



RULES AND REGULATIONS  
OF  
THE CHURCH DITCH WATER AUTHORITY

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AMENDED 12/13/10

During the irrigation season, a twenty-four (24) hour emergency phone with message recorder will be in use. Phone: 303-423-6010.

Any questions on ditch operations should be directed to the Church Ditch Water Authority, 14025 W. 82<sup>nd</sup> Ave., Arvada, CO 80005. Phone: (303) 423-6010.

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## ARTICLE I

### General Provisions

#### **1.1 Description of Church Ditch**

The Church Ditch is a carrier ditch operated by the Church Ditch Water Authority (Authority) under Colorado statutes with decreed absolute priorities to 113.03 cubic feet of water per second from Clear Creek. The Church Ditch begins at a headgate in Clear Creek, near Golden, Colorado, and runs twenty-six (26) miles in length through Jefferson County until it ends near the intersection of 100th Avenue and Simms Street at the Wilson Flume formerly known as the Ketner Flume.

Any person who has purchased and used water from the Church Ditch and who is entitled to continue to do so is defined to be a Contractual User.

A Contractual User is entitled to its prorata share of all water, which the ditch is legally entitled to divert from its source at Clear Creek during any given time as determined by the State Water Commissioner. There are 5,710.64 "inches" total owned by all Contractual Users. Usually, all Contractual Users want their prorata share of the water in the ditch. As an example, if all Contractual Users want water at a time when the ditch is legally entitled to divert 113.03 cubic feet per second (cfs) from Clear Creek, the water one (1) inch can expect, before ditch loss, is  $113.03/5710.64$  cfs or 0.0198 cfs per inch. Or in terms of gallons, 0.1481 gallons per second or 8.89 gallons per minute. The ditch loss or water loss due to evaporation and infiltration is presently assessed as twenty-five (25) percent and actual water received per one (1) inch at maximum statutory flow will be 0.1111 gallons per second or 6.68 gallons per minute.

Most of the irrigation season, however, all the Church Ditch priorities are not satisfied and the maximum flow into the Church Ditch is not delivered by the State Water Commissioner.

The State Water Commissioner, every day of the season, checks the flow volume in Clear Creek at the gauging station in Golden. Next, the Commissioner fills the most senior priorities, and then the next most senior until all water is distributed. The Church Ditch has priority numbers 21, 40, 44, 62, 65, 66, 74 and 74A. The Church Ditch waits for the lower number (senior) priorities to be satisfied before the ditch can receive its water rights based on priority number. When the Clear Creek flow drops in mid-summer, the administration of water rights to Church Ditch is reversed, that is, higher number (junior) priorities are shut off. At such a time when the ditch is not entitled to a full supply of water, water to Contractual Users is prorated as provided by 37-86-112, C.R.S.

The ditch loss depends on rate of flow, weather conditions, runoff from adjacent lands downstream of headgate, etc. Every year, the Authority evaluates the ditch loss and it is subject to change as the conditions warrant. For example, if the Water Commissioner had reduced flow in Church Ditch to 50.52 cubic feet per second and all 5710.64 inches are being called for, one (1) inch is prorated as follows:

$$\frac{50.52 \text{ cfs}}{5710.64 \text{ inches}} = 0.0088 \text{ cfs per inch}$$

$$0.0088 \text{ cfs per inch} \times .75 \text{ (25\% loss)}$$

equals 0.0066 cfs per inch

or if

$$1 \text{ cfs} = 7.48 \text{ gallons, then}$$

$$0.0066 \times 7.48 = 0.0494 \text{ gallons per second per inch}$$

or

$$2.964 \text{ gallons per minute per one (1) inch}$$

## **1.2. Rights and Liabilities of the Church Ditch Water Authority**

**1.2.1. Fiduciary Duty** The Authority as operator of the Church Ditch owes Church Ditch Contractual Users a fiduciary duty to divide the decreed water of the ditch, including surface inflows into the ditch, among the Contractual Users wishing to receive water and legally and physically able to make beneficial use of the water as nearly as practicable proportionately to the number of inches held.

**1.2.2. Elimination of Undistributable Water** The Authority shall eliminate undistributable water to the maximum extent practicable.

**1.2.3. Water Distribution** From time to time water may become lawfully available in the Church Ditch as a result of Contractual Users' reducing or not taking all or part of available water, stormwater inflows into the ditch, or other circumstances. Such water shall be distributed, as nearly as is practicable, to those Contractual Users receiving water at the time such water is available, proportionately to the number of inches held, unless notice is provided in accordance with paragraph 2.1.6 that such water is not desired.

However, in situations where the integrity of the ditch may be threatened by the rate of flow or volume of such water, the Authority may take such steps as it deems necessary to protect the ditch, including spilling such water, before seeking to distribute such water among the Contractual Users.

**1.2.4. Regulation of Diversions** The Authority shall regulate diversions of water at the Clear Creek headgate of the Church Ditch in response to lawful Inchholder demand and shall return water not distributed to Contractual Users to the stream system at the first practicable location. If water that is not distributed to Contractual Users (including Contractual Users having storage space in Standley Lake) is diverted into Standley Lake such water shall be returned to Big Dry Creek from Standley Lake as soon as practicable.

