



**QUARTERLY ATTORNEY REPORT
ENTERPRISE
July 2011**

TO: CRWCD ENTERPRISE BOARD OF DIRECTORS

FROM: PETER C. FLEMING, GENERAL COUNSEL
JASON V. TURNER, ASSOCIATE COUNSEL

Dear Directors:

This report identifies matters for discussion at the July 19-20, 2011, meeting of the River District's Enterprise. The information in this report is current as of July 7, 2011, and will be supplemented as necessary before or at the Board meeting.

I. EXECUTIVE SESSION

The following is a list of matters that qualify for discussion in executive session pursuant to C.R.S. §§ 24-6-402(4)(b) and (e).

- A. River District Diligence Application for Elkhead Reservoir Enlargement, Case No. 11CW09, Water Division 6.
- B. Application of Peak Ranch, Inc., Case No. 08CW56, Water Division 5.
- C. Wolford Mountain Reservoir Financial Matters.
- D. Wolford Mountain Reservoir Access Issues.

II. WATER COURT MATTERS

A. River District Diligence Application in Case No. 11CW09 (Elkhead Reservoir Enlargement), Water Division No. 6.

Consistent with the Board's direction in April we filed an application for a finding of reasonable diligence and to make absolute the Elkhead Reservoir Enlargement storage and direct-flow power rights in Water Division No. 6. The deadline for filing statements of opposition does not expire until the end of July. We will report back to the Board on the status of this case in October.

This case is discussed in the Confidential Report. We recommend that the Board discuss this matter in executive session.

B. Application of Peak Ranch, Inc., Case No. 08CW56, Water Division No. 5.

Peak Ranch owns 4,593 acre-feet of the 38,808 acre-feet conditionally decreed to Barber Basin Reservoir No. 2 and 4,593 acre-feet conditionally decreed to Barber Basin Reservoir No. 3. Board members may recall that the remaining portion of Barber Basin Reservoir No. 2 is owned by Tri-State and is the subject of pending negotiations regarding acquisition of the right by the River District.

Peak Ranch proposes to change its interest in Barber Basin No. 2 and Barber Basin No. 3 to a number of reservoirs on Muddy Creek and its tributaries upstream of the River District's Wolford Mountain Reservoir and in some instances use those water rights to effectuate a second fill at some of its reservoirs. These conditional water rights are senior in priority to Wolford.

This matter is discussed in the Confidential Report. We recommend that the Board discuss it in executive session.

C. Application of Archie W. and Linda R. Dunham, Case No. 06CW266, Water Division No. 5.

We request action, authorizing a stipulation as discussed below.

The Dunham's application is for on-channel storage water rights and for approval of a plan for augmentation, located upstream of Wolford Mountain Reservoir. The River District Enterprise filed a Statement of Opposition to protect its interest at Wolford Mountain Reservoir. The Applicants have agreed to make revisions to the decree that we feel are necessary and protective of the River District's interest, including agreeing to construct the reservoirs with low level outlets capable of passing water in the event of a call at Wolford Mountain Reservoir.

We request that the Board authorize counsel to stipulate to a consent decree in the Application of Archie W. and Linda R. Dunham, Case No. 06CW266, Water Division 5.

D. Contract between Colorado River District and Colorado Water Trust for Moser Rights, and Joint Application in Case No. 05CW265, Water Division 5.

No action requested.

In 2005, the River District contracted with the Colorado Water Trust to purchase the consumptive use portion of the Moser water rights for use in its water marketing program. The River District was a co-applicant to the Water Trust's change of water rights application to quantify the consumptive use associated with the Moser rights. We are pleased to report that a decree was entered approving the change of water rights and quantifying the consumptive use at 73 acre-feet.

On June 7th, the Water Trust conveyed to the River District 73 acre feet of the pre-1922 consumptive use Moser water rights. The River District is authorized by the change decree and by an excess-capacity contract with Reclamation to store this water on a yearly basis at Green Mountain Reservoir for subsequent release as part of the River District water marketing program. In addition, the River District may exchange the water into Wolford Mountain Reservoir.

III. OTHER MATTERS

A. Summit County Request for Upper Blue Water.

We request action, approving a one-year water supply contract.

The 2003 Colorado Springs Utilities (“CSU”) Substitution Agreement provides the River District with an annual supply of 250 acre feet stored in Upper Blue Reservoir (“Upper Blue Water”). The River District has made this water available pursuant to short term (annual) contracts to water users in Summit County. Once a decree is entered in the CSU Substitution case, the River District should be able to enter long-term contracts with its constituents for this water supply.

