

JUN 26 1991

Green Mountain  
Water Contract

E-400

Mr. R. L. Wade  
4569 W. Montcrieff Place  
Denver, CO 80212

Subject: Long-Term Water Service from Green Mountain Reservoir - Contract  
No. 1-07-60-W0689 - Spring Creek Homeowners Association - Colorado-  
Big Thompson Project, Colorado (Water Service Contract)

Dear Mr. Wade:

Enclosed is the fully executed duplicate original of the subject contract with  
the Spring Creek Homeowners Association for water service from Green Mountain  
Reservoir.

If you have any questions concerning this contract, write this office or  
contact Tom Gibbens at 303-962-4599.

Sincerely,

*Thomas A. Gibbens*

Thomas A. Gibbens  
Chief, Water and Land  
Operations Division

Enclosure

cc: Mr. Orlyn Bell  
Division Engineer  
Irrigation Division 5  
PO Box 396  
Glenwood Springs CO 81601 0396  
(w/c contract)

bc: Regional Director, Billings, Montana  
Attention: GP-370, GP-440  
(w/enc1 to each)

bcc: E-1400 (w/enc1)

4<sup>00</sup> DQuakenbush:dfq/:03/25/91:GRN:SPGCRK.3:WPC

Contract No. 1-07-60-W0689

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Colorado-Big Thompson Project

CONTRACT BETWEEN THE UNITED STATES AND  
SPRING CREEK HOMEOWNERS ASSOCIATION  
FOR WATER SERVICE FROM GREEN MOUNTAIN RESERVOIRINDEX

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
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Colorado-Big Thompson Project, Colorado

CONTRACT BETWEEN THE UNITED STATES AND  
SPRING CREEK HOMEOWNERS ASSOCIATION  
FOR WATER SERVICE FROM GREEN MOUNTAIN RESERVOIR

THIS CONTRACT, made this *14<sup>th</sup>* day of *June*, 19*91*, pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, and particularly the Act of August 9, 1937 (50 Stat. 564, 595), and the Act of August 4, 1939 (535 Stat. 1187), as amended and supplemented, is between the UNITED STATES OF AMERICA, acting through the Bureau of Reclamation, hereinafter referred to as the "United States," represented by the Contracting Officer executing this contract, and the SPRING CREEK HOMEOWNERS ASSOCIATION, hereinafter referred to as the "Contractor."

EXPLANATORY RECITALS

a. Green Mountain Dam and Reservoir were constructed as a feature of the Colorado-Big Thompson (CBT) Project as recommended by the Secretary of the Interior and approved by the President on December 21, 1937, pursuant to Section 4 of the Act of June 25, 1910 (36 Stat. 835), and Subsection B of Section 4 of the Fact Finders' Act (Act of December 5, 1924 (43 Stat. 672)). The Reservoir is operated and maintained by the United States in accordance with S. Doc. 80; the Act of August 9, 1937

United States in accordance with S. Doc. 80; the Act of August 9, 1937 (50 Stat. 564, 595), as decreed in the Consolidated Cases (Civil Action Nos. 2782, 5016, and 5017) United States District Court for the District of Colorado; and the Operating Policy for Green Mountain Reservoir (hereinafter referred to as the "Operating Policy") as published in the Federal Register on December 22, 1983, which became effective January 23, 1984, and as amended September 3, 1987, as published in the Federal Register on September 11, 1987. The Reservoir was authorized to provide replacement water for senior downstream diversion rights in western Colorado when water is diverted to or stored for use in eastern Colorado through the CBT Project. Additional capacity was provided for hydroelectric power generation and beneficial uses in western Colorado including irrigation, municipal/domestic, and industrial uses. In accordance with the Operating Policy, 66,000 acre-feet of water annually is deemed adequate to satisfy irrigation and domestic uses perfected by use prior to October 16, 1977. The remaining 28,800 acre-feet of capacity (34,000 acre-feet less 5,200 acre-feet dead storage) is available for beneficial use by West Slope water user contractors and has been determined to be available to develop the Reservoir's annual marketable yield.

b. The Contractor desires to contract with the United States, pursuant to Federal Reclamation laws and the laws of the State of Colorado, for water service from Green Mountain Reservoir.

c. The United States desires to provide such water service from the marketable yield of Green Mountain Reservoir in accordance with S. Doc. 80, the Consolidated Cases, and the Operating Policy.

