

MARKETING POLICY FOR THE ELK RIVER AUGMENTATION
PLAN OF THE
UPPER YAMPA WATER CONSERVANCY DISTRICT
FOR AUGMENTATION PLAN SERVICE

ADOPTED JULY 12, 2023

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1. PURPOSE OF MARKETING PROGRAM

The Upper Yampa Water Conservancy District's purpose is to conserve, develop, and stabilize supplies of water for domestic, irrigation, manufacturing, and other beneficial uses and by the construction of works for such purposes. The District also plans for and assists with the development of water resources of the District for municipal, domestic, industrial, recreational, and other beneficial uses of water resources within the District among other purposes. The District's water rights include rights to Stagecoach and Yamcolo reservoir and contract rights to Steamboat Lake water among others.

The District is authorized to appropriate water rights and initiate and implement plans for augmentation for the benefit of water users within the District's boundaries. Water is available to provide contracts to District constituents to augment their out-of-priority depletions pursuant to the Augmentation Decree of the District Court for Water Division No. 6, Case No. 15CW3058, which is defined below. The District's Board of Directors has approved the marketing of such water and other District water supplies as may be used to complement the use of such Reservoirs' water supplies through a contracting program described herein.

2. AUTHORITIES UNDER PROGRAM

- a. The General Manager is delegated the authority of the Board to implement and administer this Policy and the issuance of the augmentation contracts made pursuant to this Policy for Small Applications as defined in this Policy not exceeding 10-acre feet per year, and authority to approve assignments of all contracts issued for both Small, Large and Industrial Applications. The General Counsel shall assist in the negotiation and drafting of the contracts.
- b. The Board retains authority to approve Large Applications and Industrial Applications along with all other powers not specifically delegated.
- c. The General Manager and General Counsel may make non-substantive interpretations of the Water Marketing Policy for the Elk River Augmentation Plan and the Elk River Augmentation Contract on a case-by-case basis, where reasonably necessary to accomplish the objectives of this Policy, including non-substantive changes to the form of contract adopted under this Policy.

3. DEFINITIONS

- a. "Area A": Areas described below and governed under this Water Marketing Policy for the Elk River Augmentation Plan; provided, that only the portions of Area A that are located within the District's boundaries may be served by the District.

- b. “Area B”: Areas outside of Area A as described below.
- c. “Augmentation Decree”: Decree entered in Case No. 15CW3058, District Court, Water Division 6, on July 29, 2018, as such Decree may be amended.
- d. “Augmentation Plan” or “Plan for Augmentation”: Means a detailed plan to increase the supply of water available for beneficial use as defined in C.R.S. § 37-92-103(9).
- e. “Contract”: A water allotment contract issued by the District for delivery of water up to the annual amount specified in the Contract (“Contracted Water”) consistent with this Water Marketing Policy for the Elk River Augmentation Plan to the person(s) or legal entity(s) named in the Contract (the Contractor(s)).
- f. “District”: The Upper Yampa Water Conservancy District, a political subdivision of the State of Colorado, its Board of Directors, employees and agents.
- g. “General Manager”: The general manager of the District.
- h. “Division Engineer”: The engineer assigned to oversee the water matters for Water Division No. 6 as specified under C.R.S. § 37-92-202.
- i. Equivalent Residential Unit (“EQR”): Equal to 350 gallons per day.
- j. “Large Applications”: A contract application to the District to augment uses, other than industrial uses, with a planned average daily diversion rate in excess of 112 gallons per minute (0.25 c.f.s.) or that identifies planned total annual diversions exceeding thirty (30) acre feet per year.
- k. “Industrial Applications”: A contract application to the District to augment industrial uses that either exceeds a planned average daily diversion rate of 15 gallons per minute or for which the following commercial EQR ratings do not apply:
 - Single family home = 3.5 persons using 100 GPCD (gallons/capita/day) = 350 gallons per day = 1 Equivalent Residential Unit (EQR)
 - Apartments = 0.75/EQR unit
 - Mobile Homes = 0.75/EQR unit
 - Office = 0.6 EQR/1,000 square feet
 - Warehouse – 0.30 EQR/1,000 square feet
 - Retail Sales = 0.60 EQR/1,000 square feet

- l. “Small Applications”: A contract application to the District to augment uses that *do not* exceed a direct flow or storage diversion demand for groundwater or surface water of greater than 0.25 c.f.s. or 30 acre-feet annually.
- m. “Water Court”: The District Court in and for Colorado Water Division No. 6 as defined in C.R.S. § 37-92-201.

