

AGENDA
UPPER YAMPA WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS MEETING
THURSDAY, AUGUST 22 (1:30 PM)
MOUNTAIN VALLEY BANK COMMUNITY ROOM
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO

- (1) *1:30 pm* Establishment of Quorum and Call to Order;
- (2) Consent Agenda;
- (3) Approval of Agenda for Meeting;
- (4) Public Comment;
- (5) *1:45 pm* Report of the General Manager;
 - a) Stagecoach Firming Project
- (6) *2:15 pm* Work Session;

Work session procedure: The Board will give direction to staff at work sessions for the presentation of action items at future Board of Directors Meetings, no motions will be considered. Public comment will be accommodated at the discretion of the Board of Directors majority.

 - a) Strategic Planning Workshop;
- (7) *4:45 pm* Report from General Counsel;
 - a) Water Resumes
 - b) Status of other Water Cases, if any
 - c) Credit Cards Resolution action item
 - d) Stillwater Ditch Negotiations
- (8) *5:05 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) Other Unfinished Business, New Business;
- (10) Board Member Reports;
- (11) Determination of Future Meetings;
- (12) Adjournment.

5)





BOARD COMMUNICATION FORM

From: Kevin McBride

Date: August 22, 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 and why this task is being put on hold.

Present the conceptual description for Preliminary Alternative 4 (Morrison Creek to Stagecoach Siphon)

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

Stagecoach Reservoir Firming Project Board Work Session

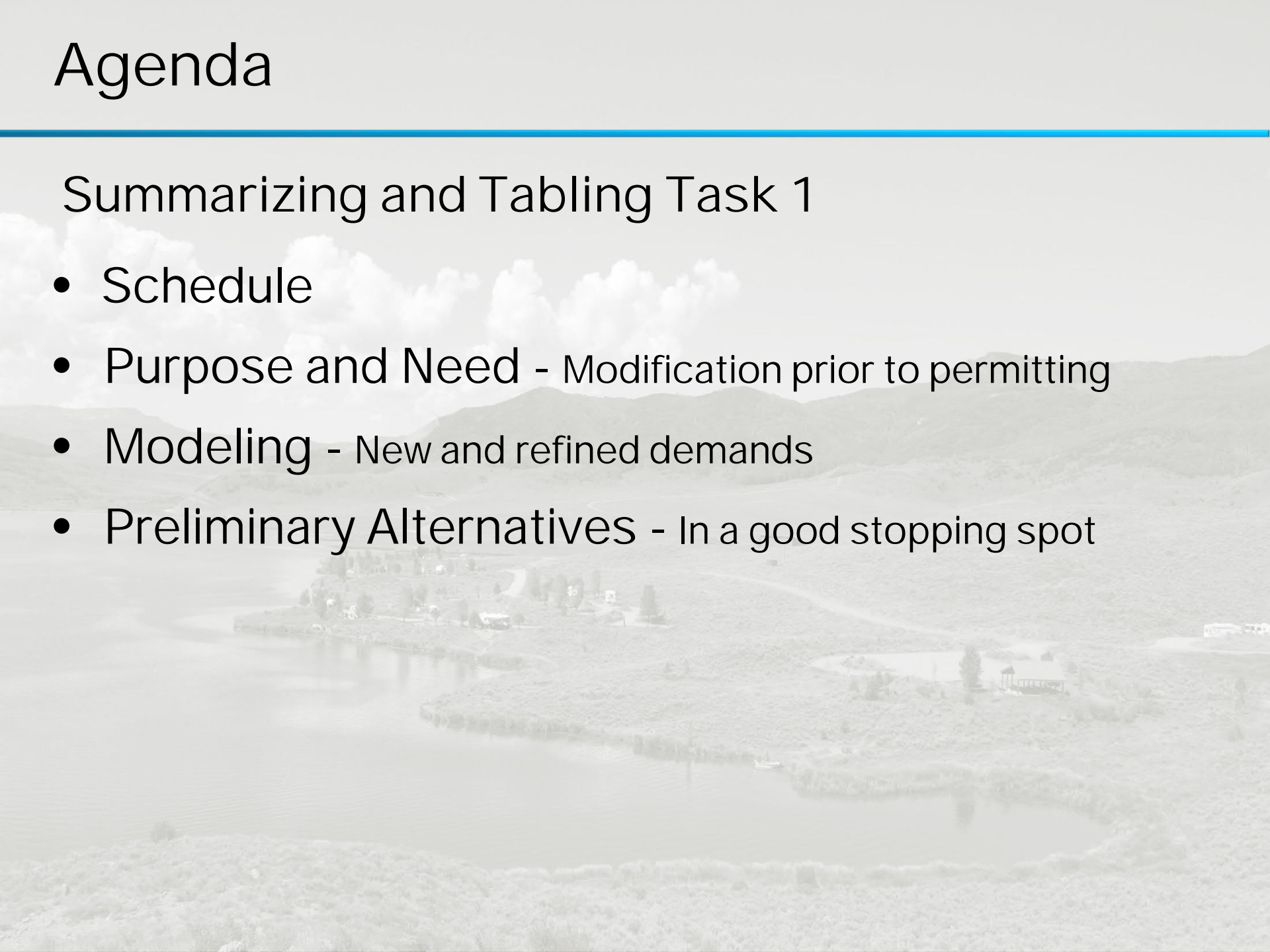
Upper Yampa Water Conservancy District

August 22, 2019



Agenda

Summarizing and Tabling Task 1

- Schedule
 - Purpose and Need - Modification prior to permitting
 - Modeling - New and refined demands
 - Preliminary Alternatives - In a good stopping spot
- 
- An aerial photograph of a large, calm lake with a small island in the center. The island has several buildings and trees. The surrounding landscape is hilly and covered in vegetation. The sky is overcast with soft clouds. The image is faded and serves as a background for the text.

Summarizing and Tabling Task 1



Schedule – April 24th Board Meeting

Purpose and Need

- Draft Report and May 15, 2019 Board meeting ✓
- Final Report - Sept 6, 2019

Alternatives

- Draft Report and May 15, 2019 Board meeting ✓
- Final Report - Oct 11, 2019

Permitting Strategy

- Draft Report - Oct 25, 2019
- Final Report – Nov 8, 2019

Budget Level Estimates

- Draft Report - Nov 22, 2019
- Dec 18, 2019 Board Meeting (permitting + budget estimates)
- Final Report - Jan 17 2020

Purpose and Need

- On-Hold – modify prior to permitting
- Draft Report - structure with placeholders for remaining demand analysis
- Refine multiple needs before permitting:
 - SWSI 2019 (“Technical Update” to Water Plan)
 - On-going contract discussions – ag, M&I and Environmental Recreational Contracts (ERCs)
- Model future demands based on contracts, SWSI 2019 and collaboration with other stakeholders

Preliminary Alternatives

P&N of Firming Stagecoach Led to Morrison Creek

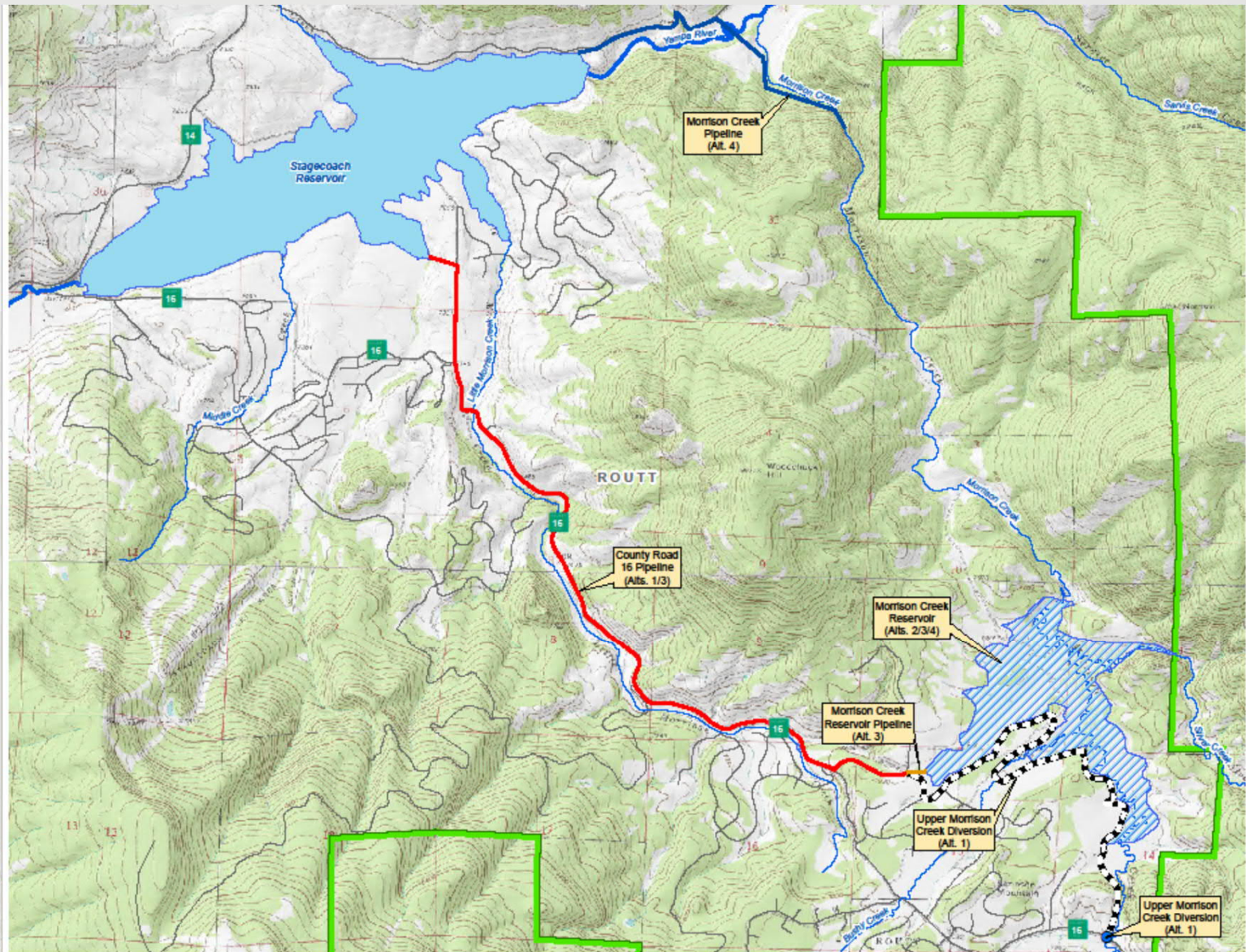
Alt 1 – Upper Diversion from Morrison Creek into Stagecoach Reservoir