d. The 20,000 acre-foot marketable yield of Green Mountain Reservoir is based on the assumptions and conditions incorporated in the supporting hydrology studies documented in the report entitled, "Green Mountain Water Sales Hydrology," dated September 15, 1988.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the United States and the Contractor agree as follows:

#### DEFINITIONS

1. Where used herein, unless specifically expressed otherwise or obviously inconsistent with the intent hereof, the term:

a. "Colorado River Basin" shall mean the geographical area of the natural basin of the Colorado River, including all tributaries thereof, in western Colorado upstream from the Colorado-Utah State line.

b. "Contracting Officer" shall mean the Regional Director, Bureau of Reclamation, Great Plains Region, or his duly authorized representative.

c. "Project" shall mean the CBT Project, Colorado.

d. "Year" shall mean the period beginning July 1 and ending the following June 30.

e. "Operating Policy" shall mean the operating policy for Green Mountain Reservoir as published in the Federal Register on December 22, 1983, as amended September 3, 1987, as published in the Federal Register on September 11, 1987.

f. "Reservoir" shall mean the dam, reservoir, and related facilities known as "Green Mountain Reservoir" as presently constructed and operated on the Blue River, a tributary of the Colorado River, in north central Colorado, as a feature of the CBT Project.

g. "Replacement pool" shall mean the 52,000 acre-feet of water available under S. Doc. 80 annually to provide replacement water for western Colorado when water is diverted out of priority to the Eastern Slope through the C-BODE Project.

h. "Power pool" shall mean the Reservoir's remaining capacity of approximately 100,000 acre-feet, including the 6,316 acre-foot refill right, which to the extent feasible will be released through the powerplant, and following release will be available either directly or by exchange for other beneficial uses in western Colorado.

i. "Marketable yield" shall mean the 20,000 acre-foot water supply available from the Reservoir based on the assumptions and conditions incorporated in the supporting hydrology studies documented in the report entitled, "Green Mountain Water Sales Hydrology," dated September 15, 1988. The marketable yield may vary depending on changes in future operating conditions.

j. "Municipal/domestic use" shall mean 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, excepting only irrigation and industrial uses of water as defined below. The meaning of this term includes the irrigation of municipal and/or quasi-governmental-owned or operated golf courses whether or not water is delivered through a municipal system.

k. "Irrigation use" shall mean the use of water for the commercial production of agricultural crops and livestock and other uses consistent with any water right decreed for irrigation purposes.

l. "Industrial use" shall mean the use of water for the purposes of producing or processing a product or service for sale including without limitation such uses as manufacturing, food processing, mining, milling, land reclamation, snowmaking, nonhydroelectric power generation, and golf

course irrigation except as provided in Subarticle 1.j. above. There shall be two categories of industrial water service as follows:

(1) "Category A" industrial water service which is reserved for those contractors who are existing customers for water from the Reservoir or have previously used water service from the Reservoir, who are currently operational, and who are unable to utilize Ruedi Reservoir as an alternative source for water service. Such entities' entitlement to Category A water service shall not exceed the quantities requested by those entities on or before August 15, 1988.

(2) "Category B" water service which is available to all other industrial contractors who are not covered in (1) above.

m. "Operation, Maintenance, and Replacement" (OM&R) costs shall mean those expenditures incurred in connection with the operation and maintenance of the Reservoir excluding facilities used solely for hydroelectric power production. Such expenditures shall include those required to remedy conditions brought about by the ordinary use of the Reservoir or to restore or replace components of the existing facilities and shall not include expenditures to increase the Reservoir's capacity or to enlarge the purposes for which it was originally authorized and constructed.

n. "Standby charge" shall be that annual charge to reserve the right for delivery of water annually pursuant to Subarticle 4.d.

o. "Delivery charge" shall be that annual charge for the amount of water requested for delivery by the Contractor and delivered by the United States pursuant to Subarticle 4.d. For purposes of this contract, the Contractor shall be deemed to have requested for delivery at least the minimum quantity set forth in Subarticle 4.d.(1).

#### TERM OF THE CONTRACT

2. a. This contract becomes effective on the date of execution, and shall remain in effect for a period of 40 years thereafter unless terminated sooner in accordance with the provisions of Article 8.

b. The Contractor shall have the option to renew this contract for an additional term of 40 years upon written request to the Contracting Officer on or before 2 years prior to the expiration of this contract. Renewal of this contract shall be upon the same terms and conditions set forth in Article 3, subject to the requirements of applicable Federal and State laws and policies in effect at that time; Provided, That all other terms and conditions, including the water service charges set forth in Article 4 will be renegotiated by the parties hereto subject to applicable Federal and State laws and Reclamation policy in effect or as established by the Secretary of the Interior at that time.

