

GCWSD WATER STORAGE RESERVOIR NO. 2
OPERATING AGREEMENT

I. Introduction.

The Grand County Water and Sanitation District #1 (“GCWSD”) owns and operates GCWSD Water Storage Reservoir No. 1 (“Reservoir 1”) and GCWSD Water Storage Reservoir No. 2 (“Reservoir 2”). Reservoir 1 has been conditionally decreed by the Water Division 5 Water Court in Case No. 02CW367 to store 158 acre-feet.

Reservoir 2 has been conditionally decreed in the same case to store 80 acre-feet of water (the Reservoir 2 water right is referred to as the “Water Right”). Reservoir 2 also has been determined by the Colorado State Engineer’s Office to meet the design standard for a lined storage reservoir (the water storage capacity available in Reservoir 2 is referred to as the “Water Storage Capacity”).

Pursuant to Purchase and Sale Agreements, dated May 3, 2018 and May 9, 2018, respectively, the Town of Fraser (“Fraser”) acquired 25 acre-feet of the Water Right and 25 acre-feet of the Water Storage Capacity and the Winter Park Water and Sanitation District (“WPWSD”) acquired 25 acre-feet of the Water Right and 25 acre-feet of the Water Storage Capacity.

The purpose of this Operating Agreement is to state the terms and conditions under which the Water Right and Water Storage Capacity to be owned by Fraser and WPWSD will be stored and used along with GCWSD’s interest in Reservoir 1 and Reservoir 2. In this Operating Agreement, GCWSD, WPWSD and Fraser may be referred to individually as a “Party” and collectively as the “Parties.”

As used in this Operating Agreement, the Parties shall have the following Storage Capacity Ratios in Reservoir 2:

GCWSD –	20 af ÷ 70 af = 28%
Fraser –	25 af ÷ 70 af = 36%
WPWSD -	25 af ÷ 70 af = 36%

II. Operations.

- a) As held by each of the Parties, the Water Right and the Water Storage Capacity shall be a singular property interest.

- i. Except as expressly provided in this Operating Agreement, the Water Right and Water Storage Capacity held by the Parties, respectively, shall never exceed their Storage Capacity Ratio set forth above; provided that the Parties may convey all or a portion of their respective Water Right and Water Storage Capacity consistent with this Operating Agreement.
 - ii. The Parties may carry-over water into the following year or years; provided that their Storage Capacity Ratio shall not change as a result of such carry-over storage and they shall not exceed their respective Water Storage Capacity.
 - iii. The Parties may store foreign water owned by them in Reservoir 2. The Parties' respective Storage Capacity Ratios shall not be exceeded, and their total storage capacities shall not be exceeded. By way of example only, if Fraser stores, in Year 1, foreign water owned by it in Reservoir 2, its Storage Capacity Ratio shall remain at 36%, and Fraser shall be entitled to store a total (Water Right plus foreign water) of 25.0 acre-feet in Reservoir 2. The Parties may also carry-over foreign water stored by them from year-to-year. In the example above, if Fraser elects to maintain its foreign water in storage in Reservoir 2 in Year 2, its Storage Capacity Ratio shall not be exceeded and its total storage in Reservoir 2 shall not exceed 25.0 acre-feet. The Party seeking to store foreign water in Reservoir 2 shall be responsible for timely obtaining any Water Court or administrative approvals necessary for the storage of foreign water in Reservoir 2.
 - iv. In the event that a Party stores foreign water in Reservoir 2, each of them agrees that the first water stored in Reservoir 2 in a given water year shall be attributed to the Water Right. An application is currently pending in the District Court in and for Water Division 5 in Case No. 18CW3070 to convert 70 acre-feet of the Water Right to absolute status and confirm the remaining 10 acre-feet as a valid conditional water right. In the event that the Water Court does not make 70 acre-feet of the Water Right absolute, this provision shall continue in full force and effect to convert the Water Right to an absolute water right in accordance with C.R.S. § 37-92-301(4)(e).
- b) The Parties acknowledge and agree that the Water Right is junior in priority and that water may not be available for storage under the Water Right from year-to-year. GCWSD shall have no obligation to provide a substitute supply of water to

WPWSD and Fraser from any sources other than water stored in priority under the Water Right.

