STATE OF COLORADO }
} SS.
County of Grand }

At a regular meeting of the Board of County Commissioners for the Grand County, Colorado, held at the Grand County Administration Building in Hot Sulphur Springs on Tuesday, the 24th day of January, 2012 there were present:

Nancy Stuart, Commissioner Chairman

James L. Newberry, Commissioner

Gary Bumgarner, Commissioner

Anthony J. DiCola, County Attorney

Lurline Underbrink Curran, County Manager

Sara L. Rosene, Clerk of the Board

when the following proceedings, among others, were had and done, to wit:

RESOLUTION NO. 2012PA-12-1

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GRAND SETTING AS THE PERMIT AUTHORITY AND GRANTING THE MUNICIPAL SUBDISTRICT OF THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT ACTING BY AND THROUGH THE WINDY GAP FIRMING PROJECT WATER ACTIVITY ENTERPRISE A PERMIT TO ENGANGE IN AN ACTIVITY PREVIOUSLY DESIGNATED AS AN ACTIVITY OF STATE INTEREST PURSUANT TO THE BOARD OF COUNTY COMMISSIONERS OF GRAND COUNTY RESOLUTION 1978-5-4, FOR THE 2012 WINDY GAP FIRMING PROJECT (2012 WGFP).

WHEREAS, on or about June 11, 2012, the Municipal Subdistrict of the Northern Colorado Water Conservancy District acting by and through the Windy Gap Firming Project Water Activity Enterprise (Subdistrict) submitted an application, under protest, for a permit pursuant to Resolution No. 1978-5-4, as amended, which permit is commonly referred to as a "1041 Permit". The application was submitted for approval of a "Municipal and Industrial Water Project" as contemplated in Chapter 5 of Resolution 1978-5-4, as amended; and

WHEREAS, the construction and operation of the 2012 WGFP constitutes a designated matter of State Interest pursuant to part 1 of Article 65.1, Title 24, of the C.R.S. 1973, and the "Grand County Administrative Regulations for Areas and Activities Designated As Matters of state Interest", adopted by Resolution No. 1978-5-4; and

WHEREAS, the proposed project is generally described as Chimney Hollow Reservoir located on the East Slope of Colorado identified in the Final Environmental Impact Statement (FIES) for the Windy Gap Firming Project as the proposed action and any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the FEIS (Alternative Reservoir), provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet. The use of the reservoir will cause additional depletions from the Colorado River in Grand County as well as prepositioning of federal water of the Colorado Big-Thompson Project in a non-federal facility.

WHEREAS, the description of the project, a history of the purpose and need for the project, a description of the affected environment, and an analysis of the environmental consequences are discussed in detail in the Windy Gap Firming Project Final Environmental Impact Statement, November, 2011, prepared by the United States Bureau of Reclamation (hereinafter referred to as FEIS and made an exhibit to the public hearing file); and

WHEREAS, the operation 2012 WGFP will cause impacts in Grand County; and

WHEREAS, notice as required by Resolution 1978-5-4, as amended, of the filing of the application, and of all hearings are complete and properly published. Hearings were held on August 1 and 2, 2012, August 28, 2012, October 2, 2012, October 30, 2012, November 8, 2012, November 14, 2012, and November 20, 2012. A record was made of all hearings. The Board of County Commissioners setting as the Permit Authority has received oral evidence in the form of testimony and informational statements, and written evidence in the form of letters, statements, comments, recommendations, reports, studies, closing arguments and other documentation from the Subdistrict, County staff, various groups and governmental entities, and members of the general public; and;

WHEREAS, a list of exhibits received is attached hereto as "Exhibit A", and the closing arguments received are attached hereto as "Exhibit B"; and

WHEREAS, the evidence was considered based upon the probative value placed thereon by the Permit Authority, and the findings and resolution herein are based upon the record as a whole. References to exhibits and testimony herein are related to the record of proceedings before the Permit Authority. Such references are for convenience only, are not intended to be all inclusive, and do not necessarily include all portions of the record upon which the findings are based; and

WHEREAS, the following persons and entities appeared at the proceedings:

Grand County
- Lurline Underbrink Curran, County Manager
- Anthony J. DiCola, Esq., County Attorney
- Robert Franek, Esq., Assistant County Attorney
- Barbara L. Green, Esq., Environmental Counsel
- David C. Taussig, Esq., Water Counsel
- Katherine Morris, Water Quality Specialist
- Peggy Bailey, Tetra Tech.

Municipal Subdistrict of the Northern Colorado Water Conservancy District
- Eric Wilkinson, General Manager
- Jeff Drager, Project Manager
- Peggy Montano, Esq.

Lane Wyatt, Northwest Colorado Council of Government

Colorado River Water Conservation District
- Eric Kuhn, General Manager
- Jason Turner, Esq.

Middle Park Water Conservancy District/Stanley Cazier, Esq.

Town of Grand Lake
- Judy Burke, Mayor
- David Hook, Town Manager

Trout Unlimited
- Amelia Whiting, Esq.
- Greg Espergren
- Rob Firth

Upper Colorado River Alliance

Steve Bushong, Esq.
Bud Isaacs
Scott Fifer, Resource Engineering
Norman Carpenter
Town of Hot Sulphur Springs
Christine Lee
Jack Zielinski
Jon Ewert, Colorado Parks and Wildlife
Rebecca Mitchell, Colorado Department of Natural Resources
Kirk Klancke
John Stahl
Steve Paul
Scally O'Donnell
Robert Jackson
Merritt Linke

WHEREAS, the application was reviewed under the Grand County Administrative Regulations for Areas and Activities Designated as Matters of State Interest (Grand County Land Use and Environmental Regulations);

WHEREAS, the 2012 WGFP must provide assurance that it complies with all required federal, state, regional and county planning policies regarding land use and water resources; and

WHEREAS, the Subdistrict must show that it is utilizing the water from the 2012 WGFP in the most efficient manner, including recycling, re-use, and conservation; and

WHEREAS, the Permit Authority has heard evidence that the 2012 WGFP will exacerbate or cause impacts in Grand County to the following :

- Water quality and quantity
- Aquatic habitat including temperature and flushing flow
- Distribution and composition of riparian and wetland vegetation
- Water clarity in Grand Lake

NOW THEREFORE BE IT RESOLVED, based on the evidence and testimony admitted at the public hearings, the Permit Authority of Grand County finds as follows with regard to the application submitted by the Subdistrict for the 2012 WGFP.

