

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

## GENERAL ABSTRACT

Water Right Number: 43D 30113438 STATEMENT OF CLAIM  
Version: 1 -- ORIGINAL RIGHT

Version Status: ACTIVE

Owners: WINDMILL312 LLC  
5427 WALTER HAGEN DR  
BILLINGS, MT 59106

Priority Date: MAY 31, 1961

Enforceable Priority Date: MAY 31, 1961

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Maximum Flow Rate: 10.00 GPM

Maximum Volume: 2.50 AC-FT

Maximum Acres: 0.60

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWNW	26	4S	20E	CARBON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Well Depth: 28.00 FEET

Static Water Level: 8.00 FEET

Casing Diameter: 6.00 INCHES

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.60		NWNWNW	26	4S	20E	CARBON

Total: 0.60

Geocodes/Valid: 10-0624-26-2-02-01-0999 - Y

Remarks:

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

## GENERAL ABSTRACT

Water Right Number: 43D 30113439 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Version Status: ACTIVE

Owners: WINDMILL312 LLC  
5427 WALTER HAGEN DR  
BILLINGS, MT 59106

Priority Date: DECEMBER 31, 1947

Enforceable Priority Date: DECEMBER 31, 1947

Type of Historical Right: FILED

Purpose (use): STOCK

Maximum Flow Rate: 15.00 GPM

Maximum Volume: 1.45 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNENW	26	4S	23E	CARBON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Well Depth: 34.00 FEET

Static Water Level: 20.00 FEET

Casing Diameter: 6.00 INCHES

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNENW	26	4S	23E	CARBON

Geocodes/Valid: 10-0624-26-2-02-01-0999 - Y

Remarks:

AGREEMENT

THE UNDERSIGNED DO HEREBY GRANT, BARGAIN, SELL AND CONVEY  
UNTO EDWARD DEITZ AND ADOLPH DEITZ, THEIR HEIRS, SUCCESSORS AND  
ASSIGNS THE PERPETUAL RIGHT TO PLACE IRRIGATION WASTE WATER FROM THE  
LOWER FIELDS OF THEIR PROPERTY INTO THE IRRIGATION SUPPLY AND WASTE  
WATER DITCH LOCATED IN THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$  OF SECTION 22, TOWNSHIP 4  
SOUTH, RANGE 23 EAST AND ADJACENT TO THE HIGHWAY RIGHT-OF-WAY, IT  
BEING AGREED AND UNDERSTOOD THAT SAID WASTE WATER WILL FLOW ONTO THE  
LANDS OWNED BY THE UNDERSIGNED.

DATED THIS 30<sup>th</sup> DAY OF APRIL, 1968.

Alex Gradwohl ✓  
(ALEX GRADWOHL)

Pauline Gradwohl  
(PAULINE GRADWOHL)

Billy Wayne Otich  
(BILLY WAYNE OTICH)

039

4  
LSEN  
K. GIBSON  
MONT.



15

NW $\frac{1}{4}$  N1  
ALEX & PAULINE  
EDGAR, MONT.



R. 23 E.

17

1.20 AC  
ANNA M. CARLSON  
JOLIET, MONT.

18

SW 1/4 SW 1/4

18A

15

NW 1/4 NW 1/4

ALEC & PAULINE GRADWOHL  
EDGAR, MONT.

ROT. 639+58.5  
56.1 TO SEC COR.

650

630

STA. 653+00 BEG. 30' IRR. CH.

652+75

640 (Corner)

6598.3 TO 1/4 COR.

90.0  
80.0  
10.0

27

26

3 1/2' NG

23

23

23

23

23

23

23

23

23

23

23

23

23

23

23

23

23

SEN  
GIBSON  
K. GIBSON  
MONT.

SW

JOLIET

FARM VADO

FARM VADO

Signs

TREES

0 45'

SUBSCRIPTION AND PLEDGE AGREEMENT

No. 590-A

This agreement dated as of the 12th day of June, 1960 between Pauline Gradwohl, Robert H. Gradwohl and Richard L. Gradwohl, hereinafter called the "Water Purchaser," and the ROCK CREEK WATER USERS' ASSOCIATION, a corporation duly organized and existing under and in pursuance of the laws of the State of Montana, hereinafter called the "Association,"

WITNESSETH

WHEREAS, simultaneously with the execution hereof, the water purchaser has entered into a water purchase contract (herein called the "water purchase contract") with the Association and the Department of Natural Resources and Conservation of the State of Montana, concurred in by the Board of Natural Resources and Conservation (herein called the "Board"), for the purchase of the privilege of obtaining certain water from the Project therein described; and

WHEREAS, the water purchaser desires to subscribe for stock in the Association and to pledge said stock as security for his obligations hereunder and under his water purchase contract,

NOW THEREFORE, in consideration of the premises and of the mutual terms, covenants and conditions hereof, it is mutually covenanted and agreed as follows:

Section 1. The water purchaser hereby agrees to take, and does hereby subscribe for fifty shares of the capital stock of the Association, said Association having a total authorized capital stock of fifty thousand Dollars (\$50,000.00), divided into fifty thousand (\$50,000) shares of the par value of One Dollar (\$1.00) each, and further agrees to pay to the Association the amount of fifty Dollars (\$50.00) for said shares of stock upon call and demand by the directors of the Association. This obligation is made and entered into in conformity with the laws of Montana, the Articles of Incorporation and the By-Laws of said Association. The amount of this subscription shall not become due and shall bear no interest until such call or demand is made for payment and thereafter only such amount as is called or demanded shall be due and same shall bear interest at the rate of six percent (6%) per annum.

