

**COLORADO WATER RESOURCES &
POWER DEVELOPMENT AUTHORITY**

BOARD PROGRAM WORK SESSION (BPWS) AGENDA

October 3, 2024

3:00 pm

Board Members: Eric Wilkinson (Chair), Steve Vandiver, Chris Treese, Mike Fabbre, Lucas Hale, Matthew Shuler, Patti Wells, Bruce Whitehead, and Karen Wogsland.

Authority Staff: Keith McLaughlin, Jim Griffiths, Justin Noll, Sabrina Speed, Wesley Williams, Ian Loffert and Kevin Carpenter.

Others present: Mark Henderson (WQCD), Alex Hawley (WQCD), and Desi Santerre (DOLA)

AGENDA

1. Arkansas Valley Conduit Funding Concepts– discussion and possible action (Keith, Jim).
2. Arkansas Valley Conduit – Intergovernmental Agreement Framework – discussion only (Jim, Karl, Keith).
3. Authority Staff “Stay Survey” - discussion only (Keith).
4. Economic Update – Time Permitting – discussion only (Kevin, Wes).



COLORADO WATER RESOURCES & POWER DEVELOPMENT AUTHORITY

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MEMORANDUM

October 3, 2024

TO: Board of Directors and Karl Ohlsen

FROM: Keith McLaughlin, Executive Director
Jim Griffiths, Finance Director

RE: Review of the Intergovernmental Agreement ("IGA") Between
Southeastern Colorado Water Conservancy District, Otero County,
Colorado Water Conservation Board, and Colorado Water Resources
& Power Development Authority

The Authority Board authorized the preparation of the above referenced IGA to support financing concepts and opportunities for the Arkansas Valley Conduit project. The financing concepts seek to use the Drinking Water Revolving Fund Bipartisan Infrastructure Law funding to support and benefit this unique and important safe drinking water project.

The first draft of the IGA has been reviewed and commented on by all four parties to the agreement. Authority staff is seeking further input from the Authority Board.

**Intergovernmental Agreement Between Southeastern Colorado Water
Conservancy District, Otero County, the Colorado Water Conservation Board, and
Colorado Water Resources and Power Development Authority**

This Intergovernmental Agreement (“IGA” or “Agreement”) is entered into this ___ day of _____, 2024, by and between the Southeastern Colorado Water Conservancy District (“SECWCD”), a statutory water conservancy district pursuant to C.R.S. 37-45-101, et seq., acting by and through the Southeastern Colorado Water Activity Enterprise (“SECWAE”), the County of Otero (“County”), the Colorado Water Conservation Board (“CWCB”), and the Colorado Water Resources and Power Development Authority (“Authority”), a body corporate and political subdivision of the State of Colorado. The parties to this Agreement may be referred to individually herein as a “Party” or collectively as “Parties”.

PURPOSE

The purpose of this IGA is to establish a framework for the joint efforts of the Parties to utilize state and federal loan and grant funds to finance, design, construct, maintain, and operate portions of the Arkansas Valley Conduit, as further described below.

RECITALS

1. The United States, pursuant to the federal Safe Drinking Water Act of 1996, assists state and local participation in the financing of the costs of drinking water system projects and the Safe Drinking Water Act requires each state to establish a drinking water revolving fund to be administered by an instrumentality of the State.
2. The Authority was created to initiate, acquire, construct, maintain, repair, and operate or cause to be operated certain water resource projects, and to finance the cost thereof;
3. Section 37-95-107.8, Colorado Revised Statutes, has created a Drinking Water Revolving Fund (“DWRF”) to be administered by the Authority;
4. In 2021, the federal government created the U.S. Environmental Protection Agency’s Drinking Water Revolving Fund Bipartisan Infrastructure Law Funding Program (the “BIL Program”), funds from which (“BIL Funds”) are intended to be a supplemental appropriation for the DWRF, to be in addition to the annual base DWRF loans;
5. The Authority has determined to loan certain sums from the BIL Funds and, when available the base DWRF, to governmental agencies in Colorado to finance all or a portion of the costs of certain water resource projects, which loans are subject to the requirements of applicable federal law, regulations, and guidelines then in effect;
6. The Authority has authorized certain funds to be applied through the BIL Funds and its base DWRF to qualified governmental agencies as Principal Forgiveness;

7. Clean and reliable supplies of water for municipal and domestic use are essential to the economy, health, safety and welfare of the citizens of the State of Colorado, including Otero County and adjacent Counties within the Arkansas River Basin and SECWCD boundaries;

8. The Arkansas Valley Conduit (“AVC”) refers to the Arkansas Valley Conduit as authorized by Public Law 87-590 as amended by Public Law 111-11. The AVC will be an approximately 130-mile pipeline with spurs that will serve approximately 50,000 people in 39 separate water systems (the “Served Entities”) east of Pueblo and will include the treatment and delivery of water from Pueblo Reservoir. Served Entities will include cities, towns, and private non-profit water companies. The AVC is designed to improve water supplies and quality to users of municipal water supplies located within the Served Entities.

