Contract No. 17-189A
Acre-feet: .5

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

THIRD-PARTY AGREEMENT
FOR PURCHASE OF ASPINALL UNIT STORAGE WATER
FOR LONG-TERM WATER SERVICE

This Agreement is entered into this 3rd day of February, 2017 between the Upper Gunnison River Water Conservancy District, a water conservancy district organized pursuant to the Water Conservancy Act (§§ 37-45-101, *et seq.*, C.R.S. (2006))(District) and the buyer identified below (Buyer).

Buyer's Name David and Lina McGuinness
Address 2375 County Road 10
Gunnison, Co 81230
Telephone 970.275.8534 E-mail address gunnisonpoultry@gmail.com

RECITALS

A. The District is authorized by the Water Conservancy Act to enter into contracts with the United States for use of water (§ 37-45-106(e), C.R.S. (2006)), to acquire water for use within the boundaries of the District (§ 37-45-106(j), C.R.S. (2006)), and to enter into cooperative agreements with water conservation districts for the lease or exchange of water produced in the exercise of the District's water rights outside of District boundaries (§ 37-83-106 C.R.S. (2006)).

B. The District has entered into a Long-Term Water Service Contract with the United States of America (the United States), acting through the Secretary of the Interior, pursuant to The Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and all acts amendatory and supplementary thereto, and particularly pursuant to the Colorado River Storage Project Act approved April 11, 1956 (70 Stat. 105), for 500 acre-feet of water stored in Blue Mesa Reservoir, a part of the Aspinall Unit of the Colorado River Storage Project (District Contract). A copy of the District Contract is attached to this Agreement as EXHIBIT A and its terms are incorporated into this Agreement by this reference.

C. The District Contract authorizes the District to resell up to 500 acre-feet of municipal and industrial water subject to the terms and conditions of the District Contract.

D. The District is providing the water described in this Agreement for use as replacement

received 2/22/17

water to the Gunnison River to permit out-of-priority depletions by the water right specifically identified in paragraph 2 below which would otherwise be curtailed by a call on the Gunnison River by senior water rights diverting water downstream from the Aspinall Unit. The water is provided by the District pursuant to the terms and conditions of a Substitute Water Supply Plan authorized by § 37-92-308(4) C.R.S. (2006) as approved by the State Engineer or the Plan for Augmentation decreed in Case No. 03CW49, Water Division 4, as applicable.

AGREEMENT

In consideration of the mutual and dependent covenants contained herein, the parties to this Agreement agree as follows:

1. This Agreement shall become effective upon execution of the Agreement by the District, subject to the approvals required by paragraph 14, and shall expire December 31, 2043. This Agreement is subject to and limited by the terms of the District Contract.

2. The water right to be protected by release of water pursuant to this Agreement are decreed to (*name of structure*) MC Guinness Existing Well, described in detail on the Application attached to this Agreement as EXHIBIT B.

3. The amount of water purchased by Buyer under this Agreement is .5 acre-feet. (*This amount must be at least one-half acre-foot and not more than 25 acre-feet.*)

4. For the water purchased under this Agreement, Buyer agrees to pay the Colorado River Storage Project Municipal and Industrial water rate (M&I water rate), as calculated annually by the Bureau of Reclamation according to the terms of the District Contract, payable as follows:

4.1 Upon signing this Agreement, the Buyer shall pay to the District:

4.1.1 **$50.00** to reimburse the District for costs of administration of this Agreement and the District Contract; plus

4.1.2 **$ 55.56** per acre-foot for each acre-foot of water purchased by Buyer, as set forth in paragraph 3; plus

4.1.3 **$2.00** per acre-foot for operation and maintenance surcharge for each acre-foot of water purchased by Buyer, as set forth in paragraph 3.

Total amount paid by Buyer upon signing this Agreement: $ 78.78 (4.1.1 + 4.1.2 x acre-feet purchased + 4.1.3 x acre-feet purchased)

Example: *Buyer is purchasing two acre-feet in 2017.*
*Total amount paid is $165.12 (**$50.00** plus **$55.56** x 2, plus **$2.00** x 2).*

Example: *Buyer is purchasing one acre-foot in 2017.*
*Total amount paid is $107.56 (**$50.00** plus **$55.56** x 1, plus **$2.00** x 1).*

4.1.4 The amount in the example reflects the M&I water rate for 2017. The M&I water rate will be adjusted annually, as provided in paragraph 4 of the District Contract.