Section 2. The water purchaser hereby assigns, transfers and sets over to the Association all his right, title and interest in and to the aforesaid shares of stock, said Association to have and to hold said shares of stock for its own use and benefit forever, for the purpose of securing the performance and observance by the water purchaser of the terms, covenants and conditions of this agreement, and the water purchase contract. In the event that the water purchaser is in default in the performance of any of his obligations under the water purchase contract, and such default shall continue for a period of forty-five (45) days, then and in any such event the Association may immediately, without demand for payment, and without advertising, and without notice to the water purchaser, each and all of which is, and are hereby, expressly waived: (a) forfeit the shares of stock subscribed for and apply the payments previously made by the water purchaser on his stock toward the payment of any sums due under his water purchase contract; or (b) acquire the absolute title to any and all of said shares of stock (free from any right or equity of redemption by the water purchaser, such right or equity of redemption being hereby expressly waived and released) by crediting the water purchaser with the par value of said stock at the time of said acquisition of absolute title; or (c) sell any or all of said shares of stock (free from any right or equity of redemption by the water purchaser, such right or equity of redemption being hereby expressly waived and released) at public or at private sale, it being expressly understood and agreed that the Association may itself be a purchaser at such sale of the whole or any part of said shares of stock. The proceeds of any sale or acquisition (pursuant to (b) or (c) of this Section) of said stock, or any part thereof, by the Association shall be applied, so far as needed, first toward the payment of the full indebtedness under this agreement; and, second, to the payment of any sums due under said water purchase contract; and, third, to the payment of any balance remaining to the water purchaser. In the event that the water purchaser is in default in the payment of any amount due on his subscription for said stock, the Association may forfeit the stock subscribed for in the manner provided by statute or otherwise.

Section 3. The right to vote the stock covered by this agreement at any and all meetings of the stockholders of the Association is hereby reserved to the water purchaser, and may be exercised by him unless and until said stock is purchased by the Association pursuant to its option or is sold by the Association in accordance with the provisions hereof. The water purchaser agrees to be bound by any and all provisions of the Articles of Incorporation and By-Laws of the Association, including all amendments and supplements hereafter made thereto with the approval of the Board.

Section 4. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties hereto, but the water purchaser shall make no assignment of his right, title or interest in the stock covered by this contract until first offering said stock to the Association at the par value thereof, the Association to have the right and option to purchase said stock at the par value thereof at any time within ten (10) days from the personal service of written notice upon the Association of its intention to sell, transfer or assign its rights in the stock covered by this agreement; provided, however, that the Association shall have no such option in the event that such stock is to be sold, transferred or assigned by a water purchaser to an assignee of his water purchase contract who, after such assignment, will hold only one (1) share of stock for each acre foot or miner's inch of water, or each acre of land, which he is obligated to purchase annually under a water purchase contract with the Association and the Board.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal, and the ROCK CREEK WATER USERS' ASSOCIATION, pursuant to authority from its Board of Directors, has caused this Agreement to be executed in its corporate name by its President or Vice President, and attested by its Secretary or its Assistant Secretary, and its corporate seal to be affixed hereto, all on the day and year first above written.

Witness to Signature of Subscriber:

Pauline Gradwohl (SEAL) Water Purchaser

Robert H. Gradwohl Richard L. Gradwohl (SEAL) Water Purchaser

ROCK CREEK WATER USERS' ASSOCIATION

Attest:

Heidi Chambers Secretary

By Orin Kyrnes President

## Water Purchase Contract

This contract made this 12th day of June, 1980, between the Rock Creek Water Users' Association, a Montana corporation, hereinafter called the "Association," the Department of Natural Resources and Conservation of the State of Montana, concurred in by the Board of Natural Resources and Conservation, duly created, authorized and acting, under and by virtue of the Laws of Montana, hereinafter called the "Board," and Pauline Gradwohl, Robert H. Gradwohl and Richard L. Gradwohl, hereinafter called the "water purchaser."

**WITNESSETH** (Transfer of Contract No. 590  
Alec Gradwohl, Deceased.)

WHEREAS, the Board proposes to construct an irrigation and flood control project (herein called the "Project") comprising the construction of one small rock fill dam and one large earth fill dam, in accordance with plans and specifications and estimates of cost heretofore adopted; and

WHEREAS, the Board has acquired the right to store, control and/or divert all unappropriated water of Rock Creek and Red Lodge Creek, Carbon County, Montana, pursuant to declaration filed in Book 15, Pages 352 and 915, in the Office of the County Clerk and Recorder of Carbon County, Montana; and

WHEREAS, it is agreed by the parties hereto that the total waters to which the Board is entitled will be at least sufficient to permit the operation of said Project at its full capacity so that 31,500 acre feet of water can be made available annually during the irrigation season and the purchaser recognizes the right of the Board to impound, during the non-irrigation season, all of the aforesaid waters; and

WHEREAS, the Association has heretofore entered into a contract with the Board dated August 26, 1935, whereby the Board agreed that, upon the completion of the Project, it would furnish to the Association the total available yield of storage water from the Project for certain purposes, all as more fully set forth in said contract (herein called the "water marketing contract"), a copy of which is on file at the office of the Board and the Association respectively;

NOW, THEREFORE, in consideration of the premises and of the mutual terms, covenants and conditions hereof, it is mutually covenanted and agreed as follows:

Section 1. The Association, upon the completion of the project will furnish to the water purchaser, at the reservoir or reservoirs, fifty acre feet of water annually during the irrigation season, beginning May 1 and ending September 30 from the reservoirs comprising the Project, provided, however, that in the event that from time to time thereafter the Board shall have an inadequate amount of water from the Project to permit the furnishing of the number of acre feet of water in any year for which there are such outstanding water purchase contracts, the water purchaser in such year shall be entitled, in lieu of each acre foot of water for which he has contracted, to a share of the total water available representing the proportion that one acre foot of water annually bears to 31,500 acre feet of water annually or (but only if there are outstanding water purchase contracts for the purchase annually of more than said amount of water) to the total number of acre feet of water agreed to be purchased annually under outstanding water purchase contracts. The distribution of such proportionate shares to the water purchaser during such year shall constitute a complete performance in said year of the obligation of the Association to deliver the number of acre feet of water for which said water purchaser has contracted, and the purchaser nevertheless shall be obligated to pay the full sums due under this contract and to perform his covenants and obligations hereunder. The Association and the Board agree not to make contracts for the sale of more than 31,500 acre feet of water from the Project annually except to the extent that the storage capacity of the completed Project is in excess of said amount. So long as the right of the Association under its water marketing contract to distribute the water of the Project has not been terminated, the Board shall be under no obligation to distribute water to the water purchaser hereunder, it being expressly understood that the Association only shall be so obligated.

