Lake Reservoir during the Irrigation Season to compensate for evaporative losses from Bear Lake Reservoir and the rate and cumulative volume of releases made from Yamcolo Reservoir pursuant to this Agreement. To the extent such records are not maintained by the Division Engineer, such records shall be developed and maintained by the District and CPW and provided to the Division Engineer.

8. REPAYMENT OF RELEASED WATER

At the request of the District, CPW agrees to release or to instruct the Division Engineer to release, water stored in Bear Lake Reservoir to Yamcolo Reservoir to repay the District the volume of water released from Yamcolo Reservoir to replace Bear Lake Reservoir evaporation as provided in Paragraph 6 above. Such releases shall be made promptly following the request of the District in cooperation with the District and DWR staff. After such 'repayment' of water is released from Bear Lake Reservoir to Yamcolo Reservoir, CPW may begin storing water in Bear Lake Reservoir in accordance with its storage priority.

9. WARRANTIES and REPRESENTATIONS

The Parties warrant that they each possess the legal authority to enter into this Agreement and that they have taken all actions required by their procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize their undersigned signatories to execute this Agreement and to bind each Party to its terms. The person signing and executing this Agreement on behalf of each Party hereby represents, warrants, and guarantees that they have full authorization to do so. If requested by the other Party, each Party shall provide the other Party with proof of its authority to enter into this Agreement within 15 days of receiving such request.

10. SUCCESSORS and ASSIGNS

All of the terms and provisions of this Agreement shall inure to the benefit of, and shall be enforceable by and binding upon, the heirs, personal representatives, successors and assigns of each of the Parties hereto.

11. ATTORNEYS’ FEES

In the event either of the Parties hereto brings an action or proceeding to enforce this Agreement or any provision thereof, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorneys’ fees and costs, including court costs, expert witness fees and other necessary costs, whether or not such action or proceeding is prosecuted to judgment.

12. DEFAULT

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a

breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against the District, or the appointment of a receiver or similar officer for the District or any of its property, which is not vacated or fully stayed within 60 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §14. If such breach is not cured within 90 days of receipt of written notice, or if a cure cannot be completed within 90 days, or if cure of the breach has not begun within 90 days and pursued with due diligence, the aggrieved Party may terminate the Agreement, and/or exercise any of the remedies set forth in §13.

13. REMEDIES

If either Party is in breach under any provision of this Agreement, the other Party shall have all of the remedies available to them in law or equity and any other remedies set forth in other sections of this Agreement. The non-breaching Party may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

14. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

CPW:

Northwest Region Water Resources Specialist
Colorado Parks and Wildlife
711 Independent Ave., Grand Junction, CO 81505
Email: David.graf@state.co.us
970-255-6142

With a copy to:
Northwest Regional Manager
Colorado Parks and Wildlife
711 Independent Ave., Grand Junction, CO 81505
Email: jt.romatzke@state.co.us

The District:

Upper Yampa Water Conservancy District
3310 Clearwater Trail
Steamboat Springs, CO 80477
Email: kmcbride@upperyampawater.com
Attn: District Manager

With a copy to:
Weiss & Van Scoyk LLP
600 Lincoln Ave.
Steamboat Springs, CO 80487
Email: BWeiss@wvsc.com
Attn: Robert Weiss, Esq.

15. LIABILITY LIMITATIONS

A. Governmental Immunity

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act ("CGIA") located at C.R.S. § 24-10-101, *et seq.*, and the risk management statutes, located at C.R.S. § 24-30-1501, *et seq.*, as amended. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the CGIA, as applicable now or hereafter amended.

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16. GENERAL PROVISIONS

A. Captions

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

B. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

C. Modification

i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

I. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

J. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by either Party if the other Party fails to perform or comply as required.

K. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

L. Waiver

Waiver of any breach of a term, provision, or requirement of this Agreement or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

M. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under C.R.S. § 24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq.*

N. Binding Arbitration Prohibited

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

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17. SIGNATURES

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

*** Persons signing for the District hereby swear and affirm that they are authorized to act on the District's behalf and acknowledge that the State is relying on their representations to that effect.**

<p>Upper Yampa Water Conservancy District* A political subdivision of the State of Colorado</p> <p>_____</p> <p>[Name] [position/title of District officer signing] Upper Yampa Water Conservancy District</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared Polis, Governor Colorado Division of Parks and Wildlife and the Parks and Wildlife Commission Jeff ver Steeg, Acting Director</p> <p>_____</p> <p>[Name] Northwest Region Manager Colorado Parks and Wildlife</p> <p>Date: _____</p>
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a)



BOARD COMMUNICATION FORM

From: Scott Grosscup, legal counsel

Date: May 9, 2019

Item: Water Resume Review

X_____ DIRECTION
X_____ INFORMATION
_____ MOTION
_____ RESOLUTION

I. Request/Issue and Background Information: I reviewed the Water Resumes for Water Divisions 6 for water court filings in the month of April and did not identify any water applications that would impair or injure the District's water rights. The resume from Division 5 has not yet been released. I do not presently recommend the District file any statements of opposition at this time.

Last month I pointed out one application of interest. It is an application for finding of reasonable diligence filed by Tri-State Generation and Transmission for its Four Counties Rights and the Wessels Canal, Case No. 19CW3005. This case could raise questions about the need and demand for additional water for Tri-State's uses. Tri-State had entered the District's diligence application to see how the Division Engineer and others would treat the District's application. The Board may want to similarly enter the case for monitoring purposes.

b)



BOARD COMMUNICATION FORM

From: Scott Grosscup, legal counsel

Date: May 9, 2019

Item: Water Court Cases Update

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

Following is an update of the status of water court cases in which the Upper Yampa Water Conservancy District is an Applicant or Opposer and matters pending before the Utah Division of Water Resources.

Case No. 16CW3016 – This is the District’s diligence application and to make absolute water rights stored in Stagecoach Reservoir. We have reached stipulations with all parties and have submitted a proposed Decree for the Water Judge. The trial that had been scheduled to begin April 1 was vacated and we are waiting for action by the Water Judge on the stipulated decree.

Case No. 17CW3043 – This is the application by the City of Steamboat Springs for an augmentation plan for Casey’s Pond. We continue to wait on a proposed stipulation and ruling from the applicant who is working with the CWCB to determine the extent of the CWCB’s instream flow water right on Burgess Creek.

Case No. 18CW3020 – This is the application by the Mt. Werner Water & Sanitation District for new junior water rights at the Yampa Meadows Infiltration Gallery and plan for augmentation using water from Stagecoach Reservoir pursuant to a contract with the UYWCD. We have provided comments to the applicant on the form of proposed Ruling and are awaiting a revised Ruling and proposed stipulation that we can then present to the Board.

Water Horse Resources – Utah counsel (Graham Gilbert of Snell & Wilmer) submitted a letter reply to Water Horse’s submittal of supplemental information on March 15, 2019. Counsel informs us that the Utah Division of Water Rights tries to issue its findings within six months of the hearing. A decision is expected this fall or winter but may be sooner or later as the Division sees fit.

c)



BOARD COMMUNICATION FORM

May 15, 2019 Meeting

(Not Confidential and Privileged Attorney-Client Communication)

From: Robert Weiss, legal counsel

Date of memo: May 6, 2019

Item: American Land Holdings of Colorado LLC (Peabody Energy) contract renewal

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information: Peabody Coal Company bought 50 AF of Stagecoach water in 1989 in 30 year agreement which expires July 15, 2019. The contracted amount was later increased to 100 AF. A Peabody representative has contacted the District requesting renewal of the Agreement for 50 AF in the name of American Land Holdings of Colorado LLC, a subsidiary of Peabody Energy Corporation. Attached is proposed contract for 50 AF on the District's current form for a term ending November 1, 2041. The current price of \$35 AF would remain in effect for 100 AF for 2019. Repricing under new agreement for 50AF would be effective for Water Year 2020 at \$121.91plus CPI.