4.2 Commencing in the calendar year following the year in which this Agreement is signed, Buyer shall pay to the District annually the M&I water rate plus the operations and maintenance surcharge calculated for such year by the Bureau of Reclamation for each acre-foot of water purchased.

4.3 On or before the last day of February of each year during the term of this Agreement, the District shall mail an invoice to Buyer's last known address, as reflected in the District's records, which shall include the following:

4.3.1 A calculation of the payment rate for M&I water for the current year, plus the operations and maintenance surcharge, as provided to the District by the Bureau of Reclamation pursuant to the District Contract;

4.3.2 The amount, if any, of the District's annual cost reimbursement;

4.3.3 The total amount due from Buyer to the District for the current year;

4.3.4 A form to be completed by Buyer, itemizing monthly well diversions under water rights described in paragraph 2, as reflected by Buyer's flow meter.

4.4 On or before March 31st, Buyer shall return the completed diversion record provided by the District pursuant to paragraph 4.3.4, together with payment of the total amount due as described in the invoice.

4.5 The District shall pay all sums collected from Buyer to the United States, pursuant to the District Contract; provided, however, that the cost reimbursements described in paragraphs 4.1.1 and 4.3.2 will be retained by the District.

5. By signing this Agreement, Buyer acknowledges, represents and warrants to the District:

5.1 That the information provided by Buyer to the District on the Application attached to this Agreement as EXHIBIT B is correct to the best of Buyer's knowledge;

5.2 That Buyer has read and understands the District Contract attached to this Agreement and agrees to be bound by its terms, as applicable;

5.3 That the Substitute Water Supply Plan and the Plan for Augmentation described in Recital D above require that all wells must have totalizing flow meters installed and maintained in good working order;

If Buyer's well is not metered on the date of this Agreement, Buyer acknowledges that the Division Engineer will require Buyer to install and maintain a totalizing flow meter in order to qualify for protection of the water right described in paragraph 2 by the Substitute Water Supply Plan or the Plan for Augmentation described in Recital D.

5.4 That water purchased under this Agreement will be released from Blue Mesa Reservoir and delivered to the Gunnison River at the outlet works of Crystal Dam upon request of the Division Engineer, Water Division 4, at times and in amounts determined by the Division Engineer in his sole discretion, and only for the purpose of providing replacement water to the Gunnison River to permit out-of-priority depletions by the water right specifically identified in paragraph 2 which would otherwise be curtailed by a valid call on the Gunnison River by senior water rights diverting water downstream from the Aspinall Unit;

5.5 That water purchased under this Agreement will not protect Buyer from curtailment as a result of a call placed by any water right upstream of the Aspinall Unit and senior to Buyer's water right;

5.6 That the amount of water purchased by Buyer under this Agreement has been determined solely by Buyer, and that the District makes no representation that the amount purchased by Buyer is sufficient to protect Buyer's water rights from curtailment as a result of a call placed by by senior water rights diverting water downstream from the Aspinall Unit;

5.7 That the amount to be paid annually by Buyer under this Agreement is due and payable in full, whether or not the water purchased is actually released from Blue Mesa Reservoir;

5.8 That Buyer shall have no holdover of water storage in Blue Mesa Reservoir from year to year; therefore, any water purchased under this Agreement which is not released by December 31 in each year shall become integrated with the water supply for all purposes of the Blue Mesa Reservoir and be available for all purposes at that time.

5.9 That in the event water available to the District under the District Contract is curtailed pursuant to the provisions of the District Contract, no liability shall attach to the District for such curtailment, even if said curtailment results in a reduction of the amount of water released under this Agreement;

5.10 That, except as expressly contained in this Agreement, no representation by or on behalf of the District has been made to Buyer as to the amount of water purchased by Buyer under this Agreement, the effectiveness of such purchase in protecting any water right from curtailment or the availability of water to the District under the District Contract.

6. Buyer agrees to maintain permanent records of all well diversions under water rights described in paragraph 2, as reflected by Buyer's flow meter, recorded by Buyer at least monthly, and to submit a copy of such records to the District annually with the payment described in paragraph 4.4.

7. The payment by Buyer of the amounts described in paragraph 4 is a condition precedent to receiving benefits under this Agreement. In the event that Buyer's tendered payment is dishonored, the District shall not make water available for Buyer until Buyer provides payment of the amount due, plus interest at the rate of ten percent (10%) per annum from the date of tender and a late charge equal to five percent (5%) of the payment, in Good Funds (cash, electronic transfer funds, certified check or cashier's check).