Section 2. The water purchaser shall pay to the Association or the Board the sum of fifty dollars on December 15, 1962, and the sum of fifty dollars on December 15 of each and every year thereafter for thirty-eight consecutive years. On December 15, 1962, and on December 15 of each and every year thereafter during the useful life of the Project, the water purchaser also shall pay to the Association such amount as the Association shall have previously notified the water purchaser (by a written notice given at least 45 days prior to each such December 15) to be necessary for his proportionate share of the amount of the operating costs of the Project for the year following respectively each said December 15. The term "operating costs" as used herein shall include all costs of the maintenance, repair, operation, and necessary alteration of the Project, and all costs incurred by the Association or the Board in the distribution of water from the Project. The determination by the Association of the amount and necessity of such operating costs and the annual amounts payable by the water purchaser to meet such operating costs shall be final, conclusive and binding upon the parties hereto, and the amounts so determined shall be deemed a debt, payable as aforesaid, to the same extent as if the amounts were specifically enumerated herein.

Section 3. All moneys required to be paid by the water purchaser to the Association hereunder shall be paid at Red Lodge, Montana, or such other place as the Association shall appoint in writing. Every installment or other sum of money required to be paid hereunder, which shall remain unpaid after the same becomes due, shall bear interest at the rate of six per centum per annum.

Section 4. The water purchaser hereby agrees to be bound by any and all the terms, provisions and limitations of the Articles of Incorporation and By-Laws of the Association, including all amendments and supplements hereafter made thereto with the approval of the Board, and by the aforesaid water marketing contract between the Board and the Association as fully and completely as if the terms, conditions and limitations therein contained were herein fully written.

Section 5. In the event that the water purchaser shall default in the payment of any of the sums when and as same shall become due and payable hereunder or shall default in the performance of any other obligations hereunder, and such default shall continue for a period of 45 days, then and in any such event, the Association may in its discretion and, upon the request of the Board, shall take any or all of the following action: (a) cease and refuse to furnish water to the water purchaser until such default and all other defaults subsequently occurring shall be cured, it being agreed that the withholding of water from the water purchaser in accordance with the provisions hereof shall not affect the obliga-

tions of the water purchaser, accruing during the period when water is withheld (except to the extent of any revenues collected by the Association from the sale of water withheld from said water purchaser), or the obligations of the water purchaser then due or thereafter accruing hereunder; (b) terminate the rights of the water purchaser under this water purchase contract, it being agreed that such action shall not prejudice the right of the Association to collect all moneys then owing by the water purchaser under said water purchase contract; and (c) institute and prosecute to final judgment or decree, actions or proceedings in law or in equity for the collection of the sums due and unpaid under this water purchase contract and enforce any such judgment or final decree against the water purchaser. No remedy herein conferred upon the Association is intended to be exclusive of any other remedy or remedies, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or under the water marketing contract or now or hereafter existing at law or in equity or by statute.

Section 6. In the event that the Board shall give written notice to the water purchaser that the Association is in default in the performance of any of its obligations under the water marketing contract, and that the Board has elected to exercise the functions of the Association under this contract, all moneys due or becoming due and payable to the Association hereunder shall be paid to the Board, and the Board, in its own name, shall have the sole right to enforce this contract and exercise all of the rights and powers of the Association with respect thereto, unless and until the Board shall give written notice to the water purchaser that the Association itself may resume the collection of moneys and the exercise of its powers hereunder. Moneys then to be paid by the water purchaser to the Board shall be paid at the office of such Board in Helena, Montana, or such other place as the Board shall appoint in writing.

Section 7. The payments and obligations of the water purchaser hereunder are for the privilege of obtaining water so long as the water purchaser shall not be in default under this contract or his rights terminated hereunder, and the water purchaser shall be obligated to pay such annual installments and perform his covenants and duties hereunder, notwithstanding the fact that no water shall be available by reason of a shortage or otherwise, or that no water is actually taken by the water purchaser, or that the Association or the Board may withhold water from the water purchaser by reason of his default under this contract. The obligation of the water purchaser to make the payments required hereby shall be absolute and unconditional so long as this contract remains in full force and effect. It is expressly understood that all the right, title and interest in and to the Project and the water rights exercised in connection therewith shall be and remain in the Board, and that the water purchaser shall acquire no right, title or interest in the Project or such water rights. The water purchaser shall acquire no rights or equities under this contract which will in any manner prejudice the right of the Association to terminate this contract in the event that the water purchaser shall be in default hereunder.

Section 8. It is understood that without regard to priority in the execution of this water purchase contract, or priority in the use of water hereunder or any other reason, the water purchaser under this contract shall have no preference or priority entitling him to receive water from the Project in advance of other water purchasers who have entered into water purchase contracts for water from the Project (unless such contracts shall specifically provide to the contrary), all such water purchasers to have an equal and ratable right to water in accordance with the respective amounts to which they are entitled under their respective water purchase contracts.

Section 9. The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but the water purchaser shall make no assignment of this contract without the written consent of the Association (unless its rights hereunder have been terminated or water is being withheld from it) and the Board.

Section 10. The water purchaser hereby agrees that this water purchase contract covers water for domestic and agricultural purposes only.

IN WITNESS WHEREOF, the Rock Creek Water Users' Association pursuant to authority from its Board of Directors has caused this Contract to be executed in its corporate name by its President or Vice-President and attested by its Secretary or its Assistant Secretary, and the Board has caused this Contract to be executed in its corporate name and said parties have caused their respective corporate seals to be affixed hereto, and the undersigned

\_\_\_\_\_ has hereunto set his hand and seal, all on the day and year first above written.

ROCK CREEK WATER USERS' ASSOCIATION

By Conni Kypner President

ATTEST:

Hilda Columbus  
Secretary

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

By Stan A. Fry Supervisor, Water Projects  
~~XXXXXXXXXX~~ Water Resources Division

Pauline Gradwohl (Seal)  
Water Purchaser

Robert H. Gradwohl  
Richard L. Gradwohl (Seal)  
Water Purchaser

Witness to Signature of Water Purchaser:  
\_\_\_\_\_

# Request for Release and Transfer

The undersigned, a party to a Water Purchase Contract No. 590 made with the Rock Creek  
Water Users' Association and the Department of Natural Resources and Conservation for the purchase of the privilege to the use of 50 acre feet, \_\_\_\_\_ acres, 50 miner's inches of water annually from the Rock Creek Project, and a Subscription and Pledge Agreement with, and a stockholder in, the Association to the extent of \_\_\_\_\_ shares, hereby requests the Association to be released from said contract and be permitted to surrender my Subscription and Pledge Agreement for stock in the Association. Richard L. Gradwohl

The undersigned submits herewith the name of Pauline Gradwohl, Robert R. Gradwohl & /, who has offered to enter into a Water Purchase Contract to purchase the identical rights and privileges and assume the obligations to be released by the undersigned, and to subscribe to the purchase of stock in the Association in the number of shares now held by us or me.