**1.2.5. Use and Maintenance of Ditch and Right-of-Way** The Authority has statutory and other rights to use and maintain the ditch and the right-of-way established for the ditch. The right-of-way includes a reasonable area of land on either side of the ditch necessary for use and maintenance of the ditch.

Adjacent landowners along the ditch do not have the right to obstruct the right-of-way with the construction of buildings, planting of vegetation, or placement of debris, which would prevent reasonable maintenance or operation of the ditch. Additionally, any crossing of the ditch, by whatever structure, will not be permitted unless approved in advance upon proper application and execution of a License Agreement with the Authority.

**1.2.6. Prosecution for Illegal Diversions** Any illegal taking of water from the ditch by individuals not Contractual Users of the ditch, or by Contractual Users in excess of the amounts deliverable under their inches, shall be subject to civil and criminal penalties as permitted under law.

**1.2.7. Measuring Devices** The Authority shall have the right to require the measurement of all water taken from the ditch and the measuring device so used shall be at a minimum a Parshall Flume which is approved in writing by the Authority. Such measuring device must be permanently installed and not removable or temporary in nature. All measuring devices must be located within 20 feet of the delivering headgate or within reasonable distance to be accessed and recorded from the Ditch or Ditch Access Road. Access to the measuring device must be maintained at all times for Authority's personnel. Failure to have or to maintain access to a measuring device can and will result in curtailment or termination of water deliveries. The Authority shall maintain all control over the amounts of water delivered in accordance with State statutes governing the operation of carrier ditches.

**1.2.8. Forfeiture** If any Contractual User fails to pay three successive yearly carriage charges assessed on his Church Ditch inches within two months after mailing of the notice of assessment for the third such year by the Authority, the Authority shall at any time thereafter have the right to declare a forfeiture of that person's Church Ditch inches in accordance with the following procedures:

(a) The Authority shall give notice of its intent to declare a forfeiture by certified mail (return receipt requested) to the last known owner of the inches for which assessments have not been paid, as that person's name and address appear in the records of the Authority and, in the Authority's sole discretion, to any other person who the Authority may have reason to believe may have an interest in the subject inches.

(b) The Authority shall also give notice of its intent to declare a forfeiture of the subject inches by publishing notice one time per week for four consecutive weeks in a newspaper with a general circulation in the Denver metropolitan area.

(c) If the delinquent assessments are not paid in full within thirty (30) days after the last published notice has appeared and notice by certified mail has been sent, the Board of Directors may declare a forfeiture at any regular or special meeting by majority vote approving a written resolution describing the inches to be forfeited for non-payment of assessments.

(d) Following a declaration of forfeiture in the manner provided in these Rules and Regulations, the former owner of the forfeited inches shall have no further right to said inches and the owners of the Church Ditch may provide for other use of those inches.

**1.2.9. Unlawful Use of Water** The Authority may refuse to deliver water to any Contractual User for any use which the Board of Directors or Manager of Ditch Maintenance (Manager) knows or has reason to believe is unlawful; provided, however, that the Authority shall not be liable for any unlawful use of water delivered to Contractual Users; and provided further that the Authority has no affirmative duty to investigate the lawfulness of any use or proposed use of water carried by the Church Ditch.

**1.2.10. Excess Carrying Capacity**

(a) Excess carrying capacity is defined as the difference between the safe carrying capacity of the ditch at any point along its course, as reasonably determined on behalf of the Authority by a registered professional engineer after considering operational information provided by the Manager, and the amount of water flowing in the ditch at that point, at a given time, attributable to (1) the Church Ditch decrees; and (2) valid, written carriage agreements.

(b) In the event that excess carrying capacity exists and anyone other than the owners of the Church Ditch desires to use excess capacity over and above that being used by the owners, such person shall present a request to the Manager in writing, providing the following information, each such request to address a single period of use:

(1) Name of applicant;

(2) Points of diversion and delivery;

(3) Amount of water involved, in acre-feet and rate of flow;

- (4) Desired date(s) and time(s) of delivery;
- (5) Name of the water right under which the water will be diverted;
- (6) Name and address of the owner of the water right under which the water will be diverted, if different from (1),
- (7) Authority of the applicant to use the water right under which water will be diverted, whether by lease, loan or otherwise (a copy of written authority shall be attached);
- (8) Decree or other legal authority for diversion of water into the ditch under the water right involved (a copy of the decree or other written legal authority shall be attached);
- (9) A statement that the applicant agrees to pay a reasonable charge for the use of such excess capacity;
- (10) A statement that the applicant shall indemnify and hold the ditch and its owners harmless from any liability arising from the applicant's use of excess carrying capacity, and arising from causes including, but not limited to:
  - (a) Overflow of water from the ditch;
  - (b) Waste of water;
  - (c) Diversion of water out of priority;
- (11) The request shall be signed by the applicant or his agent duly authorized in writing.

The charge for the use of excess carrying capacity shall be set by the Board of Directors. Said charge shall be sufficient to cover all direct expenses of such use, including but not limited to personnel, maintenance and administration, plus a reasonable rental charge. If the water to be carried is water other than raw Clear Creek water, the owners of the Church Ditch must approve the carrying of such water.