4. SOURCES AND SCOPE OF MARKETING

- a. Sources of Water Available for Augmentation or Exchange

- i. “In-Basin Supply”: Water delivered from Steamboat Lake, for which the District has a Water Lease with Colorado Parks and Wildlife for storage water right decrees were obtained in Case No. 90CW01 and 95CW142 District Court for Colorado Water Division No. 6, and for which additional storage water right decrees may be obtained in the future by the District, water available from the District’s contractual right to water deliveries, and other water sources available to the District for use in its Water Marketing Policy for the Elk River Augmentation Plan.
- ii. “Stagecoach Reservoir Supply”: Water delivered from Stagecoach Reservoir, for which storage water right decrees were obtained by the District in Cases No. CA3538, W-414-72, W-946-76, W-1091-76, 94CW149, 95CW78, 97CW84, and 01CW41, District Court for Colorado Water Division No. 6, and for which additional storage water right decrees may be obtained in the future by the District, water available from the District’s contractual right to water deliveries, and other water sources available to the District for use in its Water Marketing Policy for the Elk River Augmentation Plan.
- iii. “Yamcolo Reservoir Supply”: Water delivered from Yamcolo Reservoir, for which storage water right decrees were obtained by the District in Case Nos. W-946-76, 82CW211, 01CW41, and 03CW58, District Court for Colorado Water Division No. 6, and for which additional storage water right decrees may be obtained in the future by the District, water available from the District’s contractual right to water deliveries, and other water sources available to the District for use in its Water Marketing Policy for the Elk River Augmentation Plan.

- b. Volumetric Description

The total maximum amount of augmentation or exchange water involved in and committed to the District in this plan for augmentation is 360-acre feet or such lesser amount available pursuant to retained jurisdiction or future board direction.

The amount needed by any individual Contractor will depend on the nature and amount of its uses and, in some situations, the location of its diversions and return flows in relation to senior diversions.

c. Geographic Area

Area A encompasses portions of the Elk River below its confluence with Willow Creek including the West Fork of the Elk River and Willow Creek from its confluence with the Elk River extending to locations upstream from Steamboat Lake where use of the water rights in the Augmentation Decree can fully augment structures developed by District Contractees. **Exhibit A.** All areas outside of the below described areas are referred to as Area B. The augmentation plan allows direct augmentation on the Elk River and Yampa Mainstem and exchange augmentation on the Elk River Tributaries.

- i. Area A-1 includes structures that will divert water from within that portion of Area A encompassing all areas tributary to the Elk River and its tributaries in a stream reach extending from a downstream terminus at the confluence of the Elk River with the Yampa River to an upstream terminus located on the Elk River just upstream of its confluence with Willow Creek, a distance of approximately 27 miles. The boundaries of Area A-1 are depicted on the map that is attached hereto as **Exhibit A.** The total amount of augmentation water available for Area A-1 is 360-acre feet. The rate of exchange within Area A-1 is 1.4 c.f.s. for the entire area A-1 and not to exceed 0.3 c.f.s., with the exception of Salt Creek not to exceed 0.5 c.f.s., within any one of the seventeen major tributaries and watersheds: (1) Farnsworth Creek, (2) Trull Creek, (3) Dry Gulch, (4) Salt Creek, (5) Deep Creek, (6) Long Gulch, (7) Dutch Gulch, (8) McPhee Creek, (9) Sand Creek, (10) Cottonwood Gulch, (11) Greenville Creek, (12) Franz Creek, (13) Taylor Canyon, (14) Keller Ditch Area Watersheds, (15) Wither Ditch Area Watersheds, (16) Willow Creek Basin, and (17) Lester Creek.
- ii. Area A-2: Area A-2 includes structures that will divert water from within that portion of Area A encompassing all areas tributary to the West Fork of the Elk River and its tributaries in a stream reach extending from a downstream terminus at the confluence of the West Fork of the Elk River with the Yampa River to an upstream terminus located where the West Fork of the Elk River branches off the Elk River, a distance of approximately 1.9 miles. The boundaries of Area A-2 are depicted on the map that is attached hereto as **Exhibit A.** The total amount of augmentation water available for Area A-2 is 50-acre feet. The rate of exchange within Area A-2 is 0.2 c.f.s. for the entire area A-2, and not to exceed 0.2 c.f.s. within major tributary listed below. This amount does not include the amount of exchange for Area A-1. The tributary is: (1) DeCora Gulch.

5. CONTRACTING PROCESS AND TERMS

a. Application Process

- i. **Written Application:** Prospective Applicants for Contracts shall make written application to the District on forms prepared by District staff and approved by the General Manager and General Counsel. Such completed application forms shall be accompanied by the Applicant's non-reimbursable payment to the District of the application fee for processing of the application for approval. Application fees for Contract applications that are denied by the District, or the Division Engineer shall not be refunded.
- ii. **Served Property:** Applicant must use the water allotted pursuant to its Contract for beneficial purposes by diversion at Applicant's point of diversion under the District's direct flow water rights and/or for use by augmentation or exchange. Applicant must use the water allotted by the District within or through facilities or upon lands owned, operated, or served by Applicant, which are described in the Application. Applicant shall provide proof of ownership of, or legal right to use, the property and facilities to be served by the Contract. All lands, facilities, and areas served by the Contracted Water shall be situated within the boundaries of the District. Unless otherwise agreed by the General Manager, the Application shall include both a legal description suitable for recordation in the real property records and accurate and legible map of the actual location of use.
- iii. **Verification of Need:** The application process shall include a description by the Applicant of the nature of its water service, its places of use, its available water rights and supplies, and need for Contracted Water. The need of the Applicant for program water in the quantity requested shall be verified by the General Manager, in consultation with the General Counsel as necessary. If the General Manager determines that all or any portion of a Water Contract request is not based upon legitimate need, the General Manager shall report that finding to the District Board, which shall make the final decision, and the Board will allow the Applicant to present written information in support of its claimed need. The Board's decision on such matters shall be final.
- iv. **Review by Division Engineer:** All applications submitted to the District will be submitted to and may be reviewed by the Division Engineer. The Applicant shall be responsible for providing the information required in Paragraph 8.7.2 of the Augmentation Decree to the extent applicable. Large and Industrial Applications will also be provided to the Opposers listed in **Exhibit B** of the Augmentation Decree for informational purposes only. The Opposers may communicate specific concerns to the District, the Division Engineer, or both. The Division

