

AGREEMENT FOR SETTLEMENT OF PENDING LITIGATION AND OTHER
DISPUTES CONCERNING STATE ENGINEER PERMIT NO. 71

This agreement (“Agreement”) is entered into effective the ___ day of _____, 2006 between and among the following designated parties (“Parties,” or individually, a “Party”):

The State of New Mexico (“SNM”), New Mexico State Game Commission (“SGC”), the New Mexico Department of Game and Fish (“DGF”), and the New Mexico Interstate Stream Commission (“ISC”) (collectively the “State” or “State Parties”) and all of the following users of water pursuant to the Office of the New Mexico State Engineer Permit No. 71 as adjudicated in the Colfax County District Court, New Mexico, in cause No. 5054, stored in and delivered from the Eagle Nest Reservoir (collectively, “water users” or “non-State Parties”):

Margarito Trujillo Jr., and Ada Marie Trujillo, individually and as Settlers and Trustees of the Margarito Trujillo Jr. and Ada Marie Trujillo Revocable Community Property Trust (collectively “Trujillo Trust”); James D. Hughes (a/k/a David Hughes) and Judy Hughes, husband and wife (collectively “Hughes”); CS Cattle Company, a New Mexico corporation; (“CS Cattle”); Agua Fria Enterprises, Inc., a New Mexico corporation (“Agua Fria”); the Boy Scouts of America, a corporation incorporated February 8, 1910, chartered by Congress June 15, 1916, having its principal place of business in Irving, Texas and doing business in Colfax County, New Mexico as Philmont Scout Ranch, BSA (“Philmont”); the City of Raton, a New Mexico municipal corporation (“Raton”); the Village of Angel Fire, a New Mexico municipal corporation (“Angel Fire”); the Town of Springer, a New Mexico municipal corporation (“Springer”); Vermejo Park, LLC, a Georgia Limited Liability Company, and Vermejo Coal, LLC, a Georgia Limited Liability Company (collectively “Vermejo”); Swope Farm and Livestock Company, a New Mexico corporation (“Swope”); UU BAR Ranch, LLC, a New Mexico Limited Liability Company (“UU Bar”); Enchanted Mountain Properties, LLC, , a New Mexico Limited Liability Company, dba Angel Nest Apartments (“AN Apartments”); the Village of Eagle Nest, a New Mexico municipal corporation; (“Eagle Nest”); and Angel Fire Water Company, a (C) corporation (“AF Water”).

WHEREAS, the Parties to this Agreement are all of the interested parties to the waters delivered pursuant to Office of the New Mexico State Engineer Permit and License No. 71 adjudicated with a priority date of June 12, 1907 and its sub-permits and licenses (collectively “Permit No. 71”); and

WHEREAS, the Parties desire to resolve disputes relating to the administration of Permit No. 71 and operation of the Eagle Nest Reservoir (the “Reservoir”), and to resolve the issues relating to those who are Parties to this Agreement and who are involved in litigation concerning their rights to water in the Colfax County, New Mexico, District Court, Cause No. 2002-325-CV (the “Action”);

NOW THEREFORE, in consideration of and in reliance upon the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

DEFINITIONS

A. Delivery Right: The maximum amount of water that may be delivered from the Shared Pool to a Party in any year representing each Party's right to receive water as set forth in Paragraph 2.a. of this Agreement.

B. Annual Delivery Amount: The amount of water a Party is entitled to receive in any particular year pursuant to the terms of this Agreement up to the amount of that Party's Delivery Right as set forth in Paragraph 13.

C. Private Storage Right: The maximum amount of water a Party may have in storage at any time, as set forth in Paragraph 2.b.

D. Private Storage Amount: The actual amount of water held in storage by a Party under its Private Storage Right.

E. Shared Permit No. 71 Pool: All water in the Reservoir less all Private Storage Amounts, and less any water temporarily retained in the Eagle Nest Reservoir on behalf of the Springer Ditch Company. This shall be referred to as the "Shared Pool" throughout the Agreement.

F. 1991 Regulations: The 1991 Regulations of Operation of Eagle Nest Reservoir recorded at Records Book 2, Page 7078 et seq. of the records of Colfax County, New Mexico.

G. Permit No. 71 Delivery System: The ditches, conveyance structures, diversions and measuring points both above and below the Dam, but not including the Dam, or its outlet works and measuring points, used to deliver Permit No. 71 water to the water users, as depicted on the attached Exhibit "A".

H. March 1st Estimate: The estimate that the ISC makes on March 1st of each irrigation year which is the projected volume of water expected to be in the Shared Pool on June 1st of that same year.

I. Estimated Annual Delivery Amount: That portion of each Parties' Delivery Right the ISC estimates each Party is entitled to receive pursuant to the March 1st Estimate.

J. June 1st Shared Pool: That amount of water in the Shared Pool on June 1st consisting of the existing volume of water in the Shared Pool, plus the water delivered or placed in private storage by Parties between January 1st and June 1st, including conveyance losses attendant to deliveries prior to June 1st.