### **1.3 Contractual Users' Meeting**

There shall be an annual meeting of the Contractual Users, at a time and place to be announced by the Board of Directors. The purposes shall be:

- (a) Report on previous year's operation, water deliveries, budget and expenditures, and special problems.
- (b) Present budget and maintenance plan for the coming year.
- (c) Solicit water user information on ditch losses and maintenance and operational problems.
- (d) Solicit water user comments on budget, annual charges, operations, rules and regulations and maintenance plan.

### **1.4 Contractual User Notice**

The Authority shall provide annual written notice to all Contractual Users of the Rules set forth in Paragraphs 1.2.3 and 2.1.6.

### **1.5 Amendment of Rules and Regulations**

These Rules and Regulations shall be subject to amendment from time to time as circumstances may require. All Contractual Users are encouraged to submit suggested revisions to the Authority in writing.

In the event of a conflict between the Design Review Process and Design Criteria for Facilities and the Rules and Regulations of the Church Ditch Water Authority, the Design Review Process and Design Criteria for Facilities override.

### **1.6 Contractual User List**

“As a government authority of the State of Colorado the disclosure of the Contractual Users list shall be subject to the Colorado open records act Sec. 24-72-201 et seq.”

## ARTICLE II

### Church Ditch Water Users

#### 2.1 Responsibilities of Users

**2.1.1. Assessments** The yearly carriage charge will be billed no later than February 1 of each year, and must be paid prior to the delivery of water from the ditch.

**2.1.2. Conservation** It is imperative that all water users exercise the utmost care in their use of Church Ditch water so as to reduce consumption and eliminate waste. This effort will be necessary in order to insure that the available water will satisfy the requirements for all Church Ditch water users.

**2.1.3. Leasing of Church Ditch Water** The Authority office must be notified, in writing, of any agreement to lease water forty-eight (48) hours in advance of delivery. Said notification shall include the name, address, phone number and Church Ditch headgate number of the lessee and the lessor's written authorization to deliver the leased water for the entire season. The lessee's use of Church Ditch water must be a lawful use and must comport with these Rules and Regulations. Leases effective after April 1 shall be subject to the provisions of subsection 2.1.5 below.

**2.1.4 Transfer of Water Rights** The Authority must be notified, in writing, of any water rights transfer. Said notification must be on a Board approved form, along with the Transfer Acknowledgement Form (Appendix C), and transfer fee.

**2.1.4. Water Delivery Through Headgates Only** Contractual Users are now and have always been required to take delivery of their Church Ditch inches through headgates on the Church Ditch or on laterals and extensions connected to the Church Ditch.

**2.1.5. Change of Headgate for Delivery Within the Church Ditch System** Any Contractual User wishing to change the place of delivery of his Church Ditch inches to a different Church Ditch headgate than was last used during the preceding delivery season must give written notice of the proposed change to the Authority no later than April 1 of each year. After April 1, each Contractual User may change headgates one time during the delivery season which change shall be effective forty-eight (48) hours after receipt by the Authority of written notice of any such change. If more than one change of headgate is requested during any given delivery season, the second proposed change will be allowed only if approved in writing by the Board of Directors, in its sole discretion, subject to any terms and conditions the Board wishes to impose on said change.

**2.1.6 Water Orders** All water users from the Church Ditch shall provide 24 hours' advance notice to the Authority for all water delivery orders, including orders to commence delivery, adjust delivery rates, and end delivery.

(a) Orders may be provided :

(i) by facsimile addressed and transmitted to: Authority Manager at fax #303-423-2955; or

(ii) by telephone call to: Authority Manager at phone #303-423-6010, followed by written confirmation.

Orders received by 9 a.m. of regular business days will be implemented the following business day. Orders received on weekends or holidays will be treated as being received by 9 a.m. on the day following the weekend or holiday.

(b) The Authority may in appropriate circumstances and in the exercise of reasonable discretion waive the required 24 hour notice upon determining that the proposed headgate adjustment will not impose significant operational difficulty in adjusting or resetting other headgates to distribute Church Ditch water to Contractual Users.

**2.1.7. Change of Use** Any Contractual User wishing to change the use of his inches to any use other than direct flow use for agricultural irrigation purposes shall make written request therefore to the Board of Directors. If, in the opinion of the Board, such change can be made without injury to the ditch, the owners of the ditch, the Authority, and/or other Contractual Users, and if the inchholder obtains a court decree authorizing the proposed change, such water shall be delivered as requested.

**2.1.8. Change of Use Decree** Any Contractual User who has a court decree authorizing the use of all or any portion of his Church Ditch inches for any use other than direct flow use for agricultural irrigation purposes must provide a copy of the court decree to the Authority prior to implementing any such nonagricultural or storage use.

**2.1.9. Notices and Contractual Users' Designated Representative** Any Contractual User that is a corporation, municipal corporation, partnership, trust, association, joint venture, or any other entity other than an individual must give written notice to the Authority designating the Contractual Users' official representative who shall be responsible for issuing and receiving communications concerning Church Ditch matters. The Authority shall not act upon instructions from any person other than the Contractual Users' designated representative. Said notice shall state the full name, address, telephone number and the representative's relationship to the Contractual User and shall include proof that the person issuing said notice is authorized to do so on behalf of the Contractual User.