In submitting this Request it is understood that there is no obligation upon the part of the Association or the Department of Natural Resources and Conservation to accept this Release, and the undersigned shall not be relieved of any obligations unless and until such Release is approved by the Association and the Department.

Dated at Red Lodge, Montana this 12th day of June, 19 80

Pauline Gradwohl  
 Sole heir of the estate of Alice Gradwohl,  
 Deceased.

RELEASE AND TRANSFER approved this 10<sup>th</sup> day of August Sept, 19 80

Rock Creek Water Users' Association

By Orni Hyonen President

ATTEST:

Willa Chambers  
 Secretary

RELEASE AND TRANSFER approved this 26 day of September, 19 80

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By Steve A. [Signature] Supervisor, Water Projects  
 Administrator, Water Resources Division

Note: Three copies to be signed by the Water Purchaser. When approved and signed by the Association and the Department, 1 copy to be returned to the signer, 1 copy to the Association and the original retained by the Department of Natural Resources and Conservation.

## Water Purchase Contract

This contract made this 12th day of June, 1980, between the Rock Creek Water Users' Association, a Montana corporation, hereinafter called the "Association," the Department of Natural Resources and Conservation of the State of Montana, concurred in by the Board of Natural Resources and Conservation, duly created, authorized and acting, under and by virtue of the Laws of Montana, hereinafter called the "Board," and Juline Bradwell, Robert J. Bradwell and Richard L. Bradwell, hereinafter called the "water purchaser."

### WITNESSETH

(Transfer of Contract No. 455-A-3  
also Bradwell State.)

WHEREAS, the Board proposes to construct an irrigation and flood control project (herein called the "Project") comprising the construction of one small rock fill dam and one large earth fill dam, in accordance with plans and specifications and estimates of cost heretofore adopted; and

WHEREAS, the Board has acquired the right to store, control and/or divert all unappropriated water of Rock Creek and Red Lodge Creek, Carbon County, Montana, pursuant to declaration filed in Book 15, Pages 352 and 915, in the Office of the County Clerk and Recorder of Carbon County, Montana; and

WHEREAS, it is agreed by the parties hereto that the total waters to which the Board is entitled will be at least sufficient to permit the operation of said Project at its full capacity so that 31,500 acre feet of water can be made available annually during the irrigation season and the purchaser recognizes the right of the Board to impound, during the non-irrigation season, all of the aforesaid waters; and

WHEREAS, the Association has heretofore entered into a contract with the Board dated August 26, 1935, whereby the Board agreed that, upon the completion of the Project, it would furnish to the Association the total available yield of storage water from the Project for certain purposes, all as more fully set forth in said contract (herein called the "water marketing contract"), a copy of which is on file at the office of the Board and the Association respectively;

NOW, THEREFORE, in consideration of the premises and of the mutual terms, covenants and conditions hereof, it is mutually covenanted and agreed as follows:

Section 1. The Association, upon the completion of the project will furnish to the water purchaser, at the reservoir or reservoirs, fifty acre feet of water annually during the irrigation season, beginning May 1 and ending September 30 from the reservoirs comprising the Project, provided, however, that in the event that from time to time thereafter the Board shall have an inadequate amount of water from the Project to permit the furnishing of the number of acre feet of water in any year for which there are such outstanding water purchase contracts, the water purchaser in such year shall be entitled, in lieu of each acre foot of water for which he has contracted, to a share of the total water available representing the proportion that one acre foot of water annually bears to 31,500 acre feet of water annually or (but only if there are outstanding water purchase contracts for the purchase annually of more than said amount of water) to the total number of acre feet of water agreed to be purchased annually under outstanding water purchase contracts. The distribution of such proportionate shares to the water purchaser during such year shall constitute a complete performance in said year of the obligation of the Association to deliver the number of acre feet of water for which said water purchaser has contracted, and the purchaser nevertheless shall be obligated to pay the full sums due under this contract and to perform his covenants and obligations hereunder. The Association and the Board agree not to make contracts for the sale of more than 31,500 acre feet of water from the Project annually except to the extent that the storage capacity of the completed Project is in excess of said amount. So long as the right of the Association under its water marketing contract to distribute the water of the Project has not been terminated, the Board shall be under no obligation to distribute water to the water purchaser hereunder, it being expressly understood that the Association only shall be so obligated.

Section 2. The water purchaser shall pay to the Association or the Board the sum of fifty dollars on December 15, 1945, and the sum of fifty dollars on December 15 of each and every year thereafter for thirty-eight consecutive years. On December 15, 1945, and on December 15 of each and every year thereafter during the useful life of the Project, the water purchaser also shall pay to the Association such amount as the Association shall have previously notified the water purchaser (by a written notice given at least 45 days prior to each such December 15) to be necessary for his proportionate share of the amount of the operating costs of the Project for the year following respectively each said December 15. The term "operating costs" as used herein shall include all costs of the maintenance, repair, operation, and necessary alteration of the Project, and all costs incurred by the Association or the Board in the distribution of water from the Project. The determination by the Association of the amount and necessity of such operating costs and the annual amounts payable by the water purchaser to meet such operating costs shall be final, conclusive and binding upon the parties hereto, and the amounts so determined shall be deemed a debt, payable as aforesaid, to the same extent as if the amounts were specifically enumerated herein.

Section 3. All moneys required to be paid by the water purchaser to the Association hereunder shall be paid at Red Lodge, Montana, or such other place as the Association shall appoint in writing. Every installment or other sum of money required to be paid hereunder, which shall remain unpaid after the same becomes due, shall bear interest at the rate of six per centum per annum.

Section 4. The water purchaser hereby agrees to be bound by any and all the terms, provisions and limitations of the Articles of Incorporation and By-Laws of the Association, including all amendments and supplements hereafter made thereto with the approval of the Board, and by the aforesaid water marketing contract between the Board and the Association as fully and completely as if the terms, conditions and limitations therein contained were herein fully written.