K. Twenty-Thousand Acre Foot Restriction (or 20,000 Acre Foot Restriction): The provision in Paragraph 2 under the heading “Agreements Concerning Water Rights” of the December 8, 1951, Warranty Deed from the Charles Springer Cattle Company to Neal Hanson recorded on December 19, 1951 at Deed Book 89, page 393 of the records of the Colfax County Clerk, New Mexico, and the February 25, 1954 correction Warranty Deed between the same parties duly recorded at Deed Book 90, page 637 recorded March 2, 1954 of the records of the Colfax County Clerk, New Mexico, true and correct copies of which are attached hereto as Exhibit B.

L. Annual Permit No. 71 Inflow. Annual Permit No. 71 Inflow is inflow into Eagle Nest Reservoir that accrues to Permit No. 71 from June 1st of any given year to May 31st of the following year.

PROVISIONS

1. Reservoir Operation and Permit No. 71 Administration: The holder of Permit No. 71 or its designee shall administer and operate the Reservoir and water releases pursuant to Permit No. 71, under the terms and conditions of this Agreement commencing with the 2006 irrigation season and until such terms and conditions may be revoked or modified as hereinafter provided.

2. Agreed Delivery and Private Storage Rights: The total Delivery Rights and Private Storage Rights of all Parties with vested or contractual rights to Permit No. 71 water or storage in the Reservoir are listed as follows:

a. Delivery Rights in acre-feet per year:

Current Permit No. 71 Water User	Original Deed, Contract or Permit	Delivery Rights	
Trujillo Trust	1933, 1951, and 1954 Neal Hanson deeds	1,152	
Swope Farm	1951 and 1954 Neal Hanson deeds	345	
Hughes	1927 Waite Phillips deed	1,100	
City of Raton	1951 and 1954 E.G. Hayward deeds	2,853.5	
City of Raton Return Flow	1951 and 1954 E.G. Hayward deeds, 21 % OSE Permit requirement	758.5	
Village of Angel Fire	October 31, 2000 Contract; Currently set at the consumptive irrigation requirement of 122.5 ac-ft until a return flow plan is submitted to OSE and approved	187	
Village of Angel Fire Return Flow	October 31, 2000 Contract, OSE return flow and delivery loss requirement	63	
Town of Springer	1951 and 1954 Neal Hanson deeds, July 31, 1981 Contract	300	
CS Cattle Company	Permit No. 71 & the Adjudication Decree	1,115	
Boy Scouts of America (Philmont Ranch)	1933 Waite Phillips Indenture	1,000	

UU BAR Ranch, LLC.	1927 Waite Phillips deed, 1932 Waite Phillips Agreement, McDaniel & Sons Agreement listed in 1951 and 1954 deeds	266	
Vermejo Park	1931 Waite Phillips Indenture, 1979 Vermejo Park Corporation deed, 1979 Kaiser Steel Corporation deed	1,135	
Angel Nest Apartments	1985 PICS Investment Company deed	15	
Village of Angel Fire	1985 Robert S. Gordon deed	2	
Angel Fire Water	1985 Valley Mix deed	3	
Village of Angel Fire	December 1, 1993 Contract	25	
Village of Eagle Nest	July 13, 1995 Contract	30	
Agua Fria Enterprises	June 1, 1984 Contract	250	
Total:		10,600	

b. Private Storage Rights in acre-feet:

Trujillo Trust	525
Hughes	500
Raton	12,000
Angel Fire	750
Springer ¹	1,000
Total Private Storage Rights	14,775

1 – The Town of Springer storage right is pursuant to a contract between Springer and CS Cattle Co. date 7-31-81.

c. All Annual Delivery Amounts shall be delivered to each user’s measuring point as shown on Exhibit A from the Shared Pool in accordance with the terms of this Agreement. Other than as provided in this Agreement, all Parties shall be treated equally and shall receive their Annual Delivery Amount without regard to whether rights were conferred by deed or contract or former first or second tier status as defined in the 1991 Regulations.

3. Trujillo Trust, Hughes, and Swope Delivery Rights: The Permit No. 71 Delivery Rights shown in Section 2.a. include an increase of 105 acre-feet for Trujillo Trust over its deeded water rights; an increase of 100 acre-feet to Hughes over their deeded water rights; and an increase for Swope of 31 acre-feet over its deeded water rights.

a. The above rights shall be appurtenant to the same lands currently irrigated with Permit No. 71 waters by Trujillo Trust, Hughes and Swope; and

b. The above rights shall have the same priority as in the existing deeds for Permit No. 71 waters of Trujillo Trust, Hughes and Swope of June 12, 1907.

4. Trujillo Trust and Hughes Private Storage Rights: Pursuant to the terms of this Agreement, Trujillo Trust shall have a Private Storage Right of 525 acre-feet, and Hughes shall have a Private Storage Right of 500 acre-feet. The Trujillo Trust and Hughes Private Storage Rights are each subject to the following conditions:
- a. Trujillo Trust's Private Storage Right is available for exclusive release to, or continued storage by, Trujillo Trust, at its sole discretion subject to subparagraph 4(b). Hughes' Private Storage Right is available for exclusive release to, or continued storage by, Hughes, at their sole discretion subject to subparagraph 4(b).
 - b. Trujillo Trust's and Hughes' Private Storage Rights are accessible by and available to Trujillo Trust and Hughes only when the Shared Pool contains 10,000 acre feet or less.
 - c. When the June 1st Shared Pool contains more than 20,000 acre feet, the Trujillo Trust Private Storage Right fills automatically at the rate of 9.9% of the Annual Permit No. 71 inflow from June 1st of the previous year to May 31st of the current year, until the Trujillo Trust's Private Storage Amount equals the Trujillo Trust's Private Storage Right.

