

ARKANSAS RIVER COMPACT ADMINISTRATION

Lamar, Colorado 81052

For Colorado

Chair and Federal Representative

For Kansas

Rebecca Mitchell, Denver
Lane Malone, Holly
Scott Brazil, Vineland

James Rizzuto, Swink, CO

David Barfield, Topeka
Randy Hayzlett, Lakin
Hal Scheuerman, Deerfield

Arkansas River Compact Administration Resolution No. 2018-01

Regarding John Martin Reservoir Permanent Pool

WHEREAS, Section 204 of the Flood Control Act of 1965 authorized a “permanent pool for fish and wildlife and recreational purposes” at John Martin Reservoir (“JMR”); and

WHEREAS, Section 204 of the Flood Control Act of 1965 required that the State of Colorado “purchase and make available any water rights necessary under State law to establish and thereafter maintain the permanent pool”; and

WHEREAS, Section 204 of the Flood Control Act of 1965 required that the Arkansas River Compact Administration (“ARCA”) approve “written terms and conditions . . . [for] establishing, maintaining, and operating the permanent pool”; and

WHEREAS, by the Resolution Concerning John Martin Reservoir Permanent Pool (“1976 Resolution”) adopted on August 14, 1976, ARCA “approve[d] the creation in [JMR] of a permanent pool . . . and adopt[ed] the criteria . . . as procedures for the operation of [JMR]”; and

WHEREAS, the 1976 Resolution further provided that “water deliveries from other valid water rights owned or controlled by the State of Colorado may be added to the permanent pool water supply subject to the approval of [ARCA]”; and

WHEREAS, The Resolution Concerning an Operating Plan for John Martin Reservoir (Apr. 24, 1980, as amended) (“1980 Operating Plan”) recognizes the permanent pool authorized by the 1976 Resolution and makes the operation of the permanent pool subject to the terms of the 1980 Operating Plan; and

WHEREAS, pursuant to a Water Management Agreement between the Colorado Division of Parks and Wildlife and the Lower Arkansas Water Management Association (“LAWMA”), LAWMA will allow use of its Highland Canal water rights located in District 17 upstream of JMR and diverting from the Purgatoire River as a source of water supply for the permanent pool; and

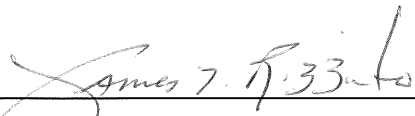
WHEREAS, the States of Colorado and Kansas have agreed to the delivery of fully consumable water from LAWMA's Highland Canal water rights under conditions provided by the document entitled "**Permanent Pool Agreement for 2018**," attached to this Resolution as Exhibit 1; and

WHEREAS, a clerical error in the Permanent Pool Agreement for 2018, paragraph no. 5 has been found. ARCA acknowledges that the reference to *paragraph no. 3)* should be a reference to *paragraph no. 4)*, and both Kansas and Colorado agree to such.

NOW THEREFORE, BE IT RESOLVED that pursuant to the terms of its 1976 Resolution the Arkansas River Compact Administration hereby approves the use of the Highland Canal water rights, formerly diverted from the Purgatoire River in District 17, as an additional source of water supply for the permanent pool at JMR through March 31, 2019, subject to the terms and conditions as described in the "**Permanent Pool Agreement for 2018**."

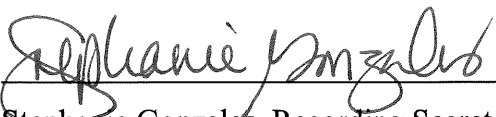
ADOPTED by the Arkansas River Compact Administration at the Special Meeting held telephonically on March 20, 2018.

The effective date of this Resolution shall be the date on which the Chief of Engineers of the Corps of Engineers, or his duly authorized representative, concurs with this Resolution by signing and dating below in the space provided.



Jim Rizzuto, Chairman
Arkansas River Compact Administration

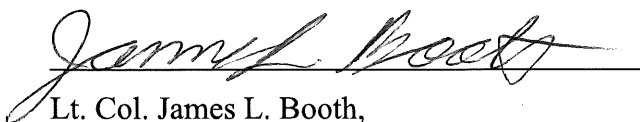
3/20/18
Date



Stephanie Gonzales, Recording Secretary,
Arkansas River Compact Administration

3-20-18
Date

Concurrence



Lt. Col. James L. Booth,
Commander and District Engineer,
Albuquerque District, U.S. Army Corps of Engineers
Duly Authorized Representative of the Chief of Engineers,
U.S. Army Corps of Engineers

20 APR 18
Date


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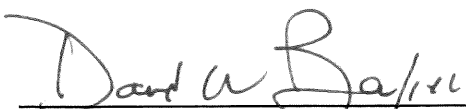
**Permanent Pool Agreement
for 2018**