II. Summary and Alternatives: Move to approve the proposed contract or table or deny the requested renewal.

III. Staff Recommendation: Approve the proposed contract.

IV. Legal Issues: Contract is on District's current form.

V. Consistency with Board Goals and Policies: Contract is consistent with Board's water contracting policies.

VI. Fiscal Impact: Annual revenue will increase from \$3500 to approximately \$6050 in 2020.

Attachments: Contract

WATER SUPPLY CONTRACT

THIS WATER SUPPLY CONTRACT (“Contract”) is entered into by and between AMERICAN LAND HOLDINGS OF COLORADO, LLC, a Delaware limited liability company (“Contractor”), and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district (“Upper Yampa”), individually each a “Party” and collectively referred to herein as the “Parties,” effective as of the Effective Date set forth below.

RECITALS

A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153, and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the “Reservoir” or “Stagecoach Reservoir”) in Routt County, Colorado.

B. Upper Yampa has stored and expects annually to store water in the Reservoir on the Yampa River under the absolute storage water rights it owns (“Water Rights”).

C. Contractor owns property in Routt County, Colorado which it holds for coal mining purposes.

D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described “Contract Pools,” or individually, a “Contract Pool”). Upper Yampa has adopted a filling priority for the various Contract Pools under the District Fill Policy as follows:

(i) 9,000 acre-feet “Municipal/Industrial Pool” – The Municipal/Industrial Pool consists of water currently allocated to Tri-State Generation and Transmission Association, Inc. (“TriState”) or its successors or assignees, or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet allotted to TriState if Upper Yampa's current contract with TriState for 7,000 acre-feet from Stagecoach is terminated or released or amended in whole or in part; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between Upper Yampa and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa's current contract with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;

(ii) 2,000 acre-feet “Augmentation Pool” – This Augmentation Pool consists of water allocated for augmentation use pursuant to the decree of the Water Court entered in Case No. 06CW49, Water Division 6;

(iii) 4,000 acre-feet “Former Exchange Pool” – The Former Exchange Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo Reservoir pursuant to an exchange agreement which expired and was not renewed; the

Exchange Pool water is not subject to any exchange obligation or right or limitations on storage and use other than the District Fill Priority, but is called the “Former Exchange Pool” only for definitional purposes;

(iv) 3,164 acre-feet “Raise Pool” – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than the District Fill Priority, but is called the “Raise Pool” only for definitional purposes;

(v) 3,125 acre-feet “Preferred Remainder Pool” – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the District Fill Priority, but is called the “Preferred Remainder Pool” only for definitional purposes; and

(vi) 15,000 acre-feet, approximately, is the “Emergency Remainder Pool” – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(v) above.

E. Upper Yampa and the Contractor desire to enter into this Contract for Upper Yampa to store and release unto Contractor 50 acre-feet of water stored in Stagecoach Reservoir from the Former Exchange Pool for beneficial uses by the Contractor on an annual basis during the Term of this Contract (the “Contracted Water”).

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the use of Contracted Water.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Upper Yampa agree as follows:

USE OF WATER RIGHTS

1. Contract Price and Payment Procedure.

1.1 The purchase price for the Contracted Water from the Reservoir storage water allocated to the Contractor for Water Year 2020 under this Contract (the “First Water Year”) shall be an amount equal to the greater of (i) One Hundred Twenty One and 91/100 dollars (\$121.91) or (ii) the product obtained by multiplying One Hundred Twenty One and 91/100 dollars (\$121.91) by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, “All Items” (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the “CPI”) for the semi-annual period ending December 31 in the Water Year prior to the Water

Year prior to the First Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the Water Year prior to the First Water Year for each acre-foot of such Contracted Water stored in the Reservoir and available for release to the Contractor in such First Water Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year. For purposes of this Contract, a "Water Year" shall be the 12-month period from March 1 in a year through February 28 of the subsequent year, unless the beginning and end of such Water Year is changed by the Division Engineer for Water Division 6.

1.2 The annual price per acre-foot for the Contracted Water stored in the Reservoir and allocated and available for release to the Contractor in the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall be an amount equal to the greater of (i) the price per acre-foot charged to the Contractor for the Contracted Water the prior Water Year, or (ii) the product obtained by multiplying the price per acre-foot charged to the Contractor for the Contracted Water the prior Water Year by a fraction, the denominator of which is the CPI for the semi-annual period ending December 31 in the Water Year prior to the prior Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year.

