

# RECORD OF PROCEEDINGS

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## UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING APRIL 24, 2019 1:30 PM MOUNTAIN VALLEY BANK COMMUNITY ROOM 2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO

### MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Board members present were Bob Woodmansee, Doug Monger, Jim Haskins, Ken Brenner, Ron Murphy, and Stephen Colby. General Manager Kevin McBride, Office Manager Karina Craig, Administrative Assistant Barbara Wilson and General Counsel Bob Weiss were also present. Directors Webster Jones and Tom Sharp attended the meeting by phone.

Members of the public present included Calder Young, Kelly Beall, Rick Dowden, Jerry Smith, Scott Hummer, Rick Milway, Jackie Brown, and Eleanor Hasenbeck.

The following agenda was proposed:

### AGENDA

- (1) 1:30 pm Establishment of Quorum and Call to Order;
- (2) 1:35 pm Consent Agenda; action item
  - a) Approval of Disbursements
  - b) Budget Comparison
  - c) Bylaw Change for Posting
  - d) Approval of the minutes of the January 23, 2019; February 20, 2019; and March 20, 2019 Board Meetings
- (3) 1:55 pm Approval of Agenda for Meeting; action item
- (4) Public Input and Comment;
- (5) 2:00 pm Report of the General Manager; action item
  - a) Yampa Basin Rendezvous
  - b) Stagecoach Firing
  - c) Instream Flow Bill, HB-1271
  - d) Water Pricing and Contract Negotiations
  - e) 360 Review – Create Special Committee action item
- (6) 3:40 pm Report from General Counsel;
  - a) Water Resumes
  - b) Status of other Water Cases, if any
- (7) 3:55 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).

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(8) *4:15 pm Executive Session:*

The specific citation to the provision of C.R.S. §24-6-402, subsection (4) that authorize(s) the UYWCD Board of Directors to meet in an executive session is set forth below. The topic of the executive session identifies the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized.

- a) Evaluation of District Manager §24-6-402(4)(f)(I). “Personnel matters except if the employee who is subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting.” action item

(9) New Business;

(10) Adjournment.

***Consent Agenda*** Director Woodmansee made a motion to approve the consent agenda, Director Monger seconded the motion which was unanimously approved.

***Meeting Agenda*** Director Monger moved to approve the agenda. Director Haskins seconded the motion which was unanimously approved.

***Public Comment*** Calder Young, Friends of the Yampa, briefly presented a plan for a social gathering of the many different water entities in the area and he may come to the District for funding.

### ***Report of the General Manager***

***Yampa Basin Rendezvous*** – Calder Young, Friends of the Yampa, asked the Board for a \$250 donation to be a Contributing Sponsor for the 2019 Yampa Basin Rendezvous. Manager McBride requested an invoice.

Direction was given to the General Manager that he can give up to \$500 per group per year up to a maximum of \$4000 a year without prior Board approval. Donations are to be communicated to the Board through the Consent Agenda.

***Stagecoach Firming*** - Manager McBride received an updated Draft from AECOM of Task 1 for the Stagecoach Firming project; however, he decided it was not ready to be presented to the Board. AECOM will present at the May Board of Directors meeting.

***Instream Flow Bill, HP-1271*** – Director Brenner reported that the bill was amended and has been postponed indefinitely. Director Brenner will find out more information and may be able to provide a draft letter to the Board as a follow-up step.

***Water Pricing and Contract Negotiations*** – Director Sharp reviewed the current negotiations for pricing the existing Yamcolo Irrigators Association contract. The District is seeking agreement with YIA for an initial price with a CPI adjustment in a contract amendment so the YIA contract would no longer be repriced annually based on O and M costs.

Director Monger requested a status update on the negotiations. Discussion followed. Tri-State is the next task with a June meeting. Yamcolo Irrigators Association (YIA) accepted the price for the 2019 water year. The Individual Irrigators price is fixed for 2019. Counsel Weiss is working on the YIA amendment

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and will also prepare the Individual Irrigators renewal contract form. The initial draft of the Stillwater Ditch contract will be provided from the former Ditch owners.

360 Review – Create Special Committee – Director Brenner reviewed the Board documents. A proposal to establish a special committee for key issues raised by the 360 Assessment was discussed. The current committee consists of Directors Brenner, Woodmansee, and Jones. Director Haskins asked to be added as a committee member. Director Brenner requested that if any Board member has input, please provide it to the committee. The committee meetings will be posted, open to the public, and have minutes taken as required for special meetings of the Board where more than two Board members meet.

Director Jones made a motion to accept the proposal to establish a special committee, to add Director Haskins to the committee, and that no language within the draft document provided has been approved or endorsed by the Board. Director Monger seconded the motion which was unanimously approved.

### ***Report from General Counsel***

Water Resumes and Status of other Water Cases – Counsel Weiss had nothing to add to Scott Grosscup's Board Communication Forms. Counsel Weiss said he would have Scott Grosscup or Gilbert Graham with Snell and Wilmer report on the Water Horse application at the next regular Board meeting.

### ***Executive Session item (7)***

Director Monger made a motion to go into executive session. It was seconded by Director Redmond and was unanimously agreed to go into Executive Session under provision C.R.S. §24-6-402(4) (b) to discuss with counsel legal issues relating to Water Resumes, Water Cases, and Contract Negotiations. Mere presence or participation of an attorney at an executive session of the local public body is not sufficient to satisfy the requirements of this subsection (4). The Executive Session commenced at about 2:30 PM and concluded at about 3:25 PM.

The Chairman then announced that if any person who participated in the executive session believed that any substantial discussion of any matters not included in the motion to go into executive session occurred in the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, that such person state their concerns for the record. No one stated concerns.

### ***Executive Session item/ Personnel matter under § 24-6-402(4)(f)(I) (8)***

Director Brenner asked General Manager (GM) McBride if he would like his performance evaluation to be in public session. Manager McBride stated the public has requested transparency, therefore he would like his evaluation to be in open session. He would also like to include Ryan Golten with CBI since his expectation was he was going to complete the 360 assessment prior to his evaluation. There was general agreement to have Ms. Golten attend by phone. Director Brenner reviewed: last fall's performance evaluation of the General Manager had diverse opinions and not a clear consensus. The suggestion was

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to do a 360 assessment. The results of the 360 assessment was completed in February and the goal is to have the District move forward. The GM stated he is interested in continuing at the District for a considerable period of time in some capacity.

Director Monger: He does not see enough production from the GM. The Board should have been more hands-on. Director Monger is worried about the new employee being directed by the GM. He also wants goals and objectives being delivered through the budget document with deliverables.

Director Redmond: He has worked with the GM through the Raise and the Master Plan. Those projects were more in his wheelhouse as an engineer. The Board needs to provide more direction for public outreach and the Board needs to provide their vision.

Director Colby: In general, he is happy with what the GM is doing for the District. For years the GM has gotten good reviews so it was a surprise to him that there is dissatisfaction. He thinks the GM gets caught between the different Board members' philosophies.

Director Haskins: He too was surprised that there is dissatisfaction with the GM. Director Haskins thinks things are going better and that more meetings were needed. He would like to see progress and going forward, the Board needs to be clear.

Director Sharp: The GM was hired for his engineering experience and they realized at that time that he did not have some of the additional skills needed. The Board needs to give the GM direction on these things. He is a valued employee and is doing a satisfactory job.

Direct Jones: He has confidence in the GM. The Board needs to be more specific on outcomes and provide direction.

Director Woodmansee: The Board needs to have a real vision with do-able actions that look to the future. He wonders if the GM has the social skills to work collaboratively with other entities. Without a strategic plan, the GM is in a terrible position because he doesn't know where the District is going. He has concerns about the management of staff.

Director Murphy: The Board has been wishy-washy and he is not sure the Board has given the GM enough staff. He thinks the GM is doing a good job when he is told what to do.

Director Brenner: He thinks the Board needs to do a better job of informing the GM of their intent. The GM needs to come with solutions if the District does not have enough staff. He is aware of the dynamics of the office and that they are not what they should be. He feels the budget should reflect the goals of the District and include a 5-year projection. Director Brenner is also apprehensive about hiring a new employee until after the Board does their work. He summarized and said his view is closer to Director Monger's point of view about the GM.

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Discussion followed. Director Monger stated that he was disappointed about the GM's work plan. He also feels the District needs long term financial planning. Also, there needs to be employee management follow-up. Director Woodmansee would like the strategic planning process expedited and that he doesn't see that there is enough staff to get things done.

Director Sharp stated it is critical for the Board to get a written ERC policy. Manager McBride will follow up with the Nature Conservancy and others to present at the next Board meeting.

Ryan Golten reviewed and suggested written documents from the GM and Board.

***Determination of future meetings*** The scheduled date for the next Board meeting was confirmed, being Wednesday June 19, 2019 at 1:30 PM, at Mountain Valley Bank Community Room, 2201 Curve Plaza, Steamboat Springs, CO.

The meeting was adjourned at 5:05 PM.

I certify that the foregoing constitutes a true and correct summary of the proceedings at the above referenced meeting.

\_\_\_\_\_  
Date: \_\_\_\_\_  
Kevin McBride, District Secretary/Manager

### **STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE**

The undersigned Robert G. Weiss hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that the portion of the executive session that was not recorded and which related to Water Resumes, Water Cases, and Contract Negotiations contract negotiations constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

\_\_\_\_\_  
Date: \_\_\_\_\_  
Robert G. Weiss, Counsel

### **STATEMENT FROM CHAIR OF EXECUTIVE SESSION REGARDING ATTORNEY-CLIENT PRIVILEGE**

The undersigned chairman hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that all of the executive session was not recorded and was confined to the topics authorized for discussion in an executive session pursuant to subsection (4) of CRS Section 24-6-402.

\_\_\_\_\_  
Date: \_\_\_\_\_  
Ken Brenner, Chairman



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

## MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Board members present were Bob Woodmansee, Doug Monger, Ron Murphy, Stephen Colby, and Webster Jones. General Manager Kevin McBride, District Engineer Andy Rossi, Office Manager Karina Craig, Administrative Assistant Barbara Wilson, and General Counsel Bob Weiss were also present.

Members of the public present included Mickey O'Hara, Kate Ryan, Scott Hummer, Lou Dequine, Greg Hamilton, Geoff Blakeslee, Jerry Smith, Frank Alfone, Claire Sollars, Kelly Romero-Heaney, Nancy Smith, Nancie McCormish, Kari Harden Dequine.