Alt 2 – Morrison Creek Reservoir

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

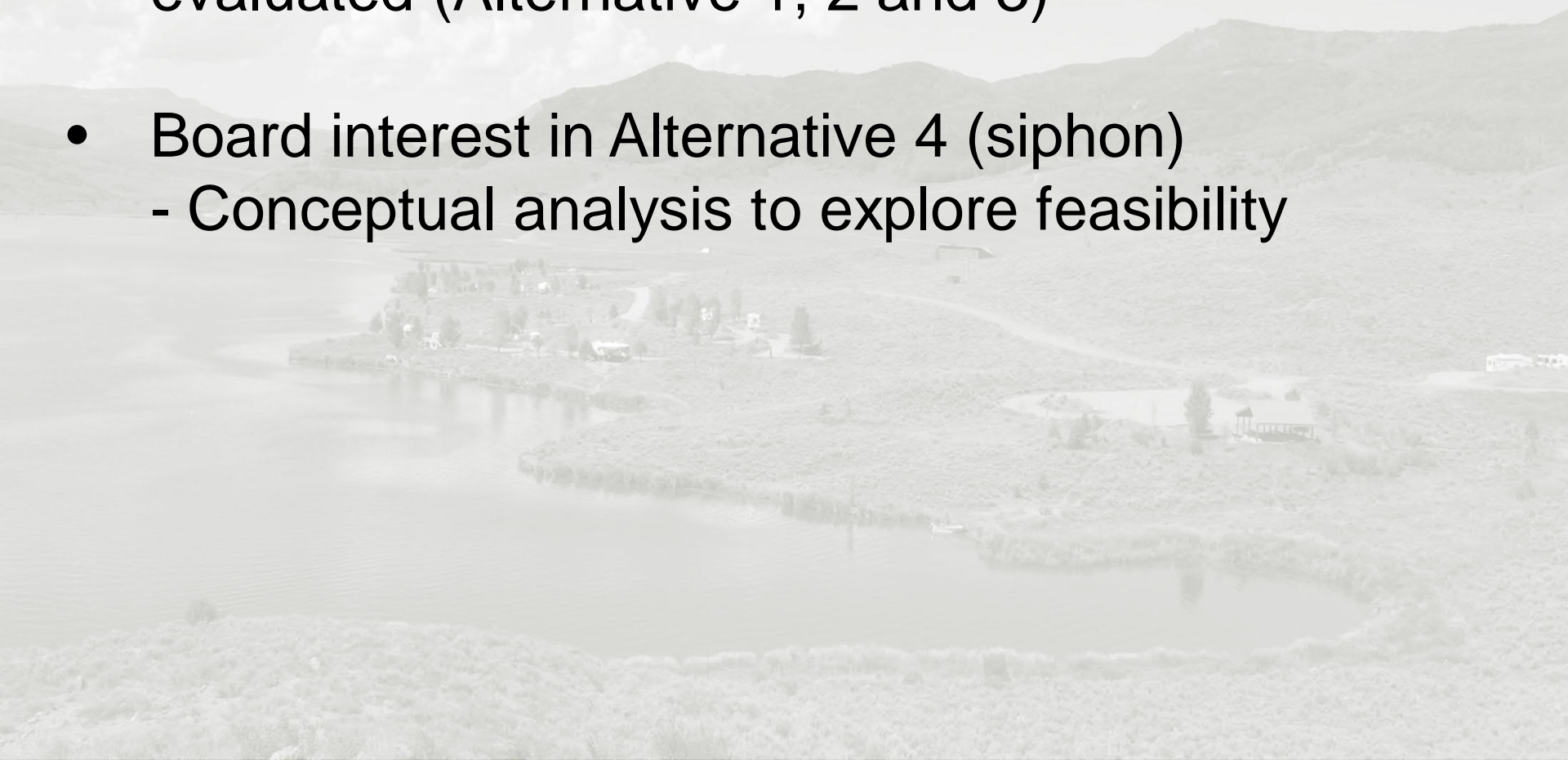
Alt 4 – Morrison Creek to Stagecoach Reservoir Siphon

Preliminary Alternative Layouts



Preliminary Alternatives

- Reservoir and diversion components previously evaluated (Alternative 1, 2 and 3)
- Board interest in Alternative 4 (siphon)
 - Conceptual analysis to explore feasibility



Alt 4 - Morrison Creek to Stagecoach Siphon

Pipeline

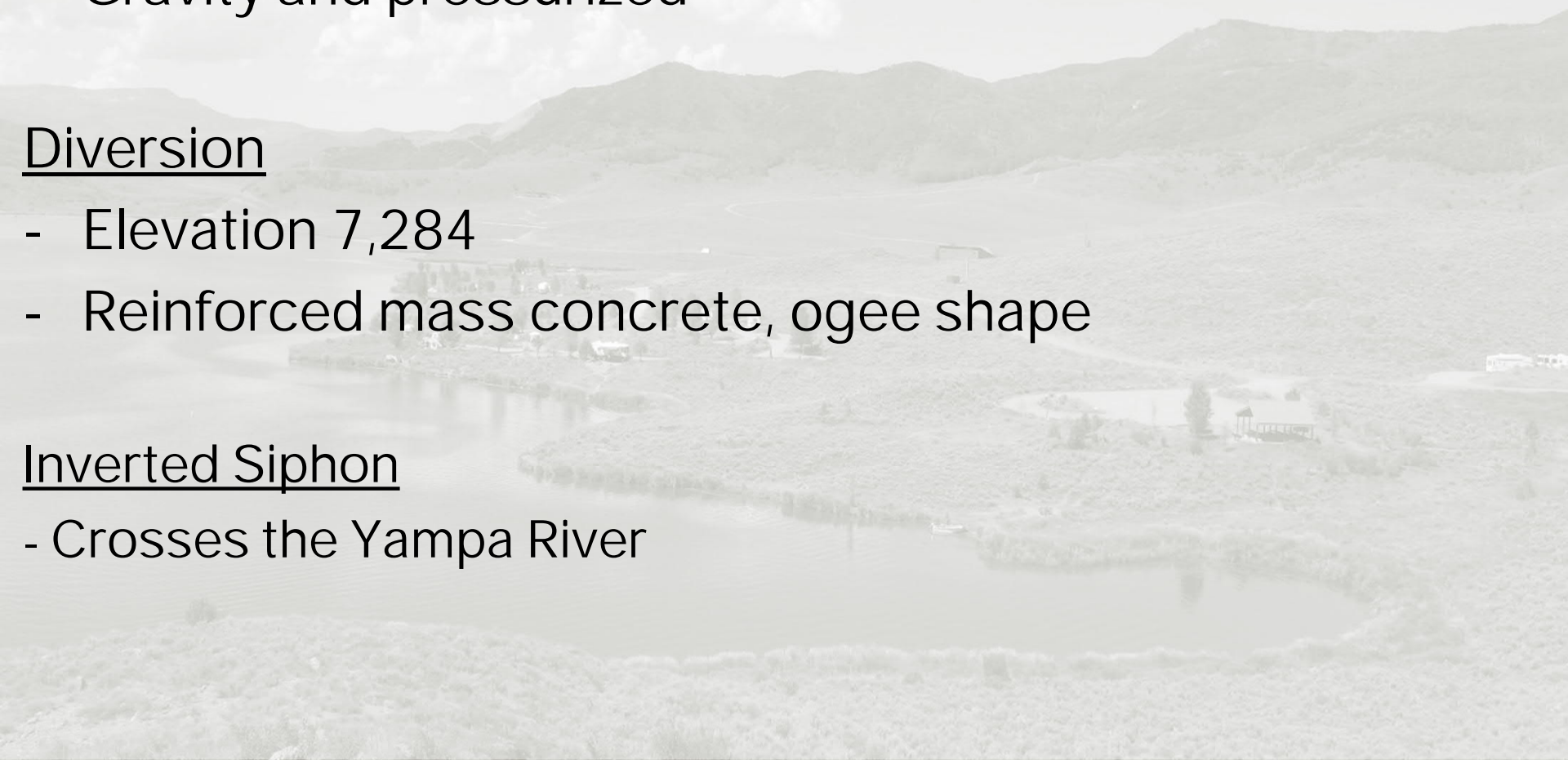
- Capacity 50 cfs, Length 8,500 feet
- Gravity and pressurized

Diversion

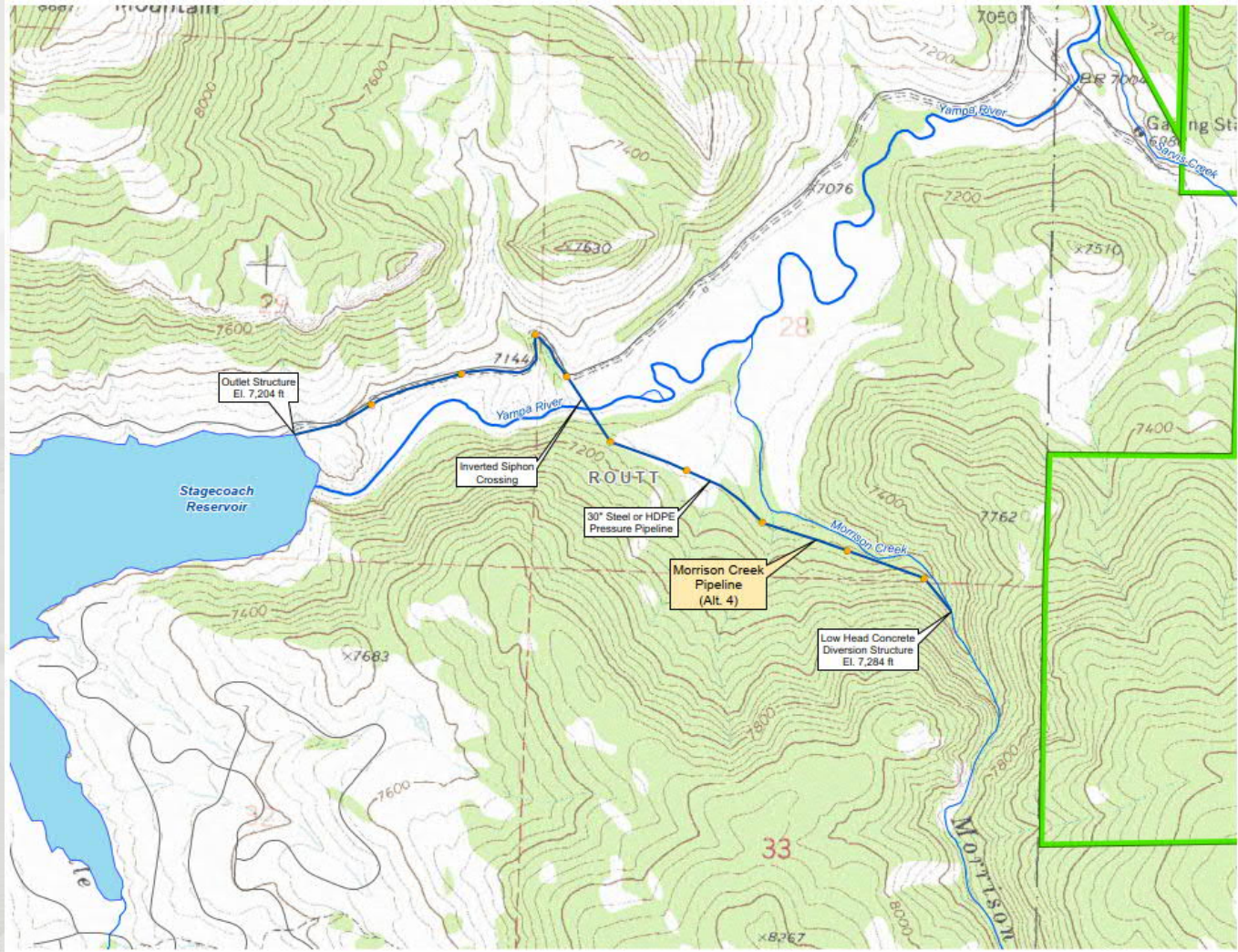
- Elevation 7,284
- Reinforced mass concrete, ogee shape

