

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between Save the Colorado, Save the Poudre: Poudre Waterkeeper, WildEarth Guardians, Living Rivers, Waterkeeper Alliance, and Sierra Club, which are the appellants in Save the Colorado et al. v. U.S. Bureau of Reclamation et al., Case No. 21-1036, U.S. Court of Appeals for the Tenth Circuit (collectively referred to herein as “Petitioners”), and the Municipal Subdistrict, Northern Colorado Water Conservancy District, an Intervenor–Appellee in the above-referenced case (“Subdistrict”). All of the foregoing parties are collectively referred to herein as the “Parties” and individually referred to herein as a “Party.” This Agreement shall be effective on the date it has been executed by both Parties. Prior to execution by all Parties this Agreement shall have no legal or evidentiary effect.

In consideration of the mutual terms and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, and for the purpose of settling the above-referenced appeal without further judicial proceedings, the Parties agree as follows:

- 1) The Parties have simultaneously executed this Settlement Agreement and the attached Stipulation to Dismiss in Case No. 21-1036 – Save the Colorado, et. al. v. United States Bureau of Reclamation. Petitioners will, within 2 business days of the execution of the Stipulation to Dismiss by the United States of America, the State of Colorado, and the City and County of Broomfield, file the Stipulation to Dismiss with the Court of Appeals for the Tenth Circuit.
- 2) The Municipal Subdistrict, Windy Gap Firming Project Water Activity Enterprise will pay to the Grand Foundation a total of \$15,000,000, to be paid out according to the following schedule:
 - a) \$1,000,000 within 2 business days of the dismissal of the appeal with prejudice by the Court of Appeals for the Tenth Circuit (unless additional time is requested by the Grand Foundation).
 - b) \$4,000,000 within 2 business days of the issuance of notice to proceed to WGFP Contractor.
 - c) \$5,000,000 within 2 business days of WGFP main dam construction to a height of 175’ (progress on dam height will be posted monthly on WGFP web site, current design height is approximately 350’).
 - d) \$5,000,000 within 2 business days of issuance of final acceptance of Chimney Hollow Dam by Colorado State Engineer pursuant to Section 8.3 of the Rules and Regulations for Dam Safety and Dam Construction, 2-CCR 402-1, effective January 1, 2020.
 - e) If, at the time of final acceptance of Chimney Hollow Dam by the Colorado State Engineer pursuant to Paragraph 2.d., the height of Chimney Hollow Dam is less than 175 feet and the payment required by Paragraph 2.c. has not been made, the Enterprise shall also pay the amount due under Paragraph 2.c., for a total payment of \$15,000,000.

- 3) Funds paid to the Grand Foundation will be used for the design, construction and maintenance of projects to improve a) aquatic habitat, b) riparian habitat, or c) water quality in Grand Lake, Shadow Mountain Reservoir, Granby Reservoir, the Colorado River from Granby Reservoir to its confluence with the Williams Fork River, or the Fraser River between the Town of Winter Park and Windy Gap Reservoir, with priority given to projects that address impacts caused by the Windy Gap Project and Windy Gap Firing Project.
- 4) The funds will be held by the Grand Foundation in a Donor Advised Fund. Distributions of money from the fund, for the purposes specified in paragraph 3, shall be overseen by a committee composed of six members, which shall meet at least once every year. Petitioners (excluding the Sierra Club) shall select three of the committee members, and three shall be selected by the Municipal Subdistrict, Windy Gap Firing Project Water Activity Enterprise. Any distribution of funds shall require the approval of at least 4 members of the committee. In the event that any member of the committee is no longer able to serve, either Petitioners (excluding the Sierra Club) or the Municipal Subdistrict shall select a replacement, maintaining the 3-3 balance on the committee. Any funds that have not been spent in accordance with this paragraph 5 years after the last payment pursuant to Paragraph 2 shall be allocated by the Grand Foundation for the purposes identified in Paragraph 3.
- 5) The Obligations of the Municipal Subdistrict, Windy Gap Firing Project Water Activity Enterprise to pay the amounts due in Paragraph 2 shall be a contractual obligation that may be enforced by the Grand Foundation or by any petitioner. This enforcement shall be limited to the payment of money or the timing of such payments, and shall not address distribution of money from the fund at the Grand Foundation.
- 6) Petitioners agree to not challenge the validity of the Records of Decision for the Windy Gap Firing Project in a judicial or administrative forum, specifically the Record of Decision of the United States Army Corps of Engineers for the Windy Gap Firing Project dated May 16, 2017 or the Record of Decision of the United States Bureau of Reclamation dated December 19, 2014 for the 2014 Contract for the Introduction, Storage, Conveyance, Exchange, Substitution, and Delivery of Water for Municipal Subdistrict, Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado. If the Subdistrict believes that any of Petitioners have breached their Obligations under this paragraph, the Subdistrict shall provide notice of the alleged breach to Petitioner's counsel, and Petitioners shall have two weeks to cure the alleged breach. Enforcement of Petitioner's Obligations under this paragraph shall be limited to performance of the Obligations and shall not include money damages.
- 7) The Parties agree that each Party shall bear its own costs and fees associated with Case No. 21-1036.

- 8) This Agreement embodies the whole agreement between the Parties, and there are no promises, terms, conditions, or obligations referring to the subject matter hereof other than as herein contained. This Agreement shall not be modified except by subsequent written agreement of all of the Parties.
- 9) This Agreement shall be deemed a contract extending to and binding upon the Parties and their respective successors or authorized assigns as of the effective date above. Any assignment of this Agreement may occur only upon prior written consent of the other Parties.
- 10) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- 11) Each Counsel executing this Agreement represents that they have the authority to execute this Agreement on behalf of and to bind their respective clients as identified in the signature blocks for this Agreement.

Municipal Subdistrict, Northern Colorado Water Conservancy District

By: *Bennett Raley* Date: April 21, 2021
Bennett W, Raley, Subdistrict Counsel
Trout Raley
1120 Lincoln St., Suite 1600
Denver, Colorado 80203

Save the Colorado, Save the Poudre: Poudre Waterkeeper, WildEarth Guardians, Living Rivers, Waterkeeper Alliance, and Sierra Club, collectively "Petitioners"

By: *Kevin J. Lynch* Date: April 21, 2021
Kevin J. Lynch, Esq., Counsel for Petitioners
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