### CONTRACTED SERVICE

3. a. The Contractor hereby contracts for 15 acre-feet of water service annually from the Reservoir as follows:

- (1) 0 acre-feet of water for irrigation use.
- (2) 15 acre-feet of water for municipal/domestic use.
- (3) 0 acre-feet of water for Category A industrial use.
- (4) 0 acre-feet of water for Category B industrial use.

The United States agrees to provide such water service subject to the terms and conditions of this contract. The United States shall not enter into any contract that will result in the total amount of water marketed from the Reservoir exceeding the marketable yield in effect at that time; Provided, That the United States reserves the right to make short-term sales of water from the Reservoir as long as such sales do not impinge upon the Contractor's entitlement to take delivery of the water contracted for herein. There shall be no right to carryover storage of undelivered water contracted for herein from year to year.

b. The 20,000 acre-foot marketable yield of the Reservoir is based on the assumptions and conditions incorporated in the supporting hydrology studies documented in the report entitled, "Green Mountain Water Sales Hydrology," dated September 15, 1988. The marketable yield may vary depending on changes in future operating conditions. In the event any of the assumptions and conditions incorporated in the supporting hydrology

studies prove to be incorrect and revised hydrology studies change the marketable yield, the United States may either increase or decrease the volume of future water sales. At any time the marketable yield is determined to be less than the total amount of water under contract, any resulting shortages shall be apportioned pursuant to Article 7.

#### WATER SERVICES CHARGES

4. a. In accordance with paragraph 5 of the Operating Policy, the United States will charge its Contractors differential rates for irrigation, municipal/domestic, and industrial water service. These rates include an appropriate share of the Reservoir's actual annual OM&R costs. The rates shall be adjustable by the United States to cover OM&R costs if such costs exceed the rates set forth herein.

b. The charge for irrigation water service will be an annual charge of \$6 per acre-foot for the amount of water contracted for herein, and which the United States is capable of delivering to the Contractor. Payment of this charge shall be due on July 1 for water to be delivered during the succeeding year. No water shall be delivered prior to payment. Whether or not the Contractor requests or takes delivery pursuant to Article 5, the Contractor is required to pay annually the charge for all of the irrigation water contracted for herein; Provided, That the United States is capable of delivering said water.

c. The charge for municipal/domestic water service shall be an annual charge of \$10 per acre-foot for the amount of water contracted for herein, and which the United States is capable of delivering to the Contractor. Payment of this charge shall be due on July 1 for water to be delivered during the succeeding year. No water will be delivered prior to payment. Whether or not the Contractor requests or takes delivery pursuant to Article 5, the Contractor is required to pay annually the charge for all of the municipal and domestic water contracted for herein; Provided, That the United States is capable of delivering said water.

d. The annual charge for Category A and Category B industrial water service contracted for herein shall be as follows:

(1) \$55 per acre-foot applied to 100 percent of all water up to 100 acre-feet plus 50 percent of all water over 100 acre-feet up to 2,000 acre-feet, for a total of 0 acre-feet of water.

(2) \$15 per acre-foot standby charge and \$40 per acre-foot delivery charge applied to the remaining 50 percent of all water over 100 acre-feet up to 2,000 acre-feet, for a total of 0 acre-feet of water.

(3) \$15 per acre-foot standby charge and \$60 per acre-foot delivery charge applied to all water from 2,001 to 4,000 acre-feet, for a total of 0 acre-feet of water.

(4) \$15 per acre-foot standby charge and \$80 per acre-foot delivery charge applied to all water above 4,000 acre-feet, for a total of 0 acre-feet of water.

