

# Resolution No. 2023-18

## A RESOLUTION OF THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, CO APPROVING AN INTERGOVERNMENTAL AGREEMENT TO PROTECT WATER RESOURCES

WHEREAS, the Board of Trustees for the City of Creede, CO is desirous of protecting the water resources of the San Luis Valley; and

WHEREAS, the San Luis Valley Council of Governments has spearheaded an effort to achieve regional cooperation in protecting the water resources of the San Luis Valley with the creation of an intergovernmental agreement; and

### NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, A COLORADO TOWN, THAT:

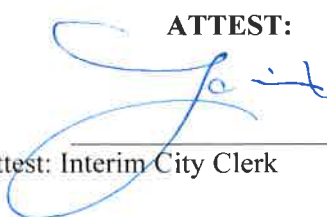
**SECTION 1:** The Board of Trustees have determined that it is in the best interest of the citizens of the City to approve the Intergovernmental Agreement to Protect Water Resources, attached as Exhibit A;

**APPROVED AND ADOPTED** by the Board of Trustees this 2<sup>nd</sup> day of May, 2023.

**CITY OF CREEDE:**

  
\_\_\_\_\_  
Mayor Date May 2, 23  
Jeffrey Larson

**ATTEST:**

  
\_\_\_\_\_  
Attest: Interim City Clerk Date  
MAY 2nd, 2023

MINERAL COUNTY, COLORADO BY ITS  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

RIO GRANDE COUNTY, COLORADO BY ITS  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

SAGUACHE COUNTY, COLORADO BY ITS  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

CITY OF ALAMOSA BY ITS CITY COUNCIL

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF ANTONITO BY ITS  
BOARD OF TRUSTEES.

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF BLANCA BY ITS  
BOARD OF TRUSTEES

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF CENTER BY ITS  
BOARD OF TRUSTEES

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF CREEDE BY ITS  
BOARD OF TRUSTEES

ATTEST:

BY:  \_\_\_\_\_

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TOWN OF CRESTONE BY ITS  
BOARD OF TRUSTEES

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF DEL NORTE BY ITS  
BOARD OF TRUSTEES

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF HOOPER BY ITS  
BOARD OF TRUSTEES.

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF LA JARA BY ITS  
BOARD OF TRUSTEES.

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF MANASSA BY ITS  
BOARD OF TRUSTEES.

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF MOFFAT BY ITS  
BOARD OF TRUSTEES.

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

CITY OF MONTE VISTA BY ITS  
CITY COUNCIL

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF ROMEO BY ITS  
BOARD OF TRUSTEES

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF SAGUACHE BY ITS  
BOARD OF TRUSTEES

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF SANFORD BY ITS  
BOARD OF TRUSTEES.

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF SOUTH FORK BY ITS  
BOARD OF TRUSTEES

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

TOWN OF SAN LUIS BY ITS  
BOARD OF TRUSTEES

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

## INTERGOVERNMENTAL AGREEMENT TO PROTECT WATER RESOURCES

This Intergovernmental Agreement to Protect Water Resources (the "Agreement"), dated as of May 2nd, 2023, is among:

Alamosa County, Colorado  
Conejos County, Colorado  
Costilla County, Colorado  
Mineral County, Colorado  
Rio Grande County, Colorado  
Saguache County, Colorado  
City of Alamosa, Colorado  
Town of Antonito, Colorado  
Town of Blanca, Colorado  
Town of Center, Colorado  
Town of Creede, Colorado  
Town of Crestone, Colorado  
Town of Del Norte, Colorado  
Town of Hooper, Colorado  
Town of La Jara, Colorado  
Town of Manassa, Colorado  
Town of Moffat Colorado  
City of Monte Vista, Colorado  
Town of Romeo, Colorado  
Town of Saguache, Colorado  
Town of Sanford, Colorado  
Town of San Luis, Colorado  
Town of South Fork, Colorado

(collectively, the "member jurisdictions").

### RECITALS

- A. Whereas, the member jurisdictions recognize that, while each of them has a unique and individual character, geography, natural environment and resources, and human populations, they are bound together by proximity, history, economics, human and natural resources, and requirements.

- B. Whereas, the member jurisdictions recognize that the interdependency of environmental, economic, and social well-being is founded upon the precious surface water and groundwater resources of the San Luis Valley.
- C. Whereas, the member jurisdictions recognize that efforts currently and will foreseeably exist to transfer water from within the San Luis Valley to outside of the San Luis Valley, and that such transfers will be significantly detrimental to the Valley’s human and natural resources, environment, and abilities to continue to thrive as a community.
- D. Whereas, the member jurisdictions desire to create a Joint Planning Area to facilitate the protection of surface water and groundwater resources from impacts of surface water and groundwater transfers out of the San Luis Valley.
- E. Whereas, the member jurisdictions intend to develop and implement a collaborative policy and regulatory process to protect the quality and quantity of the surface water and groundwater resources running through the Joint Planning Area from impacts of surface water and groundwater transfers from the Joint Planning Area.
- F. Whereas, Colorado Constitution Article XIV, 18 (2) states “[n]othing in this constitution shall be construed to prohibit the state or any of its political subdivisions from cooperating or contracting with one another . . . to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units. . .” and Section 29-1-203, C.R.S. (1) states that “[g]overnments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units . . .”
- G. Whereas, Section 29-20-105(1), C.R.S. authorizes local governments “to cooperate or contract with other units of government . . . for the purposes of planning or regulating the development of land including, but not limited to, the joint exercise of planning, zoning, subdivision, building and related regulations.”
- H. Whereas, Section 24-65.1-101 *et seq.* (“1041”), also known as the Areas and Activities of State Interest Act, authorizes counties and municipalities to identify, designate, and regulate a wide variety of areas and activities through local government permitting processes to protect the resources and interests of their communities.
- I. Whereas, each of the member jurisdictions has properly approved this Agreement.