Engineer shall review the Application to determine whether any existing water right will be injured, or whether the calculated amount of depletions is reasonable, or whether the site-specific conditions described in any lagged depletion analysis is reasonable. The Division Engineer has sixty-three (63) days to provide written specific objections to the District. If no objections are made within said 63-day period, the District may issue a Water Contract. If the Division

Engineer, within the 63-day period, provides written objection to the approval of such large application, the District must deny such application.

- v. **Contract Execution:** The Applicant shall have sixty (60) days after mailing or electronically transmitting the final Contract documents to them in which to execute the final Contract and deliver the executed originals to the District's offices. If such execution and delivery are not accomplished in that time, the Applicant shall be deemed to have rejected the District's offer to contract.

b. Quantities

- i. **Minimum:** The minimum amounts of water that may be contracted pursuant to this Policy shall be 0.1-acre feet annually. Quantity will not be pro-rated based on non-use in any part of the project year.
- ii. **Maximum:** The maximum amount of water that may be contracted for the benefit of any single property on a case-by-case basis shall be 10-acre feet without prior Board approval.
- iii. Water Contracts shall be rounded off in one-tenth acre foot units.
- iv. **Changes per Division Engineer review or retained jurisdiction:** The District reserves the right to change quantities in a Water Contract per orders from the Division Engineer or Water Court as allowed under the Augmentation Decree.

c. Deliveries

- i. **Project Year:** The basis for calculating payment and delivery obligations shall be "Project Year" or multiples thereof, which shall be the period from April in one year through March in the succeeding year.

d. Charges and Fees

i. Application Fees:

(1) The Board shall determine application fees annually.

(2) The application fee for a Water Supply Contract shall be determined annually by the Board for each application type. An application will not be processed until the appropriate application fee has been received. See **Appendix A** for current application fees.

(3) Request for contract amendments may initiate a new application process and pay associated application fees, except that General Manager may authorize amendments to correct errors and make other non-material revisions to a Contract which would not have the Application submitted for such Contract, as amended, subject to any notice provision of this paragraph 5 or otherwise under the Augmentation Decree. See **Appendix A** for current amendment fee.

ii. Rates for Classes of Users: The price for each type of water shall be reviewed and set annually by the Board of Directors. Any approved Contract is subject to change in price as annually determined by the District. The price is a “take or pay” price and is payable with respect to the maximum contract amount allotted to the Contractor, whether or not in any year such Contractor in fact takes and uses all of the Contracted Water. See **Appendix A** for current water supply pricing.

iii. Minimum Charges: The minimum annual contract charge will be for 1.0-acre feet. See **Appendix A** for current water supply pricing.

iv. O&M Assessments: Contractor shall pay any special assessment levied by the District on Contractor to recoup expenses from extraordinary maintenance incurred by the District.

v. The current version of the **Appendix A** Upper Yampa Water Augmentation Plan Water Pricing shall be annually substituted for the prior year when adopted by the Board.

e. Required Meters

Contractor agrees to provide, at its own expense, a continuous flow recording device with remote readout, or other device as required by the Contract and to be in

compliance with the Division of Water Resources (DWR) measurement standards, to continuously and accurately measure at all times all water diverted pursuant to the terms of Contractor's water right and the terms of the Contract. On or before November 5 of each year, or more frequently if required by the Division Engineer, Contractor will provide accurate readings from such continuous flow recording device (recorded on a monthly basis for the period November 1 through October 31 of each year) to the District. Contractor acknowledges that failure to comply with this paragraph could result in legal action to terminate Contractor's diversion of water by the State of Colorado Division of Water Resources.

f. Use Reporting

- i. Commencement of Service: Service will commence upon execution of the Contract, payment of applicable fees, and approval as may be required under the Augmentation Decree by the Division Engineer or Water Court. Contractor must record water use at commencement of service.
- ii. Periodic Reporting per District Requirements: Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on forms acceptable to the District specifically for the purpose of enabling the District to prove the use of project water rights and to administer and operate the project and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to the District promptly upon request and shall assist the District as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.
- iii. District Right to Enter and Verify: Contractor acknowledges that District representatives or agents have the right to enter upon property that Contractor represented in the Application for which the Contract Water is to be used. The District may verify water use in conformance with the Contract and Policy, including, but not limited to amounts, locations used, types of use, and accuracy of flow meters.

