

EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS

**SHOSHONE WATER RIGHTS DEDICATION AND ISF AGREEMENT**

(Shoshone Water Rights) **DATE FILED**  
November 20, 2025 4:35 PM  
FILING ID: D942500E82E83  
CASE NUMBER: 2025CW3177

This WATER RIGHT DEDICATION and ISF AGREEMENT (“ISF Agreement”), is made as of this 19th day of November, 2025, by and between the Colorado Water Conservation Board (“CWCB”), an agency of the State of Colorado, the Colorado River Water Conservation District (“River District”), a political subdivision of the State of Colorado, and Public Service Company of Colorado, a Colorado corporation (“PSCo”). The CWCB, the River District, and PSCo may be hereinafter referred to individually as a “Party,” and together as the “Parties.”

**RECITALS**

- A. The CWCB<sup>1</sup> is an agency of the State of Colorado created to aid in the protection and development of the waters of the state for the benefit of its present and future inhabitants. The General Assembly vested the CWCB with the exclusive authority to appropriate waters of the natural stream for minimum stream flows between specific points on a stream to preserve the natural environment to a reasonable degree.
- B. Pursuant to section 37-92-102(3), C.R.S., the General Assembly has also vested the CWCB with the ability to acquire, by grant, purchase, donation, lease, or other contractual agreement, such water, water rights, and interests in water that are not on the division engineer’s abandonment list in such amount as the CWCB determines is appropriate for stream flows to preserve and/or improve the natural environment to a reasonable degree.
- C. The River District was created by the provisions of section 37-46-101, C.R.S., *et seq.*, to promote the health and general welfare of the State of Colorado by the conservation, use, and development of the water resources of the Colorado River and its principal tributaries. The River District constituents include West Slope governmental entities and water interests that desire to maintain in perpetuity the flow regime within Water Division 5 created by the historical exercise of the water rights that are the subject of this ISF Agreement.
- D. PSCo is a Colorado corporation and is the owner and operator of the hydroelectric power plant (the “Shoshone Power Plant”) located on the mainstem of the Colorado River in Glenwood Canyon, approximately six miles upstream of Glenwood Springs, Colorado. The Shoshone Power Plant produces hydroelectric energy by means of PSCo’s diversion of the following water rights:
  - i. The Glenwood Power Canal and Pipeline water right, decreed on December 9, 1907, in Civil Action No. 466, Eagle County District Court, in the amount of 1,250 cubic feet per second of time (“c.f.s.”) with an appropriation date of January 7, 1902, for power, mining, milling, manufacturing, lighting and heating and traction purposes, and as decreed absolute by the Eagle County

---

<sup>1</sup> Throughout this ISF Agreement, if not otherwise specified reference to “CWCB” refers to CWCB staff and Board.

**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

District Court on February 27, 1911, in Civil Action No. 553 (the “Senior Shoshone Water Right”); and

- ii. The Shoshone Hydro Plant Diversion No. 2 water right, decreed absolute on February 7, 1956, in Civil Action No. 1123, Eagle County District Court, in the amount of 158 c.f.s. with an appropriation date of May 15, 1929, for manufacturing and generation of electrical energy (the “Junior Shoshone Water Right”).

Together, these two water rights are referred-to as the “Shoshone Water Rights.”

- E. The Senior Shoshone Water Right is one of the most senior water rights on the Colorado River. During significant periods of the year, there is not sufficient water to satisfy all water rights decreed on the Colorado River and its tributaries within the State of Colorado. At such times, when the measurable Natural Flow of the Colorado River drops below 1,408 c.f.s. (the sum of 1,250 c.f.s. attributable to the Senior Shoshone Water Right and 158 c.f.s. attributable to the Junior Shoshone Water Right) at the streamflow gauge (USGS 09070500) located on the Colorado River near Dotsero, Colorado (“Dotsero Gage”), the Colorado Division of Water Resources (“DWR”) administers a call for the Shoshone Water Rights which results in the curtailment of junior water rights upstream of the Shoshone Power Plant. The Dotsero Gage is the location where measurement of streamflow for the purposes of administration of the Shoshone Water Rights has historically occurred. The “Natural Flow” is the amount of water in the Colorado River measured at the Dotsero Gage, including the amount of water usable by the Shoshone Water Rights when those water rights are in priority, except that the “Natural Flow” does not include any water released from storage and conducted into the Colorado River upstream of the Dotsero Gage (accounting for evaporation and transit loss), which water is intended for delivery for use downstream of the discharge outlets for the Shoshone Power Plant.
- F. The Shoshone Water Rights are decreed for non-consumptive hydropower generation use at the Shoshone Power Plant. All of the water diverted by PSCo for hydropower generation use is returned to the Colorado River after such water is conveyed through the Shoshone Power Plant’s penstocks and turbines, to a point of return at the plant’s discharge outlets that is approximately 2.4 miles downstream of the point of diversion at the Shoshone Diversion Dam and Tunnel, as depicted on the map attached as **Exhibit A**. The approximate locations of the “Shoshone Diversion Dam and Tunnel” and the outfall for the “Shoshone Power Plant Discharge Outlets” are as follows:
  - i. **Shoshone Power Plant Diversion Dam and Tunnel:** on the right bank, being the northerly bank, of the Colorado River whence the North quarter corner of Section Thirty (30), Township Five (5) South, Range Eighty-Seven (87) West of the 6<sup>th</sup> Principal Meridian bears North 23° 48’20” East 2,414.64 feet, in Garfield County, Colorado.
  - ii. **Shoshone Power Plant Discharge Outlets:** on the right bank, being the northerly bank, of the Colorado River whence the Southeast corner of Section

**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

Thirty-five (35), Township Five (5) South, Range Eighty-Eight (88) West of the 6<sup>th</sup> Principal Meridian bears South 29° 24' 14" East, 1,771 feet, in Garfield County, Colorado.

The reach of stream between the Shoshone Power Diversion Dam and Tunnel and the Shoshone Power Plant Discharge Outlets is referred to herein as the "Shoshone Reach." Through this ISF Agreement, the Parties seek to preserve and improve the natural environment of the Colorado River within the Shoshone Reach to a reasonable degree.

- G. Pursuant to the Purchase and Sale Agreement between the River District and PSCo, with an effective date of January 1, 2024 (the "PSA"), the River District is the contract purchaser of the Shoshone Water Rights. The PSA provides that PSCo, and its successors and assigns, is entitled to a perpetual leasehold interest in the Shoshone Water Rights for continued use of the Shoshone Water Rights for hydropower generation at the Shoshone Power Plant (the "Lease," the form of which is attached to the PSA as "Exhibit D"). The PSA (including all its Exhibits and Attachments) is attached hereto as **Exhibit B**.
- H. PSCo's historical exercise of the Shoshone Water Rights has resulted in a streamflow regime that has benefitted the natural environment of the Colorado River basin both upstream and downstream of the Shoshone Power Plant. In addition, the historical exercise of the Shoshone Water Rights has provided benefits to water users throughout the Colorado River basin by providing a relatively predictable water rights administration regime both upstream and downstream of the Shoshone Power Plant.
- I. The Parties wish to continue the general historical call operations and maintain the flow regime of the Colorado River, both upstream and downstream of the Shoshone Power Plant, in perpetuity. In furtherance of that effort, and subject to the terms of this ISF Agreement, the River District wishes to dedicate to the CWCB, at no additional cost to the CWCB, the exclusive right to use the Shoshone Water Rights for instream flow purposes within the proposed Shoshone Reach to the extent the water rights are not being used for hydropower generation purposes at the Shoshone Power Plant, subject to the requirements of this ISF Agreement. To that end, and subject to the terms set forth herein, the River District, PSCo, and the CWCB agree to jointly file an application to adjudicate a change of the Shoshone Water Rights in Garfield County District Court, Water Division No. 5, (the "Water Court") to add instream flow use to preserve and improve the natural environment of the Shoshone Reach of the Colorado River to a reasonable degree as an additional beneficial use of the Shoshone Water Rights. Use of the Shoshone Water Rights for instream flow and hydropower purposes shall be subject to any terms and conditions imposed by the final change of water right decree to be entered by the Water Court, further described herein (the "Decree").
- J. At three regularly scheduled public meetings of the CWCB held on May 21, 2025, September 17-18, 2025, and November 19, 2025, the CWCB considered the River District's proposed dedication of the exclusive right to use the Shoshone Water Rights for instream flow purposes to the CWCB in accordance with section 37-92-102(3), C.R.S., and the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF

**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

Rule(s)”), 2 CCR 408-2. At its regularly scheduled meeting on November 19, 2025, the CWCB determined that it is appropriate to enter this ISF Agreement and that the best use of the acquired interest in the Shoshone Water Rights is use up to the full decreed amount of 1,408 c.f.s, for instream flow use to preserve and improve the natural environment to a reasonable degree within the Shoshone Reach. Such use of the Shoshone Water Rights for instream flow purposes can occur within the Shoshone Reach to the extent the Shoshone Water Rights are not being exercised for hydropower generation purposes at the Shoshone Power Plant, up to the full amount of 1,408 c.f.s. of Natural Flow (hereinafter, the “Shoshone ISF”), subject to the limitations described in Paragraphs 7 and 14 below.

- K. The CWCB, the River District, and PSCo wish to cooperate to implement such legal mechanisms and to obtain such court decree and approvals as are necessary to change the Shoshone Water Rights to include instream flow use for the purpose of preserving and improving the natural environment within the Shoshone Reach, and to protect the Shoshone ISF through the Shoshone Reach to the extent the Shoshone Water Rights are not being exercised for hydropower generation purposes at the Shoshone Power Plant.

**AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**DEDICATION**

1. The Recitals to this ISF Agreement are incorporated by this reference and shall constitute part of this ISF Agreement.
2. The River District hereby dedicates to the CWCB, effective as of the date of closing of the PSA, at no additional cost to the CWCB, the exclusive right to use the Shoshone Water Rights for instream flow use within the Shoshone Reach, to the extent such water rights are not being used for hydropower generation purposes at the Shoshone Power Plant pursuant to the Lease, and subject to the requirements of Paragraphs 7 and 14 below. The River District shall retain title to the Shoshone Water Rights.
3. This ISF Agreement acknowledges the CWCB’s consideration of the Colorado Parks and Wildlife analysis showing a biological need to preserve and improve the natural environment of the Shoshone Reach of the Colorado River to a reasonable degree.
4. The Parties intend that the Decree, as further described herein, shall confirm that the water attributable to the Shoshone Water Rights up to the available rate of the Shoshone ISF will remain in the stream to preserve and improve the environment to a reasonable degree within the Shoshone Reach where the CWCB does not presently have a decreed instream flow right, to the extent the Shoshone Water Rights are not being used for hydropower generation purposes.

**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

5. The Parties intend that the Decree shall confirm that the Shoshone Water Rights shall be administered by the State Engineer and the Division Engineer for Water Division No. 5 (“Engineers”) based on the Natural Flow at the Dotsero Gage. Instream flow use of the Shoshone Water Rights will be administered through the Shoshone Reach where the intended instream flow use will occur with the goal of utilizing the Shoshone Water Rights up to the available rate of the Shoshone ISF without diversion or exchange by intervening water users. The Parties intend that the Decree shall also contain an affirmative finding which confirms that the change of the Shoshone Water Rights for the additional instream flow use is administrable by the Engineers and will meet all applicable statutory requirements.
6. In the event any new infrastructure or stream gaging stations are either necessary or desirable for the implementation of this ISF Agreement, or in the event that any new infrastructure—including measuring devices—are deemed necessary by the Engineers with respect to the Shoshone Water Rights, the Parties agree to work cooperatively with each other in good faith to accommodate the installation of any such infrastructure or gaging stations, which are necessary to make water available for instream flow use under this ISF Agreement, in an efficient and economical manner. The River District will be responsible for the costs associated with any infrastructure reasonably determined to be necessary by the Division 5 Engineer to measure and administer water available for instream flow use, including the cost to construct, maintain, and operate any measuring devices.

**CONDITIONS ON THE ADMINISTRATION AND EXERCISE OF  
THE SHOSHONE WATER RIGHTS FOR INSTREAM FLOW USE**

7. Subject to the terms of the Decree, including any subsequent decision on appeal thereof, the CWCB will exercise the Shoshone Water Rights for instream flow purposes to the extent the Shoshone Water Rights are not being used for hydropower generation at the Shoshone Power Plant, except when the administrative call for the Shoshone ISF is reduced on a temporary basis (referred to herein as an “ISF Call Reduction”) pursuant to the provisions of Paragraphs 7.A., 7.B., or 7.C., below. Any ISF Call Reduction shall be temporary.
  - A. **Mandatory ISF Call Reduction.** The CWCB and River District agree that conditioned upon and subject to the terms of this Paragraph 7.A., when the Shoshone Water Rights are not being exercised by PSCo to their full available extent at the Shoshone Power Plant for hydropower generation, such that the CWCB is exercising all or some portion of the Shoshone Water Rights for instream flow purposes pursuant to this ISF Agreement, the CWCB’s instream flow use shall be subject to a Mandatory ISF Call Reduction in a manner intended to effectuate the general intent of the 2007 Agreement Concerning Reduction of Shoshone Call

**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

between Denver Water<sup>2</sup> and PSCo (which applies to the hydropower generation use of the Shoshone Water Rights)<sup>3</sup>:

- i. At the request of Denver Water, during such times that a “Water Shortage” exists as defined in Paragraph 7.A.ii., below, a Mandatory ISF Call Reduction will be implemented, such that the administrative call for the Shoshone ISF will be reduced to 704 c.f.s. or such higher rate (up to the full decreed 1,408 c.f.s.) as may be necessary to prevent an administrative priority call from the Cameo group of water rights.<sup>4</sup>
- ii. For the purposes of this Paragraph 7.A., a Water Shortage exists only when the following two conditions exist simultaneously during the period of March 14 to May 20 (inclusive):
  - a. Using its regular methodology and based on the “normal” scenario as described in **Exhibit C** to this ISF Agreement (Description of Procedures Used by Denver Water for Reservoir Storage Projections), Denver Water predicts that reservoir storage in its system on July 1 will be at or below 80% full; and
  - b. The Most Probable forecast of streamflow prepared by the Natural Resources Conservation Service (NRCS) or jointly by NRCS and the Colorado Basin River Forecast Center indicates that the April-July flow of the Colorado River at the Kremmling gage will be less than or equal to 85% of average. If no forecast for the Kremmling gage is available, then the Dotsero gage will be used.
- iii. Any Mandatory ISF Call Reduction implemented pursuant to this Paragraph 7.A. is limited to the period of March 14 to May 20 (inclusive) and will automatically terminate if a Water Shortage no longer exists.
- iv. At least ten percent (10%) of the net water that Denver Water is able to store, divert, or benefit from as a result of a Mandatory ISF Call Reduction (the “West Slope Net Water”) shall be stored and separately tracked in a storage account(s) held or used by Denver Water (the “West Slope Shoshone Storage Account(s)”). The West Slope Shoshone Storage Account(s) shall be available for release on the West Slope at the joint

---

<sup>2</sup> “Denver Water” is the City and County of Denver, acting by and through its Board of Water Commissioners.

<sup>3</sup> The 2007 Agreement Concerning Reduction of Shoshone Call is also known as the “2007 Call Reduction Agreement.” The terms of the 2007 Call Reduction Agreement are not incorporated into this ISF Agreement in any manner, and this ISF Agreement shall not be interpreted to amend the 2007 Call Reduction Agreement.

<sup>4</sup> For purposes of this ISF Agreement, the “Cameo group of water rights” means any or all of the suite of water rights legally divertible for decreed purposes at the headgates for the Grand Valley Project’s Government Highline Canal located near Cameo, Colorado, and the Grand Valley Irrigation Company’s Grand Valley Canal located near Palisade, Colorado.



**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

request of the River District and the CWCB. The West Slope Net Water shall be available for release from the West Slope Shoshone Storage Accounts for the remainder of the calendar year in which any Mandatory ISF Call Reduction is implemented. CWCB staff and the River District will work with Denver Water to make a good faith effort to secure commitments from the Northern Colorado Water Conservancy District and its Municipal Subdistrict, Aurora Water, and Colorado Springs Utilities for those entities to store in West Slope Shoshone Storage Accounts as additional Net West Slope Water at least 10% of the respective amounts of water that those entities divert, store, or benefit from that results during a Mandatory ISF Call Reduction, and to make the Net West Slope Water available for release at the joint request of the River District and the CWCB.