- c) GCWSD shall divert and store water under the Water Right in Reservoir 2 when storage capacity exists and water is available in priority under the water right for Reservoir 2, provided that there is no practical (e.g., weather-related) or legal impediment to such diversion or storage. Such storage shall be generally consistent with the Colorado Division of Water Resources General and the applicable Water Court decrees. Administration Guidelines for Reservoirs, as amended from time to time. Deliveries to storage of water stored under the Water Right shall be allocated in accordance with the Parties' respective Storage Capacity Ratio.
- d) All storage and release of water, and operation of all structures associated with Reservoir 1 or Reservoir 2, shall be conducted exclusively by GCWSD. Neither WPWSD nor Fraser shall have authority to open or close headgates or structures to release water or to operate any other structure to deliver water to or from Reservoir 1 or Reservoir 2. This provision includes the diversion structure and pipeline to deliver water from the Fraser River to Reservoir 1 and the pond transfer structure between Reservoir 1 and Reservoir 2.
- e) Releases of water on behalf of WPWSD or Fraser shall be made by GCWSD in accordance with notification by WPWSD or Fraser to GCWSD that includes the amount of water to be released and the requested timing of such release. Such notification must be made in writing or by email. Within two business days of receipt of such notice, GCWSD shall release the requested water; provided, however, that GCWSD shall release water as soon as practicable if so required by the Water Commissioner. Releases for a Party shall not exceed that Party's Storage Capacity Ratio times the total outlet capacity, unless additional outlet capacity exists at the time of release. Requests may be made either by flow rate (cfs) or volumetrically (acre-feet). Absent extraordinary circumstances or unless required by the Water Commissioner:
 - i. No more than one release (including an adjustment to a release) shall be typically made per day per Party;
 - ii. Releases shall typically occur on Monday-Friday during regular business hours; and

- iii. GCWSD shall not be obligated to release water if there is a practical (e.g., weather-related) or legal impediment to doing so.

Collectively among the Parties, releases shall not exceed a maximum release rate of ___ cfs. If the requested releases exceed the maximum release rate, any release shall be allocated among the Parties requesting a release (i.e., one-half to each or one-third to each).

- f) GCWSD shall be entitled to assess a fee of \$250 to the Party requesting a release of water to cover the administrative costs of each such release. GCWSD shall be entitled to reasonably increase this fee upon notice to, and agreement of, WPWSD and Fraser. The Parties acknowledge and agree that the last 30 acre-feet of storage in Reservoir 2 is a “dead pool” that cannot be released without pumping. If water released on behalf of WPWSD or Fraser is delivered from the dead pool in Reservoir 2, the Party requesting the release shall also reimburse GCWSD for reasonable pumping costs associated with the release. GCWSD shall not be obligated to make additional releases for any Party that has failed to pay the fee described above for a prior release of water from Reservoir 2.
- g) As the sole authorized operator of Reservoir 2 pursuant to Section II. d) above, GCWSD shall be solely responsible for the costs of any repairs to the reservoir or repairs/replacements of the reservoir liner, which become necessary due to any negligent operation by GCWSD, including the release by GCWSD of water at a rate exceeding the maximum release rate specified above in Section ii. e).
- h) Neither WPWSD nor Fraser shall have any right to store water in Reservoir 1, nor shall they have any interest in the decreed water right for Reservoir 1; provided, however, that the Parties acknowledge and agree that water delivered to Reservoir 2 is first diverted to Reservoir 1 and the delivered by a pond transfer structure to Reservoir 2. Except for the purpose of filling Reservoir 2 in priority as described above, GCWSD shall not be obligated to deliver water from Reservoir 1 to Reservoir 2. GCWSD may convey all or a portion of the water right for, or water storage capacity in, Reservoir 1, but shall, as part of any such conveyance, preserve and maintain the means of diversion to Reservoir 2 described above.
- i) The Parties may, in their sole discretion, work cooperatively to share storage in Reservoir 2. By way of example only, to the extent that Party 1’s storage capacity in Reservoir 2 is unused by Party 1 at any given time, Party 2 may, pursuant to a formal or informal agreement with Party 1, temporarily utilize the unused capacity until such time as either Party 1 has water available to store in

the capacity being utilized by Party 2 or the agreement of the Parties terminates. Upon written notice of such agreement given to all parties, the water stored by Party 2 will be accounted for as stored by Party 1.