g. Well Permit

If Contractor intends to divert through a well, then Contractor must provide to District a copy of Contractor's valid well permit before the District is obligated to deliver any water hereunder, and it is the Contractor's continuous duty to maintain a valid well permit. Contractor shall also comply with all restrictions and limitations set forth in the well permit obtained from the Colorado Division of Water Resources

pursuant to C.R.S. §37-90-137. The Contractor must comply with any other statutory or regulatory requirements for issuance of well permits to be augmented pursuant to this plan, including the 600-foot spacing requirement of C.R.S. § 37-90-137(2)(b), if applicable. Compliance with said statutory well-spacing criteria shall be an express condition of the extension of service hereunder, and the District shall in no way be liable for a Contractor's failure to comply. Contractor agrees to mark the well in a conspicuous place with the permit number.

h. Noncompliance

- i. Report to Division Engineer: Breach of the Contract by the Contractor will result in the District reporting the noncompliance to the Division Engineer.
- ii. Curtail releases: The District may withhold deliveries of Contracted Water in the event of Contractor's nonpayment for Contracted Water or any other breach of the Contract by Contractor. Such remedies shall not be the exclusive remedies in the event of such a breach.

i. Assignment

- i. The water allotted under any Contract shall be beneficially used for the purposes and in the manner specified in the Application and the Contract. The Contract is for the exclusive benefit of the Contractor's property as specified in the Contract and shall inure to the benefit of any successor in interest to the fee title to said property upon written assignment and notice thereof to the District, and subject to compliance with this Water Marketing Policy for the Elk River Augmentation Plan and Contract terms, said assignment to be made using the District's approved form as modified with the approval of the General Manager. The restrictions on assignment contained herein shall not preclude the District from holding the Contractor, or any successor of the Contractor, responsible for the performance of all or any part of the Contractor's covenants and agreements contained in the Contract. For purposes of this Contract, any change in the ownership of the property served by the Contracted Water as specified in the application and/or the Contract shall constitute an assignment requiring execution of an instrument of assignment on the District's approved form, as modified with the approval of the General Manager, notice to the District and payment of the assignment fee.
- ii. The Board shall determine assignment fees annually. See **Appendix A** for current assignment fee.

j. Limitation on Sale

Contractor may not assign, sublet, sell, donate, loan or otherwise dispose of any of its rights to a Contract or Contracted Water separate from the property that it serves as specified in the Contract without prior written notice to, and the written approval (except as otherwise provided in paragraph 5. i. (i.) above) of the District as provided in the Contract. The District will approve such disposition in all instances where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the District to be served with the Contracted Water. Any disposition of a Contractor's rights to a Contract or Contracted Water must be by written instrument signed by the District. As provided above, a fee will be imposed for each contract assignment.

k. Form of Contract, Term and Renewal

- i. Contracts shall be made in the form approved by the Board, as the same may be revised from time to time in the discretion of the Board. The form of contract approved as of the date of this Policy is attached at **Exhibit C**. The term of such contracts entered in to after July 12, 2023 shall be for a term commencing on January 1st of the year in which such contract is executed and ending on December 31, 2062. The General Manager shall have the authority to extend contracts entered in to on or prior to July 12, 2023 for a term ending December 31, 2062 with the agreement of the Contractor.
- ii. For Contracts ending December 31, 2062, the Contractor shall have the right to renew this Contract for the same Contracted Water Amount for a secondary term of thirty-five (35) years, subject to the District's current Policies and, upon such terms, conditions and pricing as the District is offering at that time, provided that the District is offering up the full amount of Contracted Water. In the event that the District, on a nondiscriminatory basis, decides not to offer up the full amount of the Contracted Water, Contractor shall have the right to renew for a secondary term of thirty-five (35) years such lesser portion of the Contracted Water as may be offered by the District. If Contractor desires to so renew this Contract, it shall provide the District written notice of its intention to do so at least ninety (90) days prior to the expiration of the initial term of this Contract. Thereafter, and prior to the expiration of the initial term, the District and Contractor shall execute a new or supplemental agreement of renewal on the District's standard form. If Contractor fails to renew as set forth above, no renewal term shall commence, and the District shall be free to contract for or otherwise dispose of the Contracted Water in its discretion.

6. DELIVERY CONTINGENCIES AND SHORTAGE CRITERIA

a. Shortages

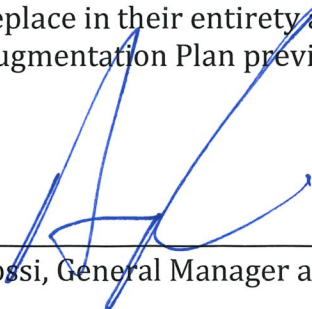
Delivery of water is subject to limitations of the hydrological conditions, availability of water under the Augmentation Decree including limitations on exchanges, and the provision for curtailment below. In the event that the District is unable, because of either legal or physical reasons (including but not limited to, hydrologic shortages, operational restrictions, or the unavailability for any reason of the water to be used for augmentation as described in the Augmentation Decree), to deliver any or all of the full amount of water contracted from the District, the District reserves the right to apportion the available water among its several contractors or to entirely curtail such deliveries. If the District is to apportion the available water among its contractors as provided herein, the District shall notify the respective Contractors in writing of such fact by August 1st of that year. Water shortages among the District's Contractors shall be apportioned in the following sequence:

- i. Large or Small Contracts used for solely for irrigation purposes are pro-rata shorted up to 100%.
- ii. Large and Industrial contracts are then pro-rata shorted up to 100%.
- iii. Small contracts then are shorted as necessary on a pro-rata basis.