The following agenda was proposed:

### AGENDA

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

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**Consent Agenda** Director Monger made a motion to approve the consent agenda. Director Jones seconded the motion which was unanimously approved.

**Meeting Agenda** Director Monger moved to approve the agenda. Director Colby seconded the motion which was unanimously approved.

### **Public Comment**

Scott Hummer with the Division of Water Resources presented. There will be a South Routt County Water Users Meeting May 29<sup>th</sup> at the Sirocco High School 6:30-8:00 pm. Mr. Hummer distributed a flowchart of the Bear River System. There could be a call on the river in the next 48 hours, discussion followed.

Kelly Romero-Heaney presented as the Yampa-White-Green River Basin Roundtable (Basin Roundtable) chair for the public education committee. The committee is working with Yampatika for K-12 education and hopes that the District will be interested in contributing matching funds.

Greg Hamilton, filmmaker, is working on a series of short videos with a trio of filmmakers for the Basin Roundtable. A short video was shown to the Board. Production is this summer and the District may want to become a partner. Director Brenner suggested that a request for funds be made to the General Manager.

### **Report of the General Manager**

Stagecoach Firming – AECOM – Andrea Parker with AECOM presented a Power Point. Three handouts were distributed and discussion followed. Director Monger noted in the Initial Screening Criteria section that the “must not impact hydro power at Stagecoach” might be changed to “negatively impact” instead. Director Brenner suggested that in the Results of Initial Screening section, the “divert direct flow” could be *numerous* locations and maybe this should be noted. Director Monger suggested in the Preliminary No Action Alternative section that “deficit irrigation” might be added to the “Rotational fallowing” text.

General Manager McBride announced that the District owns property that the Forest Service may be interested in exchanging. The Forest Service recommended that this process start as soon as possible.

Ms. Parker updated the Board that about four months have been added to the overall schedule.

Director Brenner requested that the land swap with the Forest Service be added to the agenda for the June Board Meeting. Director Monger had concerns about public perception of the land swap. Manager McBride explained that the Forest Service thinks this property would be good to be in public ownership, regardless of the Stagecoach Firming project.



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### Environmental Recreation Water Program – Stakeholder’s Presentation –

Kate Ryan and Mickey O’Hara with the Colorado Water Trust (CWT) presented a Power Point about the CWT’s projects with the District. Mr. O’Hara reviewed the benefits of the releases including the awareness that these have brought to the public about the CWT work and the District. Kate Ryan presented possible alternatives for future delivery of water and discussion followed. She said that these are just ideas and that the District may want to consult with an attorney. Mr. O’Hara reminded the Board that the CWT is a resource available to the District.

Nancy Smith and Geoff Blakeslee with The Nature Conservancy (TNC) presented a Power Point on the Yampa River Fund. Mr. Blakeslee began with thanking the Board for working with the river releases and he feels that the publicity the District got from the releases was wide. Ms. Smith requested, in reference to the ERC pricing, that in order for the Water Fund to be successful into the future it requires fairness, transparency and predictability. A longer term pricing structure will make the Water Fund work better; more predictability will help the success.

Kelly Romero-Heaney with the City of Steamboat Springs presented. She encouraged the District to participate with the water releases to benefit the River. It is very important to the City that the District follows a transparent process and do a robust financial analysis. The ERC water benefits 60% of the District’s tax base.

Discussion followed.

- Director Monger believes that our business is to sell water and that the ERC should be paying the full price. He is supportive of this process and he wants to keep the District’s enterprise concept.
- Director Woodmansee believes the river is the life blood of this region, that we can define what the “natural flow” is of the river, and that the river is not in that good of shape.
- Director Colby stated that is important that the District helps with the Yampa River Fund mission and having a firm reservoir is important. He thinks that between 50-100% of our cost would be appropriate for pricing.
- Director Murphy believes that Agriculture will be the ones who pay the price. He thinks we need to have storage in order to maintain the water in this valley. In reference to pricing, the District needs to make money too in order to exist
- Director Jones stated our highest priority should be to find out what we know we can do. Define a legal mechanism to determine what we can do.
- Director Brenner believes the District needs time to work on this. If the District gives a discounted price, then the discount is a donation from the District’s general fund.
- General Manager McBride said he was glad Stagecoach firming was discussed and reviewed the Purpose and Needs of the Stagecoach firming. He said the District has the smallest amount of storage of any basin in the state.

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Comments from the public:

- Scott Hummer feels the District should work with these different agencies.
- Greg Hamilton said it is nice to see the convergence of different organizations working on this and he is encouraged.

Director Brenner requested the General Manager and Counsel follow-up to find feasible options and work with the CWT. Counsel Weiss said the three options presented by CWT will be looked into and let him know if any other options should be evaluated. They will present in the June meeting.

360 Assessment Follow-up – Ryan Golten joined by phone. General Manager McBride announced the Board Governance Committee will meet May 20, 2019 at 9:00 AM and that all Board members are invited.

### ***Report from the District Engineer***

Reservoir Water Status – District Engineer Rossi updated the Board on the current levels of storage in Stagecoach and Yamcolo Reservoirs.

The Colorado Division of Water Resources (CDWR) Water Commissioner Scott Hummer and the Board discussed the possibility of the District voluntarily passing storable inflow at Yamcolo Reservoir when the reservoir has not yet filled for the year and the Bear River is not under administration. There was unanimous agreement that the District would store flows when in priority and if a call was necessary to pass flows to downstream seniors the District would comply with all administration from the Division Engineers office. Director Brenner thanked Mr. Hummer for bringing this to the Board.

Capital Projects Plan for 2019 – Engineer Rossi reviewed the capital projects plan for 2019 and discussion followed.

UYWCD-CPW Bear Lake Agreement – Engineer Rossi briefly reviewed the agreement between the District and Colorado Parks and Wildlife (CPW). The CDWR provided feedback the day before the Board meeting, May 19<sup>th</sup>, and Counsel Weiss recommended the District review the CDWR's comments before considering the agreement for Board action. The consideration of the agreement for Board action was tabled until the June 19, 2019 Board meeting.

### ***Report from General Counsel***

Water Resumes and Status of other Water Cases, if any – Counsel Weiss reviewed Special Counsel Scott Grosscup's memo. Counsel Weiss agrees with Mr. Grosscup's recommendation to get involved with the Tri-State case so the District can monitor. Counsel Weiss was given direction to file a friendly opposition.

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Peabody Energy Contract – Counsel Weiss stated he has not gotten a reply from Peabody and discussion followed.

Director Monger made a motion to approve the contract as drafted. Director Jones seconded the motion which was unanimously approved.

*Executive Session* – There was no Executive Session.

*Determination of future meetings* The scheduled date for the next Board meeting was confirmed, being Wednesday June 19, 2019 at 1:30 PM, at Mountain Valley Bank Community Room, 2220 Curve Plaza, Steamboat Springs, CO.

The meeting was adjourned at 5:05 PM.

I certify that the foregoing constitutes a true and correct summary of the proceedings at the above referenced meeting.

\_\_\_\_\_  
Date: \_\_\_\_\_  
Kevin McBride, District Secretary/Manager



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**UPPER YAMPA WATER CONSERVANCY DISTRICT  
BOARD OF DIRECTORS MEETING  
JUNE 16, 2019 1:30 PM  
MOUNTAIN VALLEY BANK COMMUNITY ROOM  
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO**

## MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Redmond, the Board members present were Bob Woodmansee, Doug Monger, Jim Haskins, Ken Brenner, Ron Murphy, Stephen Colby, Tom Sharp, and Webster Jones. General Manager Kevin McBride, District Engineer Andy Rossi, Office Manager Karina Craig, and General Counsel Bob Weiss were also present.

Members of the public present included Eleanor Hasenbeck, Billy Mitzelfeld, and Erin Light.

The following agenda was proposed:

### **AGENDA (REVISED)**

- (1) *1:30 pm* Establishment of Quorum and Call to Order;
- (2) Consent Agenda; action item
  - a) Approval of Disbursements
  - b) Budget Comparison
  - c) Resolution to Open New Bank Account
- (3) Approval of Agenda for Meeting; action item
- (4) Public Input and Comment;
- (5) *1:40 pm* Report of the General Manager; action item
  - a) Elk River Augmentation Plan
  - b) West Slope Roundtable "Summit"
  - c) New Position Interviews
  - d) 360 Assessment Update
  - e) Forest Service Land Swap
- (6) *3:15 pm* Report from District Engineer;
  - a) Reservoir Water Status
  - b) Capital Projects Update
- (7) *3:45 pm* Report from General Counsel;
  - a) Water Resumes
  - b) Status of other Water Cases, if any
  - c) ERC Legal Discussions
  - d) Bear Lake Colorado Parks and Wildlife Agreement action item
  - e) Proposed Tri-State NDA action item
- (8) *4:30 pm* Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, and Contract Negotiations. Mere presence or participation of an attorney at an executive session of the local politic body is not sufficient to satisfy the requirements of this subsection (4).
- (9) New Business;
- (10) Adjournment.

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**Consent Agenda** Director Jones made a motion to approve the Consent agenda. Director Woodmansee seconded the motion which was unanimously approved.

**Meeting Agenda** Director Brenner proposed starting the Executive Session to 3:00 pm due to some Board members needing to leave early. In addition, move (7) e) to become (8) b). Move (5) a) to 3:00 pm.

Director Monger moved to approve the agenda as amended. Director Haskins seconded the motion which was unanimously approved.

Counsel Weiss has concerns about privacy using a conference phone during Executive Session. Director Monger suggested the teleconference package called Zoom. Manager McBride staff would look into it.

**Public Comment** No public comments at this time.

### **Report of the General Manager**

**West Slope Roundtable “Summit”** – Discussion followed about the Summit and the Board had questions about the modeling.

**New Position Interviews** – General Manager McBride reviewed that there were 44 resumes submitted, nine were sent to the Hiring committee, seven have been chosen for short phone interviews with Manager McBride. Three applicants will be chosen for interviews prior to the July Board Meeting.

**360 Assessment Update** – Counsel Weiss was asked by the 360 Committee to review their draft of the Mission, Policies, and Goals document (MPG). Mr. Weiss reported that in general, he did not see anything in the draft that was not within the legal authority of the District. Counsel Weiss said statements appearing in planning and policy documents are very unlikely to ever generate a legal challenge as being outside the District's authority. If such a question were ever to arise it would most likely occur in a District financing when a legal opinion from a Bond attorney might be required.