Summit County has requested a 2011 contract for 100 acre feet of Upper Blue Water. This is similar to the contract request that the county made in 2009 and 2010. Those contracts were set at \$375.00 per acre foot, and/or to allow Summit County to exchange its supply of Wolford Mountain Reservoir water available through its contract with the Middle Park Water Conservancy District on a value ratio basis. A copy of the 2010 contract is included with your materials as Attachment A for your reference.

We recommend that, given the current unavailability of long term contracts for Upper Blue Water, the Board approve one year contracts of Upper Blue Water in 2011 for \$375.00 per acre foot, and make Upper Blue Water available to Summit County under the same terms and conditions provided for in the 2010 contract.

B. Wolford Mountain Reservoir Financial Matters.

This topic is discussed in the Confidential Report. The Board may wish to discuss it in executive session.

C. Wolford Mountain Reservoir Access Issues.

We have had further communications regarding the access dispute with owners of property on the Red Dirt Arm of Wolford Mountain Reservoir.

This subject is discussed in the Confidential Report. We recommend that the Board discuss it in executive session.

D. Encana Oil & Gas (USA) Inc., Request for Ruedi Reservoir Contract.

We are pleased to report that Encana Oil and Gas, Inc. has executed the Right of First Refusal Contract with the River District and has made its initial payment due pursuant to the contract. This contract covers almost all of the River District's remaining Ruedi Water Marketing Supply (but is subject to potential release to other potential contractors as provided by the terms of the right of first refusal).

Attachments:

- A. CRWCD/Summit County Water Supply Contract (CW10006), dated 10/20/2010

CW10006

WATER SUPPLY CONTRACT

This Contract is made between the COLORADO RIVER WATER CONSERVATION DISTRICT (herein the "River District"), a political subdivision of the State of Colorado acting by and through its Colorado River Water Projects Enterprise, and the BOARD OF COMMISSIONERS OF THE COUNTY OF SUMMIT (herein "Contractor") effective as of the date of the River District's execution indicated below.

RECITALS

A. The River District is authorized to contract to deliver water for beneficial use from River District water projects pursuant to provisions of C.R.S. § 37-46-101, *et seq.* (herein "River District Organic Act").

B. The River District is the owner and operator of the Wolford Mountain Reservoir Project located on the Muddy Creek drainage near Kremmling, Colorado, having obtained necessary decrees from the District Court in and for Colorado Water Division No. 5 (herein "Water Court") and permits from governmental agencies. The River District also is entitled to deliveries of Wolford Mountain Reservoir water physically stored in Upper Blue Reservoir pursuant to the Memorandum of Agreement Regarding Colorado Springs Substitution Operations among the Colorado River Water Conservation District acting by and through its Colorado River Water Projects Enterprise, the City of Colorado Springs acting through its Utilities Enterprise, the City and County of Denver acting by and through its Board of Water Commissioners, the Northern Colorado Water Conservancy District, the County of Summit acting by its Board of County Commissioners, Vail Summit Resorts, Inc., and the Town of Breckenridge, dated May 15, 2003 (herein "MOA").

C. The River District's Board of Directors has adopted a Water Marketing Policy, as revised by the Board from time to time, to provide for the use of water available from the River District's sources of supply pursuant to contracts, and that Water Marketing Policy is to be implemented through the River District's Water Projects Enterprise.

D. Contractor has a need for wholesale water supply, demonstrated in its submittal to the River District pursuant to the Water Marketing Policy's contracting process, in the amount of 100 acre feet annually for municipal/industrial purposes, which beneficial uses will be accomplished by Contractor generally in the vicinity of Summit County, by surface water diversions from or within the Blue River drainage for use in Water Division No. 5.

E. Contractor has a right to purchase and/or lease up to 300 acre-feet of Wolford Mountain Reservoir water ("Middle Park Water") from the Middle Park Water Conservancy District (herein "Middle Park") in accordance with a June 30, 2003 Option Agreement and a water supply contract to be executed by Contractor and Middle Park.

F. Contractor has reviewed the MOA and the Water Marketing Policy and is aware of the "Hydrology Assumptions" which are part of the Policy and is satisfied, based on its review and investigations, that Contractor legally and physically can make use for its intended purposes of the Contracted Water, which are the subject of this Contract and that such use will comply with the Water Marketing Policy the MOA, and the Project's permits and decrees.

AGREEMENT

The foregoing Recitals are incorporated into this agreement between the River District and Contractor.

