

**AGENDA**  
**UPPER YAMPA WATER CONSERVANCY DISTRICT**  
**BOARD OF DIRECTORS MEETING**  
**WEDNESDAY, JANUARY 15, 2020 (1:30 PM)**  
**MOUNTAIN VALLEY BANK COMMUNITY ROOM**  
**2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO**

- (1) *1:30 pm* Establishment of Quorum and Call to Order;
- (2) Consent Agenda; action item
  - a) Approval of Disbursements
  - b) Budget Comparison Report
  - c) Approval of the minutes of the September 18, 2019; November 20, 2019; and December 18, 2019 Board Meetings
  - d) Resolution approving Posting Place
- (3) Approval of Agenda for Meeting; action item
- (4) Public Input and Comment;
- (5) *2:00 pm* Report of the General Manager;
  - a) Kelly Romero-Heaney City of Steamboat Springs
  - b) Governance Discussion and Strategic Plan adoption action item
  - c) Price Notification for YIA Contract 2020 action item
  - d) Business Planning Next Steps
- (6) *3:10 pm* Election of Officers; action item
- (7) *3:25 pm* Report from General Counsel;
  - a) Water Resumes and Status of other Water Cases, if any
  - b) Contract Negotiations (YIA, Individual Irrigators, Tri-state, Stagecoach Municipal, Peabody) action item
  - c) Stillwater Ditch action item
  - d) Individual Irrigators Contract Renewal Process action item
  - e) Director Appointments
- (8) *4:00 pm* Report from District Engineer;
  - a) Reservoir Water Status
  - b) Grazing Lease action item
  - c) Capital Projects
- (9) 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).
- (10) *4:45 pm* Board Member reports
- (11) *5:00 pm* Next meeting agenda
- (12) Adjournment.

2)

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## BOARD COMMUNICATION FORM

**From:** Karina Craig

**Date:** January 10, 2020

**Item: Financial Reports: Cash Disbursement Report, Budget Comparison Report**

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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

The ***Cash Disbursement Report*** contains reconciled disbursements incurred through credit card through December 3, 2019 and check payments through December 31, 2019. Disbursements include operating and capital expenditures.

The ***Budget Comparison report*** was run on January 8, with transactions accrued up to and including December 19, 2019. Additional transactions for the month of December are expected.

Power ***Revenues***, Routt County and Moffat County Property Tax Revenues reported are for the period January-November 2019.

Projections include known December Power Generation and Routt County tax revenues, and estimated December Moffat County Tax Revenues.

Water storage revenues accrued for the year are reported. Yamcolo water revenues differ from budget due to negotiated prices. All other revenues are expected to be on or over budget. Stillwater Ditch & Reservoir Company revenues are projected to be as budgeted.

All ***expenditure*** line items (operating & capital expenditures) in the budget comparison report are expected to be within budget.

**II. Summary and Alternatives:** none.

**III. Staff Recommendation:** Accept reports.

**IV. Legal Issues:** None



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

**Attachments:**

Attachment 1: Cash Disbursement Report

Attachment 2: Budget Comparison Report

Additional Attachments: none.

a)

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**Upper Yampa Water Conservancy District**  
**Cash Disbursement Report**  
**January 8, 2020**

<b>Date</b>	<b>Name</b>	<b>Memo</b>	<b>Amount</b>
09/25/2019	USGS	Stagecoach streamgaging	15,722.00
10/09/2019	Ken Brenner	Director Fees	500.00
10/09/2019	Steve Colby	Director Fees	200.00
10/18/2019	Intermountain Environmental, Inc IEI	SWD Measuring Devices Instrumentation	4,694.21
10/18/2019	Colorado SDA Property and Liab Pool	2019 Dodge Insurance	201.01
10/22/2019	All Trades Handyman of Steamboat	New Office maintenance	382.50
10/23/2019	Adobe	Monthly Support	24.99
10/28/2019	Pour Boy's Concrete LLC	Construct concrete walls and slabs SW Ditch	17,250.00
10/28/2019	ICMA-401a	Retirement Contributions	4,080.35
10/28/2019	ICMA-457	Retirement Contributions	1,469.23
10/28/2019	Metlife	Life, Disability and Dental November	941.22
10/28/2019	Family Support Registry	Remittance	930.58
10/28/2019	ACE Hardware	SC Maintenance and Office Supplies	122.97
11/01/2019	Hotel	Fairfield Inn and Suite GJ 11/12-11/13	120.70
11/01/2019	Wells Fargo	Stop Payment FEE	31.00
11/01/2019	Mountain Valley Bank	October Rent	2,900.00
11/04/2019	Restaurant.	Skull Creek Greek LLC Staff Meeting	70.00
11/05/2019	Amazon	Stainless Steel Sheet Yamcolo	37.38
11/05/2019	Western Slope Health Care	Health Care November	9,943.57
11/05/2019	Confluence Resource Management	Stagecoach Wetlands Planting	3,871.25
11/05/2019	Workplace Resource	Standing desks for Holly and Kevin	2,878.24
11/05/2019	Catamount Ranch & Club	2019 Retreat	964.00
11/05/2019	Scott Myller, Architect	Furniture installation new office	895.00
11/05/2019	Ben's Blinds	Roller Shades Conference room	876.00
11/05/2019	Balcomb & Green, P.C.	October 2019 legal Services: General, Master Plan Diligence, Opposition cases 18CW3020 & 19CW3005	663.00
11/05/2019	Conoco Universal WEX	October gasoline	406.58
11/05/2019	Resource Engineering	Water Rights Accounting SC	235.50
11/05/2019	CenturyLink	SC Telephone. 11/01-11/30.	146.97

**Subtotal**

**70,558.25**

## Cash Disbursement Report

January 8, 2020

Date	Name	Memo	Amount
11/05/2019	PostNet	Box to mail information	3.09
11/05/2019	Weiss & Van Scoyk	Legal Services September	11,051.50
11/06/2019	Amazon	Zinc plated ex Head Expansion anchor bolt Yamcolo	50.42
11/06/2019	Amazon	Stainless Steel Strip Yamcolo	45.07
11/06/2019	Edge Communications	Phone & Internet. 4 sip trunks & 5 lines. 11/06/19-12/05/19	106.73
11/07/2019	CO Division of Water Resources - WAFP	Morrison Creek SMS 10/1/19-9/30/2020	5,830.00
11/07/2019	NDS Northwest Data Services	Computer for conference room and computer support.	1,019.00
11/07/2019	Advanced Copier Solutions, Inc.	Savin Printer.October	141.73
11/07/2019	BlueChannel, Inc.	12/1/19-11/30/20 Web Hosting	108.00
11/08/2019	CrashPlan Code42	Admin Software: Cloud Backup	9.99
11/08/2019	NDS Northwest Data Services	Computer services and phone system	315.00
11/11/2019	CenturyLink	Office Telephone. 11/07 to 12/06	231.71
11/11/2019	Flat Tops Ranch Supply	Sagecoach Supplies	120.02
11/11/2019	Napa	F250 taillight repair	59.56
11/11/2019	Mountain View Car Wash	Carwash October 2019	27.00
11/11/2019	ACE Hardware	Stagecoach and Yamcolo Supplies	8.09
11/12/2019	Aurum Food and Wine	Holiday Party 2019	500.43
11/12/2019	AECOM	Stagecoach Firming Project, 27 July to 30 August services	8,183.09
11/12/2019	AECOM	Part 12 Inspection. Stagecoach. Services through Sep 21 to Nov 1, 2019	2,500.00
11/15/2019	City Market	Office supplies	61.25
11/15/2019	Amazon	office supplies	42.97
11/15/2019	Amazon	Office Supplies	31.59
11/16/2019	Amazon	office supplies	98.00
11/17/2019	Hotel	Fairfield Inn and Suites GJ	228.00
11/18/2019	Restaurant.	Wild Plum BOD meeting	155.00
11/19/2019	YVEA	Powerhouse 09/30-10/30/19 Electricity	156.66
11/19/2019	YVEA	Shed 9/30-10/30/19 Electricity	58.98
11/19/2019	Steamboat Ski and Resort Corporation	19-20 silver medallion	3,999.00

**Subtotal****35,141.88**

**Upper Yampa Water Conservancy District**  
**Cash Disbursement Report**  
**January 8, 2020**

<b>Date</b>	<b>Name</b>	<b>Memo</b>	<b>Amount</b>
11/20/2019	Restaurant.	Wild Plum BOD meeting	30.00
11/20/2019	Crosho Lake	Crosho Lake Improvements, Grant	16,000.00
11/20/2019	Confluence Resource Management	Stagecoach willow stake planting on peninsula	880.00
11/20/2019	ACE Hardware	Supplies Stagecoach	208.57
11/20/2019	Napa	Floor liners new RAM	112.57
11/22/2019	Adobe	Monthly Adobe Support November	14.99
11/24/2019	Intuit QuickBooks	Payroll Annual Renewal	650.00
11/25/2019	Amazon	Office Supplies	349.08
11/25/2019	Denver Post	Subscription	4.56
11/25/2019	Restaurant.	Winona's Restaurant	37.30
11/25/2019	Internal Revenue Service	Fed taxes November	11,795.50
11/25/2019	Western Slope Health Care	Life, Disability and Dental December	10,777.89
11/25/2019	ICMA-401a	Retirement Contributions	4,080.35
11/25/2019	ICMA-457	Retirement Contributions	2,397.78
11/25/2019	Metlife	Life and Disability November	941.22
11/25/2019	Family Support Registry	Remittance	930.58
11/26/2019	Quickbooks Payroll Service	November Payroll	34,632.00
11/26/2019	CBI - Consensus Building Institute	360 Review, BOD Retreat	8,575.16
11/26/2019	Weiss & Van Scoyk	Legal Services October	5,543.00
11/26/2019	Arrow Performance Group	Consulting Services August	1,596.00
11/26/2019	Jennifer Poelman	Office Cleaning 10/3 10/10 10/17 10/25	300.00
11/26/2019	Resource Engineering	Umbrella Plan Elk River 10/01-10/31/19	157.00
11/26/2019	Verizon Wireless	SC cell phones 11/14-12/13/19	107.32
11/27/2019	SmartVault	Software, interphase with quickbooks	42.40
12/01/2019	Mountain Valley Bank	December Rent	2,900.00
12/03/2019	NDS Northwest Data Services	Camera - phone - conference room setup	793.00
12/03/2019	Conoco Universal WEX	November Gasoline	441.89
12/03/2019	Advanced Copier Solutions, Inc.	Savin Printer November	376.24

**Subtotal**

**104,674.40**



## Cash Disbursement Report

January 8, 2020

Date	Name	Memo	Amount
12/03/2019	Federal Express	Shipment to Frank Blackett FERC 10/30/19	115.36
12/03/2019	Mountain View Car Wash	Car Washes November	62.00
12/03/2019	Napa	Durango Exact Fit Wiper	12.45
12/04/2019	Denver Post	Subscription	11.99
12/05/2019	Western Slope Health Care	Health Care Reissue October	9,943.57
12/10/2019	Colorado SDA Property and Liab Pool	Workers Compensation Coverage 01/01-12/31/2020	6,991.00
12/10/2019	Jennifer and Mark Schwartz	Mini Grant Davis Ditch #2	742.26
12/10/2019	Jennifer Poelman	November Cleaning Services	375.00
12/11/2019	Aurum Food and Wine	2019 Holiday Party	1,873.79
12/13/2019	Colorado SDA Property and Liab Pool	Property Liability policy 01/01/20-12/31/20	28,929.00
12/13/2019	USDA Forest Service	Yamcolo Special Use Permit	21,374.96
12/13/2019	CBI - Consensus Building Institute	Project 360 11/1-11/30/19	1,680.00
12/13/2019	Environmental Solutions	USGS monthly reports	660.00
12/13/2019	CenturyLink	Office Telephone. Dec 07 to Jan 06.	231.71
12/19/2019	USGS	Stagecoach streamgaging	7,398.00
12/19/2019	Hugh Webster Jones	Director Fees	500.00
12/19/2019	Steve Colby	Director Fees	300.00
12/19/2019	John Redmond	Director Fees	200.00
12/19/2019	CenturyLink	SC Telephone. Dec 1 - Dec 31	146.97
12/19/2019	Steamboat Pilot CMNM	Advertising Auditor	39.20
12/27/2019	Internal Revenue Service	Federal tax withholdings. Settle date Dec 31	12,181.66
12/30/2019	Quickbooks Payroll Service	December Payroll	35,292.63

**Subtotal****129,061.55****Total****339,436.08**

**b)**

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UPPER YAMPA WATER CONSERVANCY DISTRICT - 2019 BUDGET COMPARISON REPORT, AS OF DECEMBER 19, 2019

	2018 ACTUALS	2019 BUDGET	2019 YTD ACTUALS	2019 PROJECTIONS	2020 BUDGET
<b>Fund Opening Balance including Encumbered Funds</b>	12,683,250	14,274,361	14,274,361	14,274,361	14,945,119
<b>Encumbered Funds</b>	919,734	919,734	919,734	919,734	6,222,280
<b>Emergency Facilities Reserve</b>					4,485,814
<b>Capital Maintenance Reserve</b>					752,436
<b>Stagecoach Wetlands Mitigation Reserve</b>	419,734	419,734	419,734	419,734	419,734
<b>Routt County Road #14 Contribution</b>	500,000	500,000	500,000	500,000	500,000
<b>Tabor Reserve</b>					64,296
<b>Unencumbered Funds</b>	11,763,516	13,354,627	13,354,627	13,354,627	8,722,839
<b>Revenues</b>					
<b>Facilities</b>					
<b>Stagecoach Reservoir</b>					
<b>Power Sales</b>	129,492	200,000	216,612	234,324	200,000
<b>Water Sales</b>	505,201	403,144	433,769	433,769	116,379
<b>Yamcolo Reservoir</b>					
<b>Water Sales</b>	130,760	133,410	121,052	121,052	163,653
<b>Stillwater Ditch &amp; Reservoir Company</b>	7,744	7,965	7,965	7,965	45,279
<b>Property taxes</b>	2,269,399	2,284,084	2,400,458	2,416,000	2,496,565
<b>Interest earned</b>	261,280	284,500	286,834	306,000	296,100
<b>Other income</b>					
	<b>revenues</b>	<b>3,303,875</b>	<b>3,313,103</b>	<b>3,466,690</b>	<b>3,519,110</b>
<b>Expenditures</b>					
<b>Operating</b>					
<b>Facilities</b>					
<b>Stagecoach Reservoir - Power Generation</b>	171,623	248,954	213,631	235,069	224,582
<b>Stagecoach Reservoir - Water storage</b>	279,641	266,927	173,575	251,427	278,537
<b>Yamcolo Reservoir</b>	132,790	144,594	126,977	138,973	156,631
<b>Stillwater Ditch &amp; Reservoir Company</b>	13,379	45,065	24,598	43,065	40,834
<b>Administration</b>	139,144	203,198	159,267	203,198	305,889
<b>Board of Directors</b>	65,006	83,105	68,491	83,105	115,304
<b>External Affairs</b>	58,016	129,754	62,617	129,754	121,909
<b>Finance</b>	99,340	132,880	104,053	132,880	152,813
<b>Legal</b>	166,889	178,567	110,882	178,567	158,090
<b>Planning</b>	136,625	432,927	259,859	432,927	74,572
<b>Grants, Scholarships &amp; Public Information</b>	39,038	257,588	141,303	257,588	253,390
<b>Treasurer fees</b>	72,507	73,786	74,602	74,650	80,650
<b>Subtotal Operating</b>	<b>1,373,999</b>	<b>2,197,345</b>	<b>1,519,855</b>	<b>2,161,203</b>	<b>1,963,200</b>
<b>Capital</b>					
<b>Stagecoach Reservoir - Power Generation</b>	3,967	102,900	24,796	26,942	50,000
<b>Stagecoach Reservoir - Water storage</b>	27,462	62,900	18,984	26,942	50,000
<b>Yamcolo Reservoir</b>	302,537	108,900	57,852	63,042	80,000
<b>Stillwater Ditch &amp; Reservoir Company</b>		40,300	38,426	40,278	
<b>Office Space</b>	4,800	130,000	82,696	100,000	
<b>Subtotal Capital</b>	<b>338,766</b>	<b>445,000</b>	<b>222,753</b>	<b>257,204</b>	<b>180,000</b>
	<b>expenditures</b>	<b>1,712,765</b>	<b>1,742,608</b>	<b>2,418,407</b>	<b>2,143,200</b>
	<b>net income (loss)</b>	<b>1,591,111</b>	<b>670,759</b>	<b>1,724,082</b>	<b>1,174,775</b>
<b>Ending Fund Balance</b>	<b>14,274,361</b>	<b>14,945,119</b>	<b>15,998,442</b>	<b>15,375,064</b>	<b>16,119,895</b>

**UPPER YAMPA WATER CONSERVANCY DISTRICT - 2019 BUDGET COMPARISON REPORT, AS OF DECEMBER 19, 2019**

		<b>2018 ACTUALS</b>	<b>2019 BUDGET</b>	<b>2019 YTD ACTUALS</b>	<b>2019 PROJECTIONS</b>	<b>2020 BUDGET</b>
	<b>Fund Opening Balance including Encumbered Funds</b>	12,683,250	14,274,361	14,274,361	14,274,361	14,945,119
	<b>Encumbered Funds</b>	919,734	919,734	919,734	919,734	6,222,280
	<b>Emergency Facilities Reserve</b>					4,485,814
	<b>Capital Maintenance Reserve</b>					752,436
	<b>Stagecoach Wetlands Mitigation Reserve</b>	419,734	419,734	419,734	419,734	419,734
	<b>Routt County Road #14 Contribution</b>	500,000	500,000	500,000	500,000	500,000
	<b>Tabor Reserve</b>					64,296
	<b>Unencumbered Funds</b>	11,763,516	13,354,627	13,354,627	13,354,627	8,722,839
	<b>Revenues</b>					
	<b>Facilities</b>					
	<b>Stagecoach Reservoir</b>					
1	<b>Power Sales</b>	129,492	200,000	216,612	234,324	200,000
2	<b>Water Sales</b>	505,201	403,144	433,769	433,769	116,379
	<b>Yamcolo Reservoir</b>					
2	<b>Water Sales</b>	130,760	133,410	121,052	121,052	163,653
3	<b>Stillwater Ditch &amp; Reservoir Company</b>	7,744	7,965	7,965	7,965	45,279
4	<b>Property taxes</b>	2,269,399	2,284,084	2,400,458	2,416,000	2,496,565
5	<b>Interest earned</b>	261,280	284,500	286,834	306,000	296,100
6	<b>Other income</b>					
	<b>revenues</b>	<b>3,303,875</b>	<b>3,313,103</b>	<b>3,466,690</b>	<b>3,519,110</b>	<b>3,317,976</b>
	<b>Expenditures</b>					
	<b>Operating</b>					
	<b>Facilities</b>					
7	<b>Stagecoach Reservoir - Power Generation</b>	171,623	248,954	213,631	235,069	224,582
7	<b>Stagecoach Reservoir - Water storage</b>	279,641	266,927	173,575	251,427	278,537
8	<b>Yamcolo Reservoir</b>	132,790	144,594	126,977	138,973	156,631
9	<b>Stillwater Ditch &amp; Reservoir Company</b>	13,379	45,065	24,598	43,065	40,834
10	<b>Administration</b>	139,144	203,198	159,267	203,198	305,889
11	<b>Board of Directors</b>	65,006	83,105	68,491	83,105	115,304
12	<b>External Affairs</b>	58,016	129,754	62,617	129,754	121,909
13	<b>Finance</b>	99,340	132,880	104,053	132,880	152,813
14	<b>Legal</b>	166,889	178,567	110,882	178,567	158,090
15	<b>Planning</b>	136,625	432,927	259,859	432,927	74,572
16	<b>Grants, Scholarships &amp; Public Information</b>	39,038	257,588	141,303	257,588	253,390
17	<b>Treasurer fees</b>	72,507	73,786	74,602	74,650	80,650
	<b>Subtotal Operating</b>	<b>1,373,999</b>	<b>2,197,345</b>	<b>1,519,855</b>	<b>2,161,203</b>	<b>1,963,200</b>
	<b>Capital</b>					
7	<b>Stagecoach Reservoir - Power Generation</b>	3,967	102,900	24,796	26,942	50,000
7	<b>Stagecoach Reservoir - Water storage</b>	27,462	62,900	18,984	26,942	50,000
8	<b>Yamcolo Reservoir</b>	302,537	108,900	57,852	63,042	80,000
9	<b>Stillwater Ditch &amp; Reservoir Company</b>		40,300	38,426	40,278	
10	<b>Office Space</b>	4,800	130,000	82,696	100,000	
	<b>Subtotal Capital</b>	<b>338,766</b>	<b>445,000</b>	<b>222,753</b>	<b>257,204</b>	<b>180,000</b>
	<b>expenditures</b>	<b>1,712,765</b>	<b>2,642,345</b>	<b>1,742,608</b>	<b>2,418,407</b>	<b>2,143,200</b>
	<b>net income (loss)</b>	<b>1,591,111</b>	<b>670,759</b>	<b>1,724,082</b>	<b>1,100,703</b>	<b>1,174,775</b>
	<b>Ending Fund Balance</b>	<b>14,274,361</b>	<b>14,945,119</b>	<b>15,998,442</b>	<b>15,375,064</b>	<b>16,119,895</b>

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	<b>Emergency Facilities Reserve</b>					4,485,814
	<b>Capital Maintenance Reserve</b>					752,436
	<b>Stagecoach Wetlands Mitigation Reserve</b>	419,734	419,734	419,734	419,734	419,734
	<b>Routt County Road #14 Contribution</b>	500,000	500,000	500,000	500,000	500,000
	<b>Tabor Reserve</b>					64,296
	<b>Unencumbered Funds</b>	11,763,516	13,354,627	13,354,627	13,354,627	8,722,839
	<b>Revenues</b>					
	<b>Facilities</b>					
	<b>Stagecoach Reservoir</b>					
1	<b>Power Sales</b>	129,492	200,000	216,612	234,324	200,000
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	<b>Expenditures</b>					
	<b>Operating</b>					
	<b>Facilities</b>					
7	<b>Stagecoach Reservoir - Power Generation</b>	171,623	248,954	213,631	235,069	224,582
7	<b>Stagecoach Reservoir - Water storage</b>	279,641	266,927	173,575	251,427	278,537
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9	<b>Stillwater Ditch &amp; Reservoir Company</b>	13,379	45,065	24,598	43,065	40,834
10	<b>Administration</b>	139,144	203,198	159,267	203,198	305,889
11	<b>Board of Directors</b>	65,006	83,105	68,491	83,105	115,304
12	<b>External Affairs</b>	58,016	129,754	62,617	129,754	121,909
13	<b>Finance</b>	99,340	132,880	104,053	132,880	152,813
14	<b>Legal</b>	166,889	178,567	110,882	178,567	158,090
15	<b>Planning</b>	136,625	432,927	259,859	432,927	74,572
16	<b>Grants, Scholarships &amp; Public Information</b>	39,038	257,588	141,303	257,588	253,390
17	<b>Treasurer fees</b>	72,507	73,786	74,602	74,650	80,650
		<b>Subtotal Operating</b>	<b>1,373,999</b>	<b>2,197,345</b>	<b>1,519,855</b>	<b>2,161,203</b>
	<b>Capital</b>					
7	<b>Stagecoach Reservoir - Power Generation</b>	3,967	102,900	24,796	26,942	50,000
7	<b>Stagecoach Reservoir - Water storage</b>	27,462	62,900	18,984	26,942	50,000
8	<b>Yamcolo Reservoir</b>	302,537	108,900	57,852	63,042	80,000
9	<b>Stillwater Ditch &amp; Reservoir Company</b>		40,300	38,426	40,278	
10	<b>Office Space</b>	4,800	130,000	82,696	100,000	
		<b>Subtotal Capital</b>	<b>338,766</b>	<b>222,753</b>	<b>257,204</b>	<b>180,000</b>
		<b>expenditures</b>	<b>1,712,765</b>	<b>2,642,345</b>	<b>1,742,608</b>	<b>2,418,407</b>
		<b>net income (loss)</b>	<b>1,591,111</b>	<b>670,759</b>	<b>1,724,082</b>	<b>1,174,775</b>
	<b>Ending Fund Balance</b>	<b>14,274,361</b>	<b>14,945,119</b>	<b>15,998,442</b>	<b>15,375,064</b>	<b>16,119,895</b>

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## RECORD OF PROCEEDINGS

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**UPPER YAMPA WATER CONSERVANCY DISTRICT  
BOARD OF DIRECTORS MEETING  
SEPTEMBER 18, 2019 1:30 PM  
MOUNTAIN VALLEY BANK COMMUNITY ROOM  
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO**

### MINUTES

Chairman Ken Brenner called the meeting to order at 1:30 pm and declared a quorum present. In addition to Chairman Brenner, the Board members present were Bob Woodmansee, Doug Monger, Jim Haskins, Ron Murphy, Stephen Colby, Tom Sharp, and Webster Jones. General Manager Kevin McBride, District Engineer Andy Rossi, Marketing and Communication Manager Holly Kirkpatrick, Office Manager Karina Craig, and General Counsel Bob Weiss were also present.

Members of the public present included Joe Haines, Yampatika; Kent Vertrees, President of Friends of the Yampa; Lyn Halliday, Upper Yampa Watershed Group; and Kelly Romero-Heeney, City of Steamboat Springs; Greg Hamilton, Mountaintown Film Collective; Chris Catterson, Catterson CPA; Craig Preston, Colorado Parks and Wildlife; and Gerry Smith.

#### ***Consent Agenda***

Disbursements, minutes, tax income were consent items. Director Sharp requested to pull 2(a) out of the consent agenda re: 2020 Estimated Tax Income.

Director Jones moved to approve consent agenda, minus 2(a). Director Woodmansee seconded the motion which was unanimously approved.

Director Sharp thanked Manager McBride and Office Manager Craig for pulling the information and calculating the tax revenues, broken down by energy sources. 20% of income is being generated by energy sources. The Hayden plant sources power for YVEA and local power in our region. Director Sharp stated that if all energy property taxes sources go to zero, we'd lose a large amount of income, but it would not be a disaster. We would lose 20% of income. Its valuable information for us to know as we move forward, said Director Monger. Having the information makes us more prepared as we move forward.

Director Sharp made a motion to approve the tax item 2(a). Director Colby seconded the motion which was unanimously approved.

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### *Meeting Agenda*

The following Agenda was presented:

- (1) 1:30 pm Establishment of Quorum and Call to Order;
- (2) Consent Agenda; action item
  - a) Financial Memo
    - i) 2020 Estimated Tax Income
    - ii) Approval of Disbursements
    - iii) Budget Comparison
  - b) Approval of the minutes of the July 24, 2019 and August 22, 2019 Board Meetings
  - c) Stagecoach Firing Resolution
- (3) Approval of Agenda for Meeting; action item
- (4) 1:40 pm Film Series Proposal – Greg Hamilton; action item
- (5) 1:55 pm 2018 Fiscal Year Audit; action item
- (6) 2:10 pm Colorado Parks and Wildlife Proposed Capital Projects; action item
- (7) Public Input and Comment;
- (8) 2:30 pm Report of the General Manager;
  - a) 2020 Draft Budget
  - b) 360 Review Staff and Board Governance
  - c) ERC Contracts
  - d) Y/W/G Roundtable Grant Application action item
  - e) Annual Retreat action item
- (9) 3:10 pm Report from District Engineer;
  - a) Reservoir Water Status
- (10) 3:15 pm Report from General Counsel;
  - a) Water Resumes
  - b) Status of other Water Cases, if any
  - c) Contract Negotiations
- (11) 3:35 pm Executive Session under CRS § 24-6-402(4)(e) for Instructions to Negotiators for Water Contracts. 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).
- (12) 4:20 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).
- (13) Other Unfinished Business, New Business;
- (14) 4:50 pm Board Member Reports;
  - a) Proposition DD – Director Brenner
- (15) Determination of Future Meetings;
- (16) New Business;
- (17) Adjournment.

The following changes to the agenda were proposed:

Item 7 (public comment) was moved to the next item (item 4) and the remaining items renumbered accordingly. Manager McBride also moved 8(c) to 8(e), so they are right after the 360 review, and the remaining items were reordered accordingly.



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Director Woodmansee moved to approve the revised agenda. Director Colby seconded the motion which was unanimously approved.

### *Public Comment*

Kent Vertrees attended on behalf of Friends of the Yampa. He thanked the Board for their financial support and attendance at events organized by Friends of the Yampa. He spoke of the fly fishing community, and the Upper Yampa Watershed Group. He spoke of multiple water related groups, and the possible organization of an event where each group could present what they've done and what they plan to do in the future. Some groups are unaware of what other groups are doing, and there seems to be some redundancy. He gave some examples. He wanted to plant the seed with the Board today. They are trying to figure out who would lead the group, who would fund it, etc. Friends of the Yampa believes there is a need. The process is just beginning including multi-organization sharing of information. Director Sharp asked if the Roundtable is doing that or is that inadequate in terms of the number of participants. Kent Vertrees said those meetings are already consumed by full blown agendas. What he is proposing is an annual meeting, where every entity can present for about 15 minutes, since there are about 10-15 entities involved with water in the local basin.

Director Woodmansee thinks it's a great idea. What is missing is more communication, and it's hard to grasp what all is going on, and to figure out what meeting to go to and it would be nice to have a coordinating body that could collect all the information to see what overlapping efforts there are. Director Sharp suggested we should see if the Roundtable could make changes to produce what is being described, as it is already a multi-organization group. It seems to him the most obvious entity to do this is the Roundtable. Kent Vertrees said he would send a request to be added to the Roundtable agenda.

Joe Haines, of Yampatika, stated they served 2700 youth from Walden to the Utah border, with environmental and water education. He wants to introduce a partnership opportunity for the Board to consider. Last year the round table approved a three-year grant for Yampatika. The next step in the process is for them to submit it to CWCB at the state level, securing additional support from other entities to match that three-year educational program. The program focuses on the importance of the use of water, be it agricultural, recreational and for other uses. Their education program is tailored to the individual school District needs and local water uses. He is here to ask to be added to the November Board meeting, to ask the Board for \$15K grant, \$5K per year for three years. There was general agreement in the Board that reviewing the application that Yampatika submitted to the Roundtable would suffice and no further documentation needs to be presented by Mr. Haines. He also thanked the Board for releasing water from Stagecoach which benefited the whole community. There is a river fund kick-off event tomorrow, Thursday September 19. He invited the Board and staff to attend.

Kelly Romero-Heaney with the City of Steamboat Springs spoke. The City in conjunction with Mount Werner Water (MWW) has been doing quite a bit of master planning. The City Council and the MWW Board approved and adopted a master plan, which is now available on their website. It includes the Fish Creek wildfire assessment plan. Ms. Romero-Heaney will send an electronic version to the Board, and she was hoping this plan fits with the District's long term planning as well.

No further public comment was made.

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Director Sharp requested that the retreat include a water fund discussion topic. Nancy Smith with The Nature Conservancy would be a contact person for such a discussion.

### *Film Series Proposal – Greg Hamilton*

Greg Hamilton described a film project and funding that he has received. The series is moving forward. They need to line up any additional sponsors before the episodes are released at the end of the year. A proposal was submitted. He was offering the District an opportunity to be recognized as a sponsor for one of the episodes, exclusively. The name of the film is “Your Water Table”, and the hope is to get more people involved in the subject. Director Woodmansee asked if the content is already scripted and ready to go, or not. Mr. Hamilton said as a sponsor we would definitely have input.

Director Sharp moved to approve the request for the \$4K grant, on the condition that whatever particular film that we are going to have our name attached to, that said video is reviewed by our staff before its release, to make sure the content aligns with the District values. Director Murphy seconded the motion which was unanimously approved.

Doug Monger said the Roundtable has reviewed the content. His question to Director Sharp is what type of content it would take for the District to not support the film. Director Sharp responded he wants to make sure there isn't content that is clearly inconsistent with what the Board believes in. For example, if there were support of transbasin transfers, which the Board is clearly against, then we ought to have a say, either to remove our name from it, or to change that content. Mr. Hamilton said the staff would get to see a rough cut of the content, and staff can provide feedback, which would be considered in editing. The District would also be involved in what specific questions are asked in the film.

### *2018 Fiscal Year Audit*

Chris Catterson described GAP and GASB accounting. There were no adjustments on the accounting and financial statements. This is as clean as you can get in accounting. We also have internal controls that provide checks and balances. His job is to try and find common errors or what might be misreported, or if there is fraud. Clearly most of the time we spend time trying to find fraud. Overall the District has very low risk as far as the transactions the District has. An example is income by taxes. As far as expenditures, expenses below \$10K are the higher risk, as they are not reviewed at a higher level. A fair sized sampling resulted in no concerns. Capital expenditures are going to be considerable somewhere down the line. He referred to a 12 year time ratio of reserves towards capital expenditures. He referred to the three financial statements. In the past few years we've added 50% to 70% of tax revenues towards reserves. Director Sharp asked about restricted assets. Manager McBride explained the reserve is for wetlands mitigation. This is needed for the 404 permit. We hope that 2020 might be the last year that we must have that reserve. The second question Director Sharp had was in regards to the road, that was not pursuant to a contract, but pursuant to a motion of the Board. Mr. Catterson responded that restricted in the audit includes only those restrictions triggered by external obligations, not by internal motions. Mr. Catterson said we can disclose this in the management letter. Director Monger talked about restricted, unrestricted and designated reserves. There is a variety of alignments in that regard. He thinks the Board should come up with some reserves, in the capital fund

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reserves. He said we should investigate that as we move forward. For example, the county does that, a “slow down” reserve if the economy slows again, and for other things that they have identified. We might do the same as the strategic plan proceeds. Director Sharp commented that staff has provided for that in the 2020 draft budget.

Director Monger moved to accept the audit. Director Sharp seconded the motion which was unanimously approved.