- v. The River District and CWCB will jointly manage the Net West Slope Water in the West Slope Shoshone Storage Accounts for the purpose of mitigating the impacts to the Shoshone ISF and streamflow in Water Division 5 resulting from a Mandatory ISF Call Reduction, by supplementing the Shoshone ISF, maintaining return flows downstream of the Shoshone Reach, and to and to provide the Net West Slope Water for other West Slope purposes, provided such purposes also directly benefit the Shoshone Reach.

B. **Collaborative Process for Voluntary ISF Call Reduction.** In limited circumstances, an ISF Call Reduction may be implemented on a voluntary basis upon the joint written agreement of the Director of the CWCB and the River District General Manager in accordance with the following collaborative process (a “Voluntary ISF Call Reduction”):

- i. The Director of the CWCB and River District General Manager receive a written request for a Voluntary ISF Call Reduction from an affected water user(s) that sets out in detail the nature and reasons for the request and the requested flow rate and timeframe for a reduction.
- ii. Promptly following receipt of such request, CWCB staff and River District staff shall convene a meeting (in person or electronically if needed) of an advisory group of stakeholders to discuss the request, its possible effects on other affected water users, and terms and conditions that could avoid, minimize, or mitigate such effects. The list of stakeholders to be invited will include, but need not be limited to, a representative from: the requesting entity(ies), the Division Engineer for Water Division 5, Colorado Parks and Wildlife, PSCo, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Ute Water Conservancy District, Clifton Water District, other primary Grand Valley water providers, West Slope municipal water providers who divert municipal water directly from the Colorado River, West Slope water users located upstream of the Dotsero Gage, the U.S. Bureau of Reclamation, Northern Colorado Water Conservancy District (or

**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

its Municipal Subdistrict), Aurora Water, Colorado Springs Utilities, Denver Water, an environmental organization, and a recreational organization.

- iii. In deciding whether to implement a Voluntary ISF Call Reduction, the CWCB and the River District may consider the following factors (which are not listed in any order of relative importance or weight):
  - a. The severity of the drought impacts upon the requesting party and other information provided by the requesting entity under Paragraph 7.B.i.
  - b. Whether then-existing conditions would prevent the fill of Green Mountain Reservoir's Historic Users Pool.
  - c. The duration and depth of the requested Voluntary ISF Call Reduction and the potential harm to the natural environment in the Shoshone Reach and elsewhere in Water Division 5 resulting from a Voluntary ISF Call Reduction.
  - d. Terms and conditions that could avoid, minimize, or mitigate any injury or adverse impacts of the Voluntary ISF Call Reduction including but not limited to whether the requesting party and other entities that would benefit from a Voluntary ISF Call Reduction have agreed to contribute a portion (and the amount of any such portion) of the water that such party and other entities are able to store as a result of a Voluntary ISF Call Reduction in West Slope Shoshone Storage Accounts for release on the West Slope at the joint request of the River District and the CWCB for the uses specified in Paragraph 7.A.v., above.
  - e. In the event the State Engineer has determined that administration of water rights is necessary pursuant to the 1922 Colorado River Compact and/or the 1948 Upper Colorado River Compact ("Compacts"), the CWCB and the River District together with water users from the West Slope and Front Range shall consider ways to avoid disparate impacts between water users and communities on the Front Range and West Slope in the exercise of the Shoshone ISF.
  - f. Any other factor deemed relevant by the CWCB and River District and/or any other relevant factor raised by a stakeholder in the collaborative process.
- iv. If, after consideration of the request and the relevant factors, the Director of the CWCB and the River District General Manager jointly determine in



**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

writing that it is in the best interests of the State's Colorado River water users and stakeholders to implement a Voluntary ISF Call Reduction, the CWCB staff and River District staff shall provide the terms and conditions under which the Voluntary ISF Call Reduction will occur to the requesting party. If such a determination is made, the CWCB and River District may implement a Voluntary ISF Call Reduction only to the minimum extent necessary to address the shortage conditions set forth in the request. The decision to implement a Voluntary ISF Call Reduction under this Paragraph 7.B. shall not be unreasonably withheld.

- v. The Director of the CWCB and the River District General Manager shall transmit their written decision of whether or not to implement a Voluntary ISF Call Reduction with a brief explanation of the decision and the applicable terms and conditions to the requesting party and the advisory group of stakeholders and promptly make such written determination publicly available.
- vi. The Director of the CWCB will report to the CWCB Board any activity contemplated by this Paragraph 7.B. at the next regularly scheduled CWCB meeting, including any requests, meetings, decisions, and actions taken.
- vii. If, following the procedures above, the Director of the CWCB and the River District General Manager do not agree on whether or not to implement a Voluntary ISF Call Reduction, they shall convene a public meeting that includes, but is not limited to, (a) the CWCB Director from the basin that made the request, the CWCB Director from the mainstem Colorado River basin, and one additional CWCB Director, and (b) three River District Directors from counties within Water Division No. 5 (a "Directors' Meeting") and any other CWCB or River District Director that has indicated they wish to participate. The purpose of the Directors' Meeting shall be to consider the request and the factors of the collaborative process. Promptly following the Directors' Meeting, each entity's directors will provide input to their respective staff regarding each entity's position on whether to implement a Voluntary ISF Call Reduction.
- viii. Any Voluntary ISF Call Reduction pursuant to this Paragraph 7.B. will occur only upon the mutual agreement of the CWCB and the River District.
- ix. The Parties recognize the exclusive authority of the State Engineer to administer, distribute, and regulate the waters of the state in accordance with applicable law, including but not limited to a determination by the State Engineer that administration is necessary to comply with and meet the State of Colorado's obligations under the Compacts. Any Voluntary ISF Call Reduction, or any collaborative process between the Parties as described in this ISF Agreement, is not intended to and shall not interfere with the State

**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

Engineer's exclusive duties to regulate, administer, and distribute the waters of the State.

- C. **CWCB Discretionary ISF Call Reduction.** No more frequently than once during any 20-year period (starting in the calendar year in which the Decree is entered), the CWCB may unilaterally implement a Discretionary ISF Call Reduction applicable to the instream flow use of the Junior Shoshone Water Right if:
- i. Following the procedures for a Voluntary ISF Call Reduction set forth in Paragraph 7.B., above, the River District and the CWCB have not reached agreement on whether to implement a Voluntary ISF Call Reduction;
  - ii. The requesting entity has implemented water use restrictions limiting outdoor watering to a maximum of one day per week (or equivalent mandatory water use restriction) within its service area;
  - iii. Terms and conditions will be implemented that attempt to avoid, minimize, or mitigate any injury or adverse impacts that could result from the CWCB Discretionary ISF Call Reduction (such terms may include but need not be limited to whether the requesting party and other entities that would benefit from a CWCB Discretionary ISF Call Reduction have agreed to contribute a portion of the water that such party and other entities are able to store as a result of a CWCB Discretionary ISF Call Reduction in West Slope Shoshone Storage Accounts for release on the West Slope at the joint request of the River District and the CWCB for the uses specified in Paragraph 7.A.v., above); and
  - iv. The CWCB Discretionary ISF Call Reduction is implemented only to the minimum extent necessary to address the shortage conditions set forth in the request and is not implemented for more than twenty (20) days.
- D. Nothing in this ISF Agreement, including but not limited to the implementation of this Paragraph 7, shall create the basis for any claim against the CWCB, the River District, or PSCo by any entity not a party to this ISF Agreement.
- E. The Parties hereto shall exert a good faith effort to have the terms of this Paragraph 7 incorporated into the Decree.
8. Pursuant to ISF Rule 10, 2 CCR 408-2, the Parties shall cooperate in the administration and monitoring of the instream flow use of the Shoshone Water Rights dedicated to the CWCB under this ISF Agreement so that, subject to the terms of this ISF Agreement and the Decree, the CWCB will maximize the use of the Shoshone Water Rights for instream flow purposes to the extent the rights are not being used for hydropower generation purposes at the Shoshone Power Plant. PSCo, the CWCB, and the River District shall coordinate with DWR to monitor the flow and calculate the Natural Flow of the Colorado River at the Dotsero Gage as the point of administration for the Shoshone Water Rights for hydropower generation and instream flow use.

EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS

9. The CWCB and the River District shall notify PSCo of any request for administration required by the provisions of this ISF Agreement. PSCo shall provide advance written notice to the River District and the CWCB at least thirty (30) days prior to any scheduled operations or maintenance activities that result in a full or partial shutdown of the Shoshone Power Plant, and shall provide notice as soon as reasonably possible of any unscheduled shutdown or reduction of Shoshone Power Plant operations. During the term of the Lease, the Parties will coordinate on at least an annual basis to determine how the Shoshone Water Rights will be allocated between hydropower generation and instream flow use in a manner consistent with the terms and conditions of the Decree that (1) maximizes PSCo's ability to exercise the Shoshone Water Rights for hydropower generation purposes; and (2) maximizes the ability to use the Shoshone Water Rights for instream flow purposes to the extent the water rights are not being used for hydropower generation purposes at the Shoshone Power Plant, in a manner that does not reduce the availability of the Shoshone Water Rights for subsequent hydropower use. Upon termination of the Lease, this Paragraph 9, and any other restrictions on the Shoshone Water Rights throughout this ISF Agreement due to hydropower use, shall no longer be in effect, and, subsequent to any permanent decommissioning of the Shoshone Power Plant, instream flow shall be the only use of the Shoshone Water Rights.
10. Each Party to this ISF Agreement shall also immediately report, in writing, to the other Parties the nature of any communications with the Engineers concerning the administration of the Shoshone Water Rights as contemplated by this ISF Agreement. Following the closing of the PSA, the Parties shall identify those persons and provide such contact information (including email and telephone number) to the other Parties necessary to effectuate the purposes hereof.
11. Any rights created by this ISF Agreement are contractual rights. Use by the CWCB for instream flow purposes in accordance with this ISF Agreement does not provide the CWCB an ownership right in the Shoshone Water Rights or in any of the River District or PSCo's facilities or water rights as they exist now or may exist in the future.
12. The CWCB's contractual rights to and interest in the Shoshone Water Rights dedicated to the CWCB for use in the Shoshone Reach under this ISF Agreement extends to and terminates at the downstream termination point of the Shoshone Reach, which is the stream accrual point for the current Shoshone Power Plant Discharge Outlets.

NO CREATION OF RIGHT OF SUCCESSIVE USE OF THE SHOSHONE  
WATER RIGHTS DOWNSTREAM OF THE SHOSHONE REACH

13. This ISF Agreement does not recognize any use or create any right of use by the River District of the Shoshone Water Rights downstream of the Shoshone Reach. Notwithstanding the foregoing, this Paragraph 13 does not prevent any use by the River District or its constituents of the natural stream flow downstream of the Shoshone Reach within the priority system and in accordance with Colorado law and the Decree.

EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS

WATER COURT PROCEEDINGS

14. The Parties shall file and diligently pursue a Water Court application and any necessary appeals to obtain the Decree in a final, unappealable form confirming a change of water right for the Shoshone Water Rights to include the additional use for instream flow purposes by the CWCB and confirming that the water attributable to the Shoshone Water Rights will be used for instream flow to preserve and improve the natural environment in the Shoshone Reach of the Colorado River to a reasonable degree up to the full amount of the Shoshone ISF, subject to the terms and conditions of the Decree and this ISF Agreement. In such water court application, the CWCB, the River District, and PSCo shall be co-applicants for the purpose of advancing and protecting their contractual rights under this ISF Agreement, including adjudicating a decreed right to use of the Shoshone Water Rights by the CWCB to preserve and improve the natural environment to a reasonable degree within the Shoshone Reach. Except as otherwise provided in the PSA, to which the CWCB is not subject, each Party shall bear its own attorney fees and costs related to its participation in any water court adjudication contemplated under this Paragraph 14. Except for its own attorney fees and court filing fees, the CWCB is not responsible for paying costs of prosecuting the water court application, including the costs of hiring a consulting engineer or other witnesses in furtherance of such application, or attorney fees of any other Party incurred in relation thereto.
  - A. During the change of use water court process authorized by this ISF Agreement, if offering an expert opinion, such opinions provided by staff of the CWCB shall be objective and consistent with the CWCB's statutory authority and obligations.
15. This ISF Agreement should not be construed as an endorsement by the CWCB of the November 8, 2024, draft report prepared by BBA Water Consultants, Inc., or the preliminary historical use assessment contained therein.
16. The Parties intend that the Decree shall confirm that to the extent the water dedicated under this ISF Agreement is not being used for hydropower generation at the Shoshone Power Plant, such water shall be beneficially used by the CWCB for instream flow purposes to preserve and improve the natural environment of the Colorado River within the Shoshone Reach to a reasonable degree, subject to the terms and conditions of the Decree and this ISF Agreement.
17. The Parties agree that the Decree shall not confirm any new appropriation of water. Nor shall any claim be included in the Water Court application except as expressly described in this ISF Agreement. The Parties further agree that, upon the successful prosecution of the Water Court application described in Paragraph 14, above, and upon the issuance of the Decree by the Water Court, no further claim for approval of any change of water right with respect to the Shoshone Water Rights shall be sought by any of the Parties to this ISF Agreement in the future without first obtaining the prior written consent of all the Parties hereto. The River District agrees it will not transfer or otherwise encumber the rights to any other person or entity without the express written consent of the CWCB, with the exception of the right to enter into a promissory note and deed of trust to the benefit of

**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

PSCo as provided by paragraph 3.1.d.2 of the PSA. The Parties agree to request that the Water Court include an express statement in the Decree setting forth the limitations described in this Paragraph 17, to wit:

- a. the Decree does not confirm any new appropriation or change except to add instream flow;
- b. no further claim for approval of any change of the Shoshone Water Rights will be sought by any of the applicants without written consent of the other applicants hereto; and
- c. the River District will not transfer or otherwise encumber the Shoshone Water Rights to any other person or entity without the express written consent of the CWCB.

**RECORDS AND ACCOUNTING**

18. The River District shall be responsible for maintaining all records and accounting necessary for the implementation of this ISF Agreement, using forms mutually agreeable to the Parties, and all records required by the Engineers for the administration of the changed Shoshone Water Rights.
19. The River District will provide accounting related to the operation of this ISF Agreement to the CWCB and PSCo.

**MISCELLANEOUS PROVISIONS**

20. The term of this ISF Agreement is perpetual unless terminated in accordance with the terms of this ISF Agreement.
21. This ISF Agreement will automatically terminate and be of no further effect in the event that: (i) the sale of the Shoshone Water Rights from PSCo to the River District does not close or occur, or (ii) the PSA is terminated or otherwise expires. Except as otherwise provided in the immediately preceding sentence in this Paragraph 21, this ISF Agreement may be amended or terminated by the written agreement of the Parties, and any such termination or amendment shall take effect only when signed by all of the Parties to this ISF Agreement or their successors in interest. The CWCB staff and River District staff shall convene an initial meeting five (5) years following entry of the Decree and shall meet every ten (10) years following the initial meeting to review the operation and implementation of this ISF Agreement. Following each meeting, the CWCB staff or River District staff shall recommend to their respective boards any mechanisms to improve the implementation of this ISF Agreement. Any such recommendations will be implemented only upon the written agreement of all Parties to this ISF Agreement pursuant to this Paragraph 21.
22. Neither the CWCB nor PSCo is responsible for construction or modification of any structures that may be necessary for use of the Shoshone Water Rights for instream flow purposes. The River District is responsible for all costs associated with installation and

EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS

maintenance of any infrastructure reasonably necessary to enable and administer the instream flow use of the Shoshone Water Rights.