FINDINGS OF FACT AND PERMIT CONDITIONS

Based on Subdistrict request for vested right and limitations stated in the application, Windy Gap Firming Project Intergovernmental Agreement (WGFP IGA), and evidence and testimony submitted at the public hearing, the following general conditions are applied and shall be met by the Subdistrict:

Condition 1. Water pumped under the original Windy Gap Project 1041 Permit cannot be stored at any time in Chimney Hollow Reservoir or any Alternative Reservoir for Windy Gap Firming Project (WGFP) that may be constructed as allowed in the IGA. In advance of each pumping season the Subdistrict will advise Grand County of the volume of water orders for that year for its Windy Gap Project participants and WGFP participants. All water pumped shall be assumed to be for the WGFP, which is subject to the 2012 Permit Conditions, unless the Subdistrict notifies Grand County as soon as it knows, but in advance of pumping, that water will be pumped under the original Windy Gap Project 1041 Permit rather than under the 2012 Permit. The Subdistrict will maintain daily records to account for and track the amount of water pumped

under each permit separately from the time that pumped water is introduced into Granby Reservoir until it is delivered to the individual participants with daily accounting records provided to Grand County on a monthly basis. Any change in the operation from WGFP to the Windy Gap Project will be for a valid operational reason, based on the Subdistrict's representation.

The 2012 WGFP Permit shall be suspended if the Windy Gap project is found to be in violation of the 1980 Windy Gap Project 1041 Permit. The 2012 WGFP may resume operation as soon as the Windy Gap Project is no longer in violation of the 1980 Windy Gap 1041 Permit.

Condition 2. The permit for the 2012 WGFP will be in effect for the life of the project and considered a vested right as long as the project is in compliance with the terms and conditions of all permits and approvals for the 2012 WGFP Permit.

Condition 3. The 2012 WGFP Permit is not transferrable to any other entity unless the County approves such transfer by Resolution.

Condition 4. This 2012 WGFP Permit shall allow construction of Chimney Hollow Reservoir (the reservoir located on the East Slope identified in the Final Environmental Impact Statement for the Windy Gap Firming Project as the proposed action) and any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the Final Environmental Impact Statement; provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any alternative reservoirs does not exceed 90,000 AF, as long as the environmental impacts in Grand County are as reviewed and approved by the Permit Authority during the public hearing process for the 2012 WGFP.

Condition 5. The 2012 WGFP shall not exceed the volumetric limits stated in the WGFP IGA for the Windy Gap project and 2012 WGFP. The 2012 WGFP Permit is contingent upon the participant's use of water in compliance with the Windy Gap decrees and Colorado law.

Section 5-306 – Grand County Regulations for Areas and Activities Designated as Matters of State Interest.

Criterion 1(a) <u>The Need For The Proposed Project Can Be Substantiated.</u>

The need for the proposed project is substantiated as follows:

The 2012 WGFP will firm the anticipated yield of the Windy Gap project.

The 2012 WGFP will meet a 34% water supply deficit for the project participants within the Northern Colorado Water Conservancy District boundaries by providing 90,000 acre feet of reservoir storage to provide a firm yield to the project of 30,000 acre feet.

The 2012 WGFP will firm the yield of the water provided to the Middle Park Water Conservancy District in the 1980 and 1985 Supplemental Agreements for the Windy Gap Project.

Criterion 1(a) has been satisfied.

Criterion 1(b) <u>Assurances of Compatibility of the Proposed Water Project with Federal, State, Regional and County Planning Policies Regarding Land Use and Water Resources.</u>

The Permit Authority finds that with regard to Criterion 1(b) there are impacts caused by the 2012 WGFP, which would be mitigated with the following conditions which shall be met by the Subdistrict:

Condition 6. In order to satisfy the Subdistrict's compliance with its obligations under section

37-45-118(1)(b)(IV) of the Water Conservancy Act, the 2012 Permit shall not take effect until the WGFP IGA has been executed, and is conditioned upon the Subdistrict' s continued compliance with its obligations under the WGFP IGA. The Permit Authority reserves jurisdiction with regard to this condition in the event any signatory to the WGFP IGA refuses to sign.

Condition 7. While the Subdistrict is not a party to the Grand Lake Clarity Agreement, the Permit Authority has relied on the Clarity Memorandum of Understanding in determining whether the 2012 WGFP complies with its 1041 Regulations; therefore, the 2012 Permit shall not be effective until the Clarity MOU, Clarity Supplement to the 1938 Repayment Contract and Contributed Funds Act Agreement (CFA Agreement) for executing the Colorado- Big Thompson (C-BT) West Slope Collection System Technical Review of Alternatives and Analysis and Plan of Study have been executed. The Subdistrict shall provide County with a status report, every two years, on the progress of meeting the State Water Clarity Standard for Grand Lake. The Permit Authority reserves jurisdiction with regard to this condition in the event any signatory to the applicable agreement(s) refuse to sign.

Condition 8. The Permit Authority has relied upon the Related Documents identified in the WGFP IGA in determining whether the 2012 WGFP complies with its 1041 Regulations; therefore, this 2012 Permit shall not be effective until those Related Documents have been executed or finalized, and Grand County has been provided with copies of same. The Permit Authority reserves jurisdiction with regard to this condition in the event any signatory for a Related Document(s) refuse to sign.

Condition 9. The storage of water in Chimney Hollow Reservoir shall not commence until the water court approves the Windy Gap decree as amended by incorporation of the WGFP IGA. The Subdistrict shall provide Grand County with documentation of this approval.