9. The SECWCD is the agency responsible for the repayment and oversight of the Municipal and Industrial and Irrigation portions of the Fryingpan Arkansas Project, a transmountain diversion project that supplies southeastern Colorado with improved supplemental water supply for irrigation, municipal and industrial uses, hydroelectric power generation, and recreational opportunities, as authorized by Public Law 87-590 (76 Stat. 389), as amended.

10. The AVC is an authorized feature of the Fryingpan Arkansas Project. The AVC when fully constructed will consist of a main trunk line, spurs serving multiple Served Entities each, and delivery lines from the spurs to individual Served Entities. The SECWCD is charged with coordinating the efforts for the development of the AVC and allocating water to beneficiaries.

11. The AVC is being constructed in two areas of responsibility: the United States Bureau of Reclamation holds the responsibility for designing and constructing the main trunk line consisting of approximately 100 miles of pipe from Pueblo Reservoir to approximately Lamar, Colorado; and the SECWCD holds the responsibility for designing and constructing the spurs and water delivery lines to the Served Entities. Construction has begun on the main trunk of the AVC.

12. The total cost of the AVC is estimated to be approximately \$600 million.

13. The CWCB is a state agency created pursuant to C.R.S. §37-60-102 et seq. for the purpose of aiding in the development of waters of the state for the benefit of its inhabitants.

14. The Colorado legislature through the CWCB has approved \$30 million in state grant funds and \$90 million in loan funds to the SECWCD, by and through its enterprise, the SECWAE, to aid in the construction of the AVC spur and delivery lines (the “CWCB AVC Grant Funds” and the “CWCB AVC Loan Funds”).

15. All of the AVC Served Entities are located within the boundaries of the SECWCD and some of those entities are located within Otero County.

16. Otero County has developed experience as a fiscal agent while administrating funds provided under the March 11, 2020, American Rescue Plan Act (“ARPA”), and is able to act in that capacity as fiscal agent to manage and administer the CWCB AVC Grant Funds.

17. Otero County and SECWCD are parties to a March 30, 2022, Intergovernmental Agreement designating Otero County as the fiscal agent for the CWCB AVC Grant Funds,

designating Otero County as the entity to receive the CWCB AVC Grant Funds, and setting forth the SECWCD and Otero County's responsibilities related to use of the CWCB AVC Grant Funds and the CWCB AVC Loan Funds.

18. The Parties desire that Otero County continue to serve as the fiscal agent related to the CWCB AVC Funds and to provide certain additional administrative services set forth in this Agreement, and to receive CWCB grant funding for use in construction of AVC spur lines with SECWCD to contribute support staff to the County at no cost to the County;

19. The Parties recognize that repayment of the CWCB AVC Loan Funds by the Served Entities could result in an undue hardship on those communities, and that application of the state CWCB AVC Grant Funds in combination with the federal BIL Program and base DWRP Funds, including applicable Principal Forgiveness and reduced interest rates, can be beneficial to the Served Entities by off-setting and potentially eliminating those repayment costs.

20. The Parties have statutory authority to enter into this agreement and perform the duties set forth herein; and

21. The Parties enter into this Agreement on the belief that it is in the best interests of their respective constituents and customers.

NOW THEREFORE, in consideration of the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Purpose.

This Agreement is entered into pursuant to Article XIV §18 of the Colorado Constitution and C.R.S. §29-1-203, to establish a framework for Otero County to serve as fiscal agent for the CWCB AVC Grant Funds, for SECWAE to administer loan funds from the CWCB and the Authority, for the Authority to use BIL Funds and base DWRP Funds through loan agreements with the SECWCD to aid in the construction of the AVC spur and delivery lines, for the CWCB and Otero County to aid in escrowing CWCB AVC Grant Funds as the source of repayment of Authority loans, and for the parties to implement a long-term plan for the application of such funds towards the design, construction, operation, maintenance, and repairs of the AVC.