### *Colorado Parks and Wildlife Proposed Capital Projects*

District Engineer Rossi updated the Board on several proposed projects including the Colorado Parks and Wildlife (CPW) proposed facilities electrical upgrades. Mr. Rossi described zoning changes and other details in regard to the proposed projects. Director Monger, Routt County Commissioner, disclosed he was abstaining from the vote on this item. Maps, property owned by the District, the FERC boundary, a permit by Routt County, and other details were reviewed and discussed. Director Sharp expressed his opinion that zoning of lot 2 should not be changed. His opinion was that removing the residential status of the lot would devalue the property. Otherwise, he agreed and in favor of approving the proposal.

Director Sharp moved to approve to authorize signature of the project on behalf of our tenant, Colorado Parks and Wildlife, to be submitted to Routt County for the lot improvement project subject to not changing the zoning of residential use of Lot 2. Director Murphy seconded the motion. All Board members were in favor, with exception of Director Brenner. Director Monger abstained.

Proposed electrical upgrades. Craig Preston, Colorado Parks and Wildlife, explained there are a couple of opportunities to prepare for future visitors, and the electrical components need to be upgraded for continued functioning. An easement with YVEA would be required, to bring in the appropriate power lines. District Engineer Rossi said staff needs to receive some direction from the General Counsel on how to proceed, once the initial surveying is carried out. Director Colby asked if underground had been considered. Mr. Preston said the budget is not adequate for undergrounding. Director Sharp was in support of the electrical upgrade to the lines in the campground, and other capital investments. For example he'd like to see the roads paved. He is aware CPW is still working on a long-term capital proposal. Mr. Rossi asked if there was an initial cost estimate. Mr. Preston thinks the allocation is about \$180K for the project as a whole. Director Monger asked who owns the power lines once they are installed. Mr. Preston said YVEA owns the line until the transformer. CPW is paying to have it extended. Mr. Rossi clarified the lines are being surveyed. Mr. Preston will send documentation to Mr. Rossi, who will review and forward to General Counsel for review and to continue moving forward in this project.

### *Report of the General Manager*

#### 2020 budget preliminary draft-

The 2020 Budget preliminary draft was presented by Manager McBride, including reserves for each facility. Director Brenner asked that there be a specific agenda item for allocation of designated and undesignated reserves. There was a discussion on encumbered funds for each facility, and how they were calculated. Mr.

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McBride said we can elaborate more at the future budget meeting. Director Brenner asked if we had considered an emergency operating fund. The Board asked staff to send a memo with the breakdown of the calculations. Revenues were discussed. Director Sharp described the changes in water revenues. The ditch revenues in this draft are not representative of contractual stipulations, where revenues are based on cost. Director Sharp asked that interest income be reduced a quarter to half a point. He expects interest at Colotrust to go down by that amount. Director Brenner asked about an “over or under” number. District Engineer Rossi said it would be an off year for large capital projects; it would be a year more for planning than carrying out big projects.

Manager McBride shared that Administrative Assistant Barbara Wilson has resigned as a half time employee of the District. He was seeing the need to increase that position to full time position. He will suggest a change in the job description. He might ask for an Executive Committee meeting to discuss the organizational structure of the District as a position is filled. Legal services were also discussed.

Director Monger asked that a memo explain what is included in each line of the budget.

Luke Fitzgerald, Elk River Water Commissioner, was present and spoke. He wanted to share with the Board that the Elk River went into administration two weeks ago. Director Sharp asked if we’ve had any applicants for the Elk River augmentation plan. Manager McBride said that our new marketing manager will be handling these applications. Three have been received recently. There was discussion about non-exempt wells. There are non-exempt wells in the Elk River valley that fall outside of the District augmentation plan. Those properties might have to truck their water, as the District is unable to service them

360 Review Staff and Board Governance- A draft of the 360 Review was provided in the packet. The intent at this meeting was to provide the most recent draft to the Board, and to defer further discussions to the annual retreat in October. All Board members are invited to the committee meeting. Manager McBride is asking to have Ryan Golten as the facilitator for the retreat in October. He was informing the Board that Barbara Wilson was willing to help with the retreat and the location would be Catamount. Director Brenner commented that Mr. McBride, Ms. Golten and himself would further work on the draft agenda for the retreat. Mr. Brenner said they’ve arrived to a point where staff can review it and provide feedback. A draft of the strategic plan would be open for public comment, and it would be brought before the Board for adoption at the December meeting.

Annual Retreat- The Retreat agenda draft was presented and reviewed. Director Sharp indicated he would be out of state during the Retreat. He asked if he could participate by phone. Counsel Weiss made a comment on process. There was an email that Mr. Sharp sent to the Board in advance of the meeting which should be made part of the record of the meeting and attached to the Board materials.

ERC Contracts – Manager McBride presented a memo. He spoke of possible mechanisms for pricing ERC water. Counsel Weiss suggested to table the subject until after the Executive Session.

Director Sharp moved to amend the agenda to table item 8c to 16, after the Executive Session. Director Colby seconded the motion which was unanimously approved.

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Y/W/G Roundtable Grant Application - Marketing and Communications (M/C) Manager Kirkpatrick is working with Lyn Halliday who is consulting with the District on the grant application.

Ms. Kirkpatrick explained that the application submitted will be presented at the Roundtable at the November 13<sup>th</sup> meeting, and pending approval, this would go before Colorado Water Conservation Board (CWCB) at the January 2020 meeting. Approved funds could be disbursed as early as February. The program could be marketed in the spring, before irrigation turns on next summer. Director Monger asked about the reimbursement, how are we working with CWCB? The funds are reimbursement only. We need to make sure we communicate this to our applicants; support is given through reimbursement applications. Director Monger asked about the mechanisms of payment for the grants. Manager McBride said that the District would reimburse Tier I of the project the same as our current mini-grant system: after the project is completed, accepted for use by the water commissioner and receipts are submitted to the District. For Tier II projects, the Natural Resources Conservation Service (NRCS) process would be followed. M/C Manager Kirkpatrick said we reduced our request to the Roundtable/CWCB for overall funding from \$175K to \$100K, per Craig Godbout, at the CWCB's request. That will simplify the administration of those funds from CWCB. Ms. Kirkpatrick described the process. Director Monger said he'd like to see that on paper as the process she described is very atypical. Manager McBride said that based on a motion last year, we have \$50K per year, for two years, and that will be in the budget for grants, for 2020 and 2021 budgets. We've always had \$100K in that line, and next year in 2020, \$50K of the \$100K will be set aside for the super mini-grant program.

Director Monger moved to approve the General Manager's signature on the grant application. The motion was seconded by Director Woodmansee and unanimously approved.

***Report from the District Engineer*** The water year was discussed. District Engineer Rossi presented a graph. At Yamcolo, stored water was released during most of the irrigation season, most of it through the Five Pine Mesa Ditch. Stagecoach Reservoir, similarly, filled. The District released water during the Labor Day weekend to both the City and Tri-State contracts. In Stagecoach, inflows continue to drop, and are currently at high twenties cfs. The situation will be reassessed in the next two weeks.

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

Water Resumes and Status of other Water Cases - Counsel Weiss asked if there were any questions on water resumes. There is a memo from Scott Grosscup that was sent to the Board. There were no questions.

Contract negotiations - Counsel Weiss provided a memo to the Board. He wanted to discuss the "snap-back" issue and negotiations. He asked if there were any questions to discuss in open session. There were none.

### ***Executive Session- Instructions to Negotiators for Water Contracts***

Director Sharp made a motion to go into executive session. It was seconded by Director Monger and unanimously agreed to go into Executive Session under provision CRS § 24-6-402(4)(e) for Instructions to Negotiators for Water Contracts, to be recorded electronically. Mere presence or participation of an attorney

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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 4:15 PM and concluded at about 5:00 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.

There was no additional Executive Session.

### ***Board Member Reports***

Director Sharp moved to authorize a letter from the District to State Representative Dylan Roberts in support of proposing legislation to be added to the substitute water supply planning section of the water statutes, limited only to the Yampa basin if that is what it takes to alleviate concerns from elsewhere in the state, that expressly provides that a water user who owns both a direct flow water decree and a water storage ownership or contract right may choose to call for and take the storage water in lieu of available direct flow under its direct flow right, and bypass downstream the stream flow it would be entitled to take in priority, if it notifies the DEO that its election to curtail diversion of its direct flow water right is intended to improve the natural environment of the stream below its point of diversion, and specifies the flow rate of its curtailment of its right and flow rate of the substitute storage water rate it elects to take. Director Monger seconded the motion which was unanimously approved.

Director Sharp moved to support Proposition DD. Director Woodmansee seconded the motion which was approved, with Directors Jones and Murphy opposing.

***Determination of future meetings*** The scheduled date for the Board Retreat was confirmed for Wednesday October 23, 2019 at 8:30 am, at Lake Catamount, Steamboat Springs, CO.

The meeting was adjourned at approximately 5:00 PM.

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

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

Date: \_\_\_\_\_

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# RECORD OF PROCEEDINGS

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## UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING NOVEMBER 20, 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, Jim Haskins, John Redmond, Doug Monger, Ron Murphy, Stephen Colby, and Webster Jones. General Manager Kevin McBride, District Engineer Andy Rossi, Office Manager Karina Craig, Marketing and Communications Manager Holly Kirkpatrick, Administrative Assistant Barbara Wilson, and General Counsel Bob Weiss were also present.

Members of the public present included Scott Hummer, Colorado Division of Water Resources; Rick Milway; Andi Shaffner; Gerry Smith; Arie Hoogendoorn, Shellsteve, LLC; David Hunter, Steamboat Ski & Resort Corp.; Joe Haines, Yampatika; Kelly Romero-Heaney, City of Steamboat Springs; and Craig Preston, Colorado Parks & Wildlife.

Scott Grosscup, Balcomb and Green; Randy Watkins, Anton Collins Mitchell; and Ryan Golten, Consensus Building Institute; attended parts of the meeting by phone.

The following agenda was proposed:

### AGENDA

- (1) 1:30 pm Establishment of Quorum and Call to Order;
- (2) Consent Agenda;
  - a) Approval of Disbursements
  - b) Budget Comparison
- (3) Approval of Agenda for Meeting; action item
- (4) 1:40 pm Public Input and Comment;
- (5) 2:10 pm Report of the General Manager;
  - a) Grant Items
    - i) Keller Ditch Grant
    - ii) Yampatika Grant Application
  - b) Reserves / Cost accounting / Financial Planning (Randy Watkins/ACM)
  - c) 2020 Budget action item
  - d) Retreat Priorities and Minutes Approval action item
  - e) Governance and Approval of By-Law Amendments action item
  - f) 2020 meeting schedule action item
  - g) Christmas party



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- h) 2020 Board appointments
- i) Report from District Engineer
  - i) Reservoir water status
  - ii) Capital Projects update
- (6) 4:40 pm Report from General Counsel;
  - a) Water Resumes action item
  - b) Status of other Water Cases, if any
  - c) Contract negotiation action item
- (7) 4:55 pm December Work Session Agenda;
- (8) Board Member Reports;
- (9) 5:00 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).
- (10) New Business;
- (11) Adjournment.

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

### **Public Comment**

Rick Milway representing the Individual Irrigators spoke. After an introduction where Mr. Milway expressed that he was not comfortable bringing the latest offer from the District to the irrigators due to missing items and limitations that were added, he asked the Board to please discuss the Individual Irrigators offer of \$9/share. Director Brenner stated that this is on the agenda and will be discussed later in the meeting.

Kelly Romero-Heaney, Water Resources Manager with the City of Steamboat Springs (City), commented on the Draft strategic plan. Ms. Romero-Heaney thanked the District for embarking on this project and the City will be providing a formal reply in writing. She suggested that the District has some very ambitious goals and the District might want to consider consolidating some. Also, she suggested that transparency be integrated into every goal.

Andi Shaffner representing the Stillwater Ditch (SW) irrigators provided feedback on the current status of the SW Ditch acquisition and their efforts involved in the negotiations. In the next two days, another redlined contract will be sent to District Counsel Weiss. She asked the Board to take a close look at the draft proposal the District has made. The irrigators feel that the District is not giving up enough control for them to be able to take care of the Ditch.

Scott Hummer, Water Commissioner for Colorado Division of Water Resources (CDWR) spoke in lieu of Erin Light who was not able to attend. Mr. Hummer stated the agency recently participated in a Yampa/White/Green Basin Roundtable (Basin Roundtable) meeting where they presented the status of the approximately 575 orders issued to appropriately administer diversions. If the Board would like a similar presentation in the future, please let them know.

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### *Consent Agenda*

Director Jones made a motion to approve the consent agenda. Director Redmond seconded the motion which was unanimously approved.

Director Brenner inquired about some disbursements, discussion followed. Director Redmond recommended consistency between the use of “5 Pines Ditch” and “Stillwater Ditch” since they are the same Ditch.

### *Report of the General Manager*

*Grant Items* – Keller Ditch Grant - Marketing and Communications (M/C) Manager Kirkpatrick introduced Arie Hoogendoorn, the representative for the owners of the Keller Ditch. The owners of the ditch are repairing an inoperable measuring device per orders from the CDWR and are requesting 50% reimbursement from the District through its grant program.

General Manager McBride explained that this grant would fall under the Super Mini-Grant that the District is moving towards. In the future, the Super-Mini Grant, known as the Diversion Infrastructure Improvement Project, will offer up to 50% reimbursement from the District for up to \$5,000 for entities/individuals to comply with CDWR water diversion orders. Amounts above \$5,000 will go through the Natural Resources Conservation Service (NRCS) program which will require engineering analysis. The District and the Colorado Water Conservation Board will supplement the NRCS funds. M/C Manager Kirkpatrick pointed out that the District does not reimburse individuals for their own labor. Director Monger thought the Keller Ditch flume should be about a \$500 project. Director Woodmansee stated that the Board needs to have a discussion about how much the District is going to pay for a project.

Director Monger moved to approve the Keller Ditch Diversion grant request not to exceed \$1,500. Director Haskins seconded the motion which was unanimously approved.

Yampatika Grant Application – M/C Manager Kirkpatrick introduced Joe Haines with Yampatika to answer questions. Mr. Haines explained Yampatika has a three year grant from the Basin Roundtable for a K-12 water education program. This grant requires matching funds so Yampatika is requesting funds from the District. Mr. Haines would appreciate additional partnerships and Director Brenner asked him to collaborate with M/C Manager Kirkpatrick.

Director Colby moved to approve the Yampatika grant request of \$15,000; \$5,000/year for three years. Director Woodmansee seconded the motion which was unanimously approved.

*Reserves / Cost accounting / Financial Planning (Randy Watkins/ACM)* – Randy Watkins with Anton Collins Mitchell joined by phone. General Manager McBride reviewed that the District restructured the budget a few years ago to account for the cost of operating its reservoirs. The District hired Mr. Watkins to help with this and the District did an internal rate study approximately five years ago. The 2020 budget reflects the funds to do an additional rate study. Manager McBride added the staff has recommendations for emergency capital reserves and long-term operation reserves. He is requesting a

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motion to set reserves and to discuss other non-discretionary reserves the Board may want to add, such as trans-mountain diversion legal reserves.

District Engineer Rossi reviewed the Recommended Reserves memo from staff. Emergency Reserves are the estimate of cost if the three facilities: Yamcolo dam, Stillwater Ditch, and Stagecoach Reservoir, become inoperable. The Capital Maintenance Reserves are based on the 30 year maintenance plan for the facilities. Discussion followed. Director Brenner requested an agenda item in the future on the budget reserves designation.

Director Murphy pointed out that the schedule for Yamcolo Reservoir has “Stillwater Pipeline ditch”. Mr. Rossi said this is an error and should be Yamcolo.

Manager McBride believes the Executive Committee or the full board needs to have a thorough discussion of the budget and what should be done with the reserves. Discussion followed. Mr. Watkins brought up the concept of Generational Equity. By building up the reserves you are asking the current generation to pay for the future generation. Relevant questions are: who should pay to fund these reserves and another question is what will be the capacity of the District to borrow money? Director Monger inquired about what happens next year to this emergency reserve? Mr. Watkins replied that you don’t want to make dramatic changes from year to year. But the closer you get to the 30<sup>th</sup> year the more accurate you should be. If significant changes come to light next year you can change it but otherwise probably not. He also suggested that the District could add CPI based on the last 30 years, not just the current CPI. A Tabor reserve should be looked at every year and should be listed separately.

2020 Budget – General Manager McBride reviewed the Draft 2020 Budget and reminded the Board that this version was created prior to the new strategic plan. Discussion followed. Director Monger requested a RFP for a salary review since it has been five years. Director Brenner requested a memo with the actual costs of the District office moving to the new location sometime in the future. It was pointed out that the District does not pay property tax on the Morrison Creek property so this should be removed from the Budget.

The funds for CBI consulting should be moved to the Board of Directors budget. Director Monger suggested doing a supplemental budget request for any additional CBI funds if needed so the budget numbers presented today can be approved.

M/C Manager Kirkpatrick made a recommendation to add a line item in the future for “sponsorship”.

Director Monger asked if the District should add the \$50,000 of Basin Roundtable Water Supply Reserve Funds (WSRF) to the budget? This should be recorded as \$50,000 in revenue and \$50,000 in grant expenses in the budget. M/C Manager Kirkpatrick noted that CWCB will not approve the allocation of the WSRF until their January meeting so the District will need to do a supplemental budget upon approval. Ms. Kirkpatrick asked that the Board consider ways for the District to allow for spending UYWCD funds allocated for 2021 grants in 2020 if the need arises. The current Diversion Infrastructure Improvement Project designates \$100,000 of UYWCD funds and \$100,000 of Basin Roundtable and

## RECORD OF PROCEEDINGS

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WSRF funds, pending approval, to conduct a two-year pilot project starting in 2020. The District currently has \$50,000 of UYWCD funds budgeted in 2020 and \$50,000 in 2021 for the Diversion Infrastructure Improvement Project. Ms. Kirkpatrick is concerned that with Division Engineer orders being sent this fall, there could be a significant number of applicants and, if needed, could we use 2021 grant funds to complete projects in 2020?

Office Manager Craig explained the budget layout and cost accounting. Typically the Board approves the budget resolutions knowing the numbers will change slightly when the District receives the final property tax numbers approximately December 10<sup>th</sup>.

Director Monger moved to approve the Resolution to Adopt Budget and Salary Range Schedule with the minor adjustments as discussed when the final property tax numbers arrive in December. Director Woodmansee seconded the motion which was unanimously approved.

Director Monger moved to approve the Resolution to Appropriate Sums of Money. Director Redmond seconded the motion which was unanimously approved.

Director Monger moved to approve the Resolution to Set Mill Levies, specifically 1.82. Director Colby seconded the motion which was unanimously approved.

Retreat Priorities and Minutes Approval - M/C Manager Kirkpatrick reported that the Draft Strategic plan has been distributed to the public for comment. She will present the comments to the Strategic Planning Committee November 26, 2019.

Director Woodmansee moved to approve the Retreat Summary/Minutes. Director Colby seconded the motion which was unanimously approved.

Manager McBride reviewed the retreat notes and based on his analysis, the Environmental/Recreational uses and Pricing are the highest priorities. He suggested the Board make a work session out of these for the February Board meeting.

Governance and Approval of By-Law Amendments - District Counsel Weiss discussed the proposed By-law amendments. Counsel Weiss said Director Sharp has a concern that "New Business" was omitted from the proposed Agenda. Director Brenner suggested that having "Board Member Report" covered this. Counsel Weiss was OK with having both of the above on the agenda.

Director Monger moved to approve the By-laws as presented. Director Woodmansee seconded the motion which was unanimously approved.

Counsel Weiss said broader questions about how the Board operates with the public, self, and staff needs to be addressed outside the Bylaw changes. Consultant Ryan Golten found a more comprehensive Board policy, the East Valley Water District Board of Directors Handbook. Discussion followed. There was general agreement to not make the Board of Directors Handbook too complicated by inadvertently

## RECORD OF PROCEEDINGS

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making additional rules that could appear to be mandatory. Director Colby mentioned that the Special District Association (SDA) has a good Board of Directors handbook. Consultant Golten reminded the Board that there were a number of actual issues that came up early in the 360 review process that the East Valley Handbook addresses. She thinks this document is thoughtful in addressing things that are controversial and she encourages the District to look at this. Director Brenner said the East Valley document will go back to the Strategic Planning Committee to vet based on the suggestions just heard.

Counsel Weiss looked into laws about Conflict of Interest in Colorado. He has a form available to the Board if anyone wants to fill one out and file it with the State. Director Brenner stated that it is considered a “best practice” and he is going to fill one out.

2020 Meeting Schedule - Director Woodmansee moved to adopt the Alternative 2020 Board Calendar. Director Haskins seconded the motion which was unanimously approved.

Director Brenner cannot attend the January 15, 2020 meeting; Director Monger will chair the meeting.

Christmas Party - The Annual Holiday party will be December 11, 2019 6:00 pm at Aurum Food & Wine.

2020 Board Appointments – Directors Haskin, Brenner, and Colby’s terms are up. Counsel Weiss will place ad in the paper as required by state law. If only one person applies per vacancy, he files a motion, which is approved by the Judge without the necessity of a hearing. . If more than one person applies for a Board position, then a hearing is necessary Counsel Weiss will send out applications to the incumbents. He pointed out that the Board has never commented on Director applicants but it nothing prevents such a recommendation. It was requested that a map of the District boundaries be added to the website.

### Report from District Engineer-

Reservoir Water Status - No additional updated information was presented about the Reservoir water status. General Manager McBride informed the Board that it has been proposed that Stagecoach Reservoir be placed on the 303(d) impaired water list.

Capital Projects update – No additional information was presented.

### Report from General Counsel

Water Resumes - Director Monger moved to authorize to enter into a stipulation consenting to form of proposed ruling in the Mount Werner Water & Sanitation District case. Director Redmond seconded the motion which was unanimously approved.

## RECORD OF PROCEEDINGS

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*Status of other Water Cases, if any* - Counsel Weiss recommended continued monitoring of Tri-State Generation and Transmission pending case.

*Contract negotiation* – Counsel Weiss reviewed that all draft proposals are in the hands of the contractees at this time. The Individual Irrigators and Yamcolo Irrigators Association have expressed concern with the price proposed. Counsel Weiss reminded the Board that the Stagecoach municipal contracts will need to be dealt with soon. Manager McBride recommended that the Board do the District financial plan first. Director Brenner reminded the Board that the District said it would meet regularly with the City of Steamboat Springs and it has been over a year since the last meeting. Also, Director Brenner mentioned that he had been contacted by representatives from both the City of Steamboat Springs and Tri-State Generation and Transmission regarding an October 2017 memo from Randy Watkins about a water rate study. The City and Tri-State thanked the District for its transparency regarding a January 5, 2017 memo from District consultant Randy Watkins addressed to General Manager McBride and the Board which included the following statement in reference to operating costs and calculated reserves for Stagecoach Reservoir. “\$28.90/acre-foot, averaged rate based on 2016 budgeted costs. (Not including capital expenditures, nor a reserve or project firming costs).”

### *December Work Session Agenda*

Director Monger asked to add Water Pricing to the proposed December meeting agenda. There was general agreement to target the February Board meeting for water pricing discussions such as a policy on assignment of indirect costs, what to subsidize, and does the Enterprise fund model work. Director Brenner said the Board needs an Executive Committee meeting first on this and then a detailed February agenda should be presented during the January Board meeting. Director Woodmansee stated it is good to inform the public in advance on the February agenda.

December agenda:

Change “360 review” to “Strategic Planning Committee”

Add “Update on the Stagecoach Reservoir 303(d) Impairment List”

Add “Update on the Draft Strategic Plan”

**Board Member Reports:** Director Monger: Routt County is undertaking to update their Master Plan.

Director Haskins: The Colorado River District summer seminar videos are good. Manager McBride agreed and said the videos would be good prep for the Board to watch prior to the December Board meeting. Director Brenner requested a reminder to the Board about this.

Director Colby: Morrison Creek Water & Sanitation District has a grant to study the replacement of their waste water treatment plant, or other options.

Director Woodmansee: The algae problem is a bigger scare than what the District thought a year ago and it’s a trend everywhere.

Director Brenner: The Conservation District and the Legacy Group are both trying to re-form. Also, the General Manager’s review will be in the spring of 2020.

There was no Executive Session.

## RECORD OF PROCEEDINGS

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*Determination of future meetings* The scheduled date for the next Board meeting was confirmed, being Wednesday December 18, 2019 at 1:30 PM, at Mountain Valley Bank Community Room, 2220 Curve Plaza, Steamboat Springs, CO.

The meeting was adjourned at 5:23 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

DRAFT

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# RECORD OF PROCEEDINGS

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**UPPER YAMPA WATER CONSERVANCY DISTRICT  
BOARD OF DIRECTORS MEETING  
DECEMBER 18, 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, John Redmond, Stephen Colby, Tom Sharp, and Webster Jones. General Manager Kevin McBride, District Engineer Andy Rossi, Office Manager Karina Craig, Communication and Marketing Manager Holly Kirkpatrick, Administrative Assistant Barbara Wilson, and General Counsel Bob Weiss were also present.

Members of the public present included Frank Alfone, Mount Werner Water District; Gerry Smith; Craig Preston, Colorado Parks and Wildlife; Erin Light, Colorado Division of Water Resources; and Kelly Romero-Heaney, City of Steamboat Springs.

The following agenda was proposed:

### AGENDA

- (1) 1:30 pm Establishment of Quorum and Call to Order;
- (2) Approval of Agenda for Meeting; action item
- (3) Public Input and Comment;
- (4) 1:35 pm Discussion on Colorado River Issues with Andy Mueller,  
General Manager Colorado River District;
  - a) Risk Study Phase III Funding Request
- (5) 3:35 pm Strategic Planning Committee;
  - a) Update on the Draft Strategic Plan
- (6) 4:35 pm Update on the Stagecoach Reservoir 303(d) Impairment List;
- (7) 4:45 pm Report from General Counsel;
  - a) Water Resumes
  - b) Status of other Water Cases, if any
- (8) New Business;
- (9) Adjournment.

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

## RECORD OF PROCEEDINGS

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*Public Comment* There were no comments at this time.

### *Discussion on Colorado River Issues with Andy Mueller, General Manager Colorado River District;*

Peter Fleming, General Counsel, and Andy Mueller, General Manager, with the Colorado River District presented a variety of Colorado River issues. These included an overview of Lake Mead and Lake Powell operational guidelines and obligations and the Drought Contingency Planning (DCP) for the Upper Colorado River Basins.

The DCP has demand management and cloud seeding components. For demand management, the Upper Colorado River Basins have agreed to study the concept. Cloud seeding was discussed including whether the District should consider more active involvement in such a program. Directors Monger and Sharp did not think the District should do so. Mr. Mueller said he would be happy to have someone give the District a presentation on cloud seeding. Another component of the DCP is the ability to move water from the CRSP reservoirs down to Lake Powell, discussion followed.

Mr. Mueller reported that the State of Colorado has set up workgroups of experts to figure out what is feasible in demand management. Colorado Water Conservation Board (CWCB) is running these workgroups including public involvement to get broader input. It is expected that the CWCB will have some results in approximately 1-1/2 years.

Mr. Mueller talked about the recently approved Colorado Proposition DD: Legalization and Taxation of Sports Betting. There are five areas of need identified in the Water Plan and Proposition DD added in a sixth area of need, Compact Compliance. These areas of need can receive funding through Proposition DD.

Director Brenner asked if a letter from the Board would help the DCP. Mr. Mueller said it was too early; however, the River District would welcome the participation of the District in the process. Director Redmond has previously been appointed by the Board to represent the District in these discussions.

Director Sharp asked if, based on the lack of clarity for demand management, the District should delay transferring the Stillwater Ditch ownership? Mr. Mueller said there is considerable uncertainty now about direction of the DCP and demand management and that increases risk.

### *Risk Study Phase III Funding Request*

Director Sharp made a motion to authorize \$10,000 to the River District for the Risk Study Phase III, provided that it runs modeling, and evaluations of, equitable apportionment and the implications of the Yampa Doctrine to the District. Director Woodmansee seconded the motion which was unanimously approved. There will be a follow up with a scope of work from the River District for the January Board meeting.

There was general agreement to have the River District meet with the Board more often.

## RECORD OF PROCEEDINGS

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The Elk River historic stock water use in District 6 was discussed. Mr. Mueller left with staff a short position paper to be distributed to the Board via email.

Mr. Mueller said good job on the strategic plan; however, the first goal could be two separate goals.

### ***Strategic Planning Committee***

#### ***Update on the Draft Strategic Plan***

Marketing and Communications Manager Holly Kirkpatrick reviewed the process to have a final draft of the Strategic Plan for approval by the Board for the January 15<sup>th</sup> Board meeting. In addition, a draft of the Board Governance Manual will be distributed to the Strategic Planning committee for review in early January.

#### ***Update on the Stagecoach Reservoir 303(d) Impairment List***

Manager McBride reviewed that the Colorado Water Quality Control Commission has proposed a 303(d) listing for Stagecoach Reservoir for total Arsenic and Dissolved Lead. In the past, the District has not been looking at this since the District is not considered a “discharger” so the standards do not apply. Manager McBride suggested budgeting money to get professional evaluation of the data used to propose the listing and other water quality data. A proposal from Leonard Rice Engineers, Inc. was included in the Board packet. The proposal includes data evaluation and also steps for the District to take to get prepared for the next standards setting process. Ms. Romero-Heaney stated that if there is any way the City of Steamboat Springs can be of help, let her know. A water quality trading program was briefly discussed.

Manager McBride suggested the District work through the Watershed Group and all the entities involved with the monitoring program and make sure the CDPHE makes good decisions. Director Colby, as the manager for the Morrison Creek Water and Sanitation District, would like to collaborate with the District on this. Ms. Romero-Heaney pointed out that there may be an opportunity to get before the Commission to present data during public comment.

Director Brenner gave direction to staff to come up with a range of solutions.

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

***Water Resumes and Status of Water Cases*** – Counsel Weiss stated that Counsel Grosscup had nothing to report.

## RECORD OF PROCEEDINGS

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### *New Business*

Counsel Weiss presented what was discussed at the last Negotiation Committee meeting:

*YIA* - Contract amendment: establish a fixed price and amendment so the District doesn't have to go through the drill of establishing a new price each year. The committee is waiting to hear from YIA representatives.

*Stillwater Ditch* - Turning the Ditch back to the former shareholders: we are down to technical issues. Director Sharp voiced that one of these issues is placing restrictions based on the future Demand Management plan. Director Brenner thinks that would be a very tall order to add that in and this needs more discussion.

*Tri-State* - Tri-State terminated the agreement and made a proposal: the committee has agreed on the next steps forward. Counsel Weiss will send out a memo with more detail. Director Sharp pointed out that if the Board reaches a conclusion on pricing policies then these negotiations will become easier. There was general agreement that the Board needs to reach a conclusion and give direction.

*Stagecoach Reservoir Municipal Contracts* - the contracts have expired this year and most have been extended for two more irrigation seasons. There is potential to do amendments on all these contracts.

*Individual Irrigators* - their contracts expire: the committee gave a form of the contract to the irrigators and discussions are ongoing. There was no comment from the Board to do something different than what the Negotiation Committee has been doing.

***Determination of future meetings*** The scheduled date for the next Board meeting was confirmed, being Wednesday January 15, 2019 at 1:30 PM, at Mountain Valley Bank Community Room, 2220 Curve Plaza, Steamboat Springs, CO.

The meeting was adjourned at 4:45 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

d)

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RESOLUTION No. 2020-1  
UPPER YAMPA WATER CONSERVANCY DISTRICT  
RESOLUTION DESIGNATING POSTING PLACE

WHEREAS, GRS Section 24-6-402 (2)(C) requires local public bodies to designate annually a posting place for notice of meetings; and

WHEREAS, the Board of Directors of Upper Yampa Water Conservancy District desires to designate such posting places for 2020.

NOW THEREFORE, be it resolved by the Board of Directors of Upper Yampa Water Conservancy District that the notice of meetings shall be posted in the following place located within the District:

1. Offices of the Upper Yampa Water Conservancy District, 2220 Curve Plaza Ste. 201, Steamboat Springs, Colorado 80487

Read, adopted and approved this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
UPPER YAMPA WATER CONSERVANCY DISTRICT  
President

ATTEST: \_\_\_\_\_

5)

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a)

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## BOARD COMMUNICATION FORM

**From:** \_\_Kevin McBride, G.M.\_\_\_\_\_

**Date:** \_\_January 10, 2020\_\_\_\_\_

**Item:** Presentation by Kelly Romero-Heaney, City of Steamboat Springs Water Resources Manager

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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

Presentation on The City's water planning.

Outline provided by presenter. Note hyperlinks available.

- [2019 Water Supply Master Plan](#) – Yampa Infiltration Galleries expansion and future Elk River WTP
- [2020 Water Conservation Plan](#) (Draft is out for comment)
- [2019 Fish Creek Critical Community Wildfire Watershed Protection Plan \(CWP\)2](#)
- [2018 Yampa River Health Assessment & Streamflow Management Plan](#)
- Wastewater Treatment Facility compliance – temperature, nutrients, capital improvements and water quality trading programs

**II. Summary and Alternatives:**

N/A

**III. Staff Recommendation:**

N/A

**IV. Legal Issues:**

N/A

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

Yes, see Goal #8 draft strategic plan.

**Attachments:**

**b)**

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## BOARD COMMUNICATION FORM

**From:** Holly Kirkpatrick\_\_\_\_\_

**Date:** 1/10/19\_\_\_\_\_

**Item:** Strategic Plan Adoption\_\_\_\_\_

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\_\_\_\_\_ DIRECTION  
\_\_\_\_\_ INFORMATION  
x \_\_\_\_\_ MOTION  
\_\_\_\_\_ RESOLUTION

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

The draft strategic plan was released for public comment from November 1, 2019 – December 1, 2019. The comments received were taken into consideration and staff made appropriate edits. The Strategic Planning Committee reviewed those edits and made a few additional changes at the January 9, 2020 meeting. A final revision of edits is attached for your review. In addition to the strategic plan, the Committee is also in the process of reviewing a first draft of a board governance manual. After further discussion and review, the Committee will present the Board with a draft for review at a later meeting.

### **II. Summary and Alternatives:**

The Strategic Planning Committee has worked very hard to create a strategic plan that reflects the policies, goals, and objectives of the Board of Directors. This is the final review stage for the draft strategic plan. The Committee would like for the Board to consider making a motion to adopt this version of the draft strategic plan.