23. The CWCB and River District acknowledge certain agreements exist that pertain to the Shoshone Water Rights, including the 2007 Call Reduction Agreement; the June 27, 2016, Shoshone Outage Protocol Agreement; the September 26, 2013, Colorado River Cooperative Agreement; the August 1, 2018, Aurora/Busk-Ivanhoe Settlement Agreement; and the March 1, 2024, Colorado Springs Blue River Settlement Agreement Concerning Water Rights. Those agreements are not incorporated into or adopted as part of this ISF Agreement. This ISF Agreement is not intended to and does not modify or supersede those agreements in any way.
24. This ISF Agreement shall not be assignable by any Party without the written consent of all the Parties hereto. Notwithstanding the foregoing, an assignment by PSCo of this ISF Agreement to any successor or assign of its rights under the Lease is approved by the CWCB and River District without separate written consent, however thirty (30) days advanced written notice of the assignment to the River District and the CWCB is required, and PSCo may assign the Lease only to a successive owner or operator of the Shoshone Power Plant for power generation purposes. Notice and contact information shall be provided to all Parties concurrent with any assignment. In the event of the termination of the Lease by PSCo or its successors or assigns pursuant to Paragraph 28, below, the River District and CWCB will not be required to obtain the written consent of PSCo or its successors or assigns to assign this ISF Agreement.
25. Pursuant to section 37-92-102(3), C.R.S., this ISF Agreement shall be enforceable by each of the Parties hereto as a water matter according to the terms and conditions of this ISF Agreement. The Parties further agree that the exclusive venue for and jurisdiction of any dispute pertaining to the interpretation or enforcement of this ISF Agreement shall be the Water Court (as defined herein); *provided, however*, that before commencing any action for enforcement of this ISF Agreement, the Party alleging the violation shall notify the other Parties in writing of the alleged violation and the Parties shall make a good faith effort to resolve their differences through informal consultation.
26. The Parties hereto acknowledge and agree that specific performance of this ISF Agreement shall be the exclusive remedy for failure of any Party to comply with any provision of this ISF Agreement. The Parties hereby waive any right to seek or collect damages for any breach or violation of this ISF Agreement.
27. Enforcement of this ISF Agreement and all rights and obligations hereunder are reserved solely to the CWCB, the River District, and PSCo, and not to any third party. Any services or benefits which third parties may receive or provide as a result of this ISF Agreement are incidental and do not create any rights for such third parties.
28. The Parties anticipate that at some point in the future, PSCo may permanently decommission the Shoshone Power Plant, and the Lease will terminate. In the event that the Lease terminates, then PSCo shall provide written notice to the Parties of the



**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

termination of the Lease and PSCo's rights and obligations under this ISF Agreement will also be deemed to be terminated; however, all rights and responsibilities between the CWCB and the River District will remain in effect. Upon termination of the Lease, all restrictions on the Shoshone Water Rights throughout this ISF Agreement due to hydropower use shall no longer be in effect, and, subsequent to any permanent decommissioning of the Shoshone Power Plant, instream flow shall be the only use of the Shoshone Water Rights.

29. The provisions of §§ 37-92-102(3) and 305(3)(b), C.R.S. that require that all contracts or agreements for interests in water, and the water court decree implementing the contracts or agreements, to state the board or the lessor, lender, or donor may bring about beneficial use of the historical consumptive use of the leased, loaned, or donated water right downstream of the instream flow reach as fully consumable water are not relevant and do not apply to this acquisition.
30. In the event the Decree and this ISF Agreement are inconsistent, the Decree shall control.
31. This ISF Agreement shall be construed in accordance with the laws of the State of Colorado and shall be interpreted broadly to give effect to its purposes.
32. Any failure or delay by a Party in exercising any of its rights, power, and remedies hereunder or in accordance with laws shall not lead to a waiver of such rights, and the waiver of any single or partial exercise of a Party's rights shall not preclude such Party from exercising such rights in any other way and exercising the remaining part of the Party's rights.
33. Any notice, consent, waiver, request or other communication required or provided to be given under this ISF Agreement shall be in writing and shall be sufficiently given and shall be deemed delivered when: (a) delivered personally; (b) transmitted by email to the then-designated address of the Party, provided that a delivery receipt sent by the recipient is received by the sender, provided if the delivery receipt is sent on a non-business day, or after 5:00 p.m. local time at the physical address of the recipient, then the notice will be deemed received on the next business day; (c) two (2) business days after deposit with the United States Postal Service by certified or registered mail, return receipt requested, postage prepaid; or (d) one (1) business day following deposit with a nationally recognized overnight delivery service, in any event, addressed to the applicable Party as set forth below, or at such address as either Party may from time-to-time specify in writing to the other:

If to the CWCB:	Section Chief Colorado Water Conservation Board Stream and Lake Protection Section 1313 Sherman Street, Room 721 Denver, CO 80203 DNR_CWCBISF@state.co.us
-----------------	--

EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS

and

Jen Mele  
First Assistant Attorney General  
Natural Resources and Environment Section  
1300 Broadway, 7<sup>th</sup> Floor  
Denver, CO 80203  
jen.mele@coag.gov

If to PSCo:

Public Service Company of Colorado  
Attn: Environmental Services  
3500 Blake St., Third Floor  
Denver, CO 80205

and

Public Service Company of Colorado  
Attn: Legal Dept. – Real Estate  
3500 Blake St., Fourth Floor  
Denver, CO 80205(303) 294-2222  
Frances.A.Folin@xcelenergy.com

and

Welborn Sullivan Meck & Tooley, P.C.  
Carolyn F. Burr, Esq.  
James M. Noble, Esq.  
1401 Lawrence Street, Suite 1800  
Denver, CO 80202  
(303) 830-2500  
cburr@wsmtlaw.com  
jnoble@wsmtlaw.com

If to the River  
District:

Colorado River Water Conservation District  
General Manager  
Andrew Mueller  
201 Centennial St., Suite 200  
Glenwood Springs, CO 81601  
edinfo@crwcd.org

and

General Counsel,  
Peter Fleming, Esq.  
201 Centennial St., Suite 200  
Glenwood Springs, CO 81601

EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS

(970) 945-8522  
pfleming@crwcd.org

34. Each provision contained herein shall be severable and independent from each of the other provisions such that if at any time any one or more provisions herein are found to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions herein shall not be affected as a result thereof.
35. The effective date of this ISF Agreement shall be the last date shown on the signature page or pages of this ISF Agreement, provided however that Parties' rights and obligations under this ISF Agreement with specific regard to the exercise of the Shoshone Water Rights for instream flow purposes shall not commence until the closing date of the PSA. If the PSA is terminated according to its terms, then this ISF Agreement shall also automatically terminate. This ISF Agreement may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. The counterparts of this ISF Agreement may be executed and delivered by electronic means (including portable document format) by the Parties and the receiving Party may rely on the receipt of such document so executed and delivered electronically as if the original had been received.

[remainder of page intentionally blank]

[signature page(s) follow]

**EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS**

IN WITNESS WHEREOF, the CWCB, the River District, and PSCo have executed this ISF Agreement as of the last date of execution.

**COLORADO WATER CONSERVATION BOARD**

By:   
\_\_\_\_\_  
Lauren Ris, Director

Date: 11/20/25

[signatures continue on next page]


[signature page to ISF Agreement (Shoshone Water Rights)]

EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS

**COLORADO RIVER WATER CONSERVATION  
DISTRICT**

ATTEST:

BY:   
Peter C. Fleming, General Counsel

By:   
Andrew A. Mueller, General Manager


Date: 11/19/2025

[signatures continue on next page]

[signature page to ISF Agreement (Shoshone Water Rights)]

EXHIBIT 2 TO  
APPLICATION FOR CHANGE OF WATER RIGHTS

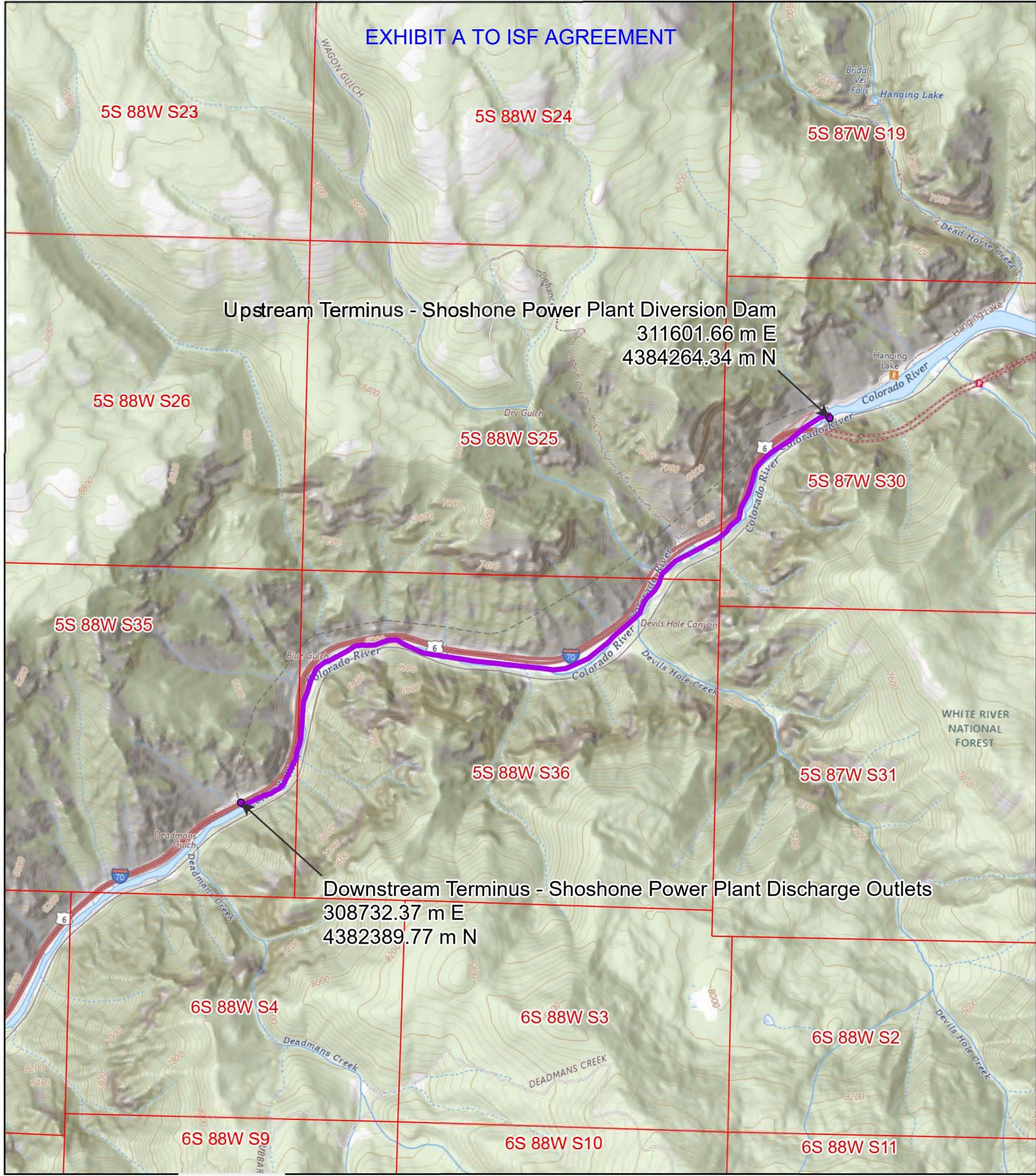
**PUBLIC SERVICE COMPANY OF COLORADO**

By:   
Robert S. Kenney, President

Date: November 19, 2025


[signature page to ISF Agreement (Shoshone Water Rights)]






# EXHIBIT 3


Garfield County, CO  
DWR Division 5




Shoshone Reach



DWR  
Division 5



**COLORADO  
RIVER  
DISTRICT**



TRUE NORTH  
MAGNETIC NORTH

Scale: 1:24,000

0 1/4 1/2 1

Miles

M:\PROJECTS\CRWCD\ShoshoneISF\_LegalLocDesc\_20250218\ShoshoneISF\_LegalLocDesc\_20250218.aprx



**PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made as of the **Effective Date** by and between Colorado River Water Conservation District, a political subdivision of the state of Colorado (the “**River District**”) and Public Service Company of Colorado, a Colorado corporation (“**PSCo**”). PSCo and the River District may be hereinafter referred to individually as a “**Party**,” and together as the “**Parties**.” All capitalized terms used but not immediately thereafter defined shall have the meanings ascribed thereto elsewhere in this Agreement.

**RECITALS**

- A. PSCo owns the Shoshone Water Rights (defined below in Article 2), which are diverted at the Shoshone Dam, located in Glenwood Canyon, Colorado, and used for non-consumptive hydro-power generation at the Shoshone Hydroelectric Generation Station (“**Power Plant**”). Water delivered to the Power Plant is discharged and returned directly into the Colorado River at the outfall of the Power Plant.
- B. Operation of the Shoshone Water Rights for hydropower purposes for over 100 years has had the added benefits of maintaining administrative stability of water rights in the Colorado River basin, , helping Colorado to meet the recovery requirements of endangered fish species under the federal Endangered Species Act, contributing significant flows to the interstate Colorado River System, and providing stream flows necessary to meet municipal, agricultural, environmental and recreation needs on Colorado’s western slope.
- C. The River District represents western slope interests that desire to maintain in perpetuity the operation of the Shoshone Water Rights in a manner consistent with their historical operation in order to preserve the benefits described above.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 1. BASIC TERMS**

- 1.1 Effective Date: January 1, 2024
- 1.2 Seller: PUBLIC SERVICE COMPANY OF COLORADO, a Colorado Corporation
- 1.3 Buyer: COLORADO RIVER WATER CONSERVATION DISTRICT, a political subdivision of the state of Colorado
- 1.4 Subject Property: The Shoshone Water Rights, as more particularly described in Article 2, below.
- 1.5 Purchase Price: NINETY-EIGHT MILLION FIVE HUNDRED THOUSAND DOLLARS (\$98,500,00.000).

## EXHIBIT B TO ISF AGREEMENT

- 1.6 Transaction Costs:** Five Hundred Thousand Dollars (\$500,000.00), as more particularly defined in Article 3, below.
- 1.7 Due Diligence Period:** The period beginning on the Effective Date and ending on May 15, 2024.
- 1.8 Closing Date:** Thirty (30) days following the satisfaction of the Closing Conditions.
- 1.9 Exhibits:**
- |            |                                 |
|------------|---------------------------------|
| Exhibit A: | Escrow Agreement                |
| Exhibit B: | PSCo's Due Diligence Deliveries |
| Exhibit C: | Special Warranty Deed           |
| Exhibit D: | Lease of Shoshone Water Rights  |
| Exhibit E: | Promissory Note                 |
| Exhibit F: | Deed of Trust                   |

### ARTICLE 2. PROPERTY DEFINED

**2.1 Shoshone Water Rights.** As used in this Agreement, the property being conveyed is the following described water rights:

(a) The Shoshone Power Plant senior water right decreed as the Glenwood Power Canal and Pipeline water right on Dec. 9, 1907, in Civil Action No. 0466, Eagle County District Court, in the amount of 1,250 cfs with an appropriation date of Jan. 7, 1902, for power, mining, milling, manufacturing, lighting and heating and traction purposes, and as further decreed by the Eagle County District Court on Feb. 27, 1911, in Civil Action No. 553; and

(b) The Shoshone Power Plant junior water right decreed as the Shoshone Hydro Plant Diversion No. 2 on Feb. 7, 1956 in Civil Action No. 1123, Eagle County District Court, in the amount of 158 cfs with an appropriation date of May 15, 1929, for manufacturing and generation of electrical energy.

together, (the "**Shoshone Water Rights**").

### ARTICLE 3. PURCHASE & SALE

**3.1 Agreement of Purchase and Sale.** Subject to the terms and conditions of this Agreement, PSCo agrees to convey to River District, and River District agrees to purchase from PSCo the Shoshone Water Rights for the Purchase Price. The River District's payment of the Purchase Price to PSCo shall be as follows:

(a) **Deposit.** Not later than ten (10) business days following the Effective Date, River District shall deliver FIVE HUNDRED THOUSAND and 00/100 DOLLARS (\$500,000.00), by wire transfer or bank or cashier's check, at its election (the "**Initial Deposit**") to the escrow holder defined below (the "**Escrow Holder**"). The Initial Deposit shall be deposited with and held by Escrow Holder as a deposit against the Purchase Price in accordance with the terms and provisions of this Agreement, and shall be credited against the Purchase Price if the transaction closes. All interest accruing on the Initial Deposit shall accrue to PSCo and be applied

## EXHIBIT B TO ISF AGREEMENT

against the Purchase Price at Closing. In the event this Agreement is terminated pursuant to the terms of this Agreement, the Escrow Holder shall distribute the Initial Deposit and interest accrued thereon in a manner consistent with Section 4.5, below.

