

## AGENDA

**UPPER YAMPA WATER CONSERVANCY DISTRICT  
EXECUTIVE COMMITTEE MEETING  
WEDNESDAY, AUGUST 18, 2021 (11:00 AM)  
MOUNTAIN VALLEY BANK COMMUNITY ROOM  
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO  
ONLINE MEETING:**

**[HTTPS://US06WEB.ZOOM.US/J/88003962692?PWD=R1KZEMTLbFBxMld4Y3pZZkRS  
YLM5dz09](https://us06web.zoom.us/j/88003962692?pwd=R1kZEMTLbFBxMld4Y3pZZkRSYLM5dz09)**

As recommended by the state public health order and the CDC, the Upper Yampa Water Conservancy District requests that unvaccinated people attending the Board of Directors meeting at the Mountain Valley Bank Community Room wear a mask.

### **INSTRUCTIONS ON HOW TO JOIN A ZOOM MEETING FOLLOW THE AGENDA**

An Executive Committee meeting packet is available for public review on our website at <http://www.upperyampawater.com/board-of-directors/agendas/> by the Friday before the meeting. Amendments to the Agenda and new documents that are generated or submitted after the original posting of the meeting materials will be posted under "Additional Documents" on the website for the relevant meeting.

**QUESTIONS ON AGENDA AND/OR BOARD MATERIALS:** Members of the public or Board of Directors with questions on the agenda or meeting materials, including the consent agenda, are welcome to contact the General Manager at the District offices prior to the meeting. You may reach the General Manager at: [arossi@upperyampawater.com](mailto:arossi@upperyampawater.com) or (970) 871-1035 Ext. 2.

**MEETING PROCEDURE:** Comments from the Public are welcome at two different times during the course of the meeting: 1) Comments no longer than three (3) minutes on items **not** scheduled on the Agenda will be heard under Public Input and Comment; and 2) Comments no longer than three (3) minutes on all scheduled public hearing items will be heard following the presentation. Please wait until you are recognized by the President. With the exception of subjects brought up during Public Input and Comment, on which no action will be taken or a decision made, the Board may take action on, and may make a decision regarding, ANY item referred to in this agenda, including, without limitation, any item referenced for "review", "update", "report", or "discussion" whether or not listed as an "Action Item."

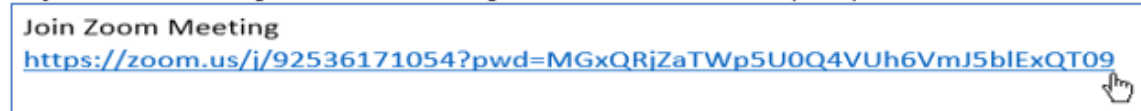
- (1) **11:00 AM** Establishment of Quorum and Call to Order
- (2) **11:00 AM** Approval of Agenda for Meeting **Action item**
- (3) **11:05 AM** Public Input and Comment  
The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes.
- (4) **11:10 AM** Water Horse Case
- (5) **11:30 AM** New Water Contracts  
a. Stagecoach **Action item**

- (6) **12:15 PM** Executive Sessions:
- a. Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and \_\_\_\_\_ (insert description). Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.
  - b. Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to \_\_\_\_\_ (insert brief description). This session will be recorded, and a copy of the recording maintained for not less than 90 days.
- (7) **12:50 PM** Committee actions in regard to Executive Session **Action Item**
- (8) **1:00 PM** Adjournment.

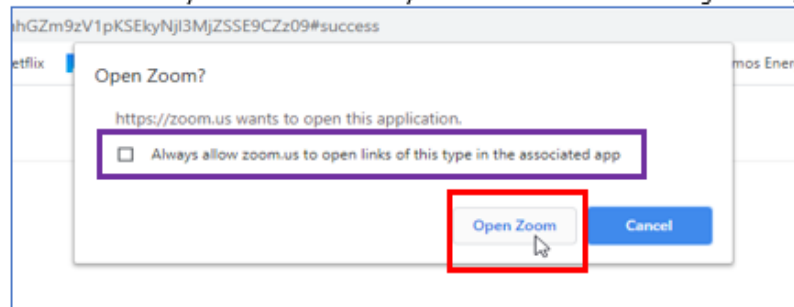
## How to join a Zoom meeting

### Join via "Join Zoom Meeting" link:

To join a Zoom meeting, click on the meeting link that has been sent to you by the host:

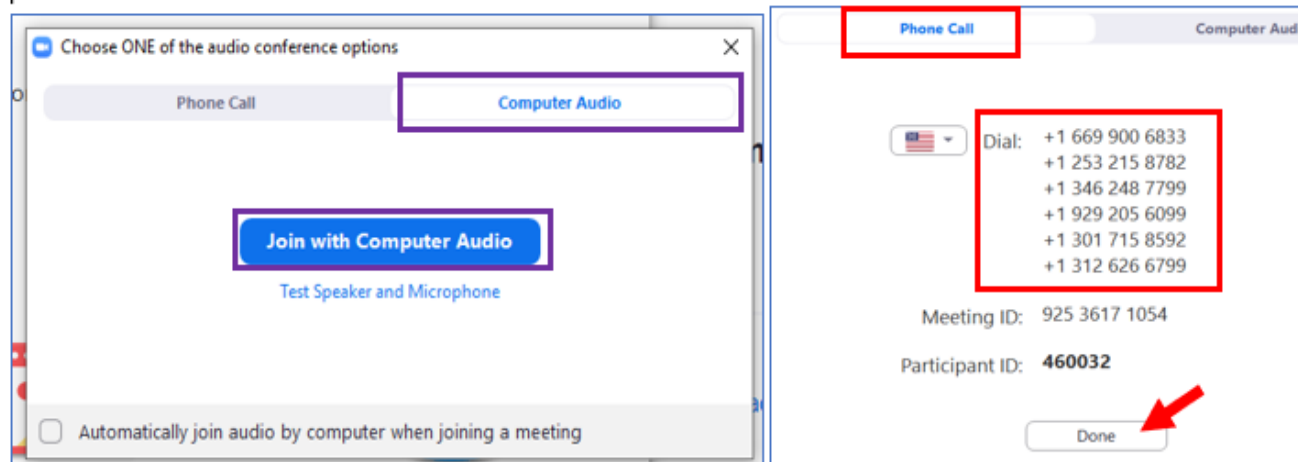


If you have not used Zoom before, you may receive this dialogue box to open Zoom. First, click on **"always allow zoom.us..."** so you will automatically connect for future meetings. Then, click on **"Open Zoom"** and follow the prompts.



Once you are connected to Zoom, you will need to choose your audio conference option. To join via your computer, click on **"Computer Audio"** and then **"Join with Computer Audio"**.

To use your cell phone or landline, click on **"Phone Call"** and then choose a number from the list. Once you dial the number, you will be asked for the Meeting ID and Participant ID to enter the meeting. Click on **"Done"** once you are connected to the Zoom meeting. Or, you can use the **"One tap mobile"** option, see below, to connect via your cell phone.



**Join via cell phone with "One tap mobile":**

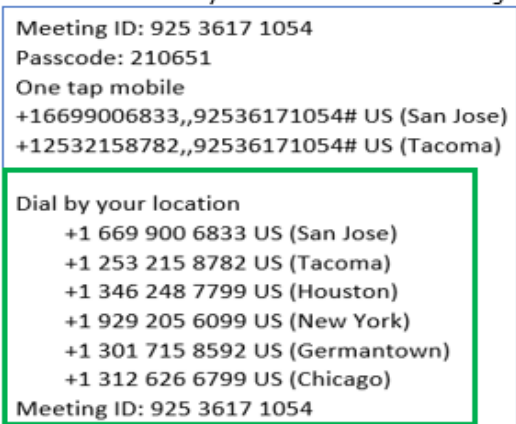
If you will be joining a Zoom meeting via your cell phone, click one of the "One tap mobile" links. Then click on "Call +1...". You will hear a request to "enter your Meeting ID followed by pound (#)". You **do not** need to enter the ID as the link will do this automatically for you.

You will be asked if you are a participant and to "Please press pound (#) to continue". You **must** press the pound key (#). Then you will be asked to "Enter your Participant ID followed by pound (#) or just press pound (#) to continue". If you **do not** enter anything, you will be automatically connected to the meeting.



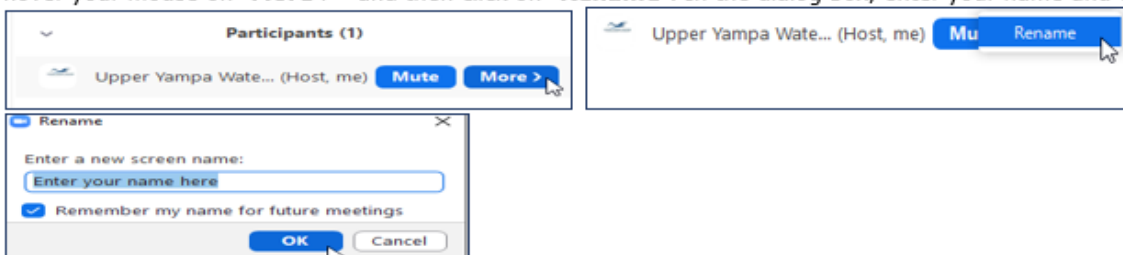
**Join via "Dial by your location":**

If you will be joining a Zoom meeting via your cell phone or landline, you can choose any of the numbers below to access the meeting. Once you dial the number you will be asked to "Enter your Meeting ID followed by pound (#)". Then, you will be asked to "press pound (#) if you are a participant". Finally, you will be asked to "Enter your Participant ID followed by pound (#) or just press pound (#) to continue". If you **do not** enter anything, you will be automatically connected to the meeting.



**Be sure you are identified properly:**

Once in Zoom, be sure that you are identified properly. If you need to change, in "Participants" click on your ID and hover your mouse on "More >" and then click on "Rename". In the dialog box, enter your name and click "OK".



Contact Deb Bastian for any questions  
- Email: [dbastian@upperyampawater.com](mailto:dbastian@upperyampawater.com)  
- Phone: 970-819-0189

## **PUBLIC INPUT AND COMMENT**

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The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes.

**WATER HORSE CASE**

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**NEW WATER CONTRACTS**

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## BOARD COMMUNICATION FORM

**From:** Andy Rossi, General Manager

**Date:** 08/11/21

**Item:** New Water Storage Contract: Mount Werner Water and Sanitation District

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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### I. Request/Issue and Background Information:

Mount Werner Water and Sanitation District (MWW) currently holds two separate municipal water storage contracts in Upper Yampa Water Conservancy District (UYWCD) facilities:

1. Stagecoach Reservoir: 200-AF Municipal Storage Contract (2021 Price = \$35.00 per AF)
2. Yamcolo Reservoir: 300-AF Municipal Storage Contract (2021 Price = \$86.88 per AF)

MWW is requesting a relocation of the existing municipal water storage contract in Yamcolo Reservoir to Stagecoach Reservoir, thereby eliminating the existing MWW municipal water storage contract in Yamcolo Reservoir. Copies of the existing MWW water storage contracts are included with this communication for reference.