Inverted Siphon

- Crosses the Yampa River



Conceptual Siphon Alternative



Preliminary Alternatives – Cost

| Preliminary Alternative | Project Yield AC-FT/YR | Opinion of Probable Cost | | Cost (\$) per AC-FT (original) (2019) | Cost Evaluation | |
|---|--|--------------------------|---|---|-----------------|--------------|
| | | Original Cost Estimates | Project Costs Adjusted to 2 nd Qtr 2019 Using USBR CCT | | Source | Date |
| Alternative 1 Upper Diversion from Morrison Creek into Stagecoach Reservoir Via Little Morrison Creek Pipeline along CR 16 | 3,500 | | | \$772 | Resource | 2008 |
| | | \$2,704,970 | \$3,516,661 | \$1,005 | | |
| | | \$7,295,153 | \$9,703,550 | \$2,193 \$2,772 | | |
| Alternative 2 Morrison Creek Reservoir | Equals reservoir size | \$10,000,000 | \$12,600,000 | TBD | URS | 2009 |
| Alternative 3 Morrison Creek Reservoir Pipe and Pump into Stagecoach Reservoir | Equals reservoir size + Stagecoach yield | \$17,295,153 | \$22,303,550 | TBD | URS Resource | 2009 2008 |
| Alternative 4 Morrison Creek to Stagecoach Reservoir Pumphouse | TBD | \$8,207,000 | \$8,207,000 | TBD | AECOM | 2019 |
| No Action Alternative | | TBD | TBD | TBD | TBD | TBD |

Cost Estimate Assumptions

- Construction Costs only – does not include Permitting, Geotech, Land Acquisition, mitigation or OM&R
- Construction Costs Estimates from 2008 and 2009 - adjusted to 2nd Quarter 2019 using USBR Construction Cost Trends for Water Resource Project – Composite Trend
- Average Yields - Resource Engineering water rights reports, represent reasonable estimates

Next Steps



Next Steps

- Refine demand
- Refine yield and cost of preliminary alternatives





6)





BOARD COMMUNICATION FORM

From: Ryan Golten (CBI)

Date: August 15, 2019

Item: 8/22 Board Strategic Planning workshop

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information:

At the June and July meetings, the Special Committee presented a draft Strategic Plan (formerly 'Mission/Goals' document) for feedback and edits. The Board expressed support for including goals, objectives, and strategies/tasks in the document. Since then, the Committee has further developed the document and is ready for more in-depth Board input, guidance and decision-making.

The Committee has worked with Ryan to plan a 2.5 hr Board session on 8/22 in which we will:

- Get in-depth Board input for District goals and corresponding objectives
- Identify strategic questions that need fuller discussion and decision-making
- Provide direction to staff to take revised draft to next level (adding proposed tasks and highlighting questions during the month of September)

II. Summary and Alternatives – see above

III. Staff Recommendation:

Conduct a Board workshop to help refine the strategic plan for the District.

IV. Legal Issues:

N/A

V. Consistency with Board Goals and Policies:

Consistent with Board direction.

Attachments/Relevant documents

Agenda for 8/22 Strategic Planning Workshop

Draft Strategic Plan, revised 8/13/19

UYWCD Board Strategic Planning Workshop

Thursday, August 22 2019, UYWCD District Office (approx. 2:15-4:45)

Purpose/goals:

- Get in-depth Board input for District goals and corresponding objectives
- Identify strategic questions that need fuller discussion and decision-making
- Provide direction to staff to take revised draft to next level (adding proposed tasks and highlighting questions)

Orientation, purpose and goals of the session (15 min, Ryan and Committee)

- Brief update on planning document: what's been done, what's left to do
- Goals and plan for today
- Next steps *after* today

Participatory exercise: what do we want to accomplish in next few years? (1 hr)

- Briefly review current draft goals and objectives
- Individual brainstorming - walk around room, suggest changes, populate goals with new objectives

Debrief/discussion (1 hr)

- Review exercise results – what was significantly changed or added?
- Debrief: In what areas does there appear to be broad agreement? What topics need further discussion and decision-making?

Wrap up (15 min)

- Review take-aways from today
- Clarify next steps

UPPER YAMPA WATER CONSERVANCY DISTRICT STRATEGIC PLAN

Mission

To lead water resource management within the District's boundaries by responsibly conserving, protecting, developing, providing and enhancing the water resources security of the Upper Yampa River Basin. The District will initiate and participate in works and projects that embody and promote the protection of water rights, provide broad benefits to District constituents and develop works and projects that provide responsible conservation, responsible growth, beneficial water storage and usage, and public awareness within the Upper Yampa Water Conservancy District.

[Placeholder for possible Vision Statement]

Ideas include, e.g.: An Upper Yampa Basin with safe, secure water storage for its customers that benefits [multiple/all/diverse?] beneficial uses in the Basin

The Board of Directors believes the Districts' mission is reflected in the following policy statements, as informed by guidance from the Upper Yampa District's 2017 community survey and 2019 stakeholder assessment report. Some of these policy statements reflect the District's responsibilities and core mission, while other policy statements reflect values and opportunities the Board sees embodied in carrying out its mission.

The statements and goals are not currently listed in order of priority. They are temporarily numbered for purpose of internal cross-referencing.

Policy Statements (note these may be simply included as 'Whereas' statements)

1. The Board acknowledges as an integral part of its vision, policies, and goals, the legislative declaration of the Colorado Water Conservancy Act (the "Act") under which the District was created, as set forth in Colo. Rev. Stat. Ann. §37-45-102. In addition, the Board acknowledges and seeks to prudently interpret and integrate the more recent federal and state mandates, statutes, policies, and regulations into the modern functioning of the District. [\[Consider moving into a Preamble.\]](#)
2. The Board supports the concept that the Upper Yampa River Basin and the healthy functioning of its reservoirs, rivers and streams are essential to the District's agricultural, environmental, municipal, commercial, industrial, domestic, and recreational cultures, and, thus, its economic future.
3. The Board acknowledges that climate change should be considered in planning.
4. The Board considers irrigation, municipal, commercial, domestic and industrial uses, and opportunities to support environmental values and water-based recreation, to be important matters for the District and the public it serves, and seeks to achieve balance among uses of water within the District.

5. The Board affirms the importance of maintaining the structural integrity and protecting the water rights of the District's Yamcolo and the Stagecoach reservoirs.
6. The Board supports the District's collaboration in partnerships that protect the healthy functioning of reservoirs, rivers and streams, and the riparian and upland ecosystems and hydrology supporting such rivers and streams, where such participation advances the District's mission.
7. The Board supports ranching and irrigated agriculture in the District for its economic, socio-cultural values, aesthetic, and environmental contributions to the community.
8. The Board recognizes that prudent industrial uses, such as energy development and production, may require direct flow and storage water and support the economic welfare of the District.
9. The Board supports planning and development of long-term water supply strategies for future municipal uses to ensure a vibrant, diverse, and resilient economy within the District.
10. The Board affirms its support for water-based outdoor recreational activities in the District.
11. The Board supports land use policies by local governments that protect the Upper Yampa Basin's water resources and are compatible the District's ability to manage and develop the water resources within its boundaries.
12. The Board supports science-based programs related to monitoring, protection, and restoration, as appropriate, in order to maintain the chemical, physical, biological, and aesthetic integrity of the reservoirs, rivers, and streams within the District.
13. The Board believes the District should participate in local and statewide processes to address co-occurring challenges such as climate, environmental, social, political, legislative, administrative and economic changes.
14. The Board recognizes the need for collaborative efforts with partners to monitor, and, if warranted and specifically directed by Board action, to support or oppose legislation, regulations, litigation, or administrative actions that could impact the District's mission.
15. The Board opposes any new transfers of stream flow or storage water from the Upper Yampa River and its tributaries to other basins, because such transfers would interfere with existing beneficial uses of water, damage economic stability, may diminish flows supporting the Colorado River Compact and reduce environmental quality of stream flow within the District.

16. The Board supports providing water-related information to the public through Districts programs and partnerships.
17. The Board values a two-way exchange of ideas and information with our community regarding the District's programs and priorities.
18. The Board should continue to prudently seek to evaluate and develop financially viable water works within the District where appropriate for beneficial uses and conservation of water within the District.
19. The Board is committed to ensuring the financial viability of the District into the future consistent with the District's statutory responsibilities.
20. The Board recognizes the District is a taxpayer supported, public entity and is committed to being responsive to and engaged with our community and constituents.

District Goals

The goals below collectively represent the District's vision. The Board believes they capture and advance the policy statements listed above.

Goal 1 Protect Upper Yampa Basin water resources and local water uses from calls under the Colorado River Compacts, new or expanded transmountain or transbasin diversions, or other plans or projects that would adversely impact those water resources and uses.

Example Objectives

- 1) Prevent legal transfers of water out of the District or those with potential adverse impacts for the District.
 - a. Oppose relevant water court and legislative activities
 - i. *Tasks may include: legal counsel monitoring monthly filings and providing standing reports at monthly Board meetings; other monitoring activities (legal and legislative); Board members bringing issues/concerns to Board for discussion*
 - b. Ensure demand management efforts are voluntary, temporary and compensated and further District goals
 - i. *Tasks may include monitoring and participating in local and regional discussions as needed*
- 2) Increase District understanding and potential role in tools to address Big River issues, such as the Drought Contingency Plan and water banking.
 - a. *Tasks may include: exploring water banking concept with state and regional organizations*

Goal 2 Safely operate, maintain and improve the District's existing infrastructure.

Example Objectives

- 1) Ensure compliance with regulatory requirements
 - a. *Tasks may include implementing requirements of FERC, dam safety, other regulatory agencies*
- 2) Ensure sufficient funds to maintain and/or improve our infrastructure
 - a. *Tasks may include: budgeting for O&M activities necessary to maintain and/or improve water infrastructure (e.g., Chief Engineer developing/annually updating 5-year capital improvement plan)*
- 3) Maintaining Stagecoach (State) Park
 - a. *Tasks may include: initiate discussions for potential renegotiation of Stagecoach lease with CPW; participate with CPW in updating Stagecoach master plan; ask CPW for update of annual activities*

Goal 3 Protect and promote historic agricultural, municipal, commercial, domestic, and industrial uses.