Director Brenner thanked Director Sharp for his effort in editing the MPG and Mr. Brenner reviewed the process of the 360 Committee. Two documents, the MPG and Board Governance, would be sent to the Board for input from the Board if they choose to participate.

Director Sharp suggested that on page 3 of the MPG, the water pricing should not be included. He believes there should be a separate pricing policy. The 360 Committee agreed.

Director Monger pointed out that the Board Governance document had no reference to sub-committees or the committee process and that the Board needs to know what is going on in the committee meetings. Counsel Weiss said he will provide notes for negotiating committee meetings he attends. Minutes are

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provided to the Board for formal subcommittees such as the 360 committee. Director Monger reiterated the need for the 360 Committee to add the ability for the Board to create committees to their document. There was general agreement.

Forest Service Land Swap – Manager McBride asked the Board if the District should begin the conversation with the Forest Service about the potential land swap. Discussion followed. Directors Monger and Brenner suggested that this discussion was premature. Manager McBride confirmed that the land swap discussion would not be pursued at this time.

### ***Report from the District Engineer***

Reservoir status – District Engineer Rossi updated the Board on the current level of storage in Stagecoach and Yamcolo Reservoirs. Also, water deliveries have started, the Division of Dam Safety has placed a fill restriction on Stillwater Reservoir and Mr. Rossi expects a dynamic runoff this spring.

Director Redmond inquired about the work being done on the Smith Basin Lateral of the Stillwater (Ditch). Engineer Rossi clarified that the District is under contract to maintain the Ditch and a consultant has been hired to look at options to fix recurring maintenance problems.

Engineer Rossi invited the Board to join him for a tour of the Stillwater Ditch to better understand the issues surrounding the Ditch.

Colorado Division of Water Resources Division Engineer, Erin Light, was invited to speak. She stated she is accepting the new rating table for the Stillwater Ditch.

Capital Projects Update – Engineer Rossi reviewed the capital projects and discussion followed. Mr. Rossi informed the Board that the Yamcolo work done last year weathered the winter well but there is some cleanup work to be done. The Stagecoach Reservoir Part 12 FERC inspection is schedule in July.

### ***Report from General Counsel***

Elk River Augmentation Plan – Special Counsel Scott Grosscup, Balcomb and Green, joined the meeting by phone. The Marketing Policy for the Elk River Augmentation plan was discussed. Counsel Grosscup requested direction from the Board on pricing and abatement policies.

Pricing was discussed. Director Sharp thought there was no good reason for the pricing to be different between the Yampa River Augmentation and the Elk River Augmentation. Counsel Grosscup said the pricing between the two is the same and stated that in the Elk River Augmentation the District keeps the application fee and gives half of the annual collection fees to Colorado Parks and Wildlife. Director Monger reminded the Board that the Augmentation plans are a community service; the District does not recoup its costs. There was general agreement to not have a different pricing structure for the Elk Augmentation plan.

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Director Sharp suggested wording changes: make sure everyone understand they pay even if they don't take and remove the reference to Tri-State.

Clarification on the annual pricing set by the Board was reviewed.

Director Brenner asked if General Manager McBride had any change requests, administratively, to make the application process easier. Mr. McBride thought there was not more the District could do. Office Manager Craig pointed out that the application fee amount for the small contracts is not correct, discussion followed. It will be made the same as the Yampa plan. Division Engineer expressed that the one-acre minimum cost was very reasonable.

Director Sharp moved to approve the Water Marketing Policy for the Elk River and the proposed Augmentation Contract form submitted by Scott Grosscup; Balcomb and Green P.C. Law Firm with the following changes to such Policy and Contract Form:

### Water Marketing Policy for the Elk River

- Remove subsection 6 b. Tri-State Right of First Refusal
- Change subsection 5 d. ii to read: Annual Rates for Classes of Users: The annual user price for each type of water contract shall be reviewed and set annually by the Board of Directors. The price is a "take or pay" price and is payable with respect to the maximum allotted contract amount allotted to the user, whether or not in any year such user in fact takes and uses all of the contracted water. The annual price may be adjusted by the Board of the District from time to time for any future year. The initial approved pricing per acre foot of water for the current Project Year is as follows:
- Change subsection 5 d. ii Supply Pricing box: all applications the same amount at \$204.75 AF/year
- Change subsection 5 d. iii \$200 to \$204.75.

### Augmentation form contract

- Add at the end of subsection 4 a.: The price is a "take or pay" price and is payable with respect to the maximum allotted contract amount allotted to the Applicant, whether or not in any year such Applicant in fact takes and uses all of the contracted water.

Director Monger seconded the motion which was unanimously approved.

Water Resumes – Counsel Grosscup recommended no opposition statements be filed; no questions from the Board.

Status of Water Cases – Counsel Grosscup informed the Board that the final decree was obtained for the District's water right portfolio and he thanked Division Engineer Erin Light and her office. Other water cases were reviewed.



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ERC Legal Discussions – Counsel Grosscup reviewed his memorandum to the Board about legal mechanism available to the District to release water for Environmental and/or Recreational purposes. In his view, it is important to keep in mind that water law is not very supportive of leaving water in the streams, it is designed more for removal and application of water for beneficial use.

Director Brenner asked Mr. Grosscup to elaborate and he thought it was good that Division Engineer Light was present.

- The 3 in 10 year option: Counsel Grosscup's view is it was intended for irrigation water and it doesn't really contemplate water stored in reservoirs. Limitations were discussed. Director Brenner said the District should plan on participating in the Interim Water Committee meeting at the Colorado Water Congress Summer conference in August.
- Loan/Lease: The Colorado Water Conservation Board can acquire water rights for instream flow purposes. Director Jones reminded the Board that the Colorado Water Trust met with the Board and expressed interest in a substitute water supply. Mr. Grosscup replied that this would be considered a temporary change in stored water for ISF purposes and the State Engineer would need to sign off on this. However, it is not a long-term solution since it would be limited to 5 years and subject to court approval.
- Augmentation Plan: The District has water for Augmentation purposes but there needs to be discussion and clarification with the Colorado Division of Water Resources to see how it would be administered and operated. Division Engineer Light added that this topic has come up on the Poudre River. This type of proposal would need to be considered by the State Engineer on a statewide basis. .

Director Sharp moved to table further discussion on the Environmental Recreation Contracts until the next Board meeting. Director Monger seconded the motion which was unanimously approved.

Bear Lake Colorado Parks and Wildlife Agreement – Director Sharp made a motion to approve the Bear Lake Administration Agreement between the State, Colorado Parks and Wildlife and the District relating to Bear Lake as presented to the Board by Counsel. And to authorize the General Manger to sign the agreement. Director Monger seconded the motion which was unanimously approved

### *Executive Session*

Director Sharp made a motion to go into executive session. It was seconded by Director Jones and was unanimously agreed to go into Executive Session under provision C.R.S. §24-6-402(4) (b) to discuss with counsel legal issues relating to Water Resumes, Water Cases, and Contract Negotiations. Mere presence or participation of an attorney at an executive session of the local public body is not sufficient to satisfy the requirements of this subsection (4). The Executive Session commenced at about 4:30 PM and concluded at about 5:00 PM.

## RECORD OF PROCEEDINGS

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The Chairman then announced that if any person who participated in the executive session believed that any substantial discussion of any matters not included in the motion to go into executive session occurred in the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, that such person state their concerns for the record. No one stated concerns.

***Determination of future meetings*** The scheduled date for the next Board meeting will be Wednesday July 24, 2019 at 1:30 PM, at Mountain Valley Bank Community Room, 2201 Curve Plaza, Steamboat Springs, CO.

The meeting was adjourned at 5:00 PM.

I certify that the foregoing constitutes a true and correct summary of the proceedings at the above referenced meeting.

\_\_\_\_\_ Date: \_\_\_\_\_  
Kevin McBride, District Secretary/Manager

### **STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE**

The undersigned Robert G. Weiss hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that the portion of the executive session that was not recorded and which related to Water Resumes, Water Cases, and Contract Negotiations contract negotiations constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

\_\_\_\_\_ Date: \_\_\_\_\_  
Robert G. Weiss, Counsel

### **STATEMENT FROM CHAIR OF EXECUTIVE SESSION REGARDING ATTORNEY-CLIENT PRIVILEGE**

The undersigned chairman hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that all of the executive session was not recorded and was confined to the topics authorized for discussion in an executive session pursuant to subsection (4) of CRS Section 24-6-402.

\_\_\_\_\_ Date: \_\_\_\_\_  
Ken Brenner, Chairman

c)

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## BOARD COMMUNICATION FORM

**From:** Andy Rossi

**Date:** 07/19/19

**Item:** Stillwater Ditch Special Use Permit

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

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### **I. Summary and Background Information:**

The Upper Yampa Water Conservancy District (UYWCD) applied for a Special Use Permit (SUP) from the United States Forest Service (USFS) for the enlargement of the Stillwater Ditch in 1988. The 1988 SUP application process for the Stillwater Ditch was never finalized and currently, there is not a valid SUP from the USFS for the Stillwater Ditch enlargement. The UYWCD re-applied for a SUP for the Stillwater Ditch enlargement on June 29, 2018. The final draft of the SUP document was received by the UYWCD on July 16, 2019. The SUP document is included with this communication form for review by the UYWCD Board of Directors (BOD). This SUP document is complete and requires acceptance by the UYWCD BOD before signature by the UYWCD authorized agent.

### **II. Alternatives:**

- Accept the SUP document and authorize signature by the UYWCD authorized agent.
- Reject the SUP document and provide UYWCD staff with direction for the completion of a SUP that may be accepted for signature by the UYWCD authorized agent.

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

Accept the current SUP document for signature by the UYWCD authorized agent.

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

A current and valid SUP is required for the operation of the Stillwater Ditch enlargement on/across USFS lands. The UYWCD is contractually required to operate and maintain the Stillwater Ditch (original ditch and enlarged capacity) per the terms of the Assignment of Stock and Water Delivery Agreement made and entered into by and among the UYWCD and the original Stillwater Ditch Company Shareholders. On September 11, 2017 the Colorado Division of Water Resources (CDWR) issued an Order to Reset/Replace Measuring Device for the Stillwater Ditch. The UYWCD is not authorized to replace the



existing primary measuring device for the Stillwater Ditch with a permanent structure without a current and valid SUP.