### II. Summary and Alternatives:

The UYWCD received a letter on August 8, 2021, from MWW formally requesting a relocation of the existing MWW storage contracts in Yamcolo Reservoir to Stagecoach Reservoir. This letter is included with this communication. Before receipt of this written request, the UYWCD staff met with the General Manager of MWW, Frank Alfone, to discuss the details of the existing MWW water storage contracts and the possibility of the requested contract relocation.

There are fundamental differences between the two existing MWW storage contracts. The most important differences fall into the following categories:

- Physical Proximity of Storage Supply to MWW Facilities
- Contract Term
- Contract Pricing
- Contract Volume





Each of these differences will be discussed in detail with the UYWCD BOD Executive Committee with pertinent background information provided by the UYWCD General Manager and General Counsel. Representatives from MWW are expected to be in attendance to allow for direct discussions of these matters.

The UYWCD BOD Executive Committee will be asked to consider options for the proposed relocation of the MWW water storage contract and decide on a recommended course of action to present this matter to the full UYWCD BOD at the regular meeting on September 15, 2021.

### **III. Staff Recommendation:**

The UYWCD staff is supportive of the MWW request to move the existing MWW storage contract in Yamcolo Reservoir to Stagecoach Reservoir. After consideration of the contract differences identified above and potential options for the relocation of the MWW storage contract, the UYWCD staff recommends that the UYWCD Executive Committee decide on a form of contract for water storage in Stagecoach Reservoir to be presented to MWW and the full UYWCD BOD on September 15, 2021. The recommended contract document will be drafted by the UYWCD General Counsel.

### **IV. Legal Issues:**

UYWCD Water Storage Contracts for more than 100 AF or for Longer than One Year Term must be approved by the full UYWCD BOD.

### **V. Consistency with Board Goals and Policies:**

UYWCD SP Goal 4, UYWCD By-Laws

#### **Attachments:**

Attachment 1: MWW Stagecoach Reservoir Water Storage Contract

Attachment 2: MWW Yamcolo Reservoir Water Storage Contract

Additional Attachments: MWW Request for Storage Contract Relocation

MWN - Stagecoach

AGREEMENT

THIS AGREEMENT, is made this 28th day of October, 1986 between the UPPER YAMPA WATER CONSERVANCY DISTRICT, a quasi-municipal corporation organized under the laws of the State of Colorado ("District"), and MOUNT WERNER WATER & SANITATION DISTRICT, a Special District ("Mount Werner").

RECITALS

A. The District intends to construct and operate a dam and reservoir known as Stagecoach Reservoir for the purpose of supplying water to municipal, industrial and agricultural users within its boundaries. The dam and reservoir will be located on the Yampa (Bear) River upstream from the City of Steamboat Springs, Colorado. The total storage capacity of the reservoir will be approximately 33,275 acre-feet. Water will be stored in Stagecoach Reservoir pursuant to water rights to be acquired by the District from Colorado-Ute Electric Association, Inc. ("Colorado-Ute").

B. It is anticipated that approximately 15,000 acre-feet of storage capacity in Stagecoach Reservoir in excess of the conservation and recreation pool will be allocated by the District approximately as follows: municipal users - 2,000 acre-feet; industrial users - 9,000 acre-feet; agricultural users - 4,000 acre-feet.

C. The parties hereto have reached agreement for the purchase by Mount Werner of 200 acre-feet annually of Stagecoach Reservoir storage water allocated for municipal uses, and the parties wish to execute this written Agreement setting forth all of the terms and conditions of said agreement.

NOW, THEREFORE, in consideration of the payments to be made by Mount Werner as hereinafter provided, and in consideration of the mutual covenants herein contained, the sufficiency of which consideration is hereby expressly acknowledged, the District and Mount Werner hereby agree as follows:

1. STORAGE AND RELEASE OF WATER:

1.1 Upon completion of construction of Stagecoach Reservoir, the District agrees, subject only to physical water supply conditions, the administration of water rights by State of Colorado water officials and the terms of this Agreement, to store in Stagecoach Reservoir prior to July 15th of each calendar year 200 acre-feet of water for release for Mount Werner's use, upon request between July 15th and April 1st of the then current year. Mount Werner shall be entitled to one use of the water delivered hereunder to extinction, but shall not be entitled to the reuse or successive use of such water.

1.2 Except in times of emergency, Mount Werner shall give at least 24 hours advance written notice to the District specifying the time and quantity of water requested to be released. The point of delivery shall be the discharge of the outlet works of the Stagecoach Reservoir. Responsibility for transportation loss shall be borne by Mount Werner. The District shall maintain permanent records of all releases of water from storage in Stagecoach Reservoir, and shall maintain records of water levels in the reservoir measured not less frequently than once per month. Mount Werner shall be entitled to inspect such records and copies shall be furnished to Mount Werner upon written request.