Replacement of depletions using the decreed appropriative exchanges shall require that said exchange(s) be in priority and have water physically and legally available in the exchange reach(es) from the exchanged from point to the exchanged-to point(s) in the amount(s) to be exchanged. Out-of-priority diversions not meeting this requirement shall be subject to curtailment.

CERTIFICATE OF SECRETARY

I hereby certify that the foregoing Water Marketing Policy for the Elk River Augmentation Plan of the Upper Yampa Water Conservancy District for Augmentation Plan Service (Elk River Augmentation Plan) dated July 12, 2023, was approved by the Board of Directors of the Upper Yampa Water Conservancy District effective as of July 12, 2023, and shall supersede and replace in their entirety all versions of this Water Marketing Policy for the Elk River Augmentation Plan previously approved for the Elk River Augmentation Plan.

By:  _____
Andy Rossi, General Manager and Secretary/Treasurer

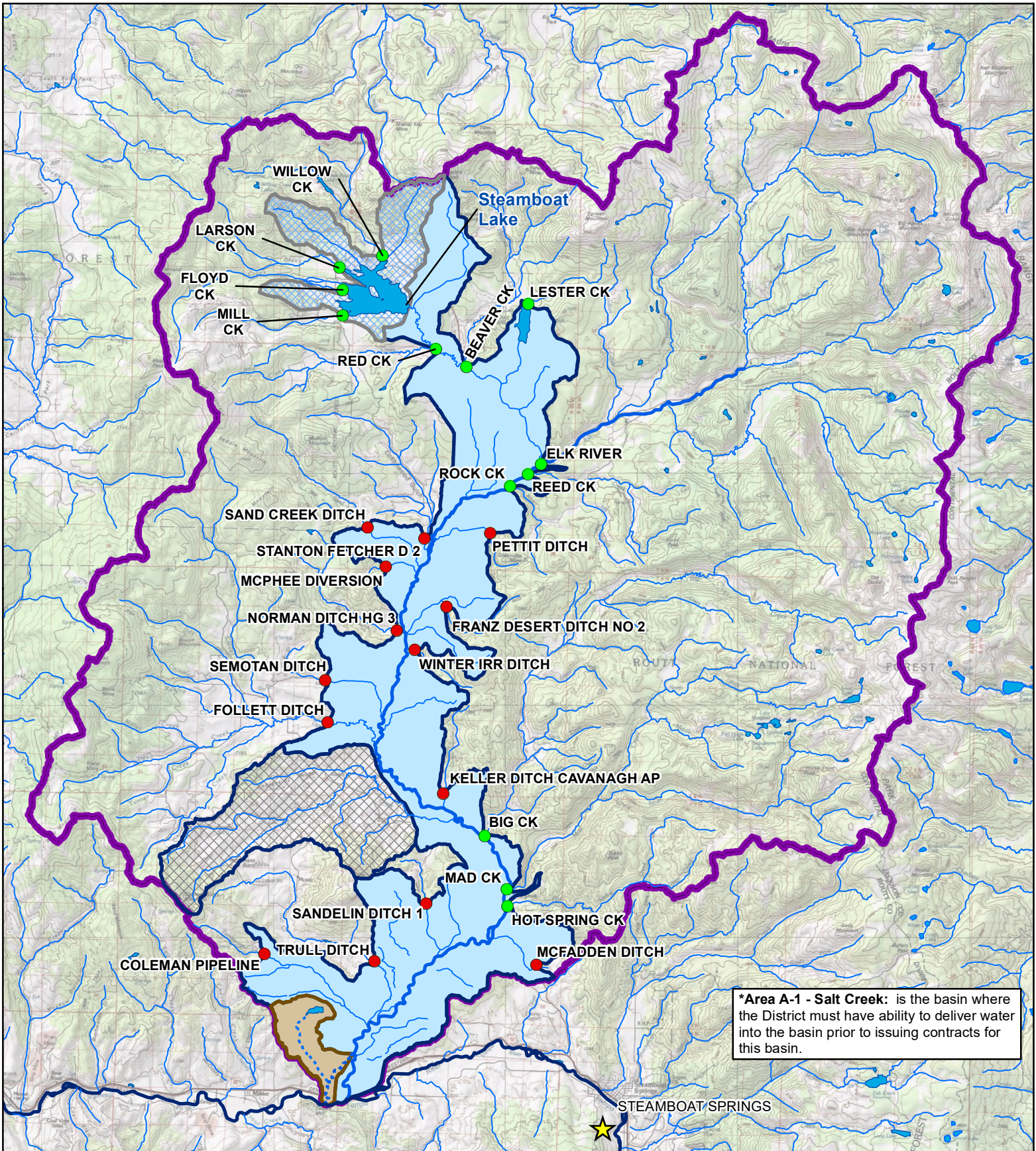
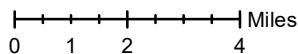