Now therefore, in consideration of the above and the mutual covenants and commitments made herein, the member jurisdictions agree as follows:

**1.0 SAN LUIS VALLEY JOINT PLANNING AREA TO PROTECT SURFACE WATER AND GROUNDWATER RESOURCES**

The member jurisdictions hereby establish the San Luis Valley Joint Planning Area To Protect Surface Water and Groundwater Resources (“Joint Planning Area”) and the San Luis Valley Planning Board (“Planning Board”).

- 1.1 The boundaries of the Joint Planning Area are the geographic boundaries of the Counties of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache.

- 1.2 The initial representatives to the Joint Planning Board shall comprise the San Luis Valley Council of Governments (“SLVCOG”) Board of Directors. Each Director may, subject to the approval of their municipality or county, designate a person instead of the Director to represent their municipality or county on the Planning Board.

## **2.0 DUTIES AND RESPONSIBILITIES OF THE PLANNING BOARD**

- 2.1 The primary duty and responsibility of the Planning Board is to review and make findings and a recommendation on any application submitted to any municipality or county in the Joint Planning Area for a 1041 permit to construct a municipal and industrial water project or a major domestic water system that would export any water from the Joint Planning Area (“Application”). The process and procedure for such findings and recommendations will generally conform to this Agreement and as more specifically set forth in the applicable regulations, and/or such bylaws or policies the Planning Board may subsequently adopt.

- 2.1.1 Upon receipt of an Application, the Planning Board shall review the Application.

- A. As provided in the applicable regulations, the Planning Board may retain technical consultants and legal advisors, at the cost of the Applicant, as needed, to review the Application.
- B. If the Application has not yet been deemed complete, the Planning Board shall, within the timeframe established by the applicable permit regulations, provide written comments to the municipality or county with authority over the Application describing the materials necessary to ensure that the Application includes all the materials required by the applicable permit regulations.
- C. If the Application has been deemed complete, the Planning Board will consider the Application and any other relevant materials in a public meeting or meetings and make findings and a recommendation pursuant to Section 2.1.2. of this Agreement within 30 days of receipt of the complete Application, or within such other time period required by the municipality or county with jurisdiction over the Application.

- 2.1.2 After the public meeting(s) to consider the Application, the Planning Board shall make findings as to whether the Application complies with each of the applicable permit regulations.

- A. The Planning Board may recommend approval of the Application if it finds that the Application complies with each of the applicable permit regulations. If the Application does not comply with each of the permit regulations, the Planning Board shall recommend that the permit be denied.
- B. Any recommendation to approve the Application shall require a supermajority vote of the Planning Board members present at the meeting.
- C. The Planning Board shall submit the findings and recommendation in writing to the municipality or county with permit authority over the Application within the timeframe established by the permit regulations.

- 2.1.3 The municipality or county with permit authority over the Application shall incorporate the Planning Board findings, recommendation, and any supporting

documentation into the record regarding the Application and shall consider such materials at the hearing.

- A. The municipality or county with permit authority over the Application shall deny the Application if it finds, based on all the evidence on the record, that the Application fails to comply with each the of the permit regulations.
  - B. The municipality or county with permit authority over the Application may approve the Application if: i) the Application complies with the permit regulations, and ii) the Planning Board recommended approval of the Application, unless the record clearly demonstrates that the Planning Board's approval is not supported by any competent evidence on the record.
- 2.2 The Planning Board may adopt organizational bylaws or policies as necessary to carry out its duties and will meet as necessary to carry out its duties.
- 2.3 The Planning Board may appoint an advisory committee of organizations or individuals with special expertise and knowledge of the water and groundwater resources in the Joint Planning Area. The advisory committee may, for example, include representatives of local governments or entities with water resource and land use expertise in the Joint Planning Area including but not limited to the San Luis Valley Water Conservancy District, the Rio Grande Conservation District, the Conejos Water Conservancy District, the Trinchera Water Conservancy District, the San Luis Valley Ecosystem Council, the Sonoran Institute, the Colorado Department of Local Affairs, and the Colorado Division of Water Resources.
- 2.4 The SLVCOG shall serve as a repository for reports, plans, studies, and monitoring results regarding the water resources in the Joint Planning Area.
- 2.5 The Planning Board may carry out any other responsibilities and duties related to protection of water resources in the Joint Planning Area as determined by a vote of its members.