(b) Escrow Holder. The Escrow Holder shall be First American Title Insurance Company, 1380 17<sup>th</sup> Street, Denver, CO 80202, Attn: Nichole Segura, Vice President, Commercial Escrow Officer. Upon execution of this Agreement, the Parties shall execute an escrow agreement as reasonably requested by the Escrow Holder, subject to PSCo's and River District's review and approval, not to be unreasonably withheld (the "**Escrow Agreement**"), substantially in the form of Exhibit A attached hereto. Escrow Holder shall hold and dispose of the Deposit in accordance with the terms of this Agreement and the Escrow Agreement.

(c) Transaction Costs. In addition to the Purchase Price, the River District shall pay PSCo FIVE HUNDRED THOUSAND and 00/100 DOLLARS (\$500,000.00) (the "**Transaction Cost Prepayment**") as prepayment for PSCo's legal and consulting fees and costs incurred in negotiating this Agreement, negotiating associated agreements with the River District, Colorado Water Conservation Board and Denver Water; participating in filing and prosecuting a change application in Water Court, and participation in other negotiations, agency or regulatory approval processes, including the Colorado Public Utilities Commission, or other actions related to this transaction ("**Transaction Costs**"). The River District shall pay the Transaction Cost Prepayment no later than ten (10) days following the Effective Date by delivering the same directly to PSCo by wire transfer pursuant to instructions provided by PSCo. The Transaction Cost Prepayment to PSCo shall not be refundable in any amount to River District, except upon early termination of this Agreement and shall not be applied or credited against the Purchase Price at Closing. If the total Transaction Costs exceed the Transaction Cost Prepayment, the River District shall pay the difference at Closing (the "**Final Transaction Costs**"). Prior to Closing, at least every sixty (60) days, PSCo shall provide an up-to-date accounting of the Transaction Costs incurred by PSCo which will identify the billing entity, the total billed by such entity, and a brief description of the work performed. Before any funds may be transferred to PSCo as contemplated by this paragraph, PSCo must provide a signed W-9 to the River District, be set up as a vendor in the River District's billing/accounting system, provide its wiring instructions to the River District, and participate in a wire confirmation call with the River District.

(d) Closing Payment.

1. On the day of the Closing, SEVENTY-EIGHT MILLION FIVE HUNDRED THOUSAND and 00/100 DOLLARS (\$78,500,000.00) of the Purchase Price, as adjusted by the Initial Deposit, and any interest accrued thereon, shall be paid in cash to PSCo by wire transfer (the "**Closing Payment**"). Notwithstanding the foregoing, the River District may, in its sole option and discretion, choose to pay more than the Closing Payment at Closing.

2. The balance of the Purchase Price, if any, after payment of the Closing Payment, and any other amounts tendered by the River District at Closing pursuant to Section 3.1(d)1. above, shall be paid to PSCo over ten (10) years in equal annual installment due on or before April 30 each year, as set forth in the promissory note (the "**Promissory Note**") attached hereto as Exhibit E and

incorporated herein by reference. The Promissory Note and Deed of Trust attached assumes the remaining balance will be TWENTY MILLION and 00/100 DOLLARS (\$20,000,000.00) and the Parties agree to adjust the principal sum stated on the Promissory Note and Deed of Trust to reflect the actual balance of the Purchase Price prior to its execution. If the River District tenders the entire Purchase Price at Closing, the Promissory Note and Deed of Trust will not be required to close the transaction contemplated by this Agreement.

#### ARTICLE 4. DUE DILIGENCE AND CONDITIONS PRECEDENT TO CLOSING

**4.1 PSCo's Due Diligence Deliveries.** PSCo shall deliver or make available to River District, within fourteen (14) business days after the Effective Date, complete, legible copies of the items described in Exhibit B attached to this Agreement to the extent such items are in the possession or control of PSCo (collectively, "**PSCo's Due Diligence Deliveries**"). The Due Diligence Deliveries shall be considered to be Common Interest Information pursuant to the Common Interest, Confidentiality and Joint Defense Agreement executed by the Parties as of March 15, 2023 (the "**JDA**"). In the event that the Closing hereunder shall not occur for any reason whatsoever, River District shall promptly return PSCo's Due Diligence Deliveries to PSCo and shall destroy all copies and abstracts thereof.

#### **4.2 Right of Inspection.**

(a) During the Due Diligence Period and prior to Closing, River District shall, at its own cost and expense, have the right to review all aspects of the Shoshone Water Rights and conduct such inspections as it determines are necessary for completion of the transaction. River District shall schedule and coordinate all physical inspections of the Shoshone Water Rights and/or the Power Plant with PSCo and shall give PSCo at least seven (7) days' prior notice thereof. The River District, and its authorized agents and employees, must be escorted by a badged PSCo representative at all times while the River District is at the Power Plant or on other PSCo-owned property. The River District, and its authorized agents and employees, must observe PSCo's safety and security policies at all times while at the Power Plant or on other PSCo-owned property. PSCo shall reasonably cooperate with River District's inspections (including without limitation River District's interviews with PSCo personnel) so long as such cooperation is at no material expense to PSCo. River District shall not, in connection with its investigations, unreasonably interfere with Power Plant operations.

(b) To the extent allowed by applicable law, the River District shall indemnify, defend and hold PSCo harmless from and against all costs, expenses, damages, liabilities, liens or claims, including, without limitation, attorneys' fees and court costs, directly related to any entry on property associated with the Power Plant or Shoshone Water Rights by the River District, its agents, employees or contractors in the course of performing inspections, tests and/or inquiries provided for under this Agreement, or resulting from any conditions on such property created by River District's entry and testing (but not including any claims resulting from the discovery or disclosure of pre-existing physical or environmental conditions or any claims resulting solely from the gross negligence or willful misconduct of PSCo or its agents, representatives, employees or contractors). The foregoing indemnity shall survive the Closing Date or earlier termination of this Agreement.

**4.3 Due Diligence Review; Approval.** River District shall promptly commence, and shall diligently and in good faith pursue, its due diligence reviews hereunder within the Due Diligence Period. If, prior to the expiration of the Due Diligence Period, based upon such review, examination or inspection, River District determines in its sole and absolute discretion that it no longer intends to acquire the Shoshone Water Rights, the River District shall promptly notify PSCo of such determination in writing (“**Disapproval Notice**”) whereupon this Agreement, and the obligations of the Parties to purchase and sell the Shoshone Water Rights, shall terminate, except those provisions that expressly survive the termination hereof, and the Initial Deposit shall be returned to the River District. If River District fails to deliver the Disapproval Notice to PSCo on or before the expiration of the Due Diligence Period, River District shall be deemed to have approved of all of the foregoing matters, and the transaction shall proceed to Closing, subject to completion of the Closing Conditions described in Section 4.4, below. In the event River District fails to deliver the Disapproval Notice on or before the expiration of the Due Diligence Period, River District shall be deemed to have accepted the condition of the Shoshone Water Rights in their “AS IS, WHERE IS” and “WITH ALL FAULTS” condition subject to the representations and warranties expressly made by PSCo in this Agreement.

**4.4 Conditions Precedent to Obligations of River District and PSCo to Close.** In addition to the River District’s approval of its due diligence review as provided in Section 4.3, PSCo and River District agree that the Parties’ obligation to complete the transaction hereunder shall be subject to the satisfaction or mutually agreed upon waiver of the following conditions at or prior to Closing (the “**Closing Conditions**”):

(a) Negotiate Use of the Shoshone Water Rights by CWCB for Instream Flow Purposes. The Parties agree to use their best efforts to mutually negotiate an agreement between the PSCo, the River District, and the Colorado Water Conservation Board (“**CWCB**”) to enable the Shoshone Water Rights to be used for instream flow purposes when they are not being used for power generation purposes (the “**Instream Flow Agreement**”). The Instream Flow Agreement shall be executed prior to filing the Change Application described in Section 4.4(c), below, *provided however* that the Instream Flow Agreement will be effective as of the Closing Date of this Agreement, and will be held in escrow by the Parties pending delivery at Closing. The Instream Flow Agreement with the CWCB shall include the following provisions:

1. Use of the Shoshone Water Rights by the CWCB shall be subject to the lease of said water rights after Closing by the River District, as lessor, to PSCo, as lessee, for continued hydroelectric generation purposes (the “**Lease**”).
2. PSCo’s continued use of the Shoshone Water Rights pursuant to the Lease shall have precedence over use of the said water rights for instream flow purposes.
3. The use of the Shoshone Water Rights by the CWCB shall be conditioned upon the Closing of this Agreement and the issuance of a final Water Court Decree (as defined in Section 4.4(c) below), which changes the use of the Shoshone Water Rights to include instream flow purposes.



## EXHIBIT B TO ISF AGREEMENT

(b) Negotiate with Certain Potential Water Court Objectors. As described in subsection (c), below, the Parties intend to file a joint application to change the Shoshone Water Rights to include instream flow uses as an additional decreed use. Prior to filing such application, the Parties agree to use their best efforts to identify third parties who would likely file statements of opposition to the Change Application, and to enter into negotiations with said third parties to address their concerns with the goal of eliminating or minimizing objections to the Change Application. Closing is not specifically dependent on the Parties' success in reaching an agreement or stipulation with any of the potential water court objectors.

(c) Obtain Decree for Change of Shoshone Water Rights. The Parties and the CWCW will file an application with the Water Court, Water Division 5, seeking to change the Shoshone Water Rights to add instream flow uses as an additional decreed use (the "**Change Application**"). The Parties agree to prosecute the Change Application with diligence with the goal of obtaining a final decree (the "**Water Court Decree**"), with all rights of appeal exhausted or expired, by June 30, 2026; provided, however, that the deadline for completion of litigation may be extended by the Parties by mutual agreement to address unforeseen circumstances in completing the litigation. Should PSCo, in its sole and absolute discretion, determine that the adjudication of the Change Application would negatively impact the Shoshone Water Rights, impair PSCo's ability to continue hydroelectric generation at the Power Plant, or otherwise impair significant PSCo business interests, PSCo may withdraw the Change Application and terminate this Agreement. Should the River District, in its sole and absolute discretion, determine that the adjudication of the Change Application would prevent the acquisition of these rights from providing the intended benefit, the River District may withdraw the Change Application and terminate this Agreement.

Should either Party make a determination to withdraw the Change Application in accordance with this subparagraph (c), such Party shall provide notice of its intent to withdraw to the other Party, and the Parties shall then have sixty (60) days (the "**Review Period**") from the date of such notice during which the Parties shall discuss the concerns of the issuing Party and attempt to resolve those concerns and prevent withdrawal of the Change Application and termination of this Agreement. If the Parties are unable to resolve the issuing Party's concerns within the Review Period, the Party who issued the notice may withdraw from the Change Application and terminate this Agreement.

(d) Negotiate Amendment of Shoshone Relaxation Agreement with Denver Water. Effective January 1, 2007, PSCo entered into that certain Agreement Concerning Reduction of Shoshone Call (the "**Relaxation Agreement**") with the City and County of Denver, acting by and through its Board of Water Commissioners ("**Denver Water**"). The Parties to this Agreement will seek to negotiate the following amendments to the Relaxation Agreement with Denver Water (the "**Amendment to the Relaxation Agreement**"), to be effective upon Closing of this Agreement:

1. Modify the term of the Relaxation Agreement to be perpetual instead of terminating on February 28, 2032;
2. Allow all or part of the Relaxation Agreement to be assigned by PSCo to the River District if PSCo permanently ceases operation of the Power Plant;

## EXHIBIT B TO ISF AGREEMENT

3. Remove or modify the bidding rights granted to Denver in paragraph 13 of the Relaxation Agreement;

4. Include new provisions that would provide for the Relaxation Agreement to continue to operate in a manner that replicates historical Power Plant outages for regular maintenance activities if Power Plant operations permanently cease and the Shoshone Water Rights are used solely for instream flow purposes.

(e) Approval of the Public Utility Commission. PSCo shall obtain any final, non-appealable, approvals and decisions from the Colorado Public Utilities Commission (“**PUC**”) legally required to effectuate the transaction contemplated by this Agreement (the “**PUC Decision**”), which must be fully acceptable to PSCo, and shall not impose any unsatisfactory conditions nor revise the terms and conditions of this Agreement, PSCo’s tariffs, or any related agreements in any material respect. PSCo shall commence the approval process with the PUC upon satisfaction of Section 4.4(a), (c) and (d) and receipt from the River District of evidence that the River District has sufficient funds to make the Closing Payment. The Parties shall cooperate to seek such PUC Decision, including, without limitation, preparing responses to any information requests, providing any testimony or witnesses, and filing any supporting briefs or affidavits as may be useful and helpful to obtain regulatory approval. PSCo agrees to pursue the PUC Decision with diligence with the goal of obtaining the same by twelve (12) months from the date of PSCo’s first public filing in the PUC approval process; provided, however, that the deadline for obtaining the PUC Decision may be extended by the Parties by mutual agreement to address unforeseen circumstances in completing the PUC approval process. PSCo, in its sole and absolute discretion, shall have the right to file any application for rehearing, reargument, and reconsideration with the PUC or to appeal any decision of the PUC to the courts.

(f) River District Financing. River District shall have available sufficient funds to make the Closing Payment to PSCo, and evidence of the same must be submitted to PSCo prior to commencing the PUC process outlined in subsection (e) immediately above. The Parties recognize that the River District anticipates a portion of the Closing Payment will be paid using funding from governmental funding sources (i.e. municipal, county, state, or federal governments or agencies, including but not limited to the River District) and that evidence of available sufficient funds from governmental sources in this paragraph shall include funds that are appropriated and/or otherwise committed by the governmental entity or entities toward the purchase of the Shoshone Water Rights.

(g) Release of PSCo Corporate Indenture. Following expiration of the Due Diligence Period, PSCo shall make application for a release of the Shoshone Water Rights from the lien of PSCo’s corporate indenture (“**Indenture Release**”). In the event the Indenture Release is not issued, for any reason, on or before Closing, PSCo may, at PSCo’s option, extend the Closing Date by written notice to River District for up to six (6) successive thirty (30) day periods or until such Indenture Release is issued.

(h) Waiver of Closing Conditions. The conditions set forth in Section 4.4(a) through (g) are for the mutual benefit of River District and PSCo. Unless stated otherwise therein, to the extent that one or more of the Closing Conditions have not been satisfied, the Parties may only waive such Closing Condition by mutual agreement in writing.

**4.5 Termination.**

(a) Except as may otherwise be indicated, if any of the conditions expressly set forth in Sections 4.4(a)-(f) have not been satisfied, extended or waived by mutual agreement of the Parties by December 31, 2027, or in the event of termination pursuant to Section 5.2(c), this Agreement may be terminated, with both Parties consenting to and acknowledging such termination in writing, and the terms hereof shall be of no further force and effect, except those provisions that expressly survive the termination hereof. In the event of termination in accordance with this Section 4.5(a), the Initial Deposit, and any accrued interest thereon, shall be released to PSCo.

(b) In the event of termination pursuant to Section 4.3, Section 4.4(g), and Section 5.1(h), the Initial Deposit, and any accrued interest thereon, shall be released to the River District.

(c) If this Agreement is terminated pursuant to a termination right expressly set forth in this Section 4.5, then:

1. within ten (10) business days following such termination and to the extent not otherwise prohibited by applicable law, River District shall deliver to PSCo all of the PSCo Due Diligence Deliveries it holds in non-electronic form or shall certify the destruction of same;
2. any documents deposited with Escrow Holder by River District shall be returned to River District, and any documents deposited with Escrow Holder by PSCo shall be returned to PSCo;
3. the Parties shall equally share any cancellation fee of the Escrow Holder;
4. the Parties shall withdraw the Change Application if it is pending, with a preference to withdraw the Change Application without prejudice;
5. PSCo shall withdraw the PUC application if it is pending;
6. if the Instream Flow Agreement has been finalized, the Parties and CWCB shall terminate such agreement;
7. if the Amendment to the Relaxation Agreement has been finalized, the Parties and Denver Water shall terminate such agreement;
8. the Parties shall execute all documents necessary to direct the Escrow Holder to release the Initial Deposit, in accordance with Sections 4.5(a) and 4.5(b) above; and
9. neither Party shall have any further obligations to the other hereunder, except for those obligations and indemnities which are expressly made to survive the termination.