e. The industrial water standby charge shall be paid annually for the amount of water service in d.(2), d.(3), and d.(4) above. The industrial water delivery charge in d.(2), d.(3), and d.(4) above shall be in addition to the standby charge and shall be paid for each acre-foot of water actually delivered. Payments for all water service charges, except the delivery charge in d.(2), d.(3), and d.(4) above shall be due on July 1 for water to be delivered during the succeeding year. No water will be delivered prior to payment of such charges. Payment for the delivery charges in d.(2), d.(3), and d.(4) above shall be based on the delivery schedule submitted by the Contractor pursuant to Subarticle 5.a. or as may be apportioned pursuant to Article 7. The Contracting Officer will provide the Contractor with a statement based on said projected schedule, whereupon payment of such additional delivery charges shall be made by the Contractor within 30 days of the date of such statements. Adjustments in payment for any differences between actual and scheduled deliveries of water will be made with the succeeding year's payment; Provided, That whether or not the Contractor requests or takes delivery pursuant to Article 5, the Contractor is required to pay annually the charges in d.(1) above and the standby charges in d.(2), d.(3), and d.(4) above; and Provided, further, That the United States is capable of delivering said water.

f. The minimum annual payment for water service under this contract will be the greater of \$250 or the charge established in b., c., and d. above.

g. Water delivered by exchange upstream from the Reservoir pursuant to this contract shall be subject to an annual power interference charge of \$2.35 per acre-foot. Said charge shall be due within 30 days after the date of the bill each year of this contract, based on the delivery schedule provided pursuant to Subarticle 5.a. Any excess advance payments will be applied to succeeding annual payments. All power interference charges are in addition to the other charges as set forth in this Article 4. Power interference charges shall be adjustable pursuant to 4.h. below.

h. Repayment of the CBT Project is scheduled to be completed in year 2002. Water service and power interference charges set forth in this article shall be adjusted by the Contracting Officer upon payout of the project, based upon applicable Federal and State laws and Reclamation policies in effect or as established by the Secretary of the Interior at that time; Provided, That charges after Project repayment will not exceed the charges that would have been in effect under this contract had Project repayment not occurred.

i. Payments pursuant to this contract shall be made to a certain bank by a medium specified by the Contracting Officer, i.e., by check to

a certain lock box, or by wire transfer to the United States Treasury, or to such other locations and by such other methods as the Contracting Officer may specify.

#### DELIVERY OF WATER

5. a. Before June 1 of each year, the Contractor will submit to the Contracting Officer a written schedule of its anticipated monthly demand for the delivery of water during the succeeding 12-month period from July 1 through June 30, and the Contractor shall periodically revise said schedule as necessary to reflect its expected demand schedule based on current water conditions; Provided, That the Contractor shall be entitled to delivery of water under this contract at any time upon 24 hours notice to the Contracting Officer. All notices requesting delivery or a change in the delivery schedule shall be in writing. However, requests which cannot be transmitted in writing due to urgent or emergency situations may be telephoned to the Contracting Officer whereupon such requests shall be confirmed in writing by the Contractor. The Contractor shall send copies of all requests to the Division No. 5 Engineer, Colorado Division of Water Resources.

b. The Contracting Officer shall notify the Division No. 5 Engineer, Colorado Division of Water Resources, in Glenwood Springs, Colorado, of the date, time, and amount of the water released from the Reservoir for delivery pursuant to this contract.

c. In the event the Contractor fails or is unable to use the quantities of water delivered by the United States pursuant to the delivery schedule or as otherwise requested by the Contractor, said inability, failure, or refusal shall not relieve the Contractor of its obligation to make the required payments pursuant to the terms of this contract.

d. The delivery of water under this contract shall be made into the Blue River at the outlet works of Green Mountain Dam or by exchange with other sources of supply; Provided, That the delivery of water from a source other than the Reservoir shall not reduce the Contractor's ability to beneficially use said water in the same location and manner, at the same times, and for the same purposes specified in this contract and the delivery schedules. All such exchanges shall be in accordance with State and Federal laws and regulations including, if required, approval by the Division No. 5 Engineer.

e. All delivery of water into the Blue River shall be subject to the limitations of the outlet capacity of Green Mountain Dam. All water delivered to the Contractor from the Reservoir shall be measured at the outlet works of Green Mountain Dam by the Contracting Officer with equipment furnished, operated, and maintained by the United States. The United States shall not be responsible for the control, carriage, use, handling, or distribution of water delivered to the Contractor beyond the outlet works of Green Mountain Dam or other point of delivery, and the Contractor shall hold the United States harmless from and against all claims, demands, and causes of action of any nature whatsoever on account

of property damage, personal injury, or death resulting from the control, carriage, use, handling, or distribution of water delivered to the Contractor provided such water is delivered at the outlet works of the Green Mountain Dam or other point of delivery in a safe and reasonable manner.