- III. Measurement and Accounting. GCWSD shall measure diversions to, releases from and storage in Reservoir 2. A preliminary draft accounting form is attached hereto as Exhibit 1; however, the Parties agree to cooperatively develop, and modify from time to time as necessary, an accounting form that meets their needs and also satisfies the requirements of the Division Engineer in Water Division 5. Diversions, releases and storage volumes will be accounted for separately for each Party, including any foreign water stored by them in Reservoir 2. To the extent necessary to accurately account for the storage of water in Reservoir 2, the accounting shall include water diverted to and stored in Reservoir 1. Records of diversions to and releases from Reservoir 2 shall be maintained in GCWSD's office and shall be regularly distributed to all Parties on a monthly basis and/or made available to them on a jointly accessible website. If requested by notice to GCWSD, documentation of a release shall be provided as soon as practicable after the date of the release. Any losses shall be allocated in accordance with the respective amount of the Parties' water actually in storage at the time of such loss. The Parties shall pay the reasonable costs of accounting, including retention of a water rights engineering firm, in proportion to their respective Storage Capacity Ratios. The Parties acknowledge and agree that storage of foreign water in Reservoir 2, as well as conveyance or lease of the Water Right and Water Storage Capacity, may increase the cost of measurement and accounting and that such increase in cost may be allocated to a particular Party as jointly agreed by them.
- IV. May 2018 Water Court Proceeding for Diligence or to Make Absolute. As described above, GCWSD filed an application in Water Court in Case No. 18CW3070 for a finding of reasonable diligence or to make absolute a portion of the conditional water right for Reservoir 2. At any time after the Effective Date of this Operating Agreement, WPWSD and Fraser may file a motion or notice to be designated as a co-applicant in Case No. 18CW3070 and in any decree issued pursuant thereto. Each Party shall bear its respective cost of the Water Court proceeding, including attorney and engineering fees.
- V. Subsequent Water Court Proceedings for Diligence or to Make Absolute. GCWSD shall be solely responsible for filing applications for a finding of reasonable diligence or to make absolute the 10 acre-feet of the Water Right for which a diligence determination is sought in Case No. 18CW3070. If less than 70 acre-feet of the Water Right is converted to absolute status as applied for in Case No. 18CW3070, WPWSD and Fraser shall file a Notice of a Change in Ownership of Conditional Water Right pursuant to Rule 9 of the Uniform Local Court Rules for all State Water Court Divisions for their respective portion

of the Water Right not made absolute. Thereafter, the Parties shall jointly file an application or applications to convert a total of 70 acre-feet of the Water Right to absolute status as soon as reasonably practicable.

- VI. Water Court Proceedings that Include Reservoir 2. Any Party may seek Water Court approval of an application involving its share of the Water Right or to store foreign water in the Water Storage Capacity in Reservoir 2. The Parties agree to reasonably cooperate with each other to obtain such approvals; provided, however, that any Party may file a statement of opposition as necessary to protect its interests. No Party shall file an application purporting to change any portion of the Water Right from Reservoir 2 to another structure.
- VII. Payment of Initial Capital and Operating Costs for Reservoir 2. To properly operate Reservoir 2, and to support detailed accounting for the Colorado Division of Water Resources and the Parties (including for purposes of their respective water rights applications), Reservoir 2 requires several improvements. These improvements are described below.
- a) A new outlet structure will allow releases on a year-round basis that can be timely and accurately measured on a Party-by-Party basis. The new outlet structure will also serve Reservoir 1; therefore, WPWSD and Fraser shall only be obligated to proportionately share in 50% of the total costs of the outlet structure.
 - i. GCWSD has incurred design and engineering expenses attributable to Reservoir 2 outlet structure. WPWSD and Fraser shall pay to GCWSD design and engineering costs in accordance with their Storage Capacity Ratios.
 - ii. The total construction costs of a new outlet structure for Reservoir 2 shall be shared by the Parties in accordance with their Storage Capacity Ratios. GCWSD shall be the construction manager for construction of a new outlet structure for Reservoir 2, but shall not assess a fee therefor. WPWSD and Fraser shall reimburse GCWSD for all construction and other costs reasonable and necessary to the construction and operation of the new outlet structure in accordance with their Storage Capacity Ratios.
 - b) Accounting of diversions to and releases from Reservoir 2, as described above, requires improvements to the measurement devices currently installed at Reservoir 2, including telemetry to make real-time measurements and

communicate relevant diversion and release-related data to remotely located receiving equipment. Also, the accounting for Reservoir 2 requires a more detailed elevation area capacity curve than exists at this time. The Parties shall pay these expenses jointly in accordance with their Storage Capacity Ratios.

- c) Protection of the liner in Reservoir 2 requires that releases not exceed a specified maximum flow rate to be determined by a qualified engineering firm. The Parties shall pay these expenses jointly in accordance with their Storage Capacity Ratios.