Condition 10. The 2012 WGFP Permit shall not be effective until issuance of necessary state and federal permits and approvals for the 2012 WGFP, and this 2012 Permit is contingent upon Subdistrict's continued compliance with those permits and approvals. If there is a conflict between a term and/or condition in the 2012 WGFP Permit and a state or federal permit or approval, the term or condition that is the more restrictive shall control, unless otherwise preempted. Subdistrict shall provide Grand County with copies of all approved federal and state permits and approvals issued for the 2012 WGFP, which shall be attached to this permit. Following is a list of anticipated state and federal permits and approvals (this may not be a complete list):

- Clean Water Act 404 permit
- Colorado Department of Public Health and Environment ("CDPHE") 401 certification
- Fish and Wildlife Mitigation Plan, C. R. S. § 37-6-122.2
- Water Conservancy Act, C.R.S. § 37-45-101 et seq.
- Amendatory Contract and companion documentation of Bureau of Reclamation determination of compliance with Senate Document 80
- Record of Decision issued by Bureau of Reclamation
- Record of Decision issued for Corps of Engineers

Condition 11. The 2012 WGFP Permit shall terminate and be in no force and effect if construction of Chimney Hollow Reservoir, as defined in Condition 4 of this 2012 WGFP Permit, has not begun within ten (10) years of the latter of the issuance of the Record of Decision for the 2012 WGFP by Bureau of Reclamation or by the Corps of Engineers.

Condition 12. Diversions and pumping associated with the 2012 WGFP must cease if the Grand County Water Apportionment provided by the WGFP IGA is not available for release in accordance with the WGFP IGA. In such circumstances, any Windy Gap Project Water delivered to Middle Park Water Conservancy District shall be delivered in accordance with the 1980 and 1985 Agreements in the water year (August 1 to July 31) following the pumping season in which

WGFP pumping was curtailed because the Grand County Water Apportionment provided by the WGFP IGA was not available for release in accordance with the WGFP IGA.

Condition 13. To show compliance with the 2011 Grand County Master Plan provision about Economic Base - Recreation and Tourism Based Industry, and Criterion 5-306(g) (Public Outdoor Recreation Areas), the County has relied upon the public access provided in paragraph IV D of the WGFP IGA.

Condition 14 . Compliance with the conditions in this 2012 WGFP Permit shall constitute compliance with the Northwest Colorado Council of Governments 208 Plan.

Criterion 1(c) Municipal And Industrial Water Projects Shall Emphasize the Most Efficient Use of Water, Including, to the Extent Permissible Under Existing Law, the Recycling and Reuse of Water, Urban Development, Population Densities, and Site Layout and Design Of Storm Water and Sanitation Systems Shall Be Accomplished In A Manner That Will Prevent the Pollution of Aquifer Recharge Areas.

The Permit Authority finds that with regard to Criterion 1(c) there are impacts caused by the 2012 WGFP, which would be mitigated with the following conditions which shall be met by the Subdistrict:

Condition 15. Prior to delivery of water through the 2012 WGFP, Subdistrict shall provide the County with documentation of conservation plans for all municipal project participants and lessees and shall continue to provide documentation that participants are complying with the Water Conservation Act with regard to updating the conservation plans as required by state law.

Condition 16. Subdistrict shall provide written notice to the County when units of the 2012 WGFP are sold or leased and verification that the new owner or lessee has complied with the Water Conservation Act.

Condition 17. Within 30 days of acceptance of this 2012 WGFP Permit, the Subdistrict shall provide the County with written documentation of how use of water for fracking satisfies criterion c of the Grand County 1041 Regulations, if at all.

Condition 18: This 2012 WGFP Permit is subject to the Subdistrict's compliance with the terms and conditions of the 1980 Agreement and 1985 Supplement that remain in effect after execution of the WGFP IGA.

Criterion 1(d) Provisions to Insure that the Proposed Water Project Will Not Contaminate Surface Water Resources.

The Permit Authority finds that with regard to Criterion 1(d) there are impacts caused by the 2012 WGFP, which would be mitigated with the following conditions which shall be met by the Subdistrict:

Condition 19 . See condition #7.

Condition 20. Prior to the beginning of construction for Chimney Hollow Reservoir, the Subdistrict shall provide Grand County with a copy of an executed agreement between the Subdistrict and the wastewater treatment provider(s) to mitigate nutrient loading. This agreement shall include provision for allocating the cost of improvements and additional operation and maintenance costs, if any, associated with those improvements.

Condition 21. The Subdistrict shall submit the Nutrient Reduction Plan required by Bureau of Reclamation to Grand County for review at the same time it is submitted to Bureau of Reclamation and the Corps of Engineers.

Condition 22. Within six months of issuance of the last Record of Decision for the 2012 WGFP, the Subdistrict shall submit to the County for review and approval of a robust monitoring plan to assure that nutrient loading from the 2012 WGFP for total nitrogen and total phosphorus is reduced to the 1:1 level that the Subdistrict has agreed to achieve.

Within six months of issuance of the last Record of Decision for the 2012 WGFP, the Subdistrict shall submit to the County for review and approval a monitoring plan for manganese, bioavailable mercury, dissolved oxygen, and chlorophyll a in the Three Lakes. The plan should also include monitoring for Secchi disc depth July through September of each year in Grand Lake and Shadow Mountain Reservoir. The monitoring plan shall include a schedule for monitoring and reporting and Subdistrict shall provide a publicly accessible data base, and submit to Grand County summary reports on a schedule and in a form approved by Grand County. Following implementation of the WGFP, if monitoring shows increasing trends in manganese, bioavailable mercury, or chlorophyll a, or decreasing trends in dissolved oxygen and Secchi disc depth in Grand Lake, the Subdistrict and Grand County will evaluate and determine the cause for the changes in the trends. If it is determined that these trends are attributable to the WGFP, the Subdistrict will develop and implement a mitigation plan to eliminate the impact of the 2012 WGFP on those constituents.

Criterion 1(e) <u>The Proposed Water Project is Capable of providing Water Pursuant to Standards of the Colorado Department of Health.</u>

This Criterion does not apply to this project.