Section 5. In the event that the water purchaser shall default in the payment of any of the sums when and as same shall become due and payable hereunder or shall default in the performance of any other obligations hereunder, and such default shall continue for a period of 45 days, then and in any such event, the Association may in its discretion and, upon the request of the Board, shall take any or all of the following action: (a) cease and refuse to furnish water to the water purchaser until such default and all other defaults subsequently occurring shall be cured, it being agreed that the withholding of water from the water purchaser in accordance with the provisions hereof shall not affect the obliga-

tions of the water purchaser, accruing during the period when water is withheld (except to the extent of any revenues collected by the Association from the sale of water withheld from said water purchaser), or the obligations of the water purchaser then due or thereafter accruing hereunder; (b) terminate the rights of the water purchaser under this water purchase contract, it being agreed that such action shall not prejudice the right of the Association to collect all moneys then owing by the water purchaser under said water purchase contract; and (c) institute and prosecute to final judgment or decree, actions or proceedings in law or in equity for the collection of the sums due and unpaid under this water purchase contract and enforce any such judgment or final decree against the water purchaser. No remedy herein conferred upon the Association is intended to be exclusive of any other remedy or remedies, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or under the water marketing contract or now or hereafter existing at law or in equity or by statute.

Section 6. In the event that the Board shall give written notice to the water purchaser that the Association is in default in the performance of any of its obligations under the water marketing contract, and that the Board has elected to exercise the functions of the Association under this contract, all moneys due or becoming due and payable to the Association hereunder shall be paid to the Board, and the Board, in its own name, shall have the sole right to enforce this contract and exercise all of the rights and powers of the Association with respect thereto, unless and until the Board shall give written notice to the water purchaser that the Association itself may resume the collection of moneys and the exercise of its powers hereunder. Moneys then to be paid by the water purchaser to the Board shall be paid at the office of such Board in Helena, Montana, or such other place as the Board shall appoint in writing.

Section 7. The payments and obligations of the water purchaser hereunder are for the privilege of obtaining water so long as the water purchaser shall not be in default under this contract or his rights terminated hereunder, and the water purchaser shall be obligated to pay such annual installments and perform his covenants and duties hereunder, notwithstanding the fact that no water shall be available by reason of a shortage or otherwise, or that no water is actually taken by the water purchaser, or that the Association or the Board may withhold water from the water purchaser by reason of his default under this contract. The obligation of the water purchaser to make the payments required hereby shall be absolute and unconditional so long as this contract remains in full force and effect. It is expressly understood that all the right, title and interest in and to the Project and the water rights exercised in connection therewith shall be and remain in the Board, and that the water purchaser shall acquire no right, title or interest in the Project or such water rights. The water purchaser shall acquire no rights or equities under this contract which will in any manner prejudice the right of the Association to terminate this contract in the event that the water purchaser shall be in default hereunder.

Section 8. It is understood that without regard to priority in the execution of this water purchase contract, or priority in the use of water hereunder or any other reason, the water purchaser under this contract shall have no preference or priority entitling him to receive water from the Project in advance of other water purchasers who have entered into water purchase contracts for water from the Project (unless such contracts shall specifically provide to the contrary), all such water purchasers to have an equal and ratable right to water in accordance with the respective amounts to which they are entitled under their respective water purchase contracts.

Section 9. The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but the water purchaser shall make no assignment of this contract without the written consent of the Association (unless its rights hereunder have been terminated or water is being withheld from it) and the Board.

Section 10. The water purchaser hereby agrees that this water purchase contract covers water for domestic and agricultural purposes only.

IN WITNESS WHEREOF, the Rock Creek Water Users' Association pursuant to authority from its Board of Directors has caused this Contract to be executed in its corporate name by its President or Vice-President and attested by its Secretary or its Assistant Secretary, and the Board has caused this Contract to be executed in its corporate name and said parties have caused their respective corporate seals to be affixed hereto, and the undersigned

\_\_\_\_\_ has hereunto set his hand and seal, all on the day and year first above written.

ROCK CREEK WATER USERS' ASSOCIATION

By Craig Hyman President

ATTEST:

William Columbus  
Secretary

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

By Stan O. To Supervisor, Water Projects  
Administrator, Water Resources Division

Pauline Gradwohl (Seal)  
Water Purchaser

Robert H. Gradwohl  
Richard L. Gradwohl (Seal)  
Water Purchaser

Witness to Signature of Water Purchaser:

SUBSCRIPTION AND PLEDGE AGREEMENT

No. 455-A-4

This agreement dated as of the 12th day of June, 1980 between Pauline Gradwohl, Robert H. Gradwohl and Richard L. Gradwohl, hereinafter called the "Water Purchaser," and the ROCK CREEK WATER USERS' ASSOCIATION, a corporation duly organized and existing under and in pursuance of the laws of the State of Montana, hereinafter called the "Association," (Transfer of Contract No. 455-A-3 Also Gradwohl, Deceased)

WITNESSETH

WHEREAS, simultaneously with the execution hereof, the water purchaser has entered into a water purchase contract (herein called the "water purchase contract") with the Association and the Department of Natural Resources and Conservation of the State of Montana, concurred in by the Board of Natural Resources and Conservation (herein called the "Board"), for the purchase of the privilege of obtaining certain water from the Project therein described; and

WHEREAS, the water purchaser desires to subscribe for stock in the Association and to pledge said stock as security for his obligations hereunder and under his water purchase contract,

NOW THEREFORE, in consideration of the premises and of the mutual terms, covenants and conditions hereof, it is mutually covenanted and agreed as follows:

Section 1. The water purchaser hereby agrees to take, and does hereby subscribe for fifty shares of the capital stock of the Association, said Association having a total authorized capital stock of Fifty Thousand Dollars (\$50,000.00), divided into fifty thousand (50,000) shares of the par value of One Dollar (\$1.00) each, and further agrees to pay to the Association the amount of fifty Dollars (\$50.00) for said shares of stock upon call and demand by the directors of the Association. This obligation is made and entered into in conformity with the laws of Montana, the Articles of Incorporation and the By-Laws of said Association. The amount of this subscription shall not become due and shall bear no interest until such call or demand is made for payment and thereafter only such amount as is called or demanded shall be due and same shall bear interest at the rate of six percent (6%) per annum.