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

Compliance with regulatory agency requirements for the operation of UYWCD facilities. Adherence to contract terms.

**Attachments:**

Stillwater Ditch Special Use Permit FS-2700-4 (VER. 03/17)  
September 11, 2017 CDWR Order to Reset/Replace Measuring Device

Authorization ID: **YAM142**  
Contact Name: **UPPER YAMPA WATER  
CONSERVANCY DIST**  
Expiration Date: **06/30/2049**  
Use Code: **911**

FS-2700-4 (VER. 03/17)  
OMB 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE  
FOREST SERVICE**

**SPECIAL USE PERMIT**

**Authority: FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976**

**UPPER YAMPA WATER CONSERVANCY DISTRICT** of PO BOX 775529 STEAMBOAT SPRINGS CO UNITED STATES 80477 (hereinafter "the holder") is authorized to use or occupy National Forest System lands in the **ROUTT NATIONAL FOREST** on the **YAMPA RANGER DISTRICT**, subject to the terms and conditions of this special use permit (the permit).

This permit covers **2.85 acres or 4.28 miles** in the **Secs. 11, 12, 13, 14, 15, and 16, T. 1 N., R. 86 W., 6TH PRINCIPAL MERIDIAN**, ("the permit area"), as shown on the map attached as **Exhibit A**. This and any other exhibits to this permit are hereby incorporated into this permit.

**Exhibit A: Permit Map dated April 17, 2019**

**Exhibit B: Operations and Maintenance Plan**

**Exhibit C: Diagram of Splitter Box/Headgate and Flow Meter Structure**

**Exhibit D: Stream Flow Monitoring Plan per permit clause VIII F. R2-D101 requirement.**

This permit issued for the purpose of:

**operation and maintenance of the Stillwater-Five Pine Mesa Ditch Enlargement used to provide transport of agricultural waters from reservoirs to private properties.**

**The enlarged ditch is 17.5 feet wide with the capacity to carry ~60 cfs. The ditch is approximately 5.5 feet wider than the original ditch. The total right-of-way width is variable and extends from the top of the ditch cut bank to the base of the ditch fill slope and includes the access route along the ditch. See Exhibit B.**

**Replacement of the existing measuring flume with a flow meter and concrete structure in the same location. See Exhibit C.**

## **TERMS AND CONDITIONS**

### **I. GENERAL TERMS**

**A. AUTHORITY.** This permit is issued pursuant to the **FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED** October 21, 1976 and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

**B. AUTHORIZED OFFICER.** The authorized officer is the Forest or Grassland Supervisor or a subordinate officer with delegated authority.

**C. TERM.** This permit shall expire at midnight on **06/30/2049**, **30** years from the date of issuance.

**D. CONTINUATION OF USE AND OCCUPANCY.** This permit is not renewable. Prior to expiration of this permit, the holder may apply for a new permit for the use and occupancy authorized by this permit. Applications for a new permit must be submitted at least 6 months prior to expiration of this permit. Issuance of a new permit is at the sole discretion of the authorized officer. At a minimum, before issuing a new permit, the authorized officer shall ensure that (1) the use and occupancy to be authorized by the new permit is consistent with the standards and guidelines in the applicable land management plan; (2) the type of use and occupancy to be authorized by the new permit is the same as the type of use and occupancy authorized by this permit; and (3) the holder is in compliance with all the terms of this permit. The authorized officer may prescribe new terms and conditions when a new permit is issued.

**E. AMENDMENT.** This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms that may be required by law, regulation, directive, the applicable forest land and resource management plan, or projects and activities implementing a land management plan pursuant to 36 CFR Part 215.

### **F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL**

**REQUIREMENTS.** In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the permit area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

**G. NON-EXCLUSIVE USE.** The use or occupancy authorized by this permit is not exclusive. The Forest Service reserves the right of access to the permit area, including a continuing right of physical entry to the permit area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation. The Forest Service reserves the right to allow others to use the permit area in any way that is not inconsistent with the holder's rights and privileges under this permit, after consultation with all parties involved. Except for any restrictions that the holder and the authorized officer agree are necessary to protect the installation and operation

of authorized temporary improvements, the lands and waters covered by this permit shall remain open to the public for all lawful purposes.

**H. ASSIGNABILITY.** This permit is not assignable or transferable.

**I. TRANSFER OF TITLE TO THE IMPROVEMENTS.**

1. Notification of Transfer. The holder shall notify the authorized officer when a transfer of title to all or part of the authorized improvements is planned.

2. Transfer of Title. Any transfer of title to the improvements covered by this permit shall result in termination of the permit. The party who acquires title to the improvements must submit an application for a permit. The Forest Service is not obligated to issue a new permit to the party who acquires title to the improvements. The authorized officer shall determine that the applicant meets requirements under applicable federal regulations.

**J. CHANGE IN CONTROL OF THE BUSINESS ENTITY.**

1. Notification of Change in Control. The holder shall notify the authorized officer when a change in control of the business entity that holds this permit is contemplated.

(a). In the case of a corporation, control is an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation.

(b). In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, control is a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity.

(c). In other circumstances, control is any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

2. Effect of Change in Control. Any change in control of the business entity as defined in paragraph 1 of this clause shall result in termination of this permit. The party acquiring control must submit an application for a special use permit. The Forest Service is not obligated to issue a new permit to the party who acquires control. The authorized officer shall determine whether the applicant meets the requirements established by applicable federal regulations.

**II. IMPROVEMENTS**

**A. LIMITATIONS ON USE.** Nothing in this permit gives or implies permission to build or maintain any structure or facility or to conduct any activity, unless specifically authorized by this permit. Any use not specifically authorized by this permit must be proposed in accordance with 36 CFR 251.54. Approval of such a proposal through issuance of a new permit or permit amendment is at the sole discretion of the authorized officer.



**B. PLANS.** All plans for development, layout, construction, reconstruction, or alteration of improvements in the permit area, as well as revisions to those plans must be prepared by a professional engineer, architect, landscape architect, or other qualified professional based on federal employment standards acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the holder to furnish as-built plans, maps, or surveys upon completion of the work.

**C. CONSTRUCTION.** Any construction authorized by this permit shall commence by **N/A** and shall be completed by **December 1, 2019**.

### **III. OPERATIONS.**

**A. PERIOD OF USE.** Use or occupancy of the permit area shall be exercised at least 365 days each year.

**B. CONDITION OF OPERATIONS.** The holder shall maintain the authorized improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this permit. Standards are subject to periodic change by the authorized officer when deemed necessary to meet statutory, regulatory, or policy requirements or to protect national forest resources. The holder shall comply with inspection requirements deemed appropriate by the authorized officer.

**C. MONITORING BY THE FOREST SERVICE.** The Forest Service shall monitor the holder's operations and reserves the right to inspect the permit area and transmission facilities at any time for compliance with the terms of this permit. The holder shall comply with inspection requirements deemed appropriate by the authorized officer. The holder's obligations under this permit are not contingent upon any duty of the Forest Service to inspect the permit area or transmission facilities. A failure by the Forest Service or other governmental officials to inspect is not a justification for noncompliance with any of the terms and conditions of this permit.

### **IV. RIGHTS AND LIABILITIES**

**A. LEGAL EFFECT OF THE PERMIT.** This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license. The benefits and requirements conferred by this authorization are reviewable solely under the procedures set forth in 36 CFR 214 and 5 U.S.C. 704. This permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. The permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

**B. VALID EXISTING RIGHTS.** This permit is subject to all valid existing rights. Valid existing rights include those derived under mining and mineral leasing laws of the United States. The United States is not liable to the holder for the exercise of any such right.

**C. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS.** The parties to this permit do not intend to confer any rights on any third party as a beneficiary under this permit.

**D. SERVICES NOT PROVIDED.** This permit does not provide for the furnishing of road or trail maintenance, water, fire protection, search and rescue, or any other such service by a government agency, utility, association, or individual.

**E. RISK OF LOSS.** The holder assumes all risk of loss associated with use or occupancy of the permit area, including but not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and other forces of nature. If authorized temporary improvements in the permit area are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the permit shall terminate.

**F. DAMAGE TO UNITED STATES PROPERTY.** The holder has an affirmative duty to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs and damage to government-owned improvements covered by this permit.

1. The holder shall be liable for all injury, loss, or damage, including fire suppression, prevention and control of the spread of invasive species, or other costs in connection with rehabilitation or restoration of natural resources resulting from the use or occupancy authorized by this permit. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under clause IV.J.

2. The holder shall be liable for damage caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to all roads and trails of the United States to the same extent as provided under clause IV.F.1, except that liability shall not include reasonable and ordinary wear and tear.

**G. HEALTH AND SAFETY.** The holder shall take all measures necessary to protect the health and safety of all persons affected by the use and occupancy authorized by this permit. The holder shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any physical or mechanical procedure, activity, event, or condition existing or occurring in connection with the authorized use and occupancy during the term of this permit that causes or threatens to cause a hazard to the health or safety of the public or the holder's employees or agents. The holder shall as soon as practicable notify the authorized officer of all serious accidents that occur in connection with these procedures, activities, events, or conditions. The Forest Service has no duty under the terms of this permit to inspect the permit area or operations of the holder for hazardous conditions or compliance with health and safety standards.

## **H. ENVIRONMENTAL PROTECTION.**

1. For purposes of clause IV.H and section V, "hazardous material" shall mean (a) any hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws.

2. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, during the holder's use and occupancy of the permit area. Environmental damage includes but is not limited to all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. If the environment or any government property covered by this permit becomes damaged in connection with the holder's use and occupancy, the holder shall as soon as practicable repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

3. The holder shall as soon as practicable, as completely as possible, and in compliance with all applicable laws and regulations abate any physical or mechanical procedure, activity, event, or condition existing or occurring in connection with the authorized use and occupancy during or after the term of this permit that causes or threatens to cause harm to the environment, including areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources.

**I. BONDING.** The authorized officer may require the holder to furnish a surety bond or other security for any of the obligations imposed by the terms and conditions of this permit or any applicable law, regulation, or order.

