



Todd G. Messenger
(303) 894-4469
tmessenger@fwlaw.com

August 4, 2020

Sent via E-Mail

Jenny Axmacher, AICP, and
Members of the Planning Commission
City of Commerce City
7887 East 60th Avenue
Commerce City, CO 80022

**Re: Metro Wastewater Reclamation District (“METRO”)
Conditional Use Permit Application No. CU-123-20 (“METRO PROJECT”)**

Dear Ms. Axmacher and Members of the Planning Commission:

We are in receipt of the City’s Public Hearing Notice regarding the Planning Commission hearing on the Metro Project. Our firm represents the Farmers Reservoir and Irrigation Company (“FRICO”)¹, a Colorado mutual ditch company. For the purposes of this letter we are also authorized to speak for the Burlington Ditch, Reservoir and Land Company (“BURLINGTON”).²

I. FRICO and Burlington Oppose Trenchless Construction Under the O’Brian and Little Burlington Canals.

A. *Trenchless Construction Creates a Major Risk of Sinkhole or Frac-Out.*

Metro’s presentation does not address risks and impacts to ditches and canals. Metro simply states in its PowerPoint presentation that trenchless construction methods are “required” at irrigation ditches and canals.³ Trenchless construction methods may be convenient for Metro, but they are not required, and they pose unnecessary and undue risk to FRICO and Burlington facilities.⁴

In its application materials, Metro admits that:

¹ FRICO is a Colorado mutual ditch company that was formed in 1902. FRICO is a critical link in systems that provide essential food and water to the northern Denver metro area and beyond. Specifically, FRICO’s system of diversion works, ditches, pipelines, and reservoirs deliver water for the irrigation of more than 60,000 acres of farmland and for the supply of public water systems that serve more than 300,000 people. The vast FRICO system consists of four major reservoirs, several smaller reservoirs, and approximately 400 miles of canals that extend from the Front Range foothills to an area east of Greeley.

² FRICO and Burlington have the same general manager, Scott Edgar.

³ Metro’s PowerPoint, Slide 12.

⁴ On January 26, 2008, the North Sterling Irrigation District experienced a blowout of the North Sterling Inlet Canal as a result of a failed boring by the Overland Pass Pipeline Company. That bore was for a 16-inch gas pipeline, 20 feet below the invert of the ditch. Within two hours after the blowout, the ditch bank eroded approximately 60 feet in width, 50 feet in depth, and 300 feet in length. Pictures of the failure, and a technical report about it, are attached to this letter.

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The **major risks** for these [trenchless] crossings include settlement or heaving of the roadway, traffic disruptions, **sinkholes within the ditch, and fluid frac-out.**⁵

B. *A Sinkhole or Frac-Out in the Little Burlington or O'Brian Canal would be Catastrophic.*

The Little Burlington and O'Brian Canals are big canals that carry a lot of water.⁶ A sinkhole or fluid frac-out in either one of them would cause havoc. According to Ecological Resource Consultants ("ERC") (FRICO's contract engineers), in the event of a sinkhole or frac-out:

- Even if the ditch could be shut off right-away (which is optimistic), water losses would be on the order of 105 to 189 million gallons (that is somewhere between 160 and 290 Olympic-sized swimming pools).
- Due to the distance between the headgate and the construction site, water could continue to flow in the canals for approximately two days after the ditch is shut off.
- Repair would take approximately two weeks (best case). It would involve stopping water; drying out canal beds; importing clay material; placing, compacting, and testing backfill, and resuming deliveries. Repair costs would be at least \$50,000 (time and materials).
- Water losses to Barr Lake during a two-week unplanned shut-off for repairs would be *between 2.7 billion and 5.78 billion gallons.*
 - The market value of the water is \$6 million to \$12 million, but there is no source in the market that is capable of supplying (or delivering) that much water.
 - Because the water cannot be replaced, there will likely also be knock-on effects from water losses at this scale (*e.g.*, crop losses, municipal water shortages, etc.).

C. *Metro Misrepresents Its Position with FRICO and Burlington.*

On January 22 (at FRICO's request) FRICO and Burlington met with Metro to discuss the Metro Project. Metro was advised that an open cut would be required, and that construction would have to be coordinated with the affected ditch company to take place during a planned maintenance shut-down of the ditch. On February 20, at Metro's request, FRICO provided proposed crossing agreements for Metro's review. Despite the fact that Metro's attorney asked for these documents, Metro did not respond.

⁵ Application materials, Appendix B, page B-5 (emphasis added).

⁶ To illustrate, on occasion the O'Brian Canal will divert the entire flow of the South Platte River.

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On May 15, 2020, Metro filed Resubmittal No. 2 with Commerce City. Metro failed to address FRICO comments. Worse, Metro misrepresented its dealings with FRICO and Burlington. According to Metro's May 15, 2020 resubmittal letter:

The primary outstanding issues are: * * * 4. Crossing of Little Burlington and O'Brian/Burlington Canals * * * Resolution of Item 4 is ongoing, with the District, City, and Farmers Reservoir and Irrigation Company (FRICO) to continue coordination outside of the CUP Application process as previously agreed to with the City.

By May 15, Metro had not coordinated with FRICO at all. In fact, Metro had been sitting on proposed FRICO agreements and comments for months. After the May 15 commitment to the City to "continue coordination," Metro stayed silent for nearly another month. Then, on June 12, it sent FRICO and Burlington "Final Offers," in preparation for eminent domain proceedings.

FRICO emailed Metro's counsel, Patrick Wilson, on June 13, reminding him that Metro had committed to work with FRICO in good faith, and asking that the Final Offers be retracted. Mr. Wilson responded on June 15, stating, "I've forwarded your email to the District and someone will respond shortly." No one from Metro responded. Just shy of a month later, Metro filed suit in eminent domain. FRICO and Burlington are now vigorously defending against those suits.

II. Detailed Crossing Agreements Are Needed In Order To Articulate Relative Rights, Risks, and Responsibilities.

A. *Commerce City Knows that FRICO's Form Crossing Agreements Are Reasonable and that FRICO and Burlington Negotiate in Good Faith.*

A few years ago, Commerce City, FRICO, and Burlington negotiated in good faith regarding the expansion of 104th Avenue across the Little Burlington and the O'Brian Canals. Commerce City understands that canal crossings are technical and complicated, and that articulating the specific rights, risks, and responsibilities of all parties is actually in all parties' best interests. The 104th Avenue crossing agreements have served all parties well since then. In short, they were worth the effort.

B. *Metro Is Apparently Not Interested In Good Faith Negotiations.*

Metro turned its back on good faith negotiations with FRICO and Burlington. Metro simply demands that FRICO and Burlington execute a short form easement or have their rights taken in court, even though Metro's form is inadequate to deal with the issues involved in a major ditch crossing (in part because it does not appropriately articulate or address the risks the Metro Project introduces). Instead of negotiating the technical terms of an agreement that is suitable for the task at hand, Metro has decided to go with the brute force approach of eminent domain litigation.

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III. FRICO and Burlington Request that Metro Address FRICO's Technical Comments.

A. FRICO and Burlington Have Extensive Experience Dealing With Ditch Crossings.

FRICO and Burlington, together, have more than two centuries of experience with ditch crossings. FRICO has developed a set of sophisticated and specialized engineering design standards to minimize risks that crossings pose to canal infrastructure. Burlington uses those standards too.

B. Experience Shows That FRICO's Engineering Standards Are Reasonable and Essential.

Much of FRICO's infrastructure is in an urbanizing environment. As such, FRICO processes canal crossings all the time. The FRICO technical review process is reasonable. It is conducted by professionals who continuously deal with canal engineering issues. It is intended to ensure public safety and to minimize risks to canal infrastructure. City engineering standards are not specialized enough to deal with canal crossings—and there is a lot at stake.

C. The City's Interests in Promoting Development and Protecting the Canals Can Be Simultaneously Advanced.

In addition to the Comprehensive Plan policies that promote the construction of infrastructure like the Metro Project, the Plan also specifically calls for protection of surface water resources including O'Brian Canal and Burlington Ditch.⁷ FRICO and Burlington submit that the City should require Metro to follow FRICO's design standards, so that all of the pertinent Comprehensive Plan policies will be advanced.

IV. The Project, As Proposed, Does Not Meet Conditional Use Permit Standards in the Areas of the Little Burlington and O'Brian Canals.

As currently proposed, the Metro Project does not meet the Conditional Use Permit standards in Section 21-3230(3), Commerce City Land Development Code ("CCLDC") in the area of the Little Burlington Canal and O'Brian Canal due to the risks involved in the trenchless design and the refusal by Metro to negotiate with the ditch companies in good faith to reach mutually-agreeable crossing agreements. Specifically:

- Metro admits that there is a "major risk" of sinkhole or frac-out as a result of its proposed trenchless installation under the ditches. As such, the proposal does not comply with Section 21-3230(3)(a)(i) and (3)(a)(ii), CCLDC because of its unmitigated "undue adverse effect." This situation alone requires denial of the application.

⁷ See Commerce City Comprehensive Plan at Page A-20.