Example Objectives

- 1) Improve efficiency of ditch diversions /constituent infrastructure
 - a. *Tasks may include: update grants program language to clarify grant criteria; administer/increase grants program*
- 2) Promote District's existing augmentation plans
- 3) Explore potential expansion or creation of augmentation plans that benefit properties not currently within the boundaries of the District's existing augmentation plans (e.g., above Stagecoach)
- 4) Explore ways to address demand management other than the transfer of agricultural water through buy and dry, e.g., by promoting efficiencies in watershed management and forest health within the District's various sub-basins
 - a. *Strategies may include: exploring opportunities to support efforts or partner with others on watershed management and forest health, and other ways to relieve pressure on agriculture based on Compact compliance/administration issues*

Goal 4 Promote environmental and recreational uses of the Upper Yampa River, consistent with the policy statements above.

Example Objectives

- 1) Maintain and/or increase level of partnering with entities that may want to purchase District water for environmental and recreational uses (e.g., Water Fund, FOTY, Yampatika, SBS)
- 2) Identify amount of the District's current supply that is physically and legally available for environmental and recreational uses within District
- 3) Explore tools to enhance water delivery flexibility (Big River)

- a. *Example task: Explore the water banking concept with state and regional organizations*
- 4) Increase tools to support physical and legal availability of environmental and recreational water
 - Strategies may include:*
 - a. *Continue to look into substitute water supply with DNR [does this include potential use of augmentation water?] and follow other strategies to support environmental and recreational water uses*
 - b. *Participate in legislative discussions to increase flexibility in water law to support environmental and recreational uses*
 - c. *Explore storage possibilities that support non-consumptive needs of the District*
- 5) Clarify District policy and role regarding the use of District water to support non-consumptive water uses
 - a. *Tasks may include: develop Environmental and Recreational (ERC) policy and pricing structure (see also Goal 10); invite relevant groups to present; schedule Board discussions*

Goal 5 Represent Upper Yampa Basin water interests at the local, regional and statewide levels on relevant policy, legislative, administrative, regulatory and judicial matters.

Example Objectives

- 1) Ensure representation of District interests on the IBCC, Basin Roundtable, Colorado River District, and CWCB
- 2) Convey District’s message through developing/clarifying District policies in collaboration with Roundtable partners (*e.g., Yampa Doctrine, equitable apportionment/percentage of native flow/post-Compact proportional sharing, DCP/demand management*)
 - a. *Tasks may include: clarifying organizational structure and expectations to ensure Board and staff roles, coordination, and messaging is clear when representing District externally; develop policy positions and messages; develop a plan for conveying these positions effectively and consistently*

Goal 6 Anticipate and plan for future water needs, uses and sources in the District in anticipation of changing climate conditions, population shifts, and other changes.

Example Objectives

- 1) Maintain District’s Water Model
- 2) Evaluate and refer to other models to regarding potential effects of climate change, population growth, and demographics
- 3) Board to stay informed of relevant climate, demographic, modeling scenarios, and other potential changes relevant to the District

- a. *Tasks could include: standing item on agendas for Board to share and receive relevant updates; guest speakers*
- 4) Increase engagement with partners and constituents regarding long-term Basin water needs
- 5) Anticipate and respond to changes in water contracts.
- 6) Increase science-based tools for internal planning
 - a. *Tasks may include: develop a science-based, living 'white paper' for the District*
- 7) Better understand water conservation methods and irrigation efficiencies
- 8) Better understand subsurface hydrology (natural lateral flow) and assumed return flow from irrigation
- 9) Better understand projected growth of the population in the District to ensure adequate water supply

Goal 7 Study, address and promote water quality concerns, consistent with the District's role and responsibilities.

Example Objectives

- 1) Support existing monitoring efforts – and, where relevant, respond to concerns that arise, consistent with District's mission
 - a. *Tasks may include: annually fund USGS and County long-term monitoring; continue support for Watershed Group*
 - b. Work with CDPHE regarding current and future needs and role of District in addressing water quality, consistent with District's mission.
- 2) Comply with District regulatory water quality responsibilities
- 3) Anticipate potential future role and responsibilities for the District to support water quality in the District
 - a. *Tasks may include: study possibility of future mandated role to evaluate non-point source influences*

Goal 8 Collaboratively engage District's constituencies to develop a shared understanding of water issues in the Upper Yampa Basin and the role of the District in addressing them.

Example Objectives

- 1) Increase public understanding of the District's role and activities
 - a. *Tasks may include: revise website to describe history and achievements of UYWCD, with Board input; annual report; email updates to interested constituents; possible social media presence; promote and support other public education programs concerning water resources in the District; potential annual event*
- 2) Improve Board collaboration, participation and representation with other organizations doing water-related work in the Upper Yampa Basin
 - a. *Tasks may include: consistent with tasks set out in Goal 4, clarify Board/staff roles in external engagement and a plan for clear,*

consistent District messaging; prioritizing and enhancing collaboration and listening skills; staff should add to this, particularly in light of new position

- 3) Improve two-way exchange with stakeholders and partners regarding District priorities and activities
 - a. *Tasks may include: Host relevant groups at monthly Board meetings; ensure opportunity for public input in District planning; provide opportunities for public input at Board meetings; ensure District meeting and planning materials are available and accessible to the public; host forums of thought leaders regarding specific water issues to help clarify the District's role or position*
- 4) Increase local awareness of local water issues and resources
 - a. *Tasks may include: budget education/outreach funds; support local education groups that offer a balanced perspective of water issues and align with District mission; explore working with local partners to promote on-line adult learning programs; provide education on water issues and policies such as demand management and equitable apportionment; create clearinghouse of relevant programs, organizations, and agencies*
- 5) Build engagement of staff and Board, as experts and key stakeholders, to help understand issues and define the District's role
 - a. *Tasks may include: continue work sessions; regular Board member updates (in writing, and verbally where needed) at Board meetings*

Goal 9 Maintain, protect, and, where possible, enhance the District's water rights portfolio, including developing or perfecting water rights.

Example Objectives

- 1) Protect District's water rights consistent with legal and planning responsibilities
 - a. *Legal/planning tasks may include: anticipate next due diligence update, in light of court decrees and Master Plan; legal dept to prepare a list of tasks for upcoming due diligence; anticipating and planning for the unforeseen*
 - b. *Other strategies may include: ensure alignment between legal dept and Board; keep Board apprised of issues and relevant budget needs*
- 2) Ensure District involvement and advocacy on relevant water administration matters
 - a. *Tasks may include: clearly define staff roles in interacting with regulatory agencies*
- 3) Evaluate potential and conditional water rights
 - a. *Tasks may include: explore potential abandonment of water rights as appropriate*
- 4) Increase tributary storage within the Upper Yampa Basin (by exploring downstream possibilities)
 - a. *Tasks may include: explore downstream possibilities*

- 5) Maintain open dialogue with Division of Water Resources

Goal 10 Ensure the District's financial ability to meet its stated goals and on-going financial viability.

Example Objectives

- 1) Develop short- and long-term financial planning to support District goals.
 - a. *Tasks may include: Create a cash-flow projection reflecting anticipated revenues and expenditures over 20-year planning period*
- 2) Clarify District's business model, i.e., use of tax revenues with respect to contract pricing and enterprise fund model
 - a. *Tasks may include: clarify District's use of enterprise fund model; clarify pricing policies, e.g., explore possibilities for recovering reasonable costs of storing water in light of District goals, potentially with criteria to guide budget and contract decision-making*

Goal 11 Maintain a robust staff and legal department.

Example Objectives

- 1) Begin succession planning where appropriate
- 2) Increase redundancy among staff and responsibilities
 - a. *Tasks may include: developing job descriptions, evaluating possibilities for redundancies*
- 3) Clarify Board policy goals and expectations, and the respective roles of Board and staff in achieving those
 - a. *Tasks may include: adopt strategic plan; consider and implement Committee governance recommendations on topics related to staffing needs/resources (e.g., staff and Board roles in external engagement; Board meetings preparation)*
- 4) Ensure staffing reflects needs of the District
 - a. *Tasks may include: staff follow up after development of strategic plan, to evaluate and recommend where staffing changes may be needed; annual budgeting process*
- 5) Ensure legal departments reflects needs of the District
- 6) [Note this is not a comprehensive list]

7)



a)



BOARD COMMUNICATION FORM

From: Scott Grosscup, legal counsel

Date: August 14, 2019

Item: Water Resume Review

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information: I reviewed the Water Resumes for Water Divisions 5 for water court filings in the month of July and did not identify any water applications that would impair or injure the District's water rights. The resume for Division 6 is not available at this time and I will update the Board at its next meeting.

b)



BOARD COMMUNICATION FORM

From: Scott Grosscup, legal counsel

Date: August 14, 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. 17CW3043 – This is the application by the City of Steamboat Springs for an augmentation plan for Casey’s Pond. We received a proposed stipulation and ruling from the applicant consistent with the version the board approved at its February meeting. The ruling uses the District’s water rights from Stagecoach reservoir in its augmentation plan for Casey’s pond. We will continue to monitor the case to ensure that no concerns are raised in the use of the District’s water rights.

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 and Yamcolo Reservoirs pursuant to two contracts with the UYWCD. The Division Engineer has raised an issue whether the District’s water rights decreed to the Pleasant Valley Reservoir and stored in Yamcolo Reservoir may be used for augmentation purposes. We are working through these issues with the applicant’s counsel along with potential solutions.

Case No. 19CW3005 – This is an application for finding of reasonable diligence filed by Tri-State Generation and Transmission Association related to conditional water rights it owns in the Four Counties Ditch No. 3, Headgate 8 and in the Wessels Canal. No other statements of opposition were filed. Next step is to await the Division Engineer’s Consultation Report.

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

From: Karina Craig

Date: August 14, 2019

Item: Banking Credit Card Resolution

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

I. Request/Issue and Background Information:

Resolution to Open Credit Card Account at MVB

At the regularly scheduled June 2019 Board meeting a resolution was presented and the Board approved the transfer of daily banking operations from Wells Fargo Bank to Mountain Valley Bank, and the opening of related MVB checking accounts.

The attached Resolution requests the equivalent, for the District credit cards. The current Visa credit cards at Wells Fargo will be closed once the new cards are issued by MVB.

Having all our daily banking at MVB, next door to our office, facilitates transactions and saves time. Credit cards are used on a need-to basis, and each and all transactions are regularly reported to the Board in the Cash Disbursement report.

II. Summary and Alternatives: The alternative would be to continue using credit cards at Wells Fargo.

III. Staff Recommendation: Approve resolution

IV. Legal Issues: None

V. Consistency with Board Goals and Policies:

Attachments:

Attachment 1: Resolution No. 2019-3

Additional Attachments: none.