1.3 In any calendar year when insufficient water is stored in Stagecoach Reservoir to supply the full allocations for municipal, agricultural and industrial users, as measured at time of peak annual storage, then the amount of water allocated to each of the users of water from Stagecoach Reservoir shall be abated proportionally; provided, however, that the District may, in its sole discretion, allocate the actual amount of stored water in such manner that the water delivery obligation to Mount Werner hereunder and/or the other municipalities and industrial users is first satisfied. If any part of the water allocated to Mount Werner by this Agreement is to be reduced by abatement as provided herein, the District shall notify Mount Werner in writing of such fact, and of the amount of the reduction in such water, by August 1st of that year, and in the absence of such notice the full amount of water for Mount Werner shall be deemed to have been in storage on or prior to July 15th of that year.

## 2. PURCHASE PRICE:

2.1 The purchase price for the Stagecoach Reservoir storage water allocated to Mount Werner shall be the sum of Thirty-Five and no/100 Dollars (\$35.00) annually for each acre-foot of such water stored at the annual peak storage occurring on or prior to July 15th of such year, without regard to subsequent releases or evaporation or reasonably unpreventable leakage of such water and without regard to whether or not all or any part of such water may have been carried over in storage from the prior year.

2.2 Annual payments of such purchase price shall be made by Mount Werner to the District at Steamboat Springs, Colorado on or before July 31st of each year during the term of this Agreement, commencing with the first calendar year in which, by July 15th of such year, water allocated hereby to Mount Werner has been placed in storage in the Stagecoach Reservoir. Any annual payment not made within 14 days after the due date shall bear interest at the rate of 12% per annum until paid. Payments due hereunder are based on storage water allocated to Mount Werner and shall be made regardless of the amount of water delivered or available for Mount Werner and there shall be no abatement or setoff against any such payment, nor shall Mount Werner be permitted to withhold any payment required hereunder, for any reason whatsoever.

3. TERM OF AGREEMENT:

3.1 If construction of the Stagecoach Reservoir is not commenced on or before July 1, 1992, this Agreement may be terminated at Mount Werner's election and, upon such termination, neither party shall have any further rights or obligations hereunder. Notice of such election shall be given by Mount Werner in writing to the District. Unless so terminated or extended as set forth in subparagraph 3.2 below, the term of this Agreement shall be for a period of 30 years, commencing on July 15th of the first year that the District notifies Mount Werner that water has been placed in storage in Stagecoach Reservoir for allocation to Mount Werner.

3.2 At the end of the 30 year period described above, Mount Werner shall have the continuing right for the life of Stagecoach Reservoir to purchase annually from the District 200 acre-feet of Stagecoach Reservoir storage water at a price per acre foot per year to be determined and paid as provided in subparagraph 3.3; provided, Mount Werner is not in default of any of the terms, conditions, and obligations of this Agreement, and Mount Werner has not provided written notice to the District at least 12 months before the expiration of the 30 year period described above of Mount Werner's intention not to exercise said continuing right.

3.3 The purchase price during the extended period (on a per acre-foot per year basis) shall be based upon the District's costs of operating, repairing, renovating and maintaining Stagecoach Reservoir. The price per acre-foot for any given year will be computed by dividing an estimate of the annual costs (computed each year) the District expects to incur for the operation, repair, renovation and maintenance of Stagecoach Reservoir (including replacement costs) as computed pursuant to standard accounting procedures, by 15,000 acre-feet. The District shall render a statement to Mount Werner of the per acre-foot per year price for each year during the extended period on or before July 1st of that year. The annual purchase price shall be due July 31st of that year.

*annual cost calc*

4. OPERATION AND MAINTENANCE OF STAGECOACH RESERVOIR:

4.1 It is hereby expressly acknowledged that the District shall be solely responsible for constructing, operating, repairing and maintaining Stagecoach Reservoir, and that the District shall be the sole owner of the dam and all facilities used in connection with the construction, operation, repair and maintenance of said Reservoir, and the water rights adjudicated thereto. Nothing herein contained shall be deemed to create a partnership, a joint venture, or joint ownership or joint responsibility in any way between the parties hereto.

5. DEFAULT:

5.1 Except as provided for in subparagraph 2.2 where no notice of late payment is required, if any obligation required hereunder is not made or performed in accordance with this Agreement, the non-defaulting party shall give written notice to the other party in default specifying such failure in performance. The party in default shall have a period of 15 days after receipt of such notice in which to perform the obligation then in default, or if such default is of such a nature that it cannot be completely cured within such 15 day period, to commence such curing within 15 days and thereafter proceed with reasonable diligence and in good faith to cure such default. If the party in default shall fail to do so within such period, then the non-defaulting party may seek specific performance of this Agreement. The parties expressly agree that this Agreement shall be specifically enforceable, which is intended to be the exclusive remedy available to the parties in the event of default. The parties expressly waive rescission or termination of this Agreement as remedies in the event of a default.

6. GOVERNING LAW:

6.1 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Colorado.

7. NOTICES:

7.1 All notices, elections, requests, demands, waivers and other communications hereunder shall be in writing and shall be effective when delivered: (a) if to the District, in care of the Secretary, Upper Yampa Water District, Steamboat Springs, Colorado 80488-0339, or at such other address as the District shall have furnished to Mount Werner in writing; or (b) if to Mount Werner, in care of Mount Werner Manager, Steamboat Springs, Colorado 80488-0339, or at such other address as Mount Werner shall have furnished to the District in writing.

8. MISCELLANEOUS:

8.1 The water allocated to Mount Werner under this Agreement shall never be diverted or used out of the geographical limits of the District.

8.2 In addition to all the other terms, conditions and covenants contained herein, it is specifically understood and agreed by and between the parties hereto that the rights of Mount Werner hereunder are subject to the following terms, conditions and limitations, to all intents and purposes as though set forth verbatim herein and made a part hereof by reference, to-wit:

A. The Water Conservancy Act of Colorado;

B. The terms and conditions of any and all water right decrees for or associated with the operation of Stagecoach Reservoir.