Exhibit A Area A Location Map

Date: 2017-07-12
 File: 1047-1.10
 Drawn: ABS
 Approved: RSF



Area A

- Area A-1
- Area A-1 - Salt Creek*
- Area A-2
- Area A-1-F

Potential Calling Right

- CWCB ISF
- Ditch Name

- Elk River Watershed
- City
- Reservoirs
- Streams
- Elk River
- West Fork Elk River
- Yampa River

Exhibit B

Opposer Contact Information for Notice of Contract Applications

DATE FILED: May 14, 2018 3:46 PM

Updated: August 12, 2022 3:12 PM- D. Bastian, UYWCD Bus. Mgr.

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Stream and Lake Protection Section
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Appendix A

Upper Yampa Water Augmentation Plan Water Pricing

	Non-Commercial / Non-Industrial		Commercial / Industrial	
	Small Contract	Large Contract	Small Contract	Large Contract
Application Fee:	\$600	\$2,000	\$600	\$2,000
Price per acre foot:	\$256.65	\$256.65	\$300.69	\$300.69
Assignment Fee:	\$600	\$600	\$600	\$600
Amendment Fee:	\$600	\$600	\$600	\$600

Approved by BOD 01.22.2025

**AUGMENTATION CONTRACT No. _____
UPPER YAMPA WATER CONSERVANCY DISTRICT
ELK RIVER SUPPLY**

_____ (hereinafter "Contractor") has applied to the Upper Yampa Water Conservancy District (hereinafter the "District") a political subdivision of the State of Colorado, organized pursuant to and existing by virtue of Section 37-45-101, Colorado Revised Statutes, *et seq.*, for an augmentation contract for use of water supplies owned, leased, or hereafter acquired by the District. By execution of this Contract, Contractor and District agree to the following terms and conditions.

1. AUGMENTATION SUPPLY.

A. In consideration of the covenants and conditions herein contained, Contractor shall be entitled to the release of _____ acre feet per year of storage or other augmentation water owned or controlled by the District (the "Contracted Water") for use to augment depletions from Contractor's out-of-priority diversions pursuant to the District's Decree entered July 29, 2018 in Case No. 15CW3058, Colorado Water Division No. 6 ("Augmentation Decree") and any amendments thereof obtained by the District in its sole discretion.

B. The Contracted Water amount is based on the water requirements table attached hereto as **Exhibit A**. Contractor shall restrict consumptive use under this Contract to that amount. Any increase or change in the water requirements to be supplied by the District may require application for and issuance of a replacement contract, and cancelation of this Contract.

C. Any quantity of the Contractor's Contracted Water that is not used by Contractor by the end of each water year shall not carry over for the Contractor's future use but shall revert to the water supplies of the District. Such reversion shall not entitle Contractor to any refund of payment made for such water supply.

D. Contracted Water will be derived from exercise of the District's water rights decreed for augmentation pursuant to the Augmentation Decree. The District shall have the right, but not the obligation, to designate the water right(s) from which the Contractor's Contracted Water shall be released and to change that designation at any time in its discretion.

E. Contractor's use of any of the Contracted Water shall be subject to any and all terms and conditions imposed by the Water Court on the use of the District's water rights.

F. The water service provided hereunder is expressly subject to the provisions of the District's Water Marketing Policy for the Elk River Augmentation Plan, which provides, in part, for the possible curtailment of uses upon the occurrence of certain events and upon the District giving notice of such curtailment, all as more

fully set forth therein. This may include curtailment of surface diversions that deplete an existing instream flow reach when a call is placed by the Colorado Water Conservation Board unless the Contractor has secured sufficient water under the Elk River Augmentation Plan and/or other lawfully available sources to fully augment one hundred percent (100%) of the Contractor's diversions as necessary to prevent injury to the instream flow water right. The service is specifically dependent on the legal and physical availability of the Contracted Water for delivery, including the unavailability for any reason of the water to be used for augmentation as described in the Augmentation Decree, and the District shall have no liability to Contractor for its inability to deliver any or all of the Contracted Water for such reasons.

G. Nothing herein gives the Contractor any equitable or legal title interest or ownership in or to any of the District's water or water rights or the facilities by which they are managed for use. Contractor is only entitled to benefit from the water supply allotted hereunder subject to the limitations, obligations, and conditions of this Contract. Contractor shall not institute any legal proceedings for the approval of an augmentation plan and/or any change of the District's water rights.

H. The District's issuance of this Contract to the Contractor is based upon the Contractor's written application and the related information provided by the Contractor to the District in connection with that application. Contractor represents and warrants that the information provided in the contract application is accurate and complete.

