

SETTLEMENT AGREEMENT

This Agreement, dated this 14th day of March, 2006, is hereby entered into between Chaffee County (the "County") and Pueblo West Metropolitan District, a Colorado Title 32 Special District, ("Pueblo West").

WHEREAS, the County currently has a water right application pending in Case No. 04CW129, Water Division No. 2, in which Pueblo West is an objector. Pueblo West and the County have negotiated a compromise settlement regarding the proposed decree in Case No. 04CW129. Pueblo West, the County and various other Objectors are also in the process of negotiating a Memorandum of Understanding in said case.

WHEREAS, Pueblo West has acquired, by Assignment dated June 4, 2001 (recorded at the Chaffee County Clerk & Recorder, Reception # 318384) ("Assignment"), the water rights historically associated with property located in Chaffee County known as the Hill Ranch,

WHEREAS, Pueblo West currently has a water right application pending in Case No. 01CW152, Water Division No. 2, which involves the removal of historic irrigation practices from the Hill Ranch in order to dry up those lands so that the historic water rights may be used for other beneficial purposes.

WHEREAS, removal of historic irrigation practices in Chaffee County are the subject of regulations promulgated by the County pursuant to C.R.S. §§ 24-65.1-101, et seq. and the Guidelines for Identification and Designation of Areas and Activities of State Interest approved by the Colorado Land Use Commission (referred to herein as the County's "1041 Regulations"), in order to ensure, among other things, appropriate revegetation, protection of soils and the avoidance of noxious weed infestations.

WHEREAS, by Agreement Creating Restrictive Covenants dated December 30, 1986, between Gary and Alice Hill (Owners) and Western Water Rights, L.P. Fund I ("Western") (recorded with the Chaffee County Clerk & Recorder at Book 485, Page 680) and by Agreement to Purchase, Sell and Lease-Back Water Rights dated December 22, 1986 between Owners and Western (recorded with the Chaffee County Clerk & Recorder at Book 485, Page 627), the ownership and use of the Hill Ranch lands by the Owners and their successors are the subject of any conditions imposed by any decree resulting from a change of the water rights historically associated with the Hill Ranch.

WHEREAS, by the Assignment, Pueblo West obtained all right, title, interest and obligations transferred to or assumed by Western under the Agreement Creating Restrictive Covenants and the Agreement to Purchase, Sell and Lease-Back Water Rights referenced above.

WHEREAS, by Consent to Covenants executed by the Owners of the Hill Ranch dated January 11, 2001 (recorded with the Chaffee County Clerk & Recorder, Reception # 218888)

the owners of the Hill Ranch consented to, affirmed and ratified the dry up conditions and covenants in the Agreement Creating Restrictive Covenants.

WHEREAS, the parties hereto desire to resolve Pueblo West's opposition to Chaffee County's pending application in Case No. 04CW129, and to resolve the County's 1041 Regulation obligations for the proposed dry up of the Hill Ranch.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Pueblo West agrees to execute the Stipulation in Case No. 04CW129 attached hereto as Exhibit A, within five days of full execution of this Agreement. Pueblo West further agrees to execute any Memorandum of Understanding ("MOU") ultimately negotiated in said case among the County and various Objectors; however, as to Pueblo West, in the event of any inconsistency between the MOU and this Settlement Agreement regarding the County's application of its 1041 regulations to the Hill Ranch dry up, the provisions of this Settlement Agreement shall control. Chaffee County agrees that the Stipulation in Case No. 04CW129 which is attached hereto as Exhibit A satisfies the requirements of paragraph 1 of the Agreed Understanding set forth in the present draft of said MOU.

2. The County agrees that with regard to the proposed dry up and related transfer of water from the Hill Ranch, it will consider its 1041 Regulations fully satisfied, and shall not require any further submittal regarding such dry up and transfer of water, subject to paragraph 5 below, so long as any final decree in Case No. 01CW152 contains the following term and condition and Pueblo West complies therewith:

Revegetation of Dry Up Land. Pursuant to C.R.S. § 37-92-305(4.5)(a), all dry up lands on the Hill Ranch as referenced in paragraph 15 of this decree, that will be taken out of irrigation under the historic water rights referenced in paragraph 12 of this decree, shall be revegetated using native seeds to the extent necessary to establish a weed free, self sustaining ground cover on the dry up lands. Applicant shall coordinate with local Chaffee County and NRCS officials in determining whether seeding or irrigation is required and, if so, the appropriate native seed to be used, the proper method of re-seeding and the amount of irrigation needed. If seeding is required, Applicant shall provide sufficient water under the rights referenced in paragraph 12 herein to irrigate said dry up lands in a manner sufficient to establish the vegetation for two full growing seasons from the date that parcel is dried up. The Applicant shall also comply with the following:

- a. If drought interferes with establishing the new vegetation, Applicant shall extend the irrigation as may be necessary to establish the new vegetation in coordination with Chaffee County and NRCS officials.