8.3 This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. This Agreement may not be assigned nor transferred to any third party without the prior written consent of both parties hereto, provided, however, that the District may, without the prior consent of Mount Werner, assign or transfer this Agreement to a third party as security for the purpose of obtaining financing. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and shall supersede all prior understandings and agreements between the parties with respect to such subject matter. The captions in this Agreement are for the purposes of reference only, and shall not limit or otherwise affect any of the term hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

UPPER YAMPA WATER CONSERVANCY  
DISTRICT

By: James D. Funk  
John D. Funk, President

(S E A L)

ATTEST:

John R. Fetcher  
John R. Fetcher, Secretary

MOUNT WERNER WATER & SANITATION  
DISTRICT, a Special District

By: Douald Valentinic  
President

(S E A L)

ATTEST:

James Allan  
Asst. Secretary

MNW-Stagecoach  
extension

## INTERIM PRICING AGREEMENT

THIS INTERIM PRICING AGREEMENT is made and entered into the 17<sup>th</sup> day of February, 2018 between the UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservation District ("UYWCD") and the MT. WERNER WATER & SANITATION DISTRICT ("District").

### RECITALS

WHEREAS, the UYWCD and the District entered into an water Allotment Contract dated November 20, 1986 (the "Agreement"), providing for the storage by the UYWCD in Stagecoach Reservoir prior to July 15<sup>th</sup> of each calendar year of 200 acre feet of water for release to the District upon request between July 15<sup>th</sup> of the year of storage and April 1<sup>st</sup> of the following year; and

WHEREAS, during the initial 30-year term of the Agreement the purchase price for the storage water allocated to the District is \$35 per acre foot annually; and

WHEREAS, the initial 30-year term of the Agreement expires July 15, 2019; and

WHEREAS, after the first 30 years of the Agreement, beginning in the year 2020, the annual purchase price of the water allocated to the District is determined as set forth in paragraph 3.3 of the Agreement; and

WHEREAS, the use of paragraph 3.3 to determine the annual purchase price may result in significant annual variation in the purchase price; and

WHEREAS, the directors of the UYWCD and the District agree it is appropriate for the District to continue to pay the existing \$35 per acre foot price for water allocated to the District for 2020 and 2021.

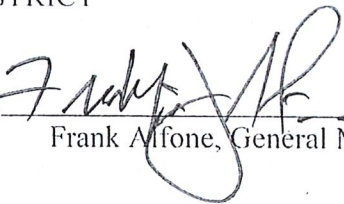
NOW, THEREFORE, the parties agree as follows:

1. The purchase price for the 200 AF of water allocated to the District for the years 2020 and 2021 shall not be calculated as provided in paragraph 3.3 of the Agreement but shall remain \$35.00 per acre foot and shall be otherwise paid as provided in the Agreement.
2. The parties agree that this agreement is for the purpose of setting the purchase price for the water allocated to the District for the years 2020 and 2021 under the Agreement and shall not apply to determination of the purchase price in subsequent years, nor in any way prejudice the rights of either party under the Agreement including the rights of the parties to determine the purchase price of the water allocated to the District for 2022 and all years thereafter in accordance with the provisions of paragraph 3.3 of the Agreement.

UPPER YAMPA WATER CONSERVANCY  
DISTRICT

By:   
Kevin McBride, General Manager

MT. WERNER WATER & SANITATION  
DISTRICT

By:   
Frank Alfone, General Manager



MWW - Yamcolo

A G R E E M E N T

THIS AGREEMENT, made this 17<sup>th</sup> day of JANUARY, 1981,  
between the UPPER YAMPA WATER CONSERVANCY DISTRICT, a quasi-municipal corporation organized under the laws of the State of Colorado ("Conservancy District"), and MT. WERNER WATER AND SANITATION DISTRICT, a quasi-municipal corporation ("Water & Sanitation District").

RECITALS:

A. The Conservancy District is now in the process of constructing and plans to operate a dam and reservoir known as Yamcolo Reservoir for the purpose of supplying water to municipal, industrial and agricultural users within its boundaries. The dam and reservoir will be located on the Yampa (Bear) River upstream from the Town of Yampa in Sections 16 and 17, Township 1 North, Range 86 West, 6th P.M., in Garfield County. The total storage capacity of the reservoir will be approximately 9,000 acre-feet, with a permanent conservation pool of about 1,000 acre-feet. Water will be stored in Yamcolo Reservoir pursuant to water rights owned by the Conservancy District. Construction and filling of the reservoir are expected to be completed in time for releases of water from storage to commence in 1981.

B. The approximately 8,000 acre-feet of storage capacity in Yamcolo Reservoir in excess of the conservation pool will be allocated by the Conservancy District as follows: municipal users - 1,010 acre-feet; industrial users - 3,990 acre-feet; agricultural users - 3,000 acre-feet.

C. The parties hereto have reached agreement for the purchase by the Water & Sanitation District of 300 acre-feet annually of Yamcolo Reservoir storage water allocated for municipal uses, and the parties wish to execute a written memorandum setting forth all of the terms and conditions of said agreement.