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

Both public and internal comments have been considered in the final draft of the strategic plan. The staff and the Committee recommends approval of the strategic plan.

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

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

Goal 10

### **Attachments:**

Attachment 1: Revised Draft Strategic Plan

## UPPER YAMPA WATER CONSERVANCY DISTRICT STRATEGIC PLAN

### **Mission Statement**

*To lead water resource management within the District's boundaries by responsibly conserving, protecting, developing, providing and enhancing the water resources of the Upper Yampa River Basin for the benefit of the Basin.*

### **Vision Statement**

*An Upper Yampa River Basin with safe, secure water storage and supply for its customers that benefits all uses in the Basin.*

This Plan will be regularly reviewed and updated as appropriate by the Board of Directors. As such, it should be considered a living document.

The Board of Directors believes the District's mission is reflected in the following statements. Some reflect the District's responsibilities and core mission, while others reflect values and opportunities for the District in carrying out its mission. The statements and goals below are not currently listed in order of priority.

The District's mission and goals are also informed by the legislative declaration of the Colorado Water Conservancy Act (the "Act") under which the District was created, in Colo. Rev. Stat. Ann. §37-45-102, as well as relevant recent federal and state mandates, statutes, policies, and regulations.

### **Policy Statements**

1. The District will be financially sustainable and able to meet its stated goals.
2. The District relies on healthy functioning reservoirs, rivers, and streams in the Upper Yampa Basin for its agricultural, environmental, municipal, commercial, industrial, domestic and recreational cultures, and thus, its economic future.
3. The District is committed to serving the public in agricultural, municipal, commercial, domestic and industrial uses, and identifying opportunities to support water-based environmental and recreational values.
4. Climate change will be considered in planning.
5. The District is committed to maintaining the structural and functional integrity and protecting the water rights of the District's Yamcolo and Stagecoach reservoirs.
6. Collaboration in watershed management is important to advancing the District's mission.
7. The District recognizes the critical economic, socio-cultural values, aesthetic, and environmental contributions that ranching and agriculture provide to the Basin.

8. Direct flow and storage water requirements of prudent industrial uses, such as energy development and production, will be considered in planning for the economic welfare of the District.
9. The District recognizes the importance of a long-term municipal water supply in creating a vibrant, diverse, and resilient local economy.
10. The District recognizes that water-based outdoor recreational activities are critical to a thriving and resilient local economy.
11. The District's ability to manage and develop water resources within its boundaries are crucial to safeguarding the Basin's water supply and depend largely upon local land use policies and practices.
12. The District recognizes the importance of science-based water quality programs in maintaining the chemical, physical, biological, and aesthetic integrity of the Basin's reservoirs, rivers, and streams.
13. The District will participate in local and statewide deliberative processes to address climate, environmental, agricultural, social, political, legal, and economic challenges as they affect water resources.
14. The District opposes any new transfers of stream flow or storage water from the Upper Yampa River Basin and its tributaries to other basins.
15. The District will evaluate future water works that may be important to the District's long-term success.
16. As a taxpayer-supported public entity, the District will promote a two-way exchange of ideas and information with our community and constituents regarding the District's programs and priorities.

### **District Goals**

*The goals below collectively represent the District's vision for the future, consistent with the policy statements above. These goals supplement the evolving regulatory compliance activities that form the core of much of the District's work.*

### **Goal 1 Protect Upper Yampa Basin water resources and local water uses from trans-basin diversions and Colorado River administration that would adversely impact those uses.**

#### **Objectives**

- 1) Develop District understanding and policies to address Colorado River issues.

- 2) Prevent out-of-District transfers of water that could have adverse impacts for the District and its constituents.

**Goal 2 Ensure the District's infrastructure is safe, maintained, and improved to serve the needs of the District.**

**Objectives**

- 1) Ensure sufficient funds to maintain and/or improve District infrastructure.
- 2) Initiate or support efforts to address algae and other water quality issues in Stagecoach Reservoir.
- 3) Ensure integrity and safety of dams.
- 4) Ensure safe work environment for dam operators, employees and visitors.
- 5) Regularly update long-term capital plans for maintaining District infrastructure.
- 6) Maintain Stagecoach Reservoir as a public recreation facility.

**Goal 3 Ensure the District is financially sustainable and able to meet its stated goals.**

**Objectives**

- 1) Develop short- and long-term financial planning to support District goals.
- 2) Clarify District's business model, including how tax revenues will be used.

**Goal 4 Protect all in-Basin beneficial vested water uses in the District, consistent with the policy statements above.**

**Objectives**

- 1) Formalize and consider expanding District's grant program.
- 2) Promote District's existing augmentation plans on Yampa and Elk Rivers.
- 3) Explore potential expansion or creation of augmentation plans that aid in protecting the beneficial uses of junior priority water rights not currently within boundaries of the existing augmentation plans.
- 4) Protect productive agricultural water uses in the District.
- 5) Effectively communicate with local municipalities regarding long-term water supplies.
- 6) Enter into appropriate and financially prudent water allotment contracts for District water from Stagecoach Reservoir and/or Yamcolo Reservoir for environmental and recreational beneficial uses.
- 7) Increase flexibility of District's water rights portfolio in order to provide water for environmental and recreational purposes.
- 8) Clarify District policy and role regarding the use of District water to support non-consumptive water uses.

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

**Objectives**

- 1) Ensure representation of District interests in local and state matters, including, but not limited to the Interbasin Compact Committee, Basin Roundtable, Colorado Water Conservation Board and Colorado River District.
- 2) Increase District collaboration with Roundtable members to advocate for Upper Yampa Basin interests.

**Goal 6 Provide adequate water supplies within the District in light of changing climate conditions, population shifts, and other changes.**

**Objectives**

- 1) Maintain and improve District's Colorado Decision Support System hydrology/water rights administration model.
- 2) Increase District's understanding of relevant effects of climate change, population growth, and demographics for District planning.
- 3) Increase engagement with District constituents and other Upper Yampa Basin water interests in planning for long-term Yampa Basin water supply and use.
- 4) Expand Board's understanding of relevant issues and trends for District decision-making.

**Goal 7 Promote healthy reservoirs, streams, and watersheds within the District in support of the policy statements above.**

**Objectives**

- 1) Support water quality efforts in the District and respond to regulatory actions.
- 2) Define the District's role and responsibilities in water quality efforts.
- 3) Support efforts in the District to improve watershed management and forest and rangeland health.
- 4) Explore alternative solutions outside of current legislation to meet this goal.

**Goal 8 Increase public understanding of water issues in the Upper Yampa Basin and the District's role in addressing them.**

**Objectives**

- 1) Increase public's understanding of water issues in the Upper Yampa Basin.
- 2) Educate the public on the District's role and activities.

- 3) Improve Board collaboration, participation and representation with other organizations doing water-related work in the Upper Yampa Basin.
- 4) Improve two-way exchange among constituents, stakeholders, Board and staff regarding District priorities and activities.

**Goal 9 Maintain a robust water rights portfolio for the District.**

**Objectives**

- 1) Maintain and, where appropriate, perfect District's water rights.
- 2) Enhance District involvement/advocacy on water administration matters.
- 3) Evaluate potential and conditional water rights.
- 4) Explore small tributary storage projects within the Upper Yampa Basin.
- 5) Pursue water projects that utilize/perfect District's water rights and provide water supply for consumptive and non-consumptive purposes.
- 6) Explore increasing flexibility of use for District's stored water rights.

**Goal 10 Ensure robust staff, legal, and administrative resources to enhance District's viability and capacity to effectively serve its constituents.**

**Objectives**

- 1) Begin succession planning where appropriate.
- 2) Regularly review and update Board goals and objectives.
- 3) Clarify District governance structure that promotes interaction, transparency, trust, and *esprit de corps* between Board, General Manager, and staff.
- 4) Improve District organizational structure to maximize effectiveness, collaboration and teamwork.
- 5) Encourage opportunities for professional development.
- 6) Ensure District continues to be represented by competent legal staff.
- 7) Support an engaged and educated Board of Directors.
- 8) Demonstrate commitment to and capacity for public service and engagement with constituents.
- 9) Create an Upper Yampa Basin records and archive repository to catalogue and preserve historic water resources records.



c)

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## BOARD COMMUNICATION FORM

**From:** Kevin McBride, G.M., Karina Craig, Office Manager

**Date:** January 10, 2020

**Item:** Price Notification for YIA

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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

The District is required to send a price for water for the 2020 season to the YIA based upon contractual language.

*“shall mean actual costs reasonably incurred during the previous year, including administrative costs of the reservoir. Capital expenses (as determined under general accounting principles) deemed essential for proper maintenance of facility shall be amortized over the life of improvement. The District shall notify the Irrigators Association in writing, on or before January 31 of each such year (after the first 30 years), of this agreement of the purchase price per acre-foot of water allocated to the Association for the ensuing year”*

**II. Summary and Alternatives:**

The calculated price for 2020 is \$22.58.

It should be noted that the price charged last year to the YIA was negotiated down to \$12 per AF and negotiations for a price of \$13 per AF, with a modified CPI escalator, has been discussed with the YIA representatives.

**III. Staff Recommendation:**

Adopt notification price.

**IV. Legal Issues:**

Notification required by current contract.

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

See Goal 3.

**Attachments:**

Price Calculation sheet

**Pricing Calculations for 2020 YIA Contract**

(based on 2019 actuals,  
rev Jan 7, 2020)

<i>Operating Expenses</i>	<b>2019</b>	
	<i>2018 actuals rev 2019 0107</i>	<i>(unaudited, rev 2019 0107)</i>
<b><i>Yamcolo, direct</i></b>	<b>133,036</b>	<b>125,438</b>
Gross Salaries, Benefits & FICA	65,016	67,996
District Insurance	3,009	2,866
Field Labor (13.6% of annual)	25,605	27,600
O&M	39,405	26,975
<b><i>Administration</i></b>	<b>137,432</b>	<b>167,917</b>
Gross Salaries, Benefits & FICA	83,451	93,343
District Insurance	4,377	4,145
Office	49,604	70,429
<b><i>Board of Directors</i></b>	<b>63,182</b>	<b>71,570</b>
Gross Salaries, Benefits & FICA	36,700	38,176
District Insurance	1,642	1,554
Travel, meetings, Directors	24,841	31,840
<b><i>External Affairs</i></b>	<b>57,650</b>	<b>70,885</b>
Gross Salaries, Benefits & FICA	47,204	62,324
District Insurance	1,642	1,554
Conference Registr and Training	8,804	7,007
Travel & Meetings		
<b><i>Finance</i></b>	<b>98,731</b>	<b>111,748</b>
Gross Salaries, Benefits & FICA	90,248	92,868
District Insurance	3,283	3,108
Audit & Consulting	5,200	15,771
<b><i>Legals</i></b>	<b>164,023</b>	<b>112,706</b>
Gross Salaries, Benefits & FICA	21,097	21,717
District Insurance	821	777
Legal Services	142,105	90,212
Yamcolo, direct	14,320	17,854
Other legal services	127,785	72,358
<b><i>Planning</i></b>	<b>80,162</b>	<b>200,536</b>
<b><i>Grants, Scholarships &amp; Public Information</i></b>	<b>77,424</b>	<b>167,331</b>
<b><i>Operating Expenses</i></b>		
<b><i>Yamcolo Capital, Depreciation.</i></b>		
<b><i>Total Operating Expenses and Capital Expenditures</i></b>		

<i>Allocation to Pricing</i>	%	<b>2019</b>	%	<b>2020</b>
		<i>calculated price</i>		<i>rev 2019 0107</i>
	100%	<b>133,036</b>	100%	<b>125,438</b>
		65,016		67,996
		3,009		2,866
		25,605		27,600
		39,405		26,975
		<b>5,456</b>		<b>7,747</b>
	0%	0	0%	0
	0%	0	0%	0
	11%	5,456	11%	7,747
		<b>2,732</b>		<b>3,502</b>
	0%	0	0%	0
	0%	0	0%	0
	11%	2,732	11%	3,502
		<b>968</b>		<b>771</b>
	0%	0	0%	0
	0%	0	0%	0
	11%	968	11%	771
		<b>572</b>		<b>1,735</b>
	0%	0	0%	0
	0%	0	0%	0
	11%	572	11%	1,735
		<b>14,320</b>		<b>17,854</b>
	0%	0	0%	0
	0%	0	0%	0
	100%	14,320	100%	17,854
	0%	0	0%	0
	0%	0	0%	0
		<b>157,085</b>		<b>157,046</b>
		<b>19,778</b>		<b>23,624</b>
		<b>176,863</b>		<b>180,670</b>

<b>Pricing</b>	
<b>2019 (calculated)</b>	<b>2020 (rev 1/7/20)</b>
<b>16.63</b>	<b>15.68</b>
<b>0.68</b>	<b>0.97</b>
<b>0.34</b>	<b>0.44</b>
<b>0.12</b>	<b>0.10</b>
<b>0.07</b>	<b>0.22</b>
<b>1.79</b>	<b>2.23</b>
<b>19.64</b>	<b>19.63</b>
<b>2.47</b>	<b>2.95</b>
<b>22.11</b>	<b>22.58</b>

d)

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## BOARD COMMUNICATION FORM

**From:** Kevin McBride

**Date:** January 10, 2020

**Item:** Developing Timeline for pricing policy

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x \_\_\_\_\_ DIRECTION  
\_\_\_\_\_ INFORMATION  
\_\_\_\_\_ MOTION  
\_\_\_\_\_ RESOLUTION

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

At the 2019 Board retreat the Board indicated that “business planning”, including cost accounting (aka “enterprise model”), pricing (including ERC pricing), and long term forecasts and budgets were a high priority. This item is to discuss the Boards desires so an appropriate scope and timeline can be prepared. Further to determine if the Full Board, Executive Committee, or some other subcommittee should meet to discuss long term business planning.

The initial discussion (first meeting) should review and discuss the attached planning document. Of more immediate need we should also review the current cost accounting methodology developed by the District and used in the pricing of existing perpetual contracts. Staff thinks it important to have an agreed upon basis for cost accounting in order to refine the use of water, power and tax revenues moving forward. Pricing discussion, particularly for water not currently under contracts, can be discussed with that knowledge along with inflation information, and assessment of the potential for new contracts.

Keeping with the intention of having the board meetings that have been added to the schedule in the past year; February, April, June, August, October, and December as “work sessions” where the topics are limited to major items, we suggest that the February meeting be focused on business planning. This will enable a discussion of pricing decisions at the March meeting as an action item if deemed appropriate.

### **II. Summary and Alternatives:**

Have the full board meeting in February devoted to future business planning. With and outline to be developed there.

Have the executive committee meeting to review the current cost accounting structure reviewed and develop a business plan scope for review to the full board



**III. Staff Recommendation:**

Staff will arrange appropriate meetings

**IV. Legal Issues:**

N/A

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

Goal #3

**Attachments:**

Example long term financial planning best practice document



# BEST PRACTICE

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## Long-Term Financial Planning

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### BACKGROUND:

Long-term financial planning combines financial forecasting with strategizing. It is a highly collaborative process that considers future scenarios and helps governments navigate challenges. Long-term financial planning works best as part of an overall strategic plan.

Financial forecasting is the process of projecting revenues and expenditures over a long-term period, using assumptions about economic conditions, future spending scenarios, and other salient variables.

Long-term financial planning is the process of aligning financial capacity with long-term service objectives.

Financial planning uses forecasts to provide insight into future financial capacity so that strategies can be developed to achieve long-term sustainability in light of the government's service objectives and financial challenges.

Many governments have a comprehensive long-term financial planning process because it stimulates discussion and engenders a long-range perspective for decision makers. It can be used as a tool to prevent financial challenges; it stimulates long-term and strategic thinking; it can give consensus on long-term financial direction; and it is useful for communications with internal and external stakeholders.

### RECOMMENDATION:

GFOA recommends that all governments regularly engage in long-term financial planning that encompasses the following elements and essential steps.

A long-term financial plan should include these elements.

1. **Time Horizon.** A plan should look at least five to ten years into the future. Governments may elect to extend their planning horizon further if conditions warrant.
2. **Scope.** A plan should consider all appropriated funds, but especially those funds that are used to account for the issues of top concern to elected officials and the community.
3. **Frequency.** Governments should update long-term planning activities as needed in order to provide direction to the budget process, though not every element of the long-range plan must be repeated.
4. **Content.** A plan should include an analysis of the financial environment, revenue and expenditure forecasts, debt position and affordability analysis, strategies for achieving and maintaining financial balance, and plan monitoring mechanisms, such as scorecard of key indicators of financial health.

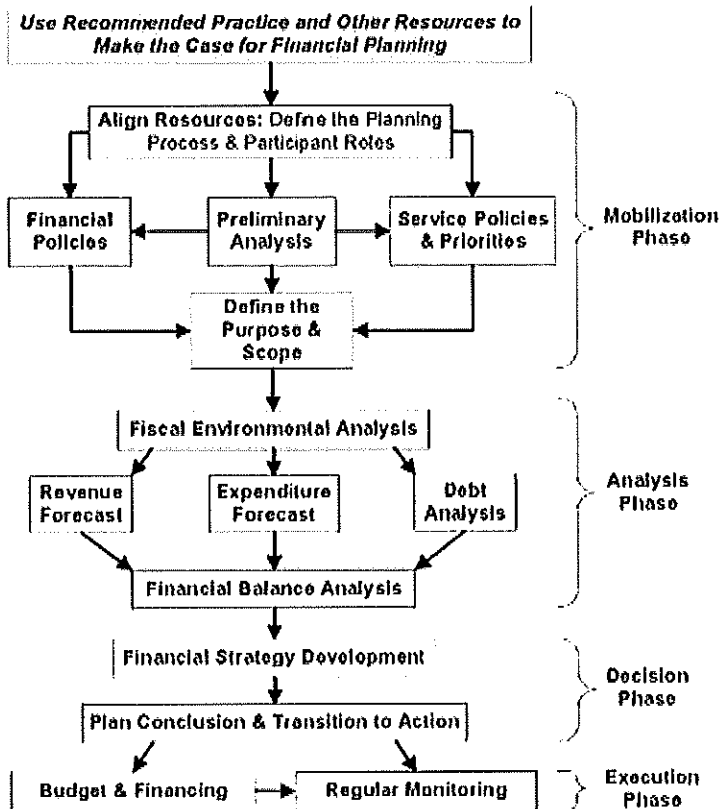
5. **Visibility.** The public and elected officials should be able to easily learn about the long-term financial prospects of the government and strategies for financial balance. Hence, governments should devise an effective means for communicating this information, through either separate plan documents or by integrating it with existing communication devices.

A long-term financial plan should include these steps.

1. **Mobilization Phase.** The mobilization phase prepares the organization for long-term planning by creating consensus on what the purpose and results of the planning process should be. The mobilization phase includes the following items:
  - **Alignment of Resources.** This step includes determining the composition of the project team, identifying the project sponsor, and formulating a strategy for involving other important stakeholders. This step also involves the creation of a high-level project plan to serve as a roadmap for the process.
  - **Preliminary Analysis.** This step helps raise awareness of special issues among planning participants, such as the board or non-financial executive staff. A scan of the financial environment is common at this point.
  - **Identification of Service Policies and Priorities.** Service policies and priorities have important implications on how resources will be spent and how revenues will be raised. A strategic plan or a priority setting session with elected officials could be useful in identifying service policies and priorities.
  - **Validation and Promulgation of Financial Policies.** Financial policies set baseline standards for financial stewardship and perpetuate structural balance, so a planning process must corroborate policies in place (as well as the organization's compliance with those policies) and also identify new policies that may be needed.
  - **Definition of Purpose and Scope of Planning.** The purpose and scope of the planning effort will become clear as a result of the foregoing activities, but the process should include a forum for developing and recognizing their explicit purpose and scope.
- **Analysis Phase.** The analysis phase is designed to produce information that supports planning and strategizing. The analysis phase includes the projections and financial analysis commonly associated with long-term financial planning. The analysis phase involves information gathering, trend projection, and analysis as follows:
  - **Information Gathering.** This is where the government analyzes the environment in order to gain a better understanding of the forces that affect financial stability. Improved understanding of environmental factors should lead to better forecasting and strategizing.
  - **Trend Projection.** After the environment has been analyzed, the planners can project various elements of long-term revenue, expenditure, and debt trends.
  - **Analysis.** The forecasts can then be used to identify potential challenges to fiscal stability (e.g., imbalances). These could be fiscal deficits (e.g., expenditures outpacing revenues), environmental challenges (e.g., unfavorable trends in the environment), or policy weaknesses (e.g., weaknesses in the financial policy structure). Scenario analysis can be used to present both optimistic, base, and pessimistic cases.
- **Decision Phase.** After the analysis phase is completed, the government must decide how to use the information provided. Key to the decision phase is a highly participative process that involves elected officials, staff, and the public. The decision phase also includes a culminating event where the stakeholders can assess the planning process to evaluate whether the purposes for the plan described in the mobilization phase were fulfilled and where a sense of closure and accomplishment can be generated. Finally, the decision phase should address the processes for executing the plan to ensure tangible results are realized.
- **Execution Phase.** After the plan is officially adopted, strategies must be put into action (e.g. funding required in achieving goals). The execution phase is where the strategies become



operational through the budget, financial performance measures, and action plans. Regular monitoring should be part of this phase. The following diagram highlights the various long-term financial planning phases discussed in this recommended practice.



References:

- GFOA Best Practice, □Financial Forecasting in the Budget Preparation Process,□ 1999.
- GFOA Best Practice, □Adopting Financial Policies,□ 2001.
- GFOA Best Practice, □Establishing Strategic Plans,□ 2005.
- GFOA Best Practice, □Budgeting for Results and Outcomes,□ 2007.
- GFOA Best Practice, □Performance Management: Using Performance Measurement for Decision Making,□ 2002 and 2007.
- *Financing the Future Long-Term Financial Planning for Local Government*; GFOA, 2007.
- <http://www.gfoa.org/ltfp>. GFOA Web site containing a wealth of supporting materials for financial planning.
- <http://www.gfoa.org/services/nacslb/>. Best Practices in Budgeting Web site. See Element 9: Develop and Evaluate Financial Options.

6)

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## BOARD COMMUNICATION FORM

**From:** \_\_\_Kevin McBride\_\_\_\_\_

**Date:** \_\_\_1-10-2020\_\_\_\_\_

**Item:** \_\_\_Election of Board Officers\_\_\_\_\_

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\_\_\_\_\_ DIRECTION  
\_\_\_\_\_ INFORMATION  
x\_\_\_\_\_ MOTION  
\_\_\_\_\_ RESOLUTION

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### **Request/Issue and Background Information:**

As per the Board of Directors bylaws, the Board of Directors shall elect officers the first regular Board meeting of the year.

### **II. Summary and Alternatives:**

Per Board bylaws:

“Qualification and Election of Officers.

The President and Vice-President shall be members of the Board of Directors. The Board of Directors shall elect a President and Vice-President at the first regular Board meeting of each year. The General Manager shall be appointed by the Board of Directors from time to time, to serve at the pleasure of the Board. The General Manager shall also be the ex officio Secretary/Treasurer of the District, but shall not be a member of the Board of Directors.

Term of Office of Officers.

The President and Vice-President shall serve for a term of one (1) year, and shall hold their offices until their successors shall have been elected. The term of consecutive service by the President of the Board in such President position shall not exceed six (6) consecutive years. A Director may again be elected to serve as President after a break in service of at least 2 years. The Vice President and Secretary/Treasurer are not subject to any term limitations.

Executive Committee Membership and Selection.

The Executive Committee shall consist of five (5) persons, all of whom shall be members of the Board of Directors selected in the following manner:



(a) The President shall be a member and chairman of the Executive Committee. The Vice President shall also be members of the Executive Committee.

(b) The remaining members of the Executive Committee shall be selected by the vote of the Board of Directors on an annual basis.

Appointment and selection of members of the Executive Committee shall be made at the first regular meeting of the Board of Directors in each year.”

**III. Staff Recommendation:**

none

**IV. Legal Issues:**

Per Board of Directors bylaws

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

Per Board of Directors bylaws:

**Attachments:**

none

7)

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a)

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**b)**

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# BOARD COMMUNICATION FORM

January 15, 2020 Board Meeting

(Not Privileged)

**From:** Robert G. Weiss, Legal Counsel

**Date:** January 8, 2020

**Item:** Yamcolo/Stagecoach contracting update

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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**I. Request/Issue and Background Information:** This District Negotiating Committee is engaged in contracting discussions with a number of parties for Stagecoach and Yamcolo contracts. This is an update on matters which are not privileged and confidential attorney-client communications or protected from disclosure as instructions to negotiators.

**A. Yamcolo Irrigators Association (YIA).** YIA accepted the District's offer of \$12 /AF for 2019 water. The most recent draft Amendment to the YIA agreement was sent to YIA on 10-25-2019. A copy is attached. YIA responded on 12-23-19. Copy attached. This draft makes a number of changes to the YIA agreement, including the pricing provisions which would fix until 2041 the price of YIA water starting in 2020 at \$13/AF and increasing annually by CPI subject to certain limitations. Under the existing 1981 YIA contract the District gave YIA the adopted budget for 2020 by November 30 and will set the 2020 price at the 1-15-2020 meeting (today). We will discuss instructions to negotiators in executive session today.

**B. Stillwater Ditch.** The proposed Stillwater Ditch Agreement recommended for approval by the Negotiating Committee is a separate agenda item for your consideration. If the Ditch is not reacquired the District will need to have a form of Carriage contract for the Ditch. We are in the process of preparing this for review by the Negotiating Committee.

**C. Tri-State Agreement.** Tri-State terminated its Stagecoach contract effective July 15, 2020. We sent the attached proposal to Tri-State on August 19, 2019. Tri-State sent the attached response 10-16-19. The Negotiating Committee is continuing to consider this matter. We will discuss instructions to negotiators in executive session today.

**D. Yamcolo Individual Irrigators (3500 AF Yamcolo water).** I completed a form of contact for the Individual irrigators for a term beginning 2020 irrigation season which was approved by the



Negotiating Committee and sent to the irrigators on 11-8-2019. Their response received 12-11-2019 is attached. We will discuss instructions to negotiators in executive session today.

**E. Other Stagecoach Municipal contracts.** Several Stagecoach municipal contracting parties have entered in two year extensions of their original fixed pricing which will continue through the 2021. The City of Steamboat has not signed an extension but the District has told the City it will bill the City under current fixed price of \$35/AF through 2021. Under the Stagecoach municipal contract language, in the absence of an agreement to fix pricing, pricing will be based on annual Stagecoach O&M after current extensions expire. The Negotiating Committee is continuing to consider this matter.

The Board approved a renewal of the Peabody Contract for 50AF on the standard District form at a price of \$121.91 as adjusted by CPI though November 1, 2041. Peabody objected to the length of the term. The Negotiating Committee has offered a ten year term. Peabody has proposed a 4 year term through July 2024 with the option to extend for an additional 4 or 6 years at a time. We will discuss instructions to negotiators in executive session today.

**II. Summary and Alternatives:** See above

**III. Staff Recommendation:** Negotiating Committee Continue with discussions and preparation of proposed contracts.

**IV. Legal Issues:** As described above.

**V. Consistency with Board Goals and Policies:** N/A

**VI. Fiscal Impact:** Various

**Attachments:** Tri-State Offer  
Tri-State counter  
YIA amendment  
YIA response  
Individual Irrigator form and response



October 16, 2019

Mr. Ken Brenner, President  
Mr. Kevin McBride, General Manager  
Upper Yampa Water Conservancy District  
2220 Curve Plaza Suite 201  
P.O. Box 775529  
Steamboat Springs, CO 80477-5529

**RE: Stagecoach Reservoir Agreement**

Gentlemen:

Thank you for your letter dated August 19, 2019 setting forth your Board's proposal for terms of a potential water contract or lease of Stagecoach Reservoir ("Lease") water with Tri-State. Tri-State's responses to the District's proposal are below:

1. The annual lease volume of 4,000 acre-feet is necessary and we request that amount for any lease/contract.
2. The commencement date of July 15, 2020 is fine, but we request a five-year term, renewable by mutual agreement of the parties before the termination of the lease/contract. We would consider a ten-year term, with a termination clause should the Craig Station no longer operate or water is no longer needed.
3. Our proposed lease/contract price is \$50 per acre foot, with a one percent annual increase throughout the term.
4. The first and senior priority proposal for the water allocated to Tri-State is essential and would require (a) a minimum of 2,000 acre-feet per year available for industrial use at the Craig Station, and (b) a minimum of 1,000 acre-feet available for instream fishery purposes through the "critical reach" for the benefit of Tri-State under the biological opinion referenced in your letter, or for other similar Tri-State benefit.
5. We request clarification of the meaning of the first clause of your paragraph 5, beginning "[t]he water allocated to Tri-State" through "the benefit of Craig Station." In relation to the fishery purpose described above in paragraph 4:
  - a. Tri-State understands it may not hold water rights for fishery purposes, but that such rights may be held by conservation districts and conservancy districts and by the Colorado Water Conservation Board. We also understand that the District does hold fishery rights and therefore, such rights would continue to be held by the District and released for Tri-State's benefit,





October 16, 2019  
Page 2

- b. We understand that for the fishery flows to travel to and then through the ESA-protected fish species “critical reach,” which is beyond the boundaries of the District, it would be necessary for those flows to pass to and be held by the Colorado River Water Conservation District. The two Districts must enter into the appropriate agreement in order to facilitate fishery flows for Tri-State’s benefit.
6. Tri-State agrees that use for fishery purposes, which may be synonymous with your use of “bypass,” is single-use, provided that such fishery purposes would continue through the “critical reach” as outlined above. Tri-State agrees that uses at the Craig Station must include reuse, and successive use, to extinction.
7. We agree and support this item.
8. This paragraph is fine, provided the District’s consent would not be unreasonably withheld.
9. We believe it best to resolve the items listed above before getting into lease/contract details.

Tri-State has been a long-term customer of the District. We find it difficult to understand your request for us to compare the two small contracts you recently signed with our situation. The magnitude of Tri-State’s water volume substantially overshadows the value of these two contracts. We believe the terms of the lease/contract, including the lease/contract price, should reflect a significant volume discount for Tri-State to lease/contract for Stagecoach water.

We are certainly willing to participate in further discussions to see if we can overcome the broad differences that seem to exist between us. Please feel free to contact me at (303) 254-3208 at your convenience, if you have any additional questions or concerns or would like to schedule a meeting.

Sincerely,

Michael G. Sorensen  
Senior Manager, Fuel and Water Resources



August 19, 2019

Michael Sorensen, P.E.  
Senior Manager, Fuels and Water Resources  
Tri-State Generation & Transmission Association  
P.O. Box 33659  
Denver, CO 80233-0659

*Via mgsorensen@tristategt.org*

***Re: Stagecoach Water Agreement***

Dear Mike:

At its meeting on July 24, 2019, the Board of Directors of the Upper Yampa Water Conservancy District (the "District") discussed the general terms under which the District would be willing to offer an allotment contract for storage of water in Stagecoach Reservoir to Tri-State taking into account Tri-State's need for water as explained to the District's negotiating committee at our meeting in Steamboat Springs on Monday, June 19, 2019.

The District proposes the following:

1. The contract would be for 1,500 acre feet of Stagecoach storage water annually.
2. The contract would commence on July 15, 2020 and terminate on July 15, 2041, subject to the right of Tri-State to elect to terminate the contract earlier than 2041 upon written notice to the District if Unit 3 at the Craig Station is permanently decommissioned and eliminated as a generator of electric power, such termination to be effective at the end of February next following such written election.
3. The purchase price for the first year of the term would be \$123.00 per acre foot, adjusted annually in 2021 and each year thereafter by the annual increases in the Denver/Aurora/Lakewood CPI.
4. The water allocated to Tri-State would be stored in the municipal/industrial pool, which is the first and senior priority of the Stagecoach pools.
5. The water allocated to Tri-State from Stagecoach would be used pursuant to a decreed water augmentation plan, decreed exchange or substitute supply plan approved by the Division Engineer for the benefit of Craig Station or such water may be beneficially bypassed at the Yampa River diversion intake facility for the Craig Station pursuant to

Mailing Address  
P.O. Box 775529  
Steamboat Springs, CO 80477-5529

Location  
Fish Creek Filtration Plant  
3310 Clear Water Trail

Telephone  
(970) 871-1035  
Fax (888) 519-3464



the requirements of the March 13, 1980 biological opinion of the U.S. Fish & Wildlife Service for Craig Station Unit 3 Power Plant.

6. Tri-State would be entitled to a single use of the water contracted if used for bypass or augmentation or substitute supply, without right to reuse or successive use of the water, but if diverted and used at the Craig Station Plant could be reused and successively used at such plant to extinction.
7. The contracted water may be used only during the then current water year, and no unreleased contracted water would be booked over to a succeeding year. There would be no carry-over storage.
8. No sale, subletting, assignment or other disposition of Tri-State's rights under the contract or of the contracted water would be permitted without the written consent of the District.
9. The other contract provisions would be consistent with the District's Stagecoach contract template, such as used in its current recent contract with Steamboat Ski & Resort Corporation which you have reviewed.

You are advised that the District has recently entered into two contracts on the District's standard Stagecoach contract form with very similar terms to those described above, one with Steamboat Ski & Resort Corporation and the other with American Land Holdings of Colorado, LLC, a company affiliated with Peabody Energy. The District negotiating committee would be very interested in hearing Tri-State's thoughts on these proposed terms. If Tri-State believes understanding of new contract terms generally along the lines set forth above would benefit from further discussions, the District negotiating committee would be happy to meet with you and other Tri-State representatives in Steamboat Springs or at such other location as would be convenient for both parties to continue our discussions.

Sincerely,

Ken Brenner, President

Kevin McBride, P.E.  
General Manager

Upper Yampa Water Conservancy District  
P.O. Box 775529  
Steamboat Springs, CO 80477

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## AMENDMENT AGREEMENT

THIS AMENDMENT AGREEMENT (the “Amendment”) is made and entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”), between THE UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservation district (“District”) and the YAMCOLO IRRIGATORS ASSOCIATION, INC., a Colorado nonprofit corporation (the “Irrigators Association”).