f. No delivery of water pursuant to this contract shall be made until the Contractor is in compliance with the terms and conditions contained in the attached Exhibit B. Exhibit B may include, but is not limited to, NEPA compliance and any special terms and conditions required by individual contractors. The Contractor's failure to comply with the terms and conditions of Exhibit B after initial delivery of water may result in discontinuance of water deliveries under this contract, in whole or in part, until the Contractor is in compliance with the terms and conditions of Exhibit B. Such noncompliance may also result in the termination of this contract pursuant to Article 8. Exhibit B may be amended upon the mutual agreement of the parties hereto.

g. The Contractor shall not be responsible for the storage of water in or the operation and maintenance of the Reservoir, and the United States agrees to be responsible for all claims, demands, and causes of action of any nature whatsoever resulting from the storage of water in or the operation and maintenance of the Reservoir, as authorized by the terms and conditions of the Federal Tort Claims Act (28 U.S.C., Sections 2671-2680).

h. The United States reserves the right to make releases of water from the Reservoir for hydropower generation as long as such releases do not interfere with the United States ability to meet its obligations to deliver water under the terms and conditions of this contract.

i. The United States reserves the right to reduce industrial water service under this contract as hereinafter provided to the extent that the Contracting Officer determines that such reductions are necessary to meet the needs of irrigation and municipal/domestic users pursuant to S. Doc. 80; Provided, That in the event subsequent Court decrees find that S. Doc. 80 does not require the water service contracted for from the Reservoir to be withdrawable, then such water service shall be nonwithdrawable, and this provision shall no longer apply.

j. Should the execution date of this contract result in less than a full initial year, the Contractor may request delivery of the amount of water deemed necessary to meet its needs during the remaining portion of the initial year and shall pay a proportionate share of the water service charges required in Article 4 based on the amount of water requested for delivery, Provided, That such charges shall not be less than the \$250 minimum payment in Subarticle 4.f. Such payment shall be in advance of the delivery of any water.

## CONTRACTOR'S USE OF WATER

6. a. Water delivered to the Contractor under this contract shall be used by the Contractor for municipal and domestic purposes either directly, by exchange, or through augmentation in connection with use within the Spring Creek Homeowners Association service area. It shall be the Contractor's responsibility to obtain the necessary approvals, permits and/or rights to carry out exchanges and to develop any necessary augmentation plans. To the extent that the water service contracted for herein is being used to prevent injury to the water rights of the City and County of Denver, hereinafter "Denver," acting by and through its Board of Water Commissioners, pursuant to the terms of the Agreement dated September 18, 1985, hereinafter "Summit County Agreement," between Denver and the Board of County Commissioners of Summit County, Colorado, then such water shall be delivered into the Blue River at the outlet works of Green Mountain Dam or delivered by exchange. Before June 1 of each year, the Contractor shall report to the Contracting Officer the amount of water service contracted for herein which will be used in the following year to prevent injury to Denver's water rights pursuant to the terms of the Summit County Agreement.

b. No lease, sale, donation, transfer, or other disposition of any of the water contracted for herein may be made without the prior written approval of the Contracting Officer; Provided, That if the Contractor's facilities are sold and this contract is assigned under Subarticle 11.b., the right to delivery of the water contracted for herein

may be transferred so long as the water will be used in the same location, at the same time(s), and for the same purpose(s) as contemplated by the Contractor under this contract. Should unauthorized dispositions occur, the Contractor's right to delivery of the quantity of water under contract so disposed of shall be terminated by the Contracting Officer.

#### WATER SHORTAGE AND APPORTIONMENT

7. a. If, based on written schedules submitted before June 1, the Contracting Officer determines that the projected water supply is not adequate to meet all reasonably expected demands, the Contracting Officer shall declare that a potential shortage condition exists and shall so notify the Contractor. Within 15 days of receipt of a notice of potential shortage, the Contractor shall provide the Contracting Officer with a revised schedule for water to be delivered during a declared shortage period. For the purposes of this contract, the shortage period shall consist of the succeeding 12-month period from July 1 through June 30 or any portion thereof. During a shortage period, delivery to all contractors shall be first reduced in accordance with the revised schedule submitted by each contractor. If the Contracting Officer determines that delivery pursuant to the revised schedules will not alleviate the shortage, delivery to all Category B industrial contractors shall first be reduced proportionately up to 100 percent of their respective contracted amounts and then deliveries to all Category A industrial contractors shall be reduced proportionately up to 100 percent of their

respective contracted amounts. If shortage conditions persist, all municipal and domestic, and irrigation contractors shall share additional reductions proportionately in the delivery of water, based on their respective contracted amounts as required by the shortage conditions; Provided, That in the event a Court of competent jurisdiction subsequently rules that S. Doc. 80 does not require the industrial water service contracted for from the Reservoir to be withdrawable, then such water service shall be nonwithdrawable and, beginning in the year following the Court's decision, all Contractors shall share shortages proportionately, based on their respective contracted amounts.

