



KERN BOARD SPECIAL MEETING

October 28, 2024 - 6:45 PM

or following the Town Board Regular Meeting

Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

AGENDA

1. Call to Order
2. Roll Call
3. Minutes (approval from previous meeting)
4. Resolution No. 24-KB-01 A Resolution Approving the 2024 New Cache Catlin Agreement Between and Among the Town of Windsor, Kern Reservoir and Ditch Company, the New Cache la Poudre Irrigating Company and the Cache la Poudre Reservoir Company - L. Lesoing, Water Resource Administrator
5. Adjourn

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.



Kern Board Regular Meeting

September 9, 2024 - 6:45 PM

or following the Town Board Regular Meeting

Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

MINUTES

A. AGENDA

1. Call to Order

President Cline called the meeting to order at 7:11 p.m.

2. Roll Call

Present: President Cline
Vice President Steinbach
Brian Jones
Lainie Peltz
Ken Symsack
Rick Klimek
Jason Hallett

Also Present: Shane Hale, Town Manager
Dan Money, Town Attorney
Eric Lucas, Deputy Town Manager
Karen Frawley, Town Clerk
Kyra McKinley, Visual Media Coordinator

3. Minutes (approval from previous meeting)

Town Board Member Hallett moved to approve the minutes as presented, Town Board member Peltz seconded the motion. Roll call on the vote resulted as follows; Yeas - Julie Cline, Ron Steinbach, Brian Jones, Lainie Peltz, Ken Symsack, Rick Klimek, Jason Hallett; Nays - None; Motion Passed.

4. Kern Reservoir Report of Bills July and August 2024

Town Board Member Hallett moved to approve the report of bills, Town Board Member Steinbach seconded the motion. Roll call on the vote resulted as follows; Yeas - Julie Cline, Ron Steinbach, Brian Jones, Lainie Peltz, Ken Symsack, Rick Klimek, Jason Hallett; Nays - None; Motion Passed.

5. Adjourn

Town Board Member Hallett moved to adjourn, Town Board Member Jones seconded the motion. Roll call on the vote resulted as follows; Yeas - Julie Cline, Ron Steinbach, Brian Jones, Lainie Peltz, Ken Symsack, Rick Klimek, Jason Hallett; Nays - None; Motion Passed.

Karen Frawley, Town Clerk

DRAFT



MEMORANDUM

Date: October 28, 2024
To: Mayor and Town Board
From: Leif Lesoing, Water Resource Admin
Re: Resolution No. 24-KB-01 A Resolution Approving the 2024 New Cache Catlin Agreement Between and Among the Town of Windsor, Kern Reservoir and Ditch Company, the New Cache la Poudre Irrigating Company and the Cache la Poudre Reservoir Company - L. Lesoing, Water Resource Administrator
Item #: A.4.

Background / Discussion:

The Town of Windsor ("Town") and the Kern Reservoir and Ditch Company "Kern" jointly filed a water court application for the change of use of 42.25 New Cache la Poudre Irrigation Company Shares ("New Cache") and 27.5 shares of Cache La Poudre Reservoir Company Shares "Reservoir Company" in Case No. 2021CW3093. The Town and Kern will use the changed shares for augmentation. New Cache and the Reservoir Company have company bylaws that require the Companies approval of the change of use in shares. This provision is commonly referred to as a "Catlin Agreement." This bylaw protects all shareholders in a mutual ditch company.

Financial Impact:

Relationship to Strategic Plan:

Recommendation:

Approve Resolution No. 24-KB-01

CC:

Attachments:

1. Resolution 2024-KB 01 New Cache Catlin Agreement
2. Agreement

KERN RESERVOIR AND DITCH COMPANY

RESOLUTION NO. 2024-KB-01

A RESOLUTION APPROVING THE 2024 NEW CACHE CATLIN AGREEMENT BETWEEN AND AMONG THE TOWN OF WINDSOR, KERN RESERVOIR AND DITCH COMPANY, THE NEW CACHE LA POUDDRE IRRIGATING COMPANY AND THE CACHE LA POUDDRE RESERVOIR COMPANY