### RECITALS

WHEREAS, the District and the Irrigators Association entered into an agreement dated January 9, 1981, providing for the storage by the District in Yamcolo Reservoir prior to July 15<sup>th</sup> of each calendar year of 3,000 acre feet of water for release to the Irrigators Association for irrigation uses upon request between May 15<sup>th</sup> and November 1<sup>st</sup> of each year (the “Agreement”); and

WHEREAS, after the first 30 years of the Agreement, the annual purchase price of the water allocated to the Irrigators Association is required to be determined as set forth in paragraph 3.2 of the Agreement; and

WHEREAS, effective April 14, 2011, the District and the Irrigators Association entered into an Arbitration Settlement and Agreement which established the purchase price of the water allocated to the Irrigators Association under the Agreement for calendar years 2011 and 2012; and

WHEREAS, effective April 1, 2013, the District and the Irrigators Association entered into a Second Arbitration Settlement and Agreement which established the purchase price of the water allocated to the Irrigators Association under the Agreement for calendar years 2013 and 2014 and 2015; and

WHEREAS, effective May 1, 2016, the District and the Irrigators Association entered into a Third Arbitration Settlement and Agreement which established the purchase price of the water allocated to the Irrigators Association under the Agreement for calendar year 2016;

WHEREAS, by e-mail dated March 31, 2017, the Irrigators Association accepted the revised purchase price offered by the District for the water allocated to the Irrigators Association under the Agreement for calendar year 2017;

WHEREAS, effective April 1, 2018, the District and the Irrigators Association entered into a Fifth Arbitration Settlement and Agreement which established the purchase price of the water allocated to the Irrigators Association under the Agreement for calendar year 2018;

WHEREAS, by e-mail dated March 28, 2019, the Irrigators Association accepted the revised purchase price offered by the District for the water allocated to the Irrigators Association under the Agreement for calendar year 2019;

WHEREAS, the parties have negotiated in good faith and now desire to establish a purchase price for the water allocated to the Irrigators Association hereunder for the calendar years 2020 through 2041, and also desire to make certain other permanent changes and amendments to the Agreement as set forth in this Amendment; and

WHEREAS, the parties acknowledge that the District opposes the export of stream and reservoir water out of the Yampa River basin except as stated in and authorized by the Agreement, as amended by this Amendment.

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

1. The purchase price for the 3,000 AF of water allocated to the Irrigators Association for 2020 is set at \$13.00 per acre foot.

2. The annual price per acre foot for the water stored in Yamcolo Reservoir and allocated and available for release to the Irrigators Association for calendar years 2021 through 2041 shall be an amount equal to the greater of (i) the price per acre foot charged to the Irrigators Association for water stored in Yamcolo Reservoir and allocated to the Irrigators Association for the prior calendar year, or (ii) the product obtained by multiplying the price per acre foot charged to the Irrigators Association for water stored in Yamcolo Reservoir and allocated to the Irrigators Association for the prior calendar year by a fraction the denominator of which is the Consumer Price Index for All Urban Consumers ("CPI-U"), Denver-Aurora-Lakewood Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 of the year prior to the prior year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior year. However, notwithstanding the foregoing, the following rules shall apply and supersede the price as determined above for any calendar year from 2021 through 2041:

(a) If the CPI-U increase for the preceding calendar year was 1.5% or less, then apply a 1.5% increase; but

(b) If the CPI-U increase for the preceding calendar year was more than 1.5% but not more than 4%, then decrease such actual CPI-U increase by 0.5% and apply such adjusted increase; but

(c) If the CPI-U increase for the preceding calendar year was more than 4%, then divide the amount by which such increase exceeds 4% by 2, and add the result to 4% and apply such adjusted increase, but

(d) In no event shall the adjusted percentage increase be less than 1.5% nor more than six percent (6%).

In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date then the District shall select a reasonably comparable



price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all increases in the CPI are taken into account, notwithstanding any such change in the base year.

A chart demonstrating the operation of this Paragraph 2 is attached as Exhibit A to this Agreement.

3. The parties agree that Paragraphs 1 and 2 of this Amendment are for the purpose of resolving the purchase price for the water allocated to the Irrigators Association for years 2020 through 2041 only under the Agreement, as amended hereby, and shall not apply to determination of the purchase price in 2042 and subsequent years, nor in anyway prejudice the rights of either party under the Agreement as amended hereby, including the rights of the parties to determine the purchase price of the water allocated to the Irrigators Association for 2042 and all years thereafter in accordance with the provisions of Paragraph 3.2 of the Agreement, as amended hereby.

4. Paragraph B of the Recitals to the Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

“B. The storage capacity in Yamcolo Reservoir described below in excess of the approximately 1,000 AF of conservation pool shall be allocated to the pools described below (collectively the "Pools") effective upon adoption by the Board of Directors of the District (the "Board") of a confirming Resolution, and shall remain in effect indefinitely except as from time to time amended by Resolution of the Board:

(1) Municipal and/or Industrial use, augmentation use, other non-agricultural uses including (but not limited to) recreational and piscatorial and instream flow uses, and/or other lawful use by a Municipal or Industrial or other non-agricultural customer, for up to 1,500 AF, including up to 500 AF which is re-allocated to this Pool from the Individual Contract Pool as described in subsection B(4) below, which re-allocated 500 AF may also be used for irrigation and stock water uses (such 1,500 AF, in all, being herein referred to as the “Original Municipal Pool”);

(2) Municipal and/or Industrial use, augmentation use, other non-agricultural uses including (but not limited to) recreational and piscatorial and instream flow uses, and/or other lawful use by a Municipal or Industrial or other non-agricultural customer, for up to 3,500 AF, such Pool to consist of storage water (a) recontracted for any or all such uses after termination of any Individual Irrigator Contract (as defined below) to the extent the agricultural user and District do not renew such Individual Irrigator Contract, and (b) available to be contracted for such uses as confirmed by Resolution of the Board pursuant to Section 8.1(b) below to the extent of storage water previously allocated to the 3,500 AF Individual Contract Pool but which is not under contract for irrigation and stock watering uses (this Pool being herein referred to as the “Enlarged Municipal Pool”);

(3) Irrigation and stock watering uses only for the 3,000 AF allocated to the Irrigators Association pursuant to the Agreement, including up to 445 AF of storage water currently allocated by the Irrigators Association to its members Vail Hatt, Lawrence Ricca & Sons, and Five Pine LLC (collectively, hereinafter referred to as the “Hatt Allocation”), 350 AF out of such 445 AF (out of the 3,000 AF to the Irrigators Association) being available for export into the Colorado River Basin through the Stillwater Ditch (sometimes herein called the “Stillwater Ditch” or the “Ditch”) for such irrigation and stock watering purposes, but such right of export of such 350 AF portion of the Hatt Allocation shall be subordinate to the export of not more than 4,000 AF of water by the District into the Colorado River Basin under the Decree in Case No. 95CW79 in Water Division 6, State of Colorado (the “Export Limit”), and such right of export of such 350 AF portion of the Hatt Allocation shall fully abate to the extent necessary to prevent the District from violating the Export Limit (such 3,000 AF allocated to the Irrigators Association is herein referred to as the “YIA Pool”); the rate of flow of the entire Hatt Allocation down the Stillwater Ditch shall be as determined by the District or subsequent owner of the Ditch but may not exceed 4.5 cfs; the right of export of such 350 AF of the Hatt Allocation may be transferred by Vail Hatt to and among other members of the Irrigation Association, and further subsequently transferred among such members, but only upon in each instance the written transfer of such export right signed by the transferor, the transferee, and the Irrigators Association (any such transfer being referred to herein as a “Hatt Export Transfer” and the right to export such 350 AF into the Colorado River basin being referred to herein as the “Hatt Export Right”).

(4) Municipal and Industrial and Domestic and Irrigation and Commercial and Stock Watering and Snowmaking and Firefighting and Recreational and Piscatorial and Augmentation and Instream Flow uses, including any beneficial uses permitted under water rights decrees of the District and including delivery to and use within the Colorado River Basin and including re-use and successive uses of return flows to extinction for any lawful beneficial use, directly or by exchange, for 3,500 AF (the “Individual Contract Pool”). Such Individual Contract Pool was formerly 4,000 AF allocated to Colorado Ute Electric Association and later allocated to individual irrigators primarily using deliveries through the Stillwater Ditch, but has now been reduced to not more than 3,500 AF by the re-allocation of the Reallocated 500 AF to the Original Municipal Pool as described in Subparagraph B(1) above. The District intends to enter into individual contracts for allotment of storage water out of this Individual Contract Pool. Individual contracts may be made to agricultural users and, if so, will be limited to irrigation and/or stock water uses and for terms ending no later than November of 2041 (“Individual Irrigator Contracts”). One or more of such Individual Irrigator Contracts, for up to 500 AF, may have an “off ramp” permitting the District to terminate such contracts early on November 1, 2030, by written notice given prior to such date. Any part of such 500 AF additional which may become available to the District in 2030 (the “Additional 500 AF”), and any of the initial offered 3,500 AF Individual Contract Pool which is not taken up by Individual Irrigator contracts or is included in terminated or cancelled Individual Irrigator contracts may be reallocated by Resolution of the Board and recontracted by the District for non-agricultural uses and shall then become a part of the Enlarged Municipal Pool described in Suparagraph B(2) above; the Individual Contract Pool may be increased by

any relinquishments of allotted water from the YIA Pool pursuant to Subparagraph 8.1(a) below; and

(5) Any Lawful Purpose Permitted by District Water Decrees, directly or by exchange, for all water stored in Yamcolo Reservoir under the Yamcolo Reservoir Second Enlargement (the “Enlargement Pool”), or stored under any Yamcolo Reservoir re-fill decree (the “Refill Pool”).” The Enlargement Pool and the Refill Pool are collectively referred to herein as the “Junior Priority Pool.”

5. In Paragraph C of the Recitals to the Agreement, change “agricultural” to “irrigation and stock watering.”

6. The first sentence of Paragraph 1.2 of the Agreement is deleted and the following is inserted in lieu thereof: “The individual irrigators shall give at least twenty four (24) hours advance notice to the Yamcolo Administrator specifying the date(s), time and rate of flow in cubic feet per second (cfs) of water requested to be released, and the Yamcolo Administrator shall use reasonable diligence to accomplish such request within such 24 hours, but such time to accomplish such request may be extended by such Administrator as reasonably necessary or appropriate to accommodate administration, directives, or policies of the District, Division Engineer or Water Commissioner or due to operating emergencies or other water cause or factor not fully in the control of the District.”

7. Paragraph 1.3 of the Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

“1.3a The Irrigators Association acknowledges that the District acquired 100% of the shares of the Stillwater Ditch and Reservoirs Company (the “Ditch Company”) in 2005 and simultaneously entered into that certain Assignment of Stock and Water Delivery Agreement recorded at Reception No. 621890 of the Routt County records (the “Ditch Agreement”) with the former shareholders of the Ditch Company (together with their successors and assigns the “Original Users”), which among other things committed the District to operate the Stillwater Ditch in a manner to permit the Ditch Users to use up to 36.3 cfs of the capacity of the Stillwater Ditch (the “First Priority Capacity”) for delivery of certain water storage or direct flows as described in Paragraphs 4 and 5 of the Ditch Agreement. Such Ditch Agreement may be amended or changed in the future whereby the First Priority Capacity of the Stillwater Ditch may be reduced, or may be terminated by mutual agreement of the Original Users or their successors, and the District, in the event the District transfers ownership of the Ditch to a subsequent owner. Accordingly, the YIA Pool stored water, separately from the Hatt Allocation, may be delivered into and through the Stillwater Ditch, but such delivery is subject to perpetual restrictions, whether or not the Ditch is owned by the District, as follows: (i) the YIA Pool stored water flow, other than the Hatt Allocation, delivered into and down the Stillwater Ditch must be contained entirely within the First Priority Capacity of the Ditch, but such stored water cannot encroach upon the water flowing in the First Priority Capacity unless such

Capacity is not then being fully used by the Original Users; (ii) the YIA Pool stored water, other than the Hatt Allocation, cannot encroach upon the capacity of the Ditch above the First Priority Capacity or the Hatt Allocation capacity, such further capacity being reserved by the District for other water deliveries; (iii) all other YIA Pool stored water delivered into the Stillwater Ditch, excluding the Hatt Allocation, must be applied solely on lands where all return flows go to the Yampa River basin; and (iv) members of the Irrigators Association claiming such right to deliver Yamcolo storage water down the Ditch shall comply with Subparagraph 1.3b below.

- 1.3b The owner or owners of the Hatt Allocation, including the owner or owners of the Hatt Export Right shall each be required to negotiate and obtain individual carriage contracts from the District or its successor Ditch owner in which each such claimant shall identify the part of the Hatt Allocation owned by such owner, and its original YIA member holding such allocation, and if such claimant claims part of the Hatt Export Right, also identify all subsequent assignees of such Hatt Export right, through whom such claimant claims either the right to capacity within the First Priority Capacity or right to capacity within the Hatt Allocation capacity, as applicable, and the amount of the Ditch flow capacity claimed to be usable by such claimant. The claimant shall provide such documentation as the District or the Ditch owner shall request to substantiate its claim and the Irrigators Association acknowledges that it is necessary for the District or the Ditch owner at all times to have full detailed knowledge of all users of the First Priority Capacity and the Hatt Allocation capacity of the Ditch, and the allocation of such capacities, for regulatory and cost billing purposes. Each carriage contract will specify the laterals to which YIA Pool stored water can be delivered and will prohibit delivery through laterals further down ditch from the specified laterals without the prior consent of the District or the Ditch owner, to protect the District or the Ditch owner against demands to enlarge sections of the Ditch due to secondary transfers among holders of carriage contracts. Carriage contracts will not allow "space in ditch" assignment, except with the prior written consent of the District or Ditch owner. So long as the District owns the Ditch, it is anticipated that the Board of the District will consider adoption of "Catlin Bylaws" for the Ditch Company, which if adopted will require notice of any such proposed "down ditch" transfer and a hearing before the District Board of Directors on the request, with opportunity for other interested parties to appear and participate. The Board may create conditions to any approval of an assignment to other laterals. Any overall assignment or sub-lease of a carriage contract will require the prior written consent of the District or the Ditch owner. The Irrigators Association waives and agrees that it has no right, privilege, or entitlement to review or approve or comment on or object to future Stillwater Ditch policies or Catlin Bylaws as may be adopted by the District or the Ditch owner, including bylaw revisions or pricing or assessment rules, or other rules and regulations (in all, the "Stillwater Ditch Terms"), including (but not limited to) pricing or assessments or management or repairs or maintenance, as may be adopted by the District or the Ditch owner or changed from time to time in the sole discretion of the District or Ditch owner, including separate O, M & R cost share by direct flow/Gardner

Park/Ramshorn/Stillwater Reservoir users, even though a portion of YIA Pool water storage is or may be then delivered using Stillwater Ditch into the Yampa drainage or Colorado River drainage. The District has no obligation to YIA to inform YIA of any changes, amendments, adoptions, terminations, or revocations of any such Stillwater Ditch Terms. YIA is not a third party beneficiary of the Stillwater Ditch or the Stillwater Ditch Terms or the Ditch Agreement or any amendments thereto.

1.3c In any calendar year when insufficient water is stored in Yamcolo Reservoir by July 15, for any reason, to supply the Pools described in Paragraph B of the Recitals above, as measured at time of peak annual storage, the water allocated to such Pools shall abate as follows:

(i) First, the Junior Priority Pool shall abate entirely.

(ii) Next, the Original Municipal Pool, the Enlarged Municipal Pool, the YIA Pool, and the Individual Contract Pool will all abate proportionally.

(iii) Then any uncontracted amount of water in the Individual Contract Pool, and any uncontracted part of the Additional 500 AF, will further abate up to the amount of remaining unreplaced abatements under Subparagraph (ii) above but such further abatement shall be applied in the following order or priority: first, to Original Municipal Pool contracts up to the amount that it will suffer no reduction, then, second, to water contracted out of the Enlarged Municipal Pool for non-agricultural purposes up to the amount that it will suffer no reduction, then, third, to the contracted water out of the Individual Contract Pool, proportionally among such Individual Contract Pool allottees, up to the amount that it will suffer no reduction.

(iv) If after application of Subparagraph (iii) above, there remains unreplaced abatements to contracts within the Original Municipal Pool and/or Enlarged Municipal Pool (including contracted portions of the Additional 500 AF for non-agricultural uses) under Subparagraph (ii) above, then all of the contracted Individual Irrigator Contract allotments from the Individual Contract Pool (including any of the Additional 500 AF storage water contracted that year for irrigation and/or stock water uses within the District) will further abate collectively and proportionally among such Pool and contracted Additional 500 AF only in a collective amount sufficient to make up and replace all remaining unsatisfied replacements for abatements applied to all storage water then allocated, first, to Original Municipal Pool contracts and, second, contracted out of the Enlarged Municipal Pool and the Additional 500 AF for non-agricultural purposes, until all of such non-agricultural allotment contracts in Yamcolo Reservoir that year are fully filled and have full yield or until all sources of replacement under this Subparagraph (iv) are exhausted.

(v) If after application of Subparagraph (iv) above, there remains unreplaced abatements to the Original Municipal Pool contracts, then all of the contracted Enlarged Municipal Pool (including contracted portions of the Additional 500 AF for non-agricultural uses) will further abate collectively and proportionally among such Pool in a collective amount sufficient to make up and replace all remaining unsatisfied replacements for abatements applied to all storage water then allocated, first, to Original Municipal contracts and, second, contracted out of the Additional 500 AF for non-agricultural purposes, until all allotment contracts in Yamcolo Reservoir that year for the Original Municipal Pool and the Additional 500 AF for non-agricultural purposes are fully filled and have full yield or until all sources of replacement under this Subparagraph (v) are exhausted.

Abatements within a Pool are allocated pro rata among contract holders in that Pool.

8. The last sentence of Paragraph 3.2 of the Agreement is deleted and replaced with the following three sentences:

“The parties and the arbitrators shall conduct such arbitration expeditiously to the end that the decision of the arbitrators is rendered by July 14 of such year. Any final decision of the arbitrators which interprets and defines the components of the phrase "operation and maintenance costs" in Paragraph 3.2 hereof shall be binding on the parties for a period of 4 years, including the year in which such decision is made. It is acknowledged that the parties intend to commence negotiations regarding a possible fixed purchase price for the 3,000 AF of water allocated to the Irrigators Association for 2042 and thereafter by no later than the commencement of 2040, though neither party is obligated hereby to agree to any pricing other than as above provided in this Paragraph 3.2.”

9. Section 4 of the Agreement is amended by the addition of new Paragraphs 4.2, 4.3, and 4.4 which read as follows:

“4.2 Subject to the administration of State of Colorado water rights and all federal, state, and local permits for the operation of Yamcolo Dam and Reservoir, the maximum allowable combined instantaneous release rate through the Yamcolo Reservoir outlet works for water stored in Yamcolo Reservoir is 220 cfs at any one time. The District reserves the right to limit and or amend the maximum allowable amount of water released through the outlet works from Yamcolo for any uses (including agricultural) for any reason, and the parties acknowledge that such maximum allowable release rate may be reduced by the District as Yamcolo Reservoir is drawn down or as necessary or appropriate for river administration, operational emergencies or circumstances beyond the control of the District. The maximum allowable combined instantaneous release rate through the Yamcolo Reservoir outlet works for water stored in Yamcolo Reservoir as determined from time to time by the District under the preceding two sentences is herein called the “Maximum Release Rate.” The release rate through the Yamcolo Reservoir outlet

works for the Original Municipal Pool shall take precedence and seniority over the release rate of all other water stored in Yamcolo Reservoir, and such releases shall not be abated by the District, subject only to required governmental permit minimum release requirements and the Maximum Release Rate. In the event the instantaneous release requests between May 15 and August 1 by allottees out of the YIA Pool and Individual Contract Pool and the Enlarged Municipal Pool (including the Additional 500 AF) exceed the Maximum Release Rate, the release requests from the non-agricultural allottees of the Enlarged Municipal Pool shall abate first and prior to any abatement of releases to allottees in the YIA Pool and agricultural allottees in the Individual Contract Pool and the Additional 500 AF, and any abatement of release rates applied to such YIA Pool and agricultural allottees in the Individual Contract Pool and the Additional 500 AF shall be apportioned pro-rata among such agricultural users. Between August 1 and the following May 14, in the event continued instantaneous release requests conflict among such Pools with the Maximum Release Rate, the allottees of the Original Municipal Pool and Enlarged Municipal Pool and non-agricultural allottees in the Additional 500 AF shall have first priority and shall not be required to have releases abate; provided, however, that releases solely for environmental, recreational, or streamflow enhancement purposes and releases solely to deliver storage water for re-storage in Stagecoach Reservoir shall abate to the extent necessary to deliver through the Yamcolo Reservoir outlet works without exceeding the then-Maximum Release Rate all properly requested agricultural use storage water out of Yamcolo Reservoir for agricultural use in the Yampa River basin.

- 4.3 Except as provided in the next sentence, the point of delivery of water from the YIA Pool shall be the Yampa (Bear) River immediately below the Yamcolo Reservoir dam, and the Irrigators Association shall assume the risk of seepage, evaporation, and other delivery losses of YIA Pool releases. Some storage water out of the YIA Pool may be delivered by exchange from Coal Creek or Watson Creek or the Yampa River below the Town of Yampa, but in the event of any such use be exchange, the user shall be solely responsible to obtain any decrees or permits for such exchange use and, insofar as the District is concerned, the “exchanged” storage water point of delivery shall be the Bear River immediately below the Yamcolo Reservoir dam. For YIA storage pool water delivered down such River to the various head gates or turn-outs or locations for exchanges of members of the Irrigators Association, such risk of losses applies, and for the Hatt Allocation of water in the YIA Pool and other YIA Pool water permitted under Section 1.3a above, which is permitted to be carried in the Stillwater Ditch by carriage contracts, the point of delivery is still the Yampa (Bear) River immediately below the Yamcolo Reservoir, and such contractees of water in the YIA Pool (including the Hatt Allocation) permitted to be carried in the Stillwater Ditch shall assume the risks of seepage, evaporation, and other delivery losses down the Bear River and down the Stillwater Ditch. The District has no responsibility for construction, maintenance, or repair of headgates or lateral turn-outs or exchange facilities on the Yampa (Bear) River or down the Stillwater

Ditch or elsewhere as necessary or appropriate to take delivery of any of the YIA Pool water released by the District at the Yamcolo Reservoir dam.

- 4.4 There is no carry-over of storage of YIA Pool water or Individual Contract Pool agricultural water in Yamcolo Reservoir from year to year, notwithstanding Paragraph 3.1 of the Agreement. Accordingly, any of the YIA Pool remaining in storage in Yamcolo Reservoir on November 2 of any year is forfeited to the District, and the District may retain all or any part of such water in storage and/or may sell or grant and release all or any part of such water from the Reservoir for any beneficial use permitted by the water rights decrees of the District to any person or entity approved by the District, all without compensation or accounting to the Irrigators Association.”

10. Paragraph 8.1 of the Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

- “8.1(a) The water stored in Yamcolo Reservoir in the YIA Pool and allocated and delivered to the Irrigators Association under this Agreement shall never be used outside of the Yampa River Basin or outside of the geographical limits of the District as it may exist from time to time, and shall never be used for other than irrigation of agricultural lands and for stock water, and all lands which receive benefit from such water shall be situated within the boundaries of the District and within the Yampa River Basin (except for the Hatt Allocation water which may be exported into the Colorado River basin under Section 1.3a above). YIA Pool stored water not delivered into the Stillwater Ditch is usable only for Bear River delivery and diversions for irrigation and/or stock water out of Bear River and not through the Stillwater Ditch, with the exception of a small amount delivered below the Yamcolo Dam into the Bear River for use by exchange with Coal Creek or Watson Creek. In the event any portion of the water allocated to the Irrigators Association under this Agreement is used or diverted for any period of time in violation of the preceding two sentences by any member of the Irrigators Association, then such portion of water shall be forfeited by said member to the Irrigators Association, and the Irrigators Association shall redistribute such forfeited water to one or more of its members; provided that no portion of such forfeited water shall be redistributed to the defaulting member. Nothing herein shall prevent a member of the Irrigation Association who takes storage water releases from Yamcolo Reservoir under the Agreement (as amended by this Amendment) from making maximum beneficial agricultural uses of such water within the lands owned or leased by such member, including surface return flows or wastewater on such lands which is not yet returned to the natural stream. However, the parties acknowledge that re-use of water out of the YIA Pool which has reached the natural stream is not an entitlement of either the District or the Irrigators Association (or its members) under Colorado water law. A member of the Irrigation Association may not



lease or sell or transfer or exchange the re-use of YIA Pool water diverted to such member to other landowners outside of the member's owned or leased lands. The District reserves ownership of the re-use and successive uses to extinction of any of the YIA Pool water stored in Yamcolo Reservoir, to the extent permitted by Colorado law. Any member of the Irrigators Association may lease, transfer or exchange such member's allocated share of the YIA Pool water to or with any other member of the Irrigators Association, so long as the limitations of this Agreement and any applicable terms or provisions of the Irrigators Association's governing documents are complied with, and subject to Colorado water law. The Irrigators Association shall in good faith seek to enforce the limitations of this Paragraph 8.1 among its members. The Irrigators Association may at any time relinquish any portion of the YIA Pool water allocated to it by the District, for all future years, by written notice given to the District between November 15 of any year and the next following May 15, specifying the quantity permanently relinquished. Such amount permanently relinquished shall reduce pro tanto the amount of water contracted for in the YIA Pool to the Irrigators Association under this Agreement, and shall correspondingly increase the amount of water within the Individual Contract Pool. The District will thereafter have the right to contract for, assign for other beneficial uses, sell, allocate and/or otherwise dispose of the quantity permanently relinquished from the YIA Pool, as an additional part of the Individual Contract Pool, whether permanently or for fixed terms, at the District's sole discretion. Once a portion of the allocated YIA Pool water has been relinquished to the District, the Irrigators Association will no longer be liable for payment to the District of the purchase price under Section 3 above for the relinquished portion of such YIA Pool."

- 8.1(b) If prior to March 1, 2020, the current Individual Irrigators take and execute allotment contracts through 2041, and applicable Ditch carriage contracts, for less than 3,500 AF, then in March of 2020, the remaining uncontracted portion of such 3,500 AF will first be offered collectively to (a) any irrigators who do not have Individual Irrigator Contracts but who own and have historically diverted and delivered water for agricultural purposes down the Stillwater Ditch, for the purpose of using any such allotment contracts only through delivery in the Stillwater Ditch, and (b) irrigators who hold existing Individual Irrigator Contracts, and if by April 1, 2020, a remainder uncontracted portion of such 3,500 AF still exists, then the remaining uncontracted portion of such 3,500 AF will be offered in April of 2020 to the Irrigators Association (but treated as part of the Individual Contract Pool), and if by May 1, 2020, there still remains an uncontracted portion of such 3,500 AF, the District may keep such remaining shortage as uncontracted water in the Individual Contract Pool, may from time to time in its discretion contract such water for agricultural purposes on a short term basis, or may re-allocate such remaining shortage

to the Enlarged Municipal Pool and contract such remaining shortage for M&I or augmentation or any other non-agricultural uses. If such uncontracted water is subsequently contracted by the District for M&I or augmentation or other non-agricultural uses (and then treated as part of the Enlarged Municipal Pool), then 1/2 of the premium of the price paid to the District annually through 2041 for such non-agricultural use by the subsequent non- agricultural allottee of such subsequently contracted water, over and above the applicable Irrigators Association contract price that year, shall be credited that year against the Irrigators Association overall contract payment for its 3,000 AF, and the remaining 1/2 is retained by the District. This process does not apply to any of the Reallocated 500 AF which is re-allocated into the Original Municipal Pool for non-agricultural purposes as described in Recital B(4) above, and does not apply to any of the Additional 500 AF of water which the District may “withdraw” and re-allocate into the Enlarged Municipal Pool under Recital B(4) above.”

11. Except as herein amended, the Agreement is ratified and confirmed.

YIA Amendment 10-25-19 clean)

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019.

UPPER YAMPA WATER CONSERVANCY  
DISTRICT

YAMCOLO IRRIGATORS  
ASSOCIATION, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

# Yamcolo Irrigator's Association

PO Box 68  
Yampa, Co. 80483  
Phone: [Your Phone] Fax: [Your Fax]  
E-Mail:  
Web: [Web Address]

To: Bob Weiss  
From: Yamcolo Irrigator's Association  
CC: Ken Brenner, Tom Sharpe, Kevin McBride  
Date: 12-18-2019  
Re: YIA – UYWCD long term contract

## Memo

Attn: UYWCD Negotiations team

Dear Sirs

The Yamcolo Irrigator's Association negotiation team has reviewed your latest turn of the document dated October 2019 from attorney Bob Weiss. Firstly, we want to thank Bob and Ken for their timely discussions, prior to our meeting, where we were able to set some direction for our review. This aided greatly in reaching our conclusions and recommendations. More importantly, we are pleased to let you know that our team has agreed to the majority of the document with exceptions noted below, subject to final review and approval by our Board and members.

Per Bob's direction, we are offering a bulletized list of key points that we discussed and a recommendation on how to address our key issue of language tied to your other two contracts (Individual Irrigators and The Ditch).

1. The complex and intertwined language around the two non-YIA contracts is impossible for us to digest. As I mentioned to Ken and Bob, there is no way we could possibly review the proposed language without extensive and costly attorney assistance and review of all three documents. What's more the District wishes to reserve the right to change anything in the other two contracts without notifying YIA. This could present a very complex and legally challenging situation for us since, as one example, you call out specific persons and properties in our contract. Therefore, if there are water rights or other legal issues are raised by these persons during a sale or transfer, YIA would surely be called to task to review the situation. We can not accept this liability or burden. Now, Bob, Ken and I did discuss the "intent" of this language and we do agree with the basic provisions. Therefore, Bob ask us to provide key bullets that we could live with, by which he will draft the appropriate language for our YIA contract while eliminating all the specific cross references and ties to other contracts.

We recognize that some YIA members, present and future, own or may own water that they wish to transport down the Ditch, and that this transport must have certain terms and restrictions. Therefore, we offer the following simple provisions that we believe will meet the needs of all parties and contracts:

- a. Presently only 350 AF of storage, owned by current members may be transported down the ditch for export to the Colorado Basin. Current owners of this water have or may have Ditch contracts in place with the District. We accept the language that allows YIA members to utilize the Ditch (after an approval and/or contract is signed) to transport water into the Yampa basin but not out of the district.
  - b. The District has the right to approve or deny this transport if said transport will exceed the 350 af limit and/or encroach on the District's maximum allowable transport restrictions.
  - c. Any YIA member, current or future, that wishes to transport water down the ditch, for distribution to the Yampa basin, has a right to do so – with limitations based on capacity, ditch rights (approval and / or contract with then current owner of the ditch).
2. YIA will accept the \$13.00 per acre foot price of 2020 and set this as the start of the 20 year contract, once signed, starting in 2021.
  3. YIA Accepts the Inflater Formula but formally requests the District include an Exhibit (as referenced) that clearly shows how this will be applied, with examples.
  4. YIA needs to better understand the Abatement section and wishes to discuss this, for clarity, with the Negotiation team. It would be very helpful if the District put together a picture showing the fill process and the abatement process prior to our next meeting. We believe such picture would help us all better understand the priorities given the multiple scenarios and users. We believe this should be included as an exhibit in the contract.
  5. We accept the outlet flow rate of 220 but want to ensure clarity and commitment on the Ag priority during our irrigation period. We believe the current languages does this, but we have concerns about post-irrigation season “dumping” to Stagecoach. This may just be a misunderstand that can be resolved with discussion.
  6. We accept the 24 hour notification language.
  7. While we strongly disagree with the lack of desire by the District to negotiate in good faith a clear and measurable O, M & A definition for inclusion in this contract as snap-back to 3.2, we accept that we have little leverage to encourage you to do so. We also believe that punting this will only add to the confusion and difficulty to define the terms by 2041. We appreciate the language that starts the process early in 2040. However, given our stalemate on this, we are willing to move forward without this additional O, M & A definition language. We will be sending the District a formal letter, which we will ask to be included in the Board meeting's public record, that describes our position on these terms.

We will review this with the negotiation team prior to sending and we are not asking for any tie-in to this contract. We are providing it in order to provide a record of our discussions to aid our successors in 2040. We accept the language that reverts back to 3.2 if an agreement can't be reached by 2041.

8. We accept the modified re-use definition and language.
9. We accept the language and methodology for reallocating untaken Individual Irrigators' water ( portions of the 3500af). However, we wish to change the April decision date for YIA members to contract this water, as an individual irrigator, to June 1<sup>st</sup>. This is the logical date by which we will know if we need the water or not.

Please review these bullets at your convenience and, per Bob's recommendation, please provide a clean copy of the amended document for our review. We will make ourselves readily available for a quick review and subsequent meeting to finalize the contract, pending mutual Board approvals.

Sincerely

YIA Negotiation Team



## Summary

- We look forward to presenting our position at your next Board meeting. Our members have requested that we underscore the fact that, while we are negotiating 1 contract and 1 price, there is no requirement that all 3000 AF of water is purchased by the Association (our collection of members). In fact, at prices above our proposed limits we believe it is likely that a significant number of users will abandon their leased water within 3 years, and either shut down or curtail their operations, or implement extreme efficiency improvements while utilizing other sources of water to power these projects. Based on our three categories of water purchased from Yamcolo this could be 1/3 (1000) AF.
- **A 1000 AF abandonment at our proposed pricing is a \$12,990 reduction in District Revenue. The Delta between Tom's proposed pricing (\$17.38) and our offer (\$11.29) at 3000 AF is only \$17,310 or a net difference of \$4320.**
- **The value created by YIA working with the District in 2011 on the 7.34x multiple resulted in an increase from \$27 per AF to \$74 per AF for Municipal Water, or an increase in annual District Revenue of \$47,000; more than 10x return of what we're asking, for this 2011 concession.**
- **We hope the district can absorb this this \$4320 which will significantly aid in the regeneration of lost goodwill within the Ag community.**
  
- YIA members greatly appreciate the District's leadership to conceive, design, build and operate this key reservoir. It truly is a win win for Routt County and the ranches and communities along the Yampa waterway. We strongly desire to build on this great accomplishment and hopefully continuing to live our ranching lifestyle (for generations to come), while helping the District achieve its broader goals for everyone in the district, and beyond. Therefore, we would like to come to your March 20<sup>th</sup> meeting and discuss this position paper, and more importantly present our financial and operational analysis behind our proposal.