- b. Applicant shall be responsible for spraying and other management of weeds on dry up lands that appear during the dry up and revegetation process consistent with the plan agreed upon with Chaffee County and NRCS officials.
- c. Applicant in coordination with Chaffee County and NRCS officials shall develop a plan to accomplish such revegetation and weed removal.
- d. Although Applicant shall provide the water at the locations where ditches divert from the streams, and rehabilitate ditches and other structures as reasonably necessary, the actual irrigation activities shall be done by and at the expense of the landowners. If the landowners do not irrigate the revegetated land, Applicant shall take over such irrigation and may seek recovery of its costs in doing so from the landowners, if allowed under the recorded agreements and covenants described below.
- e. Applicant has certain authority under recorded agreements and covenants to access land, seed, irrigate or remove weeds. *See Agreement Creating Restrictive Covenants* dated December 30, 1986 (recorded with the Chaffee County Clerk & Recorder at Book 485, Page 680); *Agreement to Purchase, Sell and Lease-back Water Rights* dated December 22, 1986 (recorded with the Chaffee County Clerk & Recorder at Book 485, Page 627); *Assignment* dated June 4, 2001 (recorded at the Chaffee County Clerk & Recorder, Reception # 318384); and *Consent to Covenants* executed by the Owners of the Hill Ranch dated January 11, 2001 (recorded with the Chaffee County Clerk & Recorder, Reception # 318382).

3. In the event Pueblo West's authority to access land, seed, irrigate, remove weeds or conduct other revegetation activities as may be required by the Court in Case No. 01CW152 is challenged in court, Chaffee County shall participate in such civil action to the extent permitted under its authority under the Colorado Noxious Weed Act, C.R.S. § 35-5.5-105 to obtain any necessary access to land and other landowner cooperation. In such civil action, Pueblo West and Chaffee County shall not seek fees, costs and other expenses of the litigation against each other, but may seek such fees, costs and other expenses against other parties.

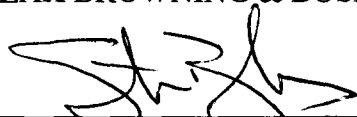
4. Pueblo West shall include the terms and conditions set forth above in paragraph 2 verbatim in any proposed decree in Case No. 01CW152. If changes to the wording of the above term and condition are required by the Court or Objectors in that case, Pueblo West shall obtain Chaffee County's approval of the change, which approval shall be granted so long as the revised condition is no less restrictive on Pueblo West and no less protective of the County's interests. Pueblo West agrees to provide the County copies of all proposed decrees in Case No. 01CW152 for purposes of ensuring compliance with this Agreement.

5. This Settlement Agreement resolves the County's application of its 1041 regulations to the cessation of irrigation resulting from the Hill Ranch dry up that is now contemplated in the pending Case No. 01CW52. The parties understand that various structures or activities may be required in order to conform to the decree that may be entered in Case No. 01CW152, including (but without limitation) headgates, turnouts, wasteways, measuring flumes, recording and telemetry apparatus, diversion dam rehabilitation or improvement, irrigation ditch improvements and monitoring or observation wells. The parties agree that until the design and capacity of those structures are completed, it is premature to pre-determine the extent to which they may be subject to the County's 1041 requirements. Accordingly, the County does not waive its 1041 permitting requirements as to any such structures or activities. However, as to any such structures or activities implicating or subject to the County's 1041 powers, the County agrees that this Settlement Agreement resolves all issues related to the cessation of irrigation and dry up now contemplated in Case No. 01CW152 and that the County will not consider the impacts associated with said cessation of irrigation and dry up when it evaluates any permit applications for such structures or activities, as such issues are already addressed in this Settlement Agreement.

6. So long as Pueblo West complies with this Agreement, the County agrees not to intervene in Case No. 01CW152 and agrees not to protest, appeal or otherwise challenge the entry of any decree in Case No. 01CW152.

Executed this 14th day of March, 2006.