**2.1.10 Lateral Ditch and Flume Cleaning** Prior to starting the irrigation season (around the first week in April, if conditions permit), all users should make sure their lateral ditches (small carrier ditches that proceed from the headgates to the Contractual Users' properties) are cleaned and unobstructed. An uncleaned lateral ditch causes slow water delivery, increased

seepage loss and more waste water than is affordable; especially during a dry season. Contractual Users flumes (measuring devices built into a lateral ditch) must clean them yearly in order to prevent silting and the resultant inaccuracies in water measurement. Flumes with built-up silt cause the water measurement to appear greater than the actual measurement. This inaccuracy in measurement could result in the Contractual User receiving less water than he has a contractual right to receive. The Authority may not deliver water to users having obstructed or inaccurate measuring flumes.

**2.1.11. Flooding** All users will be held liable for any flooding that occurs due to over watering, blocked lateral ditches or poor irrigating practices. Users are solely responsible for any damage occurring to properties, and are eligible for prosecution under waste water statutes provided for in the Colorado State Constitution.

**2.1.12. Pollution and Debris** The introduction of any "obnoxious" or foreign substance into the Church Ditch is punishable under Colorado Law. This law is interpreted to include waste effluent, manure, petroleum products, chemicals, tree cuttings, grass clippings, leaves and any other objects that pollute and cause flow restrictions.

**2.1.13. Theft of Water** Water theft results in a decreased amount of water in the ditch, thereby reducing every share. PLEASE CALL THE DITCH RIDER OR THE AUTHORITY OFFICE WITH ANY INFORMATION ON ILLEGAL PUMPS OR SIPHONS OR ANY OTHER MEANS BY WHICH WATER IS BEING ILLEGALLY WITHDRAWN FROM THE CHURCH DITCH.

**2.1.14. Delivery Problems** Contractual Users must notify the Manager of any problems with the headgates or any other problems concerning the delivery of Church Ditch water.

**2.1.15. Measurement of Water** All headgates shall have approved measuring and recording devices installed prior to the current irrigation season, as follows:

- (a) Each headgate shall have an accurate measuring device, approved in writing by the Authority.
- (b) Each headgate receiving over 100 inches shall have an accurate recording device, approved in writing by the Authority.
- (c) Measurement and recording devices shall be installed at the Contractual User's expense, and shall be located as close as practical to the headgate serving the Contractual User
- (d) All charts from such recording devices shall be made available for inspection by the Manager.
- (e) Measuring and recording devices shall be inspected by the Manager or his designee at least annually to assure that they are in operable condition.
- (f) Failure to have or to maintain access to a measuring device can and will result in

curtailment or termination of water deliveries.

**2.1.16. Additional Headgates** No additional headgates will be allowed unless at least 10 inches is to be diverted at the proposed headgate.

**2.1.17. Abandonment of Headgates** Headgates shall be deemed to be abandoned if they have not been active for three years.

Following three years of non-use, the Authority will notify the last Contractual User of record at such a headgate that the Authority intends to abandon the headgate.

If the Contractual User desires to maintain the headgate, the Manager will inspect the headgate and associated structures and notify the Contractual User of any maintenance or work required to bring the structure into acceptable operating condition. Any work required shall be at the expense of the Contractual User.

If no response is received by the Authority or if the structure is not brought into acceptable condition as provided above, the headgate may be plugged or removed at the discretion of the Authority.

**2.1.18. Headgate Lockdown Procedure** Any violation of these rules and regulation can result in a curtailment or termination of water deliveries. The following actions will be taken.

- (a) The contractual user will be given a verbal notification to correct the problem or violation and have 3 days upon notice to correct the infraction.
- (b) If after 3 days the contractual user does not comply a written notification will be provide with an additional 3 days to correct the infraction.
- (c) Failure to correct the infraction after 6 days will result in the locking of the headgate and deliveries will be terminated. Removal of the lock will constitute theft of water and shall be subject to civil and criminal penalties as permitted under law.

## ARTICLE III

### Church Ditch Crossings and Encroachment Upon Right-of-Way

#### **3.1 Church Ditch Crossings and Encroachments**

The rapid growth of real estate development in the areas served by the Church Ditch has resulted in an increasing number of applications requesting changes, revisions, encroachments and crossings to the rights-of-way of the ditch. Since such requests are initiated by the applicant and are for the benefit of the applicant, any expenses involved in review, implementation or operation of the requests must be borne by the applicant. Further, all such requests require legal, engineering and Manager services at an increasing expense to the Authority. Therefore, no application will be received or considered except as outlined in the following conditions and terms:

**3.1.1 Requirements** The changes, revisions, encroachments or crossings that require an application are as follows:

- (a) Changes, alterations or revisions to the location, alignment, cross-section or flow capacities of the ditch or any portion of its right-of-way.
- (b) Rights to cross over the ditch or any portion of its right-of-way with bridges, power line or other utilities or to cross under the ditch or any portion of its right-of-way with a sewer line, water line or other utilities.
- (c) Drainage into the ditch or its right-of-way.
- (d) Fences on right-of-way or across ditch.
- (e) Any use of the Church Ditch or its right-of-way.
- (f) Any encroachment upon or use of the ditch or the right-of-way.