WHEREAS, the Kern Reservoir and Ditch Company (“the Kern”) is a duly constituted Colorado non-profit corporation with offices in the Town of Windsor, County of Weld, State of Colorado; and

WHEREAS, the Town of Windsor (“Town”) is a Colorado home rule municipality with all powers and authority vested by Colorado law; and

WHEREAS, The Town has the power to enter into formal agreements with other designated entities; and

WHEREAS, the Kern has a long history of cooperation with the New Cache la Poudre Irrigating Company (“New Cache”); and

WHEREAS, representatives of the Kern and New Cache have undertaken negotiations, the purpose of which is to refine, update and improve the terms of various past agreements pertaining to the operation of the Kern’s Windsor Lake in relation to New Cache’s Greeley No. 2 Canal; and

WHEREAS, attached hereto is a copy of the 2024 New Cache Catlin Agreement (“2024 Agreement”), which contains the terms negotiated by the parties’ representatives, and which is incorporated herein by this reference as if set forth fully; and

WHEREAS, the New Cache wishes to enter a formal agreement with the Town and Kern to formally approve the attached 2024 Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE KERN RESERVOIR AND DITCH COMPANY BOARD OF DIRECTORS AS FOLLOWS:

Section 1. The attached 2024 New Cache Catlin Agreement is hereby approved by the Kern Reservoir and Ditch Company Board.

Section 2. The Kern’s Board President and Secretary are authorized to execute the 2024 New Cache Catlin Agreement.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 28th day of October 2024.

KERN RESERVOIR AND DITCH COMPANY

ATTEST:

Julie Cline, President

Secretary/Treasurer

AGREEMENT

between

**The New Cache la Poudre Irrigating Company,
The Cache la Poudre Reservoir Company,
The Town of Windsor, Colorado, and
The Kern Reservoir and Ditch Company**

THIS AGREEMENT is made and entered into this ___ day of ____, 2024 by and between the Town of Windsor (“Windsor”), the Kern Reservoir and Ditch Company (“Kern”) (collectively “Applicants”), the New Cache la Poudre Irrigating Company, a mutual ditch corporation incorporated under and by virtue of the laws of the state of Colorado (“NCLPIC”), and the Cache la Poudre Reservoir Company, a mutual ditch corporation incorporated under and by virtue of the laws of the state of Colorado (“CLPRC”), (collectively “Companies”). The Companies and the Applicants may all collectively be referred to herein as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, the NCLPIC owns and operates the Greeley Canal No. 2 (a/k/a the Greeley No. 2 Canal, or the New Cache Ditch), and various other related structures, for the purpose of diverting and delivering water from the Cache la Poudre River and tributaries thereto to its stockholders located in Larimer and Weld Counties; and

WHEREAS, the CLPRC owns and operates the Cache la Poudre Reservoir (a/k/a Timnath Reservoir), and various other structures, for the purpose of diverting and delivering water from the Cache la Poudre River and tributaries thereto to its stockholders located in Larimer and Weld Counties; and

WHEREAS, Applicants have acquired 42.25 shares of the capital stock of the NCLPIC – represented by Stock Certificate Numbers 4951, 4985, 2882, 5047, and 5048 – and 27.5 shares of the capital stock of the CLPRC – represented by Stock Certificate Numbers 4167, 4186, 4238, and 4239; and

WHEREAS, collectively the 42.25 NCLPIC shares owned by the Applicants shall be referred to as the “NCLPIC Shares” and the 27.5 CLPRC shares collectively owned by the Applicants shall be referred to as “CLPRC Shares,” and collectively all of these shares shall be referred to herein as “Subject Shares” or “Applicants’ Shares”; and

WHEREAS, water represented by Applicants’ Shares was historically used to irrigate the Lorenz Farm, the Sanchez Farm, the Broe East Farm, the West Broe West Farm, the Winder Farm, the Weinmeister Farm, as well as irrigated lands served by Kern Reservoir, all of which properties are generally depicted on the map attached hereto as **Exhibit 1**; and

WHEREAS, the Applicants filed an application to change the type and place of use of the water attributable to Subject Shares in District Court Case No. 21CW3093, Water Division No. 1