Criterion 1(f) <u>The Proposed Diversion of Water from the Source Development Area Will Not Decrease the Quality of Peripheral or Downstream Surface or Subsurface Water Resources in the Source Development Area Below that Designated by the Colorado Water Quality Control Division on January 15, 1974 and Effetive June 19, 1974 or Below Stricter Standards Subsequently Adopted.</u>

The Permit Authority finds that with regard to Criterion 1(f) there are impacts caused by the 2012 WGFP, which would be mitigated with the following conditions which shall be met by the Subdistrict:

Condition 23. Installation of the real time water temperature gauges required by the Fish and Wildlife Mitigation Plan shall be a condition of this 2012 Permit and the Subdistrict must verify every spring, before the beginning of pumping, that these gauges are in good working order, that they remain so during the time of the year when the standard is in effect, and that they are replaced or repaired when necessary and timely to their need in reporting temperature.

Condition 24. The Subdistrict will address temperature mitigation as follows:

- Temperature Thresholds. For the purposes of this Condition, the threshold temperatures will be the stream temperature standards adopted by the state Water Quality Control Commission then in effect.
- Grand County, Subdistrict, Trout Unlimited, Upper Colorado River Alliance will not, and Subdistrict will assure that Northern Colorado Water Conservancy District will not, independently propose changes to the temperature standards for the reaches affected by the WGFP without first working through Learning by Doing.

Under the currently applicable temperature standards, the following would apply.

- MWAT Chronic Threshold Exceedances - Reduction or Curtailment of WGFP Pumping . At such times as the Subdistrict is diverting under the 2012 Permit and the Weekly Average Temperature (WAT) exceeds the MWAT Chronic Threshold, the Subdistrict will reduce or curtail WGFP pumping at the Windy Gap diversion to the

extent necessary to maintain temperatures within the MWAT Threshold. Reduced pumping may not be sufficient to maintain temperatures below the threshold.

- DM Acute Threshold Exceedances - Reduction or Curtailment of Pumping for the WGFP and the original Windy Gap Project (under both the 2012 Permit and original Windy Gap Project Permit). At such times as the Daily Maximum temperature is within 1°C of the DM Acute Threshold, the Subdistrict will reduce or curtail pumping for the original Windy Gap Project or the WGFP at the Windy Gap diversion to the extent necessary to maintain temperatures within the DM Threshold. Reduced pumping may not be sufficient to maintain temperatures below the threshold. In the future, the 1 degree buffer may be altered, based on experience, to maintain compliance with the DM Threshold.

- Limitations on Reduction or Curtailment of Windy Gap Pumping or WGFP Pumping. The temperature mitigation measures identified above will be suspended in the event that and at such times as WGFP or, in the case of acute standards for both WGFP and the original Windy Gap, stops pumping and the temperature does not improve based on actual measurable effect. In that circumstance, WGFP and/or original Windy Gap may resume pumping. The LBD process will be used to evaluate the effect of the WGFP on temperature exceedances. Whether curtailment of pumping improves stream temperature will be tested on a periodic basis as determined by Learning by Doing.

- Use of the Windy Gap Bypass Valve and Auxiliary Outlet. The use of the Windy Gap Project Bypass Valve and Auxiliary Outlet will be considered by Learning by Doing, as appropriate.

Condition 25. Because the delivery of the 10825 endangered fish water from Granby Reservoir is an essential consideration for compliance with the Endangered Species Act and compliance with the temperature standard, the Subdistrict must participate in securing approval of the 10825 agreement and must arrange with Northern to do the same.

Criterion 1(g) <u>The Proposed Development and the Potential Diversions of Water from the Source Development Area Will Not Significantly Deteriorate Aquatic Habitats, Marshlands and Wetlands, Groundwater Recharge Areas, Steeply Sloping or Unstable Terrain, Forests and Woodlands, Critical Wildlife Habitat, Big Game Migratory Routes, Calving Grounds, Migratory Ponds, Nesting Areas and the Habitats of Rare and Endangered Species, Public Outdoor Recreational Areas, and Unique Areas of Geologic, Historic or Archaeological Importance.</u>

The Permit Authority finds that with regard to Criterion 1(g) there are impacts caused by the 2012 WGFP, which would be mitigated with the following conditions which shall be met by the Subdistrict:

Condition 26. Within six (6) months of issuance of Record of Decision by the Corps of Engineers for 2012 WGFP, the Subdistrict shall prepare and submit to Learning by Doing Management Committee, for review, approval and implementation, a fish and aquatics invertebrates monitoring plan. The monitoring data shall be provided to the Learning By Doing effort and monitoring shall continue as long as the Learning by Doing effort requires this data. If the bypass/through is constructed, the Subdistrict shall adapt and fund the monitoring plan as necessary in consultation with the Management Committee of Learning by Doing.

Condition 27. If a bypass/by through channel is constructed the design shall include a plan for minimizing blowing dust. If such plan is implemented, blowing dust shall not constitute a violation of the 1980 Windy Gap Project 1041 Permit or the 2012 Permit.

Condition 28. The bypass/by-through study shall commence on or before issuance of this 2012 Permit. If the results of the study demonstrate that the bypass/by-through will benefit the

Colorado River as defined in the Scope of Work/Request for Qualifications (RFQ) Windy Gap Reservoir Modifications Study, November 2012, RFQ# PBA-1324, implementation and construction of the bypass/by-through shall proceed in accordance with the Windy Gap Bypass Funding Agreement.

If the bypass/by-through is implemented and constructed, the Subdistrict shall contribute no less than $2 million.

Condition 29. If, during a five (5) year period, natural conditions meet or exceed flows of 600 c.f.s. required by the Fish and Wildlife Mitigation Plan so that the Subdistrict is not required to make releases or bypass water to achieve the required flow, and a flow of 1200 c.f.s. has not occurred for 72 consecutive hours, then in the sixth year, Subdistrict shall provide a 1200 c.f.s. flow for 72 consecutive hours.

Condition 30. Subdistrict shall prepare and submit to Grand County, for approval, a monitoring plan to establish a baseline for riparian vegetation along the Colorado River From Windy Gap Dam to the lower terminus of the Kemp-Breeze Wildlife Area and on Willow Creek, below Willow Creek Reservoir, within sixty (60) days of issuance of the Record of Decision by the Corp of Engineers. The operation of the WGFP will not adversely impact the distribution and composition of riparian and wetland vegetation along the Colorado River below Granby Reservoir and below the Windy Gap diversion, and on Willow Creek, below Willow Creek Reservoir. The Learning by Doing Management Committee will determine if additional follow-up monitoring of riparian vegetation is necessary based on observed conditions.