II. Responsibilities.

In furtherance of the desire to plan, finance, and construct the spur and delivery lines using state and federal funds, the Authority, SECWAE, Otero County, and the CWCB shall cooperate and each have the following responsibilities:

A. SECWAE Responsibilities:

1. SECWAE represents and warrants that it is an "Enterprise" as defined in Article X, Section 20(2)(d) of the Colorado Constitution ("TABOR") and that it is authorized to enter into the multiple-fiscal year financial obligations provided in this Agreement, notwithstanding Article X, Section 20(4)(b) of the Colorado

Constitution. SECWAE will maintain its status as an “Enterprise” throughout the course of this Agreement.

2. SECWAE will negotiate all contracts with third parties for the design, construction, and maintenance of the spur lines and the delivery lines. SECWAE may enter such contracts from each spur line and related delivery lines separately or jointly, at its sole discretion. SECWAE will ensure all contracts meet applicable SRF and CWCB requirements and will provide final drafts of such contracts to all Parties for prompt review and comment prior to execution.
3. SECWAE will apply for, manage, and administer loans from the Authority using BIL Funds or base DWRF Funds for costs related to the AVC spur and delivery lines. It is anticipated that the loans from the Authority will consist of Principal Forgiveness Funds and repayable loan funds.
4. Upon execution of an Authority loan agreement, the SECWAE will request the CWCB to deposit CWCB AVC Grant Funds in an amount sufficient to repay the Authority repayable loan funds plus estimated interest in the escrow account administered by Otero County (established under Part II.D.3., below). Such funds shall be identified and encumbered as the sole source of repayment for the Authority repayable loan funds. It is anticipated that there will be a separate loan agreement or loan agreements for each spur line, with individual payment schedules and completion dates as mutually agreeable between the SECWAE and the Authority.
5. SECWAE will submit requisition requests to the Authority as required to reimburse the costs of the design, engineering, construction, replacement, and environmental compliance for the spur and delivery lines of the AVC using BIL Funds or base DWRF Funds.
6. Pursuant to a March 30, 2022, agreement between the SECWAE and Otero County, SECWAE has delegated to Otero County its authority to receive the CWCB AVC Grant Funds. SECWAE now designates Otero County as its agent to receive, deposit in an escrow account, use, and administer said funds to repay the repayable loan funds loaned to SECWAE from the Authority, and applicable interest, for each construction project on the spur and delivery lines pursuant to a mutually-agreeable schedule set forth in each loan agreement.
7. SECWAE, or any of its duly authorized representatives, shall have the right to inspect, examine, and audit Otero County’s records, books, accounts, and other relevant documents relating to the AVC and this Agreement at any time.
8. SECWAE shall retain oversight authority over Otero County’s administration of the CWCB AVC Grant Funds to ensure compliance with this Agreement and that all funds are used in furtherance of the AVC project’s mission. SECWAE may inspect Otero County’s CWCB grant records upon request, which request shall not be unreasonably denied.

9. SECWAE will exercise its best efforts to negotiate and secure agreements with individual Served Entities for use of the spur and delivery lines.

B. Otero County Responsibilities.

1. Otero County warrants and represents that (i) it is a “District” as defined in Colo. Const. Art. X, § 20 (“TABOR”); (ii) it has received a broad form of voter approval to keep and spend revenue in excess of TABOR’s limitations [Otero County Referendum 1A, 1995 Coordinated Election]; and (iii) it is authorized to enter into this agreement notwithstanding Section 4(b) of TABOR. Otero County further warrants and represents that the acceptance of grant funding from the CWCB, and its service as a fiscal agent for those funds, will not cause any violation of, or any required election under TABOR.
2. Pursuant to a March 30, 2022, agreement between Otero County and SECWAE, Otero County will obtain, manage, and administer the CWCB AVC Grant Funds to be applied to costs related to the AVC.
3. Otero County shall keep all records and accounting reasonably necessary to facilitate the transfer of CWCB AVC Grant Funds and payments to the Authority for the repayable loan funds subject to the Authority’s loan agreements with the SECWAE, and shall prepare an annual report documenting all costs and expenditures as well as summarizing progress to date and anticipated future work.
4. Otero County shall receive, deposit, and administer all CWCB AVC Grant Funds for design, engineering and construction of the AVC spur and delivery lines. The funds shall be maintained and administered by Otero County in a separate escrow account established pursuant to part II.D.3., below, for the exclusive benefit of the AVC spur and delivery line project.
5. Upon receipt from CWCB, Otero County will deposit CWCB AVC Grant Funds in an interest-bearing escrow account established pursuant to part II.D.3, below, until authorized by SECWAE to release such funds to the Authority to pay the outstanding balance of repayable loan funds under a loan agreement.
6. Otero County shall comply with all requirements imposed by the Authority, CWCB and the SECWAE, and by any other state agency granting funds for the AVC spur and delivery line project, for the accounting and administration of such funds.
7. Otero County will not assume any debt obligation for SECWCD or SECWAE or any other parties while operating as fiscal agent administering CWCB AVC Grant Funds for the AVC spur and delivery line project.
8. Otero County will cooperate with the SECWAE, the Authority, the State Auditor, or any other state agency if any audit is performed pursuant to state or federal law.