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- By Metro's admission, the canals are not suitable for trenchless installation due to the increased risks. As such, the proposal does not comply with Section 21-3230(3)(a)(iii), CCLDC. This situation alone also requires denial of the application.
- By Metro's admission, the trenchless installation creates an "undue burden" on existing improvements and facilities. As such, the proposal does not comply with Section 21-3230(3)(a)(iv), CCLDC. This situation alone also requires denial of the application.
- Metro provides current maintenance and management policies (which are unilateral and could change at any time), but refuses to provide adequate assurances of continuing maintenance under the canals by way of an appropriate crossing agreement with FRICO and Burlington. As such, the proposal does not comply with Section 21-3230(3)(a)(v), CCLDC. Again, this situation alone requires denial of the application.

V. Conclusion and Request.

FRICO and Burlington support the improvement of regional wastewater infrastructure, but OPPOSE the application (as presented) because:

- The current plans show stunning disregard for the integrity of FRICO and Burlington infrastructure and the potential direct and indirect costs to FRICO, Burlington, and the region that could result from breaches and water losses; and
- Metro refuses to acknowledge or accept the risks and responsibilities involved in the installation and operation of its proposed pipeline.

Accordingly, as demonstrated in Section IV, above, the project should not be approved as currently proposed. FRICO and Burlington submit that the Metro Project could be (and should be) approved with conditions that would ensure compliance with the CCLDC by addressing the issues raised in this letter. To that end, FRICO and Burlington request that four additional recommended conditions of approval be added, as follows:

- S. Prior to construction within the FRICO or Burlington right-of-way, the permit holder shall negotiate in good faith and enter into crossing agreements with FRICO and Burlington that are reasonably acceptable to FRICO and Burlington.
- T. The permit holder shall design and construct the crossings of the Little Burlington Canal and the O'Brian Canal according to FRICO's design criteria manual, including standards applicable to open-cut installation of pipelines.



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- U. The permit holder shall coordinate with FRICO and Burlington regarding the timing of open cut installation, so that the installation occurs during times when the ditch is turned off for planned maintenance.
- V. The requirements of Conditions S., T., and U., above, are regulatory requirements that shall not be waived in the event that the permit holder acquires crossing rights by eminent domain.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,
FAIRFIELD AND WOODS, P.C.

A handwritten signature in blue ink, appearing to read 'Todd Messenger, Esq.', with a long horizontal stroke extending to the right.

Todd Messenger, Esq.

TM:dps

cc: Robert Sheesley, Esq.,

Attachments:

- North Sterling Irrigation District Report
- Photos of North Sterling Bore Failure Consequences

North Sterling Irrigation District

Ditch Break Damage Analysis

Prepared by:

James T. Yahn, P.E.
Manager
North Sterling Irrigation District

April 18, 2008

FRICO004859

Introduction

On Saturday, January 26, 2008 the bank of the North Sterling Inlet Canal was breached as a result of a failed boring by the Overland Pass Pipeline Company, LLC. In an attempt to bore and install a 16-inch gas pipeline at a depth of 20 feet below the invert of the canal a flow path was formed during the back reaming of the boring process. This resulted in water flowing from the newly formed bore approximately 300 feet down gradient from the inlet canal. Within two hours the borehole completely eroded the ditch bank approximately 60 feet in width, 50 feet in depth, and 300 feet in length. The canal was shut down within 2 hours, but due to the ditch break occurring 15 miles downstream of the canal's point of diversion the water from the canal continued to flow for approximately 2 days.

The North Sterling employed a geotechnical engineer to assist in the design of the ditch repair. This engineer collected samples of the soil in the area proposed for borrow material and had his firm complete necessary tests on the samples. The Overland Pass Pipeline Company also hired an engineer to perform on site compaction tests and to oversee the construction. Overland Pass Pipeline Contractor, Sterling Construction, completed repair of the canal on Sunday, February 3, 2008. The North Sterling began diverting water from the South Platte River once again on the morning of Monday February 4. Due to the large amounts of ice, which had fallen into the bottom of the canal, only a small flow rate was started in the canal. The North Sterling employees stayed with the water day and night so that if an ice blockage occurred measures could be readily taken to avoid another ditch break. The North Sterling also hired a long reach excavator and operator to follow the head of the water to help in the event of an ice blockage. The water traveled the 63-mile inlet canal in 6 days, reaching the reservoir on Sunday February 10, 2008. Although the water reached the reservoir on February 10, a flow rate equal to that prior to the ditch break was not achieved until February 24. This was due to the ice creating restrictions in the ditch.

This report provides an analysis of damages due to the ditch break incurred by the North Sterling Irrigation District both in water and direct expense.

FRICO004860

Methodology for Calculating Lost Water

In order to determine the actual loss of water incurred by the North Sterling due to the ditch break the following method was used:

1. The average daily volume stored in the North Sterling Reservoir prior to the ditch break was calculated.
2. The actual daily volume stored after the ditch break was subtracted from this calculated average daily volume to determine the daily loss in storage.
3. The daily loss in storage was summed resulting in a total loss in storage.
4. The total loss in storage was then used to back calculate the actual number of days that the storage of the North Sterling was extended due to the ditch break.
5. The number days was then used to calculate the volume of water that the North Sterling was deprived on its recharge water right.
6. The volume of water the North Sterling was deprived was then multiplied by the price/acre-foot to place a monetary value on the water.

The actual calculations are presented below.

Average Daily Volume Stored Prior to Ditch Break

In the winter the volume of water stored in the North Sterling Reservoir varies daily due to varying weather conditions. On cold days the water in the canal can freeze allowing only a small amount to flow into storage and on warmer days this water can thaw allowing a greater flow into the reservoir. Therefore to get a representative amount of water being stored, an average was taken from January 1 to January 27, 2008. Although the ditch break occurred on January 26 the flow into the reservoir was not

affected for 2 days due to the length of the canal from the ditch break to the reservoir. This is the reason January 27 was used as the last day when calculating the average.

The flow into the reservoir is measured approximately one half mile from the reservoir and is recorded on an electronic data recorder. The flow values are recorded at 15-minute intervals and the total volume in acre-feet is compiled for each day. This total daily volume is the value used in calculating the average daily volume stored for the period January 1 through 27. Table 1 presents the daily volume values along with the average daily volume stored. The calculated average daily volume stored prior to the ditch break is 278 acre-feet.

Daily Loss In Storage and Total Storage Loss

Once the average daily volume stored prior to the break was calculated the amount of lost storage was determined. This was done by using the same recorded data but this time for the period after the ditch break. The daily volume stored for the period January 28 through February 24 was subtracted from the average daily volume calculated above for each day. Table 2 presents this subtraction and the total loss in storage. January 28 was used as the beginning point because this was the first day flow into the reservoir was affected. February 24 was used as the last day due to this being the last day at which the average daily volume was higher than the actual daily volume stored. The total loss in storage during this time period was calculated to be 4,863.5 acre-feet.

Number of Days storage was Extended

Knowing that 4,863.5 acre feet of storage was lost as a result of the ditch break, allows the determination of the number days diversion to storage in the North Sterling was extended. Although the North Sterling was affected 27 days due the ditch break, the amount of water stored in good weather is greater than the amount that can be stored in cold freezing weather. Therefore an adjustment must be made in the number of days the

North Sterling was affected because the volume stored just prior to the North Sterling Reservoir filling was much greater than during January and February months. This is done by using the 4,863.5 acre-feet of total loss and subtracting the daily volume stored on the last day of storage. Table 3 shows this difference to be 4,515.4 acre-feet. The volume stored on the second to last day of storage is then subtracted from this difference. This process is repeated until the difference is approximately zero. The number of days the storage was extended is then apparent. The calculations presented in Table 3 show that the number of days that the storage of the North Sterling was extended was 7 days.

Effect of Ditch Break on North Sterling Recharge water Right

The North Sterling Irrigation District has a 1996 recharge water right, which is diverted into the North Sterling Inlet Canal. This water right can only be diverted once the reservoir is full. Any delay in the filling of the reservoir precludes the District from operating its recharge water right. As shown above, the January 26, 2008 North Sterling Inlet ditch break extended the filling of the North Sterling Reservoir by 7 days and therefore reduced the opportunity for the District to operate its recharge water right by 7 days. Once the reservoir was full the District ceased the diversion of water into the inlet canal. This occurred on March 29, 2008, the ditch was then allowed to drain. Three days were required to determine what the call on the river would be. After these 3 days, on April 1, 2008, the river commissioner determined that the North Sterling recharge right was in priority and the District commenced the diversion of water into the inlet canal for recharge. The daily diversion of water for the purpose of recharge for the first 7 days is presented in Table 4. The total volume of water over the 7 day period April 1 through April 7 was 1086.2 acre feet. The flow in the river during the end of March and beginning of April was fairly constant, therefore the same scenario could have been expected and the amount of recharge that would have been received at the end of March with no ditch break can be expected to be the same as to what was actually diverted in April.