Condition 31. See Condition #8.

BE IT FURTHER RESOLVED that conditions # 6, #7, #8, #10, #17, #19, #21, #22, #25, #26, #30, and #31 above are, in whole or in part, precedent to and must be met prior to the effective date of the 2012 WGFP Permit; and

BE IT FURTHER RESVOLVED that conditions # #9, #11, #13, #14, #15, #20, #23, #27, and #28 above are, in whole or in part, precedent to and must be met prior to the use of the 2012 WGFP after the 2012 WGFP Permit becomes effective; and

BE IT FURTHER RESOLVED that condition #1, #2, #3, #4, #5, #6, #7, #10, #12, #15, #16, #18, #19, #22, #23, #24, #26, #27, #28 and #29 above, in whole or in part, are subsequent to and must be met after the 2012 WGFP is in operation.

CONCLUSIONS OF LAW AND PERMIT CONDITIONS

The 2012 WGFP complies with all provisions of the following Grand County Regulations:
Section 5-306 1(a)

The following Grand County Regulations are not applicable to the 2012 WGFP:
Section 5-306 1(e)

Upon compliance with the permit conditions set forth above, the following Grand County Regulations would be satisfied:
Section 5-306 1(b)
Section 5-306 1(c)
Section 5-306 1(d)
Section 5-306 1(f)
Section 5-306 1(g)

Based on the foregoing Findings and Conclusions, the Permit attached hereto is issued subject to the conditions listed in the Findings of Fact above.

The Permit Authority has relied on various agreements and documents associated with the WGFP IGA in making its Findings of Fact and Conclusions of Law and Permit Conditions. The Permit Authority will execute the WGFP IGA and Related Documents when presented in final form.

The conditions stated herein may be modified or deleted following public hearing.

If any of the conditions of the 2012 WGFP Permit (or portions thereof) are found to be unenforceable, the enforceability of the remaining conditions (or portions) will not be affected; however the Permit Authority, upon a finding of unenforceability may reopen public hearings, pursuant to the Applicant's right to Notice and Hearing as provided in the Grand County Regulations, to determine whether in the absence of said condition(s) the 2012 WGFP would comply with applicable County regulations.

Moved and approved by the Permit Authority this 4th day of December, 2012. Nunc Pro Tunc November 20, 2012.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Nancy Stuart ..... Aye

James L. Newberry ..... Aye

Gary Bumgarner ..... ~~Aye~~ Nay

Commissioners

STATE OF COLORADO }
} SS.
County of Grand }

I, ..., County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Order is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Grand County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Hot Sulphur Springs, this ..... day of ..... A.D. 20.....

County Clerk and ex-officio Clerk of the Board of Commissioners.

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EXHIBIT "A" to Resolution 2012PA-12-1

List of Exhibits
Windy Gap Firming Project
1041 Permit
August 1 & 2, 2012, 8:30 a.m. and all subsequent hearing dates

Grand County Exhibits

(1) Letter of Application dated June 11, 2012 and Grand County 1041 Application of Municipal Subdistrict, Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firming Project Water Activity Enterprise date June 11, 2012.

(2) Letter dated June 21, 2012 from Anthony J. DiCola, County Attorney to Peggy E. Montano, deeming the 1041 Application to be complete.

(3) Public Notice – Middle Park Times, June 21, 2012.

(4) Proof of Publication – Middle Park Times, June 21, 2012.

(5) List of Agencies and Interested Parties notified.

(6) Public Review Sheets (no names or signatures).

(7) Grand County Letter mailed with electronic copies of Application to Review Agencies dated June 13, 2012.

(8) WGFP IGA Draft dated July 3, 2012 and Draft Closing Documents;
Draft Memorandum of Understanding: Grand Lake Clarity Project dated 4-26-12; Draft Intergovernmental Agreement between Northern Water Conservancy District, Grand County, Middle Park Water Conservancy District and Colorado River Water Conservation District dated 6-4-12. Draft Processed Material Supply Agreement dated 6-20-12;

(9) Letter from Northwest Colorado Council of Governments dated July 6, 2012.

(10)Letter of from Carol Sidofsky & Dave Hazelrigg dated July 9, 2012.

(11)Letter of from Melanie Zwick dated July 9, 201.2

(12)Letter from Colorado Parks and Wildlife dated July 9, 2012.

(13)July 9, 2012 Update to Section IV.C of WGFP IGA Draft dated July 3, 2012.

(14)Certificate of Recommendation to Grand County Planning Commission dated July 11, 2012.

(15)Grand County Planning Commission Meeting Minutes dated July 11, 2012.

(16)Grand County Planning Commission Resolution No. 2012-7-1.

(17)Certificate of Recommendation to Grand County Permit Authority dated August 1 and 2, 2012.

(18)Grand County Public Hearing reminder and link to Certificate of Recommendation mailed and emailed to Interested Parties dated July 24, 2012.

(19)Email revisions dated July 25, 2012: Certificate of Recommendation to Grand County Permit Authority dated August 1 and 2, 2012.

(20)Letter from Paul Hollrah dated July 22, 2012

(21)Letter from Kirk Klancke dated July 24, 2012.

(22)Email from Jon Weimer dated July 24, 2012.

(23)Email from Jim Ross dated July 24, 2012.

(24)Grand County email dated July 27, 2012 to Interested Parties: Tentative WGFP 1041 Permit Agenda August 1 & 2, 2012.

(25)Opinion Column in the July 27, 2012 Sky Hi News by Kirk Klancke, Headwaters Chapter of Trout Unlimited and Windy Gap Hearing Meeting Reminder on Front Page.

(26)Email from Charles W. Howe, dated July 29, 2012.

(27)Email from Ken Gillis, Ouray Ranch Homeowner's Association dated July 30, 2012.

(28)Email from Jeff Metzger dated July 30, 2012 with attached letter to BOCC dated August 1, 2012 for Public Hearing testimony.

(29)Email from Peggy Montano dated July 30, 2012 with regard to two (2) errors in the Certificate of Recommendation.

(30)Letter from Richard E. Newton dated July 30, 2012.

(31)Email dated July 31, 2012 from Ron Johnson.