We will be glad to share our Business Model calculations comparing water pricing to our commodity (hay and calf) pricing and our breakeven analysis as well.

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**RECITALS:**

We understood that the District had agreed to offer any returned Irrigator water first to users on the Stillwater Ditch. This is not reflected in Recitals B. (2.) or (4.).

(1., 2., 4.) The Division Engineer indicates that some of the uses named are not decreed in the reservoir except to the dead pool (snowmaking, firefighting, recreation, piscatorial, instream flow).

(3.) This does not agree with concepts in the Stillwater Ditch proposed contract. Specifically, the limitation of 445 AF, the naming which members can use YIA water, the YIA export water being subordinate to anything of the District's, and limiting the rate of flow to 4.5 cfs..

**STORAGE AND RELEASE OF WATER:**

2.4. The District still must maintain the main HG of the ditch if they still own the ditch.

2.5. Statements conflict: water is available all year (Dec 1 – Nov 30), but then says any water remaining on Nov 2 is forfeited to the District.

2.7 The second sentence seems to say that no water can be used outside the Yampa Basin, and 4.1 says it can. Also, the irrigator has no control over what properties downstream may benefit from this water.

2.8 How does the District determine who gets this shorter-term water, and is its price reduced?

3.3 If this provision is already available to the District by statute, why must the Irrigator also agree to it? It was not in the original Stagecoach contracts.

**STILLWATER DITCH:**

4.1 says the District may amend or terminate the Ditch Agreement at its sole discretion. This conflicts with the perpetual nature of the Ditch contract.

This paragraph says the stored water **can** be used in the Colorado Basin, but gives limitations no matter who owns the ditch. The limitation of what space the water can be used in is not under the control of the irrigator and should not be in this contract. Same for the export water being subordinate: the District controls what water they lease from Yamcolo, and the Irrigator has no control over what other water gets exported.

4.2 This again lays out limitations that the Irrigator must agree to no matter who owns the ditch. If the ditch is conveyed back to the irrigators, they may not want these limitations as specifically described ("space in ditch" assignments or written consent for changing laterals, for example).

The Irrigator who is leasing this water **cannot** be required to waive their right to "review or approve or comment on or object to future Stillwater Ditch policies..." because they are the same entities that also use the ditch in other capacities; they probably own original space and cannot give up the right to participate in discussions or negotiations about ditch issues. These limitations are unnecessary for either the District or Irrigators to simply lease and use the "Individual Irrigator Pool" stored water.

**CONTRACT TERMINATION:**

7.1.2 says the District may terminate this Contract simply because the District suspects an Irrigator's action may interfere with the District's interests... this is unreasonable just to lease irrigation water.

**PETITION TO**  
**UPPER YAMPA WATER CONSERVANCY DISTRICT**  
**FOR INDIVIDUAL IRRIGATOR WATER ALLOTMENT CONTRACT**

The undersigned property owner, \_\_\_\_\_ (hereinafter called "Irrigator"), hereby petitions the UPPER YAMPA WATER CONSERVANCY DISTRICT, a political subdivision of the State of Colorado, and a body corporate with all powers of a public or municipal corporation (hereinafter called "District" or "Upper Yampa"), organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, 1973, as amended, for an allotment contract pursuant to 37-45-125, C.R.S. 1973, for the beneficial use of water under and pursuant to the following terms and conditions:

**I. RECITALS:**

A. The District has constructed and is operating a dam and reservoir known as Yamcolo Reservoir (the "Reservoir" or "Yamcolo Reservoir") for the purpose of supplying water to municipal, industrial, agricultural and other users within its boundaries. The dam and reservoir are located on the Yampa (Bear) River upstream from the Town of Yampa, Colorado. The total storage capacity of the Reservoir is approximately 9,500 acre-feet. Water is stored in Yamcolo Reservoir pursuant to various water rights owned by the District.

B. The storage capacity in Yamcolo Reservoir described above in excess of the approximately 1,000 AF of conservation pool shall be allocated to the pools described below (individually, a "Pool" and collectively the "Pools") effective upon adoption by the Board of Directors of the District (the "Board") of a confirming Resolution, and shall remain in effect indefinitely except as from time to time amended by Resolution of the Board:

(1) Municipal and/or Industrial use, augmentation use, other non-agricultural uses including (but not limited to) recreational and piscatorial and instream flow uses, and/or other lawful use by a Municipal or Industrial or other non-agricultural customer, for up to 1,500 AF, including up to 500 AF which is re-allocated to this Pool from the Individual Contract Pool as described in subsection B(4) below, which re-allocated 500 AF may also be used for irrigation and stock water uses (such 1,500 AF, in all, being herein referred to as the "Original Municipal Pool");

(2) Municipal and/or Industrial use, augmentation use, other non-agricultural uses including (but not limited to) recreational and piscatorial and instream flow uses, and/or other lawful use by a Municipal or Industrial or other non-agricultural customer, for up to 3,500 AF, such Pool to consist of storage water (a) recontracted for any or all such uses after termination of any Individual Irrigator Contract (as defined below) to the extent the agricultural user and District do not renew such Individual Irrigator Contract, and (b) available to be contracted for such uses as confirmed by Resolution of the Board pursuant to Section 8.1(b) below to the extent of storage water previously allocated to the 3,500 AF Individual Contract Pool but which is not under contract for irrigation and stock watering uses (this Pool being herein referred to as the "Enlarged Municipal Pool");

(3) Irrigation and stock watering uses only for the 3,000 AF allocated to the Yamcolo Irrigators Association ("YIA") pursuant to the agreement between the District and YIA, dated January 9, 1981, as amended (the "YIA Agreement"), including up to 445 AF of storage water currently allocated by the YIA to its members Vail Hatt, Lawrence Ricca & Sons, and Five Pine LLC (collectively, hereinafter referred to as the "Hatt Allocation"), 350 AF out of such 445 AF (out of the 3,000 AF to the YIA) being available for export into the Colorado River Basin through the Stillwater Ditch (sometimes herein called the "Stillwater Ditch" or the "Ditch") for such irrigation and stock watering purposes, but such right of export of such 350 AF portion of the Hatt Allocation shall be subordinate to the export of not more than 4,000 AF of water by the District into the Colorado River Basin under the Decree in Case No. 95CW79 in Water Division 6, State of Colorado (the "Export Limit"), and such right of export of such 350 AF portion of the Hatt Allocation shall fully abate to the extent necessary to prevent the District from violating the Export Limit (such 3,000 AF allocated to the YIA is herein referred to as the "YIA Pool"); the rate of flow of the entire Hatt Allocation down the Stillwater Ditch shall be as determined by the District or subsequent owner of the Ditch but may not exceed 4.5 cfs;

(4) Municipal and Industrial and Domestic and Irrigation and Commercial and Stock Watering and Snowmaking and Firefighting and Recreational and Piscatorial and Augmentation and Instream Flow uses, including any beneficial uses permitted under water rights decrees of the District and including delivery to and use within the Colorado River Basin and including re-use and successive uses of return flows to extinction for any lawful beneficial use, directly or by exchange, for 3,500 AF (the "Individual Contract Pool"). The water allotted to Irrigator under this contract is water allocated to the Individual Contract Pool. Such Individual Contract Pool was formerly 4,000 AF allocated to Colorado Ute Electric Association and later allocated to individual irrigators under previously existing expired contracts primarily using deliveries through the Stillwater Ditch, but has now been reduced to not more than 3,500 AF by the re-allocation of the Reallocated 500 AF to the Original Municipal Pool as described in Subparagraph B(1) above. The District intends to enter into other individual contracts for allotment of storage water out of this Individual Contract Pool. Individual contracts may be made to agricultural users and, if so, will be limited to irrigation and/or stock water uses and for terms ending no later than November of 2041 ("Individual Irrigator Contracts"). One or more of such Individual Irrigator Contracts, for up to 500 AF, may have an "off ramp" permitting the District to terminate such contracts early on November 1, 2030, by written notice given prior to such date. Any part of such 500 AF additional which may become available to the District in 2030 (the "Additional 500 AF"), and any of the initial offered 3,500 AF Individual Contract Pool which is not taken up by Individual Irrigator contracts or is included in terminated or cancelled Individual Irrigator contracts, may be reallocated by Resolution of the Board and recontracted by the District for non-agricultural uses and shall then become a part of the Enlarged Municipal Pool described in subparagraph B(2) above; the Individual Contract Pool may be increased by any relinquishments of allotted water from the YIA Pool pursuant to Subparagraph 8.1(a) of the YIA Contract, as amended; and

(5) Any Lawful Purpose Permitted by District Water Decrees, directly or by

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exchange, for all water stored in Yamcolo Reservoir under the Yamcolo Reservoir Second Enlargement (the "Enlargement Pool"), or stored under any Yamcolo Reservoir re-fill decree (the "Refill Pool"). The Enlargement Pool and the Refill Pool are collectively referred to herein as the "Junior Priority Pool."

C. The District has agreed to make an allotment of water to Irrigator of \_\_\_\_\_ acre-feet annually of Yamcolo Reservoir storage water allocated for irrigation and/or stock water uses from the Individual Contract Pool as hereinafter set forth.

**NOW, THEREFORE, IN CONSIDERATION OF THE PAYMENTS TO BE MADE BY IRRIGATOR** as hereinafter provided, and in consideration of the mutual covenants herein contained, the sufficiency of which consideration is hereby expressly acknowledged, the District and Irrigator hereby agree as follows:

## **II. STORAGE AND RELEASE OF WATER:**

2.1 The District agrees, subject only to physical water supply conditions, the administration of water rights by State of Colorado water officials and the terms of this Contract, to store in Yamcolo Reservoir prior to July 15th of each calendar year \_\_\_\_ acre-feet of water for release for Irrigator's use, upon request (the "Contracted Water"), subject to the last sentence of Section 2.6 below.

2.2 The Irrigator shall give at least twenty four (24) hours advance notice to the District specifying the date(s), time and rate of flow in cubic feet per second (cfs) of water requested to be released, and the District shall use reasonable diligence to accomplish such request within such 24 hours, but such time to accomplish such request may be extended by such the District as reasonably necessary or appropriate to accommodate administration, directives, or policies of the District, Division Engineer or Water Commissioner or due to operating emergencies or other water cause or factor not fully in the control of the District. The point of delivery shall be the discharge of the outlet works of the Yamcolo Reservoir. The District shall maintain permanent records of all releases of water from storage in Yamcolo Reservoir, and shall maintain records of water levels in the Reservoir measured not less frequently than once per month. Irrigator shall be entitled to inspect such records and copies shall be furnished to Irrigator upon written request.

2.3 Subject to the administration of State of Colorado water rights and all federal, state, and local permits for the operation of Yamcolo Dam and Reservoir, the maximum allowable combined instantaneous release rate through the Yamcolo Reservoir outlet works for water stored in Yamcolo Reservoir is 220 cfs at any one time. The District reserves the right to limit and or amend the maximum allowable amount of water released through the outlet works from Yamcolo for any uses (including agricultural) for any reason, and the parties acknowledge that such maximum allowable release rate may be reduced by the District as Yamcolo Reservoir is drawn down or as necessary or appropriate for river administration, operational emergencies or circumstances beyond the control of the District. The maximum allowable combined instantaneous release rate through the Yamcolo Reservoir outlet works for water stored in Yamcolo Reservoir as determined from time to time by the District under the preceding two sentences is herein called the "Maximum Release Rate." The release rate through the Yamcolo Reservoir outlet works for the Original Municipal Pool shall

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take precedence and seniority over the release rate of all other water stored in Yamcolo Reservoir, and such releases shall not be abated by the District, subject only to required governmental permit minimum release requirements and the Maximum Release Rate. In the event the instantaneous release requests between May 15 and August 1 by allottees out of the YIA Pool and Individual Contract Pool and the Enlarged Municipal Pool (including the Additional 500 AF) exceed the Maximum Release Rate, the release requests from the non-agricultural allottees of the Enlarged Municipal Pool shall abate first and prior to any abatement of releases to allottees in the YIA Pool and agricultural allottees in the Individual Contract Pool and the Additional 500 AF, and any abatement of release rates applied to such YIA Pool and agricultural allottees in the Individual Contract Pool and the Additional 500 AF shall be apportioned pro-rata among such agricultural users. Between August 1 and the following May 14, in the event continued instantaneous release requests conflict among such Pools with the Maximum Release Rate, the allottees of the Original Municipal Pool and Enlarged Municipal Pool and non-agricultural allottees in the Additional 500 AF shall have first priority and shall not be required to have releases abate; provided, however, that releases solely for environmental, recreational, or streamflow enhancement purposes and releases solely to deliver storage water for re-storage in Stagecoach Reservoir shall abate to the extent necessary to deliver through the Yamcolo Reservoir outlet works without exceeding the then-Maximum Release Rate all properly requested agricultural use storage water out of Yamcolo Reservoir for agricultural use in the Yampa River basin.

2.4 Except as provided in the next sentence, the point of delivery of water from the Individual Contract Pool shall be the Yampa (Bear) River immediately below the Yamcolo Reservoir dam, and the Irrigator shall assume the risk of seepage, evaporation, and other delivery losses of Individual Contract Pool releases. For Individual Contract Pool storage water delivered down such River to the various head gates or turn-outs or locations for exchanges, such risk of losses applies, and for Individual Contract Pool water, which is permitted to be carried in the Stillwater Ditch by carriage contracts, the point of delivery is still the Yampa (Bear) River immediately below the Yamcolo Reservoir, and Irrigator shall assume the risks of seepage, evaporation, and other delivery losses down the Bear River and down the Stillwater Ditch. The District has no responsibility for construction, maintenance, or repair of headgates or lateral turn-outs or exchange facilities on the Yampa (Bear) River or at the headgate of the Stillwater Ditch or down the Stillwater Ditch or elsewhere as necessary or appropriate to take delivery of any of the Individual Contract Pool water released by the District at the Yamcolo Reservoir dam.

2.5 The water allocated to Irrigator hereunder is available during the water storage year (December 1 through the following November 30). There is no carry-over of storage of the Individual Contract Pool agricultural water in Yamcolo Reservoir from year to year. Accordingly, any of the Individual Contract Pool, including any water stored under this allotment Contract, remaining and unreleased in storage in Yamcolo Reservoir on November 2 of any year is forfeited to the District, and the District may retain all or any part of such water in storage and/or may sell or grant and release all or any part of such water from the Reservoir for any beneficial use permitted by the water rights decrees of the District to any person or entity approved by the District, all without compensation or accounting to Irrigator.

2.6 In any calendar year when insufficient water is stored in Yamcolo Reservoir by July 15, for any reason, to supply the Pools described in Paragraph B of the Recitals above, as measured

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at time of peak annual storage, the water allocated to such Pools shall abate as follows:

- (i) First, the Junior Priority Pool shall abate entirely.
- (ii) Next, the Original Municipal Pool, the Enlarged Municipal Pool, the YIA Pool, and the Individual Contract Pool will all abate proportionally.
- (iii) Then any uncontracted amount of water in the Individual Contract Pool, and any uncontracted part of the Additional 500 AF, will further abate up to the amount of remaining unreplaced abatements under Subparagraph 2.6(ii) above, but such further abatement shall be applied for Pool recovery in the following order or priority: first, to Original Municipal Pool contracts up to the amount that it will suffer no reduction, then, second, to water contracted out of the Enlarged Municipal Pool for non-agricultural purposes up to the amount that it will suffer no reduction, then, third, to the stored water contracted out of the Individual Contract Pool, proportionally among such Individual Contract Pool allottees, up to the amount that it will suffer no reduction.
- (iv) If after application of Subparagraph 2.6(iii) above, there remains unreplaced abatements to contracts within the Original Municipal Pool and/or Enlarged Municipal Pool (including contracted portions of the Additional 500 AF for non-agricultural uses) under Subparagraph 2.6(ii) above, then all of the contracted Individual Irrigator Contract allotments from the Individual Contract Pool (including any of the Additional 500 AF storage water contracted that year for irrigation and/or stock water uses within the District) and including the allotment under this contract, will further abate collectively and proportionally among such Pool and contracted Additional 500 AF only in a collective amount sufficient to make up and replace and recover all remaining unsatisfied replacements for abatements applied to all storage water then allocated, first, to Original Municipal Pool contracts and, second, contracted out of the Enlarged Municipal Pool and the Additional 500 AF for non-agricultural purposes, until all of such non-agricultural allotment contracts in Yamcolo Reservoir that year are fully filled and have full yield or until all sources of replacement under this Subparagraph 2.6(iv) are exhausted.
- (v) If after application of Subparagraph 2.6(iv) above, there remains unreplaced abatements to the Original Municipal Pool contracts, then all of the contracted Enlarged Municipal Pool (including contracted portions of the Additional 500 AF for non-agricultural uses) will further abate collectively and proportionally among such Pool in a collective amount sufficient to make up and replace and recover all remaining unsatisfied replacements for abatements applied to all storage water then allocated, first, to Original Municipal contracts and, second, contracted out of the Additional 500 AF for non-agricultural purposes, until all allotment contracts in Yamcolo Reservoir that year for the Original Municipal Pool and the Additional 500 AF for non-agricultural purposes are fully filled and have full yield or until all sources of replacement under this Subparagraph 2.6(v) are exhausted.

Abatements within a Pool are allocated pro rata among contract holders in that Pool. The District will notify the Irrigator by no later than July 25 if the amount of water stored in Yamcolo Reservoir for the Irrigator under this Contract for the current Water Year, after application of the above abatement

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rules, is less than the amount set forth in Section 2.1 above, and shall specify such reduced amount, which will for that year be deemed to be "Contracted Water" under this agreement, but if no such notice is given by the District, then it shall be presumed that the amount set forth in Section 2.1 above was stored for the benefit of Irrigator in the Reservoir.

2.7 Water allotted under this Contract may only be used on the property of Irrigator described in Exhibit A attached hereto. The water stored in Yamcolo Reservoir in the Individual Contract Pool and allocated and delivered to the Irrigator under this Agreement shall never be used outside of the Yampa River Basin or outside of the geographical limits of the District as it may exist from time to time, and shall never be used for other than irrigation of agricultural lands and for stock water, and all lands which receive benefit from such water shall be situated within the boundaries of the District. Individual Contract Pool stored water not delivered into the Stillwater Ditch is usable only for Bear River delivery and diversions for irrigation and/or stock water out of Bear River and not through the Stillwater Ditch. In the event any portion of the water allocated to the Irrigator under this Contract is used or diverted for any period of time in violation of the preceding two sentences by Irrigator, then such portion of water shall be forfeited to the District. Nothing herein shall prevent Irrigator who takes storage water releases from Yamcolo Reservoir under this Contract from making maximum beneficial agricultural uses of such water within the lands owned or leased by such Irrigator, including surface return flows or wastewater on such lands which is not yet returned to the natural stream. However, the parties acknowledge that re-use of water out of the Individual Contract Pool which has reached the natural stream is not an entitlement of either the District or Irrigator under Colorado water law. Irrigator may not lease or sell or transfer or exchange the re-use of Individual Contract Pool water diverted to such Irrigator to other landowners outside of the Irrigator's owned or leased lands described in Exhibit A. The District reserves ownership of the re-use and successive uses to extinction of any of the Individual Contract Pool water stored in Yamcolo Reservoir, to the extent permitted by Colorado law. With the written approval of the District, Irrigator may lease, transfer or exchange such Contracted water to or with any others holding Individual Irrigator Contracts or YIA members, so long as the limitations of this Agreement and any applicable terms or provisions of the YIA's governing documents are complied with, and subject to Colorado water law.

2.8 If this Box  is checked, then by notice given to Irrigator on or prior to November 1, 2030 the District may reduce the amount of the Contracted Water allotted to Irrigator in an amount not exceeding \_\_\_\_\_ acre-feet, such reduction to be effective for the Water Year set forth in such notice and continuing thereafter through the end of the Term, but in no event such reduction shall commence earlier than (a) the first Water Year commencing at least one year from the date of such notice or (b) Water Year 2030. If the above Box is not checked, this Section 2.8 does not apply to Irrigator or this Contract.

### **III. PURCHASE PRICE:**

3.1 The purchase price for the Contracted Water from the Reservoir storage water allocated to the Irrigator for Water Year 2020 under this Contract (the "First Water Year") shall be eleven dollars (\$11) per acre foot. The annual price per acre-foot for the Contracted Water stored in the Reservoir and allocated and available for release to the Irrigator in the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall be an amount equal to the greater of (i) the price per acre-foot charged to the Irrigator for the Contracted

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Water the prior Water Year, or (ii) the product obtained by multiplying the price per acre-foot charged to the Irrigator for the Contracted Water the prior Water Year by a fraction, the denominator of which is the CPI for the semi-annual period ending December 31 in the Water Year prior to the prior Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year. However, notwithstanding the foregoing, the following rules shall apply and supersede the price as determined above for any calendar year from 2021 through 2041:

- (a) If the CPI-U increase for the preceding calendar year was 1.5% or less, then apply a 1.5% increase; but
- (b) If the CPI-U increase for the preceding calendar year was more than 1.5% but not more than 4%, then decrease such actual CPI-U increase by 0.5% and apply such adjusted increase; but
- (c) If the CPI-U increase for the preceding calendar year was more than 4%, then divide the amount by which such increase exceeds 4% by 2, and add the result to 4% and apply such adjusted increase, but
- (d) In no event shall the adjusted percentage increase be less than 1.5% nor more than six percent (6%).

In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date then the District shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all increases in the CPI are taken into account, notwithstanding any such change in the base year.

3.2 The annual payments for the Contracted Water shall be made by Irrigator to the District on or before July 31st of each year during the term of this Contract, beginning July 31, 2020. Any annual payment not made within fourteen (14) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water delivered to Irrigator and there shall be no abatement or setoff against any such payment, nor shall Irrigator be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15 as described in the notice from the District to Irrigator pursuant to the last sentence of Section 2.6 above.

3.3 As security to the District, Irrigator agrees to be bound by the provisions of 37-45-125, C.R.S. 1973. If the annual payments herein required or some portion thereof are not fully met from such sources of revenue as may be legally available to Irrigator for such purpose, such annual payment or such portion thereof may be met from assessments levied by the District pursuant to 37-45-125, C.R.S. 1973 against the property described in Exhibit A.

#### **IV. STILLWATER DITCH:**

4.1 Irrigator acknowledges that the District acquired 100% of the shares of the Stillwater



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Ditch and Reservoirs Company (the "Ditch Company") in 2005 and simultaneously entered into that certain Assignment of Stock and Water Delivery Agreement recorded at Reception No. 621890 of the Routt County records (the "Ditch Agreement") with the former shareholders of the Ditch Company (together with their successors and assigns the "Original Users"), which among other things committed the District to operate the Stillwater Ditch in a manner to permit the Ditch Users to use up to 36.3 cfs of the capacity of the Stillwater Ditch (the "First Priority Capacity") for delivery of certain water storage or direct flows as described in Paragraphs 4 and 5 of the Ditch Agreement. Such Ditch Agreement may be amended or changed in the future whereby the First Priority Capacity of the Stillwater Ditch may be reduced, or may be terminated by mutual agreement of the Original Users or their successors, and the District, in the event the District transfers ownership of the Ditch to a subsequent owner. The District reserves the right in its sole discretion to transfer ownership of the Ditch and amend or terminate the Ditch Agreement. The Individual Contract Pool stored water may be delivered into and through the Stillwater Ditch, including delivery to the Colorado River Basin for irrigation of agricultural lands and for stock water on the Lands of Irrigator described in Exhibit A, but such delivery is subject to perpetual restrictions, whether or not the Ditch is owned by the District, as follows: (i) the Individual Contract stored water flow delivered into and down the Stillwater Ditch must utilize the capacity of the Stillwater Ditch other than the First Priority Capacity of the Ditch, unless such Capacity is not then being fully used by the Original Users and the Hatt Allocation; (ii) export of the Contracted Water to the Colorado River Basin shall be subordinate to the export of not more than 4,000 AF of water by the District into the Colorado River Basin under the Decree in Case No. 95CW79 in Water Division 6, State of Colorado (the "Export Limit"), and such right of export of the Contracted Water shall fully abate to the extent necessary to prevent the District from violating the Export Limit, and (iii) Irrigator shall comply with Paragraph 4.2 below.

4.2 If Irrigator desires to utilize the Stillwater Ditch for delivery of the Contracted Water, Irrigator shall be required to negotiate and obtain an individual carriage contract from the District or its successor Ditch owner. Each carriage contract will specify the laterals to which the Contracted Water can be delivered and will prohibit delivery through laterals further down ditch from the specified laterals without the prior consent of the District or the Ditch owner, to protect the District or the Ditch owner against demands to enlarge sections of the Ditch due to secondary transfers among holders of carriage contracts. Carriage contracts will not allow "space in ditch" assignment, except with the prior written consent of the District or Ditch owner. So long as the District owns the Ditch, it is anticipated that the Board of the District will consider adoption of "Catlin Bylaws" for the Ditch Company, which if adopted will require notice of any such proposed "down ditch" transfer and a hearing before the District Board of Directors on the request, with opportunity for other interested parties to appear and participate. The Board may create conditions to any approval of an assignment to other laterals. Any overall assignment or sublease of a carriage contract will require the prior written consent of the District or the Ditch owner. Irrigator waives and agrees that it has no right, privilege, or entitlement to review or approve or comment on or object to future Stillwater Ditch policies or Catlin Bylaws as may be adopted by the District or the Ditch owner, including bylaw revisions or pricing or assessment rules, or other rules and regulations (in all, the "Stillwater Ditch Terms"), including (but not limited to) pricing or assessments or management or repairs or maintenance, as may be adopted by the District or the Ditch owner or changed from time to time in the sole discretion of the District or Ditch owner, including separate O, M & R cost share by direct flow/Gardner Park/Ramshorn/Stillwater Reservoir users, even though a portion of the Contracted Water is or may be then be delivered using Stillwater Ditch into the Yampa drainage or Colorado

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River drainage. The District has no obligation to Irrigator to inform Irrigator of any changes, amendments, adoptions, terminations, or revocations of any such Stillwater Ditch Terms. Irrigator is not a third party beneficiary of the Stillwater Ditch or the Stillwater Ditch Terms or the Ditch Agreement or any amendments thereto.

**V. TERM OF AGREEMENT:**

Except in the event of an early termination as provided in Article VII below, the term of this Contract shall commence effective July 15, 2020 (the "Effective Date") and shall end on November 1, 2041 (the "Term"). This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new water allotment contract for the Contracted Water. The District may not enter into a water allotment contract for the Contracted Water with any person or entity other than the Irrigator during the Term of this Contract.

**VI. OPERATION AND MAINTENANCE OF YAMCOLO RESERVOIR:**

It is expressly acknowledged that the District shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that the District shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which the District has ownership or rights which provide supplies of water for storage in the Reservoir. Nothing herein contained shall be deemed to create a partnership, a joint venture, or joint ownership or joint responsibility in any way between the parties hereto.

**VII CONTRACT TERMINATION:**

7.1. Termination by Upper Yampa.

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

7.1.2. The District may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Irrigator materially threaten or interferes with Upper Yampa's authority to store water in the Reservoir or contract for release or delivery of the Contracted Water to Irrigator or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with the Reservoir or Reservoir operations.

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

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7.2. Termination by Irrigator.

7.2.1. Irrigator may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa's failure or inability to deliver Contracted Water for an extended period of time, provided that Irrigator has first given at least 60 days' prior written notice from Irrigator to the District specifying in detail such material breach and giving the District the right within such 60-day period to cure and remedy such material breach.

7.2.2. Except as provided in the preceding sections, Irrigator has no right to terminate or reform or rescind this Contract.

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

**VIII. FORCE MAJEURE:**

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

**IX. INSPECTIONS:**

The District grants to the managerial staff of Irrigator and any of its professional consultants access to Yamcolo Reservoir and Yamcolo Dam subject to this Contract at reasonable times and under reasonable protective terms and conditions.

**X. LIMITED REPRESENTATION BY THE PARTIES:**

The District represents and warrants that it has full power and authority to execute this Contract, allocate and deliver the Contracted Water, and perform its obligations hereunder during the Term. Irrigator represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point and cause it to be delivered to Irrigator's point and locations of use, and pay for and perform its obligations hereunder during the Term.

**XI. ENFORCEMENT OF THIS CONTRACT; REMEDIES ON DEFAULT:**

11.1. Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach.

November 8, 2019

11.2. Specific performance and/or restraining orders and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that the District shall have all remedies at law, including imposition of assessments under Paragraph 3.3 above, for collection of sums required to be paid by Irrigator hereunder which are not paid when due, including interest and attorneys' fees.

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

**XII. MISCELLANEOUS PROVISIONS:**

12.1. The District may assign this Contract without necessity of Irrigator's consent or approval to any entity which succeeds the District in the ownership of Yamcolo Reservoir, and the District or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to the District or its successor. Irrigator may assign this Contract without the necessity of the District's prior consent or approval to any individual or entity which succeeds Irrigator in the ownership of the entirety of the property described in Exhibit A, such assignment to be effective on the effective date of written notice given from Irrigator to the District of such assignment setting forth the name and contact information for the assignee and certifying that the Contract is assigned in its entirety and that assignee is acquiring ownership of all of the property described in Exhibit A. No other assignment of this Contract, including without limitation, any assignment of less than the entirety of the Contracted Water or any assignment in connection with the sale of less than the entirety of the property described in Exhibit A, shall be effective unless approved in advance in writing by the District, such approval to be given, conditioned or withheld by the District in its sole discretion.

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

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

12.4. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

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

If to Irrigator:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

November 8, 2019

Email: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Upper Yampa:

Upper Yampa Water Conservancy District  
Attention: General Manager  
P.O. Box 883990  
Steamboat Springs, CO 80488  
Email: kmcbride@upperyampawater.com

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

**XIII. EFFECTIVE DATE:**

The effective date of this Contract shall be the date set forth below that the Board of Directors of the District entered its order granting an allotment contract to Irrigator for the Contracted Water.

IRRIGATOR:

\_\_\_\_\_

By: \_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

**ORDER ON APPLICATION**

Application having been made by Irrigator as a party interested in a water allotment from the Yamcolo Reservoir to the Upper Yampa Water Conservancy District ("District") and after a hearing by the Board of Directors of the District,

**IT IS HEREBY ORDERED** that the above application be granted and that an allotment contract for \_\_\_\_\_ acre-feet annually of water is hereby made to Irrigator from the Yamcolo Reservoir for the beneficial use as set forth in the above Contract upon the terms, conditions and manner of payment as herein specified.

UPPER YAMPA WATER CONSERVANCY  
DISTRICT

November 8, 2019

By: \_\_\_\_\_  
(Title)

I hereby certify that the above Order is entered by the Board of Directors of the Upper Yampa Water Conservancy District on the \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

\_\_\_\_\_  
Kevin McBride, Secretary

November 8, 2019

**EXHIBIT A  
TO  
PETITION TO  
UPPER YAMPA WATER CONSERVANCY DISTRICT  
FOR INDIVIDUAL IRRIGATOR WATER ALLOTMENT CONTRACT  
DESCRIPTION OF PROPERTY OF IRRIGATOR**

c)

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

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

**RECITALS**

- A. The District is a Colorado water conservancy district duly organized and existing pursuant to the Water Conservancy Act, Colorado Revised Statutes §§37-45-101, *et seq.*
- B. The Stillwater Ditch and Reservoirs Company (“Company”) is a mutual ditch and reservoir company organized and existing under Colorado law. The Company was originally organized to own and manage certain water rights and infrastructure through which those water rights are exercised. Those water rights are described as follows and are referred to collectively herein as the “Original Water Rights”:
  - (1) Absolute direct flow water rights decreed to the Stillwater Ditch for the diversion of 30.830 cubic feet per second (c.f.s.) from the Yampa (Bear) River with an adjudication date of June 8, 1910 and an appropriation date of September 23, 1903; and
  - (2) Absolute water storage rights decreed to Gardner Park Reservoir for the storage of 1,155.6 acre feet from Gardner Creek and other tributaries of the Yampa (Bear) River with an adjudication date of June 8, 1910 and an appropriation date of October 7, 1902.

The infrastructure through which the Original Water Rights described in subsection B(1) above are exercised and delivered is the Stillwater Ditch, and related structures,

- improvements, existing and future diversion and measuring facilities, easements, existing and future US Forest Service Special Use Permits, existing and future prescriptive and statutory right-of-way claims, and vested rights of way, but not including individual irrigator's laterals (the "Stillwater Ditch"). The infrastructure through which the Original Water Rights described in Subsection B(2) above are exercised and delivered includes Gardner Park Reservoir and related structures, improvements, existing and future diversion and measuring facilities, dam and outlet and spillway structures and ditch for delivery of storage releases into the Stillwater Ditch, easements, existing and future US Forest Service Special Use Permits, existing and future prescriptive and statutory right-of-way claims, and vested rights of way (the "Gardner Park Reservoir"). Stillwater Ditch and Gardner Park Reservoir infrastructure are sometimes herein collectively referred to as the "Stillwater Company Infrastructure."
- C. The Stillwater Ditch is also used to convey water diverted pursuant to the following other water storage rights: (i) those used for storage of water in Stillwater Reservoir No. 1 and Ramshorn Reservoir and available for release and usage by some of the Shareholders (the "Shareholder Other Reservoir Water Rights"), and (ii) those owned by the District for storage of water by the District in Yamcolo Reservoir (the "District Yamcolo Water Rights"). The Shareholder Other Reservoir Water Rights are not altered or affected by this Agreement. Neither the Company nor any of the Shareholders hold, own, or have knowledge of any conditional water rights decreed or claimed for diversion or storage in the Stillwater Company Infrastructure.
- D. In 2005, the Company conveyed title to the Original Water Rights and Gardner Park Reservoir to its individual shareholders and retained title to the Stillwater Ditch and, thereafter, by the Assignment of Stock and Water Delivery Agreement recorded in the records of the Clerk and Recorder of Routt County, Colorado on July 14, 2005 at Reception No. 621890 and the records of the Clerk and Recorder of Garfield County, Colorado on July 25, 2005 at Book 1709 Page 444 ("Stock Assignment Agreement"), all stock in the Company was transferred to the District. At the time of execution of this Agreement, the District remains the sole owner of all stock in the Company and owns and controls the Company.
- E. At the time of execution of this Agreement, the Shareholders, collectively, are the current owners of 100% of the Original Water Rights, Gardner Park Reservoir and the residual rights of the Shareholders under the Stock Assignment Agreement.
- F. The District has constructed certain improvements to the Stillwater Ditch, including but not limited to enlargement of the carrying capacity of the Stillwater Ditch designed to permit, in addition to the carriage of water diverted and delivered pursuant to the Original Water Rights and Shareholder Other Reservoir Water Rights, the carriage of water stored by the District in Yamcolo Reservoir and delivered through the Stillwater Ditch for (a) up to 4,000 AF to the District's contractees pursuant to individual water allotment contracts (the "District's Yamcolo Water"), plus (b) up to 445 AF of storage water from Yamcolo

Reservoir allocated by the District to the Yamcolo Irrigators Association (“YIA”) pursuant to Agreement dated January 9, 1981, as amended (the “YIA-District Allotment Contract”) and currently allocated by the YIA to its members Vail Hatt, Lawrence Ricca & Sons, and Five Pine LLC (collectively, the “Hatt Allocation”). At the time of execution of this Agreement, the carrying capacity of the Stillwater Ditch is approximately 62.5 c.f.s.