PORZAK BROWNING & BUSHONG LLP



Steven J. Bushong (#21782)
P. Fritz Holleman (#21888)
929 Pearl Street, Suite 300
Boulder, Colorado 80302

Counsel for Chaffee County

KRASSA & MILLER, LLC



Robert F.T. Krassa (#7947)
1680 - 38th Street, # 800
Boulder, Colorado 80301-2611

Counsel for Pueblo West Metropolitan
District

Exhibit A to
Settlement Agreement

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO, STATE OF COLORADO Pueblo County Judicial Building 320 West 10 th Street Pueblo, CO 81003	
CONCERNING THE APPLICATION OF CHAFFEE COUNTY IN CHAFFEE COUNTY, COLORADO	▲ COURT USE ONLY ▲
Porzak Browning & Bushong LLP Steven J. Bushong (#21782) P. Fritz Holleman (#21888) 929 Pearl Street, Suite 300 Boulder, CO 80302 Tel: 303-443-6800 Fax: 303-443-6864 Email: sjbushong@pbblaw.com ; pfolleman@pbblaw.com	Case Number: 04CW129 Water Division: 2
STIPULATION BETWEEN APPLICANT AND PUEBLO WEST	

This Stipulation (“Stipulation”) is entered into between the Applicant, Chaffee County (“County”) and Opposer, Pueblo West Metropolitan District (“Pueblo West”), by and through their respective undersigned counsel, for the purpose of resolving the issues between these parties with respect to the subject matter of the captioned case, and other matters. Accordingly, the parties hereto stipulate and agree as follows:

1. Pueblo West is a party to a proposed Memorandum of Understanding (“MOU”) being negotiated among Chaffee County, Pueblo West and certain other Objectors in the above-captioned matter. Pueblo West finds the current version of the draft MOU acceptable and, so long as any final version is no more burdensome upon Pueblo West than the current version, it agrees to execute the MOU ultimately negotiated by said parties. If such an MOU is finally agreed upon and executed by the County, Pueblo West and the other parties thereto, Pueblo West will consent to the Decree described therein and agrees not to protest, appeal or otherwise challenge such a Decree.

2. In the event the negotiations of the MOU are ultimately not successful, Pueblo West hereby consents to the entry of any Decree in this matter that is no less restrictive on the County than set forth in the application, and agrees not to protest, appeal or otherwise challenge the entry of such a Decree.

3. So long as any changes in flow discussed below do not violate applicable law or regulations, or do not trigger any additional permitting requirements, Pueblo West agrees that it

will cooperate with the County in maintaining flows at the Buena Vista and Salida Boating Parks as follows:

A. At such times as Pueblo West would otherwise use its Hill Ranch water (as may be decreed in Case No. 01CW152) as a direct flow source, which involves letting such water flow through the Salida Park RICD reach, upon request by the County, Pueblo West will instead exchange such water to storage upstream of the confluence of Chalk Creek with the Arkansas River, provided that (1) upstream storage is available to Pueblo West, (2) that a substitute source of supply is available to Pueblo West downstream of Salida and (3) that such exchange and substitute supply is accomplished at no net cost or loss of water to Pueblo West.

B. As such times as Pueblo West is storing its Hill Ranch water (as may be decreed in Case No. 01CW152), upon request by the County, Pueblo West will use its Hill Ranch water as a direct flow source, provided (1) Pueblo West has a need for said water at that time; and (2) utilizing the Hill Ranch water as a direct flow source can be accomplished with no net increase in cost or loss of water compared with storing the water were it not for the County's request.

C. As such times as Pueblo West is storing its Hill Ranch water (as may be decreed in Case No. 01CW152), upon request by the County, Pueblo West will store such water either upstream of the confluence of Chalk Creek with the Arkansas River, or downstream of that location, as the County may request, provided (1) such storage is available to Pueblo West and (2) that such storage can be accomplished with no net increase in cost or loss of water compared with the location at which Pueblo West would have stored such water were it not for the County's request.

4. Pueblo West shall remain a party to this case and shall receive copies of all further proposed decrees submitted by the County to the Court for the sole purpose of ensuring compliance with this Stipulation.

5. Each party hereto shall bear its own costs and attorneys' fees.

6. This Stipulation shall bind and benefit the parties hereto, their successors and assigns. This Stipulation shall be enforceable as an agreement between the parties or as an Order of the Court.

7. At the same time this Stipulation is filed with the Court, the County shall file a Motion requesting that the Court approve the Stipulation.

Respectfully submitted this 14th day of March, 2006.

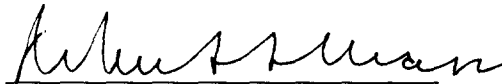
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P. Fritz Holleman (#21888)
929 Pearl Street, Suite 300
Boulder, Colorado 80302

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