(32)Letter dated July 31, 2012 from Dennis G. Buechler and Suzanne O'Neill, Colorado Wildlife Federation.

(33)Senate Document No. 80, Colorado-Big Thompson Project, Synopsis of Report dated 1937

(34)Letters documenting Grand Lake clarity issues: 1954

(35)Public Law 95-450, creating the Arapaho National Recreation Area and Colorado Big Thompson Project, dated October 11, 1978.

(36)Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Plant dated April 30, 1980.

(37)Resolution No. 1980-6-1,dated June 17, 1980, A Resolution Of The Grand County Permit Authority Granting To The Municipal Subdistrict, Northern Colorado Conservancy District, A Permit To Engage In An Activity Previously Designated An Activity Of State Interest Pursuant To The Board Of County Commissioners Of Grand County Resolution No. 1978-5-4, As Amended (Design, Construction and Operation of Applicant's Windy Gap Project, Reservoir and Pipeline as proposed).

(38)Agreement dated July 7, 1980 between Grand County and Middle Park Water Conservancy District.

(39)Corps of Engineers Record of Decision, Windy Gap Project, June 8, 1981.

(40)Bureau of Reclamation Record of Decision, Windy Gap Project, Colorado, June 18, 1981.

(41)Final Environmental Statement Colorado-Big Thomson Windy Gap Projects Colorado dated April 28, 1981.

(42)Supplement to Agreement of April 30, 1980, entitled "Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project.

(43)Report by Coley/Forrest, Inc. date July 2007: Grand County: Its Economy & Water Resources.

(44)Walsh Aquatic Consultants, Inc.: Update of [Walsh] February 1, 2008 Technical Review of revised Windy Gap Firming Project Aquatic Resources Technical Report (Dec 2007) and [Walsh] November 23, 2009 Technical Review of Preliminary Draft WGFP Fish and Wildlife Plan (August 2009) based on new information (update dated 01/10/11).

(45)Amended and Restated Transmission and Pumping Service Agreement, Contract No. TS-08-0026, dated June 13, 2008, between Tri-State, Mountain Parks Electric and the Municipal Subdistrict.

(46)Letter from Barbara J.B. Green dated 12-29-08 to Will Tully and Chandler Peter: Northern Colorado Water Conservancy District, Windy Gap Firming Project, Grand County Cooperating Agency Comments, Windy Gap Firming Project Draft Environmental Impact Statement.

(47)Stream Management Plan, Grand County, Colorado – Phase 3 dated August 2010.

(48)Intergovernmental Agreement for the Learning By Doing Cooperative Effort date August 27, 2010.

(49)Colorado River Aquatic Resources Investigations, Federal Aid Project F-237R-18, R. Barry Nehring, General Professional V, Co-Authors Brian Heinold and Justin Pomeranz, June 2011.

(50)Windy Gap Firming Project – CD's: Final Environmental Impact Statement dated and Response to DEIS Comments dated November 2011; Technical Reports dated June 2012

(51)Colorado's Official State Position regarding Fish and Wildlife Mitigation Plans, The Colorado Lawyer, February 2012, Vol.41, No.2 [page 41] and Letter dated 12-9-10 from Tim Monahan, First Assistant Attorney General re: fish and wildlife mitigation requirements under state law.

(52)Email from David Taussig dated July 18, 2012 regarding Windy Gap Decrees.

(53)Draft Request for Proposals dated 7-27-12: Windy Gap Reservoir Modifications

(54)Grand County Administrative Regulations for Areas and Activities Designated as Matters of State Interest (1041 Regulations).

(55)Peggy E. Montano letter dated July 31, 2012 to Jack DiCola, Esq. re: legal issues concerning the requested 1041 permit from Grand County for the Windy Gap Firming Project.

(56) Grand County Planning Commission CD, West Grand Firming Project, dated July 11, 2012

(57)Grand County Power Point Presentation presented at Hearing.

(58)Factors Controlling Transparency in Grand Lake, Colorado prepared by James McCutchan, Jr., dated April 2, 2010, and Revised July 2, 2010 & March 9, 2012.

(59)Municipal Subdistrict Response to Commissioners Inquiries dated August 23, 2012.

(60)Staffs Modified Conditions 1-32.

(61)Staff Condition for Grand Lake Clarity.

(62)Staffs Modified condition #22.

(63)Staffs Modified Condition #24.

(64)Staffs Modified Condition #30.

(65)Memo from Barbara Green Dated November 6, 2012, regarding 303(d)Listing.

(66)Historical Analysis of the Redtop Valley Ditch Use on the Miller Hereford.

(67)Memo from Karen Rademacher to Alan Berryman and Jeff Drager dated December 5, 2008.

(68)Comparison of 1980 Agreement and Proposed WGFP IGA, Draft of October 19, 2012.

(69)WGFP Bypass Funding IGA, November 12 Distribution Draft.

(70)Staff Modified Condition 1-31, November 8, 2012.

(71) Staff modified Conditions 27-30.

(72)WGFP Final Environmental Impact Statement Errata dated November 2012.

(73)WGFP Supplemental Information Report dated November 2012.

November 20, 2012 Hearing

(1)Staff Proposed Permit Condition.

(2)WGFP – IGA.

(3)Draft MOU Grand Lake Clarity Project.

(4)Overview of Clarity Supplement to 1938 Repayment Contract.

(5)Windy Gap Bypass Funding Agreement.

(6)Draft Scope of Work Request for Qualifications (RFQ) Windy Gap Reservoir Modifications Study, November 2012, RFQ#PBA-1324

(7)Processed Material Agreement

(8)Draft-Northern Agreement

(9)Draft IGA for Learning by Doing
(10)Proposed Agreement between Grand County and Middle Park

(11)Overview of WGFP-IGA Enhancements offered along with Colorado River Basin Proposal and Fish and Wildlife Enhancement and Mitigation Plans.