1.3 The annual payments for the Contracted Water shall be made by Contractor to Upper Yampa on or before July 31st of each year during the term of this Contract, beginning July 31, 2020. Any annual payment not made within fourteen (14) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water delivered to Contractor and there shall be no abatement or setoff against any such payment, nor shall Contractor be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15 as described in Section 2.4 below.

1.4 As security for Upper Yampa, Contractor agrees to be bound by the provisions of C.R.S. § 37-45-125 (2018). If the annual payments herein required or some portion thereof are not fully met from such sources of revenue as may be legally available to Contractor for such purpose, such annual payment or such portion thereof may be met from assessments levied by Upper Yampa pursuant to C.R.S. § 37-45-125 (2018).

2. Storage and Delivery of Contracted Water.

2.1 Upper Yampa agrees, subject to physical water supply conditions, terms of the license issued by the Federal Energy Regulatory Commission, the administration of water rights by State of Colorado water officials, and the terms of this Contract, to store the Contracted Water in Stagecoach Reservoir prior to July 15th of each calendar year for release for Contractor's beneficial use, upon request between July 15th and March 31st of the then current

Water Year. Contractor shall be entitled to one use of the water delivered hereunder to extinction, but shall not be entitled to the reuse or successive uses of such water. Contracted Water may only be used during the then current Water Year and no unreleased Contracted Water will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from one Water Year to the next.

2.2 The Contracted Water shall be stored as part of the Former Exchange Pool of Upper Yampa, to be stored in the priority of such Contract Pool under the District Fill Policy. In the event space is made available in the Municipal/Industrial Pool due to the termination or amendment of Tri State's existing contract with Upper Yampa, then all or a portion of the Contracted Water shall be delivered from the Municipal/Industrial Pool.

2.3 Except in times of emergency, Contractor shall give at least forty-eight (48) hours advance written notice to Upper Yampa specifying the time and quantity of the Contracted Water requested to be released out of the Reservoir. The point of delivery of the Contracted Water shall be the discharge of the outlet works of the Reservoir. Responsibility for transportation and delivery of such Contracted Water after the point of delivery, and for all transit and transportation and carriage losses sustained in such delivery, shall be borne solely by Contractor. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir, and shall maintain records of water levels in the Reservoir measured not less frequently than once per week. Contractor shall be entitled to inspect such records and copies shall be furnished to Contractor upon written request.

2.4 Upper Yampa shall allocate and charge any evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged. If evaporation is charged against the Contract Pool in which the Contracted Water is stored (*i.e.* either the Former Exchange Pool, or in the event of termination or amendment to the Tri-State contract, the Municipal/Industrial Pool), then Upper Yampa shall first charge the evaporation against the unallocated water in that Contract Pool, and only if there is evaporation that still needs to be accounted for, then against the Contractor's storage account on a pro rata basis with other water that is stored and allocated to other water users in that Contract Pool.

2.5 In any calendar year when insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool. If any part of the water allocated to Contractor by this Contract is reduced by such abatement, Upper Yampa shall notify Contractor in writing of such fact, and of the amount of the reduction in such water, by July 25th of that year, and in the absence of such notice the full amount of water for Contractor shall be deemed to have been in storage on or prior to July 15th of that year. The Contractor will be credited against that

Water Year's contract purchase price for the amount of such abatement shortage in acre-feet allocated to the Contractor, multiplied by that year's purchase price per acre-foot.

2.6 The Contracted Water shall only be beneficially used by Contractor for industrial purposes in its coal mining operations either directly or through a court approved augmentation plan.

2.7 The Parties acknowledge that the turbine capacity to release stored water through the outlet works of Stagecoach Reservoir is 105 cfs, and that Upper Yampa may diminish the instantaneous rate of release of the Contracted Water after a request from Contractor, proportionally with diminishment of rates of releases of stored water to other contractees without discrimination, to the extent that, in conjunction with other adjusted required release rates by Upper Yampa for such other contractees, the maximum safe release rate of stored water and required bypasses through the outlet works is not exceeded.