**3.1.2 Application** Each application must be accompanied by an application fee to the Authority. (See Appendix A) The schedule of fees is set by Resolution as adopted by the Board of Directors from time to time. This shall be deemed a minimum initial payment to cover preliminary expenses, such as legal work, engineering analysis, time and transportation costs for Authority's review of the application. Such initial payment will not be refunded even though the request is denied. If the request presented is substantial in nature and so involved as to necessitate the Authority incurring expense in excess of the initial deposit, the matter will not be cleared and receive final approval until an additional deposit is made in such amount as is reasonably calculated to cover the legal, engineering and other costs to the Authority in investigating the matter fully. If the actual cost to the Authority is less than this estimate, the difference will be refunded (less the application fee).

The general procedure for requesting a change, revision, crossing or encroachment is as follows:

- (a) The request must be made in writing to the Authority describing the project involved. Two (2) copies of the engineering studies and construction drawings, as performed by the applicant or his technical staff, must accompany the initial request.
- (b) The request must be in conformance with the design review process and design criteria for facilities.
- (c) After the review by a Registered Professional Engineer on behalf of the Authority is accomplished, and if the request is determined to not create an adverse effect upon the ditch or upon operation and maintenance of the ditch, approval of the request will be made in writing by the Authority, and a License Agreement will be executed. Prior to execution of the License Agreement, the Applicant shall pay the license fee established by the Board of Directors. (See Appendix B). If the request does create an adverse effect on the ditch or upon the operation and maintenance of the ditch, specific requirements, related to the request, will be provided to the applicant by the Authority and/or its engineering consultant.
- (d) The applicant will then comply with the specific requirements and submit a plan for final approval.
- (e) On approved requests, there shall be a pre-construction conference on the job site prior to construction, at which representatives from the Authority, the applicant, contractor and an official of the appropriate city or county (if construction is within a public right-of-way) shall attend.

**3.1.3 Performance Deposit for Erosion Control, One (+) Year Warranty Period** In addition to the customary license fee, the Board will require a minimum replenishable performance deposit in the amount of one hundred percent (100%) of the project costs per crossing. The deposit may be used by the Authority to complete the project in case of default by the Applicant, to restore the Church Ditch to original condition or to repair erosion control structures. The performance deposit will be paid in cash. If the project costs exceed fifty thousand dollars (\$50,000.00) a letter of credit will be accepted for the remaining portion of the project costs. In no event, shall the deposit be less than five thousand dollars (\$5,000.00). A minimum replenishable deposit of five thousand dollars (\$5,000.00) for erosion control to restore or repair erosion control structures, prior to beginning of construction of crossing. Upon satisfactory completion, inspection by the Authority, and expiration of a minimum one year warranty period, the Authority shall return the deposits to Licensee.

**3.1.4 Approval** The Authority expressly reserves the right to disapprove any request made of it if in its judgment approval might interfere with the ditch or the flow of water in the ditch, impede maintenance work, cause additional expense in maintenance or operation or in any way be adverse to the interests of the ditch.

The ditch may not be used for receiving or conveying drainage waters from urban areas unless approved in writing by the Board of Directors. Any project which will increase or alter the quantity or the quality of water entering the ditch or the timing thereof will not be approved except in extraordinary cases, and then only if adequate measures to protect the ditch and its structures from flood damage are provided.

All utility crossings, whether bored or open cut, shall be installed in a pipe casing as shown on the standard detail. (See Appendix C.)

All bridges or other overhead crossings or obstructions shall allow a capacity of at least 300 cubic feet per second.

Open cut utility crossings require adequate cut-off walls and ditch lining as shown on the attached standard detail. (See Appendix C.)

The applicant shall protect all Church Ditch property and appurtenances, and shall only disturb or remove same with the approval of the Authority.

**3.2 Restoration and Cleanup** Disturbed areas along the ditch shall be restored by the Licensee at its sole expense as nearly as practicable to the grade and condition immediately prior to construction. Topsoil shall be removed, saved and replaced and any excess shall be removed from the right-of-way at no additional expense to the Authority. All grassed areas shall be reseeded with a seed mixture approved by the Authority or resodded, and the contractor shall be responsible for caring for the grass including reseeded if required until its growth is established and the warranty period has lapsed.



# APPENDICES

APPENDIX A

Application No. \_\_\_\_\_

APPLICATION FOR LICENSE

WHEREAS, the Church Ditch Water Authority is the operator of an irrigation canal known as Church Ditch in Jefferson County, State of Colorado, hereinafter referred to as the "Authority", and; \_\_\_\_\_.

WHEREAS, The Authority is willing to investigate the proposed encroachments, crossings, changes, alterations, or revisions to the location, alignment, cross-section or flow capabilities of Church Ditch.

NOW, THEREFORE, for and in consideration of the covenants and agreements of the parties hereinafter set forth and contained, the parties agree as follows:

FIRST: Applicant hereby does make an application to the Authority for a license for \_\_\_\_\_ to be located at \_\_\_\_\_ in the manner shown on the attached sheets. There are \_\_\_\_\_ sheets, which by this reference are made a part of this application.

SECOND: By written acceptance of this application, the Authority agrees that it will cause a review of the request to be made in such manner as it shall, in its sole discretion, deem appropriate.

THIRD: The Authority's approval of the request shall only be made by a separate license in writing and only upon receipt of the license fee established by the Board of Directors.

FOURTH: If the request is approved by the Authority, then the parties each will enter into an agreement designated "License Agreement".