## EXHIBIT B TO ISF AGREEMENT

(d) If the transaction contemplated by this Agreement is terminated prior to the Closing Date, PSCo, within ninety (90) days after the termination, shall provide an accounting of its actual Transaction Costs as of the date of termination to the River District and

1. if the actual Transaction Costs have not exceeded the Transaction Cost Prepayment, PSCo shall within that ninety (90) day period return to the River District any unapplied balance of the Transaction Cost Prepayment; or
2. if the actual Transaction Costs have exceeded the Transaction Cost Prepayment, the River District shall within that ninety (90) day period pay to PSCo the amount of the Transaction Costs which have exceeded the Transaction Cost Prepayment.

Before any funds may be transferred to the River District as contemplated by this paragraph, the River District must provide a signed W-9 to PSCo, be set up as a vendor in PSCo's billing/accounting system, provide its wiring instructions to PSCo, and participate in a wire confirmation call with PSCo.

(e) Pre-Closing Default. EXCEPT FOR THE RELEASE OF THE INITIAL DEPOSIT TO PSCo WHERE SPECIFIED HEREIN AND THE PAYMENT OF INCURRED TRANSACTION COSTS TO PSCo, SUBJECT TO ACCOUNTING IN THE EVENT OF TERMINATION, THE PARTIES HEREBY SPECIFICALLY WAIVE ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR DIRECT DAMAGES AND ANY RIGHT EITHER PARTY MAY HAVE TO SPECIFIC PERFORMANCE IN THE EVENT OF A TERMINATION PURSUANT TO THIS SECTION 4.5.

### ARTICLE 5. REPRESENTATIONS, WARRANTIES, AND COVENANTS

**5.1 PSCo's Representations and Warranties.** PSCo represents and warrants to River District as of the Effective Date and again as of Closing as follows:

(a) PSCo is a Colorado corporation, duly organized and validly existing and in good standing under the laws of the State of Colorado.

(b) This Agreement and all documents executed by PSCo that are to be delivered to River District at the Closing are, or at the time of Closing will be, duly authorized, executed and delivered by PSCo and are, or at the time of Closing will be, legal, valid and binding obligations of PSCo.

(c) To the best of PSCo's knowledge as of the Effective Date, PSCo has received no notice from any governmental authority with jurisdiction over the Shoshone Water Rights of any current violation of any laws or regulations applicable to the Shoshone Water Rights.

(d) To the best of PSCo's knowledge, there is no material litigation pending or threatened against PSCo that arises out of the ownership of the Shoshone Water Rights.

(e) To the best of PSCo's knowledge, no condemnation or other eminent domain proceedings are pending or threatened against the Shoshone Water Rights.

## EXHIBIT B TO ISF AGREEMENT

(f) PSCo is not and has never been a “foreign person” within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and any applicable regulations promulgated thereunder. Neither PSCo nor, to PSCo’s knowledge, any of its affiliates or their respective partners, members, shareholders or other equity owners is a person or entity with whom U.S. Persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury or under any statute, executive order, or other governmental action.

(g) To the best of PSCo’s knowledge, PSCo has not received any written notice that the Shoshone Water Rights are in breach of any “Environmental Requirements,” meaning all laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders, and decrees, now or hereafter enacted, promulgated or amended, of the United States, the State of Colorado, local governmental entities or any other political subdivision or agency exercising jurisdiction over the owner of the Shoshone Water Rights, the Shoshone Water Rights, or the use of the Shoshone Water Rights, relating to pollution, the protection or regulation of human health, natural resources, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals of industrial, toxic or hazardous substances or waste or hazardous materials into the environment (including, without limitation, ambient air, surface water, ground water or land or soil).

(h) **To the extent that PSCo becomes aware after the Effective Date and prior to the Closing that any of the representations and warranties set forth in this Section 5.1, are no longer true and correct, PSCo shall promptly, and in any event prior to the Closing, provide River District with written notice thereof and explain in reasonable detail the facts giving rise to the change. Unless PSCo elects to cause and does cause the representation or warranty to again become true or correct prior to Closing, River District shall have the right to terminate the Agreement based any changes in the representations set forth in Section 5.1.**

The representations and warranties of PSCo set forth in Section 5.1, as updated as of the Closing Date in accordance with the terms of this Agreement, shall survive Closing for a period of six (6) months (the “**Survival Period**”), and upon expiration thereof shall be of no further force or effect except to the extent that, with respect to any particular alleged breach, River District gives PSCo written notice so as to be received by PSCo on or before the expiration of the Survival Period of such alleged breach with sufficient detail summarizing the nature of such alleged breach (a “**Claim Notice**”) and files an action against PSCo with respect thereto within sixty (60) days of the date of such Claim Notice. Notwithstanding anything to the contrary contained herein, PSCo shall have no liability to the River District for the breach of any representation or warranty made in this Agreement or in PSCo’s closing documents unless the loss resulting from PSCo’s breach of its representations and warranties exceeds, in the aggregate, Twenty-Five Thousand Dollars (\$25,000.00), in which event PSCo shall be liable for each dollar of damages resulting from the breach or breaches of its representations and warranties, but in no event shall PSCo’s total liability for any such breach or breaches exceed, in the aggregate, five percent (5%) of the Purchase Price (the “**Cap**”); provided, however, that the Cap shall not apply to any claims made by River District due to any PSCo fraud. In no event shall any claim for a breach of any representation or warranty of PSCo be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was actually known by River District or any of River District’s

## EXHIBIT B TO ISF AGREEMENT

employees, without any duty of inquiry, prior to Closing. PSCo shall indemnify and defend River District, its directors, officers, employees, agents, successors and assigns from and against any claim, loss, liability or expense, including reasonable attorneys' fees that, during the Survival Period, arise out of or result from the breach by PSCo of any of the foregoing representations or warranties.

With the sole exception of the representations and warranties set forth in this Agreement or in the closing documents executed by PSCo at Closing ("**PSCo Closing Documents**"), the agreement between River District and PSCo for the sale of the Shoshone Water Rights is made without representation or warranty of any kind by PSCo. With the sole exception of the representations and warranties set forth in this Agreement or in the PSCo Closing Documents, PSCo makes no representation or warranty of any kind with regard to the quality or quantity of the Shoshone Water Rights or the physical condition of any infrastructure associated therewith, with regard to any restrictions, requirements, costs or constraints that may be associated with the Shoshone Water Rights, or with regard to the suitability of the Shoshone Water Rights for River District's purposes, it being the parties' express understanding and agreement that River District shall fully inspect the Shoshone Water Rights and all aspects thereof during the Due Diligence Period and prior to Closing, and that River District will rely solely upon its own inspection in determining the physical condition and other features of the Shoshone Water Rights, any restrictions, requirements, costs or constraints that may be associated with the Shoshone Water Rights, and whether the Shoshone Water Rights are suitable for River District's intended purposes. With the sole exception of the representations and warranties set forth in this Agreement or in the PSCo Closing Documents, River District will acquire the Shoshone Water Rights in an "AS IS" and "WITH ALL FAULTS" condition. Without limiting the generality of the foregoing, except to the extent the representations and warranties set forth in this Agreement or in the PSCo Closing Documents are not true and correct, River District, for itself and its successors and assigns, releases PSCo and PSCo's agents, employees, managers, members, brokers, contractors and representatives from, and waives any and all causes of action or claims against any of such persons for, (a) any and all liability attributable to any physical condition of Shoshone Water Rights, including, without limitation, the presence of any hazardous materials; and (b) any and all liability resulting from the failure of the Shoshone Water Rights to comply with any applicable laws, including, without limitation, any environmental laws. Wherever herein a representation is made based upon the knowledge of, or notice to, PSCo, such knowledge or notice, is limited to the actual knowledge without duty of inquiry of, or notice received by Donald Hartinger, Director, Plant Operations, and Patrick Martinez, Sr. Manager, Operations, all of Xcel Energy Services Inc., provided nothing in this Agreement will be deemed to be a representation made by any named individual other than in their respective representative capacity, and the River District hereby expressly releases such individuals from any and all personal liability arising out of this Agreement or the representations made herein.

**5.2 River District's Representations and Warranties.** River District hereby represents and warrants to PSCo as of the Effective Date and again as of Closing as follows:

(a) River District is a body corporate and politic and a political subdivision of the state of Colorado duly organized and validly existing under the laws of the state of Colorado, with full right, power and authority to take title to the Shoshone Water Rights and to enter into and otherwise perform and comply with the terms of this Agreement.



## EXHIBIT B TO ISF AGREEMENT

(b) This Agreement and all documents executed by River District that are to be delivered to PSCo at the Closing are, or at the time of Closing, will be duly authorized, executed and delivered by River District and are, or at the time of Closing will be legal, valid and binding obligations of River District.

(c) To the extent that River District becomes aware after the Effective Date and prior to the Closing that any of the representations and warranties set forth in Section 5.2 are no longer true and correct, River District shall promptly, and in any event prior to the Closing, provide PSCo with written notice thereof and explain in reasonable detail the facts giving rise to the change. Unless River District elects to cause and does cause the representation or warranty to again become true or correct prior to Closing, PSCo shall have the right to terminate the Agreement based on any material change in the representations set forth in Section 5.2.

(d) The representations and warranties of River District set forth in Section 5.2 as updated as of the Closing in accordance with the terms of this Agreement, shall survive Closing for a period of six (6) months.

**5.3 PSCo's Covenants.** Between the Effective Date and the Closing or earlier termination of this Agreement, or for such other time period as set forth below, PSCo covenants and agrees as follows:

(a) PSCo shall operate and maintain the Shoshone Water Rights in substantially the same manner in which PSCo is currently operating the Shoshone Water Rights, subject to outages at the Power Plant due to necessary maintenance and repairs.

(b) Except for the existing lien of PSCo's corporate Indenture, PSCo shall not sell, mortgage, pledge, transfer or dispose of the Shoshone Water Rights, or any interest therein, except as contemplated as a condition of this Agreement. PSCo shall not create any new encumbrances on, or limitations on the exercise of, the Shoshone Water Rights.

(c) PSCo will not directly or indirectly solicit, actively encourage, initiate, entertain, substantively review, or participate in any negotiations or discussions with any other person or entity with respect to any offer or proposal to sell or finance the Shoshone Water Rights or any part thereof.

## ARTICLE 6. CLOSING

**6.1 Date and Location.** The closing of this transaction (the "**Closing**") shall occur at a mutually agreeable time and place as the Parties and Escrow Holder may mutually agree to in writing, but not later than sixty (60) days following issuance of the PUC Decision and the expiration of all periods of appeal of such decision without contest (the "**Closing Date**").

### **6.2 Transactions at Closing.**

(a) On or before the Closing Date, PSCo shall deliver or cause to be delivered to the Escrow Holder, with appropriate instructions for recording and disbursement consistent with this Agreement, the following documents duly executed and acknowledged where appropriate:

## EXHIBIT B TO ISF AGREEMENT

1. The Special Warranty Deed substantially in the form of Exhibit C.
2. The Lease to PSCo substantially in the form attached as Exhibit D.
3. The Indenture Release.
4. A Certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, together with any Certificates required pursuant to Colorado law.
5. The Amendment to the Relaxation Agreement.
6. The PUC Decision.
7. A W-9 Form.
8. Such other documents as may be reasonably necessary and appropriate to complete the Closing as contemplated herein.

(b) On or before the Closing Date, River District shall deliver or cause to be delivered to the Escrow Holder, with appropriate instructions for recording and disbursement consistent with this Agreement, the following documents to be duly executed and acknowledged where appropriate:

1. An executed Promissory Note substantially in the form attached as Exhibit E.
2. A Deed of Trust substantially in the form attached as Exhibit F.
3. The Lease.
4. The Instream Flow Agreement.
5. The Water Court Decree.
6. A W-9 Form.
7. Such other documents as may be reasonably necessary and appropriate to complete the Closing contemplated herein.
8. The Closing Payment.
9. The Final Transaction Costs, if any.

(c) Each Party shall, at Closing or from time-to-time prior to Closing, execute and deliver such further instruments, affidavits, and documents as the other Party or the Escrow Holder may reasonably request to effectuate the intent of this Agreement or as required by applicable law.

## EXHIBIT B TO ISF AGREEMENT

(d) The Escrow Holder shall record and/or distribute the Closing Documents and shall release the Initial Deposit, the Closing Payment, and Final Transaction Costs to PSCo.

(e) River District shall pay for the cost of recording of all deeds. The Parties shall each pay for one-half (1/2) of the cost of recording any of the other Closing Documents. The Parties shall each pay one-half (1/2) of the Escrow Holder costs. Except as provided in Section 3.1(c) above, each Party shall pay its own attorneys' fees.

### ARTICLE 7. GAINS ON SALE

The River District recognizes and agrees that any decision on how PSCo allocates or uses the gains on sale, if any, from the transaction contemplated by this Agreement (the “**Gains**”) is a business decision within the discretion of PSCo. In addition to the foregoing, the Parties recognize and agree that the allocation or use of the Gains may be limited by the PUC Decision.

PSCo and the River District share an interest in the ecological and environmental health of the Colorado River. The Parties also share an interest in the benefits of emerging and next-generation utility projects, and PSCo plans to pursue these types of projects across Colorado. Should PSCo identify a project located in the western Colorado region served by the River District which advances these shared interests, and which provides a benefit to PSCo's ratepayers across the State of Colorado, and should PSCo decide to allocate, use or invest any of the Gains to finance such a project, the Parties agree to work together to promote such projects.

Notwithstanding the foregoing, the River District will not make any public statements in opposition to PSCo's business decisions on how to allocate or use the Gains in accordance with Section 4.4(e).

### ARTICLE 8. POST-CLOSING DEFAULTS AND REMEDIES

**8.1 Events of Default.** After Closing, each of the following shall constitute an “**Event of Default**”:

(a) Default by either Party in the due and punctual performance of any of its covenants, conditions, agreements, payments or other provisions contained in this Agreement on its part to be performed, if such default continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by the non-defaulting Party; provided that if such default cannot be cured within such thirty (30) days, and during such period corrective action has commenced to remedy such default and subsequently is diligently pursued to the completion of such performance, an Event of Default shall not be deemed to have occurred until one hundred and twenty (120) days after written notice has been delivered.

(b) Subject to any of the survival provisions of Sections 5.1 and 5.2 (Survival), any of the representations or warranties made by a Party shall prove to have been materially incorrect under the circumstances when made.

**8.2 Remedies, Generally.** Upon the occurrence and continuation of an Event of Default, the following remedies shall be available to the Parties:

## EXHIBIT B TO ISF AGREEMENT

(a) Except as provided in Section 8.2(b) below, if an Event of Default by PSCo, River District may in its sole discretion:

1. Waive such default or condition; or

2. If the Event of Default by PSCo is not cured as provided in Section 8.1, above, River District shall have the right to damages, EXCEPT THAT RIVER DISTRICT SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

(b) If the Event of Default consists of a default by River District under Section 8.1, above, PSCo may in its sole discretion:

1. Waive such default or condition; or

2. If the Event of Default by River District is not cured as provided in Section 8.1, above, PSCo shall have the right to damages, EXCEPT THAT PSCo SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

### ARTICLE 9. NOTICES

Any notice, demand, claim or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent by electronic mail, hand messenger delivery, overnight courier service or certified mail (receipt requested) to the other Party at the addresses set forth below and shall be deemed to have been duly given by delivery to the respective addresses provided below, or such other address changed by the recipient by notice consistent with this Article: (i) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such address; (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the Party to whom notice is given as such address; (iii) on the date of delivery or attempted delivery shown on the registered or certified mail, return receipt requested, postage prepaid and properly addressed to such address; (iv) if an email address is specified, on the date and at the time shown on the sent email message if sent to the e-mail address specified below:

If to PSCo:                      Public Service Company of Colorado  
Attn: Environmental Services - Water Resources  
1800 Larimer Street, Suite 1300  
Denver, CO 80202

With Copy to:                  Public Service Company of Colorado  
Attn: Director, Community Relations  
1800 Larimer Street, Suite 1400  
Denver, CO 80202

## EXHIBIT B TO ISF AGREEMENT

and: Xcel Energy  
Attn: Frances A. Folin, Esq.  
1800 Larimer Street, 14th Floor  
Denver, CO 80202  
Frances.A.Folin@xcelenergy.com

and: Welborn Sullivan Meck & Tooley, P.C.  
1401 Lawrence Street, Suite 1800  
Denver, CO 80202  
Attn: Carolyn Burr, Esq.; James M. Noble, Esq.  
cburr@wsmtlaw.com  
jnoble@wsmtlaw.com

If to River District: Andy Mueller, Esq.  
General Manager  
Colorado River Water Conservation District  
201 Centennial St., #200  
Glenwood Springs, CO 81601  
amueller@crwcd.org

With Copy to: Peter Fleming, Esq.  
General Counsel  
Colorado River Water Conservation District  
201 Centennial St., #200  
Glenwood Springs, CO 81601  
pfleming@crwcd.org

If to Escrow Holder: First American Title Insurance Company  
1380 17<sup>th</sup> Street  
Denver, CO 80202  
Attn: Nichole Segura, Vice President  
303.876.1112  
[nsegura@firstam.com](mailto:nsegura@firstam.com)

### ARTICLE 10. MISCELLANEOUS

**10.1 No Third-Party Beneficiary: No Waiver of Governmental Immunity.** This Agreement shall not create any duty of care or liability with respect to any person or entity not a Party to this Agreement, or waive any of the privileges or immunities River District or its officers, employees, successors and assigns may present pursuant to law, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as amended.