When the June 1st Shared Pool contains more than 20,000 acre-feet, the Hughes' Private Storage Right fills automatically, at the rate of 9.5% of the Annual Permit No. 71 Inflow, until the Hughes' Private Storage Amount equals the Hughes' Private Storage Right.

In either case, once the Private Storage Amount equals the Private Storage Right, any additional Permit No. 71 inflow available to fill the Private Storage Right shall be credited to the Shared Pool.

Example:

June 1 st Shared Pool on June 1, 2006	> 20,000 AF
Annual Permit No. 71 Inflow, June 1, 2005 to May 31, 2006	= 2,000 AF
Credit to Trujillo Trust Private Storage	
on June 1, 2006 = 0.099 x 2,000 AF	= 198 AF
Credit to Hughes Private Storage	
on June 1, 2006 = 0.095 x 2,000 AF	= 190 AF

- d. Both Trujillo Trust and Hughes may re-fill their respective Private Storage Rights from all or any unused portion of their respective Annual Delivery Amounts. Any unused Annual Delivery Amount of either Trujillo Trust or Hughes beyond that used to re-fill their Private Storage Rights shall accrue to the Shared Pool.
- e. Neither the Trujillo Trust nor the Hughes Private Storage Amounts shall be charged with evaporation losses. The Trujillo Trust and Hughes Private Storage

Amounts shall be charged only with those conveyance losses that exceed sixty percent (60%) of water delivered to Trujillo Trust or Hughes from said storage pools. Trujillo Trust and Hughes shall bear no conveyance losses on their Annual Delivery Amounts.

- f. Hughes is the successor in interest and title to the January 28, 1927 Deed of Water Rights from the Charles Springer Cattle Company to Waite Phillips (the referenced party of the second part), paragraph 4 of which provides in pertinent part as follows:

The owner of Permit and License 71, his/her/its successors and assigns “shall at all times retain in the Eagle’s Nest Reservoir water to the extent of one thousand sixty (1060) acre feet for the protection of said second party hereunder, and subject to his requirements therefore.”

The Hughes and Trujillo Trust Private Storage Rights described in this settlement agreement are accepted by Hughes and the Trujillo Trust in *lieu* of paragraph 4 of the 1927 deed described above. So long as this Agreement is in full force and effect, said paragraph 4 of the 1927 deed shall not be enforced. The Trujillo Trust and Hughes storage pools may transfer in whole or in part with any transfer of Trujillo Trust and Hughes Delivery Rights, in the sole discretion of Trujillo Trust and Hughes, subject to the terms, conditions, and constraints of this Agreement.

- g. Trujillo Trust’s Storage Amount shall be augmented by the unused portion of its 2004 Annual Delivery Amount in the amount of 108 acre-feet. This additional 108 acre feet of stored water shall not be charged with evaporation or conveyance losses attendant to deliveries, and can be used at any time at the discretion of Trujillo Trust; however, any portion used may not be replenished at any future time from any source.
5. Municipal Water Sales: Each municipality agrees to not sell or provide water from its Delivery Right or Private Storage Right for uses outside its service area, subject to the following terms, conditions and exceptions:
 - a. Any municipal party to this agreement may sell or provide Permit No. 71 water to any other municipality within the Cimarron River watershed on an annual basis for the limited purpose of augmenting supplies in the event of a shortage caused by drought or emergency. Such annual water sales between municipalities will be submitted in writing to the Cimarron Watermaster for approval as being in compliance with this agreement, state statutes, and regulations. Such water sold or provided shall not result in an increased Delivery Right for any Permit No. 71 holder or an increase in any Cimarron watershed municipality’s water right under any other OSE Permit. The Cimarron Watermaster will account for and administer return flows, delivery losses and other adjustments as required. This provision shall not be used to relieve a municipality of the responsibility of purchasing adequate water rights.

- b. Sales of Raton's Annual Delivery Amount outside of Raton's service area that are currently delivered to irrigation and ranching uses via taps off Raton's pipeline are permitted. Any future increases in the amount of sales of Raton's Annual Delivery Amount for irrigation or ranching uses outside of Raton's service area must be at Raton's wholesale rate per 1,000 gallons or at a higher rate.
 - c. Nothing herein shall prohibit a municipal party hereto from selling its Delivery Right or Private Storage Right, either in whole or in part, subject to approval of any change of point of diversion, place or purpose of use by the State Engineer; provided however that the City of Raton shall not in whole or part sell, convey, assign or lease any portion of its Private Storage Right.
6. Former Tier 2 Allocations and Storage: Per the terms of this Agreement, Tier 2 Storage shall not exist, and the following 75 acre-feet of current Permit No. 71 contractual Tier 2 annual allocations, as defined in the 1991 Regulations, shall be treated as all other Permit No. 71 Delivery Rights under this Agreement:
- a. 30 acre-feet of Village of Eagle Nest,
 - b. 25 acre-feet of Village of Angel Fire,
 - c. 15 acre-feet of Angel Nest Apartments,
 - d. 3 acre-feet of AF Water, and
 - e. 2 acre-feet of Village of Angel Fire.
7. Agua Fria: As long as this Agreement is in effect, Agua Fria's 250 acre-foot annual allocation under its June 1, 1984 contract, shall not apply. Instead, as set forth in Paragraph 2.a. above, Agua Fria Enterprises shall be provided a 250 acre-foot Delivery Right.
- a. Agua Fria Enterprises shall be provided its Delivery Right unless the June 1st Shared Pool contains less than 22,500 acre feet of water.
 - b. The Agua Fria Enterprises 250 acre-feet are currently appurtenant to Agua Fria properties within the Moreno Valley.
8. Changes in Title and Use of Permit No. 71 Water:
- a. Any lease, sale, conveyance of title or assignment of all or a portion of a Party's Delivery Rights or Private Storage Rights shall be subject to this Agreement. The Permit 71 holder shall not deliver water to any subsequent buyer, lessee, grantee or assignee ("transferee") under this Agreement unless and until the Permit No. 71 holder receives from such transferee a writing, in a form satisfactory to the Permit No. 71 holder, assuming all provisions contained in this Agreement, as if such transferee had been an original signatory hereto.
 - b. With the exception of temporary annual municipal transfers, any requested change in the diversion, place and/or purpose of use of a Delivery Right or Private