NOW, THEREFORE, in consideration of the payments to be made by the Water & Sanitation District as hereinafter provided, and in consideration of the mutual covenants herein contained, the sufficiency of which consideration is hereby expressly acknowledged, the parties hereto agree as follows:

1. STORAGE AND RELEASE OF WATER:

- 1.1 Upon completion of construction of Yamcolo Reservoir, the Conservancy District agrees, subject only to physical water supply conditions and the administration of water rights by State of Colorado water officials, to store in Yamcolo Reservoir prior to July 15 of each calendar year 300 acre-feet of water for release for the Water & Sanitation District's use, upon request between July 15 and March 1 of the next succeeding year.
- 1.2 Except in times of emergency, the Water & Sanitation District shall give at least twenty-four (24) hours advance written notice to the Conservancy District specifying the time and quantity of water requested to be released. The Conservancy District shall maintain permanent records of all releases of water from storage in Yamcolo Reservoir, and shall maintain records of water levels in the reservoir measured not less frequently than once per month. The Water & Sanitation District shall be entitled to inspect such records, and copies shall be furnished to the Water & Sanitation District upon written request.
- 1.3 In any calendar year when insufficient water is stored in Yamcolo Reservoir to supply the full allocations for municipal, agricultural and industrial users, as measured at time of peak annual storage, then the amount of water allocated to each of the users of water from Yamcolo Reservoir shall be abated proportionally; provided, however, that until the Colorado-Ute Electric Association ("Colorado-Ute") constructs or otherwise acquires, directly or indirectly, water storage capacity within the Yampa River drainage in the amount of at least 25,000 acre-feet, in addition to 3,990 acre-feet of water contracted for by Colorado-Ute in Yamcolo Reservoir, then the available water up to 4,988 acre feet over the conservation pool in the Yamcolo Reservoir shall be allocated 80% to Colorado-Ute, 10% to Municipal users, and 10% to agricultural users, and any available water over and above 4,988 acre feet shall be allocated equally between municipal users and agricultural users until the municipal users have received their full 1,010 acre feet, and thereafter the agricultural users shall be entitled to all the available water until they have received their full 3,000 acre feet.

*New abatement*

2. PURCHASE PRICE:

2.1 The purchase price for the Yamcolo Reservoir storage water allocated to the Water & Sanitation District shall be the sum of Twenty-Six and no/100 Dollars (\$26.00) annually for each acre-foot of such water stored at the annual peak storage occurring on or prior to July 15 of such year, without regard to subsequent releases or evaporation or reasonably unpreventable leakage of such water and without regard to whether or not all or any part of such water may have been carried over in storage from the prior year.

2.2 Annual payments of such purchase price shall be made by the Water & Sanitation District to the Conservancy District at Steamboat Springs, Colorado, one-half ( $\frac{1}{2}$ ) on or before July 31 and one-half ( $\frac{1}{2}$ ) on or before November 1 of each year during the term of this Agreement, commencing with the first calendar year in which, by July 15 of such year, water allocated hereby to the Water & Sanitation District has been placed in storage in Yamcolo Reservoir. Such first year is expected to be 1981. Any annual payment not made within 14 days after the due date shall bear interest at the rate of 15% per annum until paid. There shall be no abatement or set-off against any such annual payment for any reason whatsoever.

3. TERM OF AGREEMENT:

3.1 If construction and filling of Yamcolo Reservoir are not completed on or before July 1, 1983, this Agreement may be terminated at the Water & Sanitation District's election and upon such termination neither party shall have any further rights or obligations hereunder. Notice of such election shall be given by the Water & Sanitation District in writing to the Conservancy District. Unless so terminated, the term of this Agreement shall be for a period of thirty (30) years, commencing on July 15 of the first year that water has been placed in storage in Yamcolo Reservoir for allocation to the Water & Sanitation District.

~~3.2~~ The Conservancy District hereby grants to the Water & Sanitation District the right and option to extend the term of this Agreement

Deleted  
as per  
2011 Agreement

for an additional period (not to exceed 30 years) upon all the terms and conditions of this Agreement existing as of the end of the primary 30-year term, except for the annual purchase price of the water allocated to the Water & Sanitation District, the determination of which purchase price during any extended term may be negotiated and agreed to between the Conservancy District and the Water & Sanitation District. In any negotiations for determination of annual purchase price of water for and during any extended term, the Conservancy District shall be bound to the following criteria: (1) The Conservancy District shall not charge the Water & Sanitation District a higher price per acre-foot of water than the price charged per acre-foot during such extended term by the District for other municipal users, and (2) the Conservancy District charge to the Water & Sanitation District per acre-foot of water during such extended term shall not be a greater ratio than the (i) price per acre-foot charged to agricultural users bears to the (ii) price per acre-foot charged to the Water & Sanitation District, both determined as of the commencement of the primary 30-year term of this Agreement. If the Water & Sanitation District elects to extend this Agreement, it shall give written notice of such intent to the Conservancy District at least 12 months prior to the termination of the primary term, and thereafter the parties hereto shall negotiate with due diligence and in good faith with respect to the annual purchase price of water during the extended term. If the parties are nevertheless unable to agree by the termination date of this Agreement, then this Agreement shall not be deemed extended.

1112  
26 = 2.43  
= 3.5

4. OPERATION AND MAINTENANCE OF YAMCOLO RESERVOIR:

4.1 It is hereby expressly acknowledged that the Conservancy District shall be solely responsible for constructing, operating, repairing and maintaining Yamcolo Reservoir, and that the <sup>Conservancy</sup> District shall be the sole owner of the dam and all facilities used in connection with the construction, operation, repair and maintenance of said Reservoir, and the water rights adjudicated thereto. Nothing herein

contained shall be deemed to create a partnership, a joint venture, or joint ownership or joint responsibility in any way between the parties hereto.