DEFINITIONS

In this Contract certain terms will have definitions as stated below:

- The "River District" means the Colorado River Water Conservation District created and existing pursuant to the River District Organic Act defined in Recital A and acting by and through its Colorado River Water Projects Enterprise which is currently described and memorialized in the Resolution of the Colorado River Water Conservation District's Board of Directors dated April 20, 2005.
- The "Project" means the River District's "Blue River Supply" from the River District's contractual right to the delivery of Wolford Mountain Reservoir water stored in Upper Blue Reservoir. Wolford Mountain Reservoir storage water right decrees were obtained by the River District in Cases No. 87CW283, 95CW281 and 98CW237, District Court for Colorado, Water Division No. 5, and additional storage water right decrees may be obtained in the future by the River District in other cases.
- "Agricultural" means the use of water for commercial production of agricultural crops and livestock and other uses consistent with any right decreed for irrigation purposes, which uses are made on a parcel of land of at least ten acres.
- "Municipal and Industrial" means the use of water by individuals, cities, towns, public or quasi-public districts, private corporations, homeowners associations, or other entities for domestic, municipal, and miscellaneous related purposes as those terms are traditionally and commonly construed, including the use of water for purposes of producing or processing a non-agricultural product or service for sale, including without limitation, such uses as manufacturing, mining, milling, land reclamation, golf course irrigation, snowmaking, and non-hydroelectric power generation; and including the use of water for environmental mitigation purposes associated with such uses; but excepting the agricultural use of water defined herein.

- “Contracted Water” means the water which is the subject of this Contract which is to be released and delivered by the River District and used by Contractor. The Contracted Water is 100 acre feet of Blue River Supply available during the term of this Contract, subject to the provisions hereof and the MOA, for Contractor’s use without right of carryover of any amount not used in any Project Year. The Contracted Water includes the right to reuse and successively use the return flows, provided that no judicial, regulatory or other administrative order is entered finding that the River District or Contractor does not have the legal right to reuse and successively use the return flows.
- “Project Year” means a period of time from July 1 through and including the subsequent June 30.
- “Water Marketing Policy” means the River District’s policy statement as revised and readopted as of the execution date of this Contract and as the same may be amended in the future.
- “Project Hydrology Assumptions” or “Hydrology Assumptions” means the document attached as Appendix “A” to the Water Marketing Policy adopted on October 17, 2006.

1. River District Water Delivery Obligations and Responsibilities.

- a. Delivery. The River District will deliver the Contracted Water at the outlet works of the Contracted Water’s sources of supply into the receiving natural streams in quantities provided herein at any time between June 15 and November 15 and at other times subject to the MOA. Unless otherwise agreed to by the River District’s General Manager based upon written request of Contractor, the River District will make releases or request that releases be made for Contractor, based upon Contractor’s written schedule of anticipated demand, adjusted as necessary by the ongoing status of river administration vis-a-vis the priority status of Contractor’s diversions, provided that the releases can be made within the operational limitations of the River District’s project facilities as determined by the River District in its sole discretion. Contractor shall be solely responsible after delivery by the River District for the legal and physical delivery and use of the Contracted Water.
- b. Delivery Contingencies. The River District’s delivery of Contracted Water shall be subject to Contractor’s commitment of its Middle Park water pursuant to paragraph 3 below and shall be subject to Contractor’s payments pursuant to paragraph 4 below, the provisions for curtailment of deliveries in paragraph 6 below; and the terms and conditions of the MOA.

- c. Water Measurements. The River District shall measure at the outlet works of the Contracted Water's sources of supply all Contracted Water and shall notify the Division Engineer of Colorado Water Division No. 5 of the date, time and amount of Contracted Water released pursuant to this Contract. Copies of such records shall be provided to Contractor upon request.
- d. Water Quality. The River District shall have no obligation to Contractor or any other person regarding and makes no warranties or representations to Contractor concerning the quality of Contracted Water delivered pursuant to this Contract by releases of raw water to natural streams.
- e. Maintenance of Facilities. The River District, to the extent that it has ownership and maintenance control, shall use its best efforts to maintain in good working condition the water storage and release facilities of the Contracted Water.
- f. Withholding of Delivery. The River District may withhold deliveries of Contracted Water in the event of Contractor's nonpayment for Contracted Water or any other breach of this Contract by Contractor. Such remedy shall not be the River District's exclusive remedy in the event of any such breach.