b. The Contracting Officer shall have the right during any shortage period, after consultation with the contractors, to establish rules, regulations, and procedures for the purpose of distributing the available water supply commensurate with the shortage conditions either prevailing or expected to prevail. Such rules, regulations, and procedures may require industrial contractors to pay for that amount of water set forth in the revised schedule referred to in Subarticle 7.a. above whether or not the Contractor requests delivery of the water. In administering shortage conditions, the Contracting Officer reserves the right, during the shortage period, to limit the amount of water available for delivery under this contract to the amount specified in the revised schedule set forth in Subarticle 7.a. above. Should any revised schedule require less than the total amount of water under contract to meet all reasonably expected demands, the Contracting Officer reserves the right to use all or any portion of the water not so scheduled by the Contractor

for redistribution to other contractors to mitigate the effects of the shortage. Whenever water is requested for delivery by the Contractor and is not delivered by the Contracting Officer, the Contractor's payments shall be reduced accordingly. Any rules, regulations, or procedures established by the Contracting Officer to administer shortages shall be provided to the Contractor in writing. In no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising out of such shortage.

c. It is recognized by the parties to this contract that the United States shall operate and maintain the Reservoir in accordance with the provisions of S. Doc. 80, particularly the requirement to make water available at such times and for such uses and purposes as are set forth therein. Should the United States determine that the industrial water service contracted for herein is required to meet obligations of the United States under S. Doc. 80, the Contracting Officer shall have the right to reduce industrial water service by the amount needed to meet such obligations. Should such reduction be necessary, deliveries to all Category B industrial contractors shall first be reduced on a pro rata basis up to 100 percent of their respective contracted amounts. If additional reductions are necessary, then deliveries to all Category A industrial contractors shall be reduced on a pro rata basis up to 100 percent of their respective contracted amounts. In the event it is necessary to reduce industrial water service on a continued or permanent basis, all contracts for industrial water service so reduced shall be

amended to reflect such reductions and corresponding reductions in the Contractor's payments. However, in the event that a Court of competent jurisdiction subsequently rules that S. Doc. 80 does not require the industrial water service contracted for from the Reservoir to be withdrawable, then such water service shall be nonwithdrawable, and the requirement for the reductions in industrial water service required by this Subarticle 7.c. shall no longer apply.

TERMINATION OF THE CONTRACT OR ADJUSTMENT IN THE CONTRACTED SERVICE

8. a. Notwithstanding the provisions of Article 8.c. below, the United States may, at any time, terminate this contract and cease water service hereunder for failure of the Contractor: to make payments as required by this contract; to abide by the terms and conditions of this contract; or to abide by any lawful notice, order, or final administrative or judicial determination that the Contractor has violated a law, rule, or regulation of the United States or the State of Colorado directly relating to and affecting water service hereunder; Provided, That this contract shall not be terminated unless such failure or violation continues 60 days after the United States gives the Contractor written notice to correct the problem.

b. The Contractor may terminate the contract or reduce the amount of water contracted for herein on July 1 of any year by giving written notice to the Contracting Officer at least 90 days prior to that date.

c. After 5 years from the date of execution of this contract, the United States may terminate this contract or adjust the amount of water service provided for in Article 3 if all of the following conditions are met:

(1) The Contracting Officer has determined, after consultation with the Contractor, that the Contractor has not yet made and is not capable of making, during the remaining term of the contract, beneficial use of the water service contracted for herein, and that the Contractor has no reasonable and legitimate future beneficial use for the water;

(2) The Contracting Officer has provided evidence to the Contractor that the United States has requests from other users to make, and who are capable of making, beneficial use of all or a portion of the water service contracted for herein;

(3) There is no other water available from the marketable yield of the Reservoir to fulfill such requests from other users; and

(4) The Contracting Officer has given written notice to the Contractor at least 1 year in advance of the proposed termination or adjustment.