(“Change Case”), which will allow the water to continue to be used for its current irrigation uses, as well as for commercial, industrial, municipal, augmentation, exchange, and domestic purposes, and for fish, wildlife and recreational purposes within and around Kyger Reservoir and Kern Reservoir; and

WHEREAS, the Applicants also seek delivery of the water attributable to Applicants’ Shares ‘up-ditch’ from their historical points of delivery from the Greeley Canal No. 2, and to change the rights to allow the water to be stored in Kyger Reservoir and Kern Reservoir, which would also result in delivery of the Subject Shares ‘up-ditch’ from historical points of delivery; and

WHEREAS, ARTICLE V, SECTION 8 of the Bylaws of the NCLPIC and Rule 34 of the Bylaws of the CLPRC provide, *inter alia*: “Each Stockholder desiring to sell or transfer his shares of stock in the Corporation, or desiring to change the place of delivery or change the type of use, place of use, time of use, means of diversion, or other change of water to which such Stockholder may be entitled, shall first make written request therefore to the Board of Directors”; and

WHEREAS, by letter dated October 15, 2018, counsel for the Applicants made a written request seeking approval of Applicants’ proposed change in place and type of use (“Catlin Application”) which included a proposed draft water court application (“Proposed Application”) and a preliminary engineering report from Clear Water Solutions dated September 2018. Windsor revised that engineering report based on discussions with the Companies’ engineer and forwarded a revised engineering report dated December 2019 which largely addressed the Companies’ concerns and which revised report is referred to herein as the “Engineering Report;” and

WHEREAS, for purposes of compliance with the Companies’ bylaws, the Proposed Application and Engineering Report were the basis for the Companies’ respective Boards of Directors’ initial review of the proposed change of the location and type of use of Applicants’ Shares; and

WHEREAS, the respective Board of Directors of the Companies approved, based upon review of the Engineering Report and the Proposed Application, Applicants’ filing of the Change Case with the Water Court; and

WHEREAS, thereafter, the Applicants provided the Companies with a revised proposed decree dated October 15, 2024 which largely addresses the Companies remaining concerns, and upon which the Companies conditional approval is based (“Approved Decree”); and

WHEREAS, that the Change Case, if prosecuted consistent with the terms and conditions set forth herein, will not result in injury to the Companies or their shareholders.

AGREEMENT

NOW THEREFORE, in consideration of the promises and the terms recited in this Agreement, it is agreed by and between the parties as follows:

1. Pursuant to ARTICLE V, SECTION 8 of the Bylaws of the NCLPIC and Rule 34 of the Bylaws of the CLPRC, the Companies approve Applicants' filing of the application in Case No. 21CW3093 seeking approval for the change of water rights represented by Applicants' Shares by filing the Proposed Application (with the minor revisions described below), and provided that the decree ultimately approved by the Water Court ("Proposed Decree") is consistent with the terms and conditions set forth herein:
 - a. *Generally.* Except as specifically set forth herein, the Applicants' delivery and use of water attributable to Applicants' Shares shall only occur in the same manner and subject to the same policies, procedures and conditions that water deliveries are made to other shareholders in the Companies (whether such shareholders are served directly from the Greeley Canal No. 2, Timnath Reservoir, from other structures owned or operated by the Companies, or from lateral ditches from the Greeley Canal No. 2¹). This is the over-arching principle under which the Companies' approval is granted. The Companies will not allow or authorize the delivery of water to the Applicants if such delivery: 1) results in the alteration of historical deliveries to other shareholders in the Companies, including shareholders taking delivery from lateral ditches from the Greeley Canal No. 2; 2) results in increases to the Companies' expenses; 3) detrimentally impacts the water uses, deliveries, diversions, storage, exchanges, and operations of the Companies; or 4) negatively impacts or prejudices the Companies' existing agreements or stipulations. A specific provision so stating shall be included in the Proposed Decree.
 - b. *NCLPIC Diversions and Deliveries.* For Applicants' NCLPIC shares, all diversions must be made into the Greeley Canal No. 2 and measured at the Greeley Canal No. 2 measurement structure. Applicants shall not seek approval of any alternate points of diversion for its proportionate ownership of the water rights decreed to the Greeley Canal No. 2, or otherwise seek to bypass water attributable to its NCLPIC Shares at the Greeley Canal No. 2 river headgate or prior to measurement by NCLPIC. The Proposed Decree must include a provision substantially similar to paragraph 22.1 of Consolidated Cases 04CW25/06CW295 (the LPAC Decree).