Damage to the North Sterling

Loss to the North Sterling Irrigation District as a result of the ditch break caused by the failed boring of the Overland Pass Pipeline is a combination of loss of recharge water (as calculated above), cost of excavator to start water into the canal, cost of engineering to assist in the design of the ditch bank reconstruction, the cost of manufactured nipple to provide water to Sterling Construction from a local well during the reconstruction process, and the cost of District employee time and extra District fuel expense. To determine a value of the District recharge water two sources were used: 1) An agreement between the Point of Rocks Water Company (a subset of North Sterling Irrigation District landowners) with Xcel Energy to provide water for the Pawnee Power Plant, and 2) an agreement between the North Sterling Irrigation District and the Overland Pass Pipeline Company LLC. These agreements are provided in Appendix A. The Xcel Energy is a 25-year agreement and was consummated in September of 2005. In the agreement there are two payments that are made to the Point of Rocks Water Company, the base payment and the delivery payment. Together these payments compose the entire payment for the water. Initially these payments were \$50/acre-foot and \$425/acre-foot, respectively. When adjusted for inflation in 2007, as provided for in the agreement, the payments are \$53.07/acre-foot for base payment and \$451.11/acre-foot for the delivery payment. Combined the total cost for water in 2007 was \$504/acre-foot. The agreement with the Overland Pass Pipeline Company LLC was entered into on January 31, 2008 and is a short-term agreement and delivers water at a price of \$500/acre-foot. Therefore the value used in the analysis is \$500/acre foot, which results in a total cost for loss of water at \$543,100.

Copies of the invoices for the cost of the excavator (\$20,183.34), cost of engineering (\$2,197.50), cost of manufactured nipple (\$187.00), and a break down of District employee time (\$5,940), and fuel costs (\$1,162.50) are presented in Appendix B. Totaling all these costs results in \$572,770.34 of damage to the North Sterling Irrigation District due to the ditch break.

TABLE 1
Daily Volume Stored in Reservoir

<u>Date</u>	<u>Volume, (ac-ft)</u>
01-Jan-2008	185.6
02-Jan-2008	283.6
03-Jan-2008	309.1
04-Jan-2008	289.1
05-Jan-2008	270.6
06-Jan-2008	268.7
07-Jan-2008	268.2
08-Jan-2008	263.0
09-Jan-2008	267.4
10-Jan-2008	276.8
11-Jan-2008	301.5
12-Jan-2008	327.8
13-Jan-2008	337.1
14-Jan-2008	347.3
15-Jan-2008	360.2
16-Jan-2008	343.2
17-Jan-2008	331.0
18-Jan-2008	255.3
19-Jan-2008	165.1
20-Jan-2008	176.2
21-Jan-2008	235.9
22-Jan-2008	354.8
23-Jan-2008	387.3
24-Jan-2008	183.0
25-Jan-2008	190.9
26-Jan-2008	243.7
27-Jan-2008	294.2

Average Daily Volume Past Inlet Gauge Prior to Ditch Break	278.4 ac-ft
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FRICO004865

TABLE 2
Storage Volume Lost

<u>Date</u>	<u>Daily Volume Stored, (ac-ft)</u>	<u>Calculated Average Volume (ac-ft)</u>	<u>Daily Volume Lost (ac-ft)</u>
28-Jan-2008	98.1	278.4	180.3
29-Jan-2008	37.1	278.4	241.3
30-Jan-2008	24.3	278.4	254.1
31-Jan-2008	11.5	278.4	266.9
01-Feb-2008	6.1	278.4	272.3
02-Feb-2008	3.5	278.4	274.9
03-Feb-2008	2.1	278.4	276.3
04-Feb-2008	1.1	278.4	277.3
05-Feb-2008	1.3	278.4	277.1
06-Feb-2008	0.5	278.4	277.9
07-Feb-2008	0.0	278.4	278.4
08-Feb-2008	0.0	278.4	278.4
09-Feb-2008	0.0	278.4	278.4
10-Feb-2008	31.9	278.4	246.5
11-Feb-2008	222.7	278.4	55.7
12-Feb-2008	155.9	278.4	122.5
13-Feb-2008	149.7	278.4	128.7
14-Feb-2008	169.9	278.4	108.5
15-Feb-2008	177.4	278.4	101.0
16-Feb-2008	185.7	278.4	92.7
17-Feb-2008	187.0	278.4	91.4
18-Feb-2008	188.0	278.4	90.4
19-Feb-2008	192.1	278.4	86.3
20-Feb-2008	196.2	278.4	82.2
21-Feb-2008	202.4	278.4	76.0
22-Feb-2008	216.3	278.4	62.1
23-Feb-2008	228.9	278.4	49.5
24-Feb-2008	242.0	278.4	36.4

Total Storage Volume Lost Due To Ditch Break

4,863.5 ac-ft

FRICO004866

TABLE 3
Number of Days Storage Extended

<u>Date</u>	Daily Volume Past <u>Inlet Gauge, (ac-ft)</u>	Lost Volume <u>Remaining (ac-ft)</u>
	Total Amount Lost	4,863.5
30-Mar-2008	348.1	4,515.4
29-Mar-2008	576.2	3,939.2
28-Mar-2008	711.6	3,227.6
27-Mar-2008	759.2	2,468.4
26-Mar-2008	795.0	1,673.4
25-Mar-2008	815.1	858.3
24-Mar-2008	824.9	33.4
23-Mar-2008	839.7	0.0

Total Number of Days Storage Extended
March 24 through March 30 Inclusive

7 days

TABLE 4
Recharge Diversion First 7 Days

<u>Date</u>	Daily Volume Diverted <u>For Recharge, (ac-ft)</u>
01-Apr-2008	118.6
02-Apr-2008	154.9
03-Mar-2008	160.5
04-Mar-2008	156.4
05-Mar-2008	142.1
06-Mar-2008	159.9
07-Mar-2008	193.8

Total Volume of Recharge Lost

1,086.2 ac-ft

FRICO004867

APPENDIX A
AGREEMENTS

FRICO004868

Xcel Energy Agreement

LEASE AGREEMENT

This Lease Agreement is entered into this 30th day of Sept., 2005 between Point of Rocks Water Company, LLC ("Water Company"), a Colorado Limited Liability Company, and Public Service Company of Colorado d/b/a Xcel Energy ("PSCo"), a Colorado Corporation (the Water Company and PSCo are also referred to collectively, as the "Parties").

RECITALS

A. PSCo is the owner and operator of the Pawnee Steam Electric Generating Station ("Pawnee Station"), located near Brush, Colorado.

B. The Water Company is a Colorado Limited Liability Company consisting of members who are landowners within the North Sterling Irrigation District ("North Sterling"), with such members being entitled to deliveries of water from North Sterling, and said members have entered into Subscription Agreements with the Water Company committing their water deliveries from North Sterling to the Water Company so that PSCo may use said water deliveries pursuant to the terms and conditions provided herein.

C. Subject to the terms and conditions below, the Parties desire to enter into a lease agreement under which the Water Company will supply to PSCo up to 3,000 acre-feet annually of fully-consumable water for industrial use at the Pawnee Station from November through March of each year during the term of this Lease Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Definitions.

1.1 "North Sterling" means the North Sterling Irrigation District.

1.2 "North Sterling Reservoir Water Rights" means the following water rights that are owned by North Sterling. Water diverted under said water rights is delivered by North Sterling to North Sterling landowners:

1.2.1 Priority 53-A with an appropriation date of June 15, 1908 for a storage amount of 69,446 acre-feet in the North Sterling Reservoir, at a diversion rate of 300 cubic-feet-per-second ("cfs") from the South Platte River, as decreed by the District Court in and for Water Division No. 1 in Case No. 2142.

1.2.2 Priority 79 with an appropriation date of August 1, 1915 for a storage amount of 11,954 acre-feet in the North Sterling Reservoir, at a diversion rate of 411 cfs from the South Platte River, as decreed by the District Court in and for Water Division No. 1 in Case No. 2142.



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The foregoing water rights are the subject of an application for change of water right and plan for augmentation pending before the Water Court in and for Water Division No. 1 in Case No. 96CW1034. For purposes of this Lease Agreement, the North Sterling Reservoir Water Rights shall also include fully consumable water delivered to the South Platte River including, but not limited to: (1) fully consumable recharge water delivered to the South Platte River from the use of the North Sterling Recharge Water Right described in the application pending before the District Court in and for Water Division No. 1 in Case No. 96CW1034; and (2) fully consumable water delivered to the South Platte River from delivery of the North Sterling Reservoir Water Rights described above, into recharge facilities described in the application pending before the District Court in and for Water Division No. 1 in Case No. 96CW1034; and (3) other fully consumable water that is delivered to the South Platte River on behalf of PSCo pursuant to this Lease Agreement.

1.3 "Pawnee Wells" means the following wells (or any replacement wells in Section 29 for the Pawnee Wells) owned by PSCo near the Pawnee Station:

<u>Well</u>	<u>Permit No.</u>	<u>Legal Description</u>
Pawnee Well A	24258-F	SW1/4, NW1/4, S29, T4N, R56W
Pawnee Well B	24259-F	NW1/4, NW1/4, S29, T4N, R56W
Pawnee Well C	24260	NE1/4, NW1/4, S29, T4N, R56W
Pawnee Well D	24261-F	NW1/4, NE1/4, S29, T4N, R56W
Pawnee Well E	24262-F	NE1/4, NE1/4, S29, T4N, R56W

1.4 "Subscription Agreement" means an agreement between the Water Company and land owners within the North Sterling Irrigation District committing said landowners' pro rata portion of the North Sterling Reservoir Water Rights to satisfy the water delivery obligation of the Water Company pursuant to this Lease Agreement.