RESOLUTION NO. 2019-3

**A RESOLUTION AUTHORIZING A CREDIT CARD ACCOUNT
AND SETTING FORTH MATTERS PERTAINING THERETO**

WHEREAS, the Board of Directors ("Board") of the Upper Yampa Water Conservancy District ("District ") desires to authorize and establish a credit card account in Mountain Valley Bank (the "Bank") as more particularly set forth herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF
THE DISTRICT THAT:**

1. The General Manager of the District, Kevin McBride, is authorized to open a credit account at the Bank in the name of the District and for cards to be issued to such employees of the District as the General Manger shall from time to time determine.

2. This resolution shall continue to have effect until express written notice of its rescission or modification has been received and recorded by the Bank. Any and all prior resolutions adopted by the Board of Directors of the District and certified to the Bank as governing the operation of the District's accounts are revoked and terminated. Any revocation, modification or replacement of this resolution must be accompanied by documentation satisfactory to the Bank, establishing the authority for the changes.

3. The signature Board President below on this resolution is conclusive evidence of his authority to act on behalf of the District.

Dated this ____ day of _____, 2019.

Ken Brenner, President

ATTEST:

Secretary

d)



BOARD COMMUNICATION FORM

August 22, 2019 Meeting

(Not Confidential and Privileged Attorney-Client Communication)

From: Robert Weiss, Counsel

Date of memo: August 15, 2019

Item: Stillwater Ditch Agreement

DIRECTION
 INFORMATION
 MOTION
 RESOLUTION

I. Request/Issue and Background Information: In 2005, the District completed acquisition of all the shares in the Stillwater Ditch & Reservoirs Company (the "Company"). At the time the District acquired all the shares in the Company, the sole assets of the Company were the physical improvements and right of way for the Stillwater Ditch. No water rights were transferred. In connection with the acquisition of all of the shares in the Company, the District entered into the Assignment of Stock and Water Delivery Agreement with the former shareholders of the Company. In that agreement, the former shareholders represented that they owned 100% of the shares in the Company. In the agreement, a portion of the capacity of the ditch was allocated among the shareholders, the District agreed to operate and maintain the ditch, and the former shareholders agreed to make a delivery payment (adjusted by CPI) based on the number of shares formerly owned and, commencing May 1, 2020 to pay to the District a pro rata share of the cost of operation, maintenance, etc. for the ditch. The agreement does not contain any restriction on the right of any former shareholder to assign their interest under the agreement.

Since the agreement was signed, there have been transfers of the interests of the former shareholders under the agreement. For the most part, the records in the possession of the District regarding these transfers are consistent with the District's billing records. The only exception is the 50 shares originally owned by Cliff Sutton. Among the records that Karina has, we have a list of six persons or entities that we believe own these interests and these parties are being billed. We have limited further documentation confirming the 50 Sutton shares. The District sent a letter to these purported "owners" back in 2012 but received incomplete responses.

As the Board knows, the negotiating committee has been in discussions with representatives of the former shareholders concerning reacquisition by the shareholders of the Ditch Company. In June, counsel for the shareholders, Jeff Houpt, sent a proposed agreement and the shareholder representatives and the District's negotiating committee met to discuss the draft on June 18, 2019. On July 10, 2019 the negotiating committee met and discussed internally a mark-up of the proposed contract. Based on this discussion further revisions were made and I sent a revised redline draft to the Jeff Houpt and the shareholder representatives on August 14, 2019. I attach the draft redlined against the original proposal of the shareholders.

II. Summary and Alternatives: Should the Negotiating Committee continue discussions with the former shareholders to reach agreement substantially consistent with the attached redline draft?

III. Staff Recommendation: Give direction to Negotiating Committee on proposed agreement.

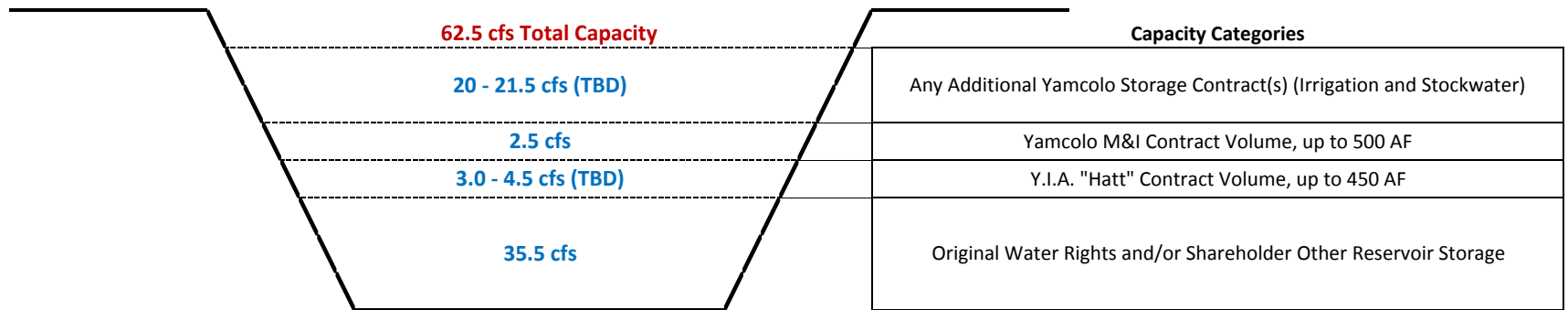
IV. Legal Issues: Terms of the proposed agreement will be summarized at the Board meeting.

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

VI. Fiscal Impact: The District would no longer receive revenue or bear the cost of operating Stillwater Ditch.

Attachments: Redlined Agreement

**Stillwater Ditch
Proposed Ditch Capacity Allocation**



DRAFT

AGREEMENT
FOR CONCERNING TRANSFER OF
STILLWATER DITCH INFRASTRUCTURE
AND
PERPETUAL COVENANTS OF
STILLWATER DITCH AND RESERVOIRS COMPANY

THIS AGREEMENT FOR TRANSFER OF STILLWATER DITCH INFRASTRUCTURE AND PERPETUAL COVENANTS OF STILLWATER DITCH AND RESERVOIR COMPANY (this “Agreement”) is entered into by and ~~between~~among the UPPER YAMPA WATER CONSERVANCY DISTRICT (referred to herein as the “District”), ~~and~~ the following individuals and entities: FIVE PINE LLC, LONE CREEK LAND COMPANY, BAR A RANCH (aka SLEEPING LION RANCH), TIMOTHY KIRKPATRICK, ANNE COLLINS, LAWRENCE RICCA & SONS, CLYNKE’S BEAR RIVER RANCH, TOWN OF YAMPA, KEVIN KRAUSGRILL, and JOHN REDMOND (referred to collectively herein as the “Shareholders”), and the STILLWATER DITCH AND RESERVOIRS COMPANY, a Colorado corporation (the “Company”), and is effective as of the date of the complete execution by all of the foregoing parties, as indicated below (the “Effective Date”). The District and the Shareholders and the Company may be referred to below individually as a “Party,” and all are collectively known as the “Parties.”

RECITALS

- ~~A.~~ A. The District is a Colorado water conservancy district duly organized and existing pursuant to the Water Conservancy Act, Colorado Revised Statutes §§37-45-101, *et seq.*
- ~~B.~~ B. The Stillwater Ditch and Reservoirs Company (“Company”) is a mutual ditch and reservoir company organized and existing under Colorado law. The Company was originally organized to own and manage certain water rights and infrastructure through which those water rights are exercised. Those water rights are described as follows and are referred to collectively herein as the “Original Water Rights”:
- ~~1.~~ (1) Absolute direct flow water rights decreed to the Stillwater Ditch for the diversion of 30.830 cubic feet per second (c.f.s.) from the Yampa (Bear) River with an adjudication date of June 8, 1910 and an appropriation date of September 23, 1903; and

~~2.~~ (2) Absolute water storage rights decreed to Gardner Park Reservoir for the storage of 1,155.6 acre feet from Gardner Creek and other tributaries of the Yampa (Bear) River with an adjudication date of June 8, 1910 and an appropriation date of October 7, 1902.

The infrastructure through which the Original Water Rights described in subsection B(1) above are exercised ~~includes and delivered is~~ the Stillwater Ditch, ~~Gardner Park Reservoir,~~ and related structures, improvements, existing and future diversion and measuring facilities, easements and, existing and future US Forest Service Special Use Permits, existing and future prescriptive and statutory right-of-way claims, and vested rights of way, but not including individual irrigator's laterals (the "Stillwater Ditch"). The infrastructure through which the Original Water Rights described in Subsection B(2) above are exercised and delivered includes Gardner Park Reservoir and related structures, improvements, existing and future diversion and measuring facilities, dam and outlet and spillway structures and ditch for delivery of storage releases into the Stillwater Ditch, easements, existing and future US Forest Service Special Use Permits, existing and future prescriptive and statutory right-of-way claims, and vested rights of way (the "Gardner Park Reservoir"). Stillwater Ditch and Gardner Park Reservoir infrastructure are sometimes herein collectively referred to as the "Stillwater Company Infrastructure".

~~C.~~ C. The Stillwater Ditch is also used to convey water diverted pursuant to the following other water ~~rights and water~~ storage rights, including but not limited to: (i) those used for storage of water stored in Stillwater Reservoir No. 1, and Ramshorn Reservoir and ~~water stored~~ available for release and usage by some of the Shareholders (the "Shareholder Other Reservoir Water Rights"), and (ii) those owned by the District for storage of water by the District in Yamcolo Reservoir (the "~~Other Water Rights~~ District Yamcolo Water Rights"). The Shareholder Other Reservoir Water Rights are not altered or affected by this Agreement. Neither the Company nor any of the Shareholders hold, own, or have knowledge of any conditional water rights decreed or claimed for diversion or storage in the Stillwater Company Infrastructure.

~~D.~~ D. In 2005, the Company conveyed title to the Water Rights and Gardner park Reservoir to its individual shareholders and retained title to the Stillwater ~~Company Infrastructure~~ Ditch and, thereafter, by the Assignment of Stock and Water Delivery Agreement recorded in the records of the Clerk and Recorder of Routt County, Colorado on July 14, 2005 at Reception No. 621890 and the records of the Clerk and Recorder of Garfield County, Colorado on July 25, 2005 at Book 1709 Page 444 ("Stock Assignment Agreement"), all stock in the Company was transferred to the District. At the time of execution of this Agreement, the District remains the sole owner of all stock in the Company; and owns and controls the Company.