**10.2 Limits on Governmental Immunity.** River District represents that, pursuant to C.R.S. Section 24-10-106, its governmental immunity is limited to claims for injury that lie in tort or could lie in tort. Under existing law, River District is not entitled to raise the defense of

## EXHIBIT B TO ISF AGREEMENT

sovereign immunity in connection with any legal proceeding to enforce or collect upon contractual obligations, including this Agreement, or any amendments or exhibits to this Agreement, including the payment of any amounts due thereunder, provided however that no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the privileges or immunities River District, its officers, employees, successors or assigns may present pursuant to law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101 et seq., as amended.

**10.3 Mediation.** If any dispute arises under this Agreement (including as to whether either Party has breached this Agreement or whether an Event of Default has occurred), then either Party may require that the other engage in nonbinding dispute resolution processes upon delivery of a written notice (a “**Dispute Notice**”) setting forth the disputed matter. Upon receipt by the other party of such Dispute Notice, the Parties shall use commercially reasonable efforts to negotiate a resolution of the dispute for a period of sixty (60) days (the “**Dispute Resolution Period**”) which may include mediation using a mediator chosen by the Parties. During the Dispute Resolution Period, no Party may bring a claim or commence legal action related to or in connection with the matter set forth in the Dispute Notice until the Dispute Resolution Period ends. This section shall not alter any date in this Agreement, unless the Parties agree otherwise in writing.

**10.4 Time.** Except as otherwise provided in this Agreement, time is of the essence as to each provision of this Agreement and the performance of each Party’s obligations hereunder.

**10.5 Attorneys’ Fees.** If any legal action or other proceeding is commenced to enforce or interpret any provision of this Agreement, the prevailing Party (defined below) shall be awarded its attorneys’ fees and expenses, in addition to any other relief granted. The phrase “**Prevailing Party**” shall include the Party who receives substantially the relief desired whether by dismissal, summary judgment, judgment or otherwise. This provision shall survive the termination of this Agreement.

**10.6 No Waiver.** No waiver by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such party of any other covenant or condition hereunder. Any failure of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

**10.7 Entire Agreement.** This Agreement contains the entire agreement between the Parties. This Agreement may only be modified by mutual written agreement duly authorized and executed by the Parties.

**10.8 Survival.** The provisions of this Section and Sections 3.1(d), 4.2, 4.3, 5.1, 5.2, and 10.5 shall survive the Closing or any earlier termination of this Agreement.

**10.9 Publicity.** Neither PSCo nor River District shall issue any public announcement referencing the Purchase Price or the other economic terms of this Agreement without the prior

## EXHIBIT B TO ISF AGREEMENT

written consent of the other. The Parties agree to work cooperatively and in good faith to jointly prepare all public announcements involving this Agreement.

**10.10 Assignment.** River District may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder without first obtaining PSCo's prior consent and approval thereto.

**10.11 Governing Law and Construction.** This Agreement, including any instrument or agreement required hereunder, and all matters arising out of or in connection with this Agreement (whether in contract, tort or otherwise) shall be construed in accordance with and governed by the laws of the State of Colorado without giving effect to any conflict of law principles that would require the application of the laws of another jurisdiction. The Parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

**10.12 Venue.** All actions or proceedings arising out of or relating to this Agreement and any dispute shall be litigated in the District Court in Garfield County, Colorado. Each Party accepts for itself, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid court, submits itself to the personal jurisdiction of such courts and waives any defense of forum non conveniens or any similar defense. Each Party hereby waives its respective right to a trial by jury for any claim or cause of action based upon or arising out of or related to this Agreement in any action, proceeding, or other litigation of any type brought by any Party against any other Party, whether with respect to contract claims, tort claims, or otherwise. Each Party agrees that any such claim or cause of action will be tried by a court trial without a jury.

**10.13 Joint Effort.** Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one Party than against the other Party.

**10.14 Days.** In the event any time period set forth in this Agreement commences, expires or is determined from a date which falls on a Saturday, Sunday, legal holiday of the State of Colorado, the date of such commencement, performance, expiration or determination shall automatically be extended to the next business day. As used in this Agreement "business day" means any day except any Saturday, Sunday, any day which is a Federal or State of Colorado legal holiday, or any day on which banking institutions in the State of Colorado are authorized or required by law or other governmental action to close.

**10.15 Counterparts; Electronic Signatures.** This Agreement may be executed in any number of multiple counterparts, each of which shall be deemed to be an original copy and all of which shall constitute one agreement, binding on all parties hereto. PDF or DocuSign signatures shall be sufficient to bind the Parties.

**10.16 Integrated Agreement.** This Agreement, including all exhibits referenced herein, constitutes the complete, unseverable, unitary, integrated agreement between PSCo and River District concerning the subject matter hereof. The parties hereto acknowledge that they negotiated this Agreement, including all exhibits, as a single transaction and would not have entered into any



portion of the Agreement without the rights and obligations conferred by the Agreement as a whole. In the event of a conflict between the terms of this Agreement and any exhibits, the terms of this Agreement shall control unless such exhibit specifically identifies the Section(s) of this Agreement that will be superseded.

**10.17 Approval.**

(a) THE OBLIGATIONS OF THE RIVER DISTRICT ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY THE BOARD OF DIRECTORS OF THE RIVER DISTRICT.

(b) The River District's Board will not publish notice of its intent to consider this Agreement for approval, in accordance with Colorado law, until receiving written confirmation of final approval of this Agreement by the Board of Directors of PSCo and its parent company. Upon confirmation of the River District's Board's approval of this Agreement at a public meeting, each Party shall execute and deliver the Agreement to the other. The Parties may elect and mutually agree to a time and place for in-person execution of this Agreement.

**10.18 Requirement of Good Faith and Reasonable Judgment.** Unless otherwise expressly provided in this Agreement, all decisions to be made by a Party or jointly by the Parties shall be interpreted to require the exercise of each Party's reasonable judgment, acting in good faith, in rendering such decision.

**10.19 Severability.** In case any one or more of the provisions contained in this Agreement for any reason is held to be invalid or unenforceable, the invalidity or unenforceability will not affect any other provision of this Agreement, which will be construed as if the invalid or unenforceable provision had not been contained in this Agreement and, in lieu of each invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to the invalid or unenforceable provision as may be possible and be valid and enforceable.

**10.20 No Warranty of Tax Treatment.** Each party is relying solely on itself and its own tax advisors regarding the tax treatment of the transactions contemplated under this Agreement.

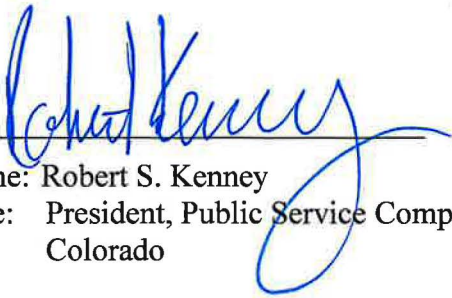
**10.21 Cooperation.** At the request of the other Party, each Party, on its own behalf, covenants that it shall reasonably cooperate with the other Party, at no cost to the cooperating Party, except as provided in Section 3.1(d), in negotiating with other parties, or obtaining governmental approvals which are required to implement the Agreement.

[Signatures on Next Page]

EXHIBIT B TO ISF AGREEMENT

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

**Public Service Company of Colorado, a**  
Colorado Corporation:

By:   
Name: Robert S. Kenney  
Title: President, Public Service Company of  
Colorado

**Colorado River Water Conservation District, a**  
political subdivision of the State of Colorado

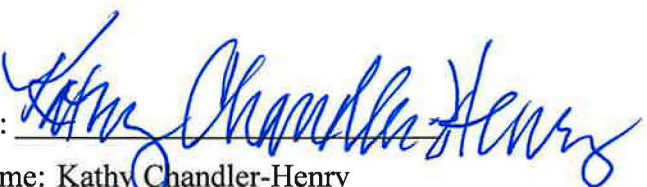
By:   
Name: Kathy Chandler-Henry  
Title: President, Colorado River Water  
Conservation District

EXHIBIT B TO ISF AGREEMENT

**EXHIBIT A**  
ESCROW AGREEMENT

See attached.

## EXHIBIT B TO ISF AGREEMENT



1380 17<sup>th</sup> Street  
Denver, CO 80202

### ESCROW INSTRUCTIONS

File # \_\_\_\_\_

First American Title Insurance Company ("Escrow Agent"), hereby agrees to act as the escrow agent for funds deposited with it by the other parties to this Escrow Agreement ("the Agreement") under the terms and conditions set forth herein.

1. Colorado River Water Conservation District, a political subdivision of the state of Colorado ("Purchaser"), hereby deposits, in escrow with Escrow Agent, funds in the amount of FIVE HUNDRED THOUSAND and 00/100 DOLLARS (\$500,000.00) (the "Escrowed Funds").

2. Escrow Agent is authorized to hold the Escrowed Funds in a segregated deposit account. The segregated deposit account [*check one*:   X   shall \_\_\_\_\_ shall not] be an interest-bearing deposit account.

3. If Public Service Company of Colorado, a Colorado corporation ("Seller") and Purchaser do not jointly and timely authorize the closing of the transaction contemplated by that certain Purchase and Sale Agreement dated effective as of January 1, 2024 by and between Seller and Purchaser (the "PSA"), or if the PSA is terminated by either party pursuant to the terms thereof, Escrow Agent is instructed to follow the terms of the PSA with respect to the Escrowed Funds. Additionally, Escrow Agent shall obtain the written permission of both parties hereto prior to disbursing the Escrowed Funds. In doing so, Escrow Agent shall be relieved of any further responsibility or liability in connection with this Agreement or the Escrowed Funds.

4. The parties hereto agree that Escrow Agent has not yet made a search of the public records with respect to the transaction contemplated under the PSA, nor has Escrow Agent any documents deposited with Escrow Agent for validity, execution or their effect upon title, if any.

5. The parties agree to pay Escrow Agent any and all fees incurred pursuant to this Agreement or with respect to the escrowed funds and/or documents.

6. The parties hereto agree to hold Escrow Agent harmless, from and against any and all liabilities, losses, damages, expenses and charges, including but not limited to, attorney's fees and expenses of litigation, including those necessary to enforce this indemnification paragraph, which may be sustained or incurred by Escrow Agent and its agents under, or arising directly or indirectly out of such any claim, action, proceeding, or judgment arising from the escrowed documents and/or funds. In the event of a dispute between the parties to this Agreement, Escrow Agent shall be permitted in its sole discretion: (a) not to act unless pursuant to an order of a court, or (b) to file a complaint in interpleader and deposit the documents and/or funds with the court, less all out-of-pocket fees and expenses incurred by Escrow Agent, including attorneys' fees. Upon so acting under 6(a) or (b), Escrow Agent shall be released and forever discharged of all liability under the terms of this Agreement or with respect to the documents and/or funds escrowed.

## EXHIBIT B TO ISF AGREEMENT

7. Escrow Agent shall not be personally liable for any act it may do or omit to do hereunder as such agent, while acting in good faith and in the exercise of its own best judgment, and any act done or omitted by it pursuant to the advice of its own attorneys shall be conclusive evidence of such good faith. Escrow Agent shall not be under any duty or obligation to ascertain the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver these instructions or any documents or papers or payments deposited or called for hereunder, and assumes no responsibility or liability for the validity or sufficiency of these instructions or any documents or papers or payments deposited or called for hereunder.

8. The Agreement may be supplemented, altered, amended, modified or revoked by writing only, signed by all of the parties hereto.

Dated effective: January 1, 2024.

Purchaser:

COLORADO RIVER WATER  
CONSERVATION DISTRICT, a  
political subdivision of the state of Colorado

By: 

Name: Kathy Chandler-Henry

Title: President, Colorado River Water  
Conservation District

Escrow Agent:

FIRST AMERICAN TITLE INSURANCE  
COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Seller:

PUBLIC SERVICE COMPANY OF  
COLORADO, a Colorado corporation

By: 

Name: Robert S. Kenney

Title: President, Public Service Company of  
Colorado

## EXHIBIT B TO ISF AGREEMENT

### EXHIBIT B

#### PSCo's DUE DILIGENCE DELIVERIES

Pursuant to Section 4.1 of the Agreement, PSCo shall provide any of the following documents in possession of PSCo, its agents, contractors, agents and/or attorneys to the River District within 14 days after the Effective Date of the Agreement:

1. Any and all title work, title opinions, correspondence, court documents related to the existence, title, ownership, conveyance, of title related to the Shoshone Water Rights.
2. Any and all documents related to historical diversion of the Water Rights.
3. Any official correspondence or notices from any and all government officials or agencies related to the diversion, beneficial use, or existence of the Shoshone Water Rights.
4. Any public document or correspondence from third parties related to the diversion, beneficial use or existence of the Shoshone Water Rights and/or the validity of the ability or right of the Shoshone Water Rights to call out junior water rights.
5. Any valuation, appraisal or assessment of the value of the Shoshone Water Rights.

EXHIBIT B TO ISF AGREEMENT

**EXHIBIT C**

SPECIAL WARRANTY DEED

See attached.



## EXHIBIT B TO ISF AGREEMENT

### SPECIAL WARRANTY DEED (Grant of Water Rights)

THIS SPECIAL WARRANTY DEED, dated this \_\_\_\_ day of \_\_\_\_\_, 202\_, is from Public Service Company of Colorado, a Colorado corporation (“Grantor”), whose address is 1800 Larimer Street, Suite 1300, Denver, Colorado 80202, to the Colorado River Water Conservation District (“Grantee”), a political subdivision of the State of Colorado, whose address is 201 Centennial Street, Suite 200, Glenwood Springs, Colorado 81601.

WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged does grant, sell, transfer, convey, and assign unto Grantee, its successors, and assigns, all of Grantor’s right, title, and interest in and to the following water rights:

- (a) The water right decreed as the Glenwood Power Canal and Pipe Line water right on December 9, 1907, in Civil Action No. 466, Eagle County District Court, in the amount of 1,250 cubic feet per second with an appropriation date of January 7, 1902, for power, mining, milling, manufacturing, lighting and heating and traction purposes, and as further decreed by the Eagle County District Court on February 27, 1911, in Civil Action No. 553; and
- (b) The water right decreed as the Shoshone Hydro Plant Diversion No. 2 First Enlargement on February 7, 1956 in Civil Action No. 1123, Eagle County District Court, in the amount of 158 cubic feet per second with an appropriation date of May 15, 1929, for manufacturing and generation of electrical energy,

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise pertaining, and the reversion and reversions, remainder and remainders, and all the estate, right, interest, claim and demand whatsoever of the Grantor, in law or equity, of, in, and to the above-described water rights. (the “Shoshone Water Rights”).

TO HAVE AND TO HOLD, the Shoshone Water Rights, together with any and all rights incident thereto, forever, and all the estate, right, title and interest of Grantor in the Shoshone Water Rights unto the Grantee. Grantor further represents that it has the authority to convey to Grantee all rights described herein. Grantor, for itself, its successors and assigns, covenants and agrees that it will warrant title and forever defend the Shoshone Water Rights in the quiet and peaceable possession of Grantee, its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

[signature page follows]

EXHIBIT B TO ISF AGREEMENT

SPECIAL WARRANTY DEED  
(Grant of Water Right)

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed on the date set forth above.