- G. Pursuant to the terms of the Stock Assignment Agreement, the District has been responsible for the operation and maintenance of the Stillwater Ditch and the delivery of water diverted pursuant to the Original Water Rights, the Shareholder Other Reservoir Water Rights, the Hatt Allocation and the District’s Yamcolo Water, and the Shareholders have paid an annual delivery payment to the District.
- H. The District desires to transfer to the Shareholders, and the Shareholders desire to assume, ownership and responsibility for the operation, repair, permitting, and maintenance of the Stillwater Company Infrastructure, and to thereafter exercise those responsibilities and conduct the business of operating and maintaining the Stillwater Company Infrastructure as shareholders of the Company. The District and the Shareholders also desire that, effective on and as of such assumption of ownership and responsibility, and subsequently through the life of the operation and use of the Stillwater Ditch, the Company agree with and perform certain covenants to the use and benefit of the District as set forth in this Agreement, and the Shareholders desire that, after such assumption of ownership and responsibility, they and their successors will covenant to cause the Company to comply with, honor, and perform such covenants with the District. By this Agreement, the Parties intend to set forth the terms of this transfer of ownership and responsibility, and the covenants, agreements, and promises of the parties which survive such transfer of ownership and responsibility, including remedies and procedures to be applicable in the event of default in or violation of such covenants, agreements, and promises.
- I. The portion of the Stillwater Ditch that traverses land owned by the United States Forest Service (“USFS”) was enlarged by the District. The District has obtained from the USFS a Special Use Permit (“SUP”) acknowledging and authorizing the enlargement of the Stillwater Ditch on USFS property (the "Ditch Enlargement"). The District has represented to the Shareholders that, to its knowledge, such SUP does not increase, decrease, alter, or affect whatever legal rights may exist for the original Stillwater Ditch right-of-way through the US Forest Service lands (“Legal Rights”), but the District does not warrant or represent to the Shareholders the past or current status of the Legal Rights. The Parties acknowledge that the SUP obtained by the District will terminate on the Effective Date and Company will be required to obtain a replacement special use permit for the Ditch Enlargement containing provisions which are expected to be substantially the same as the SUP (the "Replacement SUP").

- J. Immediately following the Effective Date the Shareholders have agreed to convey all of their interests in the Original Water Rights and the Gardner Park Reservoir to the Company.

## **AGREEMENT**

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

1. **INCORPORATION OF RECITALS.** The foregoing recitals are true and correct and are incorporated herein.
2. **CONVEYANCE OF SHARES.** For no monetary or other compensation to the District other than the covenants and agreements contained herein, the District has on the Effective Date conveyed to the Shareholders, or to others as otherwise mutually agreed by the Parties, by appropriate instrument(s), all of the District's right, title and interest in and to 100% of the shares in Company.
3. **WARRANTIES OF THE DISTRICT.** The District warrants to the Shareholders that on the Effective Date:
  - (a) It is the sole and exclusive owner of the shares being transferred and that the transfers are being made free and clear of all encumbrances, including but not limited to contractual obligations that would cause the Shareholders to incur costs or other obligations of any kind, but subject to the provisions of this Agreement with respect to post-Effective Date covenants, agreements and promises of the Shareholders and/or the Company to the District; and
  - (b) The Company is the sole and exclusive owner of the Stillwater Company Infrastructure, excluding Gardner Park Reservoir, which the Shareholders have agreed to convey to the Company immediately following the Effective Date, and that all such infrastructure is owned by the Company free and clear of any and all encumbrances, other than any claim by the United States that the expanded portion of the Stillwater Ditch was a trespass upon USFS property prior to the issuance of the USFS SUP.
4. **WARRANTIES OF THE SHAREHOLDERS.** The Shareholders warrant to the District that as of the Effective Date, the Shareholders own 100% of the Original Water Rights, Gardner Park Reservoir and the residual rights of the Shareholders under the Stock Assignment Agreement and that the consent to the transaction and covenants described in this Agreement of any party holding a security or other interest in the rights of the Shareholders under the Stock Assignment Agreement has been obtained or is not required.
5. **MANDATORY PROVISIONS OF THE COMPANY ARTICLES.** For the purpose of recognizing and protecting for the life of the operation of the Stillwater Ditch the

District's right to deliver the District's Yamcolo Water through the Stillwater Ditch as described in subsection (b) below, the Articles of Incorporation of the Company have been amended as of the Effective Date as set forth in the following subparagraphs, which amendments shall be irrevocable.

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

(b) The District shall have and own a third party beneficial interest in the Company and the Stillwater Company Infrastructure in proportion to the rights of delivery of the District's Yamcolo Water through the Stillwater Ditch as described in subsection (c) below, but without ownership of any shares in the Company and without any voting rights in the Company.

(c) The existing carriage capacity of the Stillwater Ditch will be allocated and maintained by the Company for the life of the existence and operation of the Stillwater Ditch as follows:

i. The first 35.5 c.f.s. of the capacity of the Stillwater Ditch ("Shareholder Capacity") shall be reserved for use by the Shareholders to convey water lawfully diverted under the Original Water Rights, and/or the Shareholder Other Reservoir Water Rights, In addition, to the extent capacity is available, the Shareholder Capacity may also be used by Shareholders to deliver the District's Yamcolo Water and the Hatt Allocation to which a Shareholder may be entitled. The Shareholder Capacity shall be allocated among the Shareholders on a *pro rata* basis, according to the number of shares owned. No carriage contract shall be required for use of the Shareholder Capacity but such use may be subject to payment of assessments and carriage fees to Company Shareholders as reasonably established by the Company. Water lawfully diverted under any other water right than the Original Water Rights, the District's Yamcolo Water, the Hatt Allocation or the Shareholder Other Reservoir Water Rights shall not be conveyed within or under the Shareholder Capacity. The Company will not divert or deliver unadjudicated water from the Yampa or Bear River into the Stillwater Ditch, but all water diverted into the Stillwater Ditch will be accounted for under the Original Water Rights or Shareholder Other Reservoir Water Rights or the contracted water described in Subsection 5(c)(ii) below. In the event that the capacity of the Stillwater Ditch suffers a reduction for any

reason, the Shareholder Capacity shall remain intact; in such event, deliveries of water pursuant to carriage Contracts in the Carriage Contract Capacity shall be reduced proportionally and pro rata, without discrimination, as necessary to preserve the Shareholder Capacity to the greatest extent possible.

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

a. 4.5 cfs of the remaining 27 c.f.s Carriage Contract Capacity shall be reserved for the delivery of the Hatt Allocation. The parties acknowledge that the Hatt Allocation capacity among the YIA members is determined by the YIA and not by either the District or the Company or the allottees from YIA, and that the Hatt Allocation is subject to the YIA-District Allotment Contract as now exists and as may hereafter be amended.

b. 2.5 c.f.s. of the remaining 27 cfs Carriage Contract Capacity (the “District Non-Ag Water Capacity) shall be reserved to and for the District, at the option of the District exercisable as hereinbelow provided, for the delivery of up to 500 acre feet annually that may be stored by the District in Yamcolo Reservoir and allocated by the District to its Original Municipal Pool for municipal, industrial, augmentation or other non-agricultural uses (the “District’s 500 AF Non-Ag Water”) and further allocated pursuant to individual contracts between the District and the users of such 500 AF of stored water; provided, however, that such reservation of capacity shall only be reserved to and for the District commencing March 1 of the calendar year after the calendar year in which the District gives written notice of exercise of such option to the Company (the “Non-Ag District Capacity Commencement”). Until the date of the Non-Ag District Capacity Commencement for the District, such 2.5 cfs District Non-Ag Water Capacity shall be added to the capacity reserved to and for the District under Subsection 5(c) (ii)(c) below. No portion of the District’s 500 AF Non-Ag Water will be delivered to a lateral of the Stillwater Ditch unless unused capacity exists in the lateral. In the event that the District desires to have some portion of the District’s 500 AF Non-Ag Water delivered into a lateral of the Stillwater Ditch that lacks the unused capacity necessary to accept such water, the District shall be responsible for constructing, at its sole expense, any and all improvements to the lateral, including but not limited to enlargements, headgates, measuring devices, and easements, necessary for the lateral to accommodate such additional water. Prior to the commencement of construction of such improvements, the District shall submit plans for such improvements to and receive the approval of the Company, whose approval will not unreasonably be withheld, delayed, or conditioned. No such water shall be delivered by the Company until such improvements are completed and approved by the Company. Subject to the foregoing limitations, after the Non-Ag District Capacity Commencement, if the District enters into allotment contracts for

delivery of any or all of the District's 500 AF Non-Ag Water through the Stillwater Ditch, then the Company shall enter into carriage contracts on non-discriminatory terms with such allottees.

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

iii. Only to the extent that the 27 c.f.s. of capacity of the Stillwater Ditch reserved pursuant to Subsection 5(c)(ii) above for the Hatt Allocation, the District's Yamcolo Water and the District's 500 AF Non-Ag Water is not used during any water year for delivery of such water, then such unused capacity may be used by Shareholders and non-shareholders for diversion and delivery of absolute water rights from the Yampa River adjudicated prior to January 1, 2019, as may be allocated by the Company. However, the previous sentence is subject to the perpetual limitations that (A) the Stillwater Ditch and its capacity shall never be allocated or used or carried to deliver water for first use of water other than for irrigation and stockwater uses (except for the District 500 AF Non-Ag Water), and (B) the quantity of water carried by the Stillwater Ditch in such 27 c.f.s. of capacity for delivery into the Colorado River Basin in any water year shall never exceed the lesser of 4,000 AF or the sum of (a) the quantity of the District's Yamcolo Water delivered or expected to be delivered into the Colorado River Basin that water year, plus (b) the Hatt Allocation delivered or expected to be delivered into the Colorado River Basin (not to exceed in any event 445 AF), plus (c) water allocated and delivered pursuant to the preceding sentence, and (C) are set forth under Subsections 5(d) and 5(e) below.

iv. For purposes of illustration, the allocation of capacity within the Ditch is graphically depicted on Exhibit A attached hereto. In the event of a conflict between Exhibit A and the provisions of this Section 5(c), this Section 5(c) shall be controlling.

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

(e) Except for the District 500 AF Non-Ag Water, the Company shall not divert or deliver water through the Stillwater Ditch into the Colorado River Basin for purposes

other than irrigation and/or stockwater uses. The Company will not deliver more than 445 AF of the Hatt Allocation into the Colorado River Drainage in any water year. If any Shareholder or any owner or YIA member contracts with any person or entity to voluntarily reduce consumptive use of any of the Original Water Rights and/or the Shareholder Other Reservoir Water Rights or the Hatt Allocation or the District's Yamcolo Water, pursuant to any demand management or conservation practice or program or contract or augmentation plan or substitute supply plan or otherwise, whether temporary or permanently (any or all of which is herein referred to as a "Demand Reduction/Augmentation Supply Plan"), then the water otherwise available to be diverted into the Stillwater Ditch for such Shareholder or owner or YIA member which is subject to such Demand Reduction/Augmentation Plan shall not be diverted from the Yampa (Bear) River or below the outlet of Gardner Park Reservoir into the Stillwater Ditch but such water shall remain in the Yampa River or its tributaries to flow only within the Yampa River system below the Stillwater Ditch headgate. The limitations of the Hatt Allocation plus the preceding sentence shall not apply to re-use water in the Colorado River basin after first use of Yampa River water exported into the Colorado River basin and first used for irrigation and stockwater purposes, but only to the extent such re-use water has been captured and controlled within the boundary of the District and has been quantified as to location and amount by final decree of the Water Court for Water Division 6.

(f) No practices of the Company and no provision of the Bylaws or rules or regulations of the Company shall be interpreted to conflict with or alter or amend or modify subparagraphs (a) through (e) of this Section 5. The provisions of the Articles of Incorporation that incorporate subparagraphs (a) through (e) of this Section 5 shall not be amended, modified, revoked, surrendered, deleted, or terminated without in each instance the prior written consent of the Board of Directors of the District, whose consent may be withheld, delayed or conditioned in its sole discretion. Upon written request from the District from time to time, the Company will provide to the District copies of the Company's then current articles of incorporation, bylaws, and rules and regulations of operation. Such documents shall not be contrary to the terms of this Agreement.

(g) If for a period exceeding five (5) consecutive years commencing after 2041 the cumulative total of allotment contracts in effect for the District's Yamcolo Water each year during such 5-year period is less than 1300 AF, and during such same 5-year period the Company in any year never holds carriage contracts exceeding 50% of the Contract Carriage Capacity allocated to the District's Yamcolo Water under Sections 5(c)(ii)(a) and (c) above (the "District's Yamcolo Water Contract Carriage Capacity"), the Company shall have the right (but not the obligation) to give the District notice (the "Deficit Notice") of the percentage of the District's Yamcolo Water Contract Carriage Capacity for which the Company has not entered into carriage contracts for each of the years of the 5-year period described in such Deficit Notice ("Contract Carriage Capacity Deficit"). Thereafter the District will enter into negotiations with the Company in good faith to



seek to provide some financial relief to the Company from the incremental adverse financial impact to the Company caused by the Contract Carriage Capacity Deficit, until carriage contracts exceeding 50% of the Contract Carriage Capacity allocated to the District's Yamcolo Water under Section 5(c) (ii)(c) hereof is again achieved by the Company. No notice shall be given under the first sentence of this Section 5(g) before November 1, 2041. If a year occurs in which there is no Contract Carriage Capacity Deficit below 50% after any Deficit Notice has been given, the financial relief as may be provided by the District pursuant to this Section 5(g) shall be terminated and shall not again apply unless the requirements of the first sentence of this Section 5(g) are again satisfied.

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

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

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

(c) The existing carriage capacity of the Stillwater Ditch will be allocated and maintained and operated by the Company for the life of the existence and operation of the Stillwater Ditch pursuant to and in accordance with all of the provisions and limitations set forth in Subsections 5(c), 5(d), 5(e), 5(f) and 5(g) above.

(d) The Company shall not divert or deliver water in the Stillwater Ditch after October 11 of any year; the Company shall not divert or deliver water in the Stillwater Ditch in any year before May 1 or the date in the springtime that the headgates, diversion structure and Ditch are free of ice and snow and capable of transporting water, whichever occurs later.

(e) Except for the District 500 AF Non-Ag Water, the Company shall not divert or deliver water through the Stillwater Ditch into the Colorado River Basin for purposes other than agricultural irrigation and/or stockwater uses. The Company will not deliver more than 445 AF of the Hatt Allocation into the Colorado River Drainage in any water year. The Company will not divert or deliver water into the Stillwater Ditch contrary to or in alteration or violation of the limitations set forth in Subsection 5(e) above.

(f) No practices of the Company and no provision of the Bylaws or rules or regulations of the Company shall be interpreted to conflict with or alter or amend or modify subparagraphs (a) through (g) of Section 5 above. The provisions of the Articles of Incorporation that incorporate subparagraphs (a) through (g) of Section 5 shall not be amended, modified, revoked, surrendered, deleted, or terminated without in each instance the prior written consent of the Board of Directors of the District, whose consent may be withheld, delayed or conditioned in its sole discretion.

(g) Promptly following the Effective Date, the Company shall make application for and obtain the Replacement SUP and thereafter during the life of the Stillwater Ditch keep the Replacement SUP in place and in good standing in compliance with all requirements of the SUP and the USFS. If an amendment to the Replacement SUP, a new SUP or some other authorization from the USFS or other regulatory authority is required in order to carry and convey the District 500 AF Non-Ag Water within the Stillwater Ditch, the Company at the District's request shall apply for such authorization(s) (the "Non-Ag Water Authorizations") and process such applications with diligence and in good faith. All cost and expense of obtaining the Non-Ag Water Authorizations incurred by the Company shall be paid directly by the District or promptly reimbursed by the District to the Company on request. The Company shall not be under any obligation to carry and convey the District 500 AF Non-Ag Water within the Stillwater Ditch until the Non-Ag Water Authorizations are obtained.

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

During any period of time the Company is relieved from its obligation to maintain the Stillwater Ditch to accommodate delivery of not less than 62.5 c.f.s as required under this Section 6(h) as a result of Force Majeur Events, the reduced carriage capacity of the Stillwater Ditch will be allocated first to the Shareholder Capacity until fully satisfied and then pro rata to the Hatt Allocation, the District's Yamcolo Water and the District's 500 AF Non-Ag Water.

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

7. **INSPECTION.** Prior to the Effective Date, the Parties have conducted a thorough inspection of the Stillwater Ditch to document its condition. As of the Effective Date, the Ditch, diversion structure, measuring structures, laterals, headgates and turn-outs, flumes, tail ditch, and piping are in serviceable condition and capable of making delivery of water as contemplated by this Agreement. From and after the Effective Date, the District will not assume or undertake any obligation with respect to the Stillwater Ditch, other than payment of the Reserved Carriage Capacity Fee described below, and will not assume or undertake any obligation to construct, repair, maintain, replace, manage, or improve the Stillwater Company Infrastructure, except to the extent necessary to ensure compliance with the following sentence. However, the District will, at its sole cost and expense, design and construct, with the permission and approval of the US Forest Service and the Division Engineer for Water Division No. 6, a substantial replacement flume and measuring device down-ditch from the point of entry onto the Ditch from the Bear River, which are the subject of the "repair" order from the Water Commissioner ("Replacement Flume"). The Replacement Flume shall be completed no later than July 1, 2020.
8. **RECONVEYANCE OF EASEMENTS.** On the Effective Date, the District conveyed to the Company by quitclaim deed ("Quitclaim Deed") the easement for the Ditch that was granted to the District by the original shareholders under Paragraph 6 of the Stock Assignment Agreement, including all interests that the District may have in and to any of the Stillwater Company Infrastructure.

9. **CARRIAGE FEE.** To the extent not paid by an allottee of the District pursuant to a carriage contract with a third party under Subsection 5(c) (ii)(b) above, the Company may assess and charge to the District a non-discriminatory carriage fee associated with the right of carriage of the District's 500 AF Non-Ag Water each water year (the "Reserved Carriage Capacity Fee"). The amount of the Reserved Carriage Capacity Fee shall be determined by the Company annually in accordance with its Articles of Incorporation and Bylaws as a *pro rata* portion of the anticipated cost of administration, operation, maintenance, repair, replacement and other expenses of the Company consistent (and without discrimination) with the manner in which assessments and carriage fees are determined for the Company's shareholders, and shall be payable by the District to the Company within 30 days after delivery of an invoice from the Company.
10. **NOTICE.** By their signatures on this Agreement, all Shareholders have authorized the Company to receive notices for purposes of this Agreement. All notices and other communications pertaining to this Agreement shall be transmitted in writing and sent by U.S. Mail, postage prepaid, to the individuals and addresses set forth in this paragraph and shall be deemed duly given when received by said individuals. At any time during which this Agreement remains in effect, the identities and addresses of these individuals may be changed by notice to the others provided as set forth in this paragraph.

To the Shareholders and  
Stillwater Ditch and Reservoirs Company:

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

To the District:

Upper Yampa Water Conservancy District  
Attn: District Manager  
P.O. Box 775529  
Steamboat Springs, CO 80477

11. **TERMINATION OF PRIOR AGREEMENT.** On the Effective Date, all terms of the Stock Assignment Agreement are terminated and released without recourse. The Parties acknowledge and agree that as of the Effective Date the District has no ownership interest or liability or responsibility in Gardner Park Reservoir, Ramshorn Reservoir, or Stillwater Reservoir, except as set forth in the Agreement for Limited Services for Stillwater between the District and the Bear River Reservoir Company dated June 3, 2019.
12. **DEFAULT AND REMEDIES.** The failure of a party to strictly comply with its obligations under this Agreement, including the breach of any promise or covenant of

such party shall constitute an event of default and entitle the other party to all remedies available at law or in equity. The parties acknowledge and agree that any breach or violation or threatened breach or violation by the Company of its covenants and promises under this Agreement would cause immediate, substantial and irreparable injury to the District for which there is no adequate remedy at law. Therefore, the District shall have the right, in addition to damages and any other remedies available at law or in equity, to specifically enforce the provisions of this Agreement and to enjoin the Company and all others acting in concert with the Company from violating this Agreement. The Company waives any requirement for the posting of any bond or other security prior to the granting of any temporary restraining order or other injunctive relief in any action of the District to enjoin violations of this Agreement. Further, if the Company fails to properly maintain the Stillwater Ditch as required by Section 6 (h) above, and such failure results in a reduction of the Carriage Contract Capacity below 27 c.f.s and the inability of the Stillwater Ditch to accommodate delivery of water under Section 5(c)(ii) above to persons or entities contracted for such water deliveries, the District, after not less than 30 days' notice to the Company, shall have the right, but not the obligation, to undertake such maintenance and charge the cost thereof to the Shareholders on a pro rata basis. In addition, if the failure of the company to maintain Stillwater Ditch as required by Section 6 (h) above continues for two irrigation seasons, and such failure results in a reduction of the Carriage Contract Capacity below 27 c.f.s and the inability of the Stillwater Ditch to accommodate delivery of water under Section 5(c)(ii) above to persons or entities contracted for such water deliveries during such period, the District shall have the right to compel the Shareholders to reconvey all of their shares in the Company to the District and the Stock Assignment Agreement shall be reinstated effective on the date the District reacquires all the shares of the Company, but not including the Original Water Rights and Gardner Park Reservoir which shall be reconveyed by the Company to the Shareholders prior to such reacquisition.

13. **SEVERABILITY.** If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided, in order to achieve the intent of the parties to this Agreement to the fullest extent possible. In any event, all other provisions of this Agreement shall be deemed valid and enforceable to the fullest extent possible.
14. **NO ASSIGNMENT.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as otherwise provided herein, neither the District, the Company nor any Shareholder may assign or delegate their respective rights or obligations hereunder without the consent of the other parties, which consent may be withheld by the party whose consent is requested in its sole discretion. The District may assign this Agreement in connection with the transfer of Yamcolo Reservoir by the District without the consent of the Company or any Shareholder provided that the transferee assumes the rights and obligations of the District under this Agreement. The

Company may assign its rights and obligations under this Agreement without the consent of the District or any Shareholder in connection with the merger or consolidation of Company where the articles and governing documents of the surviving or new company contain the provisions set forth in paragraph 5 above and the new or surviving company affirms, assumes and agrees to perform in writing all obligations of the Company under this Agreement. Any attempted assignments or delegations not in accordance with the foregoing shall be void and of no effect.

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

Executed on the dates indicated below.

UPPER YAMPA WATER CONSERVANCY DISTRICT

By:

Kevin McBride, Manager

Date: \_\_\_\_\_

[SIGNATURES OF SHAREHOLDERS ON FOLLOWING PAGE]

SHAREHOLDERS:

FIVE PINE LLC

By: \_\_\_\_\_  
Title

Date: \_\_\_\_\_

LONE CREEK LAND COMPANY

By: \_\_\_\_\_  
Title

Date: \_\_\_\_\_

BAR A RANCH

By: \_\_\_\_\_  
Title

Date: \_\_\_\_\_

\_\_\_\_\_  
TIMOTHY KIRKPATRICK

Date: \_\_\_\_\_

\_\_\_\_\_  
ANNE COLLINS

Date: \_\_\_\_\_

LAWRENCE RICCA & SONS

By: \_\_\_\_\_  
Randy Ricca Title

Date: \_\_\_\_\_

CLYNKE'S BEAR RIVER RANCH



By: \_\_\_\_\_  
Title

Date: \_\_\_\_\_

TOWN OF YAMPA

By: \_\_\_\_\_  
Title

Date: \_\_\_\_\_

\_\_\_\_\_  
KEVIN KRAUSGRILL

Date: \_\_\_\_\_

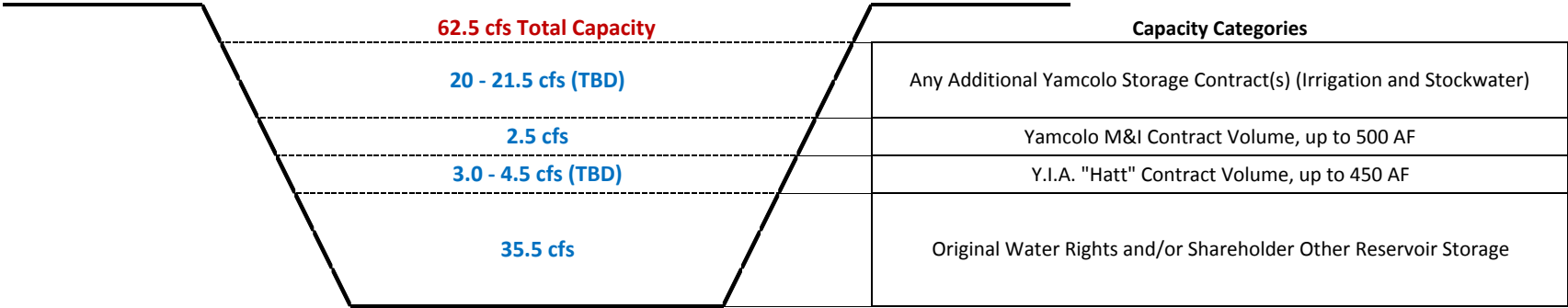
\_\_\_\_\_  
JOHN REDMOND

Date: \_\_\_\_\_

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**Stillwater Ditch  
Proposed Ditch Capacity Allocation**



**DRAFT**



From: Bob Weiss  
Sent: Sunday, January 05, 2020 3:55 PM  
To: Andrea Schaffner; Ken Brenner; Thomas R. Sharp (tom@tomsharp.com); Jeff Houpt; Rick Milway  
Cc: 'Kevin McBride (kmcbride@upperyampawater.com)'; 'arossi@upperyampawater.com'  
Subject: RE: Stillwater Ditch negotiations  
Attachments: Agreement for Transfer of Shares - Comparison 10-13-2019 to1-5-2020.pdf; Agreement for Transfer of Shares -RGW 1-5-2020 clean.pdf

Andi, Rick and Jeff,  
As agreed, here is redlined and clean revision to the Stillwater Ditch reconveyance

agreement. This is redlined from the 10-13-2019 version.  
As you may have gathered, several Upper Yampa Board members are becoming increasingly concerned that there are forces at work in the water world that create uncertainty and make it difficult to anticipate the future and to resolve outstanding issues concerning the ditch operation. The thinking is that it might be

better to defer negotiations over transfer of ownership of the Ditch for 3-5 years and revisit the question when everyone has a better grip on Big River issues as they may impact local issues and practices. There is also concern that there is simply not enough time to get the signatures of all the Stillwater Ditch shareholders and for Upper Yampa to know whether it is running the Ditch in 2020 and determine carriage pricing. Further, if we do reach agreement we will need time to verify that the signatures of all the correct shareholders are being obtained.

Nevertheless, the Negotiating Committee is prepared to seek the approval of the Board for the attached version of this Agreement at the January 15, 2020 Board meeting, provided that the Agreement is agreed to and fully executed by all Shareholders no later than February 7, 2020. If this deadline cannot be met and further negotiations are deferred for 3-5 years, the Negotiating Committee will recommend to the Upper Yampa Board that the Shareholders be reimbursed for the reasonable attorney's fees they have incurred in this matter.

With respect to the changes to the Agreement, you will see that the Section 12 remedies have been revised along the lines discussed at our meeting. You will also see that the provisions regarding use of the ditch capacity has been clarified to address some of the concerns the Upper Yampa Board has regarding demand management and similar recent developments. Finally, the Negotiating Committee has looked carefully at each place the Consent of the District is required in the Agreement for changes by the Company and believes the District should retain the right to deny changes where the District determines in the exercise of its discretion that such changes should not be made.

Bob

Robert G. Weiss  
Weiss and Van Scoyk, LLP  
1625 Mid Valley Drive, Suite 1, PMB 82  
Steamboat Springs, CO 80487  
(970) 846-8637 cell

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From: Andrea Schaffner [mailto:hayschaffner@gmail.com]  
Sent: Tuesday, December 31, 2019 5:24 AM  
To: Bob Weiss <bweiss@wvsc.com>; Ken Brenner <kpbrennersteamboat@gmail.com>; Thomas R. Sharp (tom@tomsharp.com) <tom@tomsharp.com>; Jeff Houpt <Jeff@bhjlegal.com>; Rick Milway <cindiemilwayyampa@gmail.com>  
Subject: Stillwater Ditch negotiations

Bob, Ken or Tom,

Could you let us know the likely status of the Ditch negotiations when it's possible? We're on hold at our end until we get some indication from you. We realize that nothing will be official until your regular meeting in mid-January.

Thanks very much,  
Andi

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# BOARD COMMUNICATION FORM

## January 15, 2020 Meeting

(Not Confidential and Privileged Attorney-Client Communication)

**From:** Robert Weiss, legal counsel

**Date of memo:** January 9, 2020

**Item:** Resolution re Individual Irrigator contract renewal process

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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**Request/Issue and Background Information:** The Negotiating Committee believes the District should put in place a process for the renewal of the 3500 AF of water allocated to the "Individual Irrigators" out of the "Individual Contract Pool" in Yamcolo Reservoir. The current contracts expired July 15, 2019 and the goal is to have in place new contracts for the 2020 irrigation season and continuing through November 1, 2041 for a total of 22 irrigation seasons.

The attached Resolution establishes a process to renew the contracts, which starts by sending out a renewal offer to current irrigators. If the entire 3500 AF is not taken up then the Resolution establishes a process to make available what's left. This process has been under discussion with Yamcolo Irrigators Association (YIA) and the Individual Irrigators for quite some time and previously appeared in the proposed amendment to the YIA Agreement. However the Negotiating Committee has concluded that it would better for the Board to approve this process by Resolution and delete from the Amendment since this is a one-time matter and doesn't need to be placed in a long-term contract.

**III. Staff Recommendation:** Approve the Resolution.

**IV. Legal Issues:** These issues are addressed above.

**V. Consistency with Board Goals and Policies:** This is consistent Board Policy.

**VI. Fiscal Impact:** N/A

**Attachments:** Resolution



**UPPER YAMPA WATER CONSERVANCY DISTRICT**

**RESOLUTION  
January 15, 2020**

**A RESOLUTION ESTABLISHING A PROCESS FOR THE GRANT OF ALLOTMENT CONTRACTS FOR YAMCOLO RESERVOIR WATER FOR IRRIGATION AND STOCK WATER PURPOSES FROM THE INDIVIDUAL IRRIGATOR POOL**

**WHEREAS**, the Upper Yampa Water Conservancy District (the "District") has previously entered in to mostly duplicative 30 year agreements with persons or entities who for the purpose of this Resolution shall be referred to as the "Current Irrigators" for the delivery of 4000 acre-feet of stored water from Yamcolo Reservoir water on an annual basis for irrigation purposes (the "Prior Individual Contract Pool"); and

**WHEREAS**, such agreements expired on July 15, 2019; and

**WHEREAS**, the storage capacity in Yamcolo Reservoir in excess of the approximately 1,000 AF of conservation pool has been allocated to the pools described below (collectively the "Pools" and individually a "Pool") by the Board of the Directors of the District (the "Board"), and such allocation shall remain in effect indefinitely except as from time to time amended by Resolution of the Board in its discretion:

(1) Municipal and/or Industrial use, augmentation use, other non-agricultural uses including (but not limited to) recreational and piscatorial and instream flow uses, and/or other lawful use by a Municipal or Industrial or other non-agricultural customer, for up to 1,500 acre-feet AF, including up to 500 AF which is re-allocated to this Pool from the Prior Individual Contract Pool , which re-allocated 500 AF may also be used for irrigation and stock water uses (such 1,500 AF, in all, being herein referred to as the "Original Municipal Pool");

(2) Municipal and/or Industrial use, augmentation use, other non-agricultural uses including (but not limited to) recreational and piscatorial and instream flow uses, and/or other lawful use by a Municipal or Industrial or other non-agricultural customer, for up to 3,500 AF, such Pool to consist of storage water (a) recontracted for any or all such uses after termination of any Renewal Irrigation Allotment Contracts (as defined below) to the extent the agricultural user and District do not renew such Individual Irrigator Contract, and (b) available to be contracted for such uses pursuant to Paragraph 4 below (this Pool being herein referred to as the "Enlarged Municipal Pool");

(3) Irrigation and stock watering uses only for the 3,000 AF allocated to the Yamcolo Irrigators Association ("YIA") (such 3,000 AF allocated to the Yamcolo Irrigators Association is herein referred to as the "YIA Pool")

(4) Municipal and Industrial and Domestic and Irrigation and Commercial and Stock Watering and Snowmaking and Firefighting and Recreational and Piscatorial and Augmentation and Instream Flow uses, including any beneficial uses permitted under water rights decrees of the

District and including delivery to and use within the Colorado River Basin and including re-use and successive uses of return flows to extinction for any lawful beneficial use, directly or by exchange, for 3,500 AF (the "Individual Contract Pool"). Such Individual Contract Pool was formerly the 4,000 AF known as the Prior Individual Contract Pool which had previously since inception of Yamcolo Reservoir been first allocated to Colorado Ute Electric Association and later re-allocated to individual irrigators primarily using deliveries through the Stillwater Ditch, but has now been reduced to not more than 3,500 AF by the re-allocation of the Reallocated 500 AF to the Original Municipal Pool as described in Subparagraph (1) above.