GCWSD shall provide a written request for reimbursement, including relevant documentation, for the costs identified above. WPWSD and Fraser shall reimburse GCWSD within 60 days of the receipt of GCWSD's request therefor. GCWSD shall not be obligated to make releases of water from Reservoir 2 for any Party that has failed to pay amounts due under this paragraph, unless the Party has sought to resolve its failure to pay by the dispute resolution provisions set forth below.

VIII. Maintenance and Capital Reserve Fund. GCWSD shall establish, accumulate and maintain a Maintenance and Capital Reserve Fund of \$25,000. The initial contributions to the fund shall be as of the Effective Date of this Operating Agreement and permitted expenditures of the fund shall be replenished by the Parties as soon as reasonably practicable following any such expenditure.

- a) GCWSD shall maintain, repair and improve Reservoir 2, and any of its associated structures (including the diversion and release structures, the pipeline from the diversion structure to Reservoir 1, and the pond transfer structure between Reservoir 1 and Reservoir 2), as it determines to be necessary for safe, prudent and efficient operation. GCWSD will make reasonable efforts to minimize interruptions of deliveries of water to WPWSD and Fraser and, if practicable, will provide advance notice to them when GCWSD is aware that interruptions may occur. GCWSD's reasonable costs of diverting water to Reservoir 2 shall be a reimbursable expense from the Maintenance and Capital Reserve Fund.
- b) The Maintenance and Capital Reserve Fund may be expended by GCWSD to conduct such maintenance, repair and improvements on Reservoir 2 and its associated structures, as described above, and to make capital improvements or replacements to the same as may be necessary for the effective operation of Reservoir 2.
- c) GCWSD shall consult with WPWSD and Fraser regarding maintenance or capital expenditures at Reservoir 2, except that GCWSD may proceed without

consultation in the event of an emergency condition, as determined by GCWSD in its discretion, which requires immediate action to maintain Reservoir 2 (including the diversion and outlet structures and measurement devices) or to allow continued operation of Reservoir 2.

- d) No part of the Maintenance and Capital Reserve Fund shall be expended on Reservoir 1 except as may be necessary to directly benefit Reservoir 2.
- e) GCWSD shall not be obligated to make releases of water from Reservoir 2 for any Party that has failed to pay its contribution to the Maintenance and Capital Reserve Fund described herein.
- f) In the event that a maintenance or capital expenditure is anticipated to exceed \$25,000, the Parties shall meet to discuss the expenditure. The Parties must agree on whether and how to proceed with the proposed expenditure, including funding of the expenditure.

IX. Conveyance. Any Party may convey all or a portion of their Water Right and Water Storage Capacity subject to the terms and conditions of this section and subject to the right of first refusal described in the following section.

- a) The Parties' proposed conveyance of their respective Water Right and Water Storage Capacity shall be, in whole or in part, as a singular property interest.
- b) Any proposed conveyance of a Party's interest in the Water Right and Water Storage Capacity shall be a minimum of 5.0 acre-feet.
- c) The proposed purchaser must agree to pay any additional costs incurred to modify the accounting to include a new party.
- d) Any purported sale of the Water Right and Water Storage Capacity that fails to fully comply with this provision or the right of first refusal described below shall be void and of no effect, and GCWSD shall not be obligated to release water from Reservoir 2 pursuant thereto.

X. Right of First Refusal. With respect to any proposed conveyance of the Water Right and Water Storage Capacity, the Parties shall have rights of first refusal described below.

- a) GCWSD shall have a right of first refusal to acquire the Water Right and the Water Storage Capacity in the event WPWSD or Fraser enters into an agreement

or otherwise purports to convey all or any portion of their respective interest to a third-party pursuant to a bona fide offer to purchase such interest. WPWSD or Fraser shall provide a copy of the proposed purchase agreement to GCWSD, including the purchaser's agreement to accept and comply with the terms and conditions of this Operating Agreement. GCWSD shall have 30 days from the date on which it receives the proposed purchase agreement from WPWSD or Fraser to provide notice of its intent to acquire such interest. If GCWSD elects to acquire the Water Right and Water Storage Capacity, WPWSD or Fraser shall complete the sale to GCWSD on the same terms and conditions as the proposed purchase agreement.