2. PURPOSE AND LOCATION OF USE.

A. Contractor will use the Contracted Water to augment diversions at Contractor's point(s) of diversion. Contractor will use the Contracted Water within or through facilities or upon land owned, operated, or served by Contractor, which land is within the District's boundaries and is described on **Exhibit B** attached hereto; provided, that the location and purpose of Contractor's use of Contracted Water must be legally recognized and permitted by the applicable governmental authorities having jurisdiction over the property served. Any change in the location of use shall require application for and issuance of a replacement contract.

B. Contractor's contemplated use for the Contracted Water is for augmentation of the following type of contract as the same are defined in the District's Water Marketing Policy for the Elk River Augmentation Plan: [Select] Large, Small, Industrial.

3. AUGMENTATION PLAN IMPLEMENTATION AND COMPLIANCE.

A. The District shall be responsible for the implementation of the Augmentation Decree including, without limitation, the review of water allotment contract applications with the Division Engineer and any other parties, making

needed augmentation releases, and accounting for augmentation releases made for Contractor and other District allottees.

B. Contractor shall provide, at its own expense, a continuous flow recording device with remote readout, or other device as required by the Augmentation Decree and to be in compliance with the Division of Water Resources (DWR) measurement standards, to continuously and accurately measure at all times all water diverted pursuant to the Augmentation Decree. On or before November 5 of each year, or more frequently if required by the Division Engineer, Contractor shall provide accurate readings from such continuous flow recording device (recorded on a monthly basis for the period November 1 through October 31 of each year) to the District. Contractor acknowledges that failure to comply with these provisions could result in legal action to terminate Contractor's diversion of water by the State of Colorado, Division of Water Resources.

C. Contractor hereby specifically allows the District, through its authorized agents, to enter upon Contractor's property during ordinary business hours for the purposes of determining Contractor's measurement capabilities and actual use of water.

D. If Contractor intends to divert through a well, Contractor must provide to the District a copy of Contractor's valid well permit before the District is obligated to deliver any Contracted Water, and it is the Contractor's continuous duty to maintain a valid well permit. Contractor shall also comply with all restrictions and limitations set forth in the well permit obtained from the Colorado Division of Water Resources. Contractor must comply with the well-spacing requirements set forth in C.R.S. § 37-90-137, as amended, if applicable. Compliance with said statutory well-spacing criteria is an express condition of the extension of service hereunder, and the District shall in no way be liable for a Contractor's failure to comply. Contractor agrees to mark the well in a conspicuous place with the permit number.

4. PAYMENTS.

A. Contractor shall pay the District annually for the Contracted Water herein at a price to be fixed annually by the Board of Directors of the District for such service. Payment of the annual fee shall be made, in full, within fifteen (15) days after the date of a notice from the District that the payment is due. Said notice will advise the Contractor, among other things, of the water delivery year to which the payment shall apply and the price which is applicable to that year. If a payment is not made by the due date, a late fee of \$50 (or such other amount as the Board may set from time to time) will be assessed and final written notice of the delinquent account and late fee assessment will be sent by the District to the Contractor at Contractor's address set forth below. If payment is not made within thirty (30) days after said final written notice, the District may, at its option, elect to terminate all of the Contractor's right, title, or interest under this Contract, in which event the Contracted Water may be transferred, leased or otherwise disposed of by the District at the discretion of its

Board of Directors. The price is a “take or pay” price and is payable with respect to the maximum allotted contract amount allotted to the Contractor, whether or not in any year such Contractor in fact takes and uses all of the contracted water.

B. If water deliveries hereunder are made by or pursuant to agreement with some other person, corporation, quasi-municipal entity, or governmental entity, and in the event the Contractor fails to make payments as required hereunder, the District may, at its sole option and request, authorize said person or entity to curtail the Contractor’s water service pursuant to this Contract, and in such event neither the District nor such persons or entity shall be liable for such curtailment.

C. Contractor agrees that so long as this Contract is valid and in force, Contractor will budget and appropriate from such sources of revenues as may be legally available to the Contractor the funds necessary to make timely annual payments. Contractor will hold harmless the District and any person or entity involved in the delivery of water pursuant to this Contract for discontinuance in service due to the failure of Contractor to maintain the payments herein required on a current basis.

5. TERM AND RENEWAL.

The term of this contract shall commence on January 1st of the year in which it is executed and terminate on December 31, 2062. The Contractor shall have the right to renew this Contract for the same Contracted Water amount for a secondary term of thirty-five (35) years, subject to the District’s current Policies and, upon such terms, conditions and pricing as the District is offering at that time, provided that the District is offering up the full amount of Contracted Water. In the event that the District, on a nondiscriminatory basis, decides not to offer up the full amount of the Contracted Water, Contractor shall have the right to renew for a secondary term of thirty-five (35) years such lesser portion of the Contracted Water as may be offered by the District. If Contractor desires to so renew this Contract, it shall provide the District written notice of its intention to do so at least ninety (90) days prior to the expiration of the initial term of this Contract. Thereafter, and prior to the expiration of the initial term, the District and Contractor shall execute a new or supplemental agreement of renewal on the District’s standard form. If Contractor fails to renew as set forth above, no renewal term shall commence, and the District shall be free to contract for or otherwise dispose of the Contracted Water in its discretion.