The States of Colorado and Kansas (“States”) agree to the delivery of fully consumable water from the Lower Arkansas Water Management Association’s (“LAWMA”) Highland Canal water rights (“Highland Canal Water”) to the Permanent Pool Account in John Martin Reservoir (“Permanent Pool”) under the following conditions:

- 1) The Highland Canal Water may not be delivered to the Permanent Pool pursuant to this agreement until the Arkansas River Compact Administration (“ARCA”) approves the temporary use of the Highland Canal Water as a source of water for the Permanent Pool.
- 2) The State of Colorado and LAWMA shall deliver at least 4,700 acre-feet of fully consumable water to the Offset Account in John Martin Reservoir between April 1, 2018 and November 15, 2018, at least 3,133 acre-feet of which shall be delivered by August 1, 2018. This amount does not include the 500 acre-foot storage charge.
- 3) In the case of a spill of the Offset Account, or if a spill of the Offset Account appears likely, any quantity of water required to be delivered to the Offset Account prior to August 1, 2018, may be delayed for the purpose of avoiding a spill of such deliveries. The terms and conditions of any such delay shall be first proposed by LAWMA and set forth in writing. There shall be no allowable delay in delivery until such terms and conditions are approved in writing by the Chief Engineer of the State of Kansas. In writing may include email communications and other electronic documents.
- 4) LAWMA and Colorado Parks and Wildlife must obtain approval for a Substitute Water Supply Plan (SWSP) pursuant to Colorado Revised Statutes §37-92-308(5) prior to delivery of the Highland Canal Water to the Permanent Pool.
- 5) Upon ARCA approval to use the Highland Canal Water as a source of water for the Permanent Pool as described in paragraph 1), above, and SWSP approval in paragraph 3), above, the Highland Canal Water may be delivered to the Permanent Pool on a daily basis to the extent it is not needed to fulfill the commitment made in paragraph 2), above.
- 6) The Highland Canal Water shall not be delivered to the Permanent Pool in months when any portion of the Highland Canal Water is used for in-state replacement.
- 7) Replacement credit will not be claimed as special water input to the H-I Model for the transit losses incurred when the Highland Canal Water is being delivered to the Permanent Pool. LAWMA may claim in-state replacement credit in the monthly accounting maintained by Colorado for unconsumed transit losses allowed by the LAWMA decree or approved Substitute Water Supply Plan.
- 8) The States will continue to work together to:
 - a. Establish a methodology to annually determine LAWMA’s projected depletions, projected replacements, and the amount and sources of water committed to the Offset Account

- b. Allow the use of the Highland Canal Water as a source of water for the Permanent Pool when the Offset Account is full. When the Offset Account is full, paragraph 2.a of Appendix A.4 of the decree entered in *Kansas v. Colorado*, No. 105, Original provides that there is no obligation to deliver replacement water to the Offset Account under Appendix A.4.
 - c. Determine what replacement credit is allowed for transit losses on Highland Canal Water deliveries to the Offset Account and Permanent Pool.
 - d. Examine the potential for exchange from Fort Lyon and Lamar Canal augmentation stations to the Offset Account in lieu of direct delivery to the Stateline, including how the evaporative losses on those exchanged credits are charged.
 - e. Explore how augmentation station deliveries of Granada Irrigation Company shares could be managed to facilitate replacement of in-state and Stateline depletions.
- 9) LAWMA or Colorado Parks and Wildlife, through Colorado Division of Water Resources staff, shall notify the State of Kansas and the ARCA Operations Secretary prior to beginning delivery of the Highland Canal Water to the Permanent Pool.
 - 10) The ARCA Operations Secretary shall keep accurate records of all deliveries into the Permanent Pool, provide such information to the State of Kansas upon request, and include an annual summary of all Permanent Pool operations in his annual report to the Administration.
 - 11) Nothing in this agreement shall be construed to alter in any way the State of Colorado's obligation to maintain compliance with the Colorado-Kansas Arkansas River Compact.
 - 12) This agreement shall not be binding on any future agreements related to the delivery of the Highland Canal Water to the Permanent Pool or to the Offset Account.
 - 13) Approval of this agreement does not waive either State's position on allowable uses of the Highland Canal Water.
 - 14) Approval of this agreement does not waive either State's position concerning the interpretation of Appendix A.4 of the decree entered in *Kansas v. Colorado*, No. 105, Orig.
 - 15) The States agree to review the performance of this agreement at the 2018 ARCA Annual Meeting and to discuss renewal or modifications of an agreement to allow for continued delivery of the Highland Canal Water to the Permanent Pool on a temporary or permanent basis beyond the term of this agreement.
 - 16) This agreement will expire on March 31, 2019.


 Kevin Rein, P.E.
 Colorado State Engineer


 David W. Barfield, P.E.
 Kansas Chief Engineer

Date: 2/28/2018

2 of 2 originals