### **3.0 DESIGNATION OF ACTIVITIES OF STATE INTEREST**

- 3.1 Member jurisdictions, contemporaneously with its execution of this Agreement, shall designate the following activities of state interest pursuant to Section 24-65.1 - 101 C.R.S. *et seq.*:
- A. Site selection and construction of major new domestic water systems and major extension of existing domestic water systems; and
  - B. Efficient utilization of municipal and industrial water projects.
- 3.2 Nothing in this Agreement shall prohibit or be construed to prohibit any member jurisdiction from designating additional 1041 areas or activities of state interest, nor shall this Agreement affect any previous designation of a 1041 area or activity by any member jurisdiction.
- 3.3 Once a member jurisdiction designates an area of state interest pursuant to this Agreement, no person shall conduct an activity of state interest until regulations have been adopted and the activity has been reviewed and permitted pursuant to this Agreement.



#### **4.0 APPLICABILITY AND EXCLUSIONS**

- 4.1 Applicability. Except for activities set forth in Section 4.2 of this Agreement, this Agreement applies as follows:
  - 4.1.1 Major domestic water treatment system shall include any collection, treatment, storage, or distribution system and any of its components for the export of water outside the Joint Planning Area directly or by exchange with the eventual capacity to serve 15 or more service connections. The term components includes without limitation all diversion structures, dams, reservoirs, ponds, water bodies, streams, trenches, wells, pipes, conduits, tanks, pumps, buildings, structures, trucks, and other methods or conveyances.
  - 4.1.2 Municipal and industrial water project means a project, and any of its components to export water outside the Joint Planning Area for eventual use for municipal or industrial purposes, directly or by exchange. The term components includes without limitation diversion structures, dams, reservoirs, ponds, water bodies, streams, trenches, wells, pipes, conduits, tanks, pumps, buildings, structures, trucks, and other conveyances.
- 4.2 Exclusions from Applicability.
  - 4.2.1 Providing augmentation or replacement water to the Rio Grande Basin for the purpose of replacing injurious depletions caused by the use of water within the Joint Planning Area shall not be considered an export of water for purposes of this Agreement, if such water is provided in accordance with the Rules Governing the Withdrawal of Groundwater in Water Division No. 3, the Rio Grande Compact, water court decrees, or other state administrative or judicial requirements.
  - 4.2.2 Export of water from the Joint Planning Area that remains for eventual use within the Rio Grande Basin shall not be considered an export of water for purposes of this Agreement.

#### **5.0 MEMBER JURISDICTION REVIEW AND RECOMMENDATION ON APPLICATION**

- 5.1 Each member jurisdiction shall, in analyzing and determining whether an Application satisfies that member jurisdiction's regulations and this Agreement, consider and require mitigation of impacts of the Application occurring in the Joint Planning Area both within and outside the boundaries of the member jurisdiction.
- 5.2 Any member jurisdiction that receives an Application, within three (3) working days shall send such Application to the administrator of the SLVCOG. The SLVCOG shall send a notice to its member jurisdictions that the Application has been received.

#### **6.0 TERM OF THE AGREEMENT AND WITHDRAWAL OF MEMBER JURISDICTION**

- 6.1 This Agreement is binding upon each of the member jurisdictions upon that member jurisdiction's execution of the Agreement.
- 6.2 This Agreement shall remain in effect unless the Board of the SLVCOG by majority vote terminates this Agreement.
- 6.3 Following the effective date of this Agreement, any member jurisdiction may withdraw from this Agreement upon 30-day written notice to the Board of the SLVCOG unless that

member jurisdiction has a pending Application. Any member jurisdiction that withdraws from this Agreement shall be bound by the terms of this Agreement for five (5) years from the date of withdrawal.

**7.0 NOTICES**

Any notice required by this Agreement shall be in writing either by electronic communication or sent by certified or registered mail, return receipt requested, to the administrator Board of the SLVCOG. The date of delivery shall be deemed to be the date of any such notice.

**8.0 MISCELLANEOUS**

- 8.1 Severability. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.
- 8.2 Amendment. No amendment, alteration, medication of, or addition to this Agreement shall be valid or binding unless expressed in writing and signed by all of the member jurisdictions.
- 8.3 No Waiver of Governmental Immunity. Nothing in this Agreement is, or shall be construed to be, a waiver in whole or in part, by any of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.
- 8.4 Effective Date. This Agreement shall become effective upon the execution by no less than six (6) of the County member jurisdictions.
- 8.5 Execution by Counterpart. This Agreement may be executed by the member jurisdictions in counterpart.

**9.0 APPROVAL AND COMPLIANCE WITH AUTHORITY**

This Agreement has been approved by the governing body of each of the member jurisdictions in compliance with all statutes and governing documents.

ALAMOSA COUNTY, COLORADO BY ITS  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

CONEJOS COUNTY, COLORADO BY ITS  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

COSTILLA COUNTY, COLORADO BY ITS  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_