5. DEFAULT:

5.1 If any payment or other obligation required hereunder is not made or performed in accordance with this Agreement, the non-defaulting party shall give written notice to the party in default specifying such failure in performance. The party in default shall have a period of fifteen (15) days after receipt of such notice in which to make the payment or perform the obligation then in default. If the party in default shall fail to do so within such period, this Agreement may at the other party's election be terminated by written notice to the defaulting party, provided, however, that if such written notice of termination is given between November 16 and June 1, inclusive, the effective date of termination shall be the day of receipt by the defaulting party of such notice, but if such written notice of termination is given between June 2 and November 15, inclusive, the effective date of termination shall be November 15. The parties expressly agree that this Agreement shall be specifically enforceable; provided, however, that specific enforcement is not intended to be the exclusive remedy available to the parties in the event of default.

6. GOVERNING LAW:

6.1 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Colorado.

7. NOTICES:

7.1 All notices, elections, requests, demands, waivers, and other communications hereunder shall be in writing and shall be effective when delivered: (a) if to the Conservancy District, in care of the Secretary, Upper Yampa Water Conservancy District, Ski Time Square, Box 5220, Steamboat Village, Colorado 80499, or at such other address as the Conservancy District shall have furnished to the Water & Sanitation District in writing; or (b) if to the Water & Sanitation

District, in care of the Secretary,, Mt. Werner Water & Sanitation District, Ski Time Square, P. O. Box 5220, Steamboat Village, Colorado 80499, or at such other address as the Water & Sanitation District shall have furnished to the Conservancy District in writing.

8. MISCELLANEOUS:

8.1 The water allocated to the Water & Sanitation District under this Agreement shall never be diverted or used out of the geographical limits of the Conservancy District.

8.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. This Agreement may not be assigned nor transferred to any third party without the prior written consent of both parties hereto. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and shall supersede all prior understandings and agreements between the parties with respect to such subject matter. The captions in this Agreement are for the purposes of reference only, and shall not limit or otherwise affect any of the terms hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

UPPER YAMPA WATER CONSERVANCY DISTRICT

(Seal)

By: James D. Funk  
James D. Funk, President

ATTEST:

John R. Fetcher  
John R. Fetcher, Secretary

MT. WERNER WATER & SANITATION DISTRICT

(Seal)

By: Donald Valentini  
President

ATTEST:

John R. Fetcher  
Secretary

MWW Yamcolo

EXTENSION AND AMENDMENT AGREEMENT

This Extension And Amendment Agreement is made effective the 19<sup>th</sup> day of May, 2011 ("Effective Date") between the Upper Yampa Water Conservancy District, a Colorado water conservancy district ("District") and the Mt. Werner Water and Sanitation District, a governmental entity ("Municipality").

RECITALS

WHEREAS, the District and the Municipality entered into an agreement dated January 17, 1981 (the "Agreement"), providing for the storage by the District in Yamcolo Reservoir prior to July 15<sup>th</sup> of each calendar year of 300 acre feet of water available for release to the Municipality at its request as more particularly described in the Agreement.

WHEREAS, the annual purchase price for the water allocated to the Municipality during each of the first 30 years of the Agreement ("Primary Term") was \$26.00 for each acre foot of water stored in Yamcolo Reservoir and available for delivery from the Reservoir for use by the Municipality.

WHEREAS, Paragraph 3.2 of the Agreement provides that the Municipality shall have the right and option to extend the term of the Agreement for an additional period, not to exceed 30 years, on all the terms and conditions of the Agreement existing as of the end of the Primary Term, except for the annual purchase price of water allocated to the Municipality during such 30 years, which is to be negotiated between the parties subject to certain criteria.

WHEREAS, the Municipality has given timely notice to the District of its intent to extend the Agreement for an additional 30 years.

WHEREAS, the Municipality and the District have negotiated with due diligence and good faith and agreed on the annual purchase price of the water for such extended 30 year term.

WHEREAS, since Colorado Ute Electric Association went bankrupt and no longer exists, the Municipality and the District desire to clarify and amend the Agreement with respect to references to Colorado Ute or to industrial users.

NOW, THEREFORE, in consideration of foregoing recitals and the covenants and agreements of the parties as hereinafter set forth, the parties agree as follows:

1. The Municipality and the District agree that the Agreement is extended for an additional period of 30 years commencing on July 15, 2011, and terminating on July 15, 2041 (the "Extended Term").

2. The purchase price for the Yamcolo Reservoir storage water allocated to the Municipality for 2011 under the Agreement during the Extended Term shall be \$68.38 for each acre foot of such water stored in Yamcolo Reservoir and available for release to the Municipality in 2011.

CPI annual Price Adj.

3. The annual price per acre foot for the water stored in Yamcolo Reservoir and allocated and available for release to the Municipality in 2012 and in each calendar year thereafter during the Extended Term shall be an amount equal to the greater of (i) the price per acre foot charged to the Municipality for water stored in Yamcolo Reservoir and allocated to the Municipality for the prior calendar year, or (ii) the product obtained by multiplying the price per acre foot charged to the Municipality for water stored in Yamcolo Reservoir and allocated to the Municipality for the prior calendar year by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers ("CPI-U"), 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 of the year prior to the prior year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date then the District 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 increases in the CPI are taken into account, notwithstanding any such change in the base year.