Section 2. The water purchaser hereby assigns, transfers and sets over to the Association all his right, title and interest in and to the aforesaid shares of stock, said Association to have and to hold said shares of stock for its own use and benefit forever, for the purpose of securing the performance and observance by the water purchaser of the terms, covenants and conditions of this agreement, and the water purchase contract. In the event that the water purchaser is in default in the performance of any of his obligations under the water purchase contract, and such default shall continue for a period of forty-five (45) days, then and in any such event the Association may immediately, without demand for payment, and without advertising, and without notice to the water purchaser, each and all of which is, and are hereby, expressly waived: (a) forfeit the shares of stock subscribed for and apply the payments previously made by the water purchaser on his stock toward the payment of any sums due under his water purchase contract; or (b) acquire the absolute title to any and all of said shares of stock (free from any right or equity of redemption by the water purchaser, such right or equity of redemption being hereby expressly waived and released) by crediting the water purchaser with the par value of said stock at the time of said acquisition of absolute title; or (c) sell any or all of said shares of stock (free from any right or equity of redemption by the water purchaser, such right or equity of redemption being hereby expressly waived and released) at public or at private sale, it being expressly understood and agreed that the Association may itself be a purchaser at such sale of the whole or any part of said shares of stock. The proceeds of any sale or acquisition (pursuant to (b) or (c) of this Section) of said stock, or any part thereof, by the Association shall be applied, so far as needed, first toward the payment of the full indebtedness under this agreement; and, second, to the payment of any sums due under said water purchase contract; and, third, to the payment of any balance remaining to the water purchaser. In the event that the water purchaser is in default in the payment of any amount due on his subscription for said stock, the Association may forfeit the stock subscribed for in the manner provided by statute or otherwise.

Section 3. The right to vote the stock covered by this agreement at any and all meetings of the stockholders of the Association is hereby reserved to the water purchaser, and may be exercised by him unless and until said stock is purchased by the Association pursuant to its option or is sold by the Association in accordance with the provisions hereof. The water purchaser agrees to be bound by any and all provisions of the Articles of Incorporation and By-Laws of the Association, including all amendments and supplements hereafter made thereto with the approval of the Board.

Section 4. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties hereto, but the water purchaser shall make no assignment of his right, title or interest in the stock covered by this contract until first offering said stock to the Association at the par value thereof, the Association to have the right and option to purchase said stock at the par value thereof at any time within ten (10) days from the personal service of written notice upon the Association of its intention to sell, transfer or assign its rights in the stock covered by this agreement; provided, however, that the Association shall have no such option in the event that such stock is to be sold, transferred or assigned by a water purchaser to an assignee of his water purchase contract who, after such assignment, will hold only one (1) share of stock for each acre foot or miner's inch of water, or each acre of land, which he is obligated to purchase annually under a water purchase contract with the Association and the Board.

IN WITNESS WHEREOF, The undersigned has hereunto set his hand and seal, and the ROCK CREEK WATER USERS' ASSOCIATION, pursuant to authority from its Board of Directors, has caused this Agreement to be executed in its corporate name by its President or Vice President, and attested by its Secretary or its Assistant Secretary, and its corporate seal to be affixed hereto, all on the day and year first above written.

Witness to Signature of Subscriber:

Pauline Gradwohl (SEAL) Water Purchaser

Robert H. Gradwohl Richard L. Gradwohl (SEAL) Water Purchaser

ROCK CREEK WATER USERS' ASSOCIATION

Attest:

Hilda Elezabau Secretary

By Dennis Agnew President

# Request for Release and Transfer

The undersigned, a party to a Water Purchase Contract No. 455-A-3 made with the Rock Creek Water Users' Association and the Department of Natural Resources and Conservation for the purchase of the privilege to the use of 50 acre feet, \_\_\_\_\_ acres, 50 miner's inches of water annually from the Rock Creek Project, and a Subscription and Pledge Agreement with, and a stockholder in, the Association to the extent of \_\_\_\_\_ shares, hereby requests the Association to be released from said contract and be permitted to surrender my Subscription and Pledge Agreement for stock in the Association.

Richard L. Gradwohl  
 The undersigned submits herewith the name of Pauline Gradwohl, Robert H. Gradwohl & /, who has offered to enter into a Water Purchase Contract to purchase the identical rights and privileges and assume the obligations to be released by the undersigned, and to subscribe to the purchase of stock in the Association in the number of shares now held by us or me.

In submitting this Request it is understood that there is no obligation upon the part of the Association or the Department of Natural Resources and Conservation to accept this Release, and the undersigned shall not be relieved of any obligations unless and until such Release is approved by the Association and the Department.

Dated at Red Lodge, Montana this 12th day of June, 19 80

Pauline Gradwohl  
 Sole heir of the estate of RICH GRADWOHL,  
 Deceased.

RELEASE AND TRANSFER approved this 10th day of Sept, 19 80

Rock Creek Water Users' Association

By [Signature] President

ATTEST:

[Signature]  
 Secretary

RELEASE AND TRANSFER approved this 26 day of September, 19 80

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

[Signature] Supervisor, Water Projects  
 Administrator, Water Resources Division

Note: Three copies to be signed by the Water Purchaser. When approved and signed by the Association and the Department, 1 copy to be returned to the signer, 1 copy to the Association and the original retained by the Department of Natural Resources and Conservation.

## GRADWOHL FARM SUPPLEMENT SHEET

### WATER FOR FARM:

62.5 shares of New Prosperity Ditch Company, 98 ditch rights. Cost for 2012 was \$250.00.  
Pamela Deines, Sec-Treas. Phone: 406-962-9939.  
7 E. Elbow Creek RD  
Joliet, MT 59041

150 acre feet of Cooney Dam water thru Rock Creek Water Users Association. Contract  
Numbers: 590-A for 50 acre feet, 730 for 50 acre feet, & 455-A-4 for 50 acre feet for a total  
cost of \$350.00 per year.  
Paulette M. Piccin, Sec. 406-445-2476  
P.O. Box 177  
Roberts, MT 59070

Dietz farm waste water accepted 5-6-1968.

Water well for house water and separate water well for corral and barn.

### FARM LEASE:

Farm Leased to Foos Family for share crop since 1964. Current lease expires 2-28-2014. 2013  
crop expenses and income from crops belong to seller. 2014 crop field work and fertilizer  
applied must be reimbursed to the Foos family, if a new lease isn't extended to them. Fertilizer  
applied to 2014 crop paid by seller, must also be reimbursed to seller, if farm purchased before  
expiration of lease on 2-28-2014.