2. Conditions Precedent. Both Parties' obligations to perform pursuant to this Lease Agreement are contingent upon full satisfaction of all of the following conditions:

2.1 The Water Company shall work with North Sterling to obtain a final decree (including any and all appeals) in its change of water right and plan for augmentation pending in Case No. 96CW1034 ("Final Decree"). The Final Decree must contain adequate terms and conditions, as determined by PSCo, to enable the Water Company to deliver up to 3,000 acre-feet of fully consumable water for industrial use at the Pawnee Station from November through March for each year of the term of this Lease Agreement and in accordance with the terms and conditions of this Lease Agreement.

2.2 A sufficient number of North Sterling landowners shall enter into Subscription Agreements with the Water Company so that no less than 22,000 acres of land included within North Sterling shall be subject to such Subscription Agreements.

2.3 The Subscription Agreements described above shall be recorded with the Logan County Clerk and County Recorder.

2.4 North Sterling and the Water Company shall enter into a Management Agreement for the administration of this Lease Agreement that is acceptable to PSCo.

2.5 A structure shall be constructed at or below the headgate of the North Sterling Reservoir Inlet Ditch to allow for the measurement and delivery to the South Platte River of water diverted at or below the headgate of the North Sterling Inlet Ditch for the use of PSCo under this Lease Agreement. The headgate of the North Sterling Reservoir Inlet Ditch is located at a point whence the corner common to Sections 28, 29, 32, and 33, in Township 5 North, Range 55 West of the 6th P.M. bears north 4077 feet, in Morgan County, Colorado. Repairs to and/or replacement of this structure as required will be the responsibility of the Water Company, which shall pay any and all costs of such repairs or replacement.

2.6 If the foregoing conditions have not been fully satisfied by December 31, 2006, then either Party may, at its sole discretion, elect to terminate this Lease Agreement. Any such termination shall be in accordance with the notice provisions provided herein.

3. The Lease. Subject to the satisfaction of the foregoing conditions, and pursuant to the terms and conditions contained below, the Water Company will annually make available for lease and delivery to PSCo 3,000 acre-feet of fully consumable water from the North Sterling Reservoir Water Rights. Such water will be used by substitution, replacement, or exchange for industrial purposes at the Pawnee Station from November through March of each year of the term of this Lease Agreement.

4. Deliveries. The Parties acknowledge and agree that, at various times, the water to be delivered to PSCo by the Water Company will be available at the headgate of the North Sterling Canal or other locations below the headgate of the North Sterling Canal, and that, at various times, PSCo's ability to exchange water from water delivery locations at or below the headgate of the North Sterling Canal to the Pawnee Wells will be limited. The Parties have agreed to the following terms and conditions for the delivery of water to PSCo:

4.1 Delivery Amounts. The Water Company shall make available for delivery to PSCo 3,000 acre-feet of fully consumable water annually in accordance with the following schedule:

January	600	July	0
February	600	August	0
March	600	September	0

April	0	October	0
May	0	November	600
June	0	December	600

Subject to the notice requirements by PSCo under the Notice of Delivery Amounts section of this Lease Agreement, PSCo, in its sole discretion, will determine whether it will divert all, none, or a portion of the water made available to PSCo by the Water Company.

4.2 Carry Over Allowance. In the event that the Water Company is unable to deliver the full amount of water shown on the foregoing schedule during the month in which the water is to be delivered, or PSCo is unable to divert the full amount of water shown in the foregoing schedule during the month in which the water is to be delivered, the difference between the amount of water shown on the foregoing schedule and the amount of water actually made available and diverted may be added to the amount of water to be made available to PSCo by the Water Company during the following month. Any modification of the monthly amounts shown in the foregoing schedule based on this subsection shall not reduce the Water Company's obligation to make available for delivery 3,000 acre-feet of fully consumable water to PSCo from November 1 to March 31 of any year that this Lease Agreement remains in effect.

4.3 Variance of Delivery Amounts. Because actual pumping may vary, actual monthly delivery amounts shall be agreed to by PSCo and the Water Company on a month-to-month basis and upon verbal agreement between PSCo's water resources department and the manager of the Water Company. Such deliveries may vary between 80% of the amount described above for the subject month, to 120% of the amount described above for the subject month. Changes in deliveries of water from the Water Company to PSCo pursuant to this Lease Agreement that are less than 80% of the monthly amounts described above, or that exceed 120% of the monthly amounts described above are allowed, provided both PSCo's water resources department and the Water Company secretary-manager agree in writing to such modification of the monthly delivery amounts described above. Modifications to the delivery schedule shall not reduce the Water Company's annual obligation to make available for delivery 3,000 acre-feet of fully consumable water to PSCo.

4.4 Notice of Delivery Amounts. PSCo shall provide any written notice to the Water Company of the amount of water that is to be delivered to PSCo pursuant to Paragraph 4.3 of this Lease Agreement, on or before the 21st day of the month prior to the month in which such water is to be delivered to PSCo by the Water Company. The written notice from PSCo to the Water Company may pertain to more than one month, and may pertain to multiple months. If PSCo provides notice of the amount of water to be delivered by the Water Company to PSCo, and that amount of water is delivered by the Water Company to the South Platte River or another water right holder pursuant to this Lease Agreement, PSCo shall be obligated to pay the Water Company for the amount of water so delivered, without regard to whether PSCo actually diverted an amount of water equal to the amount of water delivered by the Water Company.

4.5 Delivery Locations. The water to be delivered to the South Platte River for the benefit of PSCo shall be delivered to the following locations:

4.5.1 In the event that the North Sterling Reservoir Water Rights are in priority under Colorado law and water is available pursuant to the North Sterling Reservoir Water Rights at the headgate of the North Sterling Inlet Canal, the Water Company will deliver the water to the South Platte River at a location at or below the headgate of the North Sterling Inlet Canal.

4.5.2 In the event that the North Sterling Reservoir Water Rights are not in priority under Colorado law and the water right calling for delivery of water under Colorado law is the Julesburg Reservoir water right, which is diverted at the headgate of the Harmony Ditch and has an appropriation date of February 12, 1904, the Water Company shall either (1) deliver water through the North Sterling Outlet Canal to a location that the owner of the Julesburg Reservoir water right may divert the water, or (2) deliver other fully consumable water to a location upstream of the headgate of the Harmony Ditch, and PSCo may divert an amount of water equal to the amount of water delivered by the Water Company to the owner of the Julesburg Reservoir water right.

4.5.3 In the event that the North Sterling Reservoir Water Rights are not in priority under Colorado law and there is another water right located downstream of the headgate of the North Sterling Inlet Canal that is in priority and calling for water, the Water Company shall deliver fully consumable water to a location downstream of the headgate of the North Sterling Inlet Canal to satisfy the calling water right, and PSCo may divert the amount of water equal to the amount of water delivered to the calling water right.

4.5.4 In the event the Prewitt Reservoir water right in the amount of 32,300 acre-feet, with an appropriation date of May 25, 1910, and an adjudication date of January 15, 1914, as granted pursuant to the decree entered by the District Court in and for Weld County, Colorado in Case No. 2142 ("Prewitt Reservoir Water Right") is in priority and is calling for water, it is expressly agreed that, absent a separate agreement between the Water Company and one or more owners of interests in the Prewitt Reservoir Water Right for exchange of water provided by the Water Company water in lieu of water that would otherwise be diverted into Prewitt Reservoir, the Water Company shall not be required to deliver water to the South Platte River for diversion by PSCo. However, the inability of the Water Company to deliver water to the South Platte River for diversion by PSCo during such times as the Prewitt Reservoir Water Right is in priority and is calling for water shall not reduce the Water Company's obligation to make available for delivery 3,000 acre-feet of fully consumable water to PSCo from November 1 to March 1 of any year this Lease Agreement remains in effect.

4.5.5 In order to ensure that PSCo will be able to divert water at such times as PSCo has a need for the water, and the Water Company is not otherwise able to deliver water to the South Platte because the Prewitt Reservoir Water Right is in priority and is calling, the Water Company agrees to exercise good faith efforts to secure agreements with one or both types of the following types of agreements on or before March 1, 2006:

4.5.5.1 Agreements with one or more owners of interests in the Prewitt Reservoir Water Right for an exchange of water between the owners of such interests and the Water Company at alternate times and locations; and or

4.5.5.2 An agreement with North Sterling for delivery of recharge water into recharge facilities at such locations as will provide recharge water to the South Platte River upstream of the headgate of the Prewitt Reservoir, in accordance with the application pending before the Water Court in and For Water Division No. 1 in Case No. 96CW1034, so that such recharge may be used by PSCo as a replacement for out-priority depletions affecting the Prewitt Reservoir Water Right pursuant to the terms of this Lease Agreement.