3. Contractor's Water Use Obligations of the Contracted Water.

3.1 **Carriage and Transit Losses.** Contractor shall bear carriage and transit losses in the Contracted Water released by Upper Yampa, in such amounts as are determined by the Division Engineer for Water Division 6, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.

3.2 **Use per Contract and Law.** Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of Upper Yampa's Water Rights, Upper Yampa's adopted Policies and Procedures, as they may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Upper Yampa warrants and represents to Contractor that the Contracted Water may be used by Contractor for industrial purposes, subject to (a) transit losses after release from Stagecoach Dam, (b) the terms of Section 3.3 below and any plan of augmentation obtained by Contractor to which Upper Yampa has consented, and (c) administration of the Yampa River at and above Contractor's point(s) of use and/or exchange or augmentation. . Upper Yampa does not, however, warrant or represent that any augmentation plan of Contractor is sufficient, adequate, effective, or lawful to accomplish its objectives or to protect the continued diversion of the Contracted Water during administration of the Yampa River. Contractor is not authorized to apply for or secure any change in the Water Rights of Upper Yampa for or associated with any of the sources of supply of the Contracted Water.

3.3 **Legal Approvals.** If Contractor requires a plan of augmentation to utilize the Contracted Water, Contractor shall at its sole expense adjudicate such plan of augmentation needed for Contractor to use its Contracted Water. Upper Yampa may in its discretion become a co-applicant or opposer in the prosecution of any such applications for the purpose of protecting its Water Rights and related policies and the operation of the Reservoir by Upper Yampa. If a Water Court decree is required for Contractor to use the Contract Water, Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of an Upper Yampa contract.

3.4 **Limitation on Disposition.** Contractor shall not sublet, sell, donate, loan, or otherwise dispose of any of its rights to Contracted Water without prior written notice to, and the written approval of, Upper Yampa and the payment of a transfer fee at the prevailing rate set forth by Upper Yampa.

3.5 **Assignment.** This Contract shall not be assigned or otherwise transferred by Contractor without the prior written consent of Upper Yampa, such consent not to be unreasonably withheld, conditioned or delayed. All assignments and transfers not in compliance with the foregoing shall be void and of no effect.

3.6 **Nondiscrimination.** Contractor and its employees shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, sex, disability, national origin, or any other criteria prohibited under state or federal law.

3.7 **Accounting of Use.** Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to Upper Yampa specifically to enable Upper Yampa to prove the use of the Water Rights and to administer and operate the Reservoir and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to Upper Yampa promptly upon request and shall assist Upper Yampa as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

3.8 Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, et seq.) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species.

4. Term.

4.1 **Term.** Except in the event of an early termination as provided in Section 5 below, the term of this Contract shall commence effective July 15, 2019 (the "Effective Date") and shall end on November 1, 2041 (the "Term"). This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new water allotment contract for the Contracted Water. Upper Yampa may not enter into a water allotment contract for the Contracted Water with any person or entity other than the Contractor during the Term of this Contract.

4.2 **Right of First Offer.** If Contractor and Upper Yampa do not enter into a new allotment contract for the Contracted Water before the end of the Term, then Contractor shall have a right of first offer for the Contracted Water for a period of five years after the end of

the Term. If within the period of five years after the end of the Term of this Contract, Upper Yampa determines to offer for contract all or a portion of the Contracted Water from the applicable Contract Pool to any person or entity besides Contractor, Upper Yampa shall first notify Contractor of such decision and shall specify to Contractor the quantity, price (which may provide for annual adjustments), duration (but not to exceed 30 years), and terms and conditions upon which Upper Yampa offers to enter into a new water allotment contract (the “New Contract Offer”). For a period of 120 days after the giving of such notice, Upper Yampa will negotiate in good faith with Contractor regarding any and all of the provisions in such New Contract Offer, so long as Contractor first confirms in writing to Upper Yampa within 15 days of receipt of such notice that Contractor is willing to meet the quantity limitations and price and payment terms of the New Contract Offer. If the Parties have not entered into a new contract upon agreed terms and conditions within 120 days after the giving of such notice from Upper Yampa, then the New Contract Offer shall be deemed rejected. The terms and conditions of this Section 4.2 survive expiration of the Term to the extent set forth herein. If Upper Yampa enters into an allotment contract with any person or entity other than the Contractor for water from the applicable Contract Pool which does not include the Contracted Water, such action does not require compliance with this Section 4.2.