Justin Foos  
3854 HWY 310  
Edgar, MT 59021 Cell: 698-9271 Home: 962-9175

Randy & Diana Foos  
281 Leslie RD  
Joliet, MT 59041-9475 Home: 962-3424 E-mail: [rdj@tctwest.net](mailto:rdj@tctwest.net)

Cindan Heating Installed furnace  
Dan Foos  
Laurel, MT Phone 628-6518

Schessler Ready Mix Installed septic tank  
Laurel, MT

Garbage Dump in Bridger, MT  
MDU and Northwestern Energy supply gas and electricity for house. Bruce has account info.



SUBSCRIPTION AND PLEDGE AGREEMENT

This agreement dated as of the 26th day of January, 19 82 between Pauline Gradwohl, Robert H. Gradwohl and Richard L. Gradwohl, hereinafter called the "Water Purchaser," and the ROCK CREEK WATER USERS' ASSOCIATION, a corporation duly organized and existing under and in pursuance of the laws of the State of Montana, hereinafter called the "Association,"

WITNESSETH

WHEREAS, simultaneously with the execution hereof, the water purchaser has entered into a water purchase contract (herein called the "water purchase contract") with the Association and the Montana Water Resources Board (herein called the "Board") for the purchase of the privilege of obtaining certain water from the Project therein described; and

WHEREAS, the water purchaser desires to subscribe for stock in the Association and to pledge said stock as security for his obligations hereunder and under his water purchase contract,

NOW THEREFORE, in consideration of the premises and of the mutual terms, covenants and conditions hereof, it is mutually covenanted and agreed as follows:

Section 1. The water purchaser hereby agrees to take, and does hereby subscribe for fifty shares of the capital stock of the Association, said Association having a total authorized capital stock of Fifty Thousand Dollars (\$ 50,000.00), divided into fifty thousand ( 50,000 ) shares of the par value of One Dollar (\$1.00) each, and further agrees to pay to the Association the amount of Fifty Dollars (\$ 50.00 ) for said shares of stock upon call and demand by the directors of the Association. This obligation is made and entered into in conformity with the laws of Montana, the Articles of Incorporation and the By-Laws of said Association. The amount of this subscription shall not become due and shall bear no interest until such call or demand is made for payment and thereafter only such amount as is called or demanded shall be due and same shall bear interest at the rate of six percent (6%) per annum.

Section 2. The water purchaser hereby assigns, transfers and sets over to the Association all his right, title and interest in and to the aforesaid shares of stock, said Association to have and to hold said shares of stock for its own use and benefit forever, for the purpose of securing the performance and observance by the water purchaser of the terms, covenants and conditions of this agreement, and the water purchase contract. In the event that the water purchaser is in default in the performance of any of his obligations under the water purchase contract, and such default shall continue for a period of forty-five (45) days, then and in any such event the Association may immediately, without demand for payment, and without advertising, and without notice to the water purchaser, each and all of which is, and are hereby, expressly waived: (a) forfeit the shares of stock subscribed for and apply the payments previously made by the water purchaser on his stock toward the payment of any sums due under his water purchase contract; or (b) acquire the absolute title to any and all of said shares of stock (free from any right or equity of redemption by the water purchaser, such right or equity of redemption being hereby expressly waived and released) by crediting the water purchaser with the par value of said stock at the time of said acquisition of absolute title; or (c) sell any or all of said shares of stock (free from any right or equity of redemption by the water purchaser, such right or equity of redemption being hereby expressly waived and released) at public or at private sale, it being expressly understood and agreed that the Association may itself be a purchaser at such sale of the whole or any part of said shares of stock. The proceeds of any sale or acquisition (pursuant to (b) or (c) of this Section) of said stock, or any part thereof, by the Association shall be applied, so far as needed, first toward the payment of the full indebtedness under this agreement; and, second, to the payment of any sums due under said water purchase contract; and, third, to the payment of any balance remaining to the water purchaser. In the event that the water purchaser is in default in the payment of any amount due on his subscription for said stock, the Association may forfeit the stock subscribed for in the manner provided by statute or otherwise.

Section 3. The right to vote the stock covered by this agreement at any and all meetings of the stockholders of the Association is hereby reserved to the water purchaser, and may be exercised by him unless and until said stock is purchased by the Association pursuant to its option or is sold by the Association in accordance with the provisions hereof. The water purchaser agrees to be bound by any and all provisions of the Articles of Incorporation and By-Laws of the Association, including all amendments and supplements hereafter made thereto with the approval of the Board.

Section 4. The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties hereto, but the water purchaser shall make no assignment of his right, title or interest in the stock covered by this contract until first offering said stock to the Association at the par value thereof, the Association to have the right and option to purchase said stock at the par value thereof at any time within ten (10) days from the personal service of written notice upon the Association of its intention to sell, transfer or assign its rights in the stock covered by this agreement; provided, however, that the Association shall have no such option in the event that such stock is to be sold, transferred or assigned by a water purchaser to an assignee of his water purchase contract who, after such assignment, will hold only one (1) share of stock for each acre foot or miner's inch of water, or each acre of land, which he is obligated to purchase annually under a water purchase contract with the Association and the Board.

IN WITNESS WHEREOF, The undersigned water purchasers have their hand and seal, and the ROCK CREEK WATER USERS' ASSOCIATION, pursuant to authority from its Board of Directors, has caused this Agreement to be executed in its corporate name by its President or Vice President, and attested by its Secretary or its Assistant Secretary, and its corporate seal to be affixed hereto, all on the day and year first above written.

Witness his signature of Subscriber:

Pauline Gradwohl (SEAL) Water Purchaser

Robert H. Gradwohl (SEAL) Water Purchaser

Richard L. Gradwohl (SEAL) Water Purchaser

ROCK CREEK WATER USERS' ASSOCIATION

Attest:

Hilda Columbus Secretary

By Daniel David President



Washed 4.23-82

Contract No. 730

(BELOW COONEY)

Water Purchase Contract

This contract made this 26th day of January, 1982, between the Rock Creek Water User's Association, a Montana corporation, hereinafter called the "Association", and the Department of Natural Resources and Conservation of the State of Montana, hereinafter called the "Department" (formerly the State Water Conservation Board), "concurred in by the Board of Natural Resources and Conservation, duly created, authorized and acting, under and by virtue of the Laws of Montana, and Pauline Gradwohl, Robert H. Gradwohl and Richard L. Gradwohl hereinafter called the "water purchaser".