4.5.6 If by March 1, 2006, the Water Company is unable to secure agreements with owners of interests in the Prewitt Reservoir Water Rights and/or an agreement with North Sterling for delivery of recharge water to the South Platte River, sufficient to enable PSCo to divert water in accordance with the schedule set for in Section 4.1 above, at times when the Prewitt Reservoir Water Rights are in Priority and is calling, then PSCo shall be entitled to a twenty percent (20%) reduction in the amount of the Base Payment, beginning with the November 1, 2006 Base Payment, and for each year thereafter that the Water Company fails to secure such agreement(s) by March 1 of that same year.

4.5.7 The Parties may mutually agree upon other locations to which the Water Company will deliver fully consumable water to enable PSCo to divert an amount of water at the Pawnee Well Field that is equal to the amount of water delivered to any calling water right.

4.5.8 Rate of Diversion. Water delivered by the Water Company to PSCo pursuant to this Lease Agreement may be diverted from the South Platte River by PSCo at a diversion rate not to exceed 35 c.f.s.

5. Measurement. The Water Company shall measure and maintain monthly records of its deliveries to the South Platte River under this Lease Agreement. PSCo shall measure and maintain monthly records of its diversions of water delivered by the Water Company. Each Party shall provide the other Party with copies of such records on a monthly basis.

6. Payments.

6.1 Calculation of Payments. Payments under this Lease Agreement shall consist of a Base Payment and a Delivery Payment.

6.1.1 Base Payments. PSCo shall annually pay to the Water Company a base payment regardless of whether PSCo elects to divert any water made available for delivery by the Water Company pursuant to this Lease Agreement ("Base Payment"). The first Base Payment, for water made available by the Water Company for the period from November 2005 through March 2006 shall be in the amount of \$150,000, and shall be paid by PSCo to the Water Company on or before January 10, 2006. Thereafter, the Water Company shall submit an invoice to PSCo by October 1st of each year for the Base Payment. The invoice shall be paid by PSCo within thirty days of receipt of said invoice, or by November 1st, whichever is later. If PSCo does not pay the invoice by the required date, it shall be assessed a carrying charge of 1.5% per month on the unpaid balance.

6.1.2 Delivery Payments. PSCo shall also pay to the Water Company an additional \$425 for each acre-foot of water that is delivered by the Water Company to the South Platte River pursuant to this Lease Agreement ("Delivery Payments"). Such Delivery Payments shall be billed by the Water Company in the first week following the month in which the deliveries occur, and shall be paid by PSCo within 30 days of receipt of the billing from the Water Company. If PSCo does not pay the invoice within the required thirty days, it shall be assessed a carrying charge of 1.5% per month on the unpaid balance.

6.2 Rate Adjustments. The initial rate for the Base Payment shall be \$50 per acre-foot. The initial rate for Delivery Payments shall be \$425 per acre-foot. Every year thereafter, these rates shall be increased in accordance with the following formula:

$$AP = BP(LI/LB)$$

Where: AP is the adjusted price per acre-foot of water

BP is the base price of \$50 per acre-foot for the Base Payments and \$425 per acre-foot for Delivery Payments.

LI is the Consumer Price Index for all urban consumers, all items, U.S. City Average as published for January of the year of adjustment. If the Consumer Price Index is changed, the Index shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics. Should the Index be discontinued, the Parties agree to substitute another index generally recognized to be authoritative.

LB is the base value of the above described index, which shall be the published value for January 2005.

6.2.1 Should the Consumer Price Index for all urban consumers, all items, U.S. City Average (LI in the above formula) decrease in any year, the adjusted price for the Base Payments and the Delivery Payments shall not be decreased and shall remain the same as the previous year.

6.3 Effective Date of Rate Adjustment. The Effective Date for adjusting the Base Payments and the Delivery Payments shall be April 1 of each year.

7. Term.

7.1 Unless previously terminated, as described in this section or the Force Majeure section of this Lease Agreement, this Lease Agreement shall terminate on January 21, 2031, and shall be of no force and effect thereafter. Upon termination of this Lease Agreement, the Water Company shall have no obligation to supply water to PSCo. PSCo waives any claim to continued water supply by the Water Company after termination, and PSCo shall no longer have any obligation to make payments hereunder to the Water Company.

7.2 This Lease Agreement may also be terminated as provided below in the event that PSCo discontinues electrical power generation at Pawnee Station; provided, however, that such right to terminate may not be exercised at any time prior to 10 years from the Effective Date of this Lease Agreement.

7.2.1 PSCo shall give the Water Company written notice of its intent to terminate this Lease Agreement ("Notice of Termination"). PSCo shall make all payments required by this Lease Agreement for the year in which the Notice of Termination is given. In addition, at PSCo's request, the Water Company shall deliver to PSCo all the water that is required to be delivered under this Lease Agreement for the year in which the Notice of Termination is given.

7.2.2 During the calendar years that follow the year in which PSCo gives the Notice of Termination, the Water Company shall have no obligation to deliver any water pursuant to this Lease Agreement. However, PSCo shall pay the following percentage of the Base Payment to the Water Company on November 1 of such years:

<u>Year Following Termination Notice</u>	<u>% of Base Payment Made</u>
1	100%
2	80%
3	60%
4	40%
5	20%
Subsequent years	0%

7.2.3 During the calendar years that follow the year in which PSCo delivers the Notice of Termination, there shall be no rate adjustment for the Base Payments, which payments shall be paid at the rate that existed as of the date of the Notice of Termination.

8. Force Majeure. If at any time during the term of this Lease Agreement, either PSCo is rendered unable to operate the Pawnee Station, or the Water Company is rendered unable to deliver water pursuant to the terms of this Lease Agreement as a result of actions by federal, state or local governments, or their agencies, the affected Party shall give notice to the other Party within thirty (30) days from the date the affected Party has notice or knowledge of the governmental action or proposed action. The notice shall specify: (1) the nature of the governmental action or proposed action, (2) the impact on the affected Party, (3) the projected date on which the governmental action or proposed action will preclude the affected Party from operating pursuant to this Lease Agreement, and (4) a description of the actions that the affected Party will take with respect to the governmental action or proposed action. The Parties shall continue to perform under this Lease Agreement until the date that the affected Party is precluded from continued operations by the governmental action or proposed action. If PSCo is the affected Party, PSCo shall only pay the Water Company for water delivered as of the date of discontinuance of operations at the then-existing per acre-foot rate. If the Water Company is the affected Party, it shall deliver water hereunder until such date as it is precluded from operating pursuant to this Lease Agreement, and PSCo shall only pay the Water Company for water actually delivered during the calendar year in which the discontinuance of operations occurs. Payment shall be at the then-existing per acre-foot rate, and if PSCo has paid for more water than is actually delivered, the Water Company shall refund to PSCo any amounts paid for water that was not actually delivered by the Water Company. This Lease Agreement shall terminate on the date of discontinuance of operations, subject to the payment and delivery obligations described in this section of the Lease Agreement. If at any time during the term of this Lease Agreement the affected Party is able to continue or restart operations in compliance with federal, state or local law, the unaffected Party shall have the option of reinstating this Lease Agreement by providing written notice to the affected Party. The unaffected Party shall specify in the written notice the date on which this Lease Agreement shall be reinstated, and obligations under this Lease Agreement shall remain in full force and effect from the date of such reinstatement.

9. Water Court Proceedings. The Parties agree to fully cooperate in any Water Court proceedings that are necessary to implement performance under this Lease Agreement. Each Party shall bear its own costs and attorneys fees associated with such proceedings.

10. Inclusion in Substitute Water Supply Plan. The Water Company will work with North Sterling to include the Pawnee Wells in the 2005 Substitute Water Supply Plan and subsequent substitute water supply plans pertaining to the augmentation plan that is currently pending before the District Court in and for Water Division No. 1 in Case No. 96CW1034.

11. Priority of Delivery. It is expressly understood between the Parties, that should the Water Company contract with other entities or individuals for delivery of water, that such deliveries shall not interfere with, and shall be subordinate to, the delivery obligations imposed on the Water Company by this Lease Agreement.

12. Changes in Quantity or Timing of Delivery. The Parties may, by separate, written agreement: (1) increase or decrease the total annual amount and/or the monthly amount of fully consumable water from the North Sterling Water Rights that will be delivered to the South Platte River by the Water Company on behalf of PSCo; and/or (2) change or modify the months in which fully consumable water from the North Sterling Water Rights will be delivered to the South Platte River by the Water Company on behalf of PSCo; and/or (3) change the timing of any delivery of fully consumable water delivered to the South Platte River by the Water Company on behalf of PSCo to include delivery of all or any portion of fully consumable water available pursuant to the North Sterling Water Rights at any and all times, without limitation.

13. Indemnification. The Parties agree to save and hold each other harmless from and against all liability from damage to property, or death of any person, or liability arising from claims arising out of or specifically related to actions of the Parties and their agents, employees, and contractors and pursuant to the terms and conditions of this Lease Agreement.

14. Audits. The Water Company agrees to maintain accurate records in accordance with sound accounting principles to evidence compliance with this Lease Agreement. Said accounting records shall present a fair and accurate accounting of all charges to PSCo under this Lease Agreement. Upon 30 days written notice, the Water Company shall provide PSCo with access to such accounting records, so that PSCo can determine whether the Water Company is in compliance with the provisions of this Lease Agreement. These accounting records shall be made available to PSCo during the term of this Lease Agreement and for a period of twenty-four (24) months thereafter.