2. Contractor's Water Use Obligations and Responsibilities.

- a. Scheduling of Use. Contractor has provided the River District a preliminary written schedule of its anticipated monthly demands for the Contracted Water during the current Project Year (July 2010-June 2011). The schedule provided by Contractor shall serve as the schedule to be used until it is modified in a written notice given by Contractor to the River District, or as necessary in response to river administration of the Contractor's diversions. The schedule shall identify the volume of any Contracted Water anticipated by Contractor not to be needed by it during any particular Project Year. Contractor shall update said schedule periodically during the Project Year as conditions require and give the River District written notice of all such revisions.
- b. Carriage Losses. Contractor shall bear carriage losses in such amount as is determined by the Division Engineer for Colorado Water Division No. 5, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.
- c. Use Per Contract and Law. Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of the Project, the Water Marketing Policy, the MOA, and in accordance with

applicable law and all decrees related to the Contracted Water. Contractor is not authorized to apply for or secure any change in the water rights for or associated with any of the sources of supply of the Contracted Water.

- d. Legal Approvals. Contractor shall at its sole expense adjudicate a plan or plans for augmentation or exchange and/or secure administrative approvals of any temporary substitute supply plans which are needed for Contractor to use, reuse or successively use its Contracted Water, including, without limitation, Contractor's decree in Water Court, Water Division No. 5, Case No. 95CW122. If Contractor intends to make any additional application(s) for any augmentation or exchange plan(s) or substitute supply plan(s) needed for Contractor to use its Contracted Water, Contractor shall submit the proposed application(s) to the River District within a reasonable time before Contractor proposes to file such application. The River District shall review written approval of such applications before they are submitted or filed, and the River District's approval shall not be unreasonably withheld. The River District may in its discretion become a coapplicant in the prosecution of any such applications for the purpose of protecting its water rights and related policies. Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of a River District contract.
- e. Disposition. Contractor may lease, sublet, sell, donate, loan or otherwise dispose of any of its rights to all or a portion of the Contracted Water without prior written notice to or prior written approval of the River District, provided that the place of use of such Contracted Water is within Summit County, Colorado. Any such disposition by Contractor does not relieve Contractor of its obligations set forth in this Contract.
- f. Contractor's Water Rates. Contractor may charge its water customers who are supplied with Contracted Water such rates and charges as are permitted by Colorado law.
- g. Nondiscrimination. Contractor shall not discriminate in the 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, or national origin or any other criteria prohibited under state or federal law.
- h. Accounting of Use. Contractor shall maintain an accounting of its use, reuse and successive use of all water used or supplied by Contractor on form(s) acceptable to the River District specifically for the purpose of enabling the River District to comply with the terms of the MOA; to prove the use of River District 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 River District promptly upon

request and shall assist the River 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.

- i. Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, *et seq.*) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species. As of March 1, 2007, designated critical habitat exists from the Garfield County 320 Road Bridge Crossing of the Colorado River in Rifle downstream to the Colorado State line.

3. Contractor's Water Dedication Requirements.

- a. In order for the River District's delivery obligation of 100 acre feet of the Contracted Water to become effective, Contractor shall obtain Middle Park's agreement to book over to the River District 100 acre-feet of Contractor's Middle Park Water, being one (1) acre-foot for each acre foot of Blue River Supply (the Contracted Water). The 100 acre-feet of Middle Park Water supplied by Contractor for the 2010-2011 Project Year shall be dedicated to the River District each and every year until such time as the 100 acre-feet of Contractor's Middle Park Water is used for Colorado Springs' Utilities substitution purposes pursuant to the MOA; provided, that such dedication in subsequent years, combined with all dedications under contracts entered into in subsequent years, shall never exceed 300 acre-feet. The following table illustrates the dedication requirements, assuming that in 2013 the 300 acre-feet booked over to the River District in the prior year is used by Colorado Springs Utilities for substitution purposes pursuant to the MOA:

Contracting Year	Contract Amount	Bookover Amount for Contract Year...					Total Bookover
		2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	
2009-2010	100	100					100
2010-2011	100	100	100				200
2011-2012	100	100	100	100			300
2012-2013	100	100	100	100	0		300
2013-2014	100	0	0	0	0	100	100

- b. The requirement that the 100 acre-feet of Middle Park Water supplied by the Contractor for the 2010-2011 Project Year shall be dedicated to the River District in subsequent years, as provided in the foregoing subparagraph (a), shall terminate

upon the execution of a long-term contract between Contractor and the River District for the Contractor's use of Upper Blue Reservoir water in accordance with the MOA and any decree to be entered by the Water Court in Case No. 03CW320, Water Division No. 5.