6. ASSIGNMENTS.

A. The Contracted Water shall be beneficially used for the purposes and in the manner specified herein, and this Contract is for the exclusive benefit of the Contractor’s property and shall inure to the benefit of any successor in interest to the fee title to said property upon written assignment and notice thereof to the District, and subject to compliance with the District’s Water Marketing Policy for the Elk River

Augmentation Plan and the terms of this Contract, said assignment to be made using the District's approved form.

B. Upon the sale of the real property to which this Contract pertains, Contractor has a duty to make the buyer aware of this Contract and of the need to assign the Contract to the buyer. Written notice of assignment to the District shall be necessary for the assignment to become effective. Payment of an assignment fee in an amount determined annually by the Board shall be required for the approval of an assignment.

C. If the Contracted Water will be used for the benefit of land that is now or will hereafter be subdivided or otherwise held or owned in separate ownership interests, Contractor may assign Contractor's rights hereunder only to a homeowners association, property owners association, water district, water and sanitation district or other special district, or other entity properly organized and existing under and by virtue of the laws of the State of Colorado, and then only if such entity establishes to the satisfaction of the District that it has the ability and authority to assure its performance of the Contractor's obligations under this Contract. In no event shall the owner of a portion but less than all of the property served under this Contract have any rights hereunder, except as such rights may exist through an association or special district as above provided.

D. The restrictions on assignment contained herein shall not preclude the District from holding the Contractor, or any successor to the Contractor, responsible for the performance of all or any part of the Contractor's covenants and agreements herein contained.

7. MULTIPLE OWNERSHIP.

A. In the event of the division of the property served by this Contract into two or more parcels owned by different persons or entities, in addition to the obligations in Section 6.C. above, the Contractor shall give notice to purchasers of any part of the subject property of the obligations of this Contract and shall record such notice in the records of the Clerk and Recorder of the county in which such property is located.

B. If such divided property is to be served by a shared well, as a condition of service under this Contract, all of the owners of such property shall execute and record a well sharing agreement in a form acceptable to the District and provide evidence thereof to the District.

8. CONTRACTOR'S LEGAL COMPLIANCE.

A. Contractor's rights under this Contract shall be subject to the Water Marketing Policy for the Elk River Augmentation Plan and to any Water Service Plan adopted by the District and amended from time to time; provided, that such Policy

and Plan shall apply uniformly among water users receiving the same service from the District. Contractor shall also be bound by all applicable laws and regulations, including, for example, the provisions of the Water Conservancy Act of the State of Colorado.

B. Contractor shall comply with all federal, state, and local governmental laws and regulations in the construction, maintenance, operation, replacement or repair of the facilities required to divert and use water that is augmented pursuant to this Contract. Upon demand of the District, Contractor shall provide the District with documentary proof of such compliance.

C. Contractor shall only charge its water customers, if any, who are supplied based upon the Contracted Water such rates, charges, and fees as are permitted by Colorado law.

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

E. Contractor shall implement and use commonly accepted conservation practices with respect to use of water augmented by the supply allotted under this Contract and shall be bound by any conservation plan hereafter adopted by the District, as the same may be amended from time to time.

9. CONTRACT TERMINATION.

A. Termination by District:

1. The District may terminate this Contract for any violation or breach of the terms of this Contract by Contractor, including as provided in Section 4. A., above, regarding delinquent payments.

2. The District may terminate this Contract if, in its discretion, any judicial or administrative proceeding initiated by Contractor threatens the District's authority to contract for delivery or use of the District's water rights, or threatens the District's permits, water rights, or other interests of the District.

3. The District may terminate this contract if Contractor opposes any of the District's Water Court applications regarding the District's water rights used for augmentation pursuant to the Augmentation Decree.

B. **Termination by Contractor:** Contractor may terminate this Contract in its entirety for any reason by notifying the District in writing of the termination on or

before April 1. Notice by said date will prevent the Contractor's liability for the next annual contract charge.

C. Notice to Division Engineer: Upon termination of this Contract by either the District or Contractor, the District will provide notice of such termination to the Office of the Division 6 Engineer, Colorado Division of Water Resources. The District shall have no liability to Contractor for any administrative or legal action taken by the Division Engineer or other representatives of the State of Colorado to curtail or limit Contractor's use of water previously augmented by the Contracted Water under this Contract.

10. FORCE MAJEURE.

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

11. NOTICES.

All notices required or appropriate under or pursuant to this contract shall be given in writing mailed or delivered to the parties or sent by internet communication at the following addresses:

Notice to Contractor

Email: _____

Notice to District

Upper Yampa Water Conservancy District
Attention: General Manager
P.O. Box 775529
Steamboat Springs, CO 80477
UYWCD@upperyampawater.com

Either Party may by notice given in accordance with this provision change the addresses to which future notices shall be mailed or delivered.