GRANTOR

\_\_\_\_\_  
Robert S. Kenney, President  
Public Service Company of Colorado

NOTARIZATION

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ by as President of the Public Service Company of Colorado.

Witness my hand and official seal. My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT B TO ISF AGREEMENT

**EXHIBIT D**

LEASE OF SHOSHONE WATER RIGHTS

See attached.

## EXHIBIT B TO ISF AGREEMENT

### WATER LEASE

This WATER LEASE (“Lease”) is entered into this \_\_\_\_ day of \_\_\_\_\_ (the “**Effective Date**”), by and between the COLORADO RIVER WATER CONSERVATION DISTRICT, a political subdivision of the state of Colorado (“**River District**”), and PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation (“**PSCo**”).

### RECITALS

WHEREAS, River District owns the following water rights, which were conveyed to it by PSCo pursuant to the Special Warranty Deed dated \_\_\_\_\_, 202\_, and are diverted at the Shoshone Dam, located in Glenwood Canyon, Colorado, and historically used for non-consumptive hydro-power generation at the Shoshone Hydroelectric Generation Station (“**Power Plant**”).

(a) The Power Plant senior water right decreed as the Glenwood Power Canal and Pipeline water right on Dec. 9, 1907, in Civil Action No. 0466, Eagle County District Court, in the amount of 1,250 cfs with an appropriation date of Jan. 7, 1902, for power, mining, milling, manufacturing, lighting and heating and traction purposes, and as further decreed by the Eagle County District Court on Feb. 27, 1911, in Civil Action No. 553; and

(b) The Power Plant junior water right decreed as the Shoshone Hydro Plant Diversion No. 2 on Feb. 7, 1956 in Civil Action No. 1123, Eagle County District Court, in the amount of 158 cfs with an appropriation date of May 15, 1929, for manufacturing and generation of electrical energy.

together, (the “**Shoshone Water Rights**”); and

WHEREAS, PSCo desires to lease the Shoshone Water Rights from River District for continued use at the Power Plant for as long as the Power Plant is being operated to produce hydroelectric power; and

WHEREAS, River District is willing to lease the Shoshone Water Rights to PSCo for use at the Power Plant;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, River District and PSCo agree as follows.

### LEASE

1. Water Rights Lease. River District hereby leases to PSCo, and PSCo hereby leases from the River District, the above-described Shoshone Water Rights for use at the Power Plant for hydroelectric generation purposes.

2. Term of Lease. The term of this Lease begins on the Effective Date and terminates upon permanent abandonment and/or decommissioning by PSCo of Power Plant operations for hydroelectric generation purposes (the “**Term**”). Any temporary suspension of operations at the

## EXHIBIT B TO ISF AGREEMENT

Power Plant due to operational considerations, maintenance, replacement, repairs or for other reasons shall not constitute permanent abandonment or decommissioning. Notwithstanding the foregoing, PSCo may terminate this Lease during the Term for any reason by delivering one (1) year's advance written notice to River District. Additionally, refer to Paragraph 12 for provisions relating to termination for cause.

3. Annual Lease Fee. PSCo shall pay to River District annual rent in the amount of ten dollars (\$10.00) (the “**Annual Lease Fee**”) on or before January 15 of each calendar year during the Term. For any Annual Lease Fee payment not already prepaid by PSCo, the River District will provide an invoice of the Annual Lease Fee to PSCo by December 31 of each calendar year prior to the due date of the Annual Lease Fee payment. PSCo may, in its discretion, prepay the Annual Lease Fee for more than one year of the Lease at any point during the Term. River District acknowledges that it has received a payment of \$500.00 from PSCo as of the Effective Date, representing payment of the Annual Lease Fee in advance for fifty (50) years through 20\_\_.

4. Use of Water Rights.

a. PSCo shall use the water delivered pursuant to the Shoshone Water Rights only for power generation purposes at the Power Plant, consistent with the Shoshone Water Rights decrees. PSCo shall not use the Shoshone Water Rights for any other uses or at any other location. PSCo shall take and use the water delivered pursuant to the Shoshone Water Rights to the fullest extent practical, and shall undertake no action that could be construed as abandonment of the Shoshone Water Rights. At times when PSCo is operating the Power Plant, delivery of the Shoshone Water Rights to the Power Plant shall take precedence over any other use of the Shoshone Water Rights.

b. At times when the Power Plant is temporarily not operating or is not fully operating due to maintenance or repair issues, or due to other business considerations, the Shoshone Water Rights may be made available to the Colorado Water Conservation Board pursuant to the terms of the Instream Flow Agreement dated \_\_\_\_\_, 202\_\_, between the River District, PSCo and the CWCB, and the decree entered in Division 5 Case No. \_\_CW\_\_\_. PSCo shall provide advance written notice to River District at least thirty (30) days prior to any scheduled shutdown of Power Plant operations, and shall provide notice as soon as reasonably possible of any unscheduled shutdown of Power Plant operations. Such notice, whether for scheduled or unscheduled shutdown of Power Plant operations shall also provide River District notice of the anticipated amount of time that the Power Plant will be shutdown or partially shutdown.

5. Power Plant Operations. PSCo shall conduct Power Plant operations, including but not limited to replacing, reconstructing, upgrading, adding to, improving, or altering the Power Plant, in its sole discretion, so long as the same does not change the point of diversion, flow rate, and non-consumption of the Shoshone Water Rights through the Power Plant. If PSCo determines to decommission and/or permanently suspend operations of the Power Plant it will provide written notice to River District at least six (6) months before operations at the Power Plant permanently cease and this Lease shall automatically terminate as of the date of completion of decommissioning by PSCo and/or permanent abandonment of the Power Plant.

## EXHIBIT B TO ISF AGREEMENT

6. Restriction on Sublease and Assignment. Upon thirty (30) days advanced written notice to the River District, PSCo may assign this Lease only to a successive owner or operator of the Power Plant for power generation purposes. Otherwise PSCo shall not rent, sublet, transfer or convey the right to use the Shoshone Water Rights.

7. No Vested Interest in Shares or Joint Venture. River District grants no interest in the Shoshone Water Rights to PSCo other than as explicitly set forth in this Lease. PSCo shall make no claim to any rights, title, or interest in the Shoshone Water Rights other than as explicitly set forth in this Lease. This Lease does not create a partnership or joint venture of any kind between the parties. River District shall not be entitled to any claim based on revenue generated by PSCo by use of the Shoshone Water Rights at the Power Plant. Likewise, PSCo shall bear the entirety of any loss, cost, or expense incurred through its use of the Shoshone Water Rights at the Power Plant, including but not limited to the cost or expense related to any federal “headwaters benefit” charge. River District shall have no obligation express or implied to maintain, operate and or have any role in the decommissioning of the plant and or repair, replacement or removal of any infrastructure owned and/or operated by PSCo. PSCo hereby indemnifies and holds harmless the River District from any and all obligations, financial or otherwise related to the repair, replacement, removal of infrastructure arising from PSCo’s operation or decommissioning of the Power Plant or its associated infrastructure including but not limited to the current or future Shoshone dam.

8. No Guarantee of Yield. PSCo is entitled to receive the amount of water yielded by the Shoshone Water Rights by operation of the decrees therefore and administration of the same by the Colorado Division of Water Resources. River District makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Shoshone Water Rights. PSCo shall not hold River District liable for any failure in delivery of the water pursuant to the Shoshone Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure, except if such failure is a result of the exercise of the Shoshone Water Rights by the CWCBC.

9. Maintenance of Infrastructure and Power Plant. During the Term, PSCo shall be responsible for the maintenance, construction, repair, operation, replacement, reconstruction, inspection, and improvement of:

a. the infrastructure and other personal property necessary to deliver water pursuant to the Shoshone Water Rights at PSCo’s own cost and expense. PSCo shall undertake the foregoing as may be necessary to keep the infrastructure and other personal property in good working condition during the Term of this Lease, as reasonably practicable in PSCo’s discretion.

b. the Power Plant at PSCo’s own cost and expense. PSCo may, in its sole discretion, conduct any of the foregoing at any time during the Term of this Lease so long as the Shoshone Water Rights’ use, and point of diversion remain unchanged by PSCo’s activities.

Any temporary shutdowns, suspensions, or reductions in operation of the Power Plant due to any of the foregoing activities shall not constitute a default pursuant to Paragraph 12 of this Lease.



## EXHIBIT B TO ISF AGREEMENT

10. Environmental Indemnity. Except to the extent that the same arise from any use of the Shoshone Water Rights by the River District, or any third party, or the River District's obligations under this Lease, PSCo hereby agrees to indemnify, defend, and hold harmless the River District and its agents, affiliates, officers, directors and employees of and from any and all liability, claims, demands, actions, and causes of action whatsoever (including without limitation reasonable attorneys' fees and expenses, and costs and expenses reasonably incurred in investigating, preparing or defending against any litigation or claim, action, suit, proceeding or demand of any kind or character) arising out of or related to the use of the Shoshone Water Rights in the Power Plant and the (1) alleged contamination by any hazardous substance, pollutant or contaminant, or petroleum or any fraction thereof of the Shoshone Water Rights, or (2) alleged injury or threat of injury to human health or safety or to the environment, or (3) alleged noncompliance with any with any federal, state, and local environmental statutes, regulations, ordinances, and any permits, approvals, or judicial or administrative orders issued thereunder, giving rise to liability under any federal, state or local environmental statutes or ordinances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., as amended from time to time, or under any common law claim, including claims for personal injury or property damage or for injunctive relief of any kind.

11. Notice. All notices to be given under this Lease shall be (1) sent by certified or registered mail, return receipt requested, (2) hand-delivered at the addresses set forth below, or (3) by electronic mail requiring confirmation of receipt. Either party shall provide written notice to the other party if the appropriate contact information changes.

If to PSCo:	Public Service Company of Colorado Attn: Water Resources 1800 Larimer Street, Suite 1300 Denver, CO 80202
With Copy to:	Public Service Company of Colorado Attn: Director, Community Relations 1800 Larimer Street, Suite 1100 Denver, CO 80202
And:	Xcel Energy Attn: Legal Dept. – Real Estate 1800 Larimer Street, 14th Floor Denver, CO 80202
and:	Welborn Sullivan Meck & Tooley, P.C. 1401 Lawrence Street, Suite 1800 Denver, CO 80202 Attn: Carolyn Burr, Esq.; James M. Noble, Esq. cburr@wsmtlaw.com jnoble@wsmtlaw.com

## EXHIBIT B TO ISF AGREEMENT

If to River District: Andy Mueller, Esq.  
General Manager  
Colorado River Water Conservation District  
201 Centennial St., #200  
Glenwood Springs, CO 81601  
amueller@crwcd.org

With Copy to: Peter Fleming, Esq.  
General Counsel  
Colorado River Water Conservation District  
201 Centennial St., #200  
Glenwood Springs, CO 81601  
pfleming@crwcd.org

### 12. Default and Remedies.

a. If either River District or PSCo fails to comply with a term or condition herein, such failure constitutes a default of this Lease. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 11 above. Upon receipt of this notice of default, the defaulting party will have thirty (30) days within which to cure the default.

b. If, in the sole discretion of the non-defaulting party, the default has not been cured, a cure has not commenced, or the defaulting-party has ceased to pursue the cure with diligence during such 30-day cure period, or after any written extension thereof mutually agreed upon by the parties, the non-defaulting party may treat the Lease as continuing and the non-defaulting party shall have the right to injunctive relief, specific performance or damages, or both, and to avail itself of any other remedy at law or equity. The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Lease.

c. In the event either party is unable to perform its obligations under the terms of this Lease because of acts of God, strikes, stoppage of labor, riot, fire, flood, rock or mud slides, acts of war, insurrection, accident, order of any court, equipment or transportation failure or damage reasonably beyond its control, or other causes reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes.

d. All of the rights and remedies set forth in this Paragraph 12 shall be cumulative. In any action to enforce or construe the terms of this Lease, the substantially prevailing party shall recover all legal and related court costs, including all reasonable attorneys' fees and expert witness fees, costs and expenses.

13. No Third Party Beneficiaries. Nothing in this Lease, express or implied, is intended to confer any rights or remedies upon any parties other than PSCo and River District, or their respective permissible successors in interest.

## EXHIBIT B TO ISF AGREEMENT

14. Recovery of Costs and Fees. In addition to any remedies otherwise available, a party that is successful in a legal action commenced against the other due to a default or material breach of this Lease may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

15. Governing Law and Venue. This Lease shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Lease is the District Court for Garfield County, Colorado, or the Division 5 Water Court for the State of Colorado.

16. Severability. In the event a provision of this Lease is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Lease should be interpreted in accordance with the intent of the parties.

17. Integration. This Lease constitutes a complete integration of the understanding and Lease between River District and PSCo with respect to the subject matter herein. No representations, negotiations, or warranties, express or implied, exist between River District and PSCo except as explicitly set forth in this Lease. This Lease may only be modified in a written form duly authorized, approved, and executed by River District and PSCo.

18. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies of this Lease may be delivered by electronic means. The parties agree to accept and be bound by signatures hereto delivered by electronic means.

19. Recording. PSCo shall not record this Lease in the real property records of any jurisdiction. This Lease is not intended to run with the land as a covenant burdening real property.

[signature page follows]

EXHIBIT B TO ISF AGREEMENT

IN WITNESS WHEREOF, the undersigned parties have executed this Water Lease on the date first set forth above.

**Public Service Company of Colorado, a**  
Colorado Corporation

**Colorado River Water Conservation District,**  
a political subdivision of the state of Colorado

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT B TO ISF AGREEMENT

**EXHIBIT E**

PROMISSORY NOTE

See attached.

PROMISSORY NOTE

\$20,000,000.00 (Twenty Million Dollars)

\_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, the Colorado River Water Conservation District, a political subdivision of the state of Colorado (“**Borrower**”) promises to pay to Public Service Company of Colorado, a Colorado corporation (“**Lender**”) the principal sum of TWENTY MILLION and No/100 DOLLARS (\$20,000,000.00) (the “**Principal Amount**”), with interest on the unpaid balance thereof at the Effective Rate (hereinafter defined) in effect from time to time.

1. All sums owing hereunder are payable in lawful money of the United States of America, in immediately available funds.

2. For the purposes of this promissory note (this “**Note**”), the “**Effective Rate**” shall mean the Secured Overnight Financing Rate in effect on the date of this Note on a per annum basis. The Effective Rate is identified on the payment schedule attached hereto as Schedule 1 (the “**Payment Schedule**”).

3. The outstanding principal balance of this Note, together with all accrued and unpaid interest, shall be due and payable in annual installments calculated based on a 10-year amortization. The annual installment payments shall begin on the April 30, \_\_\_\_\_ and shall continue to be due on or before the 30<sup>th</sup> day of each subsequent April until the principal amount is paid in full, and shall be paid to Lender in accordance with the Payment Schedule.

4. Payment by Borrower shall be made to Lender by wire or electronic funds transfer per the instructions provided by Lender, or at such other place as may be designated by written notice to Borrower by Lender.

5. Payments will be applied first to any late fees, then to accrued interest, and the remainder, if any, to the then-outstanding Principal Amount. Any reductions of the Principal Amount may not be re-borrowed.

6. Any remaining Principal Amount, and any accrued interest thereon, that has not been paid in full on or before April 30, 20\_\_ (“**Maturity Date**”) shall be due and payable on the Maturity Date.

7. The River District may prepay the then-outstanding amount of this Note, along with any outstanding interest, at any time without penalty or premium.

8. If any payment required by this Note is not paid when due the indebtedness shall bear interest at the rate of Effective Rate plus 5% per annum until such payment is made. Further, if any payment is not paid within 30 days of its due date, Borrower shall pay Lender a late payment charge of 10% of the amount of such annual payment. Should the Borrower fail to pay any payment due pursuant to this Note within sixty (60) days, Lender shall be entitled to accelerate the entire remaining principal amount then outstanding and all accrued interest and penalties thereon.

9. Nothing in this Note is intended or shall be construed to create a multiple fiscal year financial obligation or debt of the Borrower. Where activities or payment obligations provided in



## EXHIBIT B TO ISF AGREEMENT

this Note extend beyond the then-current fiscal year, continued payments, expenditures, or appropriations are contingent on the approval of the Board of Directors of the Borrower.

10. The indebtedness evidenced by this Promissory Note is secured by a Deed of Trust, of even date herewith, and, until released, the Deed of Trust contains additional rights of Lender. Such rights may cause acceleration of the indebtedness evidenced by this Promissory Note. Reference is made to said Deed of Trust for such additional terms. Said Deed of Trust grants rights in certain property located in the County of Garfield, State of Colorado, described as follows (the “**Property**”):

- (a) The Shoshone Power Plant senior water right decreed as the Glenwood Power Canal and Pipeline water right on Dec. 9, 1907, in Civil Action No. 0466, Eagle County District Court, in the amount of 1,250 cfs with an appropriation date of Jan. 7, 1902, for power, mining, milling, manufacturing, lighting and heating and traction purposes, and as further decreed by the Eagle County District Court on Feb. 27, 1911, in Civil Action No. 553; and
- (b) The Shoshone Power Plant junior water right decreed as the Shoshone Hydro Plant Diversion No. 2 on Feb. 7, 1956 in Civil Action No. 1123, Eagle County District Court, in the amount of 158 cfs with an appropriation date of May 15, 1929, for manufacturing and generation of electrical energy.

11. Any notice, demand, claim or other written instrument required or permitted to be given pursuant to this Promissory Note shall be in writing signed by the Party giving such notice and shall be sent by electronic mail, hand messenger delivery, overnight courier service or certified mail (receipt requested) to the other Party at the addresses set forth below and shall be deemed to have been duly given by delivery to the respective addresses provided below, or such other address changed by the recipient by notice consistent with this paragraph: (i) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such address; (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the Party to whom notice is given as such address; (iii) on the date of delivery or attempted delivery shown on the registered or certified mail, return receipt requested, postage prepaid and properly addressed to such address; (iv) if an email address is specified, on the date and at the time shown on the sent email message if sent to the e-mail address specified below:

If to Lender: Public Service Company of Colorado  
1800 Larimer Street, Suite 1100  
Denver, CO 80202  
Attn: Director, Environmental Services

with a copy to:

Frances A. Folin, Esq.  
Xcel Energy Services Inc.  
1800 Larimer Street, 14th Floor  
Denver, CO 80202  
303-294-2222  
Frances.A.Folin@xcelenergy.com

## EXHIBIT B TO ISF AGREEMENT

and: Welborn, Sullivan, Meck & Tooley, P.C.  
1401 Lawrence Street, Suite 1800  
Denver, Colorado 80202  
Attn: Carolyn Burr, Esq., James M. Noble, Esq.  
(303) 830-2500  
cburr@wsmtlaw.com, jnoble@wsmtlaw.com

If to Borrower: Andy Mueller, Esq.  
General Manager  
Colorado River Water Conservation District  
201 Centennial St., #200  
Glenwood Springs, CO 81601  
970-945-8522  
amueller@crwcd.org

with a copy to: Peter Fleming, Esq.  
General Counsel  
Colorado River Water Conservation District  
201 Centennial St., #200  
Glenwood Springs, CO 81601  
970-945-8522  
pfleming@crwcd.org

12. A waiver of any term of this Note or the Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by this Note, the terms of this Note shall prevail.

13. This Note shall be construed and enforced in accordance with the laws of the State of Colorado.

14. The provisions of this Note may be amended or revised only by an instrument in writing signed by the Borrower and Lender.

### **BORROWER:**

Colorado River Water Conservation District,  
a political subdivision of the State of Colorado

By: \_\_\_\_\_

## EXHIBIT B TO ISF AGREEMENT

### Schedule 1 (Payment Schedule)

[insert amortization/payment schedule prior to closing]

EXHIBIT B TO ISF AGREEMENT

**EXHIBIT F**

DEED OF TRUST

See attached.

## EXHIBIT B TO ISF AGREEMENT

Following recording return to:  
Public Service Company of Colorado  
c/o Xcel Energy  
Attn: Legal Dept. – Real Estate  
1800 Larimer Street, 14<sup>th</sup> Floor  
Denver, Colorado 80202

### DEED OF TRUST

THIS DEED OF TRUST is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the COLORADO RIVER WATER CONSERVATION DISTRICT, a political subdivision of the State of Colorado (“Trustor”), whose address is 201 Centennial Street, Suite 200, Glenwood Springs, Colorado 81601, in favor of the PUBLIC TRUSTEE OF GARFIELD COUNTY, COLORADO (“Trustee”), for the benefit of PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation (“Beneficiary”), whose address is 1800 Larimer Street, Suite 1100, Denver, Colorado 80202.

1. **Property in Trust.** Trustor, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee, for the benefit of Beneficiary, in trust, with power of sale, all of Trustor’s right, title, and interest in the following legally described property located in the COUNTY OF GARFIELD, STATE OF COLORADO (the “Property”):

- (a) The Shoshone Power Plant senior water right decreed as the Glenwood Power Canal and Pipeline water right on Dec. 9, 1907, in Civil Action No. 0466, Eagle County District Court, in the amount of 1,250 cfs with an appropriation date of Jan. 7, 1902, for power, mining, milling, manufacturing, lighting and heating and traction purposes, and as further decreed by the Eagle County District Court on Feb. 27, 1911, in Civil Action No. 553; and
- (b) The Shoshone Power Plant junior water right decreed as the Shoshone Hydro Plant Diversion No. 2 on Feb. 7, 1956, in Civil Action No. 1123, Eagle County District Court, in the amount of 158 cfs with an appropriation date of May 15, 1929, for manufacturing and generation of electrical energy.

2. **Note; Obligations Secured.** This Deed of Trust is given to secure to Beneficiary:

- (a) the repayment of the indebtedness evidenced by Trustor’s promissory note (“Note”), dated as of \_\_\_\_\_, in the principal sum of TWENTY MILLION and 00/100 DOLLARS (U.S. \$20,000,000.00), with interest as specified in the Note;
- (b) the payment of all other sums as specified in the Note disbursed by Beneficiary in accordance with this Deed of Trust to protect the security of this Deed of Trust; and
- (c) the performance of the covenants and agreements of Trustor herein contained.

If not sooner paid, the entire principal amount outstanding and accrued interest thereon shall be due and payable on \_\_\_\_\_.

## EXHIBIT B TO ISF AGREEMENT

3. **Title.** Trustor covenants that Trustor has taken no action to alienate and/or convey the title to the Property received from Beneficiary via Special Warranty deed dated the same date as this Deed of Trust.
4. **Payment of Principal and Interest.** Trustor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and any late charges or other charges as provided in the Note, and shall perform all of Trustor's other covenants contained in the Note.
5. **Application of Payments.** All payments received by Beneficiary under the terms hereof shall be applied by Beneficiary first in payment of amounts due pursuant to §8 (Protection of Beneficiary's Security), and the balance in accordance with the terms and conditions of the Note.
6. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Trustor represents and warrants that there are no prior deeds of trust, charges or liens on the Property.
7. **Preservation and Maintenance of Property.** Trustor shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. Trustor shall perform all of Trustor's obligations under any declarations, covenants, by-laws, rules, court decrees, or other documents governing the use or ownership of the Property.
8. **Protection of Beneficiary's Security.** If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in a prior lien, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, then Beneficiary, at Beneficiary's option, with notice to Trustor if required by law, may make such appearances, disburse such sums, and take such action as is necessary to protect Beneficiary's interest, including, but not limited to:
  - (a) any general or special taxes or ditch or water assessments levied or accruing against the Property;
  - (b) the premiums on any insurance necessary to protect any improvements comprising a part of the Property;
  - (c) sums due on any prior lien or encumbrance on the Property;
  - (d) if the Property is a leasehold or is subject to a lease, all sums due under such lease;
  - (e) the reasonable costs and expenses of defending, protecting, and maintaining the Property and Beneficiary's interest in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney in the employment of Beneficiary or holder of the certificate of purchase;
  - (f) all other costs and expenses allowable by the evidence of debt or this Deed of Trust; and

## EXHIBIT B TO ISF AGREEMENT

- (g) such other costs and expenses which may be authorized by a court of competent jurisdiction.

Trustor hereby assigns to Beneficiary any right Trustor may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.

Any amounts disbursed by Beneficiary pursuant to this §8, with interest thereon, shall become additional indebtedness of Trustor secured by this Deed of Trust. Such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof, and Beneficiary may bring suit to collect any amounts so disbursed plus interest specified in the Note. Nothing contained in this §8 shall require Beneficiary to incur any expense or take any action hereunder.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary as herein provided. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor.

In the event of a partial taking of the Property, the proceeds remaining after taking out any part of the award due any prior lien holder (net award) shall be divided between Beneficiary and Trustor, in the same ratio as the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to Trustor's equity in the Property immediately prior to the date of taking. Trustor's equity in the Property means the fair market value of the Property less the amount of sums secured by both this Deed of Trust and all prior liens (except taxes) that are to receive any of the award, all at the value immediately prior to the date of taking.

If the Property is abandoned by Trustor or if, after notice by Beneficiary to Trustor that the condemnor offers to make an award or settle a claim for damages, Trustor fails to respond to Beneficiary within 30 days after the date such notice is given, Beneficiary is authorized to collect and apply the proceeds, at Beneficiary's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in §4 (Payment of Principal and Interest) nor change the amount of such installments.

10. **Trustor not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor, nor Trustor's successors in interest, from the original terms of this Deed of Trust. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Trustor nor Trustor's successors in interest.



11. **Forbearance by Beneficiary Not a Waiver.** Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

12. **Remedies Cumulative.** Each remedy provided in the Note and this Deed of Trust is distinct from and cumulative to all other rights or remedies under the Note and this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

13. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Trustor, subject to the provisions of §21 (Transfer of the Property; Assumption). All covenants and agreements of Trustor shall be joint and several. The captions and headings of the sections in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

14. **Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Trustor or (2) mailing such notice by first class U.S. mail, addressed to Trustor at Trustor's address stated herein or at such other address as Trustor may designate by notice to Beneficiary as provided herein, and (b) any notice to Beneficiary shall be in writing and shall be given and be effective upon (1) delivery to Beneficiary or (2) mailing such notice by first class U.S. mail, to Beneficiary's address stated herein or to such other address as Beneficiary may designate by notice to Trustor as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor or Beneficiary when given in any manner designated herein.

15. **Governing Law; Severability.** The Note and this Deed of Trust shall be governed by the laws of the State of Colorado. In the event that any provision or clause of this Deed of Trust or the Note conflicts with the law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and Note are declared to be severable.

16. **Acceleration; Foreclosure; Other Remedies.** Except as provided in §21 (Transfer of the Property; Assumption), upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, at Beneficiary's option, all of the sums secured by this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Beneficiary may invoke the power of sale, may commence and maintain an action to foreclose this instrument and in such event Borrower specifically waives the defense of laches and any applicable statutes of limitation, and/or may exercise any other remedies permitted by law. Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

If Beneficiary invokes the power of sale, Beneficiary shall give written notice to Trustee of such election. Trustee shall give such notice to Trustor of Trustor's rights as is provided by law. Trustee shall record a copy of such notice and shall cause publication of the legal notice as required by law in a newspaper of general circulation in each county in which the Property is situated, and shall

mail copies of such notice of sale to Trustor and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Trustor, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think best and in such order as Trustee may determine. Beneficiary or Beneficiary's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

17. **Trustor's Right to Cure Default.** Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

18. **Appointment of Receiver; Beneficiary in Possession.** Beneficiary or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property after Acceleration under §16 (Acceleration; Foreclosure; Other Remedies), and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Trustor or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed by any Court of competent jurisdiction upon ex parte application and without notice; notice being hereby expressly waived.

Upon Acceleration under §16 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, Beneficiary, in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Beneficiary or the receiver shall be applied, first to payment of the costs of preservation and management of the Property, second to payments due upon prior liens, and then to the sums secured by this Deed of Trust. Beneficiary and the receiver shall be liable to account only for those rents actually received.

19. **Release.** Upon payment of all sums secured by this Deed of Trust, Beneficiary shall cause Trustee to release this Deed of Trust and shall produce for Trustee the Note. Trustor shall pay all costs of recordation and shall pay the statutory Trustee's fees. If Beneficiary shall not produce the Note as aforesaid, then Beneficiary, upon notice in accordance with §14 (Notice) from Trustor to Beneficiary, shall obtain, at Beneficiary's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to affect the release of this Deed of Trust.

20. **Waiver of Exemptions.** Trustor hereby waives all right of homestead and any other exemption in the Property under state or federal law presently existing or hereafter enacted.

21. **Transfer of the Property; Assumption.** The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein); (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein); (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of 3 years; (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in Trustor and (v) the reorganization, liquidation or dissolution of Trustor. Not to be included as a Transfer are the creation of a lien or encumbrance subordinate to this Deed of Trust, or an agreement with, or transfer to, the Colorado Water Conservation Board regarding the use of the Property for instream flow purposes.

At the election of Beneficiary, in the event of each and every Transfer:

- (a) All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).
- (b) If a Transfer occurs and should Beneficiary not exercise Beneficiary's option pursuant to this §21 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Trustor under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. Beneficiary may without notice to Trustor deal with Transferee in the same manner as with Trustor with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging Trustor's liability hereunder for the obligations hereby secured.
- (c) Should Beneficiary not elect to Accelerate upon the occurrence of such Transfer then, subject to §21(b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Beneficiary had actual or constructive notice of such Transfer, shall not be deemed a waiver of Beneficiary's right to make such election nor shall Beneficiary be estopped therefrom by virtue thereof. The issuance on behalf of Beneficiary of a routine statement showing the status of the loan, whether or not Beneficiary had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Beneficiary's said rights.

22. **Trustor's Copy.** Trustor acknowledges receipt of a copy of the Note and this Deed of Trust.

[signature page follows]

EXHIBIT B TO ISF AGREEMENT

EXECUTED BY TRUSTOR as of the date first stated above:

**TRUSTOR:**

COLORADO RIVER WATER CONSERVATION DISTRICT,  
a political subdivision of the State of Colorado

By: \_\_\_\_\_  
Andrew A. Mueller, Secretary/General Manager

By: \_\_\_\_\_  
Kathy Chandler-Henry, CRWCD Board President

STATE OF COLORADO                    )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Andrew A. Mueller, Secretary/General Manager, and Kathy Chandler-Henry, Board President of the Colorado River Water Conservation District, a political subdivision of the State of Colorado.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_  
Notary Public

## Exhibit A

### DESCRIPTION OF PROCEDURES USED BY THE BOARD FOR RESERVOIR PROJECTIONS

Denver Water projects future reservoir levels monthly in the springtime and less frequently throughout the rest of the year. Active storage levels (excluding the dead storage pools) for the 10 largest reservoirs in Denver's system (Antero, Eleven Mile, Cheesman, Marston, Chatfield, Gross, Ralston, Dillon, Williams Fork, and Wolford Mountain) are forecasted. Calculations of gross and net aggregate reservoir contents are made. The calculation of net reservoir contents excludes any water in Denver's system owed to others (primarily Green Mountain Reservoir). The net active storage of the 10 reservoirs will be used in the forecast for the Shoshone call reduction.

The reservoir projections are based on natural streamflow forecasts produced primarily by the Natural Resources Conservation Service (NRCS). However, streamflow forecasts produced by other organizations including the Colorado Basin River Forecast Center, the Bureau of Reclamation, the Northern Colorado Water Conservancy District and Denver Water are also used.

The reservoir projections utilize correlations between natural streamflow and divertible streamflow to estimate how much of the natural streamflow can be diverted under Denver's water rights. Other factors incorporated in the reservoir projections include projections of treated water use, raw water deliveries, evaporation (based on rates approved by the State Engineer's Office), minimum bypass and release requirements, carriage losses assessed by the State Engineer's Office, existing capacities of diversion and conveyance facilities, system outages and river calls. The assumed treated water use considers any water use restrictions approved by the Denver Water Board at the time of the forecast.

Usually, three levels of reservoir projections are produced. These projections are based on three scenarios after the forecast date: "dry", "normal" and "wet" conditions. The "dry" scenario is based on the "reasonable minimum" streamflow forecasts, which have a 90% chance of being exceeded. The "normal" scenario is based on the "most probable" streamflow forecasts, which have a 50% chance of being exceeded. The "wet" scenario is based on the "reasonable maximum" streamflow forecasts, which have a 10% chance of being exceeded. The "normal" scenario will be used for the Shoshone call reduction.