**J. STRICT LIABILITY.** The holder shall be strictly liable (liable without proof of negligence) to the United States for **\$990,000** per occurrence for any injury, loss, or damage arising in tort under this permit. Liability in tort for injury, loss, or damage to the United States exceeding the prescribed amount of strict liability in tort shall be determined under the law of negligence.

**K.** Subject only to the limits on the Lessee's liability under Title 24, Article 10, of the Colorado Governmental Immunity Act (CGIA), Colorado Revised Statutes (C.R.S.) §§ 24-10-101 through 24-10-119 (as amended), the holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use and occupancy authorized by this permit. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the

use and occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to those environmental laws listed in clause IV.F of this permit; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment. This clause shall survive termination or revocation of this permit, regardless of cause.

**L** Subject only to the limits on the holder's liability under Title 24, Article 10, of the CGIA, C.R.S. §§ 24-10-101 through 24-10-119 (as amended), the holder shall indemnify the United States for any damages arising out of the holder's use and occupancy authorized by this permit. The holder shall be liable for all injury, loss, or damage, including fire suppression, or other costs associated with rehabilitation or restoration of natural resources, associated with the holder's use and/or occupancy. Compensation shall include but is not limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other associated costs.

**M.** Clauses IV.H and IV.I shall not be interpreted to limit any of the holder's liability for, or prevent the United States from taking any action to address, injury, loss, damages, or costs associated with environmental contamination, injury to natural resources, or other cause of action that arises under other law, including the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 et seq., and the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., in connection with the holder's use and occupancy of Federal lands, or to diminish any independent obligation of the permittee to indemnify the United States with respect to the same.

**N.** The authorized officer has determined through a risk assessment that the potential liability of the United States for property damage and personal injury or death arising from the holder's use and occupancy authorized by this permit is \$350,000 or less for an injury to one person in a single occurrence (per incident) or \$990,000 or less for an injury to two or more persons in a single occurrence (in the aggregate). Pursuant to the CGIA, the holder shall provide self-insurance covering claims for personal injury or death up to \$350,000 for an injury to one person in a single occurrence (per incident) or \$990,000 for an injury to two or more persons in a single occurrence (in the aggregate) . The self-insurance documentation shall name the United States as a certificate holder. The coverage under the holder's self-insurance shall extend to property damage and personal injury or death arising from the holder's activities under the permit, including use and occupancy of National Forest System lands and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by the permit.

1. If there is a conflict between this permit the certificate of insurance provided by the Colorado Risk Management Division ("the certificate"), and/or the Colorado Risk Management Division's insurance policy manuals ("insurance policy manuals"), the order of precedence among those documents shall be (1) this permit; (2) the certificate; and (3) the insurance policy manuals.

2. If a claim is submitted to the United States for property damage and personal injury or death arising from the holder's use or occupancy authorized by this permit, the Forest Service shall tender the defense of the claim to the respective representatives of the self-insurance. The holder understands that tort claims against the United States are governed by the Federal Tort Claims Act, which may result in the administrative denial of a claim. The holder further understands that in litigation the United States is represented by the United States Department of Justice (USDOJ) and agrees that representatives of the self-insurance will coordinate the defense with USDOJ, if a claim is litigated.

## **V. RESOURCE PROTECTION**

**A. COMPLIANCE WITH ENVIRONMENTAL LAWS.** The holder shall in connection with the use or occupancy authorized by this permit comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., the Oil Pollution Act, as amended, 33 U.S.C. 2701 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., CERCLA, as amended, 42 U.S.C. 9601 et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq.

**B. VANDALISM.** The holder shall take reasonable measures to prevent and discourage vandalism and disorderly conduct and when necessary shall contact the appropriate law enforcement officer.

### **C. PESTICIDE USE.**

1. Authorized Officer Concurrence. Pesticides may not be used outside of buildings in the permit area to control pests, including undesirable woody and herbaceous vegetation (including aquatic plants), insects, birds, rodents, or fish without prior written concurrence of the authorized officer. Only those products registered or otherwise authorized by the U.S. Environmental Protection Agency and appropriate State authority for the specific purpose planned shall be authorized for use within areas on National Forest System lands.

2. Pesticide-Use Proposal. Requests for concurrence of any planned uses of pesticides shall be provided in advance using the Pesticide-Use Proposal (form FS-2100-2). Annually the holder shall, on the due date established by the authorized officer, submit requests for any new, or continued, pesticide usage. The Pesticide-Use Proposal shall cover a 12-month period of planned use. The Pesticide-Use Proposal shall be submitted at least 60 days in advance of pesticide application. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests require control measures which were not anticipated at the time a Pesticide-Use Proposal was submitted.

3. Labeling, Laws, and Regulations. Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers. No pesticide waste, excess materials, or containers shall be disposed of in any area administered by

the Forest Service.

**D. ARCHAEOLOGICAL-PALEONTOLOGICAL DISCOVERIES.** The holder shall immediately notify the authorized officer of all antiquities or other objects of historic or scientific interest, including but not limited to historic or prehistoric ruins, fossils, or artifacts discovered in connection with the use and occupancy authorized by this permit. The holder shall follow the applicable inadvertent discovery protocols for the undertaking provided in an agreement executed pursuant to section 106 of the National Historic Preservation Act, 54 U.S.C. 306108; if there are no such agreed-upon protocols, the holder shall leave these discoveries intact and in place until consultation has occurred, as informed, if applicable, by any programmatic agreement with tribes. Protective and mitigation measures developed under this clause shall be the responsibility of the holder. However, the holder shall give the authorized officer written notice before implementing these measures and shall coordinate with the authorized officer for proximate and contextual discoveries extending beyond the permit area.

**E. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA).** In accordance with 25 U.S.C. 3002(d) and 43 CFR 10.4, if the holder inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on National Forest System lands, the holder shall immediately cease work in the area of the discovery and shall make a reasonable effort to protect and secure the items. The holder shall follow the applicable NAGPRA protocols for the undertaking provided in the NAGPRA plan of action or the NAGPRA comprehensive agreement; if there are no such agreed-upon protocols, the holder shall as soon as practicable notify the authorized officer of the discovery and shall follow up with written confirmation of the discovery. The activity that resulted in the inadvertent discovery may not resume until 30 days after the forest archaeologist certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, or at any time if a binding written agreement has been executed between the Forest Service and the affiliated Indian tribes that adopts a recovery plan for the human remains and objects.

**F. PROTECTION OF THREATENED AND ENDANGERED SPECIES, SENSITIVE SPECIES, AND SPECIES OF CONSERVATION CONCERN AND THEIR HABITAT.**

1. Threatened and Endangered Species and Their Habitat. The location of sites within the permit area needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, 16 U.S.C. 1531 et seq., as amended, or within designated critical habitat shall be shown on a map in an appendix to this permit and may be shown on the ground. The holder shall take any protective and mitigation measures specified by the authorized officer as necessary and appropriate to avoid or reduce effects on listed species or designated critical habitat affected by the authorized use and occupancy. Discovery by the holder or the Forest Service of other sites within the permit area containing threatened or endangered species or designated critical habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

2. Sensitive Species and Species of Conservation Concern and Their Habitat. The location of sites within the permit area needing special measures for protection of plants or animals designated by the Regional Forester as sensitive species or as species of conservation concern pursuant to FSM 2670

shall be shown on a map in an appendix to this permit and may be shown on the ground. The holder shall take any protective and mitigation measures specified by the authorized officer as necessary and appropriate to avoid or reduce effects on sensitive species or species of conservation concern or their habitat affected by the authorized use and occupancy. Discovery by the holder or the Forest Service of other sites within the permit area containing sensitive species or species of conservation concern or their habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

**G. CONSENT TO STORE HAZARDOUS MATERIALS.** The holder shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after this permit is issued, shall be amended to include specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

#### **H. CLEANUP AND REMEDIATION.**

1. The holder shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer or the authorized officer's designated representative, of any oil discharge or of the release of a hazardous material in the permit area in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302. For the purposes of this requirement, "oil" is as defined by section 311(a)(1) of the Clean Water Act, 33 U.S.C. 1321(a)(1). The holder shall immediately notify the authorized officer or the authorized officer's designated representative of any release or threatened release of any hazardous material in or near the permit area which may be harmful to public health or welfare or which may adversely affect natural resources on federal lands.

2. Except with respect to any federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either in the permit area or in connection with the holder's activities in the permit area, regardless of whether those activities are authorized under this permit. The holder shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the site to the Forest Service free and clear of contamination.

#### **VI. LAND USE FEE AND DEBT COLLECTION**

**A. LAND USE FEES.** The holder shall pay an initial annual land use fee of **\$191.78** for the period from to **January 1, 2019** to **December 31, 2019**, and thereafter on January 1, shall pay an annual land use fee of **\$191.78**. The annual land use fee shall be adjusted annually using the Implicit Deflator-Gross National Product Index (IPD-GPN).

**B. MODIFICATION OF THE LAND USE FEE.** The land use fee may be revised whenever necessary to reflect the market value of the authorized use or occupancy or when the fee system used to calculate the land use fee is modified or replaced.

**C. FEE PAYMENT ISSUES.**

1. Crediting of Payments. Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.

2. Disputed Fees. Fees are due and payable by the due date. Disputed fees must be paid in full. Adjustments will be made if dictated by an administrative appeal decision, a court decision, or settlement terms.

3. Late Payments

(a) Interest. Pursuant to 31 U.S.C. 3717 et seq., interest shall be charged on any fee amount not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the fee amount is due.

(b) Administrative Costs. If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.

(c) Penalties. A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.

(d) Termination for Nonpayment. This permit shall terminate without the necessity of prior notice and opportunity to comply when any permit fee payment is 90 calendar days from the due date in arrears. The holder shall remain responsible for the delinquent fees.

4. Administrative Offset and Credit Reporting. Delinquent fees and other charges associated with the permit shall be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. and common law. Delinquencies are subject to any or all of the following:

(a) Administrative offset of payments due the holder from the Forest Service.

(b) If in excess of 60 days, referral to the United States Department of the Treasury for appropriate collection action as provided by 31 U.S.C. 3711(g)(1).

(c) Offset by the Secretary of the Treasury of any amount due the holder, as provided by 31 U.S.C. 3720 et seq.



(d) Disclosure to consumer or commercial credit reporting agencies.