4. References to "Colorado Ute Electric Association" or "Colorado Ute" in Section 1.3 and elsewhere in the Agreement shall be corrected and changed to read as follows: "Tri-State Generation and Transmission, Inc. ("Tri-State"), or its successors or assigns, or the municipal and industrial allottees of water from Yamcolo Reservoir who contract for all or part of the 4,000 AF allotted to Tri State if the District's current contract with Tri-State for 4,000 AF from Yamcolo Reservoir is terminated or released or amended in whole or in part ("Replacement M&I Customers"), or the successors or assigns of such Replacement M&I Customers." Reference to "industrial users" in Recital Paragraph B and Paragraph 1.3 shall mean either Tri-State or Replacement M&I Customers.

5. The above 30-year extension and purchase terms having been agreed upon by the parties, Paragraph 3.2 of the Agreement is hereby deleted.

6. Except as herein amended, the Agreement is ratified and approved. The undersigned person signing this instrument for the Municipality warrants and represents that this instrument has been duly and properly approved by the Municipality as provided in law, and that this instrument is binding upon the Municipality in accordance with its terms.

Dated this 19<sup>th</sup> day of May, 2011.

Municipality

By: [Signature] President

Upper Yampa Water Conservancy District

By: [Signature]





Andy Rossi, General Manager  
Upper Yampa Water Conservancy District  
2220 Curve Plaza, Suite 201  
P.O. Box 775529  
Steamboat Springs, CO 80477-5529

*Re: Mt. Werner Water's Proposal to Relocate Contract Water from Yamcolo Reservoir  
to Stagecoach Reservoir*

Dear Andy,

As you know, Mount Werner Water & Sanitation District has maintained a contract with the Upper Yampa Water Conservancy District for the storage and release of 300-acre feet annually in Yamcolo Reservoir since 1981, and has maintained a contract for 200-acre feet annually in Stagecoach Reservoir since 1986. MWW maintains these contracts for the primary purpose of providing augmentation water; releases of water from storage facilities located upstream of MWW's diversions is a particularly effective source of augmentation, allowing diversions by MWW to continue when its water rights are out of priority. Water available to MWW from these two sources was specifically approved for replacement of MWW's out-of-priority depletions to the Yampa River in the augmentation plan approved in Case No. 18CW3020.

During the adjudication of that augmentation plan, it was made apparent by the Division Engineer that Yamcolo Reservoir was not the reliable source of augmentation water that MWW had previously understood it to be. While there are many water rights decreed for storage within Yamcolo Reservoir, the Division Engineer recognizes only one, Yamcolo Reservoir First Enlargement decreed in Case No. 80CW175, as being legally available for use for augmentation. That water right is limited to 1,000-acre feet annually, and may be limited to just 589-acre feet if that portion of the right that appears on the 2020 Abandonment List is, in fact, abandoned. Further, it is a relatively junior water right and is junior to many of the other water rights decreed for storage in Yamcolo Reservoir. It is not clear how the Division Engineer is administering, or will administer in the future, the various water rights in Yamcolo Reservoir, and this uncertainty may affect MWW's ability to utilize water released from Yamcolo Reservoir for its intended purposes. It is our understanding that the Upper Yampa District has not completed a study of the reliability of its municipal/industrial water in Yamcolo Reservoir. However, MWW is advised that Yamcolo has achieved a complete fill only 66% of the time in recent years.

Other circumstances add to MWW's concern about its ability to utilize its 300-acre feet of Yamcolo contract water. First, if the pool of useable augmentation water is limited to 1,000-acre feet annually (or perhaps as little as 589-acre feet), there may not be sufficient water in storage to satisfy all holders of

municipal/industrial contracts. In addition, there are seasonal limits on the ability to effectively release water from Yamcolo Reservoir during certain times of the year when it may be needed by MWW.

For these reasons MWW has been considering the idea of moving its contract for 300-acre feet annually from Yamcolo Reservoir to Stagecoach Reservoir. While we believe that storing this water in Stagecoach would increase its utility and reliability, MWW is hesitant to give up the relatively favorable terms of its existing Stagecoach contract.

Yet moving MWW's water to Stagecoach would have benefits to the Upper Yampa District, as well. It would relieve some of the pressure on the limited pool of augmentation water available to fulfill M&I contracts, particularly if that pool becomes further limited by the abandonment of 410-acre feet as proposed by the Division Engineer. It would allow the Upper Yampa District to retain more water higher up in the basin and to make more water from Yamcolo Reservoir available for agricultural users.

With these mutual benefits in mind and recognizing the long-term relationship between the parties and the unique character of the transaction, MWW proposes to move its 300-acre feet of water from Yamcolo Reservoir to Stagecoach Reservoir, provided that the parties can reach acceptable terms. MWW proposes that those terms would include an established price for the water that is mutually agreeable to the parties and that would include a price-escalator tied to the Consumer Price Index. The term of the contract would remain as currently provided in MWW's existing Stagecoach contract.

If this basic proposal is acceptable to the Upper Yampa District, MWW is prepared to commit time and resources to drafting an appropriate agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Alfone", with a long horizontal stroke extending to the right.

Frank Alfone  
General Manager

CC: Gavin Malia, Board Chair  
Wade Gebhardt, Board Member  
Jeff Houpt

## EXECUTIVE SESSIONS

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Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and \_\_\_\_\_. Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.

Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to \_\_\_\_\_. This session will be recorded, and a copy of the recording maintained for not less than 90 days.

## COMMITTEE ACTIONS IN REGARD TO EXECUTIVE SESSION

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