9. As consideration for fulfilling its obligations as fiscal agent pursuant to this Agreement, Otero County is entitled to all interest earned on CWCB AVC Grant Funds held in escrow, which amount may be released to Otero County pursuant to the escrow agreement required under part II.

C. Authority Responsibilities

1. The Authority will work in good faith to negotiate, draft, and execute one or more loan agreements with SECWAE for the purpose of lending BIL Funds and Base DWRF funds (if available) to be used for designing, constructing, administering, and maintaining each AVC spur and associated delivery lines. The loan agreements will contain such terms as are necessary to insure compliance with the BIL Program and DWRF requirements, including the application of Principal Forgiveness and reduced interest rates, where applicable. It is anticipated that each loan agreement will include a portion of Principal Forgiveness funds and a portion of repayable loan funds at the applicable interest rate. The loan agreement will require bond counsel and general counsel opinions substantially similar to those generally required for DWRF loan agreements issued by the Authority.
2. The Authority will coordinate with the Parties and its partners, the Water Quality Control Division, within the Colorado Department of Public Health and Environment (WQCD), and the Division of Local Government, within the Department of Local Affairs (DOLA), to ensure compliance with federal and state requirements for the BIL Program, the DWRF program, and state statute, including but not limited to C.R.S. §37-95-107.8, and to develop a streamlined funding mechanism for the SECWAE for the construction of spur and delivery lines.
3. It is the intent of the Parties that each loan agreement encumbers sufficient CWCB AVC Grant Funds to repay the repayable loan funds from the Authority provided under each Authority loan agreement with the SECWAE for each spur line and related delivery lines, together with such estimated interest that will accrue under the loan agreement.
4. The Authority will work with Otero County and the CWCB to develop an escrow agreement under which a portion of CWCB AVC Grant Funds are set aside and secured in an escrow account administered by Otero County as the sole source of loan repayment for the repayable loan funds. This method may include development of an interest-bearing escrow account and escrow agreement as funds are committed for each spur line, but in any event will result in an irrevocable commitment of such CWCB AVC Grant Funds as the sole source of repayment for the repayable loan funds.
5. The Authority and its partners DOLA and WQCD will review proposed project costs for each spur line and delivery line, and the applicability of federal provisions for the use of BIL Funds and base DWRF Funds, including but not

limited to Davis Bacon & Related Acts, codified at 40 U.S.C. §§ 3140 through 3148, Section 436 of P.L. 113-76, Consolidated Appropriations Act, 2014, (the “Appropriations Act”) and related State Revolving Fund Policy Guidelines, which require that all of the iron and steel products (as defined in the Appropriations Act and Guidelines) are made in the U.S., and the Build America Buy America Act, enacted as part of the Bipartisan Infrastructure Law, including guidance for implementing the BABA Act provided by the Office of Management and Budget, where applicable.

6. The Authority and its partners DOLA and WQCD will perform periodic reviews and construction inspections as necessary to ensure compliance with applicable federal and state requirements and will exercise best efforts to coordinate such reviews and inspections with the CWCB, as necessary to satisfy CWCB grant and loan requirements, as applicable.
7. The Authority will review requisition requests from SECWAE and, pursuant to the terms of the applicable loan agreement, disburse BIL Program and/or DWRP Principal Forgiveness funds and repayable loan funds, as applicable, to the SECWAE for payment to contractors, constructing, and maintaining the applicable spur line and associated delivery lines.
8. The Authority, in coordination with SECWAE, will submit a requisition to Otero County and the CWCB pursuant to the repayment terms of the loan agreement between the Authority and the SECWAE for each spur line or associated delivery line, and upon receipt and acceptance, CWCB will authorize the release of escrowed CWCB AVC Grant Funds administered by Otero County for that purpose, and Otero County will deliver such funds to the Authority to pay the repayable loan funds, pursuant to the escrow agreement required herein.
9. The Authority may elect, at its sole discretion, and only after approval by its Board of Directors, to waive any or all interest charges against the repayable loan funds. The Authority will notify the Parties of its election upon submitting the notice of substantial completion to the CWCB and Otero County.