¹ As used in this Agreement, "lateral ditches from the Greeley Canal No. 2" shall include and refer to those ditches that receive water from the Greeley Canal No. 2 or from the reservoirs or other structures owned or operated by the Companies (examples include but are not limited to the Cook Lateral and the Union Lateral, and all branches of those ditches).

- c. *CLPRC Storage and Deliveries.* For Applicants' CLPRC shares, all diversions must continue to be diverted at the presently decreed points of diversion for the Cache la Poudre Reservoir Rights and stored in the Cache la Poudre Reservoir prior to delivery to Applicants. The Proposed Decree must include a provision substantially similar to paragraph 22.2 of the LPAC Decree. Applicants may take delivery of their CLPRC Shares following storage based upon the CLPRC's annual allocation of water any time the CLPRC is making reservoir releases for shareholders for irrigation purposes and there is sufficient canal capacity, provided that if Applicants requests water at other times the CLPRC may, at its discretion, make such releases provided: (1) Applicants are assessed actual transit losses from the point of release from the Cache la Poudre Reservoir to the point of delivery, and (2) Applicants pay all increased costs associated with making such releases. The CLPRC will not allow Applicants to carry-over any undelivered water on its account past October 31 without a separate written agreement. Any undelivered water in Applicants' account on October 31 will revert back to the CLPRC. To the extent that (1) Applicants take delivery of and store water attributable to its CLPRC shares at storage locations other than Cache la Poudre Reservoir, and (2) such storage is required, either by Proposed Decree or pursuant to order of the State and/or Division Engineer, to count against the fill of the Cache La Poudre Reservoir if in storage on November 1 of each year, then Applicants shall promptly release such stored water prior to November 1 of each year so as to prevent any paper fill in the Cache La Poudre Reservoir.
- d. *No 'Turnback' or Relinquishment Provisions.* Applicants shall not agree to any term or condition in any Proposed Decree that would require or result in the Company being compelled to relinquish or "turnback" water to the river unless such term is specifically and separately approved by the Company in writing. To the extent necessary to prevent relinquishment or turnback, Applicants shall only include terms and conditions in the Proposed Decree that impact the diversion and use of Applicants' Shares by Applicants, and shall include no terms that could impact the Companies' diversions or operations. For instance, Applicants may be required to include terms and conditions to assure that Applicants will not reach any applicable volumetric limitation until the end of the last day of any applicable month or other volumetric time period so as to assure that the volumetric limitations are not ever reached that might otherwise trigger the need for a "turnback" requirement. Applicants may also be required to take delivery of water and/or to make return flow replacements at times they may otherwise elect not to take delivery if necessary to prevent relinquishment or "turnback." Regardless, in no event shall Applicants tender a Proposed Decree with any "turnback" or relinquishment provisions. Applicants shall cooperate and coordinate with the Companies in resisting any efforts to require "turnback" or relinquishment terms and conditions, whether those efforts occur pre-trial, during trial, post-trial or on appeal. Applicants shall keep the Companies apprised of any such efforts to impose "turnback" or relinquishment requirements in the Change Case.

- e. *Historical Use and Engineering Analysis.* The Companies' approval is conditional. The following terms and conditions must be adhered to in order to protect the Companies and their shareholders from injury and are based upon the Companies' review of the Proposed Application, Engineering Report and Approved Decree. Compliance with these terms and conditions is essential to this Agreement, and the Companies reserve the right to seek to dismiss Applicants' Water Court application in the event the Applicants fail to comply.