Storage Right shall be subject to the New Mexico Office of the State Engineer's approval and processing as provided by law.

9. Prohibition of Future Permit No. 71 Holder Sales:

- a. The Permit No. 71 holder shall not transfer, sell, contract, permit or authorize any additional water, water rights, or delivery rights from, or additional storage in, the Reservoir beyond the amounts listed in Paragraphs 2.a. and 2.b. The Permit No. 71 water in the Reservoir shall be available only to meet the Permit No. 71 Delivery Rights and Private Storage Rights listed Paragraphs 2.a. and 2.b, and for public recreational uses and propagation of fish and wildlife, subject and subservient to delivery of and use of the Delivery Rights and Private Storage Rights as provided in Paragraph 10.b. below.
- b. Nothing in this Agreement shall prohibit a State Party, at its discretion, from entering into an annual agreement with a non-State party to lease all or a portion of the Annual Delivery Amount or Private Storage Amount from a non-State Party for the purpose of leaving the leased water in the Reservoir. Such leased water shall remain in the Reservoir and accrue to the Shared Pool on December 31st of each year the water was leased.

10. Agreement as to Beneficial Use:

- a. The Parties agree that the impounding and storage in the Reservoir of water in the Shared Permit No. 71 Pool and pursuant to any annual state leases of water or Private Storage Rights listed in Paragraph 2.b. are beneficial uses of Permit No. 71 waters. The Parties shall not challenge the Delivery Rights, the Private Storage Rights and the Shared Pool, on any basis including, but not limited to, claims of non-use and/or waste of water.
- b. The State, acting through the DGF or SGC, has the right to use waters in the Reservoir and the Reservoir for public recreational uses and propagation of fish and wildlife, subject and subservient to delivery of and use of the Delivery Rights and Private Storage Rights.

11. Agreement Governs.

- a. With regard to the signatories to this Agreement, and for only as long as this Agreement is in full force and effect, all entitlements to Permit No. 71 and the Reservoir are subsumed by and contained in this Agreement and the terms and conditions in this Agreement shall govern the signatories' rights and entitlements under Permit No. 71 and the Reservoir. In the event that a provision of this Agreement conflicts with any term or condition of any deed or contract, such conflicting term or condition in such deed or contract shall not be enforced so long as this Agreement remains in full force and effect.

- b. So long as this Agreement is in full force and effect, the 1991 Regulations and the 20,000 Acre-Foot Restriction shall not be enforced. Nothing contained in this subparagraph 11(b) shall be deemed an admission by any party.
- c. If, for any reason, this Agreement is vacated, deemed invalid or unenforceable by a court of competent jurisdiction, the Parties shall return to the legal and operational positions they enjoyed prior to execution of this Agreement with no Party, as a result of the termination of this Agreement, enjoying any benefit or suffering any impairment relative to their position prior to execution of this Agreement, except as noted in Paragraph 17 below.

12. Conditions Related to Storage:

- a. Storage by the municipalities of Raton, Angel Fire, and Springer, and their successors and assigns, may be re-filled only by the respective municipality's unused Annual Delivery Amount. Any unused Annual Delivery Amount that when added to such municipality's then existing Storage Amount exceeds the municipality's Private Storage Right shall automatically be credited to the Shared Pool.
- b. Except as to Trujillo Trust and Hughes who do not bear any evaporation losses, the Storage Amount of any Party shall be charged monthly evaporation loss in the ratio of that Party's Private Storage Amount to total actual stored water in the Reservoir. For purposes of this provision, total actual stored water in the Reservoir shall be the sum of all of the Private Storage Amounts and the number of acre-feet of water in the Shared Pool.
- c. Except as to Trujillo Trust and Hughes, the initial amount of water in storage for a Party with a Private Storage Right under Paragraph 2.b. shall be that amount of water actually in storage as of the date the court in the Action *The City of Raton v. Trujillo Trust, et al.* No. 2002-325-CV enters judgment in the said Action incorporating the terms and conditions of this Agreement. The computation of such actual storage amounts shall be made by the ISC. The Private Storage Amounts for Trujillo Trust and Hughes will begin at 525 acre-feet and 500 acre-feet, respectively.
- d. A Party's Storage Amount is available for exclusive release to, or continued storage by, such Party at its sole discretion in accordance with this Agreement.

13. Calculation of Annual Delivery Amounts: The Annual Delivery Amounts shall be determined in accordance with the following criteria:

- a. Between January 1st and March 1st no Party may call for more than 10% of their Annual Delivery Right.
- b. The March 1st Estimate and Estimated Annual Delivery Amounts:

- i. The ISC shall arrive at the March 1st Estimate by adding the existing volume of water in the Shared Pool to the estimated annual inflow to the Shared Pool. The ISC shall use the best available data, including the NRCS Snotel data and runoff predictions, to estimate annual inflow.
- ii. If the March 1st Estimate is more than 20,000 acre feet, each Party's Estimated Annual Delivery Amount shall be equal to the Party's Delivery Right, except for Agua Fria which receives water according to Paragraph 7;
- iii. If the March 1st Estimate is 20,000 acre-feet or less, but more than 10,000 acre-feet, each Party's Estimated Annual Delivery Amount shall equal 80% of the Party's Delivery Right;
- iv. If the March 1st Estimate is 10,000 acre-feet or less, 50% of the March 1st Estimate, including conveyance losses, will be available for release. A Party's Estimated Annual Delivery Amount shall be that Party's Delivery Right divided by the total Permit No. 71 Delivery Rights and multiplied times 50% of the amount of the March 1st Estimate minus the estimated conveyance losses. The ISC shall determine the conveyance losses attendant to the release of 50% of the March 1st Estimate.

Example:

March 1 st Estimate	= 9,000 AF
50% of March 1 st Estimate	= 4,500 AF
Conveyance Losses Estimate	= 1,500 AF

If Party A has a 1,000 AF Delivery Right and total Delivery Rights equal 10,600 AF, Party A's Estimated Annual Delivery Amount is equal to:

$$1,000 \text{ AF} / 10,600 \text{ AF} \times (4,500 \text{ AF} - 1,500 \text{ AF}) = 283 \text{ AF}$$

- v. No Party may call for more than 40% of its Estimated Annual Delivery Amount prior to June 1st.
- c. June 1st Shared Pool and Annual Delivery Amounts Determination
- i. The ISC shall calculate the June 1st Shared Pool.
 - ii. If the June 1st Shared Pool is more than 20,000 acre-feet, each Party's Annual Delivery Amount shall equal 100% of the Party's Delivery Right, except for Agua Fria which receives water according to Paragraph 7;

- iii. If the June 1st Shared Pool is 20,000 acre-feet or less, but more than 10,000 acre-feet, each Party's Annual Delivery Amount shall equal 80% of the Party's Delivery Right;
- iv. If the June 1st Shared Pool is 10,000 acre-feet or less, 50% of the June 1st Shared Pool, including conveyance losses, will be available for release. A Party's Annual Delivery Amount shall be that Party's Delivery Right divided by the total Permit No. 71 Delivery Rights multiplied times 50% of the amount of the June 1st Shared Pool minus the estimated conveyance losses. The ISC shall determine the estimated total conveyance losses attendant to the release of 50% of the June 1st Shared Pool.

Example:

June 1 st Shared Pool	= 9,500 AF
50% of June 1 st Shared Pool	= 4,750 AF
Total Conveyance Losses Estimate	= 1,425 AF

If Party A has a 1,000 AF Delivery Right and total Delivery Rights equal 10,600 AF, Party A's Annual Delivery Amount is equal to:

$$1,000 \text{ AF} / 10,600 \text{ AF} \times (4,750 \text{ AF} - 1,425 \text{ AF}) = 314 \text{ AF}$$

- 14. Unused Annual Delivery Amounts: If a Party with a Private Storage Right does not take delivery of all or a portion of its Annual Delivery Amount by December 31st of each year, such unused portion of that Party's Annual Delivery Amount shall automatically fill that Party's Private Storage Right until each such Party's Private Storage Amount equals but does not exceed that Party's Private Storage Right. Any excess Annual Delivery Amounts shall accrue to the Shared Permit No. 71 Pool. Annual Delivery Amounts not delivered or put in storage by December 31st of each year shall accrue to the Shared Permit No. 71 Pool on January 1st of the following year.
- 15. Reservoir Operations Manual. The ISC shall prepare an Operations Manual in complete conformity with this Agreement. The Operations Manual shall govern procedures for operating the Reservoir and shall be subject to review and approval of the Parties. If there is a conflict between the Operations Manual and this Agreement, this Agreement shall control.
- 16. Final Agreement and Amendment. It is the intention of the Parties that this Agreement resolve and be the final expression of their agreement to settle disputes which arose in 2002, and which are the subject of *The City of Raton v. Trujillo Trust, et al.* No. 2002-325-CV filed in the Eight Judicial District Court of New Mexico filed on November 6, 2002 (hereafter "the 2002 Dispute"). All of the Parties' rights to the use and storage of water under Permit No. 71 derive from the Cimarron River Adjudication Decree, Cause

No. 5054 (December 20, 1929), and deeds, permits or written contracts. These instruments remain the source of the Permit No. 71 rights and other rights of the Parties. The underlying instruments are not merged or integrated herein and shall remain in full force and effect and are not amended, modified (or permanently affected in any way) by this Agreement (except as noted in Paragraph 17); provided, however, that those rights and/or obligations contained in the instruments that are in conflict with this Agreement will not be enforced so long as this Agreement remains in full force and effect. All negotiations for the resolution of the 2002 Dispute are hereby merged and integrated into this Agreement. This Agreement is the sole, entire, final and binding expression of the settlement of the Parties pertaining to the 2002 Dispute. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the 2002 Dispute, whether oral or written, of the Parties or their agents or representatives except as provided herein. This Agreement may be amended or modified only by the unanimous written agreement of the Parties.

17. Eagle Nest Dam and Reservoir and Shared Permit No. 71 Delivery System Maintenance and Improvements.

- a. By July 1, 2008, the State of New Mexico shall provide funding in the amount of Four Hundred Thousand Dollars (\$400,000) (the “State Share of Funding”) and the non-State Parties, in a manner and proportions to be decided among themselves, shall provide One Hundred Thousand Dollars (\$100,000) (the “Non-State Parties Share of Funding”), to repair or replace diversion structures on the Cimarron River and other conveyance structures or facilities, or to make improvements on the conveyance systems below Eagle Nest Dam. If the State Share of Funding is not provided by July 1, 2008, this Agreement shall terminate unless otherwise agreed by the Parties.
- b. When the non-State Parties shall have provided the Non-State Parties Share of Funding, they shall be relieved in perpetuity of any responsibilities for maintenance of Eagle Nest Dam and Reservoir.
- c. All water users shall be responsible for any and all costs of routine maintenance, cleaning of ditches, repair or replacement of diversion structures, placement and repair/maintenance/replacement of pipelines, if any, and any other related structures or systems, beginning at, and including, their individual and respective point of diversion.
- d. The water users who actually use the joint CS Canal system ditches shall be responsible, in perpetuity, for any and all costs of routine maintenance, cleaning of ditches, repair or replacement of diversion structures, placement and repair/maintenance/replacement of pipelines, if any, and any and all other related structures or systems used to deliver Eagle Nest water to their individual points of diversion.
- e. When the State shall have provided the State Share of Funding, the State shall be, in perpetuity, responsible only for maintenance of Eagle Nest Dam and Reservoir

including any and all improvements, replacements, repairs, routine maintenance and any other costs associated with the Eagle Nest Dam and Reservoir. The State shall exercise all due care to minimize impact to water deliveries when performing maintenance on Eagle Nest Dam.

- f. The Parties agree that the obligations of the respective Parties set forth in subparagraphs b., c., d., and e., above, shall survive, in perpetuity, the termination of this Agreement.
18. Stipulated Judgment and Dismissal of Action: The Parties shall submit in the Action *The City of Raton v. Trujillo Trust, et al.* No. 2002-325-CV a stipulated judgment that incorporates this Agreement and dismisses the Action with prejudice in the form attached as Exhibit “C.” Those Parties not yet joined in the Action shall agree to be joined as interested parties in the Action for the purposes of submitting the stipulated judgment.
19. State Engineer Permit: In order to conform Permit No.71 et al. to the terms of this Agreement, the Parties agree to support and submit as joint-applicants to the New Mexico Office of the State Engineer an application for modification of Permit No. 71 to conform with and allow full implementation of this Agreement. The Department of Game and Fish shall take the lead and the Parties shall cooperate in pursuing State Engineer approval of the application. If, after all appeals, the application for modification of Permit No. 71 is denied, this Agreement shall terminate, unless the Office of the New Mexico State Engineer confirms in writing, and so instructs the Cimarron Watermaster, that this Agreement may be fully implemented without modification of Permit No. 71, or if the all the Parties agree not to terminate this Agreement.
20. Cooperation by Parties to this Agreement: The Parties to this Agreement shall cooperate in the consummation of this settlement including the preparation, execution and/or filing of all documents reasonable and/or necessary to consummate this settlement and to implement the goals of the settlement. In consideration of the mutual covenants contained in this Agreement, the Parties agree not to protest any application of any Party to the Office of the New Mexico State Engineer for any right conferred or recognized or any obligation imposed or recognized by this settlement or this Agreement, and agree further not to bring any action in any forum to invalidate this settlement or this Agreement or any part thereof, or any right conferred or recognized or any obligation imposed or recognized by this settlement or this Agreement. Nothing contained in this Agreement shall be construed to hinder or prohibit any Party from bringing any action to enforce this Agreement, from bringing any action for the breach of this Agreement, or from protesting any application to the Office of the New Mexico State Engineer by any person or entity including but not limited to the Parties to this Agreement with respect to any right not conferred or recognized by this Agreement, or any obligation not imposed or recognized by this Agreement.
21. General Release
 - a. Each Party, for themselves and on behalf of their respective officers, directors, shareholders, agents, representatives, employees, owners, administrators,

members, executors, heirs, assigns, predecessors and successors in interest, hereby release and forever discharge each other Party, including such Party's respective past, present and future officers, directors, shareholders, agents, attorneys, representatives, employees, owners, administrators, members, executors, heirs, assigns, predecessors and successors in interest, and all other person, firms, corporations, agencies, or governmental entities or agencies with whom any of the former have been, are now, or may hereafter be affiliated, from any and all past, present and future claims, demands, obligations, and causes of action of any nature whatsoever, and whether now known or unknown, suspected or unsuspected, which are based upon or arise out of or in connection with the rights, privileges, obligations, actions, inactions or other decisions with respect to the operation or administration of Permit No. 71 and any allocation, storage, or releases of water from Eagle Nest Reservoir, or maintenance of Eagle Nest Dam and the infrastructure associated therewith by which water is delivered to various parties herein from Eagle Nest Reservoir regardless of whether such matters arise out of or are in connection with contract, deed, agreement, negligence, intentional acts or otherwise, and inclusive of all such claims asserted in Case No. 2002-325-CV, Eighth Judicial District, State of New Mexico and such claims as could have been asserted therein.

Notwithstanding the foregoing, however, any claims of any Party against any other Party arising from or related to an executory provision of this Agreement or any instrument executed and delivered by any of the parties pursuant to this Agreement are not released hereby.

The Parties expressly release any and all past, present and future claims in connection with the released claims, but which said Parties do not know of or suspect to exist in their favor, whether through ignorance, oversight, error, negligence or otherwise, and which if known, would materially affect their decision to enter into this release.

Each Party acknowledges that no other Party, nor any agent or attorney of any Party, has made any promise, representation, or warranty whatsoever, express or implied, not expressly contained herein, concerning the subject matter hereto so as to induce him or her to execute this Release; and each Party acknowledges that this Release was not executed in reliance on any promise, representation or warranty not contained herein other than as may be contained in this Settlement Agreement.

- b. The Parties acknowledge and agree that this Release is executed by each as a compromise and settlement of disputed claims and defenses, and shall not be construed as an admission of any liability or wrongdoing of any kind by any party, and is the result of a compromise entered into to avoid the expense and uncertainty of litigation and to promote comity and the efficient administration of Permit No. 71.

- c. Each Party warrants that no other person had or claims any interest in any of the claims, demands, causes of action, obligations, damages, or liabilities referred to herein; that each Party has the sole right to execute this Release and to bind itself and its successors and assigns hereby; that it has not sold, assigned, transferred, conveyed or otherwise disposed of any claims, demands, causes of action, obligations, damages or liabilities referred to herein.
 - d. Each Party has made an independent investigation of the facts and has been advised by its own attorneys. Each of the Parties fully understands that if any fact with respect to any matter covered by this Release is found hereafter to be other than, or different from the facts now believed by it to be true, each expressly accepts and assumes the risk of the possible differences in facts and agrees that this Release shall be and remain effective notwithstanding the difference in facts.
 - e. If, for any reason, this Agreement is terminated, deemed invalid or unenforceable by a court of competent jurisdiction, the release contained in this Agreement shall not survive the termination of the settlement agreement, but being part of this settlement agreement shall terminate with the settlement agreement. This Paragraph 21 of this Agreement may not be severed from this Agreement in whole or in part.
22. Authority to Execute Agreement: Each signatory below has been fully and duly authorized to execute this Agreement by their respective Party and to bind their respective Party, and its successors in interest and assigns hereby.
23. Law of New Mexico: The Parties agree that this Agreement shall be governed by the laws of the State of New Mexico.
24. Severability: If any provision or clause of this Agreement or application thereof to any Party or circumstance is held invalid or unenforceable by a court of competent jurisdiction, after all applicable appeals have been exhausted, such invalidity or unenforceability shall not affect such other provisions, clauses or applications of this Agreement as can be given effect without the invalid or unenforceable provision, clause or application. To this end, the provisions and clauses of this Agreement are severable; provided; however, that if the Court determines that the severance would deprive any Party to this Agreement of any material right conferred or recognized by this Agreement, or any obligation conferred or recognized by this Agreement, this entire Agreement shall be subject to termination.
25. Binding Effect. This Agreement is binding on and the benefits inure to the Parties, their successors and assigns.
26. Filing of Agreement: This Agreement shall be recorded in the records of the Colfax County Clerk's Office.
27. Springer Ditch Company Storage Agreement. The Parties approve of the agreement between the State of New Mexico and the Springer Ditch Company executed on June 2,

2006, providing for the temporary storage of water in the Reservoir, attached hereto as Exhibit "D."

28. Signatures. This Agreement may be signed in counterparts.

(signatures on following pages)

SIGNATURE PAGES

1. THE STATE OF NEW MEXICO

By: _____
Governor (SEAL)

Date: _____

PATRICIA A. MADRID
ATTORNEY GENERAL

FRANK D. WEISSBARTH
Assistant Attorney General

Date: _____

2. NEW MEXICO DEPARTMENT OF GAME AND FISH

By: _____
Name:
Title:

Date: _____

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of the NEW MEXICO
DEPARTMENT OF GAME AND FISH.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

3. NEW MEXICO STATE GAME COMMISSION

By: _____ Date: _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of the NEW MEXICO
STATE GAME COMMISSION.

(Seal, if any) _____
Signature of notarial officer
Title (and Rank)

My commission expires: _____

4. NEW MEXICO INTERSTATE STREAM COMMISSION

By: _____ Date: _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of the NEW MEXICO
INTERSTATE STREAM COMMISSION.