- c. Notwithstanding the foregoing, the parties recognize that the term of this Contract is for the 2010-2011 Project Year. Nothing in this paragraph 3 shall be construed as an obligation on the part of either party to enter into any future contract(s).
4. Contractor's Payments. In order for the River District's delivery obligation to become effective, Contractor shall pay to the River District on the execution of this Contract the total sum of \$400.00 for the application fee for the current Project Year (July 2010-June 2011).
5. Contract Term. The term of this Contract shall be for a period of one (1) year; provided, however, that (a) the Contractor's dedication obligations under paragraph 3(a) shall survive the expiration of this contract and (b) the parties shall in good faith negotiate any amendment to this Contract that may become necessary as a result of lawful requirements imposed by the Bureau of Reclamation, the Division 5 Water Court, or the federal district court in connection with the approval of Colorado Springs' substitution under the MOA.
6. Water Shortage. In the event that the River District is unable, because of either legal or physical reasons (including, but not limited to, hydrologic shortages and operational restrictions), to deliver any or all of the full amount of water contracted from the Project, including the Contracted Water, the River District reserves the right to apportion the Project's available water among its several contractors, including Contractor, in the manner provided in paragraph 6 of the Water Marketing Policy.
7. Contract Termination.
 - a. Termination by River District.
 - i. The River District may terminate this Contract for any violation or breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any sum or amount due under this Contract within thirty (30) days after receiving written notice from the River District of such breach.
 - ii. The River District also may terminate this Contract if, in its discretion, any judicial or administrative proceedings initiated by Contractor as contemplated in subparagraph 2.d above, threaten the River District's authority to contract for delivery of Project Water or the River District's water rights, permits, or other interests associated with the Project.

- iii. The River 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 deliver the Contracted Water.

8. Miscellaneous/Standard Provisions.

a. Notices.

- i. All notices required or appropriate under or pursuant to this Contract shall be given in writing mailed or delivered to the parties at the following addresses:

River District:

Colorado River Water Conservation District
Attention: Secretary / General Manager
201 Centennial Street, Suite 200
P. O. Box 1120
Glenwood Springs, Colorado 81602
Phone: (970) 945-8522
Fax: (970) 945-8799

Contractor:

Summit County Commissioners
Attention: County Manager
208 E. Lincoln Avenue
P.O. Box 68
Breckenridge, CO 80424
Phone: (970) 453-3410
Fax: (970) 453-3453
bocc@co.summit.co.us


with copy to:

Scott Fifer
Resource Engineering, Inc.
909 Colorado Avenue
Glenwood Springs, CO 81601
Phone: (970) 945-6777
E-mail: sfifer@resource-eng.com


- ii. Either party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.
- b. Amendments. 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.
 - c. This Contract is subject to the River District's Water Marketing Policy, as it may be revised from time to time by the River District's Board.

COLORADO RIVER WATER CONSERVATION
DISTRICT acting by and through its Colorado River
Water Projects Enterprise

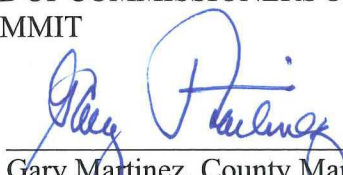
DATE: 10-20-2010

By: 
R. Eric Kuhn, General Manager/Secretary

ATTEST:


Dan Birch, Deputy General Manager/Asst. Sec.

BOARD OF COMMISSIONERS OF THE COUNTY
OF SUMMIT

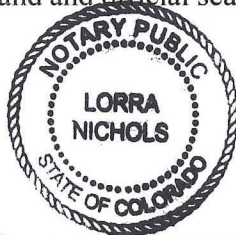
By: 
Gary Martinez, County Manager

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing Water Supply Contract was subscribed and sworn to before me by R. Eric Kuhn as General Manager/Secretary and Dan Birch, Deputy General Manager/Assistant Secretary of the Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise this 20th day of October, 2010.

Witness my hand and official seal. My Commission Expires: 7-11-2011



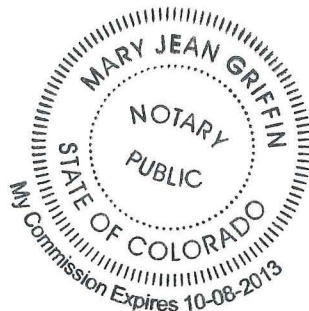
My Commission Expires 07/11/2011

Lorra Nichols
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF Summit

The foregoing Water Supply Contract was subscribed and sworn to before me by Gary Martinez as County Manager of the Board of Commissioners of the County of Summit this 20th day of October, 2010.

Witness my hand and official seal. My Commission Expires: October 8 2013



Mary Jean Griffin
Notary Public