8. This Agreement may not be assigned, or the water purchased hereunder transferred, by Buyer without the written consent of the District and approval by the United States. Upon any transfer of the water right identified in paragraph 2, Buyer shall notify the District of such transfer in writing. The notice shall include the name, address and telephone number of the person to whom the transfer will be made and an application for transfer. The District may, in its discretion, assess an administration fee to record the transfer as a condition of approving the transfer. Any transfer of the water purchased under this Agreement without the consent and approval required by this paragraph shall be void.

9. The District may terminate this Agreement in the event of failure by the Buyer to perform Buyer's obligation to pay the sums due under this Agreement, or in the event of a misrepresentation or breach of warranty by Buyer. In the event of termination by the District for reasons other than non-payment, any sums paid by Buyer shall be non-refundable. The District shall give written notice of termination to Buyer, the United States and the Division Engineer.

10. This Agreement constitutes the entire and only agreement between the District and Buyer relating to the subject matter hereof. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties and the United States and approved by the Division Engineer.

11. The use of water purchased under this Agreement shall comply fully with the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 *et seq.*) prior to the approval of this Agreement by the United States.

12. The water purchased under this Agreement shall be appurtenant to the water right identified in paragraph 2, and the terms of this Agreement shall be binding upon Buyer's successors in interest to said water right.

13. Any notice to Buyer provided for in this Agreement shall be in writing and shall be given and be effective upon (1) hand delivery to Buyer or (2) mailing such notice by first-class U.S. mail, addressed to Buyer at the Buyer's address stated on the first page of this Agreement, or to such other address as Buyer may designate by notice to the District. Any notice to the District shall be in writing and shall be given and be effective upon (1) hand delivery to the District's manager or (2) by mailing such notice by first-class U.S. mail to the District at 210 West Spencer, Suite B, Gunnison, CO 81230, or to such other address as the District may designate by notice to Buyer.

14. This Agreement is subject to approval by the United States. Upon execution by all parties, and subject to timely payment by Buyer, the District will issue an Augmentation Certificate, a copy of which will be recorded in the records of the County in which structure identified in EXHIBIT B is located and a copy of which will be provided to Buyer in a form that can be attached to the structure.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

Buyer:

Tina McGlumes

Upper Gunnison River
Water Conservancy District

By: Frank J. Kugel, General Manager

APPROVED:

United States of America

By: Ed Warner, Area Manager
Western Colorado Area Office

Contract No. 17-190A
Acre-feet: .5

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Buyer's Name David and Lina McGuinness
Address 2375 County Road 10
Gunnison, Co 81230
Telephone 970-275-8534 E-mail address gunnisonmentors@gmail.com

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B. The District has entered into a Long-Term Water Service Contract with the United States of America (the United States), acting through the Secretary of the Interior, pursuant to The Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and all acts amendatory and supplementary thereto, and particularly pursuant to the Colorado River Storage Project Act approved April 11, 1956 (70 Stat. 105), for 500 acre-feet of water stored in Blue Mesa Reservoir, a part of the Aspinall Unit of the Colorado River Storage Project (District Contract). A copy of the District Contract is attached to this Agreement as EXHIBIT A and its terms are incorporated into this Agreement by this reference.

C. The District Contract authorizes the District to resell up to 500 acre-feet of municipal and industrial water subject to the terms and conditions of the District Contract.

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2. The water right to be protected by release of water pursuant to this Agreement are decreed to (*name of structure*) McGuinness Newwell, described in detail on the Application attached to this Agreement as EXHIBIT B.

3. The amount of water purchased by Buyer under this Agreement is .5 acre-feet. (*This amount must be at least one-half acre-foot and not more than 25 acre-feet.*)

4. For the water purchased under this Agreement, Buyer agrees to pay the Colorado River Storage Project Municipal and Industrial water rate (M&I water rate), as calculated annually by the Bureau of Reclamation according to the terms of the District Contract, payable as follows:

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Total amount paid by Buyer upon signing this Agreement: $ 78.78 (4.1.1 + 4.1.2 x acre-feet purchased + 4.1.3 x acre-feet purchased)

Example: *Buyer is purchasing two acre-feet in 2017.*
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5.2 That Buyer has read and understands the District Contract attached to this Agreement and agrees to be bound by its terms, as applicable;

5.3 That the Substitute Water Supply Plan and the Plan for Augmentation described in Recital D above require that all wells must have totalizing flow meters installed and maintained in good working order;

If Buyer's well is not metered on the date of this Agreement, Buyer acknowledges that the Division Engineer will require Buyer to install and maintain a totalizing flow meter in order to qualify for protection of the water right described in paragraph 2 by the Substitute Water Supply Plan or the Plan for Augmentation described in Recital D.