(5) Any Lawful Purpose Permitted by District Water Decrees, directly or by exchange, for all water stored in Yamcolo Reservoir under the Yamcolo Reservoir Second Enlargement (the "Enlargement Pool"), or stored under any Yamcolo Reservoir re-fill decrees (the "Refill Pool").

**WHEREAS**, the District intends to offer new individual contracts for allotment of storage water out of the Individual Contract Pool to the Current Irrigators. These individual contracts will be limited to irrigation and/or stock water uses and for terms ending no later than November of 2041 ("Renewal Irrigation Allotment Contracts").

**WHEREAS**, one or more of such Renewal Irrigation Allotment Contracts will have an "off ramp" permitting the District to permanently reduce the quantity of water allotted by 500 AF effective November 1, 2030, by written notice given prior to such date.

**WHEREAS**, by this Resolution the Board of Directors of the District desires to establish the process by which it will offer to enter into Renewal Irrigation Allotment Contracts for the allotment of up to 3,500 acre feet of such water from such Pool in Yamcolo Reservoir.

**NOW THEREFORE**, be it resolved by the Board of Directors of the Upper Yampa Water Conservancy District, as follows.

1. The District shall offer Renewal Irrigation Allotment Contracts for Yamcolo storage water out of the Individual Irrigators Pool on the District's standard allotment contract form no later than March 1, 2020 to each of the Current Irrigators in the same amount such irrigator had under contract deliverable out of the Prior Individual Contract Pool from Yamcolo Reservoir on July 15, 2019, except that the allotment contract offered to \_\_\_\_\_ shall be for \_\_\_\_\_ acre feet. Determination of the identity of each of the Current Irrigators shall be based on the billing records of the District and in the event of any question or dispute regarding the identity, the amount of water to be offered, the description of the property on which the water may be used or other matter involving the completion of the allotment contracting process the decision of the General Manager on such question or dispute shall be conclusive and not appealable to the Board.
2. If prior to April 1, 2020, the Current Irrigators take and execute Renewal Irrigation Allotment Contracts through 2041, and applicable Stillwater Ditch carriage contracts, for less than 3,500 AF, then in April of 2020, the remaining uncontracted portion of such 3,500 AF will first be offered collectively to (a) any irrigators who do not have Renewal Irrigation Allotment Contracts but who own and have historically diverted and delivered water for agricultural purposes down the Stillwater Ditch, for the purpose of using any such allotment contracts only through delivery in the Stillwater Ditch, and (b) irrigators who hold current Individual Irrigator Contracts;

3. If by May 1, 2020, a remainder uncontracted portion of such 3,500 AF still exists, then the remaining uncontracted portion of such 3,500 AF will be offered in May of 2020 to the members of YIA (but treated as part of the Individual Contract Pool), to accept on a first come-first served basis until such uncontracted portion is committed;

4. If by June 1, 2020, there still remains an uncontracted portion of such 3,500 AF, the District may keep such remaining shortage as uncontracted water in the Individual Contract Pool, may from time to time in its discretion contract such water for agricultural purposes on a short term basis, or may re-allocate such remaining shortage to the Enlarged Municipal Pool and contract such remaining shortage for M&I or augmentation or any other non-agricultural uses.

5. The allocation of the contract provision providing for reduction of Additional 500 AF among the Renewal Irrigation Allotment Contracts under the “off-ramp” described in the 5<sup>th</sup> WHEREAS clause above shall be determined by the General Manger in his discretion in consultation with the Individual Irrigators.

**READ AND RESOLVED** effective the 15<sup>th</sup> day of January, 2020.

Upper Yampa Water  
Conservancy District

By: \_\_\_\_\_  
Ken Brenner, President

e)

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# BOARD COMMUNICATION FORM

January 15, 2020 Meeting

**From:** Bob Weiss, Legal Counsel

**Date:** January 8, 2020

**Item:** Board Appointments

DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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**I. Request/Issue and Background Information:** The terms of Directors Haskins, Brenner and Colby expire March 8, 2020. Appointments are made by the Chief Judge.

State Law says this: *Not more than sixty days and not less than forty-five days prior to expiration of a director's term, the conservancy district shall publish notice, once in a newspaper of general circulation within the district, that applications for appointment as director will be accepted by the court until thirty days prior to the expiration of the director's term. The notice shall specify the address of the court to which resumes may be sent, shall specify that the applicant must have resided within the district for a period of one year and be the owner of real property within the district, and, when applicable by decree or revised decree, shall specify that the applicant must be the owner of real property within the particular county whose director's term is expiring.*

We will publish January 12, 2020. The deadline for applications is February 7, 2020. A copy of the notice that will be published is attached.

**II. Summary and Alternatives:** N/A

**III. Staff Recommendation:** Staff will assist applicants in filing application with the Court. If such assistance is desired, Karina Craig should be contacted well before the application deadline to discuss.

**IV. Legal Issues:** Legal issues are identified above.

**V. Consistency with Board Goals and Policies:** N/A

**VI. Fiscal Impact:** N/A

## **PUBLIC NOTICE**

### **APPLICATIONS FOR APPOINTMENT OF DIRECTORS OF THE UPPER YAMPA WATER CONSERVANCY DISTRICT (3 Directors to be Appointed to Four Year Terms Starting March 8, 2020)**

**NOTICE IS HEREBY GIVEN** that applications for appointment of three (3) directors of the Upper Yampa Water Conservancy District are being accepted by the Clerk of the Combined Court, Routt County Courthouse, P.O. Box 773117, Steamboat Springs, Colorado 80477. Applications with a resume showing a background in agricultural, municipal, industrial and other interests in the beneficial use of water within the District must be received by the Clerk no later than February 7, 2020 at the address set forth above. An application form may be requested from Karina Craig, Office Manager, at [kcraig@upperyampawater.com](mailto:kcraig@upperyampawater.com). To be eligible, an applicant must have resided within the Upper Yampa Water Conservancy District for a period of one year and be the owner of real property within the District. In addition, the applicant must be a resident of the division which he seeks to represent.

One Board member will be appointed from each of the following divisions for a four-year term beginning March 8, 2020.

Division 1 (Hayden area) which consists of that part of the District lying West from the East boundary of Range 87 West of the 6th P.M., including all that part of the District contained in Moffat County.

Division 2 (Steamboat Springs area) which consists of that part of the District lying East of the West boundary of Range 86 West of the 6th P.M. and North of the South boundary of Township 6 North of the 6th P.M.

Division 3 (Oak Creek/Yampa area) which consists of that part of the District lying East of the West boundary of Range 86 West of the 6th p.m. and South of the North boundary of Township 5 North of the 6th P.M.

A map showing the District and the boundaries of each division within the District is available for inspection on the District website at <http://www.upperyampawater.com/> or in the office of the District located at 2220 Curve Plaza Ste. 201, Steamboat Springs, Colorado 80487.

Information about the District is available on the District's website. Questions regarding the District and the responsibilities of Directors should be directed to Kevin McBride, General Manager, at 970 871-1035.

Date of Publication: January 12, 2020

UPPER YAMPA WATER CONSERVANCY DISTRICT

By: /S/ Kevin McBride  
Kevin McBride, Manager



a)

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## BOARD COMMUNICATION FORM

**From:** Andy Rossi

**Date:** 01/08/20

**Item:** Reservoir Water Status

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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

Water storage data for Yamcolo Reservoir and Stagecoach Reservoir are included as reference materials for a summary discussion of the 2019 and 2020 water years to date.

**II. Summary and Alternatives:**

NA

**III. Staff Recommendation:**

NA

**IV. Legal Issues:**

NA

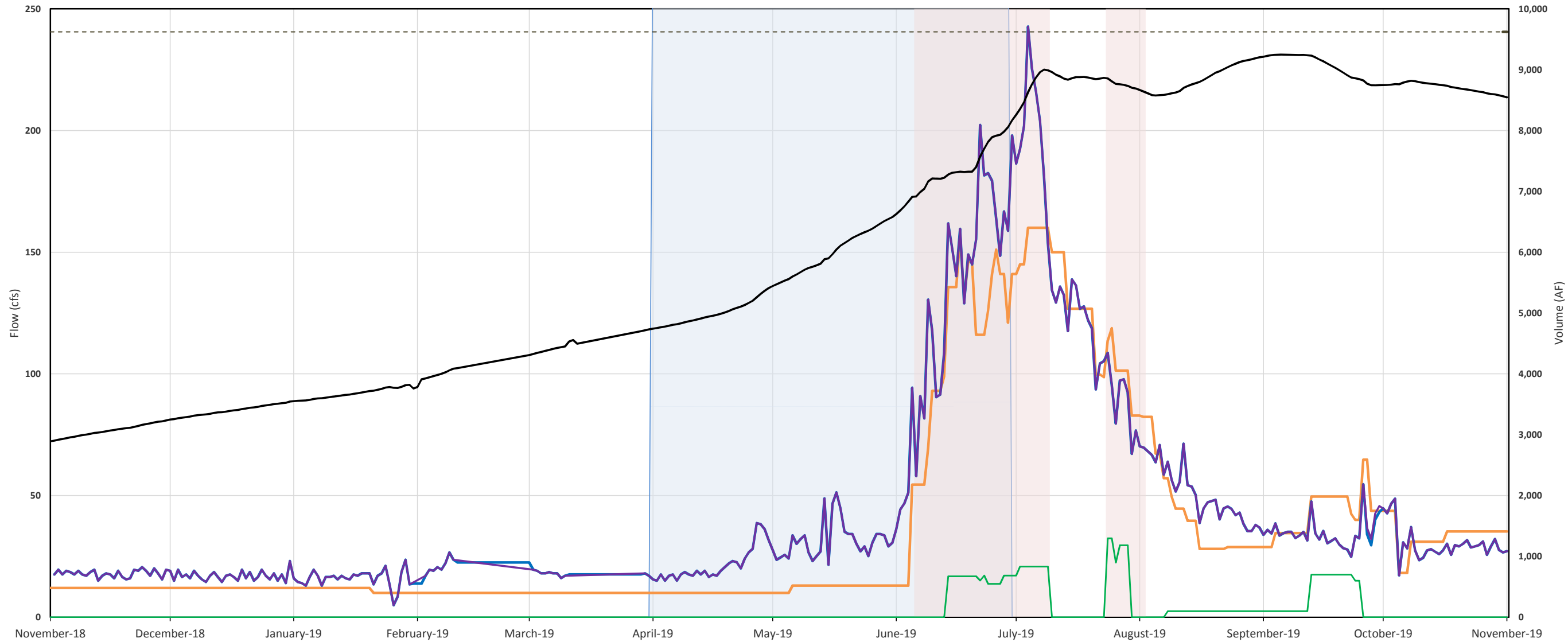
**V. Consistency with Board Goals and Policies:**

Policy Statement: 2

**Attachments:**

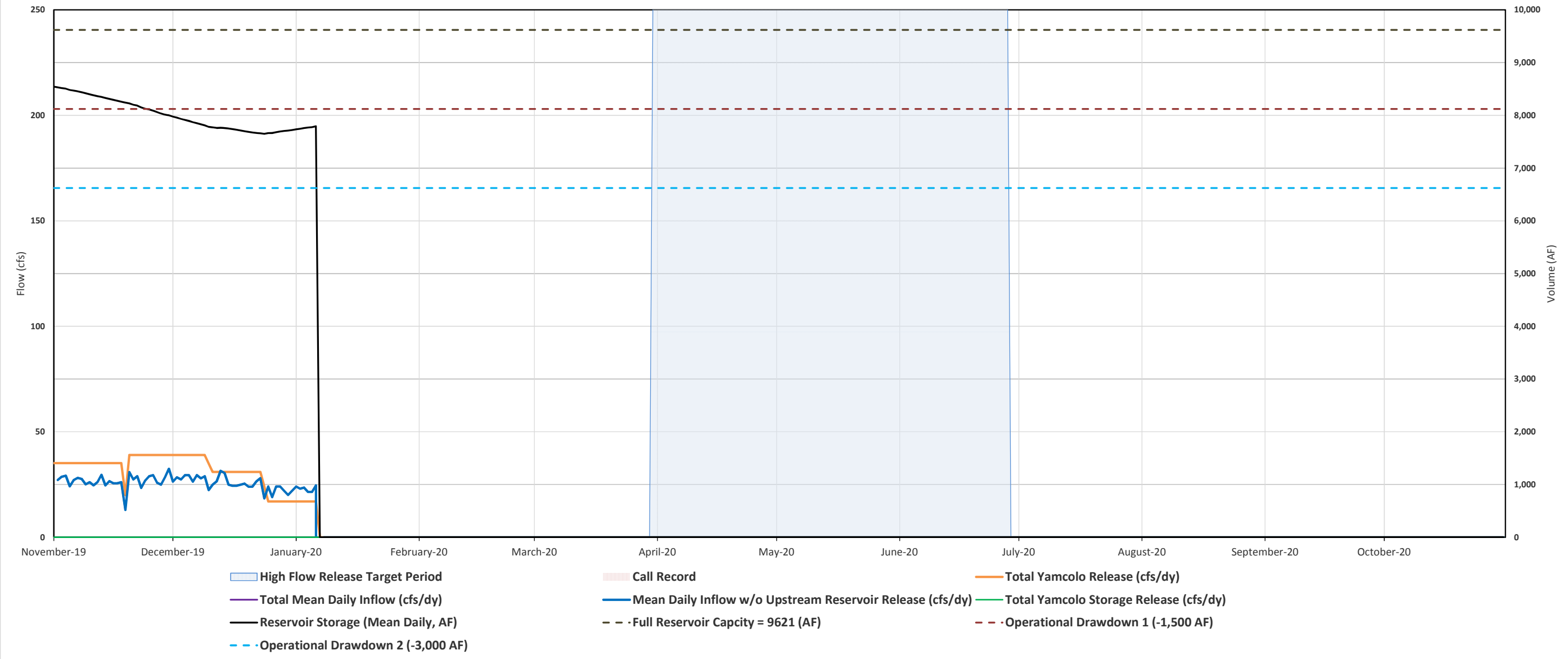
Yamcolo Water Storage Data (WY 2019, WY 2020)  
Stagecoach Water Storage Data (WY 2019)

Yamcolo Reservoir: WY 2019 (Provisional Data)



- High Flow Release Target Period
- Call Record
- Total Yamcolo Release (cfs/dy)
- Mean Daily Inflow w/o Upstream Reservoir Release (cfs/dy)
- Total Mean Daily Inflow (cfs/dy)
- Total Yamcolo Storage Release (cfs/dy)
- Reservoir Storage (Mean Daily, AF)
- Full Reservoir Capacity = 9621 (AF)

Yamcolo Reservoir: WY 2020 (Provisional Data)



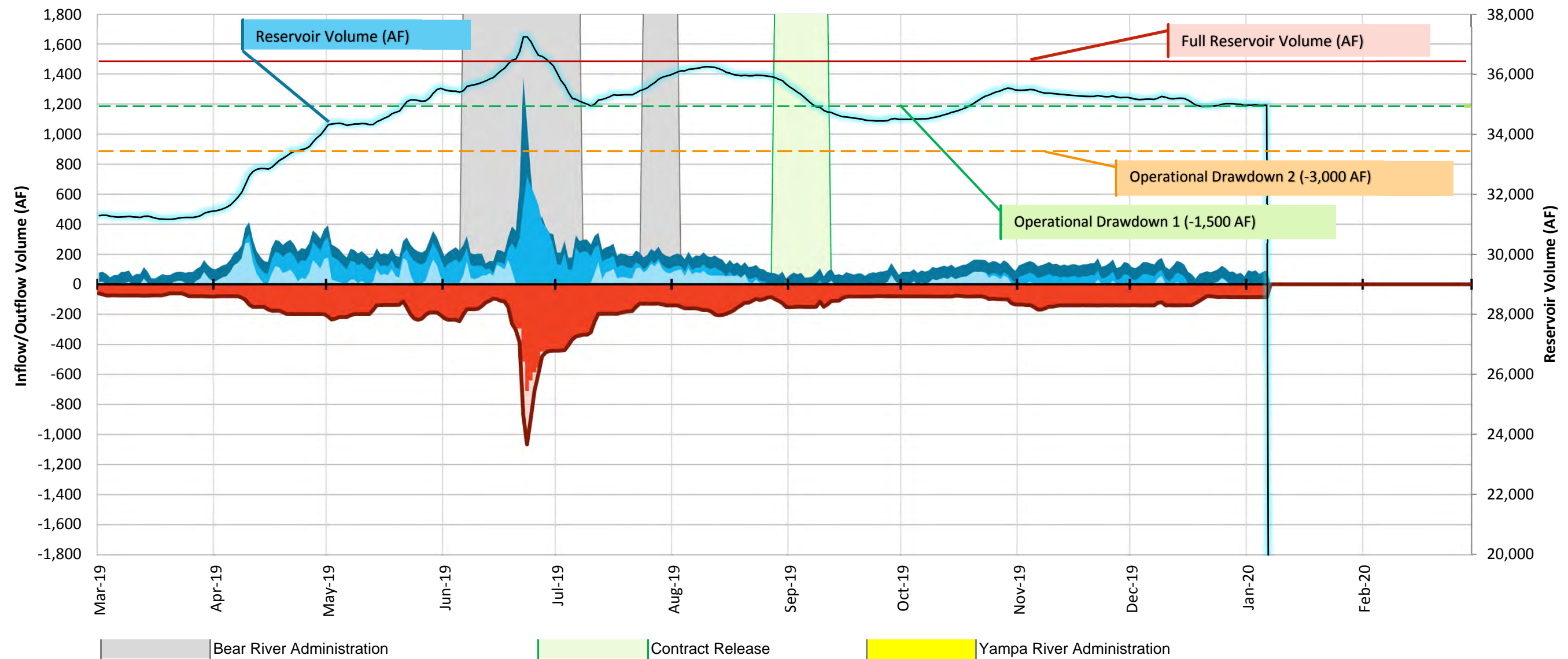
# Stagecoach Reservoir Operations

## Total Monthly Volume (AF)

Accounting Year 2019  
1/6/2020

INFLOW	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Total
Physical	2,475	7,391	7,401	10,886	7,283	4,485	2,265	3,793	4,069	3,323	518		53,889
Storable	413	5,011	4,942	7,800	4,823	2,090	172	1,343	1,689	966	53		29,302
Stored	405	2,869	1,764	1,354	1,904	1,468	152	1,156	111	232	24		11,439

OUTFLOW	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Total
Operator	-2,258	-4,544	-5,795	-9,820	-7,268	-4,532	-3,234	-2,705	-4,293	-3,587	-510		-48,547
Spill	0	0	0	-1,273	0	0	0	0	0	0	0		-1,273
Gage	-2,254	-4,544	-5,795	-9,892	-7,268	-4,532	-3,234	-2,705	-4,293	-3,587	-510		-48,614



**b)**

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## BOARD COMMUNICATION FORM

**From:** Andy Rossi

**Date:** 01/08/20

**Item:** Sickle Place Grazing Lease, Stagecoach Property

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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

The Upper Yampa Water Conservancy District (UYWCD) reserves the right to permit the grazing of domestic livestock on 223 acres of the Conservation Easement section of the Stagecoach property owned by the UYWCD. The property included in the grazing permit area is commonly known as the "Sickle Place Property". The Grazing Lease Agreement for the Sickle Place is available for re-authorization for 2020.

### **II. Summary and Alternatives:**

The UYWCD asks the UYWCD Board of Directors to authorize the updated Grazing Lease Agreement and authorize the UYWCD Staff to advertise the Invitation to Bid with the intent of entering into a Grazing Lease Agreement for the Sickle Parcel with the possibility of subsequent lease extensions for qualified and adequately performing parties.

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

Approve the proposed gazing lease documents and authorize the UYWCD staff to advertise the Invitation to Bid for the 2020 grazing lease.

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

Grazing Lease Agreement is a contract.



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

Policy Statement: 1,6

**Attachments:**

Memorandum

Invitation to Bid

Request for Management Proposals

Management Proposal Scoring Sheet

Grazing Lease Agreement (Reviewed by UYWCD General Counsel)



# MEMORANDUM

**TO:** UYWCD BOD, Kevin McBride, District Manager

**FROM:** Andy Rossi, District Engineer

**DATE:** January 8, 2020

**RE:** UYWCD Grazing Lease for Sickle Parcel Located at Stagecoach

## Summary

The Upper Yampa Water Conservancy District (UYWCD) reserves the right to permit the grazing of domestic livestock on 223 acres of the Conservation Easement section of the Stagecoach property owned by the UYWCD. The property included in the grazing permit area is commonly known as the “Sickle Place Property”. This memo summarizes the current status of this grazing lease.

### 1.0 Introduction

A Deed of Conservation Easement in Gross was made on April 22, 1991 by the UYWCD as Grantor and the State of Colorado, acting through the Colorado Division of Wildlife (now CPW), as Grantee for the portion of the property associated with the Stagecoach Reservoir project. The Conservation Easement property is approximately defined as lands lying to the north of Routt County Road 18, located north of the reservoir. As part of this Conservation Easement, the UYWCD reserves the right to permit the grazing of domestic livestock on 223 acres of the Conservation Easement property. The portions of the Conservation Easement contract that detail the specifics of the reserved grazing rights are included with this memo for reference.

Along with the reserved grazing rights, the UYWCD is required to maintain a section of fencing along the south border of the grazing area. The UYWCD is not required to lease the Sickle Place Property for grazing as part of the Conservation Easement contract.

### 2.0 Current Status of Grazing Lease

The UYWCD entered into a grazing lease agreement for the Sickle Place with Trout 123, LLC in 2016. The 2016 Grazing Lease Agreement administration and management were handled by the CPW staff in consultation with the UYWCD staff. Two additional grazing lease terms were granted to Trout 123, LLC in 2017 and 2018. No grazing was permitted on the property in 2019 at the recommendation of the CPW staff. Grazing practices permitted under the 2016 – 2018





agreements were conducted in accordance with the terms of those agreements and the grazing lease area is in excellent condition. Currently the UYWCD has no contract granting the rights to graze livestock on UYWCD property with any party. Local representatives of the CPW recommend continued grazing practices on the Sickie Place Property for the 2020 to 2024 period. To continue with the historic grazing practices on the Sickie Parcel, updates to the documents associated with the grazing lease are required. The CPW staff will remain active participants in the grazing lease management for the 2020 - 2024 period. The UYWCD staff will assume the role of lease administration. The following documents are included with this memorandum for review:

Invitation to Bid  
Request for Management Proposals  
Management Proposal Scoring Sheet  
Grazing Lease Agreement (Reviewed by UYWCD General Counsel)

### **3.0 Requested Board Action**

The UYWCD asks the UYWCD Board of Directors to authorize the updated Grazing Lease Agreement and authorize the UYWCD Staff to advertise the Invitation to Bid with the intent of entering into a Grazing Lease Agreement for the Sickie Parcel with the possibility of subsequent lease extensions for qualified and adequately performing parties.

**INVITATION TO BID**  
Upper Yampa Water Conservancy District

**Grazing Lease**  
**Blacktail Conservation Easement**

The Upper Yampa Water Conservancy District is accepting management proposals for a grazing lease on the Blacktail Conservation Easement. Please call the Upper Yampa Water Conservancy District at 970-871-1035 to obtain bid process details and information about the lease. Bid deadline is March 3, 2020.

## Blacktail Conservation Easement Sickle Place

### Request for Management Proposal

INTRODUCTION: The purpose of this request for management proposal (RFMP) is to obtain competitive proposals from qualified individuals in order to provide the Upper Yampa Water Conservancy District (UYWCD) with a lessee to properly manage the Sickle Place of the Blacktail Conservation Easement. This will be a one-year lease with the possibility of successive extensions of one year each, up to **three, four, five?** total years. This RFMP will provide prospective lessees with sufficient information to enable them to prepare and submit livestock management plans for consideration by the UYWCD. The livestock management plan will work toward meeting the management goals and objectives as set forth by the UYWCD and Colorado Parks and Wildlife (CPW) in this document.

DESCRIPTION: The Sickle Place is a 223-acre parcel located within the larger Blacktail Conservation Easement, which is on Blacktail Mountain north of Stagecoach Reservoir and Stagecoach State Park. The parcel consists predominantly of a mixture of grasses, sagebrush rangeland, and mountain shrub vegetation, but also includes some aspen conifer forest. There are three springs on the parcel that can be used for watering cattle.

This property will be rated at 75 AUM's. This rate may vary from year to year based on range conditions, weather, and whether the UYWCD and CPW's objectives are being achieved.

#### ADMINISTRATIVE INFORMATION:

1. Proposals must be typewritten and received at the UYWCD office by 3:00 PM MST, March 3, 2020.
2. Prospective candidates may call (970) 871-1035 to obtain clarification of any of the requirements of this RFMP or to set up an appointment to tour the property.
3. All material submitted in response to this RFMP becomes property of the UYWCD and will become public record.
4. The UYWCD and CPW are not responsible for any cost incurred by prospective candidates while completing this proposal.
5. The contents of the proposal of the successful candidate will become the basis for a final negotiated Lease Management Agreement. Failure of the successful candidates to accept these obligations in the Lease Management Agreement may result in the cancellation of the award.
6. The use of sub-lessees will not be allowed in the proposal or in the lease agreement.
7. The UYWCD reserves the right to reject any and all bids.

### SCHEDULE OF ACTIVITIES:

1. Proposal submittal deadline: 3:00 P.M. MST, March 3, 2020.
2. Notification of intent to lease: April 1, 2020.
3. Final Lease Management Agreement and Management Plan: May 1, 2020.

### EVALUATION OF PROPOSALS:

1. An evaluation will be made by a panel to judge the merit of proposals received in accordance with the evaluation criteria defined in this document.
2. The evaluation panel will consist of representatives from the CPW and UYWCD.
3. Failure of the candidate to provide all information requested in the RFMP may result in the disqualification of the proposal.
4. The evaluation panel will select the proposal that most closely meets those goals and objectives as set forth by the UYWCD and CPW in this document.
5. The successful bid proposal will be the basis for a negotiated Lease Management Agreement and Management Plan with the prospective lessee.

### OBJECTIVES:

1. Work cooperatively with UYWCD and CPW to protect and enhance existing winter range for elk and key transition range for mule deer. Optimal results will achieve an appropriate balance between quantity and quality of fall and winter forage for wildlife by focusing on allowing for key vegetation regeneration resulting from controlled cattle grazing during the summer. Please note that in order to satisfactorily meet this objective, grazing will be limited from June 15 – August 15. All proposals should reflect this stipulation
2. Further develop springs to enhance wildlife and livestock value.
3. Maintain grass and forb production and diversity to provide quality cover, nesting, and brood rearing habitats for dusky grouse and Columbian Sharp-tailed grouse.
4. Establish a cooperative weed management plan between the UYWCD and lessee to control noxious weeds.
5. Maintain good water distribution on the entire property for maximum livestock distribution and wildlife use (under UYWCD supervision).
6. Establish a cooperative fence maintenance plan between UYWCD and the lessee to maintain and if necessary, provide adequate livestock fencing that meets CPW's wildlife-friendly fencing requirements.

### CRITERIA FOR EVALUATION:

The evaluation panel will use the following criteria for evaluation in selecting the best proposal. Each item is ranked with a percentage of importance, which will be used in the selection process. In order to evaluate proposals completely, the candidate must fully address each item of this section. The candidate must start with the first item and consecutively continue through completion of all items.

1. Grazing plan- the prospective lessee must submit a plan which will address the following; dates in and out, class of animal (cow/calf, stocker calves), number of head, herd movement or rotation: 30%
2. Explain how the grazing plan will meet the aforementioned objectives: 15%
3. Explain what monitoring system will be implemented to track progress toward the objectives: 10%
4. How much is the candidate willing to pay in return for grazing (Minimum \$15/AUM): 25%
5. Fence maintenance plan: 10%
6. Describe history of land management of the prospective lessee to include any progressive land management practices in the past: 10%

### COMPENSATION:

The proposal shall include a monetary amount in exchange for grazing. Payment can be in the form of goods and/or services in lieu of cash payment. These goods and/or services shall be identified and approved by the UYWCD prior to being received on property no later than October 1 of the same year grazing takes place. All developments and materials become the sole property of the UYWCD. Lessee retains no vested interest in either.

Possible goods and services include, but are not limited to;

1. Water development to include labor and materials.
2. Riparian development and improvement.
3. Noxious weed control (herbicide and/or application)
4. Equipment rental.
5. Contract fence maintenance and/or construction.

### INDEMNIFICATION:

Per the terms of this lease, the Lessee agrees to indemnify, save and hold harmless the UYWCD, its employees and agents against any and all claims, damages, and liability incurred as a result of an act or omission by the lessee or their employees, agents, or assignees.

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## 2020 Blacktail Conservation Easement/Sickles Place Grazing lease Management Proposal Scoring

Grazing Plan = 30%			
Objective Explanation = 15%			
Monitoring = 10%			
Compensation = 25%			
Fence Maintenance = 10%			
History = 10%			
<b>TOTAL</b>	/100	/100	/100

Procedure: All scores will be determined by panel consensus. Everyone on the panel will have the opportunity to comment on any aspect of any proposal they feel is important to the process.

Scoring: Highest possible score is the percent that corresponds with that objective and the lowest possible score is 0. The proposal that fails to address the objective being discussed receives a score of zero. The proposal that best addresses the objective being discussed receives the highest score. The percentage weight given each objective will determine the highest possible score. The proposal that receives the highest score after all objectives are totaled will receive the grazing lease.

Example: Grazing Plan 30%, thirty would be the highest score possible for that objective.

		Date
		Date
		Date

---





## GRAZING LEASE

**THIS LEASE**, made and entered into by and between the UPPER YAMPA WATER CONSERVANCY DISTRICT ("UYWCD"), Lessor, and \_\_\_\_\_, Lessee,

### WITNESSETH:

Subject to the provisions hereinafter provided, it is hereby agreed by the parties hereto that:

1. Lessor does hereby lease and demise unto Lessee the following described lands situate in the County of Routt, State of Colorado, to-wit: Blacktail Conservation Easement/Sickle Pasture containing approximately 223 acres more particularly described as the NW1/4NW1/4 of Section 28, S1/2SE1/4 of Section 20, N1/2NE1/4, N1/2SE1/4NE1/4 of section 29, T4N R84W and as illustrated in Attachment A (the "Leased Premises").
2. This Lease is only for the purpose of grazing livestock on the Leased Premises and performing such work and improvements on the Leased Premises as Lessor shall approve, as provided herein.
3. The term of this Lease for grazing shall be for the period commencing no earlier than June 15, 2020 and ending no later than August 15, 2020, which period and any extended term provided for herein shall be referred to as a "Term."
4. This Lease may extended for grazing purposes by mutual agreement of the parties for up to two additional terms, the first commencing no earlier than June 15, 2021 and ending no later than August 15, 2021 and the second commencing no earlier than June 15, 2021 and ending no later than August 15, 2021 utilizing Attachment B as completed and modified by Agreement of the parties.
5. The use of the Leased Premises for grazing during any Term shall not exceed 75AUM's or such Lessor number of AUM's as Lessor shall specify prior to the commencement of any Term. The consideration payable by Lessee to Lessor for grazing during the Term shall be \$\_\_\_\_ per AUM, payable to Lessor no later than 45 days following the conclusion of the Term subject to adjustment as herein set forth.

If agreed by Lesser in writing prior to the commencement of any Term (and subject to confirmation by Lessor that the agreed goods and services have been provided in a manner that Lessor in its discretion deems acceptable) Lessee may pay the consideration due hereunder for any Term by providing goods and services to Lessor including noxious weed control, water development, riparian development and improvement, purchase of capital equipment, road and parking lot construction, maintenance, and materials, equipment rental, and fence construction. These goods and/or services to be provided must be completed no later than October 1 following the end of the Term and shall be identified and approved by the Lessor using Attachment C of this Lease.

Grazing will begin no sooner than June 15 as per Blacktail Conservation Easement and as agreed to by the Lessee and Lessor. Grazing will be completed by August 15 of each year or when a maximum of 75 AUM's are achieved, whichever occurs first. Lessee will submit a grazing plan each year (Attachment D), specifying numbers of livestock, on/off dates and water manipulation.

6. The Lessee shall have the right of ingress and egress to the Leased Premises for the purpose of grazing livestock and associated operations as provided herein.
7. The Lessee shall perform all operations in a manner acceptable to Lessor in its discretion. Neglect in care for the land or pasture shall constitute a default under this lease.
8. The Lessee agrees to repair or replace all fences and/or gates damaged or destroyed as a result of activities of Lessor associated with this Lease.
9. The Lessee shall provide to the Lessor, prior to application, the label for any fertilizers, pesticides, herbicides or any other chemical compounds intended for application on the Leased Premises. Approval from the Colorado Parks and Wildlife ("CPW") must be obtained in writing before application of any of the above. The disposal, spillage or dumping of any refuse, waste, trash or other material on the Leased Premises is forbidden.
10. Lessee agrees to cooperate fully with Lessor in any programs or activities conducted by Lessor on the Leased Premises.
11. Lessee agrees not to sublease any portion of the Leased Premises nor assign this Lease or any portion thereof without the express written consent of the Lessor prior to any such action, which consent may be withheld by Lessor in its sole discretion.
12. Lessor and its agents shall have access to the Leased Premises at such times and for such purposes as Lessor may deem necessary or desirable for any purpose.
13. Lessee agrees not to remove, burn or destroy any brush or other vegetation, growth or cover without the prior written consent of the Lessor.
14. Lessee agrees that, at the expiration or termination of this Lease, and upon the conclusion of any Term, Lessee will surrender and deliver up possession of the Leased Premises in as good order and condition as when this Lease was entered into, loss by inevitable accident, act of God, and ordinary wear and tear excepted.
15. Lessee agrees that it will submit no claims to Lessor for any damage done by wildlife to the crops, pasture or livestock on the Leased Premises and that it will prevent or suppress to the best of its ability any and all fires and will immediately report any fires to the Lessor.
16. Lessee agrees not to engage in any practice in any year which will obligate the Lessor to that practice in succeeding years without first securing, in writing, approval of Lessor, which Lessor may withhold in its discretion.
17. The Lessee shall be responsible for all indebtedness incurred by Lessee in association with this Lease and the Lessor shall not be held liable to any injury or damage caused by or inflicted upon the Lessee.
18. The Lessee shall comply with all rules and regulations of the Lessor and all other State agencies, including CPW, as well as those of all county, city or other governmental entity having jurisdiction in regard to sanitation, waste disposal, water supply and systems, fire protection and to other

regulations necessary for public health, safety, and welfare.