- b) If GCWSD does not exercise the right of first refusal as described above, WPWSD, with respect to a proposed conveyance by Fraser, or Fraser, with respect to a proposed conveyance by WPWSD, shall have a right of first refusal on the same terms and conditions as set forth above. If no Party exercises the right of first refusal, the conveyance may be completed as originally proposed.
 - c) In the event of a proposed conveyance by GCWSD, WPWSD and Fraser shall have a right of first refusal on the same terms and conditions as are set forth above, except that they shall meet and determine whether one or both of them shall exercise the right of first refusal and, if both of them wish to exercise the right, how the Water Right and Water Storage Capacity will be allocated between them.
- XI. Leasing. If WPWSD or Fraser desire to lease all or a portion of their respective interest in the Water Right and Water Storage Capacity, they shall provide a copy of the proposed lease agreement to GCWSD including all terms and conditions of the proposed lease. GCWSD may request reasonable modifications to the proposed lease related to the effective operation of Reservoir 2 within 30 days of the receipt of proposed lease from WPWSD or Fraser.
- a) Any proposed lease shall be for at least 2.5 acre-feet and the term of the lease shall be for at least one water season (November 1-October 31), but not more than five water seasons.
 - b) The Parties' lease of their respective Water Right and Water Storage Capacity shall be, in whole or in part, only as a singular property interest and only if the lease expressly includes the lessee's agreement to accept and comply with the terms and conditions of this Operating Agreement.

- c) The accounting of releases from Reservoir 2 shall be maintained only for the Parties hereto and not for any lessee. The leasing Party shall be solely responsible to request releases, to pay to GCWSD release fee, and to pay accounting-related costs for or on behalf of its lessee. The leasing Party shall also continue to pay its full contribution, i.e., not diminished by the lease, to the Maintenance and Capital Reserve Fund described above.
 - d) Any purported lease of the Water Right or Water Storage Capacity shall be void and of no effect, and GCWSD shall not be obligated to deliver water pursuant thereto, unless the lease fully complies with this provision.
- XII. Dispute Resolution. Any dispute arising under this Operating Agreement shall be resolved in the following manner and sequence:
- a) Negotiation between or among the District Managers of GCWSD and WPWSD and the Town Manager of Fraser;
 - b) Negotiation between or among the Boards of Directors of GCWSD, WPWSD and the Board of Trustees of Fraser;
 - c) Mediation under the Commercial Mediation Procedures of the American Arbitration Association; and
 - d) Binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association.

The Parties shall bear their own costs and attorneys' fees except in the event of arbitration in which case the award of the arbitrator(s) may include interest as such rate and from such date as the arbitrator(s) may deem appropriate and reasonable attorneys' fees.

- XIII. Amendment. This Operating Agreement may only be amended in a writing executed by all of the Parties.
- XIV. Effective Date. This Operating Agreement shall be effective as of the date it is executed by all of the Parties.
- XV. Cooperation. The Parties acknowledge that this Operating Agreement may not cover all of the operating issues that may arise from time to time at Reservoir 2. The Parties agree to cooperate with each other as necessary to permit each of them to obtain the

benefits of their respective Water Right and Water Storage Capacity. The Parties further agree that they will cooperate with requirements imposed by the Water Commissioner and to implement the terms of any applicable Water Court decrees. Representatives of the Parties shall communicate regularly with one another to keep all Parties reasonably apprised of matters related to operation of Reservoir 2 and implementation of this Operating Agreement.

- XVI. Notices. Any notice under this Operating Agreement shall be in writing and shall be hand delivered, sent by email, sent by a nationally recognized overnight delivery service, or sent by registered or certified mail, postage prepaid, return receipt requested. Either Party may change its address by written notice to the other Parties as provided for in this paragraph. Notice shall be effective upon delivery if the notice is provided by hand delivery and shall be effective upon receipt if given by email, overnight delivery or by certified or registered mail. Notice shall be provided as follows:

To GCWSD:

Bruce Hutchins, District Manager
Grand County Water and Sanitation
District #1
P.O. Box 3077
50 Vasquez Road
Winter Park, CO 80482
bhutchins@gcws1.com

To WPWSD:

Kent Bosshard, District Manager
Winter Park Water & Sanitation
District
P.O. Box 7
1540 Winter Park Dr.
Winter Park, CO 80482
kentb@wpwsd.com

To Fraser:

Jeff Durbin, Town Manager
Town of Fraser
P.O. Box 370
153 Fraser Avenue
Fraser, CO 80442
jdurbin@town.fraser.co.us

The Parties have executed this Operating Agreement on the dates shown below their signatures.

GRAND COUNTY WATER AND SANITATION DISTRICT #1

WINTER PARK WATER & SANITATION DISTRICT

Arthur Ferrari, Chairman

Jack Buchheister, President

Date:

Date:

TOWN OF FRASER

Philip Vandernail, Mayor

Date: