

WATER STORAGE LEASE

This agreement is entered into this 2 day of <sup>NOV.</sup>~~October~~, 1996, between the County of Gilpin, 203 Eureka, Central City, Colorado, (hereinafter referred to as "County" or "Lessee") and Dory Lakes Property Owner's Association, a Colorado corporation, whose address is 91 South Dory Lakes Drive, Black Hawk, Colorado 80403 (hereinafter referred to as "Owner" or "Lessor").

WITNESSETH:

WHEREAS, County has filed an application with the Water Court in and for Water Division No. 1, Case No. 94-CW-277, seeking approval of a plan for augmentation including storage of water by exchange, to provide water service to the Gilpin County Justice Center, located in Gilpin County, Colorado; and,

WHEREAS, Lessor owns the water storage right represented by decree in Case No. W-126, Water Division 1, Sea of Tranquility Reservoir, also known as Dory Lake (and so identified on map attached as Exhibit A to this lease), date of appropriation September 20, 1870, (date of adjudication September 25, 1970) for 29.055 acre-feet of storage, said reservoir being located on Ralston Creek, Gilpin County, Colorado; and,

WHEREAS, County in order to implement its plan for augmentation must have access to a water storage site and is desirous of leasing from owner a portion of the water storage capacity of Dory Lake; and,

WHEREAS, owner is willing to lease such storage-capacity to County, on the terms and conditions set forth in this lease.

1. Description of Facility. The water storage facility described as the Sea of Tranquility in Water Court Case No. W-126, also known as Dory Lake, located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29, Township 2 South, Range 72 West, 6th P.M., County of Gilpin, State of Colorado. The existing storage facility encompassed by the decree is depicted in the drawing attached hereto as Exhibit B. The estimated storage capacity of Dory Lake, based upon the County's survey is approximately 41 acre-feet.

2. Description of Rights Leased. The owner leases to County for the term stated herein, a maximum of 30 acre-feet of storage capacity in Dory Lake. The County may utilize up to 30 acre-feet of storage capacity on an annual basis for storage of water under any storage rights owned or available for County's use, including, but not limited to, Tucker Lake rights under Reservoir Priority No. 2, Arapahoe County District Court, decree dated October 4, 1884, appropriation date June 1, 1869; and Reservoir Priority No. 4, Denver District Court, Civil Action 60052 (date of decree May 13, 1936, date of appropriation March 19, 1899) and the storage right applied for in Case No. 94-CW-277, which may be legally stored in Dory Lake, pursuant to the augmentation plan described in 94-CW-277 and any amendment thereto. County shall also have the right of non-exclusive access to the Reservoir solely for purposes of

operation, maintenance and measurement of storage and making releases, using the access easement described in Exhibit C to this lease. County acknowledges that Owner may exchange the existing easement as shown on Exhibit C for a comparable easement in the same general area, but farther away from residential structures. The County agrees to substitute the new easement for the existing easement, provided the new easement provides comparable access to Dory Lake, does not substantially (\$1,000 or more increase) change the cost of access and the exchange is completed prior to the County's first construction use of the access. To the extent that capacity exists in Dory Lake beyond the greater of: (a) 30 acre-feet, or (b) the storage capacity actually utilized by County as of the 1st day of November each lease year, owner may store water under owner's priority for the Sea of Tranquility Reservoir or if Owner's water right is not in priority and the County's is, the County shall continue to divert and store water in Dory Lake for the benefit of the Owner, to the extent of the water rights owned by County which may be lawfully stored in Dory Lake.

3. Term. The term of this lease shall commence upon execution of this agreement, and shall be for one (1) year commencing on January 1, 1997, and shall be deemed to be renewed for successive one-year terms, unless written notice of non-renewal is given by County to lessor, at least 30 days prior to the expiration of any one-year term. Upon termination, title and ownership of all improvements shall revert to the Owner.

4. Rental. County shall pay an annual rent of \$300.00 per acre-foot of storage used by County, based upon the prior year's accounting forms, as identified in Paragraph 5 hereof, and the maximum amount reported thereon as having been stored during the previous year. Rental shall be paid annually on or before the 30th day of the first month of each lease year. The initial lease year shall be the one-year period commencing January 1, 1997. Regardless of actual storage used by the County, a minimum annual rental of \$4,500.00 (15 acre-feet) shall be paid each year this lease is in effect. The minimum annual rent for the first year of the lease shall be due and payable upon execution of this lease. On each annual anniversary date, the annual rental shall increase by a factor equal to the percentage increase in the United States Bureau of Labor Statistics consumer price index, for Denver-Boulder all Items, All Urban Consumers or its successor index ("Index"). The base Index shall be the Index for the month of January, 1997. For any Index related adjustment to be made under this lease, the adjustment shall be the percentage increase equal to the fraction, the numerator of which shall be the index in effect on the anniversary date of the lease, less the base index, and the denominator shall be the base index factor.

5. Recordkeeping. All measurement of water into and out of storage, and in storage, shall be performed by County utilizing gauges or other measuring devices installed at County's expense. Such devices shall include a new headgate and measuring flume on

the inlet to the reservoir, installing a staff gauge and modification of the existing outlet to allow for measured augmentation release from the reservoir. All evaporation/seepage loss attributable on a proportional basis to storage under the Sea of Tranquility decree, shall be charged to Owner and all such losses proportionately attributable to County's storage under the Tucker Lake or other decrees available to County, shall be charged to County. County shall be responsible for completing the necessary accounting forms, in sufficient format and at sufficient intervals, as required by the Office of the State Engineer. The forms shall, at a minimum, include an accounting for amounts diverted, stored, released, evaporated and seeped, all of which will be segregated according to the amount of water stored by the County and the amount stored under the Owner's water right. One copy of the forms shall be furnished to the Owner at the same time they are filed with the State Engineer. To assist the Owner in the management of piscatorial and recreational resources, County shall notify Owner of any releases from Dory Lake in excess of 2.0 acre-feet in any single month.

6. First and Prior Right. The County shall be entitled to the first 30 acre-feet of storage-capacity available each year in Dory Lake, during the term of this lease and may withdraw up to 30 acre-feet from storage each year or such lesser volume as may have been stored under the priorities owned by County. Owner may store water under its priority in any unused portion of the County's

storage capacity; however, if the County is legally and physically able to subsequently store water under its priorities, the County may replace the water stored under the Owner's priority, up to the full 30 acre-foot capacity.

7. Insurance. Each party shall be responsible for insuring its respective interest in the reservoir storage site. In particular, Lessor shall be responsible for obtaining general liability insurance coverage for non-consumptive usage of the lake surface, as more particularly detailed on Paragraph 10 hereof.

8. Non-Consumptive Uses. Lessor reserves the right to make non-consumptive use of the water stored in the reservoir by County. Non-consumptive use shall include fishing and other non-consumptive recreational uses, (i.e. boating, but excluding swimming) provided that County shall always have the paramount and prior right to release water from the reservoir as necessary to comply with requirements of the County's augmentation plan. Lessor may make consumptive use of its water stored in Dory Lake. Any use of water by a fire district shall be charged first to the lessors storage and only after lessors storage has been exhausted, will any fire district use be charged to County storage.

9. Maintenance. For the term hereof, County, at its expense, shall perform all maintenance and repairs, required in connection with the operation of Dory Lake, as necessary to assure

that the County remains in compliance with its augmentation plan. Specifically, the dam, spillway, inlet ditch, pump station, and measuring devices shall be maintained by County, provided however, that in the event of complete failure of the dam, County may, at its option, terminate this lease and County shall have no obligation to rebuild the dam in such event. County shall be responsible for payment of any and all power billings associated with operation of the pump station, provided that any fire district use of the pump station pursuant to separate agreement between such fire district and County, shall be prorated.

10. Construction. It is understood and agreed that in order to accommodate 30 acre-feet of storage capacity leased by County, Dory Lake and its inlet must be improved in certain respects. County, using its contractor and designs prepared by County's engineer, shall improve the flow into Dory Lake through the culvert under Dory Lakes Drive North. County will install a pump station with building, inlets, and appurtenances, and shall construct measuring devices as described in Paragraph 5 of this lease. Plans for all construction contemplated by County under this lease shall be made available for Lessor's review and comment prior to implementation. With particular respect to the pump station, plans for construction of the pump house shall specify materials to be used, which materials shall be acceptable under architectural review standards of the Dory Lakes Property Owner's Association.

11. Restoration of Construction Site. Upon completion of the work described above, County shall by reseeding and regrading as necessary, restore the construction site and access, and any other property of owner disturbed by the construction, as near as reasonably possible to the condition existing prior to construction.

12. Contractor. County shall select the contractor(s) selected to perform the work described herein. All contractors shall provide bonds as required by Colorado statute for public construction projects. County shall indemnify, save, protect and hold Owner harmless from any mechanic's lien or other claims arising from the work described herein.

13. Permits. All permits required by federal, state or local law or regulation, in connection with the construction activities herein described, including but not limited to Gilpin County excavation permits, shall be obtained by County at County expense.

14. Purchase Option. In the event the County shall obtain an alternative source of water supply requiring no further need for augmentation or storage, upon termination of this lease in such event, Lessor shall have the option to purchase up to 4 shares of the Tucker Lake stock owned by County. The Lessor shall have the exclusive option to purchase the said shares at the price of \$11,000.00 per share. Said price shall be increased by a factor of



10% per year (or fractional year) per share, after the initial lease year (1997). This option shall be exercised only upon strict compliance with the following provisions:

14(a). Lessor shall deliver written notice to County within 30 days from the effective date of termination of this lease, of Lessor's intent to exercise this option.

14(b). The notice of intent to exercise option shall specify the number of shares to be purchased. The notice of intent to exercise option shall be accompanied by a cashier's check or certified funds in the amount payable under this option for the number of shares to be purchased.

14(c). In the event this option is not exercised in strict accordance with the requirements of this paragraph, upon the expiration of 30 days from the effective date of termination of this lease, the option shall be deemed to be null, void and of no further force or effect.

15. Termination. In addition to termination pursuant to the procedure set forth in Paragraph 3 hereof, Lessee may terminate this lease at any time during the term, if deemed necessary to comply with requirements of Article 10, Section XX of the Colorado Constitution, upon providing written notice 60 days prior to the effective date of termination.

16. Covenant of Quiet Enjoyment. So long as County shall pay the annual rental stated herein, and shall perform and observe all covenants and conditions herein set forth, Owner/Lessor covenants that County shall lawfully and quietly hold the leased water storage capacity.

17. Notices. Any notice required, or which may be given under the terms of this lease shall be deemed to have been properly given upon deposit in the United States Mail, Certified, Return-Receipt Requested, postage pre-paid, addressed as follows:

TO OWNER:

Dory Lakes Property Owner's Association  
91 South Dory Lakes Drive  
Black Hawk, Colorado 80403

TO COUNTY:

ATTN: County Manager  
County of Gilpin  
P.O. Box 366  
Central City, Colorado 80427

18. No Oral Modifications. This lease shall not be changed orally, but only by agreement in writing signed by the party against whom any waiver, change, modification or discharge is sought.

19. Inurement/Assignment. This lease shall be binding upon the heirs, successors and assigns of the parties hereto. This lease may be assigned by either County or Owner, provided that in the event of assignment, written notification thereof shall be provided to the non-assigning party at least 30 days prior to the effective date of assignment.

DORY LAKES PROPERTY OWNER'S ASSOCIATION - OWNER/LESSOR

By: Delbert Johnson  
PRESIDENT

ACKNOWLEDGEMENT

STATE OF COLORADO )  
COUNTY OF Gilpin )

ss.

The foregoing was acknowledged before me this 2nd day of November 1996, by Delbert Johnson, as President of Dory Lakes Property Owner's Association, a Colorado corporation.

My commission expires: JANUARY 31, 2000

Witness my hand and official seal.

Notary Public

Paul H. Mack

Address

63 Highpoint Circle  
BLACK HAWK, CO 80423  
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(S E A L)



ATTEST

COUNTY OF GILPIN - LESSEE

By: L.M. Armbricht, Deputy  
County Clerk

By: Ralph H. Knell  
Chairman  
Board of County Commissioners

ACKNOWLEDGEMENT

STATE OF COLORADO )  
COUNTY OF Gilpin )

ss.

The foregoing was acknowledged before me this 2nd day of November 1996, by Ralph H. Knell, Chairman of the Board of County Commissioners of the County of Gilpin/Lessee, and by L.M. Armbricht, County Clerk.

My commission expires: 6/24/2000

Witness my hand and official seal.



Notary Public

Susan C. Allen

Address

P.O. Box 66

Central