## **VII. REVOCATION, SUSPENSION, AND TERMINATION**

**A. REVOCATION AND SUSPENSION.** The authorized officer may revoke or suspend this permit in whole or in part:

1. For noncompliance with federal, state, or local law.
2. For noncompliance with the terms of this permit.
3. For abandonment or other failure of the holder to exercise the privileges granted.
4. With the consent of the holder.
5. For specific and compelling reasons in the public interest.

Prior to revocation or suspension, other than immediate suspension under clause VII.B, the authorized officer shall give the holder written notice of the grounds for revocation or suspension and a reasonable period, typically not to exceed 90 days, to cure any noncompliance.

**B. IMMEDIATE SUSPENSION.** The authorized officer may immediately suspend this permit in whole or in part when necessary to protect public health or safety or the environment. The suspension decision shall be in writing. The holder may request an on-site review with the authorized officer's supervisor of the adverse conditions prompting the suspension. The authorized officer's supervisor shall grant this request within 48 hours. Following the on-site review, the authorized officer's supervisor shall promptly affirm, modify, or cancel the suspension.

**C. APPEALS AND REMEDIES.** Written decisions by the authorized officer relating to administration of this permit are subject to administrative appeal pursuant to 36 CFR Part 214, as amended. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

**D. TERMINATION.** This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. Examples include but are not limited to expiration of the permit by its terms on a specified date and termination upon change of control of the business entity. Termination of this permit shall not require notice, a decision document, or any environmental analysis or other documentation. Termination of this permit is not subject to administrative appeal and shall not give rise to any claim for damages by the holder against the Forest Service.

### **E. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WITHOUT ISSUANCE OF A NEW PERMIT.**

Upon revocation or termination of this permit without issuance of a new permit, the holder shall remove all structures and improvements, except those owned by the United States, within a reasonable period prescribed by the authorized officer

and shall restore the site to the satisfaction of the authorized officer. If the holder fails to remove all structures and improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

### **VIII. MISCELLANEOUS PROVISIONS**

**A. MEMBERS OF CONGRESS.** No member of or delegate to Congress or resident commissioner shall benefit from this permit either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.

**B. CURRENT ADDRESSES.** The holder and the Forest Service shall keep each other informed of current mailing addresses, including those necessary for billing and payment of land use fees.

**C. SUPERSEDED PERMIT.** This permit supersedes a special use permit designated N/A dated N/A

**D. SUPERIOR CLAUSES.** If there is a conflict between any of the preceding printed clauses and any of the following clauses, the preceding printed clauses shall control.

**E. OPERATION AND MAINTENANCE PLAN (R2-C102).** An Operation and Maintenance Plan, described as **Exhibit B**, is attached hereto and made a part hereof.

**F. STREAM FLOW (R2-D101).** The Holder shall maintain stream flows adequate to protect the environment, including fishery resources and channel stability. Minimum flows shall be specified by the Authorized Officer. During high spring runoff, natural peak discharge will be maintained for a period of not fewer than five (5) days. The Holder shall be responsible for monitoring streamflow and determining when reservoir releases, diversion curtailments, or other measures are required to maintain required stream flow levels. Prior to development, the Holder shall submit a Stream Flow Monitoring Plan for approval by the Authorized Officer.

**G. WATER DEPLETIONS IN THE UPPER COLORADO RIVER BASIN (R2-D-104).** The holder recognizes that the obligation for providing conservation measures which allow the Forest Service to issue this Special Use Authorization has been provided by the Colorado River Programmatic Biological Opinion (ES/GJ-6-CO-99-F-033) issued on December 20, 1999. These conservation measures are implemented by the Upper Colorado River Recovery Program. It is the obligation of the holder to comply with these conservation measures and to participate in the Upper Colorado River Recovery Program. In the event the Upper Colorado River Recovery Program is unable to fulfill those responsibilities required by the programmatic biological opinion, reinitiation of consultation under the Endangered Species Act (ESA) would be required. The holder agrees it is their responsibility to insure compliance with the ESA, and that continued use of this authorization depends on the holder's compliance with the ESA. The holder further agrees that this authorization may be re-opened if the Forest Service is obligated to reinitiate consultation.

**H. AUGMENTATION PLANS FOR EXISTING WATER RIGHTS (R2-D108).** In the event that the authorized facilities/activities result in an out-of-priority diversion that requires augmentation, the Forest Service authorized officer must approve the augmentation plan in writing prior to the applicant submitting the plan for final decree by the court. The Forest Service authorized officer reviews the augmentation plan for the limited purpose of determining whether the augmentation plan has the potential to adversely impact NFS lands and resources.

**I. WATER RIGHTS, BOULDER CANYON ACT (R2-X102).** This authorization is issued subject to the Boulder Canyon Project Act of December 21, 1928 (45 Stat., 1064).

**J. WATER FACILITIES AND WATER RIGHTS (D-25).** This permit does not confer any water rights on the holder. Any necessary water rights must be acquired by the holder in accordance with State law. Any expenses for acquiring water rights shall be the responsibility of the holder. The United States reserves the right to place any conditions on installation, operation, maintenance, and removal of facilities to pump, divert, store, or convey water on National Forest System lands covered by this permit that are necessary to protect public property, public safety, and natural resources on National Forest System lands in compliance with applicable law. The holder waives any claims against the United States for compensation in connection with imposition of any conditions on installation, operation, maintenance, and removal of water facilities under this permit.

**THIS PERMIT IS ACCEPTED SUBJECT TO ALL ITS TERMS AND CONDITIONS.**

**BEFORE ANY PERMIT IS ISSUED TO AN ENTITY, DOCUMENTATION MUST BE PROVIDED TO THE AUTHORIZED OFFICER OF THE AUTHORITY OF THE SIGNATORY FOR THE ENTITY TO BIND IT TO THE TERMS AND CONDITIONS OF THE PERMIT.**

ACCEPTED:

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**KEN BRENNER**  
**President Board of Directors**  
**Upper Yampa Water Conservancy District (UYWCD)**

---

**DATE**

APPROVED:

---

**RUSSELL M BACON**  
**Forest Supervisor**  
**Medicine Bow-Routt National Forests and Thunder Basin National Grassland**

---

**DATE**

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

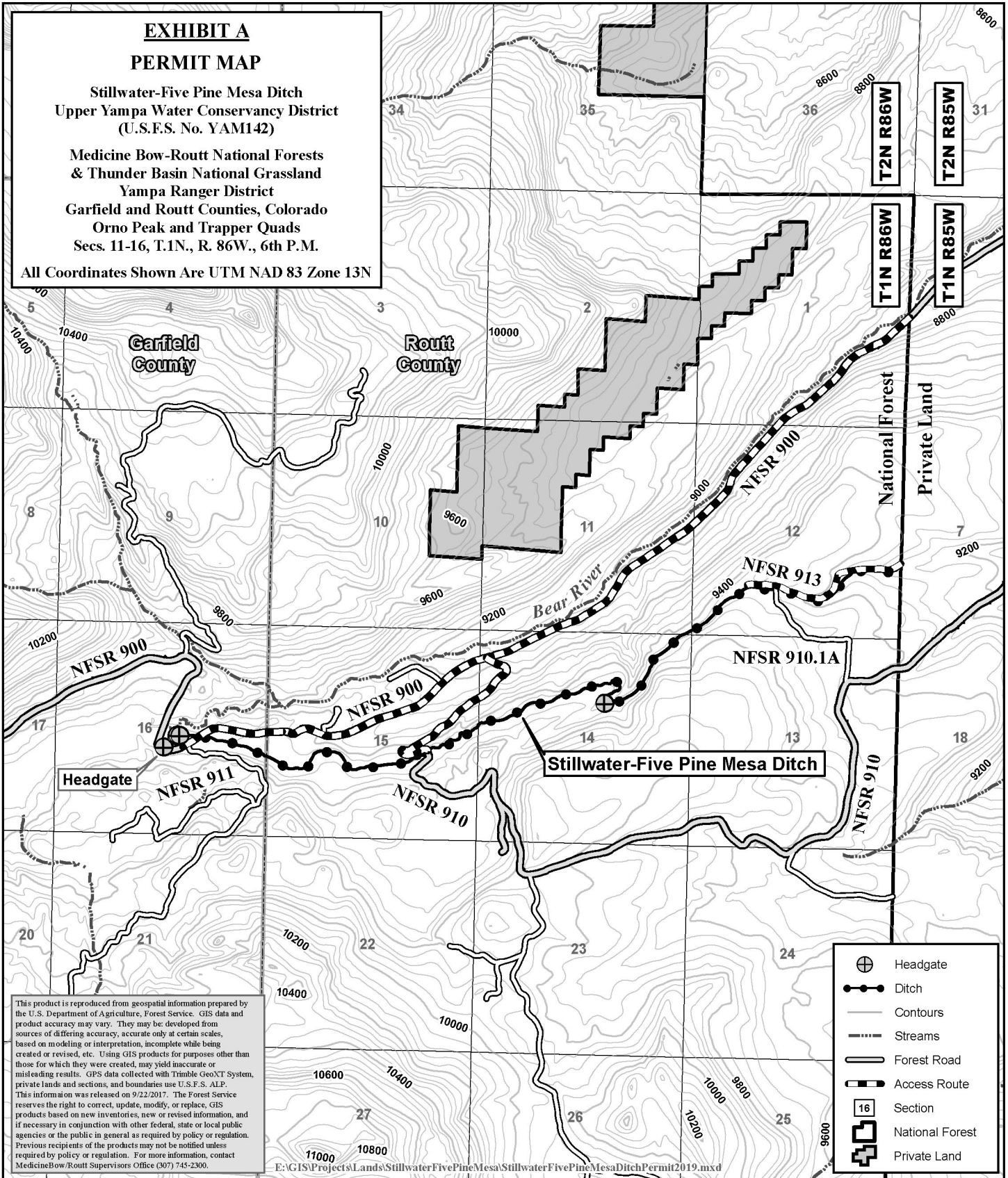
The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

**EXHIBIT A**  
**PERMIT MAP**

**Stillwater-Five Pine Mesa Ditch**  
**Upper Yampa Water Conservancy District**  
**(U.S.F.S. No. YAM142)**

**Medicine Bow-Routt National Forests**  
**& Thunder Basin National Grassland**  
**Yampa Ranger District**  
**Garfield and Routt Counties, Colorado**  
**Orno Peak and Trapper Quads**  
**Secs. 11-16, T.1N., R. 86W., 6th P.M.**

All Coordinates Shown Are UTM NAD 83 Zone 13N



This product is reproduced from geospatial information prepared by the U.S. Department of Agriculture, Forest Service. GIS data and product accuracy may vary. They may be developed from sources of differing accuracy, accurate only at certain scales, based on modeling or interpretation, incomplete while being created or revised, etc. Using GIS products for purposes other than those for which they were created, may yield inaccurate or misleading results. GPS data collected with Trimble GeoXT System, private lands and sections, and boundaries use U.S.F.S. ALP. This information was released on 9/22/2017. The Forest Service reserves the right to correct, update, modify, or replace GIS products based on new inventories, new or revised information, and if necessary in conjunction with other federal, state or local public agencies or the public in general as required by policy or regulation. Previous recipients of the products may not be notified unless required by policy or regulation. For more information, contact MedicineBow/Routt Supervisors Office (307) 745-2300.