The parties recognize that the Engineering Report and Approved Decree may be revised during the course of the Change Case. Consequently, the Companies reserve the right to review and comment on future engineering reports and/or revisions to the Engineering Report and revisions to the Approved Decree for the purpose of assuring that any changes do not: 1) result in the alteration of historical deliveries to other shareholders in the Companies, including shareholders taking delivery from lateral ditches from the Greeley Canal No. 2; 2) result in increases to the Companies' expenses; 3) detrimentally impact the water uses, deliveries, diversions, storage and exchanges and operations of the Companies; or 4) negatively impact or prejudice the Companies' existing agreements or stipulations.

Below are the initial/general terms and conditions of the Companies' conditional approval.

- i. Any use of the Companies' recharge or augmentation structures will require a separate agreement with the Companies.
- ii. The Companies have adopted a Policy Concerning Study Periods for the Change of Water Rights. Applicants agree to accept and abide by this Policy in the change of its NCLPIC and CLPRC shares, as such policy exists at the time of Applicants' C.R.C.P. 26(a)(2) disclosures. The Approved Decree complies with the foregoing policy.
- iii. Except as separately agreed upon by the Company and Kern for certain shares historically delivered through the Kern system and that continue to be delivered in through the Kern system, delivery of Applicants' shares shall be subject to the same loss as other shareholders, as determined by the Companies and as provided herein. To assure maintenance of canal losses, the decree entered in this case must include provisions substantially identical to paragraphs 8.3.3 and 22.9 of Consolidated Cases 04CW25/06CW295 (the LPAC Decree) regarding assumed losses for the Greeley Canal No. 2, including in particular the requirement that a minimum of 17.4 percent loss for the Greeley

Canal No. 2 shall be assessed for delivery of Applicants' shares except as provided for in Paragraph 1(d)(iii) above. The Supplement to Contract between the New Cache La Poudre Irrigating Company and the Kern Reservoir and Ditch Company does provide that New Cache shares owned by Kern Reservoir Company shareholders will be assessed only a 10% shrink, and the Companies are agreeable to that figure being used in the change analysis for the Subject Shares. However, this shrink is only applicable to the historical use of the shares or future use of the shares at the historical location of delivery. Any future deliveries of these New Cache shares elsewhere in the New Cache system will be assessed the same shrink charged against the delivery of all of the New Cache shares in the system as set forth above, and the limits on average deliveries shall be reduced so as not to exceed the ditch-wide average in the Companies' Study Period Policy.

- iv. The Subject Shares were historically delivered through the Blaine Lateral, the Kern Lateral, the Powers Lateral, and the Cazeer One Lateral. Those lateral companies and/or the owner(s) of the laterals shall be notified of the proposed change and pending water court application. Applicants shall promptly provide such notification and provide the Companies with evidence that it has done so, including providing the Engineering Report to the owner(s) of said laterals together with any other relevant information concerning the Applicants' water court change case. Should Applicants fail to do so, the Companies may do so and bill Applicants for any costs associated with doing so.
- v. Applicants acknowledge lateral losses shall be assessed and deducted from Applicants' deliveries as necessary to assure that Applicants continue to contribute their share of the lateral losses in the lateral that historically delivered water associated with the Subject Shares ("Historical Lateral"). Accordingly, at times Applicants are not taking delivery of any portion of the water attributable to the Subject Shares, through a Historical Lateral, Applicants shall be assessed lateral losses consistent with the lateral losses then being assessed against other shareholders in the Historical Lateral in order to assure that Applicants contribute to the lateral losses as if they were taking delivery of all Subject Shares as they had been historically delivered. At times when Applicants are taking only partial deliveries (e.g. the return flow component only, or a partial share delivery in the

Historical Lateral), Applicants shall still be obligated to replace that portion of the lateral loss that remains unreplaced, as determined by the Company, and this portion shall be deducted from Applicants' deliveries.