15. Default; Remedies. In the event of default hereunder by any Party, the remedies upon default are as set forth below unless otherwise provided in this Lease Agreement. The remedies of the Parties shall survive termination of this Lease Agreement.

15.1 A default shall be deemed to have occurred if any Party breaches its obligations hereunder and fails to cure such breach within 30 days of receipt of written notice specifying the breach.

15.2 Upon any default by any Party, the non-defaulting Party shall be entitled to seek any available remedies under law or equity (including, without limitation, specific performance and/or damages) and the prevailing Party shall also be entitled to recovery of its reasonable attorneys' fees, expert witness fees, and court costs. The Parties acknowledge that due to the unique subject matter of this Lease Agreement, legal remedies may be inadequate, damages may be difficult to determine, and it may be impossible to return the non-defaulting Party to the status quo as it existed at the time of default. As a result, the non-breaching Party shall have the right to specific performance under terms and conditions of this Lease Agreement.

16. Notice. All notices and other communications under this Lease Agreement shall be in writing and shall be deemed to have been received on the date of service, if served personally or via facsimile on the person to whom notice is given, or on the third day after

mailing, if mailed to the Party to whom notice is to be given by certified, first class mail, postage prepaid, return receipt requested and properly addressed as follows:

PSCo: Xcel Energy
4653 Table Mountain Drive
Golden, CO 80403
ATTN: Water Resources

Water Company: Point of Rocks Water Company, L.L.C.
112 North 8th Avenue
Sterling, CO 80751

Any Party may change its address by giving notice in the manner provided hereunder.

17. Additional Provisions.

17.1 Survival of Terms. The representations, warranties, and covenants given by each Party hereunder, and the Parties' remedies and obligations set forth herein, shall be deemed to be continuing in nature.

17.2 Negotiation. This Lease Agreement has been submitted to the scrutiny of, and has been negotiated by all Parties hereto and their counsel. It shall be given fair and reasonable interpretation in accordance with its terms, without consideration or weight being given to its having been drafted by any Party or its counsel.

17.3 Waiver. This Lease Agreement may not be amended, nor any rights hereunder waived except by an instrument in writing signed by the Party to be charged with such amendment or waiver. The waiver by any Party of any term or condition of this Lease Agreement shall not be deemed to constitute a continuing waiver thereof, nor of any additional right that such Party may have under this Lease Agreement.

17.4 Binding Effect. This Lease Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors.

17.5 No Third Party Beneficiaries. This Lease Agreement is entered into between the Parties for the purposes set forth herein. No other person or entity is a beneficiary of this Lease Agreement, nor shall any other person or entity be considered a beneficiary, third party or otherwise, of this Lease Agreement.

17.6 Colorado Law. This Lease Agreement shall be governed by the laws of the State of Colorado, insofar as any matter is not regulated by applicable laws of the United States. Wherever possible, each provision of this Lease Agreement shall be interpreted in such manner as to be effective and valid under the laws of the State of Colorado, or, as applicable, under the laws of the United States, but if any provision of this Lease Agreement shall be prohibited or invalidated thereby, such provision shall be ineffective to the extent of such

prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease Agreement.

17.7 Paragraph Headings. The paragraph headings of this Lease Agreement are inserted for convenience and reference only and shall not alter, define, or be used in construing the text of the paragraphs.

17.8 Additional Documents. The Parties agree to execute such additional documents and give such further assurances as may be reasonably necessary to complete the transactions contemplated herein.

17.9 Counterparts. This Lease Agreement may be executed in any number of counterparts, each of which shall be considered to be an original, but all of which together shall constitute one and the same instrument.

17.10 Entire Agreement. This document constitutes the entire agreement between the Parties concerning the subject matter hereof. It supersedes any prior agreements or understandings between the Parties concerning the subject matter hereof.

17.11 Full Authority. The undersigned represent that they have full authority to enter this Lease Agreement on behalf of the respective Parties. The Parties have taken all actions required and secured the necessary approvals to enter this Lease Agreement.

17.12 Effective Date. This Agreement shall be effective on the last date it is signed by the Parties.

IN WITNESS WHEREOF, the Water Company and PSCo have caused these presents to be executed in their respective behalf by their proper officers.

Point of Rocks Water Company, LLC

By: James R. Riser
Manager

ATTEST:

James S. Yahn
Secretary

Public Service Company of Colorado

By: David Wilks
David Wilks, Vice-President

Overland Pass Pipeline Company, LLC Agreement

FRICO004882

WATER LEASE AGREEMENT

THIS WATER LEASE AGREEMENT ("Agreement") is entered into this 31st day of January, 2008 (the "Effective Date"), by and among the North Sterling Irrigation District ("Lessor") and Overland Pass Pipeline Company LLC ("Lessee"). Lessor and Lessee may be referred to individually as a "Party," and collectively as the "Parties."

RECITALS:

- A. Lessor owns or controls decreed South Platte River water rights that may legally be used for industrial use.
- B. Lessee is constructing the Overland Pass Natural Gas Liquids Pipeline ("Pipeline"), and requires water to complete hydrostatic pressure testing of the Pipeline and for other pipeline construction activities, at times when free river conditions do not exist.
- C. A portion of the Pipeline will be constructed via boring under the South Platte River and the North Sterling Inlet Canal at the location generally shown on the attached Exhibit 1.
- D. Subject to the terms and conditions of this Agreement, Lessor is leasing to Lessee water to be used by Lessee and its contractors in conjunction with hydrostatic pressure testing and other pipeline construction activities.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows.

- 1. Lease of Water. Subject to the terms and conditions of this Agreement, Lessor hereby leases to Lessee up to 20 acre feet of water approved for industrial use as decreed in Case No. 96CW1034 (Water Div. 1).
- 2. Term of Agreement. This Agreement shall commence on the Effective Date and shall continue through August 31, 2008, unless earlier terminated pursuant to this paragraph 2. If the pipeline construction activities for which water will be supplied under this Agreement are completed before August 31, 2008, Lessee shall so notify Lessor, and this Agreement shall terminate upon such notice.
- 3. Payment. The lease price shall be \$500 per acre foot of water. As payment for use of the water leased under this Agreement, Lessee shall pay Lessor \$5,000 for a minimum of 10 acre feet of water at the price of \$500 per acre foot ("Minimum Payment"). The Minimum Payment of \$5000 shall be made within 14 days of the Effective Date. The Minimum Payment is non-refundable, regardless of whether Lessee actually takes any water under this Agreement.

FRICO004883

No later than August 31, 2008, Lessee shall pay Lessor \$500 per acre foot for each acre foot of water actually diverted in excess of 10 acre feet. The Parties shall cooperate to develop mutually acceptable means of calculating the amount of water delivered to Lessee.

4. Diversion of Leased Water. When water is flowing in the North Sterling Ditch, Lessee or its contractors may divert leased water directly from the North Sterling Ditch. When water is not available in the North Sterling Ditch, Lessee shall divert leased water directly from the South Platte River at a point near the Pipeline.

5. Use of Leased Water. Leased water will be used directly by Lessee or its contractors, after pumped from the North Sterling Ditch, or pursuant to a substitute water supply plan, if one is required, if diverted from the South Platte River. The water shall only be used for industrial purposes, including hydrostatic pressure testing of the Pipeline and related pipeline construction activities.

6. Substitute Water Supply Plan. Lessor agrees to cooperate and participate as reasonably necessary in all State Engineer's proceedings relating to Lessee's pursuit of substitute water supply plan approval pertaining to the substitution of water leased under this agreement for Lessee's diversion of water directly from the South Platte River.

7. Miscellaneous.

(a) Amendment. This Agreement may be modified or amended only by an agreement in writing duly authorized and executed by the Parties.

(b) Entire Agreement. This Agreement represents the entire agreement of the Parties, and neither Party has relied upon any fact or representation not expressly set forth herein. This Agreement supersedes all other prior agreements and understandings of any type, both written and oral, between the Parties with respect to the subject matter hereof.

(c) Headings for Convenience Only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

(d) Binding Effect. This Agreement and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

(e) Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Colorado. The Parties agree that venue for any litigated disputes regarding this Agreement shall be the Logan County District Court.

(f) Multiple Originals. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same Agreement.

(g) Notices. Any notice required or permitted to be given hereunder shall be in writing addressed as follows, or as the Parties may subsequently designate by written notice to the other. All notices shall be delivered by facsimile, recognized overnight delivery service, or hand-delivery and shall be deemed effective upon: (i) the successful transmission of a facsimile; (ii) deposit with a recognized overnight delivery service; or (iii) upon receipt by hand delivery.

If to Lessor:

North Sterling Irrigation District
Attn: Jim Yahm
P.O. Box 103
Sterling, Colorado 80751
Phone: 970-522-2025

If to Lessee:

Overland Pass Pipeline Company LLC
Attn: Walt Hoppensteadt
P.O. Box 871
Tulsa, Oklahoma 74102
Phone: 877-683-7277

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

North Sterling Irrigation District

By: James L. Yahm
Its: Manager

**Overland Pass Pipeline Company
LLC**

By: Walt Hoppensteadt
Its: Authorized Agent

STATE OF COLORADO)
) ss
COUNTY OF Logan)

The foregoing instrument was acknowledged before me this 1 day of February, 2008, by James T. Yahn, as Manager for North Sterling Irrigation District.