E:\GIS\Projects\Lands\StillwaterFivePineMesa\StillwaterFivePineMesaDitchPermit2019.mxd

Prepared by: Nicolai Bencke  
GIS Specialist



**EXHIBIT B**  
**OPERATIONS AND MAINTENANCE PLAN**

**Water Storage Facility:** Stillwater-Five Pine Mesa Ditch Enlargement

**Permit Holder:** Upper Yampa Water Conservancy District (YAM142)

The permit incorporates this Operation and Maintenance Plan (O & M Plan) and any attachments thereto.

**Ditch Location:** Sections 11, 12, 13, 14, 15, and 16, T.1N., R.86 W., 6<sup>th</sup> Principal Meridian.  
Garfield and Routt Counties, Colorado

**Head Gate Location:** E1/2 Section 16, T. 1 N., R. 86 W.

Irrigation water is diverted from the Yamcolo Reservoir outlet through a large, permanent concrete and steel structure located near the base of Yamcolo Reservoir and the right abutment of the dam. The east wall of the structure includes two headgates that divert water down the Stillwater-Five Pine Mesa ditch. (See Exhibit C-Bifurcation structure and flow meter structure)

The west section of the concrete structure includes a measuring device and two diversion headgates that direct water to the Bear River. This part of the structure is considered part of the Yamcolo Reservoir permit. The measuring flume down ditch from the concrete diversion structure is authorized for replacement in 2019 with a flow meter and concrete structure depicted in Exhibit C.

The ditch was enlarged to transport stored reservoir water along with the original water rights decreed to the ditch allowing for a total of 62.5 cfs (30.83 cfs direct flow water right + 31.67 cfs stored water) to be conveyed through the ditch. The water rights for the stored water are associated with the reservoir water rights. There is a direct flow water right for 30.83 cfs that belongs to the Stillwater Ditch company and is parsed out to the various owners as part of the original Stillwater Ditch. The original ditch is likely authorized by an Act of 1891/DOI authority.

The ditch is 22,598 feet long or 4.28 miles across National Forest System lands and approximately 17.5 feet wide at the water line. The Right-of-Way width of the expanded ditch is 50 ft outside of either side of the top of the ditch embankment.

**The Holder agrees to operate and maintain the facilities and use the granted land in accordance with the following stipulations:**

1. Use only access routes described below. Holder is responsible for repairing all damage resulting from said use.
  - a. Access to the ditch is on National Forest System Road (NFSR) 900, NFSR 910, and NFSR 913 and then along the ditch.
  - b. Approved equipment includes: Trucks and ATV's on the non-system route. No large equipment except an excavator for routine operations and maintenance unless authorized in writing.

**EXHIBIT B**  
**OPERATIONS AND MAINTENANCE PLAN**

- c. Use of these routes is approved for water facility operation and maintenance needs only.
  - d. Holder is still subject to federal and state laws regulating travel on State, County, and Federal lands. These include Code of Federal Regulations (CFR) 261.13 prohibiting travel in a manner which damages or unreasonably disturbs the land, wildlife and vegetative resources.
  - e. Operations that involve traveling the above-mentioned roadways, trails or other access to the project shall cease when travel causes rutting 3" or more in depth.
  - f. Any rocks, or other barriers, moved to access water facilities shall be placed back following end of operation and maintenance activities.
  - g. Holder shall cut and pull back any downed trees blocking the access routes and shall not leave the trail in order to go around the trees.
2. Water facilities should be inspected by holder prior to use each year, periodically during the operating season, and after all major storms or major flow events. Diversion and headgate should be inspected to ensure proper functioning. Conveyance structure should be inspected for adequate freeboard, excessive erosion, undercutting of structures or blockage from obstructions.
  3. Maintain diversion, headgate and conveyance structure in good functioning condition and clear of sediment, logs and other debris to ensure proper operation and facilitate inspection.
  4. The holder shall be responsible for prevention and control of soil erosion and gullyng on lands covered by this authorization and [the land] adjacent thereto, resulting from operations, maintenance and termination of the authorized use. The holder shall revegetate or otherwise stabilize all ground where the soil has been exposed as a result of the holder's operations, maintenance and termination of the authorized use. The holder shall maintain channel to prevent downcutting and bank failure and remove all obstructions from the channel. The holder shall be responsible for control of and spread of those noxious weeds, which have been identified by the US Forest Service and local County weed list.
  5. Under this Special Use Permit, water for agricultural purposes up to **62.5 cubic feet/second (cfs)** is allowed through this conveyance facility without an additional land-use authorization.
  6. The holder shall maintain an operable headgate.

**Routine operations and maintenance activities include, but are not limited to:**

- a. Inspection of facilities,
- b. Weed and brush control,
- c. Removal of dead and downed trees and brush that interfere with proper working condition of ditch.
- d. Removal of debris and beaver dams.
- e. Maintaining diversion, headgate and other ditch structures in good functioning condition and clear of sediment and other debris.
- f. Reinforcement of berm of ditch to fix breaches.
- g. Addition of ditch bank material to maintain freeboard above the water line.

**EXHIBIT B**  
**OPERATIONS AND MAINTENANCE PLAN**

- h. An excavator is authorized to execute the above operation and maintenance activities.

**The Holder will contact the Forest Service Authorized Officer for approval before proceeding with work that is other than routine operations or maintenance. Non-routine maintenance is to be submitted by the Holder as soon as the work is identified. Every effort will be made to provide a timely response by the Forest Service for emergency repairs. Some of the situations requiring notification and approval include:**

- a. Installation of headgate, measuring device or other structures.
- b. Bringing in and using heavy equipment, (except as authorized above)
- c. Using other than approved maintenance routes for access.
- d. Removal of significant amounts of vegetation and silt and deposition of the same, if on National Forest System lands.
- e. Burning, application of seed mixtures, chemical application or other means of vegetation control measures.
- f. Major reconstruction of facilities, such as reconstruction or re-routing of a portion of the ditch (the latter would also entail a new special use permit).
- g. Maintenance work that deviates from historical activities or that causes disturbance in excess of typical and historic activities associated with the system which may affect cultural resources. Such work may require prior cultural review and approval by the Forest Service.
- h. Any work performed within natural waterways must have prior approval from the Forest Service.

This Operation and Maintenance Plan will be reviewed as needed by the Holder and the Forest Service and may be amended by the District Ranger when jointly agreed to with the Holder.

**Forest Service Construction Stipulations for Flow Meter Structure Installation**

**Authorizations and Plans**

- The Holder is responsible for insuring the Contractor meets all requirements in FS Special Use Permit YAM142, the Flow Meter structure plans developed for UYWCD by AECOM and these Forest Service Construction Stipulations.
- If changes to the Plan and Provisions are required, an updated copy will be provided to the Forest Service for review, with the changes highlighted. All changes will require authorization by the Forest Service (FS) in writing prior to implementation.
- Any permits required by the County and State will be obtained prior to the project start date. Copies will be provided to the Forest Service
- A Storm Water Management Plan/erosion control plan is required by the Forest Service.
- The Holder will identify a contractor representative as contact with the FS.
- The FS contact will be Janet Fallor, Realty Specialist, or her designated representative. Her contact information is: jfallor@fs.fed.us or 970-870-2174.



## EXHIBIT B

### OPERATIONS AND MAINTENANCE PLAN

- The US Government will be added as additionally insured on the certificate of insurance provided by the contractor.
- The Holder will submit the Contractor's work schedule to the FS. The Forest Service will be notified at least a week in advance of start of the project, and notify the FS representative at least 3 days in advance of the commencement and completion of the project.
- A close-out meeting with the Forest Service will be required before equipment is removed from the project site. This requirement may be waived by request.
- The Holder will identify the source and location of all fill material, if needed for the project.

#### **Staging and Construction Area:**

- The limits of disturbance for the project will be identified on a plan approved by the Forest Service. Any disturbance beyond these limits must be approved in writing by the Forest Service.
- The Holder will insure no public access is permitted within the construction area.

#### **Reclamation:**

- The Holder shall be responsible for the prevention and control of noxious weeds. If noxious weeds are currently present on the site, they should be treated prior to any excavation.
- All equipment/machinery will be thoroughly cleaned (remove all soil and plant material) prior to mobilizing onto National Forest System (NFS) lands to prevent the spread of noxious weeds
- No material may be disposed of by burning or burying on NFS lands. All scrap material, refuse, or other debris will be removed from NFS lands.

#### **Seed Lot Testing Standards:**

- Prior to ordering seed, the holder or contractor will provide the Forest Service with a copy of the seed test for each seed lot to determine whether there are undesirable species in the lot. Any weed or crop seed in the mix must be identified by species and quantity. The FS reserves the right to reject any seed lot. (*accepted JF*)
- All seed used for revegetation shall be tested for and free of "all states noxious weeds" and annual bromes.
- All seed must have a seed label. At the end of seeding the label (or a copy) from each bag must be provided to the Forest Service.

#### **Fire Precautions:**

- The Holder and Contractor will abide by all fire restrictions established by the Medicine Bow-Routt National Forests & Thunder Basin Grasslands and those established by state, county and local authorities.
- The Holder and Contractor shall maintain a muffler or spark arrester satisfactory to the FS on the exhaust systems of all trucks and tractors or other internal combustion engines used in connection with this project.