(Seal, if any) _____
Signature of notarial officer
Title (and Rank)

My commission expires: _____

5. CITY OF RATON

By: _____ **Date:** _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of CITY OF
RATON.

Signature of notarial officer
Title (and Rank)
(Seal, if any)
My commission expires: _____

6. VILLAGE OF ANGEL FIRE

By: _____ **Date:** _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of CITY OF
ANGEL FIRE.

Signature of notarial officer
Title (and Rank)
(Seal, if any)
My commission expires: _____

7. TOWN OF SPRINGER

By: _____ **Date:** _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of TOWN OF
SPRINGER.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

8. VILLAGE OF EAGLE NEST

By: _____ **Date:** _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of **VILLAGE OF
EAGLE NEST.**

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

9. MARGARITO TRUJILLO, Jr.

_____ Date: _____

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by MARGARITO TRUJILLO, Jr.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

10. ADA MARIE TRUJILLO

_____ Date: _____

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by ADA MARIE TRUJILLO.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

11. MARGARITO TRUJILLO, Jr. and ADA MARIE TRUJILLO REVOCABLE COMMUNITY PROPERTY TRUST

By: _____ Date: _____
Name

Name
Settlors and Trustees of the Trust

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by MARGARITO TRUJILLO, Jr. and ADA MARIE TRUJILLO, as Settlers and Trustees of the MARGARITO TRUJILLO, Jr. and ADA MARIE TRUJILLO REVOCABLE COMMUNITY PROPERTY TRUST.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

12. JAMES D. HUGHES (a/k/a David Hughes)

_____ Date: _____

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by JAMES D. HUGHES.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____;

13. JUDY HUGHES

_____ Date: _____

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by JUDY HUGHES.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

14. C.S. CATTLE COMPANY, INC.

By: _____ Date: _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by _____ (name), as _____ (title) of C.S. CATTLE COMPANY, INC.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

15. AGUA FRIA INTERPRISES, INC.

By: _____ Date: _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of AGUA FRIA
INTERPRISES, INC.

(Seal, if any) _____
Signature of notarial officer
Title (and Rank)

My commission expires: _____

16. BOY SCOUTS OF AMERICA, INC., d/b/a PHILMONT SCOUT RANCH, BSA

By: _____ Date: _____
Name:
Title:

Acknowledgment

State of _____
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of BOY SCOUTS
OF AMERICA, INC., d/b/a PHILMONT SCOUT RANCH, BSA.

(Seal, if any) _____
Signature of notarial officer
Title (and Rank)

My commission expires: _____

17. VERMEJO PARK, LLC

By: _____ Date: _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of VERMEJO
PARK, LLC.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

18. VERMEJO COAL, LLC

By: _____ Date: _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of VERMEJO
COAL, LLC.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

19. SWOPE FARM AND LIVESTOCK COMPANY

By: _____ Date: _____

Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of SWOPE FARM
AND LIVESTOCK COMPANY.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

20. UU BAR RANCH, LLC

By: _____ Date: _____

Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of UU BAR
RANCH, LLC.

(Seal, if any)

Signature of notarial officer
Title (and Rank)

My commission expires: _____

21. ENCHANTED MOUNTAIN PROPERTIES, LLC d/b/a ANGEL NEST APARTMENTS

By: _____ Date: _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of ENCHANTED
MOUNTAIN PROPERTIES, LLC d/b/a ANGEL NEST APARTMENTS.

(Seal, if any) _____
Signature of notarial officer
Title (and Rank)

My commission expires: _____

22. ANGEL FIRE WATER COMPANY

By: _____ Date: _____
Name:
Title:

Acknowledgment

State of New Mexico
County of _____

This instrument was acknowledged before me on _____, 2006, by
_____ (name), as _____ (title) of **ANGEL FIRE
WATER COMPANY**.

(Seal, if any) _____
Signature of notarial officer
Title (and Rank)

My commission expires: _____

EXHIBIT C

(Insert Court Caption)

STIPULATED JUDGMENT AND ORDER

The Parties in the above-captioned action, have entered into that particular Settlement Agreement dated _____, 2006, attached hereto as Exhibit “A” and incorporated herein in its entirety. In so doing, the Parties have agreed to resolve their disputes without adjudication in this court.

THEREFORE, pursuant to stipulation of the parties, it is hereby **ORDERED, ADJUDGED and DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the Parties hereto.
2. Venue is proper as to all Parties.
3. The Settlement Agreement between the Parties resolves all matters in dispute between the Parties set forth in the above-captioned matter. **COMPLETE**

SETTLEMENT

4. The Settlement Agreement is approved and its terms are incorporated herein as the Order of this Court and shall become effective upon entry of this Stipulated Judgment and Order.
5. The parties hereby consent to entry of this Stipulated Judgment and Order, which shall constitute a final judgment in this matter. The parties further stipulate and agree that the entry of the Stipulated Judgment and Order shall constitute a full, complete and final settlement of this action. Upon entry of this Stipulated Judgment and Order, this action is hereby dismissed

with prejudice.

LIMITED RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter solely for the purpose of enforcing compliance with the Settlement Agreement or for punishing violations thereof.

DONE AND ORDERED, this ____ day of _____, 2006, in _____, New Mexico.

HONORABLE JOHN W. POPE
Thirteenth Judicial District Court

(Insert Signature Lines for all Parties Below)