D. CWCB Responsibilities

1. CWCB will review each contract and supporting documentation for construction of each spur line and delivery line for which CWCB AVC Grant Funds will be used prior to final execution to ensure compliance with CWCB AVC Grant Funds allowable uses.
2. CWCB will coordinate with the Parties to determine the estimated cost for each spur line and associated delivery lines, and will set aside, reserve, and escrow funds from the CWCB AVC Grant Funds pursuant to that estimate.
3. CWCB will coordinate with the Parties to develop an escrow agreement under which the portions of the CWCB AVC Grant Funds necessary to repay the

Authority repayable loan funds for each loan agreement will be irrevocably pledged and reserved in an interest-bearing escrow account, to be administered by Otero County and released, pursuant to the terms of the escrow agreement, for repayment of the Authority's repayable loan funds upon substantial completion of each spur and/or delivery line.

4. CWCB will conduct all necessary reviews and inspections of each spur line and delivery line as required by the CWCB loan and grant award. CWCB will exercise best efforts to coordinate its reviews and inspections with the Authority and its partners.
5. CWCB and the Authority will prepare joint periodic progress reports for their respective Boards of Directors regarding use of the CWCB AVC Grant Funds for each spur line and associated delivery lines.
6. Upon approval by SECWAE of substantial completion (or upon some other mutually-agreed upon schedule set forth in the applicable loan agreement) of a spur line and associated delivery lines, CWCB will coordinate with SECWAE and Otero County to release CWCB AVC Grant Funds from escrow for the purpose of funding the payment necessary to pay the outstanding balance and any accrued interest for each Authority loan.

E. Joint Responsibilities

1. The Parties will coordinate and exercise best efforts to explore, pursue, and if applicable, secure additional funding sources, including additional federal funding when available, to design, construct, maintain, and administer the spur lines and delivery lines in order to minimize or eliminate the costs to the entities receiving water deliveries through the AVC Project.
2. [Intentionally left blank]
3. [Intentionally left blank]

III. Project Plan and Implementation.

- A. Further Intergovernmental Agreements and Contracts Necessary: the Parties agree to initiate discussions with the other Parties and with AVC Served Entities in order to negotiate and execute Intergovernmental Agreements and other Contracts, as may be necessary, for implementation of the AVC Project. In particular, the Parties anticipate that such Intergovernmental Agreements likely will include (1) escrow agreements providing for the reservation and security of specific CWCB grant funds for the purpose of securing each Authority loan to SECWAE, and for the release of such funds upon the substantial completion, or other mutually-agreed upon schedule, of each spur and related delivery lines; (2) an intergovernmental agreement providing for any necessary repayment of the CWCB loan, the Authority loans, and federal financial support for the AVC; and (3) service and maintenance agreements between Served Entities and the SECWAE.

- B. Fee for Performance of Fiscal Agent Duties. In consideration of Otero County's performance of the services described in this Agreement, and to cover Otero County's administrative, overhead, and other expenses in connection with the Project, Otero County shall receive an amount not to exceed one percent (1%) of the CWCB AVC Grant Funds. Such amount shall not exceed the reasonable and necessary costs and expenses Otero County incurs in performing the services of fiscal agent as provided in this Agreement.

IV. Dispute Resolution.

If a dispute arises between the Parties relating to this IGA, then the following procedure shall be followed:

- A. The Executive Director of SECWAE, a representative from Otero County, the Executive Director of the Authority, and the Executive Director of the CWCB, or their designees, shall hold a meeting promptly, but in no event later than 20 calendar days from the written referral of the dispute by any Party, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties or be deemed a waiver by a Party hereto of any remedies to which such Party would otherwise be entitled under this IGA unless otherwise agreed to by the Parties in writing.
- B. If, within 20 calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
- C. The Parties agree to participate in good faith in the mediation and related negotiations for a period of 30 calendar days. The substantive law of the State of Colorado shall apply to the proceedings, but the rules of procedure and evidence need not be adhered to. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to pursue any other legal remedy. The Parties agree to reasonably expedite any legal proceedings brought hereunder in order to obtain a prompt resolution.