- vi. In order to be consistent with ongoing irrigation operations for the Companies and with the operation and delivery of share water for augmentation purposes under the LPAC Decree, Applicants shall call for water to be delivered and any delivery amounts, augmentation credits, and delivery limitations shall be based upon canal headgate delivery amounts.
 - vii. Return flows, including lateral losses, need to be replaced to the appropriate river "reach" consistent with the LPAC Decree.
- f. *Water Orders.* Applicants shall remain responsible for placing orders for water delivery with the Companies. When placing water orders, Applicants shall specify the location, subject to the requirements in this ¶1.f below, at which they desire to take delivery of their water. Applicants acknowledges that the Companies deliver water based on individual orders from stockholders, subject to the Companies' rules, regulations and policies, water availability, ditch capacity, shrinkage and any volume limits that the shares may be subject to, rather than based on a pro-rata portion of river diversions. Applicants agree to take delivery of their share water after appropriate deduction for system losses, as determined by the Companies. Direct flow orders will be filled based on water availability and ditch capacity. To the extent that Applicants seek delivery of water at locations other than the historical locations of delivery, Applicants acknowledge that such orders, if they can be accommodated at all, are subject to paragraph ¶1.h. below. At times when Applicants do not require, or are otherwise not entitled to take delivery of, the full amount of water available to them by virtue of their NCLPIC Shares and/or their CLPRC Shares, the Companies reserve the right, at their discretion and without cost or expense, to deliver any unused water to the remaining stockholders in the Companies, distributed as directed by the Companies. Applicants shall designate a contact person who will be in charge of placing such orders and coordinating delivery with the NCLPIC office.
- g. *No Inter-ditch Exchanges.* Applicants acknowledge and agree that they will not operate exchanges of water within the New Cache system, which includes the Greeley Canal No. 2, Cache la Poudre Reservoir, and lateral ditches without prior authorization from the Company and shall not seek any terms or conditions that would purport to authorize any in-ditch exchanges.

- h. *Location of Deliveries and Additional System Loss.* Applicants may take delivery of the Subject Shares at locations along the Greeley Canal No. 2 in accordance with the procedures described in ¶1.f above, and consistent with the Companies' practices and policies, including but not limited to NCLPIC's "Policy Concerning Use of System Capacity" as such policy exists or may be modified in the future. All requested delivery locations must be approved by the Companies and may be subject to additional fees and costs. In determining if deliveries can be made to the requested locations, the Companies will determine if the Companies can legally and physically make such deliveries, and, if so, whether such deliveries will impact other shareholders. The Companies may assess additional transit loss, if necessary, to prevent injury to the Companies or their shareholders. The Applicants acknowledge and agree that approval to deliver to certain location(s) along the Greeley Canal No. 2 shall not be construed as authorization to utilize the structures where the water may be diverted and delivered, including recharge and storage structures owned and/or controlled by NCLPIC and/or Lower Poudre Augmentation Company ("LPAC"). Applicants will need to obtain additional approval(s) from NCLPIC and/or LPAC to utilize said structures, including but not limited to the NCLPIC /LPAC recharge structures.
- i. *Use of System Capacity.* Applicants acknowledge and agree that nothing in this Agreement grants Applicants any additional rights to utilize capacity in the Greeley Canal No. 2, Timnath Reservoir and/or other structures owned and/or operated by the Companies. Except as separately agreed upon between the Parties, the use of said structures is limited to use by the Companies for diverting, storing and delivering water to the Companies' stockholders, including Applicants. Applicants acknowledge and agree that Applicants' deliveries of their share water hereunder shall be subject to the NCLPIC's "Policy Concerning Use of System Capacity" as such policy exists or may be modified in the future, and that use of system capacity, or the Companies' other structures or assets, may require a separate agreement with the Companies. Any use of system capacity not consistent with the Companies' policies, including the Policy Concerning the Use of System Capacity, is prohibited unless authorized to be separate agreement. Nothing herein shall be construed to modify the terms of existing agreements between the Parties regarding the use of capacity in the Greeley No. 2 Canal system or the Kern Reservoir and Kern Lateral systems.
- j. *Structure Modifications.* Applicants may not construct facilities on or in, or operate or modify the Cache la Poudre Reservoir, Cornish Plains Reservoir, the Greeley No. 2 Canal, their headgates, inlet and outlet ditches or any reservoir, ditch, facility or other structure or property owned or operated by the Companies, unless the prior written approval of the Companies' respective Board of Directors is obtained. Such approval may be withheld or denied in the sole and absolute discretion of Companies' respective Board of Directors. Nothing herein shall be construed to preclude the Applicants from constructing, modifying, removing or operating

structures owned by the Kern Reservoir Company or the Town of Windsor. Nothing herein shall be construed to modify the terms of existing agreements between the Parties regarding the construction, maintenance, modification or operation of existing structures of the Greeley No. 2 Canal system and the Kern Reservoir and Kern Lateral systems.