Colorado River Water Conservation District Exhibits

A. Green Mountain Reservoir Administrative Protocol Draft dated 7-13-12.

B. Shoshone Outage Protocol Operating Agreement - Draft dated 6-4-12: Agreement Among the United States Department of the Interior, Bureau of Reclamation, the State of Colorado, Division of Water Resources, Denver Water, The Colorado River Water Conservation District, The Middle Park Water Conservancy District, The Northern Colorado Water Conservancy District, The Municipal Subdistrict, Northern Colorado Water Conservancy District, The Grand Valley Water Users Association, The Orchard Mesa Irrigation District, and The Grand Valley Irrigation Company.

C. Upper Colorado River Wild & Scenic Stakeholder Group Summary of Alternative Management Plan.

D. Environmental Assessment: Finding of No Significant Impact - Colorado Water Users' Commitment to Provide 10,825 acre-feet to the 15-Mile Reach of the Upper Colorado River, Great Plains Region, Eastern Colorado Area Office dated March 2012.

E. Colorado River District Eric Kuhn WGFP 1041 Permit Testimony August 1-2, 2012.

Municipal Subdistrict Exhibits

A. Letter dated July 30, 2012 from Peggy E. Montano re: WGFP witness summary and list of exhibits for public hearing.

B. Exhibits presented at the July 11, 2012 Grand County Planning Commission hearing.

C. Annual deliveries to WGF and Spill Years from 1950 to 1996.

D. Deliveries with Windy Gap Firming from 1950-1996.

E. Flows in Colorado River at Windy Gap Historic Flows 2002, 2010, 2011, 2012.

F. 2011 flows with 100,000 acre-feet pumped Windy Gap Firming.

G. 2012 Colorado River flows with enhancements.

H. 2010 Colorado River flows with enhancements.

I. Bar Chart with flushing flows above 600 cfs.

J. Graphic of waste water treatment plants on which nutrient reductions in the three lakes system are possible.

K. Graphic of three waste water treatment plants for nutrient reductions are focused.

L. Nutrient reduction non point source evaluation graphic.

M. A photograph Windy Gap Reservoir to illustrate by or through pass.

N. CLazyU Ranch and Miller-Hereford Agricultural Properties.

O. Windy Gap Firming Project Summary of Mitigation and Enhancement Measures.

P. Letter from Peggy Montano, Legal Counsel for Municipal Subdistrict, dated August 1, 2012 regarding conditions of the 1041 Permit.

Q. Municipal Subdistrict Power Point Presentation presented at the Hearing.

Trout Unlimited Exhibits

A. Letter Dated July 30, 2012 from Mely Whiting, Legal Counsel, Trout Unlimited Colorado Water Project re: WGFP Testimony and Exhibits.

B. Power Point Slides: Windy Gap Firming Project 1041 Permit Trout Unlimited August 2012.

C. EPA letter dated 12-19-2008 to Michael Ryan, Bureau of Reclamation re: WGFP DEIS.

D. Carol Rushin, EPA letter dated 12-24-08 to Colonel David C. Press, Corps of Engineers regarding Public Notice No. 200380523.

E. Western Resource Advocates letter dated 12-29-08 to Kara Lamb and Will Tully, Bureau of Reclamation and Chandler Peter, Corps of Engineers re: Comments on WGFP DEIS and 404 Permit Application.

F. Letter from Barbara J.B. Green dated 12-29-08 to Will Tully and Chandler Peter: Northern Colorado Water Conservancy District, Windy Gap Firming Project, Grand County Cooperating Agency Comments, Windy Gap Firming Project Draft Environmental Impact Statement.

G. Thomas E. Remington, Director Colorado Division of Wildlife letter date 12-29-08 to Will Tully, Bureau of Reclamation re: WGFP Draft EIS comments.

H. Trout Unlimited letter dated 12-29-08 to Will Tully, Bureau of Reclamation and Chandler Peter, Corps of Engineers re: Comments on WGFP DEIS.

I. Moffat Expansion and WGFP: Impacts of Mitigation from Colorado Wildlife Commission Hearing 5-6-11 from Western Resource Advocates.

J. Public Comment Letter date 11-7-2011 to Governor Hickenlooper signed by Grand County business owners.

K. EPA letter date 2-6-12 to Tim Carey, Corps of Engineers re: EPA remaining concerns on WGFP following FEIS release.

L. EPA letter dated 2-6-12 to Michael Ryan, Bureau of Reclamation re: EPA comments on WGFP Final EIS.; CEQ # 20110413.

M. Analysis of The Relationship Between Minimum Flow Below Windy Gap And Water Temperature Above The Williams Fork, by Blair Hanna, AMEC Earth and Environmental 2/5/2009.

N. Detailed Comments Public Notice No. 200980523 WGFP DEIS.

O. Trout Unlimited Power Point Presentation presented at Hearing.

Upper Colorado River Alliance Exhibits

A. Letter dated July 30, 2012 from Steve Bushong of Porzak, Browning & Bushong re: Summary of WGFP Witness Testimony and Exhibit Disclosures.

B. Colorado River Aquatic Resources Investigations, Federal Aid Project F-237R-18, R. Barry Nehring, General Professional V, Co-Authors Brian Heinold and Justin Pomeranz, June 2011.

C. Steve Bushong, Attorney for UCRA letter dated 1-3-12 to Michael Collins and Will Tully, Bureau of Reclamation; and John Bezdek, Asst. Solicitor, Department of Interior re: WGFP EIS.

D. Steve Bushong, Attorney for UCRA letter dated 2-3-12 to Michael Collins, Lucy Maldonado and Mike Ryan, Bureau of Reclamation; and John Bezdek, Asst. Solicitor, Department of Interior re: WGFP EIS.

E. Mely Whiting, Legal Counsel, Trout Unlimited letter dated 1-31-12 to Michael Collins, Lucy Maldonado and Mike Ryan, Bureau of Reclamation; and John Bezdek, Asst. Solicitor, Department of Interior re: WGFP Final EIS.

F. EPA letter date 2-6-12 to Tim Carey, Corps of Engineers re: EPA remaining concerns on WGFP following FEIS release.

G. EPA letter dated 2-6-12 to Michael Ryan, Bureau of Reclamation re: EPA comments on WGFP Final EIS; CEQ # 20110413.

H. Andrew Todd, Ph.D., USGS letter dated 4-29-11 to Melanie Wasco, EPA re: EPA comments on the development of a comprehensive water temperature impact analysis for WGFP EIS.