V. Assignment and Delegation.

No Party may assign or delegate its rights and obligations under this IGA.

VI. Term.

This Agreement shall be perpetual and remain in full force and effect until: (a) the Parties mutually determine and agree in writing that all work on the AVC as provided in this IGA has been completed; or (b) this IGA is superseded by a new written agreement between the Parties.

VII. Reduction Clause.

This IGA represents the entire agreement of the parties, and neither party has relied on any fact or representation not expressly set forth herein.

VIII. Miscellaneous Provisions.

A. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the date sent by email (with confirmation of transmission and receipt) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section X.A):

To SECWAE: Executive Director
Southeastern Colorado Water Conservancy District
31717 United Avenue
Pueblo, CO 81001
Facsimile: (719) 948-0036

To Otero County: Otero County Administrator
Otero County Courthouse
13 West Third Street, Room 212
La Junta, CO 81050
Facsimile: (719) 383-3090

To CWCB: Colorado Water Conservation Board
Department of Natural Resources
Executive Director
1313 Sherman Street, Suite ____
Denver, CO 80203
Facsimile: (303) 866-4474

To Authority: Colorado Water Resources and Power Development
Authority
Executive Director
1580 Logan Street, Suite 820
Denver, CO 80203
Facsimile:

B. No Impairment of Existing Contracts. Nothing in this Agreement shall impair, amend, limit, abridge, contravene or otherwise affect the rights of any Party under any existing contracts or agreements.

- C. No Restriction on Water Powers or Parties.** Nothing herein shall be deemed or construed to restrict, prohibit, or otherwise limit any Party from obtaining water services, facilities, or programs from any source that such Party may desire on its own or in a combined manner with anyone.
- D. Full Force and Effect.** Except as hereinafter provided, this Agreement and the contractual obligations and rights hereunder shall continue in full force and effect until amended or modified by the Parties.
- E. Liability of Parties.** No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon each Party nor the breach thereof, nor the issuance and sale of any bonds by a Party, shall constitute or create an indebtedness of the other Parties within the meaning of any Colorado constitutional or statutory provision. Unless otherwise agreed in writing between any of the Parties, no Party shall have any obligation whatsoever to repay any debt or liability of the other Party.
- F. Headings for Convenience Only.** Paragraph headings and titles contained in this IGA are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this IGA.
- G. Amendment.** This IGA may be modified, amended or changed in whole or in any part only by an agreement in writing duly authorized and executed by the Parties with the same formality as this IGA.
- H. Severability.** Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.
- I. Effect of Invalidity.** If any portion of this IGA is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, the parties agree to use their best efforts to reform as soon as possible any such invalidity and achieve a valid agreement that accomplishes the purposes of this IGA as originally set forth.
- J. No Third-Party Beneficiaries.** There are no express or implied third party beneficiaries of this Agreement. No third party has any right to enforce this Agreement.
- K. Governing Law.** This IGA and its application shall be construed in accordance with the laws of the State of Colorado.
- L. No Attorneys' Fees.** In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this IGA, the parties agree that each shall be responsible for their own costs and attorneys' fees associated with any such activities, with the exception of any claims found by the courts to be frivolous or groundless as per Colorado statutes.

M. Intent of Agreement. This IGA is intended to describe the rights and responsibilities of and between the Parties; it is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto; nor to limit, impair or enlarge in any way the powers, regulatory authority and responsibilities of the Parties, or any other governmental entity not a party hereto.

N. Non-Business Days. If the date for any action under the IGA falls on a Saturday, Sunday or a day that is a “holiday” as such term is defined in C.R.C.P. 6, then the relevant date shall be extended automatically until the next business day.

O. Successors. This IGA and the rights and obligations created hereby shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

P. Counterparts. This Agreement may be executed in counterparts, each of which, when combined, shall be deemed to be an original. Facsimile or scanned signatures shall be an acceptable form of execution of this Agreement.

Southeastern Colorado Water Conservancy District,
acting by and through Southeastern Colorado Water
Activity Enterprise

By: _____
Date: _____

Otero County

By: _____
Date: _____

Colorado Water Conservation Board

By: _____
Date: _____

Colorado Water Resources and Power Development Authority

By: _____
Date: _____