- k. *Ongoing Review of Decree and Engineering Report.* The Applicants have provided the Companies with the Approved Decree, which is part of the basis for this Agreement, but at this time have not provided the Proposed Decree which will be tendered to the Water Court. Applicants shall draft the Proposed Decree based upon the Approved Decree and this Agreement and shall not substantively alter the terms and conditions negotiated by the Parties or otherwise required in this Agreement without the Companies written approval. Prior to tendering any Proposed Decree to the Water Court, Applicants shall first provide said Proposed Decree to the Companies for review and comment. Applicants shall make revisions to the Proposed Decree requested by the Companies as necessary to maintain compliance with this Agreement and to protect the Companies from injury. The Companies' approval in this Agreement is conditional and based upon the understanding that the Companies' review of the draft Proposed Decree and Engineering Report is and will be ongoing as changes are made, and any changes that violate this Agreement and/or will result in injury to the Companies will be considered a violation of this Agreement. In such event the Companies may withdraw their approval, seek to have the application for the Change Case dismissed, refuse to deliver water to the Applicants, or take such other measures as are appropriate until the violation or injury are remedied.
2. In the event that Applicants are not complying with this Agreement, the Companies may, at their election, seek to dismiss Applicants' Water Court application, not deliver any water to Applicants which is otherwise available by virtue of its NCLPIC and CLPRC shares, and/or take such other legal action as is appropriate to protect the Companies and their shareholders from injury.
3. Applicants agree that in the event there is any lawsuit or claim brought by other NCLPIC or CLPRC shareholders or third parties against the Companies and/or their respective Board of Directors arising from or related to the deliveries of water by the Companies pursuant to this Agreement then, to the extent permitted by law, Applicants shall indemnify the Companies and/or their respective directors for the cost of defense of said suit and/or any claim for damages relating thereto. If agreed upon by the Companies and Applicants in writing, Applicants may directly defend such suit or suits. Nothing herein shall be construed to waive Applicants' immunity under the Governmental Immunity Act.

4. In seeking judicial approval to change the type, manner, time and place of use of the waters available to Applicants pursuant to Applicants' Shares of the Companies and/or to add other uses as Applicants may desire, Applicants shall not accept, and shall cooperate with the Companies to oppose any term or condition in any decree to be entered in such proceedings that would have the effect of creating additional limitations on the Companies' operations, such as diversions of water, or otherwise result in terms, conditions or limitations in violation of the provisions of this Agreement which could injure the Companies' operations or other stockholders. It is understood that this is an essential obligation of this Agreement and, should Applicants be in violation of it, the Companies may, at their discretion, seek to have Applicants' change application dismissed.
5. Nothing contained in this Agreement shall prevent Applicants from making use of all or a portion of Applicants' shares of the Companies by: (a) lease of such shares to other shareholders for the irrigation of lands under the Greeley Canal No. 2 consistent with the leasing policies and requirements of the Companies, or (b) Applicants using the waters represented by Applicants' shares for the irrigation of lands under the Greeley Canal No. 2.
6. Applicants acknowledge that any diversion, delivery and use of water at any particular time must be in accordance with the then-existing Articles of Incorporation, Bylaws, policies, and rules and regulations of the Companies, and as applicable, those of other companies that own or operate lateral ditches from the Greeley Canal No. 2 (to the extent Applicant seeks to use such lateral ditches).
7. The parties specifically acknowledge and agree that this Agreement is intended to only address Applicants' application for approval for its proposed change of water rights pursuant to ARTICLE V, SECTION 8 of the Bylaws of the NCLPIC and Rule 34 of the Bylaws of the CLPRC. This Agreement is not intended to address other aspects of Applicants' application filed in Water Court, including in particular any proposed use of structures or water rights owned or controlled by the Companies.
8. The parties intend that this Agreement is not to supersede or modify any previous agreements or stipulations that the Companies may have entered into with shareholders or others. Therefore, it shall not be so construed, interpreted, or enforced, even if its language would have such a result. This Agreement and the diversion and/or delivery of waters represented by Applicants' shares of the Companies are subject to all previous agreements and stipulations entered into by the Companies. Nothing contained in this Agreement shall be construed or interpreted to create, grant, expand or diminish any right Applicants may or may not have, as a shareholder of the Companies or otherwise, to utilize excess capacity in the Companies' systems.
9. This Agreement shall be in full force and effect until cancelled or modified by written agreement between the parties. The provisions of this Agreement shall be effective