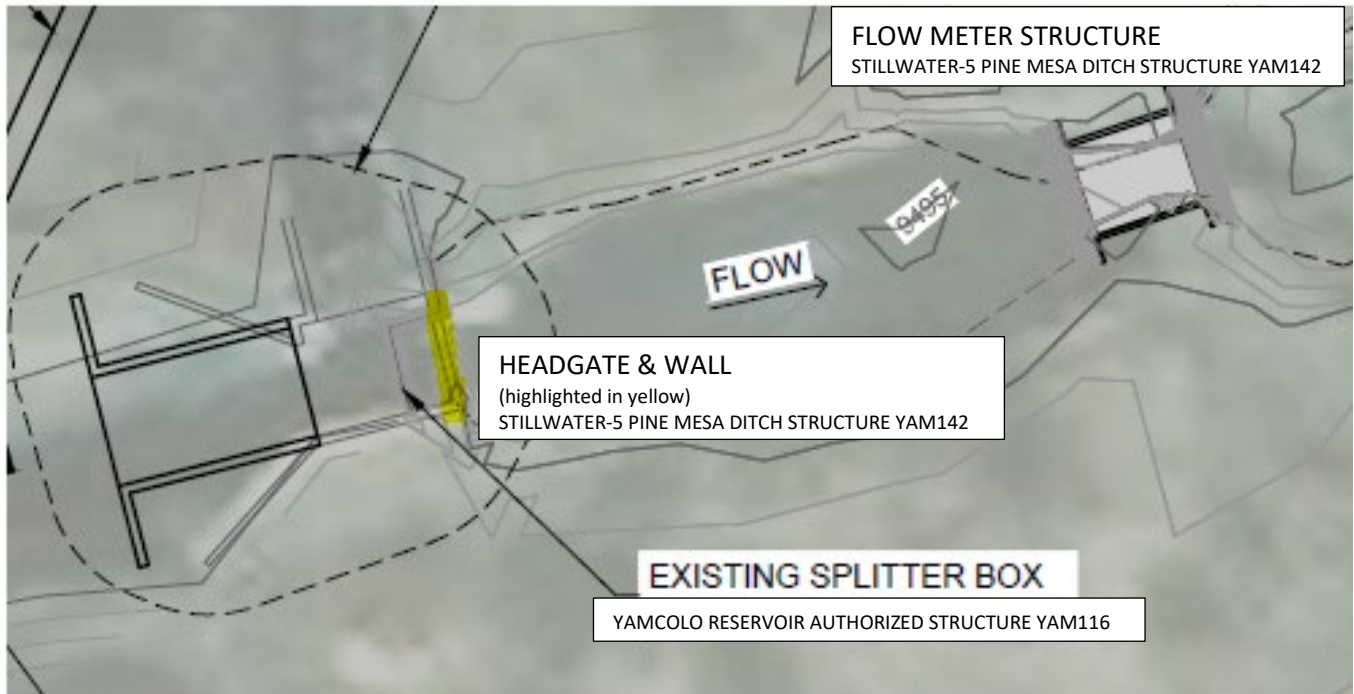
**EXHIBIT C**

**Diagram: Splitter Box/Headgate and Flow Meter Structure**

**Stillwater-Five Pine Mesa Ditch Enlargement**

**Upper Yampa Water Conservancy District (UYWCD)**

**YAM142**



## Exhibit D

### Stillwater-Five Pine Mesa Ditch Enlargement Streamflow Monitoring Plan

April 24, 2019

The Upper Yampa Water Conservancy District (UYWCD) is authorized by the U.S. Department of Agriculture Forest Service (USFS) to use or occupy National Forest System lands in the Yampa Ranger District of the Routt National Forest for the purpose of operating and maintaining the Stillwater-**Five Pine Mesa Ditch Enlargement (Stillwater Ditch)** including the diversion structure, measuring device(s), and other related structures. The UYWCD's use of National Forest System lands for the Stillwater Ditch is subject to the terms and conditions of the Special Use Permit issued in 2019 pursuant to the Federal Land Policy Management Act, as amended October 21, 1976 and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions including the Stream Flow clause:

**G. Stream Flow (R2-D101).** The Holder shall maintain stream flows adequate to protect the environment, including fishery resources and channel stability. Minimum flows shall be specified by the Authorized Officer. During high spring runoff, natural peak discharge will be maintained for a period of not fewer than five (5) days. The Holder shall be responsible for monitoring streamflow and determining when reservoir releases, diversion curtailments, or other measures are required to maintain required stream flow levels. Prior to development, the Holder shall submit a Stream Flow Monitoring Plan for approval by the Authorized Officer.

The following Stream Flow Monitoring Plan was developed for implementation and to meet the intent of the Stream Flow clause R2-D101:

- 1) Minimum flows will be retained in the Bear River as follows:
  - a. A minimum flow of 8 cubic-feet-per-second (CFS) or streamflow in the Bear River, whichever is less, will be retained in the Bear River from 1 October to 1 May, and shall be increased and maintained at 12 cfs or streamflow, whichever is less, during the remainder of the year.
- 2) The High Flow targets in the Bear River downstream of Stillwater Ditch diversion will be as follows:

Default peak flow requirements will be those specified in the permit clause R2-D101 'During high spring runoff, natural peak discharge will be maintained for a period of not fewer than five (5) days'.

Both the UYWCD and the USFS agree that during dry years, low water years, etc, it may not be possible to maintain natural peak discharge for five days. In order to meet the intent of clause R2-D101, flows authorized by this SUP will not be diverted prior to May 15. or the date that the headgates, diversion structure and ditch are free of ice and snow and capable of transporting water, whichever occurs later."

**USDA FOREST SERVICE  
BILL FOR COLLECTION**

1. BILL DATE: 07/16/2019

PAGE: 1 OF 1

TO ENSURE PROPER CREDIT PLEASE HAVE YOUR BILL AVAILABLE AND CHOOSE ONE OF THE FOLLOWING PAYMENT OPTIONS:

- . **PAY ONLINE AT:** WWW.FS.FED.US/BILLPAY
- . **PAY BY MAIL:** Please include the top part of this bill with your payment. Also include the bill number and payer code, items 4 & 5 at right, on your check or money order. Do not send cash. Make your payment for the exact amount due and make it payable to USDA Forest Service. See address at right.
- . **PAY AT MOST FOREST SERVICE OFFICES:** Bring a copy of your bill. Call your local Forest Service office for details.

PAY BY MAIL ADDRESS:

USDA FOREST SERVICE  
C/O US BANK  
P. O. BOX 6200-09  
PORTLAND, OR 97228-6200

**AMOUNT DUE: \$191.78**

AMOUNT ENCLOSED: \$ \_\_\_\_\_

TO: UPPER YAMPA WATER CONSERVANCY DIST  
PO BOX 775529  
STEAMBOAT SPRINGS, CO 80477 UNITED STATES

KCRAIG@UPPERYAMPAWATER.COM

2. NET AMOUNT DUE: \$191.78  
3. DUE DATE: 08/19/2019  
4. BILL NUMBER: BF020601Y0054  
5. PAYER CODE: 0003331857

6. AGREEMENT NO: -- TEAR HERE --  
8. REMARKS:  
FAILURE TO PAY FEES BY DUE DATE CONSTITUTES NON-COMPLIANCE WITH AUTHORIZATION.

7. DESCRIPTION:  
9. PRINCIPAL: \$191.78  
10. INTEREST:  
11. ADMINISTRATIVE COSTS:  
12. PENALTY:  
13. AMOUNT DUE: \$191.78  
14. ADJ. + CREDIT: \$.00  
15. NET AMOUNT DUE: \$191.78

NOTE:  
PLEASE SEND ALL CORRESPONDENCE, INQUIRIES, AND CHANGE OF ADDRESS TO:

YAMPA RANGER DISTRICT 970-638-4516  
P.O. BOX 7  
YAMPA, CO 80483

Failure to include both the bill number and payer code with your payment will delay posting and may delay your ability to use the National Forest. Failure to make payment by the due date may result in the assessment of interest, administrative fees and/or penalty charges. In accordance with your authorization or the debt collection act of 1982, as amended, postmarks are not honored.

DATE/PERIOD	DESCRIPTION	AMOUNT
01/01/2019 To 12/31/2019	2720 SPECIAL USES YAM142 911 IRRIGATION WATER DITCH	YAMPA RANGER DISTRICT \$191.78

**FOR OFFICIAL USE ONLY**

16. ORG	17. JOB	18. AMOUNT
0206	D3103F19	\$191.78





DEPARTMENT OF NATURAL RESOURCES

## DIVISION OF WATER RESOURCES

### ORDER TO RESET/REPLACE MEASURING DEVICE

John W. Hickenlooper  
Governor

Bob Randall  
Executive Director

Kevin G. Rein, P.E.  
State Engineer

Erin C.H. Light, P.E.  
Division Engineer

Upper Yampa Water Conservancy District  
C/o Kevin McBride  
P.O. Box 775529  
Steamboat Springs, CO 80477  
Certified No. 7013 1710 0000 1146 8820

**RE: Reset/Replace Measuring Device - Stillwater Ditch (aka Five Pine Mesa Ditch)**

Pursuant to Section §37-92-502(1), "the division engineers shall issue to the owners or users of water rights and to the users of waters of the state such orders as are necessary to implement the provisions of section §37-92-501."

Additionally, pursuant to Section §37-84-112, "The owners of any irrigation ditch, canal, flume, or reservoir in the State, taking water from any stream, shall erect where necessary and maintain in good repair, at the point of intake of such ditch, canal, flume, or reservoir, a suitable and proper headgate of height and strength and with embankments, sufficient to control the water at all ordinary stages and suitable and proper measuring flumes, weirs, and devices, and shall also erect and maintain in good repair suitable wastegates where necessary in connection with such ditch, canal, flume, or reservoir intake..."

It has been brought to my attention that the current measuring device located on the Stillwater Ditch is not accurately measuring the diversions of water. As such, in accordance with the statutes stated above, you are directed and ordered to provide a measuring device suitable for measuring all diversions made by the Ditch.

**This device must be reset or replaced prior to diverting water in the spring of 2018.** Any diversion of water after this time will be considered contrary to this order and may result in an enforcement action pursuant to §37-92-503, which may subject you to fines of up to five hundred dollars (\$500) for each day violation of this order occurs.

Prior to repair of an existing or installation of a new measuring device, it is critical that you contact the water commissioner listed below.

Dated Monday September 11, 2017

Erin Light, P.E.  
Division Engineer

CC: Scott F. Hummer, Water Commissioner - WD58; Phone: 970-390-0957

Water Division 6 • Steamboat Springs

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