I. Graph: Colorado River average daily flow at Hot Sulphur Springs 1904-1994.

J. Bureau of Reclamation Record of Decision, Windy Gap Project, Colorado, June 18, 1981.

K. Resolution No. 1980-6-1,dated June 17, 1980, A Resolution Of The Grand County Permit Authority Granting To The Municipal Subdistrict, Northern Colorado Conservancy District, A Permit To Engage In An Activity Previously Designated An Activity Of State Interest Pursuant To The Board Of County Commissioners Of Grand County Resolution No. 1978-5-4, As Amended.

L. Thomas E. Remington, Director Colorado Division of Wildlife letter date 12-29-08 to Will Tully, Bureau of Reclamation re: WGFP Draft EIS comments.

M. Carol Rushin, EPA letter dated 12-24-08 to Colonel David C. Press, Corps of Engineers regarding Public Notice No. 200380523.

N. Letter dated 12-29-08 from Fritz Holleman, Attorney for Chimney Rock Ranch, of Porzak, Browning & Bushong re: WGFP Draft EIS.

O. Letter from Barbara J.B. Green dated 12-29-08 to Will Tully and Chandler Peter: Northern Colorado Water Conservancy District, Windy Gap Firming Project, Grand County Cooperating Agency Comments, Windy Gap Firming Project Draft Environmental Impact Statement with Exhibits A-G.

P. Colorado Division of Wildlife, Colorado River near Parshall, Fish Survey and Management Information.

Q. WGFP 1041 Hearing, August 1-2, 2012, Upper Colorado River Alliance Presentation.

Public Exhibits

A. Letter from Town of Kremmling received August 2, 2012.

B. Email from Mike Collins, Mountain Meadows HOA dated August 1, 2012.

C. Letter from Stephanie Young, Ouray Ranch HOA & Brain Young, Ouray Ranch Angler's Club dated July 31, 2012.

D. Letter from Richard Sprague dated August 2, 2012.

E. Email from Jim Woodside (forwarded from McCranewood@g.com) dated August 2, 2012.

F. Email from Brad McDaniel dated August 2, 2012.

G. Norm Carpenter, Graph of Colorado River below Windy Gap, Peak Day Streamflow.

H. Letter with attachments from Judy Burke, Mayor, Town of Grand Lake, dated August 1, 2012.

I. Aerial Photographs of Grand Lake dated August 30, 2011, and September 8, 2011.

J. Presentation by Canton O'Donnell, President of Three Lakes Watershed Assoc., dated August 2, 2012.

K. Comments by K. John Stall dated August 2, 2012.

Exhibit "B" to Resolution No. 2012PA-12-1

List of Closing Arguments

1. Closing Argument by Municipal Subdistrict, Northern Colorado Water Conservancy District dated 8-23-2012

2. Closing Statement by Trout Unlimited dated 8-23-2012

3. Letter from Hershal Deputy, Mayor of the Town of Hot Sulphur Springs received 8-22-2012

4. Closing Comments by Upper Colorado River Alliance dated 8-23-2012

5. Closing Statement by Grand County Staff dated 8-23-2012

PERMIT ISSUED TO CONDUCT

A DESIGNATED ACTIVITY OF STATE INTEREST

OR

TO ENGAGE IN DEVELOPMENT IN A

DESIGNATEGD AREA OF STATE INTEREST

IN

THE COUNTY OF GRAND, STATE OF COLORADO

FOR THE

2012 WINDY GAP FIRMING PROJECT (2012 WGFP)

Pursuant to administrative regulations and guidelines for administration heretofore adopted by the Board of County Commissioners of Grand County, said County has received an application from the Municipal Subdistrict of the Northern Colorado Water Conservancy District acting by and through the Windy Gap Firming Project Water Activity Enterprise (hereinafter referred to as Applicant) for a permit for the 2012 WGFP involving the following matter of state interest:

> Development of a Municipal and Industrial Water project as required by Chapter 5 of the Grand County Regulations for Areas and Activities Designated as Matters of state Interest, to wit:

Design, construction, and operation of a dam and reservoir generally described as Chimney Hollow Reservoir located on the East Slope of Colorado identified in the Final Environmental Impact Statement (FIES) for the Windy Gap Firming Project, November, 2011, as the proposed action and any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the FEIS (Alternative Reservoir), provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet. Pursuant to and in accordance with Resolution No. 2012PA-12-1, the Permit Authority has approved the application with conditions.

This Permit authorizes the Applicant to:

1. Operate the 2012 WGFP in Grand County, utilizing Chimney Hollow Reservoir or Alternate Reservoir as proposed in the application and approved by the Permit Authority with conditions.

2. For the following period: From the date of the issuance of the permit and for the life of the project. If all conditions of approval are not met or complied with as required, this permit may be suspended or revoked for cause.

3. In accordance with the plans and/or specifications approved by the Permit Authority on the 20th day of November, 2012 as well as the Guidelines for Administration adopted by Grand County for: Municipal and Industrial Water Projects as set forth in Resolution No. 1978-5-4, by the Grand County Board of County Commissioners.

4. On the condition that the Applicant proceeds in conformity with Resolution No. 2012PA-12-1, to which this Permit is attached.

Any Notice to the applicant shall be sent to:

General Manager,
Northern Colorado Water Conservancy District
Municipal Subdistrict of Northern Colorado Water Conservancy District
220 Water Avenue,
Berthoud, CO. 80513

With a Copy to:

Trout Raley, Montaño, Witwer & Freeman P.C.
1120 Lincoln Street, Suite 1600
Denver, CO. 80203

This Permit is valid for use only by the Applicant and may not be transferred without approval of the Permit Authority. In the event the Applicant fails to notify Grand County, in writing, whether or not it intends to proceed with the WGFP within 10 years of issuance of the 404 Permit for the WGFP by the United States Army Corps of Engineers, or upon execution of construction contracts for Chimney Hollow Reservoir, whichever occurs first, this Permit may be revoked by the Permit Authority.

Dated this 4th day of December, 2012. (Nunc Pro Tunc – November 20, 2012).

Nancy Stuart

Nancy Stuart,
Chairman, Permit Authority