5. Contract Termination.

5.1 Termination by Upper Yampa.

5.1.1 Upper Yampa may terminate this Contract for a material breach of the terms of this Contract by Contractor, including Contractor’s failure to pay timely any amount due under this Contract, provided that Upper Yampa has first given at least 60 days prior written notice specifying in detail such material breach and giving Contractor the right within such 60-day period to cure and remedy such material breach.

5.1.2 Upper Yampa may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Contractor as contemplated in Section 3 above materially threaten or interfere with Upper Yampa’s authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa’s Water Rights, permits, or other interests associated with Upper Yampa’s Water Rights or the Reservoir or Reservoir operations.

5.1.3 Upper Yampa may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

5.2 Termination by Contractor.

5.2.1 Contractor may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa’s failure or inability to deliver Contracted Water for an extended period of time, provided that Contractor has first given at least 60 days prior written notice from

Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 60-day period to cure and remedy such material breach.

5.2.2 Except as provided in these preceding sections, Contractor has no right to terminate or reform or rescind this Contract.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract.

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

7. Inspections. Upper Yampa grants to the managerial staff of Contractor and any of its professional consultants access to Stagecoach Reservoir and Stagecoach Dam subject to this Contract at reasonable times and under reasonable protective terms and conditions.

8. Miscellaneous Provisions.

8.1 Upper Yampa may assign this Contract without necessity of Contractor's consent or approval to any entity which succeeds Upper Yampa in the ownership of Stagecoach Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.

8.2 This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

8.3 The Parties agree to communicate, coordinate and cooperate, if needed, on any required or desired water use accounting.

8.4 It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights which providing supplies of water for storage in the Reservoir.

8.5 No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and

executed by both parties with the same formality as they have approved and executed this Contract.

8.6 Any notice required or permitted to be given by a party under or in connection with this Contract shall be in writing and shall be deemed duly given when personally delivered or sent by (i) registered or certified mail, return receipt requested, postage prepaid, (ii) expedited courier service, or (iii) email with confirmation of receipt, to the following addresses:

If to Contractor:

AMERICAN LAND HOLDINGS OF COLORADO, LLC

Attn: _____

Email: _____

With a copy to:

If to Upper Yampa:

Upper Yampa Water Conservancy District

Attention: General Manager

P.O. Box 883990

Steamboat Springs, Colorado 80477

Email: kmcbride@upperyampawater.com

Each party may change its address or contact information for notices under this Contract upon written notice to the other party in accordance with this paragraph.

9. Limited Representations by the Parties. Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and deliver the Contracted Water, and perform its obligations hereunder during the Term. Contractor represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point and cause it to be delivered to Contractor's point and locations of use, and pay for and perform its obligations hereunder during the Term.

10. Enforcement of this Contract; Remedies on Default.

10.1 Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to

the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach.

10.2 Specific performance and/or restraining orders and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that Upper Yampa shall have all remedies at law for collection of sums required to be paid by Contractor hereunder which are not paid when due, including interest and attorneys' fees.

10.3 In the event of litigation between the Parties with respect to this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party.

11. **Effective Date.** The effective date of this Contract shall be the last date below it is executed by all Parties.

IN WITNESS WHEREOF, Contractor and Upper Yampa have executed this Contract on the dates set forth below.

UPPER YAMPA WATER CONSERVANCY
DISTRICT

DATE: _____

BY: _____
Ken Brenner, President

ATTEST:

UPPER YAMPA WATER CONSERVANCY
DISTRICT

BY: _____
Kevin McBride, General Manager

AMERICAN LAND HOLDINGS OF
COLORADO, LLC

DATE: _____

BY: _____
Title