Witness my hand and official seal.

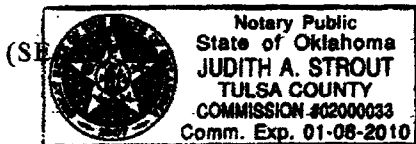
Mendi Roberts
Notary Public

My commission expires: 8/10/09

STATE OF Oklahoma)
) ss
COUNTY OF Tulsa)

The foregoing instrument was acknowledged before me this 29th day of January, 2008, by W. R. Hoppensteadt, as Attorney-in-Fact for Overland Pass Pipeline Company LLC.

Witness my hand and official seal.



Judith A. Strout
Notary Public

My commission expires: 01-08-2010

3812614_1.DOC

APPENDIX B

INVOICES AND DIRECT DISTRICT EXPENSE

FRICO004887

North Sterling Irrigation District Employee Time (Hrs) Related To Ditch Break

<u>Date</u>	<u>Employee</u>					
	<u>Yahn</u>	<u>Rose</u>	<u>Schippert</u>	<u>Miller</u>	<u>Vass</u>	<u>Blecha</u>
26-Jan	2	2	2			
27-Jan	2	4	4	4	4	4
28-Jan	2	4	4	4	4	4
29-Jan	2					
30-Jan	2					
31-Jan	2					
01-Feb	2	6				
02-Feb	2	4				
03-Feb	2	4				
04-Feb	2	17	17			
05-Feb		16	14			
06-Feb		15	12			
07-Feb		16		16		
08-Feb		16		16		
09-Feb		18		18		
10-Feb		8		8		
11-Feb	—	<u>6</u>	—	<u>6</u>	—	—
Total	20	136	53	72	8	8

Total North Employee Time 297 hours @ \$20/hrs = \$5,940

Estimated Fuel Usage

It is difficult to determine the exact extra fuel usage, but by reviewing past fuel usage and comparing it to fuel used during the ditch break event it is estimated that an additional 375 gallons of gasoline was used. The price of this fuel was \$3.10/gallon for a total cost of 1,162.50.

FRICO004888

Invoices

FRICO004889

Of Colorado LLC

INVOICE # 08002
DATE: 02-18-08

FOR:
[Project or service description]
[P.O. #]

Make all checks payable to Long Reach Excavators
Total due in 15 days. Overdue accounts subject to a service of 2% per month.

FRICO004890



Kumar & Associates, Inc.
Geotechnical and Materials Engineers
and Environmental Scientists



2390 South Lipan Street
Denver, CO 80223
phone: (303) 742-9700
fax: (303) 742-9666
e-mail: kadenver@kumarusa.com
www.kumarusa.com

Other Office Locations: Colorado Springs, Fort Collins, Pueblo
and Winter Park/Fraser, Colorado

February 29, 2008
Project No: 081-134.00
Invoice No: 0152364

North Sterling Irrigation District
Attention: Mr. Jim Yahn
P.O. Box 103
Sterling CO 80751

Subject: Construction Observation and Materials Testing Services, Sterling Canal Repair, Near Stearling,
Colorado.
GJM

Billing through February 23, 2008

	Hours	Rate	Amount
ENGINEERING			
Senior Project Engineer	14.50	125.00	1,812.50
Total Labor			\$1,812.50
MISCELLANEOUS EXPENSES			
Mileage Expense			115.00
Total Expenses		1.0 times	115.00
			\$115.00
LABORATORY TESTING			
Atterberg Limits	2.00 tests @	40.00	80.00
Percent Passing No. 200 Sieve	2.00 tests @	20.00	40.00
Standard Proctor Compaction	2.00 tests @	75.00	150.00
Total Units			\$270.00
Billing Limits			
Total Billings	Current	Prior	To-date
Limit	2,197.50	0.00	2,197.50
Remaining			7,500.00
			5,302.50

TOTAL DUE \$2,197.50

KUMAR & ASSOCIATES, INC.

By


Greg J. Monley, P.E.

FRICO004891

Circle L Irrigation, Inc.**Invoice**

**PO Box 1969
335 East Chestnut
Sterling, CO 80751
(970) 522-8816**

Date	Invoice #
2/29/2008	8144

Bill To
North Sterling Irrigation Box 103 Sterling, CO 80751

Item	Quantity	Description	Rate	Amount
1040033	1	3" x 3" Black Half Nipple	12.80	12.80T
3684-03	1	6"x4" Blk Weld On Cone 10GA	12.70	12.70T
3684-05-FL	1	8"x6" Blk Weld On Cone 10GA	19.30	19.30T
3684-06-FL	1	10"x8" Blk Weld On Cone 10GA	19.70	19.70T
1675-15	1	10" Pierce Galv Male End	27.50	27.50T
2123-04-FL	1	10" Ringlock Clamp	20.00	20.00T
LPT		Parts & Service Labor	75.00	75.00
			Subtotal	\$187.00
			Sales Tax (0.0%)	\$0.00
			Total	\$187.00

FRICO004892

License

This agreement made this 8th day of FEB, 2007, between the North Sterling Irrigation District (North Sterling), 112 North 8th Avenue-P.O. Box 103, Sterling, Colorado 80751 and Overland Pass Pipeline Company LLC, (Licensee) who address is P. O. Box 871, Tulsa, Oklahoma 74102 (Real Estate Services).

Witnesseth:

The following grant and mutual covenants by and between the parties:

1. Grant of License. For valid consideration and subject to the covenants, conditions, and limitations hereinafter set out, North Sterling does hereby grant unto the Licensee, a non-exclusive license for the purpose of the construction, use, maintenance, repair and removal of the following structure: One 16" steel pipeline for utilization to transport natural gas liquids pipeline across North Sterling's canal right-of-way situated in Logan County, State of Colorado, at the location described in Exhibit A, a copy of which is attached hereto and incorporated herein by reference.

2. Construction, Maintenance and Use. The structure above described shall be constructed, maintained and used at no cost to North Sterling. Licensee hereby agrees that the above described structure will be constructed under the supervision of the North Sterling Manager and that the irrigation canal will be crossed according to the specifications set out by said Manager. (See Exhibit B.) Where compacting of earth materials is required around the structures, the materials shall be deposited in horizontal layers and compacted by using pneumatic and/or other suitable mechanical tampers. Backfill materials shall be deposited in horizontal layers of not more than six inches in thickness after being compacted. Prior to and during compaction operations, backfill material shall have the optimum practicable moisture content required for the purpose of compaction as determined by North Sterling.

All portions of the right-of-way and of the canal bottom, sides and banks which are disturbed by Licensee's activities shall be restored to the original condition and all fencing and other facilities appurtenant to the canal right-of-way shall be replaced in condition at least equal to the condition of such facilities and appurtenances prior to construction of the structures permitted herein. Within one hundred twenty (120) days after the completion of said crossing, the Licensee will furnish North Sterling with a plat showing the location, design and construction of said crossing. Said plat shall become a part of this license.

Licensee agrees that the construction or maintenance of the licensed structure over said canal shall not interfere with or hinder the operation or maintenance of the irrigation canal and shall not impede or interrupt the flow of water in such canal. North Sterling shall not be liable for any damage done to the above-described structure of the Licensee by North Sterling while operating or maintaining the canal or as a result of any flooding or high water conditions.

Furthermore, the structure above described shall at all times be maintained and used in a manner and by means that will not create a hazard to the public or to the officials, employees, and contractors of North Sterling and will not damage or constitute a threat of damage to the facilities of operations of North Sterling.

FRICO004893

3. Notice. Notices provided for in this agreement may be served by either regular mail addressed to the parties at the addresses shown above, or by personal delivery to the addresses shown above. Notice given by mail shall be effective on the date of mailing, and notice given by personal delivery shall be effective upon delivery to the proper address.

4. Termination. This license shall be in effect unless terminated pursuant to this agreement, or until the above described structures are abandoned by Licensee. The license granted by this agreement is subject to termination for any breach of the terms of this agreement. In the event of termination, North Sterling may give notice to the Licensee in writing of the termination of this license. North Sterling may elect to give the Licensee a reasonable time to correct any defect or hazard, but in no case shall any grant of time for said corrections adversely affect North Sterling's right to terminate this license. If the license hereinabove granted is terminated, or if the licensed structure is abandoned, the Licensee shall immediately remove all facilities or structures constructed or installed on the above described lands by the Licensee, and the Licensee shall return the land to safe, usable, and cleared condition, as determined by North Sterling. In the event that the Licensee does not, within sixty days after termination of the license, remove all facilities constructed or installed by Licensee, North Sterling may remove the facilities and installations placed on the above-described lands; dispose of all materials and equipment so removed by such means as may appear advisable; return the premises to a safe, usable and cleared condition; and recover all costs of removal, disposal, and rehabilitation of the area from the Licensee or its successors and assigns. Under no circumstances shall North Sterling or its employees, contractors, or agents be liable for any damage or injury to the Licensee caused by or arising from any damage or injury to the Licensee caused by or arising directly or indirectly from the removal of facilities and installations as provided herein.