5.4 That water purchased under this Agreement will be released from Blue Mesa Reservoir and delivered to the Gunnison River at the outlet works of Crystal Dam upon request of the Division Engineer, Water Division 4, at times and in amounts determined by the Division Engineer in his sole discretion, and only for the purpose of providing replacement water to the Gunnison River to permit out-of-priority depletions by the water right specifically identified in paragraph 2 which would otherwise be curtailed by a valid call on the Gunnison River by senior water rights diverting water downstream from the Aspinall Unit;

5.5 That water purchased under this Agreement will not protect Buyer from curtailment as a result of a call placed by any water right upstream of the Aspinall Unit and senior to Buyer's water right;

5.6 That the amount of water purchased by Buyer under this Agreement has been determined solely by Buyer, and that the District makes no representation that the amount purchased by Buyer is sufficient to protect Buyer's water rights from curtailment as a result of a call placed by by senior water rights diverting water downstream from the Aspinall Unit;

5.7 That the amount to be paid annually by Buyer under this Agreement is due and payable in full, whether or not the water purchased is actually released from Blue Mesa Reservoir;

5.8 That Buyer shall have no holdover of water storage in Blue Mesa Reservoir from year to year; therefore, any water purchased under this Agreement which is not released by December 31 in each year shall become integrated with the water supply for all purposes of the Blue Mesa Reservoir and be available for all purposes at that time.

5.9 That in the event water available to the District under the District Contract is curtailed pursuant to the provisions of the District Contract, no liability shall attach to the District for such curtailment, even if said curtailment results in a reduction of the amount of water released under this Agreement;

5.10 That, except as expressly contained in this Agreement, no representation by or on behalf of the District has been made to Buyer as to the amount of water purchased by Buyer under this Agreement, the effectiveness of such purchase in protecting any water right from curtailment or the availability of water to the District under the District Contract.

6. Buyer agrees to maintain permanent records of all well diversions under water rights described in paragraph 2, as reflected by Buyer's flow meter, recorded by Buyer at least monthly, and to submit a copy of such records to the District annually with the payment described in paragraph 4.4.

7. The payment by Buyer of the amounts described in paragraph 4 is a condition precedent to receiving benefits under this Agreement. In the event that Buyer's tendered payment is dishonored, the District shall not make water available for Buyer until Buyer provides payment of the amount due, plus interest at the rate of ten percent (10%) per annum from the date of tender and a late charge equal to five percent (5%) of the payment, in Good Funds (cash, electronic transfer funds, certified check or cashier's check).

8. This Agreement may not be assigned, or the water purchased hereunder transferred, by Buyer without the written consent of the District and approval by the United States. Upon any transfer of the water right identified in paragraph 2, Buyer shall notify the District of such transfer in writing. The notice shall include the name, address and telephone number of the person to whom the transfer will be made and an application for transfer. The District may, in its discretion, assess an administration fee to record the transfer as a condition of approving the transfer. Any transfer of the water purchased under this Agreement without the consent and approval required by this paragraph shall be void.

9. The District may terminate this Agreement in the event of failure by the Buyer to perform Buyer's obligation to pay the sums due under this Agreement, or in the event of a misrepresentation or breach of warranty by Buyer. In the event of termination by the District for reasons other than non-payment, any sums paid by Buyer shall be non-refundable. The District shall give written notice of termination to Buyer, the United States and the Division Engineer.

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11. The use of water purchased under this Agreement shall comply fully with the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 *et seq.*) prior to the approval of this Agreement by the United States.

12. The water purchased under this Agreement shall be appurtenant to the water right identified in paragraph 2, and the terms of this Agreement shall be binding upon Buyer's successors in interest to said water right.

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14. This Agreement is subject to approval by the United States. Upon execution by all parties, and subject to timely payment by Buyer, the District will issue an Augmentation Certificate, a copy of which will be recorded in the records of the County in which structure identified in EXHIBIT B is located and a copy of which will be provided to Buyer in a form that can be attached to the structure.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

Buyer:

Upper Gunnison River
Water Conservancy District

By: Frank J. Kugel, General Manager

APPROVED:

United States of America

By: Ed Warner, Area Manager
Western Colorado Area Office