- ~~E.~~ E. At the time of execution of this Agreement, the Shareholders, collectively, are the current owners of 100% of the ~~Water Rights~~Original Water Rights, Gardner Park Reservoir and the residual rights of the Shareholders under the Stock Assignment Agreement.
- ~~F.~~ F. The District has constructed certain improvements to the Stillwater ~~Company Infrastructure~~Ditch, including but not limited to enlargement of the carrying capacity of the Stillwater Ditch designed to permit, in addition to the carriage of water diverted and delivered pursuant to the Original Water Rights and Shareholder Other Reservoir Water Rights, the carriage of water stored by the District in Yamcolo Reservoir and delivered through the Stillwater Ditch for (a) up to 4,000 AF to the District's contractees pursuant to individual water allotment contracts (the "District's Yamcolo Water"), plus (b) up to 445 AF of storage water from Yamcolo Reservoir allocated by the District to the Yamcolo Irrigators Association ("YIA") pursuant to Agreement dated January 9, 1981, as amended (the "YIA-District Allotment Contract") and currently allocated by the YIA to its members Vail Hatt, Lawrence Ricca & Sons, and Five Pine LLC (collectively, the "Hatt Allocation"). At the time of execution of this Agreement, the carrying capacity of the Stillwater Ditch is approximately 62.5 c.f.s.
- ~~G.~~ G. Pursuant to the terms of the Stock Assignment Agreement, the District has been responsible for the operation and maintenance of the Stillwater ~~Company Infrastructure~~Ditch and the delivery of water diverted pursuant to the Original Water Rights, the Shareholder Other Reservoir Water Rights, the Hatt Allocation and the District's Yamcolo Water, and other water as described in the Stock Assignment Agreement, and the Shareholders have paid an annual delivery payment to the District.
- ~~H.~~ H. The District desires to transfer to the Shareholders, and the Shareholders desire to assume, ownership and responsibility for the operation, repair, permitting, and maintenance of the Stillwater Company Infrastructure, and to thereafter exercise those responsibilities and conduct the business of operating and maintaining the Stillwater Company Infrastructure as shareholders of the Company. The District and the Shareholders also desire that, effective on and as of such assumption of ownership and responsibility, and subsequently through the life of the operation and use of the Stillwater Ditch, the Company agree with and perform certain covenants to the use and benefit of the District as set forth in this Agreement, and the Shareholders desire that, after such assumption of ownership and responsibility, they and their successors will covenant to cause the Company to comply with, honor, and perform such covenants with the District. By this Agreement, the Parties intend to set forth the terms of this transfer of ownership and responsibility, and the covenants, agreements, and promises of the parties which

survive such transfer of ownership and responsibility, including remedies and procedures to be applicable in the event of default in or violation of such covenants, agreements, and promises.

- I. ~~[This recital should be revised when the parties are otherwise ready to execute this Agreement to recite the then-current status of processing of the USFS Special Use Permit]~~ That I. ~~_____~~ The portion of the Stillwater Ditch that traverses land owned by the United States Forest Service ("USFS") was enlarged ~~by the District~~. The District has ~~applied to~~obtained from the USFS ~~for~~ a Special Use Permit ("SUP") acknowledging and authorizing the enlargement of the Stillwater Ditch on USFS property, ~~but as of (the date of this Agreement, the SUP has not been issued.~~"Ditch Enlargement"). The District has represented to the Shareholders that, to its knowledge, such SUP ~~application and any SUP that may be issued would~~does not increase, decrease, alter, or affect whatever legal rights may exist for the original Stillwater Ditch right-of-way through the US Forest Service lands ("Legal Rights"), but the District does not warrant or represent to the Shareholders the past or current status of the Legal Rights. The Parties acknowledge that the ~~District will not have the legal authority to continue to process the SUP application in its name when it is no longer a shareholder in the Company.~~ SUP obtained by the District will terminate on the Effective Date and Company will be required to obtain a replacement special use permit for the Ditch Enlargement containing provisions which are expected to be substantially the same as the SUP (the "Replacement SUP").
- J. ~~Under date of July 1, 2005, the District and the Flattops Water Company, LLC, a Colorado limited liability company, then one of the Shareholders under the Stock Assignment Agreement and predecessor in title to Sleeping Lion Ranch entered in to a supplemental agreement with respect to the Company and Stillwater Company Infrastructure ("Supplemental Agreement").~~
- K. ~~Immediately following the Effective Date the Shareholders have agreed to convey all of their interests in the Original Water Rights and the Gardner Park Reservoir to the Company.~~

AGREEMENT

NOW THEREFORE, for and in consideration of the understandings of the Parties set forth in the Recitals and mutual promises set forth herein and other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows:

- I. 1. INCORPORATION OF RECITALS. The foregoing recitals are true and correct and are incorporated herein.

2. **2. CONVEYANCE OF SHARES.** For no monetary or other compensation to the District other than the covenants and agreements contained herein, ~~at closing of the transaction contemplated in this paragraph (“Closing”), the the~~ District will conveyhas on the Effective Date conveyed to the Shareholders, or to others as otherwise mutually agreed by the Parties, by appropriate instrument(s), all of the District’s right, title and interest in and to 100% of the shares in Company. ~~The conveyance of shares shall be accomplished in accordance with all applicable requirements of the Articles of Incorporation and Bylaws of the Company and Colorado Law.~~
3. **3. WARRANTIES OF THE DISTRICT.** The District warrants to the Shareholders that ~~at on the time of Closing~~Effective Date:
- a. ~~it~~ (a) It is the sole and exclusive owner of the shares being transferred and that the transfers are being made free and clear of all encumbrances, including but not limited to contractual obligations that would cause the Shareholders to incur costs or other obligations of any kind, but subject to the provisions of this Agreement with respect to post-Effective Date covenants, agreements and promises of the Shareholders and/or the Company to the District; and
- b. ~~the~~ (b) The Company is the sole and exclusive owner of the Stillwater Company Infrastructure, excluding Gardner Park Reservoir, which the Shareholders have agreed to convey to the Company immediately following the Effective Date, and that all such infrastructure is owned by the Company free and clear of any and all encumbrances, other than any claim by the United States that the expanded portion of the Stillwater Ditch is a trespass upon USFS property until and unless a USFS SUP is issued.
4. **4. WARRANTIES OF THE SHAREHOLDERS.** The Shareholders warrant to the District that as of the Effective Date, the Shareholders own 100% of the Original Water Rights, Gardner Park Reservoir and the residual rights of the Shareholders under the Stock Assignment Agreement and that the consent to the transaction and covenants described in this Agreement of any party holding a security or other interest in the rights of the Shareholders under the Stock Assignment Agreement has been obtained or is not required. Sleeping Lion Ranch LLC warrants to the District that it is the successor and sole owner of all rights under the Supplemental Agreement of Flattops Water Company, LLC, and has the right to agree to its termination.

4. 5. MANDATORY PROVISIONS OF THE COMPANY ARTICLES. For the purpose of recognizing and protecting for the life of the operation of the Stillwater Ditch the District's right to deliver the District's Yamcolo Water through the Stillwater Ditch as described in subsection (b) below, the Articles of Incorporation of the Company ~~will behave been~~ amended ~~prior to as of~~ the Closing Effective Date as set forth in the following subparagraphs, which amendments shall be ~~thereafter~~ irrevocable. ~~Prior to amending the Articles of Incorporation, the District and Shareholders shall agree on the specific language of the amendments.~~
- a. ~~The Company shall not be dissolved or liquidated and~~ (a) The Company shall not be dissolved or liquidated or merged or consolidated with any other entity, except that a merger or consolidation with another entity may be permitted only if the amendments to the Articles of Incorporation of the Company as required in this Section 5 become incorporated into and a part of all of the governing documents of the merged or consolidated entity without alteration, dilution, or impairment. Further, except by the ordinary transfer of shares in the Company, the Stillwater Company Infrastructure shall not be assigned or transferred, directly or indirectly, out of or by the Company to any other person or entity, without in each instance the prior written consent of the Board of Directors of the Upper Yampa Water Conservancy District (the "District"), whose consent ~~shall not may~~ be ~~unreasonably withheld.~~, delayed or conditioned in its sole discretion.
- b. (b) The District shall have and own a third party beneficial interest in the Company and the Stillwater Company Infrastructure in proportion to the rights of delivery of the District's Yamcolo Reservoir storage water ~~Water~~ through the Stillwater Ditch as described in subsection (c) below, but without ownership of any shares in the Company and without any voting rights in the Company.
- e. (c) The existing carriage capacity of the Stillwater Ditch will be allocated and maintained by the Company for the life of the existence and operation of the Stillwater Ditch as follows:
- i. i. The first 35.5 c.f.s. of the capacity of the Stillwater Ditch ("Shareholder Capacity") shall be reserved for use by the Shareholders to convey ~~any water~~ water lawfully diverted under the Original Water Rights, and/or the Shareholder Other Reservoir Water Rights, In addition, to the extent capacity is available, the Shareholder Capacity may also be used by Shareholders to deliver the District's Yamcolo Water and the Hatt Allocation to which a Shareholder may be entitled. The

Shareholder Capacity shall be allocated among the Shareholders on a *pro rata* basis, according to the number of shares owned. No carriage contract shall be required for use of the Shareholder Capacity. but such use may be subject to payment of assessments and carriage fees to Company Shareholders as reasonably established by the Company. Water lawfully diverted under any other water right than the Original Water Rights, the District's Yamcolo Water, the Hatt Allocation or the Shareholder Other Reservoir Water Rights shall not be conveyed within or under the Shareholder Capacity. In the event that the capacity of the Stillwater Ditch suffers a reduction for any reason, the Shareholder Capacity shall remain intact; in such event, deliveries of water pursuant to carriage Contracts shall be reduced proportionally and pro rata as necessary to preserve the Shareholder Capacity to the greatest extent possible.

ii. ii. Use of the remaining 27 c.f.s. of the capacity of the Stillwater Ditch (“Carriage Contract Capacity”) shall be reserved for use pursuant to carriage contracts between the Company and the ~~individual~~ individuals and/or entity/entities utilizing or entitled to utilize such remaining capacity, as follows:

iii. a. ~~4.5 e.f.s. cfs-3.0 cfs~~ [to be determined] of the remaining 27 c.f.s. Carriage Contract Capacity shall be reserved for the delivery of up to 445AF of storage water from Yamcolo Reservoir allocated by the District to the YIA pursuant to shares in the Yameolo Irrigators Association the YIA-District Allotment Contract and currently owned by Shareholders allocated by the YIA to its members Vail Hatt, Lawrence Ricca & Sons, and Five Pine LLC. Such (the “Hatt Allocation”). The parties acknowledge that the Hatt Allocation capacity shall be transferrable to successors in interest to such water; among the YIA members is determined by the YIA and not by either the District or the Company or the allottees from YIA, and that the Hatt Allocation is subject to the YIA-District Allotment Contract as now exists and as may hereafter be amended.