19. THE LESSEE SHALL NOT ENROLL ANY OF THE LESSOR'S PROPERTY INTO ANY OF THE U.S. DEPARTMENT OF AGRICULTURE PRICE SUPPORT AND PRODUCTION ADJUSTMENT PROGRAMS.

20. All notices required or provided in this Lease shall be mailed to the other party at its official address, United States mail, postage prepaid, certified, return receipt requested. For the purposes of this agreement, the official addresses of the parties shall be:

**Lessor:** Upper Yampa Water Conservancy District  
P. O. Box 775529  
Steamboat Springs, CO 80477

**Lessee:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party may change its official address by giving notice of such change to the other as provided above.

21. INDEMNIFICATION: Lessee shall indemnify, save and hold harmless the Lessor, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Lessee or its employees, agents, or assignees pursuant to the terms of this Agreement.

22. If default shall be made in any of the covenants and agreements herein contained to be kept by the said Lessee, it shall be lawful for the Lessor, at the discretion of the Lessor, to declare said Lease terminated.

23. This Lease agreement constitutes the entire understanding of the parties and there are no other provisions other than set forth above, and any changes in this Lease agreement shall be made in writing and signed by both parties before the same shall be effective. All provisions of this Lease, including the benefits and burdens, run with the land and are binding upon and extend to the heirs, legal representatives, successors and assigns of the parties hereto.

**LESSOR:**

**LESSEE:**

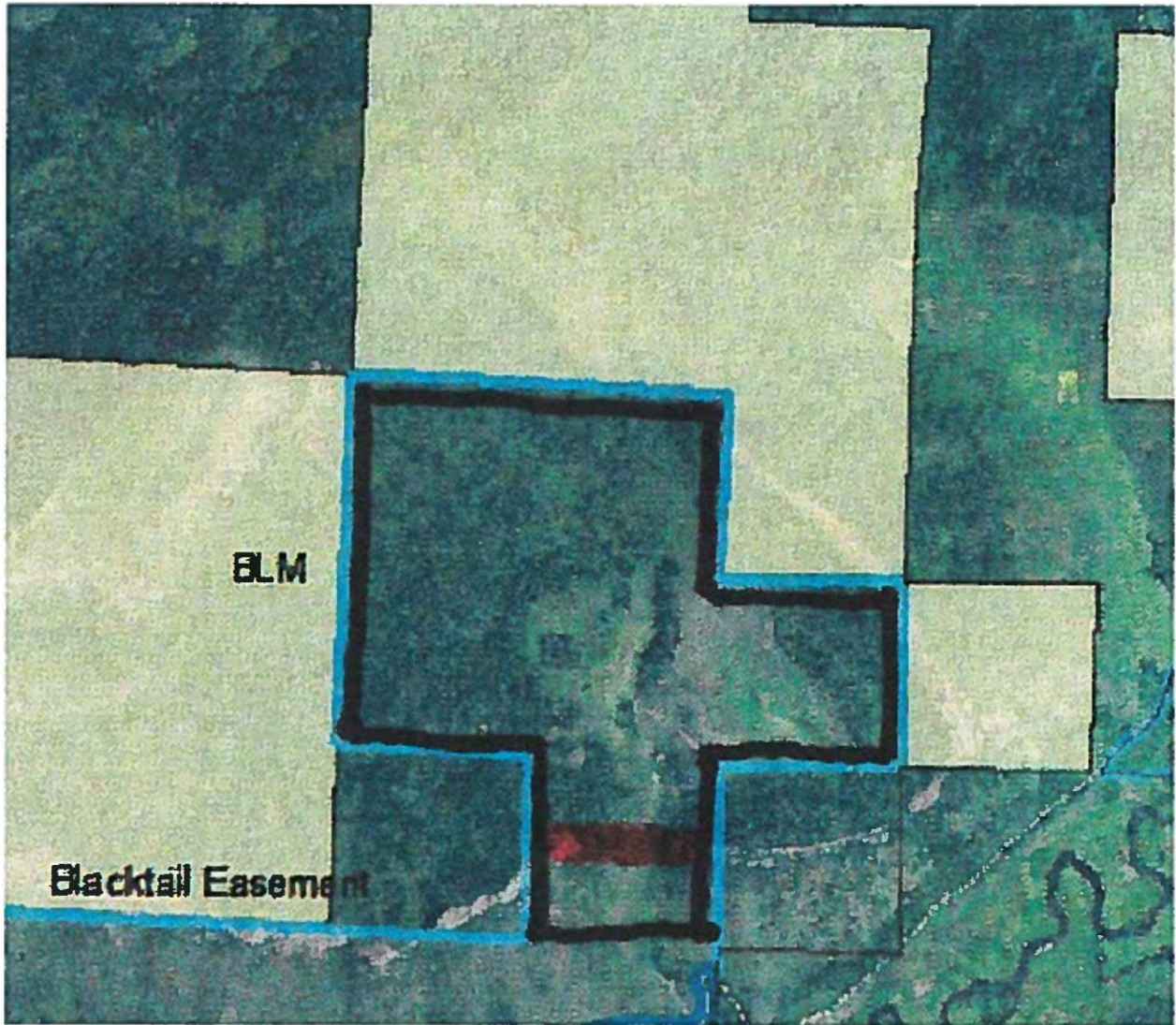
UPPER YAMPA WATER CONSERVANCY  
DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

ATTACHMENT A



**ATTACHMENT B**

**EXTENSION OF AGRICULTURE LEASE**

**EXTENSION NO.**

It is hereby agreed by \_\_\_\_\_, LESSEE, and the Upper Yampa Water Conservancy District, LESSOR, to **extend** certain Lease located on the Blacktail Conservation Easement Sickle Pasture for \_\_\_\_\_ AUMs for this extension.

This Lease extension authorizes the Lessee an additional use period, as provided in the detailed Lease document, beginning \_\_\_\_\_ (month/day/year) and ending \_\_\_\_\_ (month/day/year), and is subject to those provisions, conditions and terms listed within the Lease dated \_\_\_\_\_ excepted as herein modified.

LESSEE:

By: \_\_\_\_\_

EIN:

\_\_\_\_\_

LESSOR:

UPPER YAMPA WATER CONSERVANCY DISTRICT

By \_\_\_\_\_

**ATTACHMENT C**

In-Kind Goods or Services Approval

Year	AUMs	Payment
2020 grazing Lease	75	
2021 grazing extension		
2022 grazing extension		
<b>TOTAL</b>		

For the year of \_\_\_\_\_ both the Lessor and Lessee agree that the work listed below, and amounts will suffice for payment by in-kind goods and services for all or some part of the consideration due under the Lease for such Term.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LESSEE:

By: \_\_\_\_\_

Date: \_\_\_\_\_

EIN:

\_\_\_\_\_

LESSOR:

UPPER YAMPA WATER CONSERVANCY DISTRICT

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT D**

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**Grazing Plan for the year of \_\_\_\_\_**

Group A of cattle will be turned out at \_\_\_\_\_ on \_\_/\_\_/\_\_, numbering \_\_\_\_\_ head of steers/yearlings/cow calf pairs.

Group B of cattle will be turned out at \_\_\_\_\_ on \_\_/\_\_/\_\_, numbering \_\_\_\_\_ head of steers/yearlings/cow calf pairs.

Group C of cattle will be turned out at \_\_\_\_\_ on \_\_/\_\_/\_\_, numbering \_\_\_\_\_ head of steers/yearlings/cow calf pairs.

Springs \_\_\_\_\_ will be utilized from \_\_/\_\_/\_\_ until \_\_/\_\_/\_\_

Springs \_\_\_\_\_ will be utilized from \_\_/\_\_/\_\_ until \_\_/\_\_/\_\_

Springs \_\_\_\_\_ will be utilized from \_\_/\_\_/\_\_ until \_\_/\_\_/\_\_

Cattle will be pulled off of property on \_\_/\_\_/\_\_

LESSEE:

By: \_\_\_\_\_

Date: \_\_\_\_\_

EIN:

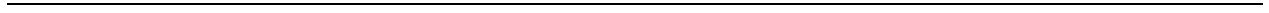
\_\_\_\_\_

LESSOR:

UPPER YAMPA WATER CONSERVANCY DISTRICT

By: \_\_\_\_\_

Date: \_\_\_\_\_





a. The Grantor reserves the right to permit the grazing of domestic livestock on 223 acres of the easement property, described in Exhibit "B," known as the Sickie Place, attached hereto and incorporated herein by reference. Such grazing of livestock shall be limited to 75 A.U.M.s (cow and calf units) during the period of June 15 to October 15 of each year.

5. PROHIBITED USES. The following uses and practices by Grantor and Grantee, although not an exhaustive recital of uses and practices which are inconsistent with the purposes of this conservation easement, shall be prohibited upon or within the Property. Uses and prohibited practices on the property shall be as set forth in Paragraph 17 of this Easement Deed.

a. The construction or placement of any buildings, camping accommodations, mobile homes, signs (except informational or directional signs approved by the parties), billboards or other device for advertising or other structures (except fences) or utilities (except powerlines) on the Property.

b. The dumping of ashes, trash, garbage or other unsightly or offensive material, and the changing of the topography by placing soil, landfill, or other substances on the Property.

c. The operation of any motorized vehicles on the Property, except on Routt County Road 18 (described in Exhibit A-1 and attached hereto) running through the Property and except by Grantor or Grantee or persons acting with their authorization.

d. Filling, excavating, dredging, mining, drilling, removal of topsoil, sand, gravel, rock or other materials, and the exploration for or extraction of oil, gas, or other hydrocarbon and other minerals on or below the surface of the Property.

e. The removal, cutting or destruction of trees or native plants; or the introduction of exotic vegetation, except for habitat improvement by Grantee; or as otherwise agreed by Grantor and Grantee.

f. The grazing or other use of livestock on the Property, except as reserved to the Grantor in Paragraph 4 (a). Provided that, horses used for packing and access while hunting shall be permitted, and controlled livestock grazing may be allowed for vegetation management purposes if approved by both parties.

g. The use of biocides, except as consented to by Grantee and Grantor.

h. The feeding, enticement, or harassment of any wildlife, except emergency feeding by Grantee as necessary to manage the animal population in accordance with sound wildlife management practices;

EXHIBIT "B"

Attached to and made a part of the Deed of Conservation Easement in Gross between The Upper Yampa Water Conservancy District, Grantor, and the State of Colorado acting by and through the Department of Natural Resources for the use and benefit of the Division of Wildlife and Wildlife Commission, Grantee.

Description of property referred to in the Deed of Conservation Easement in Gross as follows:

DESCRIPTION OF THE SICKLE PLACE PROPERTY

Approximately 220 acres more or less

The lands included within the above described lands know as the Sickle property more particularly described as the NW1/4NW1/4 of Section 28, S1/2SE1/4 of Section 20, N1/2NE1/4, N1/2SE1/4NE1/4 of Section 29, T4N R84W are subject to grazing rights.

CDOW and DPOR:

1. Emergency winter feeding of elk
2. Law enforcement
3. Biological surveys or data gathering

Routt County Sheriff's Office:

1. Law enforcement
2. Public emergencies

CDOW shall:

1. Take all appropriate actions in an attempt to obtain approval from Routt County for closure of County Road 18 for three months annually.
2. Include closure regulations in Chapter 9 of CDOW regulations "Land and Water Use." Inclusion of a similar closure regulation in the appropriate DPOR chapter may also be appropriate. The Chapter 9 regulation will be: Blacktail Mountain Conservation Easement (Routt County) see "Service Creek SWA."

SERVICE CREEK SWA (Routt County)

Blacktail Mountain Unit (Conservation Easement):

1. Public use is prohibited for approximately six (6) months each year commencing and concluding on dates designated by CDOW.
2. Motorized vehicle use is prohibited, except for vehicles operated by or under control of UYWCD or CDOW.
3. Big game hunting is allowed during all seasons that apply to Game Management Unit 15 in accordance with rules and regulations adopted by the Colorado Wildlife Commission, with the exception of small game hunting and trapping, which are prohibited after November 15.

B. Grazing Management

UYWCD has made a commitment to prohibit livestock grazing on 449 of the 672 acre easement. Grazing is allowed on a forage availability basis for a maximum of 75 animal unit months per season (AUMs) from June 15 through October 15 annually for cattle on the remaining 223 acres, commonly known as the "Sickle Place" and described in Exhibit "B" to the Deed of Conservation Easement In Gross.

The first objective in this grazing management plan is to ensure that livestock that are grazing the area are the livestock that are allowed under the Conservation Easement. UYWCD agrees to control the grazing situation on the area by means of the following only:

1. Install and maintain three strand wire fence in the areas shown on Attachment 1 to this Range Improvement Plan.

2. Maintain other existing fence shown on Attachment 1.

3. In the event that maintenance of fence as set forth in the two preceding sentences does not prevent significant trespass of livestock into the conservation easement, UYWCD agrees to construct and maintain such other and further perimeter or drift fencing as may be reasonably necessary to prevent the significant trespass of livestock not permitted hereunder on the conservation easement. For purposes of this paragraph, "significant trespass" shall be defined as trespass by livestock in contravention to this Section 8 (Grazing Management) in excess of five (5) individual trespass incidents in any calendar year. In any event, UYWCD shall correct trespass violations within seventy-two (72) hours of notification that such trespass has occurred.

4. There are three springs in the area subject to the conservation easement. Subject to the physical availability of water to flow from springs, UYWCD will protect these springs so they remain operational. UYWCD will file for water rights for wildlife on the spring that lies furthest west.

C. Vegetation Management

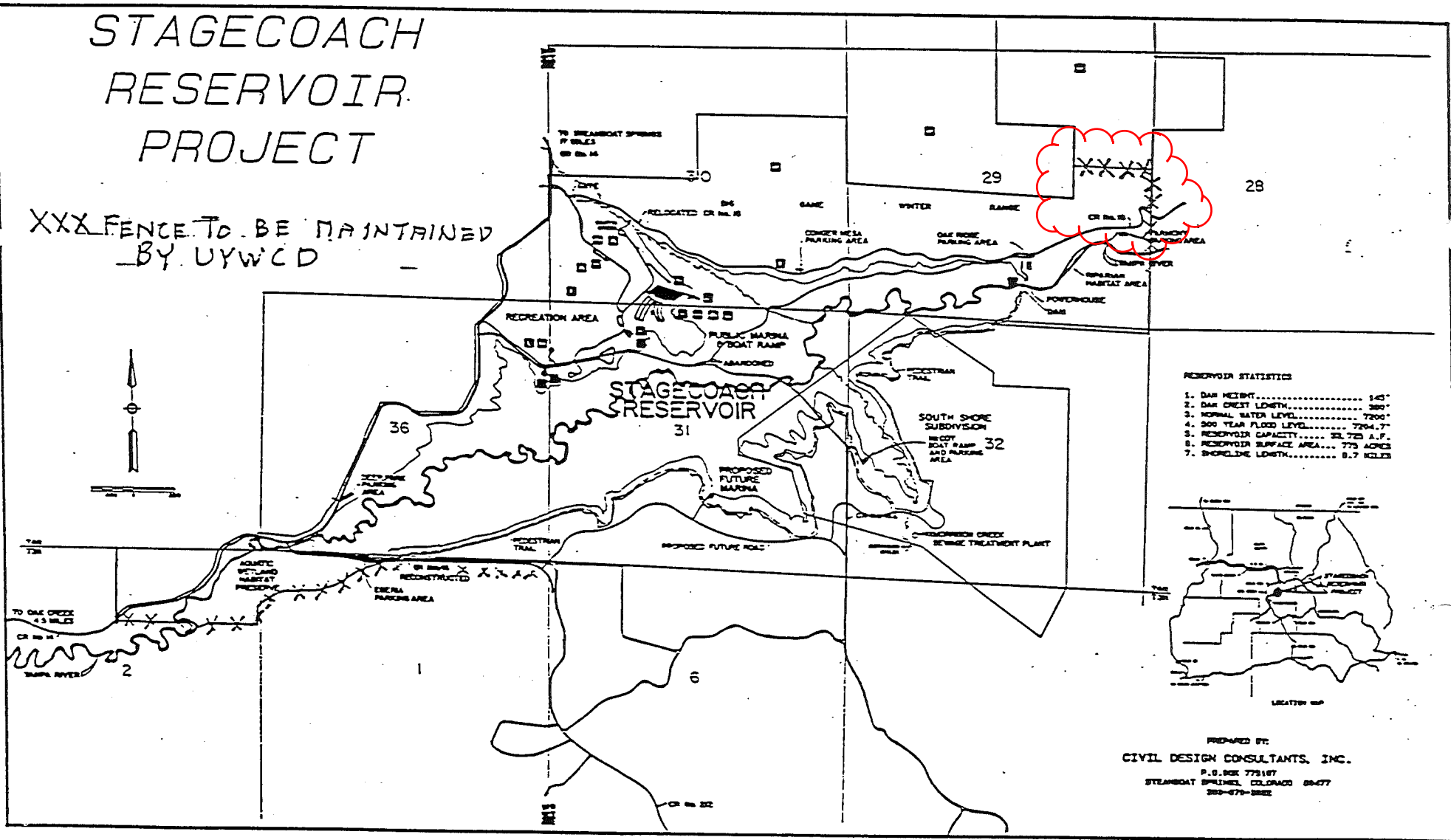
The goal of vegetation management on Blacktail Mountain is to improve the quantity of forage available to wintering elk. Approximately 150-200 elk winter in the Blacktail Mountain vicinity.

Much of the area of the conservation easement is steep, south-facing slope immediately above the reservoir site and below rocky cliff faces. Due to the slope and aspect, this area accumulates the least snow cover on the mountain, and is important to elk in severe winters. The lower slopes are sagebrush-grass and oak-serviceberry. In some areas, particularly on the east portions of the easement, the shrubs have been heavily browsed to the point of severely limiting shrub growth. On the west end, browsing is not as severe: much of the oak and serviceberry there has grown beyond the reach of elk. Prescribed burning is the proposed treatment for these areas.

Other areas used by elk in winter are the "bench" area above the previously mentioned cliffs and the basin on the southeast side of Blacktail Mountain. The bench area is a mixture of sagebrush, oak-serviceberry, and aspen vegetation types. The basin area is similar, with grass meadow along the intermittent stream. South slopes of oak-serviceberry in this basin should be burned to promote resprouting, along with similar areas on the bench.

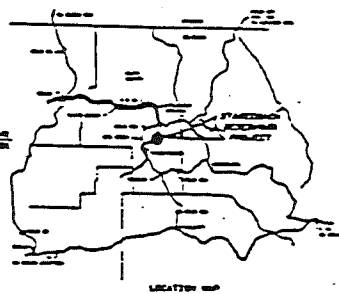
# STAGECOACH RESERVOIR PROJECT

XXX FENCE TO BE MAINTAINED  
BY UYWCD



RESERVOIR STATISTICS

1. DAM HEIGHT..... 145'
2. DAM CREST LENGTH..... 380'
3. NORMAL WATER LEVEL..... 7200'
4. 500 YEAR FLOOD LEVEL..... 7204.7'
5. RESERVOIR CAPACITY..... 28,725 A.F.
6. RESERVOIR SURFACE AREA..... 775 ACRES
7. SHORELINE LENGTH..... 8.7 MILES



PREPARED BY:  
CIVIL DESIGN CONSULTANTS, INC.  
P.O. BOX 775187  
STEAMBOAT SPRING, COLORADO 80477  
303-679-2822



S 1/2 SE 1/4  
SECTION 20

N 1/2 NE 1/4  
SECTION 29

NW 1/4 NW 1/4  
SECTION 28

N 1/2 SE 1/4 NE 1/4  
SECTION 29

18

Morrison Creek

January 15, 2016

Upper Yampa Water Conservancy District  
3310 Clear Water Trail  
PO Box 775529  
Steamboat Springs, CO  
80477-5529

Dear UYWCD Board of Directors:

Thank you for taking time in your November, 2015 meeting to discuss with Todd Hagenbuch the situation surrounding the leasing of your property north of the Stagecoach Dam, more commonly referred to as the 'Sickles Property.' As was described to you at that meeting, and in a subsequent follow-up meeting with Andy Rossi in January, 2016, the ownership and management of the surrounding private property has recently changed, and because of those changes, we would like to work with you to secure the agricultural lease of the Sickles property beginning with the 2016 grazing season.

As was described to you in November and in our follow-up meeting in January, the Sickles Lease has been managed congruently with our private property immediately down-river from Stagecoach State Park since at least the mid-1970's. This is largely due to the topographical nature of the Sickles property and the fact that the only way to access the property with cattle is either through the open-range managed property we own or through Stagecoach State Park, which is not desired by park management. We also own property that is traditionally managed as part of the Sickles lease and would like to continue to use that private property for livestock grazing.

Additional challenges face the UYWCD and our family if we are not the continued lessees of the Sickles property. Fencing, or lack thereof, between your property and ours (because of their historic, congruent management) means that cattle from your property will mix with cattle on ours, making for a potentially disastrous situation. We fully intend to continue to fix all of the fence that currently separates our property with that of the Stagecoach State Park, but if another ag lessee runs livestock on the Sickles property, then we will request that the UYWCD or its lessee, at its full cost, build additional fencing between our adjoining ag properties to keep livestock from mixing, as per Colorado fence law. These costs and additional headaches can be avoided if our family can lease the Sickles property.

In closing, we would like to submit this point: while we are intimately familiar with the Sickles property and the historic management of it, we want to be clear with the Board that the ownership of the properties that were formerly owned by the Robert and Elaine Gay Limited Partnership has changed. While we are partly the same players and familiar faces, we are taking advantage of this ownership change to create new management plans for our properties and want to work with you and the other owners in this area to create a better situation for the people, wildlife, and property that make up this unique area. If for some reason you decide not to enter into a lease agreement with us for the 2016 grazing season, we would respectfully request that you decline leasing the property for 2016 so that all

of the parties who own or manage property in this area are able to create a management plan that works for all parties. Because the Colorado Department of Parks and Wildlife and the Bureau of Land Management both own land that is managed with this lease, we are including them on this letter (CC'd below) and hope that if there is a change to the historic management of this property that they are included in discussions on management changes. We will all continue to own these respective properties for decades to come, so it would behoove us all to work together proactively to manage a resource that is important to all of us.

Many thanks for your consideration. We look forward to further discussions with your staff and board.

Sincerely,

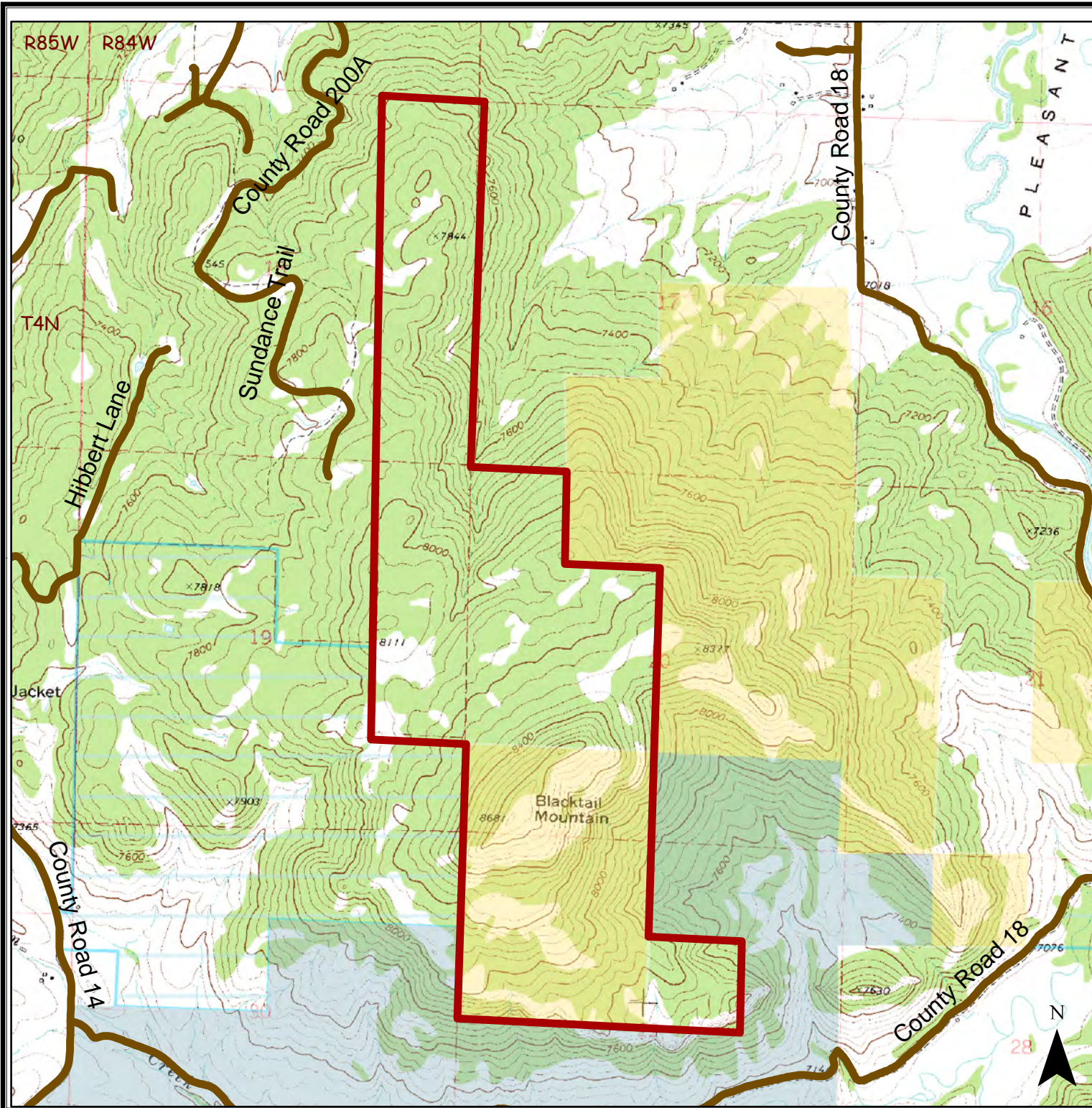
A handwritten signature in black ink that reads "Margaret Hagenbuch". The signature is written in a cursive style with a large initial 'M'.

Margaret Hagenbuch,  
Margaret E. Hagenbuch Trust

**CC:** Libbie Miller, Colorado Parks and Wildlife  
Chris Rhyne, Bureau of Land Management



<b>#04180</b>	
<b>South Blacktail Mountain</b>	
240 ac	BLM
520 ac	Private
760 ac	Total

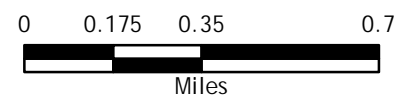


Legend

- S Blacktail Mtn Revised 2015
- Roads (Routt)

**Surface Management Status**

- Private
- Colo Parks and Wildlife
- State Lands
- State Park
- US Forest Service
- US Bureau of Land Mgmt



No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregation use with other data. All boundaries are an approximate representation.



c)

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## BOARD COMMUNICATION FORM

**From:** Andy Rossi

**Date:** 01/08/20

**Item:** UYWCD Facilities Maintenance - 2020

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

---

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

The Upper Yampa Water Conservancy District (UYWCD) continues to invest in the construction and installation of multiple facilities maintenance projects. A summary of these efforts proposed for 2020 is included.

**II. Summary and Alternatives:**

The ongoing maintenance projects at the UYWCD facilities are contributing to the organization's operational effectiveness by improving the cleanliness, orderliness, functionality and safety of these facilities. The UYWCD staff will continue to identify facilities maintenance priorities proactively rather than reactively to extend the operational lifespan of the UYWCD infrastructure. Regular maintenance activities at all facilities will continue as needed and determined by the UYWCD staff. A summary of the facilities maintenance projects considered for 2019 and 2020 is presented in the tables included with this communication form.

**III. Staff Recommendation:**

Complete facilities maintenance tasks as planned in 2020.

**IV. Legal Issues:**

NA

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

UYWCD Strategic Plan Goal 2.3

**Attachments:**

2020 Facilities Projects Summary

2020 UYWCD Facilities and Engineering Tasks and Planning

Update: 1/8/2020

Facility	Task	Personnel	Frequency	Status	Cost Estimate
Stagecoach	General Facilities Operation and Management	District Engineer, UYWCD Dam Operators, YVEA	Continuous	Ongoing	Annual budget
Stagecoach	Continued Powerhouse Re-Organization and General Building Upgrades	UYWCD Facilities Operators	On going, as needed	Ongoing	Annual budget
Stagecoach	Operating Procedure Manuals and Written Observation Logs	UYWCD Facilities Operators	Completion Scheduled for September 2019, annual updates (or as needed)	Ongoing	Annual budget
Stagecoach	RedLion Integration to IFix	District Engineer, Facilities Operators	Initial integration of existing hardware, updates as needed	Ongoing	TBD/Annual Budget
Stagecoach	Stem Guide Repair	District Engineer, Outside Contractor	TBD pending design recommendations	Dive Contractor to be selected in 2020. Construction start TBD.	\$30,000
Stagecoach	Turbine Repairs- Replace Wear Rings, W.G.	UYWCD Facilities Operators, Outside Contractor	Annual	New Wear Rings delivered 2019, Turbine tear down scheduled for 2020	\$35,000
Stagecoach	Outflow Real Time Data Acquisition	USGS	One time set-up, continuous agency feedback	Initial gage re-programming complete, agency communication ongoing	Annual budget
Stagecoach	Bank Erosion/Willow Planting	Outside Contractor	One-time, installation 2017, annual maintenances possible	Planting area to be extended in 2020 as necessary	\$5,000
Stagecoach	Regulatory Agency Reporting and Permit Compliance	District Engineer	Monthly, Annual, as needed	Ongoing	Annual budget
Stagecoach	Regulatory Agency Liaison (FERC, CPW, USFS, BLM, EPA, USACE...)	District Engineer, District Manager	Continuous	Ongoing	Annual budget
Stagecoach	EAP Updates and Exercises	District Engineer	Annual	Updates complete, Exercise to be scheduled 2020	Annual budget
Stagecoach	Inflow Forecasting	District Engineer	Annual for potential fill forecast period	Ongoing	Annual budget
Stagecoach	Water Rights Accounting, Water storage release orders	District Engineer, UYWCD Facilities Operators	Continuous	Ongoing	Annual budget
Stagecoach	FERC Part 12 Inspection and Report	District Engineer, Outside Contractor	5-Year Recurring, completed 2019, next inspection 2024	Inspection required 2024	Annual budget
Stagecoach	Safety Buoys - Hardware replacement	District Engineer, Facilities Operators	One time	Regular maintenance incorporated into 2020 annual budget	Annual budget
Stagecoach	Facility Budget Tracking and Individual Project Management	District Engineer	Continuous	Ongoing	Annual budget
Yamcolo	General Facilities Operation and Management	District Engineer, UYWCD Facilities Operators	Continuous	Ongoing	Annual budget
Yamcolo	Flow Measurement Bear River	UYWCD Staff, Outside Contractor, USGS	One-Time, as conditions allow	Continue calibration and data connectivity to control house	\$25,000
Yamcolo	Butterfly Valve Repair	UYWCD Staff, Outside Contractor	One-Time, TBD based on observed conditions	Repairs dependent on conditions	\$15,000
Yamcolo	Existing Dam Toe Drains Clearing and Repair	District Engineer, Outside Contractor	5-Year recurrence interval	Toe drain outfalls repaired 2019, area clearing scheduled for 2020	Annual Budget
Yamcolo	Regulatory Agency Reporting and Permit Compliance	District Engineer	Monthly, Annual, as needed	Ongoing	Annual budget
Yamcolo	EAP Updates and Exercises	District Engineer	Annual	Minor document updates will be necessary with CDWR Dam Safety Rules 2019 updates	Annual budget
Yamcolo	Inflow Forecasting	District Engineer	Annual for potential fill forecast period	First iteration of model complete, upgrades as necessary	Annual budget
Yamcolo	Water Rights Accounting, Water storage release orders	UYWCD Staff, Outside Contractor	Continuous	Update to consolidated calculations and tracking scheduled for 2020	Annual Budget
Yamcolo	Regulatory Agency Liaison (FERC, CPW, USFS, BLM, EPA, USACE...)	District Engineer, District Manager	Continuous	Ongoing	Annual budget
Yamcolo	Facility Budget Tracking and Individual Project Management	District Engineer	Continuous	Ongoing	Annual budget
Yamcolo	Riprap Replacement	UYWCD Staff, Outside Contractor	10 - 30 years depending on conditions	Phase 2 Construction Scheduled for 2020.	\$40,000
Stillwater Ditch	Flow Measurement at SW Ditch	District Engineer, Outside Contractor	10 - 30 years	SUP finalized, Design complete, construction 85% Complete, Final site grading and clean up scheduled for 2020 as conditions allow.	\$10,000
Stillwater Ditch	General Facilities Operation and Management	District Engineer, UYWCD Facilities Operators	Seasonal	Ongoing	Annual budget



**UPPER YAMPA WATER CONSERVANCY DISTRICT  
BOARD OF DIRECTORS MEETING  
WEDNESDAY, FEBRUARY 12, 2020 (1:30 PM)  
MOUNTAIN VALLEY BANK COMMUNITY ROOM  
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO**

- 1) Establishment of Quorum and Call to Order;
- 2) Consent Agenda;
- 3) Approval of Agenda for Meeting; action item
- 4) Public Input and Comment;
- 5) Work Session;
  - a) Business Plan
  - b) Board Governance, Strategic Planning
- 6) New Business;
- 7) Adjournment.

DRAFT