5. Assignment. Licensee reserves the right to assign this License to an affiliate of Licensee. However, Licensee shall first obtain the consent of North Sterling before any assignment is made to a non-affiliate of Licensee. Said consents shall not be unreasonably withheld. Any assignees or successors to the right of the Licensee shall be liable and bound under all the provisions of this agreement to the same extent as the Licensee.

6. Modifications or Additions. The Licensee agrees that it will not make any modifications of the above-described structure without obtaining prior approval in writing from North Sterling. The Licensee further agrees not to construct or maintain any additional structures on the above-described lands of North Sterling without first obtaining a license for said structures from North Sterling.

7. Land-Use Subordination. The right-of-way covered by this License is a part of the facilities of North Sterling. There is reserved to North Sterling, its successors or assigns, the prior right to use any of the lands herein described to construct, operate and maintain all structures and facilities including, but not limited to, canals, wasteways, laterals, ditches, roadways, electrical transmission lines, dams, dikes, reservoirs, pipelines, and any other appurtenant irrigation or power structures and facilities, without any payment made by North Sterling or its successors for such right.

The Licensee further agrees that if the construction of any or all of such structures and facilities across, over or upon said lands should be made more expensive by reason of the existence or improvements or works of the Licensee thereon, Licensee shall be liable for such costs. Within

thirty days after demand is made upon the Licensee for payment of any such costs, the Licensee will make payment thereof to North Sterling or to any of its successors or assigns constructing such structures and facilities across, over or upon said lands. As an alternative to payment, the Licensee, at its sole cost and expense and within time limits established by North Sterling, may remove or adapt facilities constructed and operated by it on said lands to accommodate the aforementioned structures and facilities of North Sterling. The Licensee shall bear the cost to North Sterling of any costs occasioned by the failure of the Licensee to remove or adapt its facilities within the time limits specified.

There is also reserved to North Sterling the right of its officers, agents, employees, licensees and permittees at all proper times and places freely to have ingress to, passage over, and egress from all of said lands for the purpose of exercising, enforcing and protecting the rights reserved herein.

The Licensee further agrees that North Sterling, their officers, agents, and employees and their successors and assigns shall not be held liable for any damage to the Licensee's improvements or works by reason of the exercise of the rights hereinabove reserved.

8. Indemnity. Licensee agrees to indemnify and hold harmless North Sterling, its officers, agents, employees, and contractors, from claims and liability for damage or injury to property or persons or death arising from or caused directly or indirectly by the occupancy and use of the above-described lands by the Licensee. Licensee agrees that it shall be directly liable to North Sterling, its stockholders and water users for all loss or death arising from or caused directly or indirectly by the occupancy and use of the above-described lands by the Licensee. Licensee agrees that it shall be directly liable to North Sterling, its stockholders and water users for all loss or damage occasioned by the construction, installation, operation, maintenance or abandonment of the above-described statute. At North Sterling's request, Licensee shall defend North Sterling and its officers, agents, employees and contractors against any such claim, suit or demand.

9. Consideration. As. Consideration for the grant of license hereinabove made, the Licensee shall, upon execution of this instrument, pay North Sterling the sum of eight thousand dollars (\$8,000.00).

The North Sterling Irrigation District (Lessor)

By: [Signature]
David A. Hernandez, President

Date 2-8-07

ATTEST: [Signature]
James T. Yahn, Secretary

Date 2-8-07

Overland Pass Pipeline LLC Licensee)

By: [Signature]
Walt Hoppensteadt, aka W. R. Hoppensteadt
Attorney-in-Fact

Date 1-25-07

FRICO004895

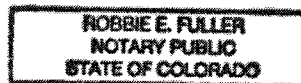
STATE OF COLORADO)
) ss
COUNTY OF LOGAN)

Subscribed and sworn before me this 8th day of February, 2007, by David A. Hernandez as President, and James T. Yahn as Secretary of The North Sterling Irrigation District.

Witness my hand and official seal.

My commission expires 6/28/2010.

[Seal]



Robbie E. Fuller
Notary Public Robbie E. Fuller

STATE OF Wyoming)
) ss
COUNTY OF LARAMEE)

Subscribed and sworn before me this 25th day of JANUARY, 2007, by Walt Hoppensteadt, aka W. R. Hoppensteadt, Attorney-in-Fact for Overland Pass Pipeline LLC, (Licensee).

Witness my hand and official seal.

My commission expires MAR 7 2010.

[Seal]



Larson H. Hornes
Notary Public

FRICO004896

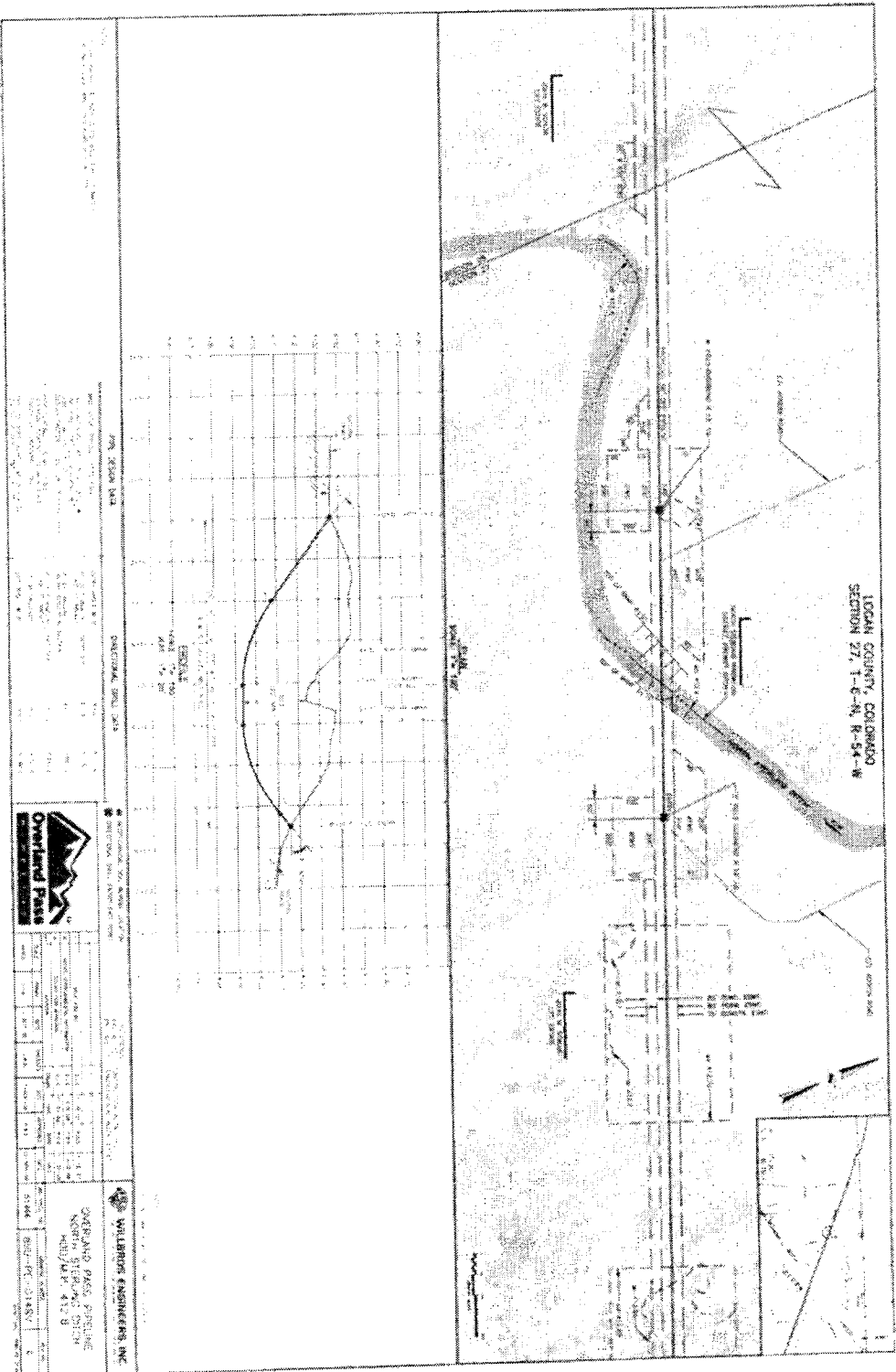


EXHIBIT "A"

Exhibit B

North Sterling Irrigation District

Specifications for bore crossings of the North Sterling Inlet or Outlet Canals
(to be made part of License Agreement)

- 1) The North Sterling Irrigation District Manager shall be notified prior to the crossing being started. He can be reached at (970) 522-2025
- 2) The bore shall begin no closer than 20 feet from the edge of the canal on each side.
- 3) The bore shall be at least 10 feet below the lowest point in the ditch bottom.
- 4) Each side of the crossing shall be clearly marked with some type of marker to indicate the exact location of that crossing. (The marker shall not be placed on the ditch road)
- 5) Emergency phone numbers for the North Sterling Irrigation District:

Jim Yahn, Manager (970) 522-6918 (home)
(970) 520-0170 (cell)

Leon Rose, Assistant Manager (970) 522-6680 (home)
(970) 520-2084 (cell)