iv. ~~20~~ b. 2.5 c.f.s. of the remaining 27 cfs Carriage Contract Capacity (the “District Non-Ag Water Capacity) shall be reserved to and for the ~~delivery of the District’s Yameolo Water to individual agricultural irrigators according to individual contracts between the District and those irrigators (the “District’s Agricultural Yameolo Water”) and carriage contracts between those irrigators and the Company;~~

v. ~~2.5 c.f.s. shall be reserved~~ District, at the option of the District exercisable as hereinbelow provided, for the delivery of up to 500 acre feet annually that may be stored by the District in Yamcolo Reservoir and allocated by the District to its Original Municipal Pool

for municipal, industrial, augmentation or other non-agricultural uses (the “District’s 500 AF Non-Ag Water”) ~~pursuant to individual contracts between the District and the users of such water and~~ further allocated pursuant to individual contracts between the District and the users of such 500 AF of stored water; provided, however, that such reservation of capacity shall only be reserved to and for the District commencing March 1 of the 6th calendar year after the calendar year in which the District gives written notice of exercise of such option to the Company (the “Non-Ag District Capacity Commencement”). Until the date of the Non-Ag District Capacity Commencement for the District, such 2.5 cfs District Non-Ag Water Capacity shall be added to the capacity reserved to and for the District under Subsection 5(c) (ii)(c) below. No portion of the District’s 500 AF Non-Ag Water will be delivered to a lateral of the Stillwater Ditch unless unused capacity exists in the lateral. In the event that the District desires to have some portion of the District’s 500 AF Non-Ag Water delivered into a lateral of the Stillwater Ditch that lacks the unused capacity necessary to accept such water, the District shall be responsible for constructing, at its sole expense, any and all improvements to the lateral, including but not limited to enlargements, headgates, measuring devices, and easements, necessary for the lateral to accommodate such additional water. Prior to the commencement of construction of such improvements, the District shall submit plans for such improvements to and receive the approval of the Company, whose approval will not unreasonably be withheld, delayed, or conditioned. No such water shall be delivered by the Company until such improvements are completed and approved by the Company. Subject to the foregoing limitations, after the Non-Ag District Capacity Commencement, if the District enters into allotment contracts for delivery of any or all of the District’s 500 AF Non-Ag Water through the Stillwater Ditch, then the Company shall enter into carriage contracts on non-discriminatory terms with such allottees.

c. 20 cfs-21.5 cfs[to be determined] of the remaining 27 c.f.s. Carriage Contract Capacity (plus the 2.5 cfs District Non-Ag Water Capacity prior to the Non-Ag District Capacity Commencement) shall be reserved to and for the District for the delivery of the District’s Yamcolo Water for irrigation and/or stockwater first uses (including subsequent storage for such first uses) within the Yampa River basin and/or the Colorado River basin pursuant to allotment contracts entered into by the District. If the District enters into allotment contracts for delivery of any or all of the District’s Yamcolo Water through the Stillwater Ditch, then the Company shall enter into carriage contracts on non-discriminatory terms with such allottees.

vi. iii. Only to the extent ~~the~~ that the ~~22.527~~ c.f.s. of capacity of the Stillwater Ditch reserved pursuant to Subsection 5(c) (ii) above for the Hatt Allocation, ~~the~~ District’s ~~Agricultural~~ Yamcolo Water and the District’s 500 AF Non-Ag Water is not used during any water year for delivery of such water, then such unused capacity may be used by Shareholders and non-shareholders as may be allocated by the Company.

However, the previous sentence is subject to the perpetual limitations that the Stillwater Ditch and its capacity shall never be allocated or used or carried to deliver water for first use of water other than for irrigation and stockwater uses, and the quantity of water carried by the Stillwater Ditch for delivery into the Colorado River Basin in any water year shall never exceed the lesser of 4,000 AF or the sum of (a) the quantity of the District's Yamcolo Water delivered or expected to be delivered into the Colorado River Basin that water year, plus (b) the Hatt Allocation delivered or expected to be delivered into the Colorado River Basin (not to exceed in any event 445 AF, plus (c) water allocated and delivered pursuant to the preceding sentence.

- iv. For purposes of illustration, the allocation of capacity within the Ditch is graphically depicted on Exhibit A attached hereto. In the event of a conflict between Exhibit A and the provisions of this Section 5(c), this Section 5(c) shall be controlling.
- ~~d.~~ (d) The Company shall not divert or deliver water in the Stillwater Ditch after October 1, or before May 1 or the date that the headgates, diversion structure and ~~ditch~~Ditch are free of ice and snow and capable of transporting water, whichever occurs later.
- ~~e.~~ (e) Except for the District 500 AF Non-Ag Water, the Company shall not divert or deliver water through the Stillwater Ditch into the Colorado River Basin for purposes other than ~~agricultural use~~irrigation and/or stockwater uses. The Company will not deliver more than 445 AF of the Hatt Allocation into the Colorado River Drainage in any water year.
- ~~f.~~ No (f) No practices of the Company and no provision of the Bylaws or rules or regulations of the Company shall be interpreted to conflict with or alter or amend or modify subparagraphs (a) through (e) of this ~~paragraph~~Section 5. The provisions of the Articles of Incorporation that incorporate subparagraphs (a) through (e) of this ~~paragraph~~Section 5 shall not be amended, modified, revoked, surrendered, deleted, or terminated without in each instance the prior written consent of the Board of Directors of the District, whose consent may be withheld, delayed or conditioned in its sole discretion. Upon written request from the District from time to time, the Company will provide to the District copies of the Company's then current articles of incorporation, bylaws, and rules and regulations of operation. Such documents shall not be contrary to the terms of this Agreement.~~shall not be unreasonably withheld.~~

6. COVENANTS OF THE COMPANY. The Company agrees and covenants with the District, for the life of the existence and operation of the Stillwater Ditch from and after the Effective Date, each of the following covenants and promises, and each of the Shareholders acknowledges and agrees that the following are binding upon the Company from and after the Effective Date, and that such Shareholder affirms each of the following as a shareholder of the Company from and after the Effective Date, and that such Shareholder shall not take or omit any act before or after the Effective Date that would dispute, deny, alter, contest, or impede any of the covenants of the Company contained in this Agreement, including any of the following:

(a) The Company shall not be dissolved or liquidated or merged or consolidated with any other entity, except that a merger or consolidation with another entity may be permitted only if the amendments to the Articles of Incorporation of the Company as required in Section 5 become incorporated into and a part of all of the governing documents of the merged or consolidated entity without alteration, dilution, or impairment. Further, and, except by the ordinary transfer of shares in the Company, the Stillwater Company Infrastructure shall not be assigned or transferred, directly or indirectly, out of or by the Company to any other person or entity, without in each instance the prior written consent of District whose consent may be withheld, delayed or conditioned in its sole discretion.

(b) The District shall have and own a third party beneficial interest in the Company and the Stillwater Ditch in proportion to the rights of delivery of the District's Yamcolo Reservoir storage water through the Stillwater Ditch as described in Section 5 above, but without ownership of any shares in the Company and without any voting rights in the Company.

(c) The existing carriage capacity of the Stillwater Ditch will be allocated and maintained by the Company for the life of the existence and operation of the Stillwater Ditch as set forth in subsection 5(c) above.

(d) The Company shall not divert or deliver water in the Stillwater Ditch after October 1, or before May 1 or the date that the headgates, diversion structure and Ditch are free of ice and snow and capable of transporting water, whichever occurs later.

(e) Except for the District 500 AF Non-Ag Water, the Company shall not divert or deliver water through the Stillwater Ditch into the Colorado River Basin for purposes other than agricultural irrigation and/or stockwater uses. The Company will not deliver more than 444 AF of the Hatt Allocation into the Colorado River Drainage in any water year.

(f) No practices of the Company and no provision of the Bylaws or rules or regulations of the Company shall be interpreted to conflict with or alter or amend or modify subparagraphs (a) through (e) of Section 5 above. The provisions of the Articles of Incorporation that incorporate subparagraphs (a) through (e) of Section 5 shall not be

amended, modified, revoked, surrendered, deleted, or terminated without in each instance the prior written consent of the Board of Directors of the District, whose consent may be withheld, delayed or conditioned in its sole discretion.

(g) Promptly following the Effective Date, the Company shall make application for and obtain the Replacement SUP and thereafter during the life of the Stillwater Ditch keep the Replacement SUP in place and in good standing in compliance with all requirements of the SUP and the USFS.

(h) From and after the Effective Date, the Company shall be responsible for maintaining in accordance with governmental and other applicable requirements and permits the Stillwater Ditch in good and operable condition to accommodate delivery of not less than 62.5 c.f.s., inclusive of the capacities described in Section 5.c., above; provided, however, that the Company shall not be in default of this obligation in the event it is unable to do so due to Acts of God, acts of public enemies, governmental orders or restraints, catastrophic events, or other causes not reasonably within the control of the Company (collectively, "Force Majeur Events"), provided that the Company takes the necessary action to correct such Force Majeur Events within a reasonable time.

(i) The Shareholders and the Company acknowledge and agree never to contest in Water Court or by any other means, including the refusal to deliver water to the District or its allottees, or in any way to deny that (a) the District is the owner of absolute water storage rights which have been separately decreed in Water Court for export into and delivery of water stored in Yamcolo Reservoir of up to 4,000 AF per water year, for first use and successive uses to extinction, which can be delivered into and within the Colorado River drainage, and that (b) upon delivery into the Colorado River basin of water stored in Yamcolo Reservoir and delivered through the Stillwater Ditch, such water may be treated under Colorado Water Law as "imported water," and that (c) the District owns and retains all rights to second and successive uses and reuses of such originally-stored Yamcolo Reservoir water imported into the Colorado River Basin, to extinction, and retains and reserves all rights to sell, assign, transfer, mortgage, lease, loan, contract, use, or otherwise deal with such second and successive uses and reuses without impairment by the Shareholders or the Company, whether within or outside of the boundary of the District.

5. 7. **INSPECTION.** Prior to ~~Closing~~the Effective Date, the Parties ~~shall conduct~~have conducted a thorough inspection of the Stillwater ~~Company Infrastructure Ditch~~ to document its condition. ~~At~~As of the ~~time of Closing~~Effective Date, the Ditch, diversion structure, measuring structures, laterals, headgates and turn-outs, flumes, tail ditch, and piping ~~will all be~~ in ~~in the same~~serviceable condition and capable of making delivery of water as ~~documented during~~contemplated by this Agreement, except ~~_____~~. From and after the Effective Date, the ~~inspection.~~The District will not ~~thereafter~~assume or undertake any obligation with respect to the Stillwater Ditch, other than payment of the Reserved Carriage Capacity Fee described

below, ~~to further and will not assume or undertake any obligation to~~ construct, repair, maintain, replace, manage, or improve ~~such facilities~~ the Stillwater Company Infrastructure, except to the extent necessary to ensure compliance with the ~~preceding~~ following sentence. However, the District will, at its sole cost and expense, design and construct, with the permission and approval of the US Forest Service and the Division Engineer for Water Division No. 6, a substantial replacement flume and measuring device down-ditch from the point of entry onto the Ditch from the Bear River, which are the subject of the “repair” order from the Water Commissioner. ~~—If not completed prior to Closing, his obligation will survive the Closing.~~ (“Replacement Flume”). The Replacement Flume shall be completed no later than _____, 2019.