A Contractor shall be considered capable of making beneficial use of the contracted water service if such water will serve future growth or development; Provided, That the projections for such future growth or

development are, in the judgment of the Contracting Officer, supported by credible development plans and/or growth projections.

d. In the event the contracted service is reduced by the Contractor or the United States pursuant to Subarticles 8.b. or 8.c. above, then the annual water service charges set forth in Article 4 shall be reduced accordingly.

#### ENVIRONMENTAL COMPLIANCE

9. a. There shall be no delivery of water under this contract until compliance with the provisions of the National Environmental Policy Act (NEPA), as amended, and the Endangered Species Act (ESA), as amended, has been completed. The general environmental impacts associated with the sale of the Reservoir water pursuant to this contract are described in the Green Mountain Reservoir Marketing Program Environmental Statement (Environmental Statement). Additional compliance may also be required on a site specific basis and shall be the responsibility of the United States using data and other information provided by the Contractor. The Contractor shall provide necessary data and information and a site specific mitigation plan, if required, to the Contracting Officer for approval by the United States. The data, information, and mitigation plan will cover those environmental impacts associated with the Contractor's diversion and onsite use of the Reservoir water. All costs associated with the preparation, approval, and

implementation of NEPA, and ESA compliance and mitigation plans, including costs incurred by the United States, shall be the responsibility of the Contractor.

b. The Contractor shall give notice to the United States concerning any changes in location of diversions, return flows, places or type of use, or diversion rates. The Contractor shall be responsible for any additional environmental assessments or mitigation measures which may be required by the United States as the result of such changes and all associated costs, including costs incurred by the United States, shall be the responsibility of the Contractor.

c. Advance payment shall be made by the Contractor for costs to be incurred by the United States which are the Contractor's responsibility under this Article 9.

d. The Contractor shall not be liable for the payment of any costs associated with the preparation of the Environmental Statement for the Reservoir water marketing program and costs associated with the "Biological Opinion Round II Water Sale from Ruedi Reservoir and Green Mountain Reservoir Water Sale."

## NOTICES

10. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Bureau of Reclamation, Missouri Basin Region, P.O. Box 36900, Billings, Montana 59107-6900, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Spring Creek Homeowners Association, P.O. Box 101-B, Blue River Route, Dillon, Colorado 80435. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

## ASSIGNMENT OF THE CONTRACT

11. a. The United States reserves the right to enter into agreements with third party agents for administration of this contract; Provided, That such agreements shall not adversely affect the rights of the Contractor under this contract.

b. No assignment or transfer of this contract or any rights or interests therein shall be valid until approved in writing by the Contracting Officer; Except, That this contract may be assigned by the Contractor without the prior approval of the Contracting Officer where such assignment is to any affiliate of the Contractor or to any successor owners of the facilities for which the water is being furnished; Provided, That

any such assignee assumes all obligations of the Contractor, and uses the water contracted for herein in the same location, manner, and times for the purposes contemplated by the Contractor under this contract.

c. For purposes of this article, an "affiliate" of a corporation or entity shall be deemed to include any corporation or entity which is controlled by, is under common control with, or controls said corporation or entity.

#### CHANGE IN CONTRACTOR'S ORGANIZATION

12. The Contractor shall notify the Contracting Officer whenever there is any change in the Contractor's organization through dissolution, consolidation, merger, or otherwise.

#### CONTRACT NULL AND VOID IF OPERATING POLICY RULED INVALID

13. In the event the Operating Policy is ruled invalid by a Court of competent jurisdiction, this contract shall become null and void. Should a Court of competent jurisdiction require such modification of the Operating Policy as in the Contracting Officer's judgment would substantially affect the ability of the United States to perform its obligations under this contract, then this contract may be terminated at the option of the Contracting Officer.

## STANDARD CONTRACT ARTICLES

14. The standard contract articles applicable to this contract are listed below. The full text of these standard articles is attached as Exhibit A and is hereby made a part of this contract by this reference.

- A. Charges for Delinquent Payments
- B. General Obligation--Benefits Conditioned Upon Payment
- C. Contingent on Appropriation or Allotment of Funds
- D. Officials Not to Benefit
- E. Books, Records, and Reports
- F. Compliance With Reclamation Laws
- G. Quality of Water
- H. Water and Air Pollution Control
- I. Water Conservation
- J. Equal Opportunity
- K. Compliance With Civil Rights Laws and Regulations
- L. Privacy Act Compliance
- M. Uncontrollable Forces

IN WITNESS WHEREOF, the parties have executed this contract the day and year first above written.