FIFTH: No approval or requirement of the Authority shall be considered to be a statement as to the adequacy or suitability of any proposed structure or any plan, specification or part thereof for any intended use by Applicant, nor shall such approval or requirement provided by the Authority to the Applicant limit or absolve the responsibility of Applicant to maintain or repair Church Ditch.

SIXTH: The Authority expressly reserves the right not to approve any request that in its sole judgment and determination might interfere with the ditch or with the flow of water in Church Ditch, impede maintenance work, or cause additional expenses in maintenance or operation or in any way be adverse to the interests of the Authority or condition approval upon additional requirements as the Authority may give at its sole discretion.

SEVENTH: Each application must be accompanied by a payment of \_\_\_\_\_ Dollars (\$\_\_\_\_.00) to the Authority. This shall be deemed a minimum initial payment to cover preliminary expenses, such as legal work, engineering analysis, time and transportation cost for the Authority's review of the application. Such initial payment will not be refunded even though the request is denied. If the request presented is substantial in nature and so involved as to necessitate the Authority incurring expense in excess of the initial deposit, the matter will not be cleared and receive final approval until an additional deposit is made in such amount as is reasonably calculated to cover the legal, engineering and other costs to the Authority in investigating the matter fully. If the actual cost to the Authority is less than this estimate, the difference will be refunded (less the \$\_\_\_\_.00 minimum).

EIGHTH: No permission, right-of-way, easement, license or other interests are granted by this application, but the sole intent and purpose of this application is to permit the Authority to investigate the request by the Applicant.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Applicant

ATTEST:  
  
\_\_\_\_\_

ACCEPTED for review purposes only this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CHURCH DITCH WATER AUTHORITY

By \_\_\_\_\_

EXHIBIT A TO APPENDIX A

CHURCH DITCH WATER AUTHORITY

CERTIFICATE OF COMPLIANCE

Supplement to be filled in by applicant for improvements in the Church Ditch right-of-way or easement.

All engineering design for construction of structures across or along the ditch shall not interfere with the operation and maintenance of the ditch and shall conform to a minimum of all the following criteria:

1. All crossings and improvements shall be designed to pass a minimum flow of 300 cfs.
2. All crossings and other improvements shall be built with a clear span without obstructing the waterway, with a freeboard of one foot between the maximum flow and the bottom most chord of the structure.
3. The top of the foundation footing for structures shall be at least three feet deep below the flowline of the ditch.
4. Other design features required by the engineer of the ditch as dictated by site conditions in conformance with the codes of practice.

The applicant shall employ a licensed professional engineer for the preparation of plans and specifications in conformance with the Design Review Process and Design Criteria for Facilities manual of the Church Ditch Water Authority. The plans shall be certified by the engineer as to conformance of the plans to the above criteria.

EXHIBIT B TO APPENDIX A

AFFIDAVIT OF DESIGN OF DITCH CROSSING

TO: Church Ditch Water Authority  
14025 W. 82<sup>nd</sup> Ave.  
Arvada, Colorado 80005

This is to acknowledge that I, \_\_\_\_\_, am a Professional Engineer licensed by the State of Colorado (License # \_\_\_\_\_) and that to the best of my knowledge, the design of the ditch crossing structures and appurtenances located at \_\_\_\_\_ meets the attached design criteria (address or description of location) given to me by the Church Ditch Water Authority and other applicable codes and generally accepted engineering practice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
Professional Engineer

SEAL

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

APPENDIX B

NO. \_\_\_\_\_

CHURCH DITCH WATER AUTHORITY  
LICENSE AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CHURCH DITCH WATER AUTHORITY (the "AUTHORITY"), a political subdivision of the State of Colorado \_\_\_\_\_, a \_\_\_\_\_ corporation (hereafter the "Licensee").

WITNESSETH:

WHEREAS, the AUTHORITY is the operator of that certain irrigation canal known as the Church Ditch in Jefferson County, Colorado;

WHEREAS, Licensee desires to construct and maintain a \_\_\_\_\_ located at \_\_\_\_\_ in the manner shown on the drawings attached hereto as Exhibit A and incorporated herein by this reference. Said Exhibit A consists of \_\_\_\_ sheets; and

WHEREAS, the AUTHORITY is willing to grant the license desired by the Licensee subject to certain covenants.

NOW, THEREFORE, in consideration of the foregoing promises and covenants set forth below, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. License In consideration of the sum of \$ \_\_\_\_\_ paid to the AUTHORITY, and the provisions contained herein, the AUTHORITY grants to Licensee, its successors and assigns, a license to construct a \_\_\_\_\_ on a part of the right-of-way of the Church Ditch as shown on Exhibit A. No work shall be performed between April 1, 20\_\_\_\_ and November 1, 20\_\_\_\_ without prior approval of the AUTHORITY. If no construction has begun or substantial progress made within one year of date of this agreement, the AUTHORITY retains the right to revoke this license agreement.

Licensee agrees to pay as liquidated damages, and not as a penalty, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_.00) for each consecutive calendar days delay in completing the work after the completion dated specified herein, excluding any approved extensions of time because of unavoidable delay ("Liquidated Damages") In the event Liquidated Damages are necessary after the completion date, said Liquidated Damages may be deducted from the performance guarantee provided to the AUTHORITY assure completion of the work in accordance with this License.

The amount of liquidated damages is based on the determination by the AUTHORITY that the cost for running decreed water in the Church Ditch is a minimum of the amounts set forth above, and Licensee agrees the amounts are reasonable under the circumstances.

Notwithstanding any other provision of this Agreement, the AUTHORITY reserves the right in any event that a construction deadline is then in breach to enter upon the Ditch right of way which may at any time be under construction and to take any steps reasonable necessary to bring the Ditch into a condition to safely carry water, the cost of which will be borne by Licensee. In such a circumstance the Authority shall not be liable for any damage to material or partially completed structures that may have to subsequently be rebuilt or salvaged once construction activities can be reinitiated without interfering with the AUTHORITY's need to run water through the Ditch.

2. Performance Deposit In addition to the customary license fee, Licensee shall provide a replenishable performance deposit in the amount of \$ \_\_\_\_\_ per crossing and \$ \_\_\_\_\_ for erosion control, prior to beginning of construction of crossing. If any failure to comply with construction plans, specifications, crossing agreement requirements, Church Ditch Design Review Process and Design Criteria for Facilities manual (Design Manual) or other deficiency is noted by the AUTHORITY, it shall give Licensee written notice of said deficiency.
  - a. Corrective Action Licensee shall initiate corrective actions within three (3) business days after receipt of the written notice, which corrective actions must be completed to the reasonable satisfaction of AUTHORITY. If after the three (3) days from receipt of the written notice no corrective action has been initiated, the AUTHORITY may undertake and complete the corrective action on its own. All direct and reasonable costs incurred by the AUTHORITY in making the corrective actions shall be reimbursed by Licensee within ten (10) days from receipt of a billing invoice from the AUTHORITY. If Licensee fails to remit timely payment to the AUTHORITY for the AUTHORITY'S corrective actions, the AUTHORITY may deduct from the performance deposit all such direct and reasonable costs.
  - b. Certificate of Completion Upon completion of the work, Licensee shall contact the AUTHORITY for final inspection and shall furnish the AUTHORITY an "Affidavit of Installation of Ditch Crossing" (Exhibit B) signed and sealed by a Professional Engineer registered in the State of Colorado. The Affidavit shall state the project was constructed in conformance with approved plans and specifications. Attached to the Affidavit shall be a set of project plans revised to accurately represent the "As-Built" configuration of the project. Upon acceptance of the as-built drawings and Affidavit, the AUTHORITY shall issue the Certificate of Completion. The AUTHORITY shall not be unreasonable in inspecting the construction or the execution of the Certificate of Completion. Once the Certificate of Completion has been issued, the warranty period shall begin.

- c. Release of Performance Deposit Upon completion, inspection by the AUTHORITY and expiration of a one year warranty period, the AUTHORITY shall immediately return the performance deposit to Licensee. The AUTHORITY shall not be unreasonable in inspecting the construction, initiating the warranty period, or releasing the performance deposit.
3. Term The license herein granted to Licensee shall continue so long and only so long as Licensee, its successors and assigns, shall faithfully and promptly comply with the provisions herein stated but may be revoked by the AUTHORITY in its sole discretion at any time following the date of this agreement.
4. Construction Inspection and Testing The Licensee shall hold a pre-construction meeting on the job site with the AUTHORITY Manager of Ditch Maintenance (Manager) or designee(s) for each Ditch crossing or encroachment. The Licensee's agent(s), the Contractor and an official of the appropriate city or county (if construction is within a public right-of-way) shall also attend.

No construction of any ditch crossing shall be made without first providing five (5) working days notice to the AUTHORITY and obtaining the consent and approval thereof of the AUTHORITY Manager. The Licensee and its agent(s) shall provide for inspection of all ditch crossings by the AUTHORITY and said inspection shall be completed within two (2) working days of the request for inspection by the Licensee. Failure by the Licensee or its agent(s) to provide an opportunity for inspection by the AUTHORITY may result, at the sole discretion of the AUTHORITY, in the uncovering, at the sole cost of the Licensee, of any such construction so that the inspection can be made.

The Licensee or its agent(s) shall perform material or soil compaction testing as required by the Design Manual or as directed by the AUTHORITY Manager. A copy of test results shall be provided to the AUTHORITY. Should any portion of the work fail said testing, the Licensee shall immediately cause the affected item(s) to be removed, redone, and retested until all such work is in compliance with the Design Manual.

5. Scope of Authority It is understood that this instrument shall grant to Licensee only such rights as the AUTHORITY has the power to grant.
6. Non-Interference with Ditch Operations In exercising the rights granted by this license, Licensee shall act in such manner as not to damage the Church Ditch or the embankments and/or the right of way thereof and so as not to interfere with or affect the flow of water in Church Ditch and/or laterals therefrom. Under no circumstances shall the Authority be responsible or held liable for damages to the \_\_\_\_\_ resulting from the maintenance or repair to Church Ditch.
7. Maintenance Licensee specifically agrees and pledges that it will at all times maintain said \_\_\_\_\_ so as not to require the Authority to maintain or repair it. Licensee will repair all breaks, leaks and damages therein and thereto at its own expense. If the Licensee fails to properly maintain or repair any portion of the \_\_\_\_\_<sup>6</sup> which it is responsible after ten days' notice of the need for same, the Authority may, at its



own option, conduct its own maintenance or repair, and the Licensee shall reimburse the Authority for the cost of such work within 30 days. If, by reason of any break, leak or damage in and to the \_\_\_\_\_ injury occurs to the properties of the AUTHORITY, then Licensee will, with all due diligence, repair and replace such property of the AUTHORITY in the same condition as the property was in prior to such break, leak, or damage in and to the said \_\_\_\_\_ and will pay any and all monetary damages resulting from such break, leak or damage sustained or incurred by the AUTHORITY or its stockholders or water users or to any one not a party to this Agreement, including water lost. Licensee further agrees that if at any time the Licensee or Licensee's act or acts causes any washing, settling or other change or damage in the Church Ditch embankments, the roads thereon, or any part of the ditch right-of-way, or any loss of water or of ditch capacity, it will, upon notification from the AUTHORITY, immediately make all repairs required by the AUTHORITY at Licensee's expense. In the event the Licensee fails to maintain or repair the \_\_\_\_\_, it shall be held liable for any loss, damage or injury to Church Ditch. If the Authority conducts its own maintenance, repair or replacement, it does not waive the right to hold Licensee liable for damages caused by the Licensee's failure to maintain, repair or replace.

In the event of an emergency, the Authority or the Licensee may conduct maintenance or repair immediately, giving notice to the other party as soon as possible. If the Authority conducts emergency work, it shall be reimbursed for the cost of the work.

8. Indemnification To the extent permitted by law, Licensee agrees to indemnify and save harmless the AUTHORITY, its owners, successors, assigns, officers, directors, employees, agents, attorneys, engineers, and stockholders on account of any damage or loss sustained by them or any of them or to anyone not a party to this Agreement arising by reason of laying, construction, operation, maintenance or removal of said \_\_\_\_\_ by Licensee or Licensee's act or acts. Licensee further agrees, to the extent permitted by law, to indemnify, protect, and save and hold the AUTHORITY, its owners, successors, assigns, officers, directors, employees, agents, attorneys, engineers, and stockholders from any claims, causes of action, demands or injuries arising, either directly or indirectly, out of the operation or maintenance of the Church Ditch and laterals thereunder or resulting from any other act of the Licensee.
9. Alterations Licensee agrees that before any future alteration of said \_\_\_\_\_, it will notify the AUTHORITY of the proposed alteration and submit appropriate license applications to the AUTHORITY for such alteration. If in the future, the AUTHORITY should desire to repair, restore, enlarge, deepen or otherwise change or relocate said Church Ditch or laterals thereunder or to construct any other canal, ditch or waterway on the Church Ditch right-of-way or to do any other thing incident to the operation of Church Ditch or laterals, then Licensee agrees, at its sole expense, to promptly remove its \_\_\_\_\_, and if allowed by the AUTHORITY, to relay and reconstruct its \_\_\_\_\_ so as to comply with such plans and specifications the AUTHORITY may prescribe as being necessary to permit the proper maintenance and operation of the ditch. The parties understand and agree that the AUTHORITY is relying on and does not waive or intend to waive the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. ' 24-10-101, *et seq.*, as from time to time amended, or

otherwise available by law to the AUTHORITY.

10. Construction Warranty Licensee warrants all work for a minimum period of one (1) year following Certificate of Completion executed by the AUTHORITY. Thirty (30) days prior to expiration of the warranty period, the AUTHORITY shall submit a list of warranty repairs, if any, to Licensee, which repairs shall be made by Licensee to the satisfaction of the AUTHORITY within (30) days from the date notice under this provision is received by Licensee. After such construction and, where applicable, warranty repairs are completed, the AUTHORITY shall issue a written acceptance of work, which acceptance shall not be unreasonably withheld. The AUTHORITY reserves the right to bring to the attention of Licensee any deficiencies in the work prior to the period stated herein.
11. Binding Effect It is mutually understood and agreed that this agreement and all the terms and conditions hereof shall extend to and be binding upon the parties hereto, their successors, designees and assigns.

EXECUTED in duplicate the day and year first hereinabove written.

CHURCH DITCH WATER AUTHORITY: LICENSEE:

By: \_\_\_\_\_ By: \_\_\_\_\_

Its: \_\_\_\_\_ Its: \_\_\_\_\_

ATTEST: ATTEST:  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

Subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

Subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

EXHIBIT A TO APPENDIX B

AFFIDAVIT OF INSTALLATION OF DITCH CROSSING

This is to acknowledge that I, \_\_\_\_\_, am a Professional Engineer licensed by the State of Colorado (License # \_\_\_\_\_) and that to the best of my knowledge, installation of ditch crossing structures and appurtenances located at \_\_\_\_\_ and maintained by \_\_\_\_\_ meets the design criteria given to me by the Church Ditch Water Authority and other applicable codes of practice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
Professional Engineer

SEAL

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Copy to the party responsible for maintenance.

APPENDIX C

**Transfer Acknowledgement**

Today's Date: \_\_\_\_\_

From Contractual User: \_\_\_\_\_

Headgate (s): \_\_\_\_\_

Total Inches: \_\_\_\_\_

To: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Headgate: \_\_\_\_\_

Total Inches: \_\_\_\_\_

Contractual User Signature: \_\_\_\_\_

Sample