6. ~~At Closing,~~ 8. RECONVEYANCE OF EASEMENTS. On the Effective Date, the District ~~shall convey~~ conveyed to the Company by quitclaim deed (“Quitclaim Deed”) the easement for the Ditch that was granted to the District by the original shareholders under Paragraph 6 of the Stock Assignment Agreement ~~and any and, including~~ all interests that ~~the District~~ may have in and to any of the Stillwater Company Infrastructure.

7. ~~[This paragraph should be revised when the parties are otherwise ready to execute this Agreement to address the then-current status of processing of the USFS Special Use Permit] At Closing, the District shall either (a) assign, without recourse, all of its rights in the SUP application to the Company, or (b) if requested by all Shareholders~~ 9. CARRIAGE FEE. Only from and agreed to by the District Board prior to Closing, withdraw the SUP application, in which event the Company will, after Closing, submit a new application for the SUP. In either case, after Closing, the Company shall be obligated to pursue the SUP application with the USFS diligently the date of the Non-Ag District Capacity Commencement by the District, the Company may assess and in good faith.

8. ~~From and after the conveyance of all stock in the Company to the Shareholders, the Company shall be responsible for maintaining the Stillwater Ditch in good and operable condition to accommodate delivery of not less than 62.5 c.f.s., inclusive of the capacities described in paragraph 4.c., above; provided, however, that the Company shall not be in default of this obligation in the event it is unable to do so due to Acts of God, acts of public enemies, governmental orders or restraints, catastrophic events, or other causes not reasonably within the control of the Company.~~

9. ~~There will be a charge to the District a non-discriminatory carriage fee associated with the carriage of the District’s 500 AF Non-Ag Water each water year from and after such date (the “Reserved Carriage Capacity Fee”). No Reserved Carriage Capacity Fee shall be charged to or paid by the District prior to the Non-Ag District Capacity Commencement.~~

The amount of the Reserved Carriage Capacity Fee shall be determined by the Company annually in accordance with its Articles of Incorporation and Bylaws as a *pro rata* portion of the anticipated cost of administration, operation, maintenance, repair, replacement and other expenses of the Company consistent with the manner in which assessments and carriage fees are determined for the Company's shareholders, and shall be payable by the District to the Company within 30 days after delivery of an invoice from the Company. ~~By March 1 of each year, the District shall provide written notice to the District of the amount of the Reserved Carriage Capacity it will use during that year (not to exceed 2.5 c.f.s.). That proportion of total ditch capacity identified by the District for carriage of the District's 500 AF Non Ag Water in any given year will determine its *pro rata* share for that year. Use of the Reserved Carriage Capacity may not continue past October 1, which is the annual date the Ditch ceases operation.~~

~~10. The Shareholders acknowledge that (a) the District is the owner of an absolute water right for 4,000 acre feet of water stored in Yameolo Reservoir which can be delivered into the Colorado River drainage, and that (b) upon delivery into the Colorado River basin of water stored in Yameolo Reservoir and delivered through the Stillwater Ditch, such water may be treated under Colorado Water Law as "imported water," and that (c) the District owns and retains all rights to second and successive uses and reuses of such originally stored Yameolo Reservoir water.~~

~~11.~~ 10. NOTICE. By their signatures on this Agreement, all Shareholders have authorized the ~~individual identified in this paragraph~~ Company to receive ~~notice~~ notices for purposes of this Agreement. All notices and other communications pertaining to this Agreement shall be transmitted in writing and sent by U.S. Mail, postage prepaid, to the individuals and addresses set forth in this paragraph and shall be deemed duly given when received by said individuals. At any time during which this Agreement remains in effect, the identities and addresses of these individuals may be changed by notice to the others provided as set forth in this paragraph.

To the Shareholders and
Stillwater Ditch and Reservoirs Company:

c/o Andrea Schaffner
P.O. Box 121
Yampa, ~~Colorado~~ CO 80483

To the District:
Upper Yampa Water Conservancy District

Attn: District Manager
P.O. Box 775529
Steamboat Springs, Colorado CO 80477

- ~~12. Upon written request from~~ **11. TERMINATION OF PRIOR AGREEMENT.** ~~On the District, the Company will provide to the District copies of the Company's current articles of incorporation, bylaws, and rules and regulations of operation. Effective Date~~ Such documents shall not be contrary to the terms of this Agreement.
- ~~13. Upon execution of this Agreement and all related Closing documents,~~ all terms of the Stock Assignment Agreement ~~shall be~~ terminated and released without recourse. The Parties acknowledge and agree that as of the Effective Date the District has no ownership interest or liability or responsibility in Gardner Park Reservoir, Ramshorn Reservoir, or Stillwater Reservoir, except as set forth in the Agreement for Limited Services for Stillwater between the District and the Bear River Reservoir Company dated _____, ~~2018 and any future such agreement.~~ _____, 2018. On the Effective Date, Sleeping Lion Ranch LLC and the District hereby irrevocably terminate the Supplemental Agreement between the District and Flattops Water Company LLC, and each irrevocably waives and terminates all inchoate and unexercised rights and obligations and claims under such Supplemental Agreement, and mutually acknowledge that neither party has any obligation to or claims owing to the other thereunder.
- ~~14. The term of this Agreement shall extend from the Effective Date until [insert date upon which individual irrigators' contracts expire in 2041] (the "Expiration Date"). Beginning 12 months prior to the Expiration Date, the Company and the District shall commence negotiation of the terms of an agreement to replace this Agreement, with the intent that such replacement agreement shall be executed by the Company and the District prior to the Expiration Date. In the event that the replacement agreement is not executed prior to the Expiration Date, this Agreement shall terminate.~~
- 12. DEFAULT AND REMEDIES.** The failure of a party to strictly comply with its obligations under this Agreement, including the breach of any promise or covenant of such party shall constitute an event of default and entitle the other party to all remedies available at law or in equity. The parties acknowledge and agree that any breach or violation or threatened breach or violation by the Company or the Shareholders of their covenants and promises under this Agreement would cause immediate, substantial and irreparable injury to the District for which there is no adequate remedy at law. Therefore, the District shall have the right, in addition to damages and any other remedies available at law or in equity, to specifically enforce the provisions of this Agreement and to enjoin the Company, its Shareholders and all others acting in concert with the Company from violating this Agreement. The Company and the Shareholders specifically consent to the

entry of temporary restraining orders and preliminary and permanent injunctions prohibiting violation of this Agreement by the Company, its Shareholders and others acting in concert with the Company and to the greatest extent permitted by law hereby waive any right to a hearing prior to the entry of any such temporary restraining order and waive any requirement for the posting of any bond or other security prior to the granting of any temporary restraining order or other injunctive relief. Further, if the Company fails to properly maintain the Stillwater Ditch as required by Section 6 (h) above, the District, after not less than 30 days' notice to the Company, shall have the right to undertake such maintenance and charge the cost thereof to the Shareholders on a pro rata basis. In addition, if the failure of the company to maintain Stillwater Ditch as required by Section 6 (h) above continues for two irrigation seasons, the District shall have the right to compel the Shareholders to reconvey all of their shares in the Company to the District and the Stock Assignment Agreement shall be reinstated effective on the date the District reacquires all the shares of the Company, but not including the Original Water Rights and Gardner Park Reservoir which shall be reconveyed by the Company to the Shareholders prior to such reacquisition.

13. **SEVERABILITY.** If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided, in order to achieve the intent of the parties to this Agreement to the fullest extent possible. In any event, all other provisions of this Agreement shall be deemed valid and enforceable to the fullest extent possible.
14. **NO ASSIGNMENT.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as otherwise provided herein, neither the District, the Company nor any Shareholder may assign or delegate their respective rights or obligations hereunder without the consent of the other parties, which consent may be withheld by the party whose consent is requested in its sole discretion. The District may assign this Agreement in connection with the transfer of Yamcolo Reservoir by the District without the consent of the Company or any Shareholder provided that the transferee assumes the rights and obligations of the District under this Agreement. The Company may assign its rights and obligations under this Agreement without the consent of the District or any Shareholder in connection with the merger or consolidation of Company where the articles and governing documents of the surviving or new company contain the provisions set forth in paragraph 5 above and the new or surviving company affirms, assumes and agrees to perform in writing all obligations of the Company under this Agreement. Any attempted assignments or delegations not in accordance with the foregoing shall be void and of no effect.
15. **TERM.** The term of this Agreement shall be perpetual, but however not to exceed the duration of the existence and operation of the Stillwater Ditch.

- ~~15.~~ 16. **MERGER.** This Agreement is the complete and exclusive agreement between the parties regarding its subject matter, and supersedes all oral and written communications, negotiations, representations or agreements in relation to that subject matter made or entered into prior to this Agreement.
- ~~16.~~ 17. **AMENDMENTS.** The District and the Company are authorized to amend this Agreement without the need to obtain the consent of any Shareholder. This Agreement cannot be amended orally or by performance. No amendment to this agreement is affective unless made in writing and signed by authorized representatives of ~~all parties~~the District and the Company. The Company is hereby granted an irrevocable power of attorney coupled with an interest by each Shareholder and their successors and assigns authorizing the Company to enter into amendments to this Agreement on their behalf.
- ~~17.~~ ~~Each Party shall, at its own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.~~
- ~~18.~~ 18. **NEUTRAL CONSTRUCTION.** This Agreement has been prepared as a joint effort of the parties and its terms will not be construed more severely against one of the parties than against the other.
- ~~19.~~ 19. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which is deemed an original of this Agreement, and which together constitutes one in the same instrument. When executed in counterparts, no party is bound to this Agreement until all parties have executed and delivered to each of the other parties an executed counterpart.
- ~~20.~~ 20. **AUTHORIZATION.** Each person executing this Agreement represents and warrants that he or she is one of the parties or is duly authorized by one of the parties to execute this Agreement and has the authority to bind that party to the terms of this Agreement.
- ~~21.~~ 21. **ATTORNEYS FEES.** Each party shall be responsible for and shall bear its own ~~attorneys~~attorney's fees.
- ~~22.~~ 22. **GOVERNING LAW.** This Agreement is governed by and shall be interpreted under the laws of the ~~state~~State of Colorado.

Executed on the dates indicated below.

UPPER YAMPA WATER CONSERVANCY DISTRICT

By: _____
Kevin McBride, Manager

Date: _____

FIVE PINE LLC

By ~~XXX~~: _____
Title

Date: _____

LONE CREEK LAND COMPANY

By ~~XXX~~: _____
Title

Date: _____

BAR A RANCH

By ~~XXX~~: _____
Title

Date: _____

TIMOTHY KIRKPATRICK

~~Timothy Kirkpatrick~~

Date: _____

ANNE COLLINS

~~Anne Collins~~

Date: _____

LAWRENCE RICCA & SONS

By: _____

Randy Ricca _____ Title

Date: _____

CLYNKE'S BEAR RIVER RANCH

By: _____

By: _____

_____ Title

Date: _____

TOWN OF YAMPA

By: _____

By: _____

Title

Date: _____

KEVIN KRAUSGRILL

~~Kevin Krausgrill~~

Date: _____

JOHN REDMOND

~~John Redmond~~

Date: _____

DRAFT