THE UNITED STATES OF AMERICA

By *D.S. Lauver* **D.S. LAUVER**  
Acting Regional Director  
Bureau of Reclamation  
Great Plains Region

(CORPORATE SEAL)

SPRING CREEK HOMEOWNERS ASSOCIATION

By *Richard H. Wade*  
President  
Title

ACKNOWLEDGEMENT

STATE OF Calo )  
COUNTY OF Denver )

On April 2, 1991, before me, Richard L. Wade  
\_\_\_\_\_ appeared \_\_\_\_\_,

the person(s) whose name(s) (is)(are) subscribed to the within instrument  
and known to me to have executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the  
day and year in this acknowledgment first above written.

(SEAL)

Jasphine D. Jasso  
Notary Public  
4555 N. Moncrieff Pl.

My commission expires:  
April 10, 1994

EXHIBIT A  
STANDARD ARTICLES

A. CHARGES FOR DELINQUENT PAYMENTS

1. The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

2. The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

3. When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

B. GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1. The obligation of the Contractor to pay the United States as provided in this contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of the individual water users in their obligations to the Contractor.

2. The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract. No water will be made available to the Contractor from project facilities during any period in which the Contractor may be in arrears in the advance payment of any operation and maintenance charges due the United States or in arrears for more than 12 months in the payment of any water rates due the United States. The Contractor shall not furnish water made available pursuant to this contract for lands or parties which are in arrears in the advance payment of operation and maintenance or toll charges or in arrears more than 12 months in the payment of water rates as levied or established by the Contractor.

C. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

D. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this contract other than as a water user or landowner in same manner as other water users or landowners.

E. BOOKS, RECORDS, AND REPORTS

The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, and project land and right-of-way use agreements; the water users' land-use (crop census), landownership, land-leasing and water-use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of each other party's books and records relating to matters covered by the contract.

F. COMPLIANCE WITH RECLAMATION LAWS

The parties agree that the delivery of irrigation, municipal-domestic, or industrial water and the use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, including, but not limited to, the Reclamation Reform Act of 1982 (Public Law 97-293).

G. QUALITY OF WATER

The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

#### H. WATER AND AIR POLLUTION CONTROL

The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

#### I. WATER CONSERVATION

Within 18 months of the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Contractor shall develop an effective water conservation program acceptable to the Contracting Officer. The water conservation program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent 6-year intervals following the acceptance of the Contractor's program, the Contractor shall submit a report on the results of the program to the Contracting Officer for review. Based upon the conclusions of the review, the Contracting Officer and the Contractor shall consult and agree to continue or to revise the existing water conservation program.

#### J. EQUAL OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs 1. through 7. in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### K. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the United States Department of the Interior and/or the Bureau of Reclamation.

2. These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

3. The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

#### L. PRIVACY ACT COMPLIANCE

1. All contractors purchasing water for irrigation use are subject to the provisions of this article. The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in maintaining landholder acreage certification and reporting records, required to be submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.10.

2. With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining the certification and reporting records referenced in (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

3. The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained in the landholders' certification and reporting records.

4. The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64, and amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

5. The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 CFR 2.64, and each request for amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.10, unless the requester elects to cite the Privacy Act as authority for the request.

M. UNCONTROLLABLE FORCES

Neither party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed, for the purpose of this contract, to mean any cause beyond the control of the party affected, including, but not limited to, drought, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

Contract No. 1-07-60-40689

Exhibit B

Environmental Compliance

The site specific National Environmental Policy Act (NEPA) compliance for water service pursuant to this contract with the Spring Creek Homeowners Association was evaluated and documented by Categorical Exclusion Checklist (CEC) No. E-400-91-09. This CEC is for a well diversion located in the NE1/4, SE1/4, of sec. 7, T. 2S., R. 80 W., 6th P. M., with diversion rates up to 50 gallons per minute serving 7 residences year round with up to 15 acre-feet of water annually. The water service pursuant to this contract will be used in the service area of the Spring Creek Homeowners Association in part of sec. 5 and 6, T. 2S., R. 80 W., 6th P. M. Water released from Green Mountain Reservoir pursuant to this contract shall be for replacement of out of priority depletions to senior water rights.