irrespective of the provisions of any decree awarded to Applicants by the Water Court, or other court of competent jurisdiction. Applicants shall comply with the provisions of this Agreement separate and apart from any such decree entered by the Water Court, even to the extent that this Agreement imposes obligations upon Applicants in addition to or exceeding those obligations imposed upon Applicants by any such decree.

10. This Agreement is expressly contingent upon Applicants paying all fees owed to the Companies as a result of the Companies' review of the proposed change requested by Applicants made pursuant to ARTICLE V, SECTION 8 of the Bylaws of the NCLPIC and Rule 34 of the Bylaws of the CLPRC. In the event Applicants refuse to reimburse the Companies for said costs associated with this review, the Companies reserve the right to terminate this Agreement, to refuse to deliver water to Applicants for any proposed changed purpose and/or to seek withdrawal of any water court application seeking a change of Applicants' NCPIC and/or CLPRC shares.
11. This Agreement may not be assigned by one party unless it has obtained the written consent of the other parties. The Companies and Applicants recognize that the rights, obligations, and performance under this Agreement are unique and specific to the parties. This Agreement is binding upon the successors of the Companies and Applicants.
12. The obligations of each of the parties hereto are contingent and conditional upon the other party performing all of its obligations. It is specifically agreed that neither party can be compensated by damages in the event of the other party's breach of this Agreement. Rather, specific performance is agreed to be the only remedy. Enforcement may take the form of a mandatory or prohibitory injunction. While either party is in default in regard to any of its obligations, the other party is relieved of the duty to perform its own obligations. In the event a party asserts a default of the other party's obligations under this Agreement, the party asserting default shall give written notice thereof to the other party. Immediately following receipt of such notice, the parties shall meet to discuss the alleged default. Notice under this paragraph 13 shall be deemed given and made if delivered personally or sent by registered or certified United States mail (postage prepaid and return receipt requested) to the following:

- a. If to Applicants:

Town of Windsor
c/o Leif Lesoing, Water Resource Administrator
301 Walnut Street
Windsor, Colorado, 80550

- b. If to NCLPIC or CLPRC:

Ethan Cozzens & Dale Trowbridge

P O Box 104
33040 Railroad Ave.
Lucerne, CO 80646

13. In the event any court of competent jurisdiction holds that any provision of this Agreement is illegal and, thus, invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
14. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute the agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have caused duplicate original copies of this Agreement to be signed the day and year first hereinabove written.

[Remainder of page left blank intentionally]

TOWN OF WINDSOR

By: _____

APPROVED AS TO SUBSTANCE:

ATTEST:

By: _____

By: _____

APPROVED AS TO LEGAL FORM:

By: _____

THE KERN RESERVOIR AND DITCH COMPANY,
A Mutual Ditch Corporation

ATTEST:

By: _____
President

By: _____
Secretary

THE NEW CACHE LA POUFRE IRRIGATING COMPANY,
A Mutual Ditch Corporation

ATTEST:

By: _____
President

By: _____
Secretary

THE CACHE LA POUFRE RESERVOIR COMPANY,
A Mutual Ditch Corporation

ATTEST:

By: _____
President

By: _____
Secretary