WITNESSETH

WHEREAS, the Department has constructed an irrigation and flood control project (herein called the "Project") which included the construction of one small rock fill dam and one large earth fill dam, in accordance with plans and specifications and estimates of cost heretofore adopted; and

WHEREAS, the Department has acquired the right to store, control and divert all unappropriated water of Rock Creek and Red Lodge Creek, Carbon County, Montana, pursuant to but not limited to declaration filed in Book 15, Pages 352 and 915, in the Office of the County Clerk and Recorder of Carbon County, Montana; and

WHEREAS, it is agreed by the parties hereto that the total waters to which the Department is entitled to will be at least sufficient to permit the operation of said Project at its full capacity so that sufficient water can be made available annually during the irrigation season and the purchaser recognizes the right of the Department to impound, during the non-irrigation season, all of the aforesaid waters; and

WHEREAS, the Association has heretofore entered into a contract with the Department dated August 26, 1935, whereby the Department agreed that, upon the completion of the Project, it would furnish to the Association the total available yield of storage water from the Project for certain purposes, all as more fully set forth in said contract (herein called the "Water Marketing Contract"), a copy of which is on file at the offices of the Department and the Association respectively; and

WHEREAS, the Association has entered into a Repayment Contract with the Department dated April 8, 1981, whereby the Association has agreed to pay the Department, a stated schedule of annual payments,

over a period of forty years, for the Cooney Dam Rehabilitation, that being the repairing of the existing spillway, building an emergency spillway and raising the dam four feet, which will provide approximately 4,000 additional acre-feet of water for sale;

NOW, THEREFORE, in consideration of the promises and of the mutual terms, covenants and conditions hereof, it is mutually covenanted and agreed as follows:

Section 1. The Association upon the completion of the rehabilitation of the project, will furnish to the water purchaser, at the reservoir or reservoirs, fifty acre-feet of water annually during the irrigation season, beginning May 1 and ending September 30 from the reservoirs comprising the Project, provided, however, that in the event that from time to time thereafter the Department shall have an inadequate amount of water from the Project to permit the furnishing of the number of acre-feet of water in any year for which there are such outstanding water purchase contracts, the water purchaser in such year shall be entitled, in lieu of each acre-foot of water for which he has contracted, to a share of the total water available representing the proportion that one acre-foot of water annually bears to the Project's full capacity annually or (but only if there are outstanding water purchase contracts for the purchase annually of more than said amount of water) to the total number of acre-feet of water agreed to be purchased annually under outstanding water purchase contracts. The distribution of such proportionate shares to the water purchaser during such year shall constitute a complete performance in said year of the obligation of the Association to deliver the number of acre-feet of water for which said water purchaser has contracted, and the purchaser nevertheless shall be obligated to pay the full sums due under this contract and to perform his covenants and obligations hereunder. The Association and the Department agree not to make contracts for the sale of more than the capacity of the project annually. So long as the right of the Association under its water marketing contract to distribute the water of the Project has not been terminated, the Department shall be under no obligation to distribute water to the water purchaser hereunder, it being expressly understood that the Association only shall be so obligated.

Section 2. The water purchaser shall pay to the Association or the Department the Special Assessment levied each year for said Repayment Contract and the sum of fifty dollars on December 15, 19<sup>83</sup>, and the sum of fifty dollars on December 15 of each and every year thereafter for ~~forty~~-consecutive (30) years. On December 15, 19<sup>83</sup>, and on December 15 of each and every year thereafter during the useful life of the Project, the water

purchaser also shall pay to the Association such amount as the Association shall have previously notified the water purchaser (by a written notice given at least 45 days prior to each such December 15) to be necessary for his proportionate share of the amount of the operating costs of the Project for the year following respectively each said December 15. The term "operating costs" as used herein shall include all costs of the maintenance, repair, operation, and necessary alteration of the Project, and all costs incurred by the Association or the Department in the distribution of water from the Project. The determination by the Association or the Department of the amount and necessity of such operating costs shall be final, conclusive and binding upon the parties hereto, and the amounts so determined shall be deemed a debt, payable as aforesaid, to the same extent as if the amounts were specifically enumerated herein.

Section 3. All moneys required to be paid by the water purchaser to the Association hereunder shall be paid at Red Lodge, Montana, or such other place as the Association shall appoint in writing. Every installment or other sum of money required to be paid hereunder, which shall remain unpaid after the same becomes due, shall bear interest established by the Association or the Department.

Section 4. The water purchaser hereby agrees to be bound by any and all the terms, provisions and limitations of the Articles of Incorporation and By-Laws of the Association, including all amendments and supplements hereafter made thereto with the approval of the Department, and the aforesaid water marketing contract and the aforesaid Repayment Contract between the Department and the Association as fully and completely as if the terms, conditions and limitations therein contained were herein fully written.

Section 5. In the event that the water purchaser shall default in the payment of any of the sums when and as same shall become due and payable hereunder or shall default in the performance of any other obligations hereunder, and such default shall continue for a period of 45 days, then and in any such event, the Association may in its discretion and, upon the request of the Department, shall take any or all of the following action: (a) cease and refuse to furnish water to the water purchaser until such default and all other defaults subsequently occurring shall be cured, it being agreed that the withholding of water from the water purchaser in accordance with the provisions hereof shall not affect the obligations of the water purchaser, accruing during the period when water is withheld (except to the extent of any revenues collected by the Association from the sale of water withheld from said water purchaser), or the obligations of the water purchaser then due or

thereafter accruing hereunder; (b) terminate the rights of the water purchaser under this water purchase contract, it being agreed that such action shall not prejudice the right of the Association to collect all moneys then owing by the water purchaser under said water purchase contract; and (c) institute and prosecute to final judgment or decree, actions or proceedings in law or in equity for the collection of the sums due and unpaid under this water purchase contract and enforce any such judgment or final decree against the water purchaser. No remedy herein conferred upon the Association is intended to be exclusive of any other remedy or remedies, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or under the water marketing contract or new or hereafter existing at law or in equity or by statute.

Section 6. In the event that the Department shall give written notice to the water purchaser that the Association is in default in the performance of any of its obligations under the water marketing contract, and that the Department has elected to exercise the functions of the Association under this contract, all moneys due or becoming due and payable to the Association hereunder shall be paid to the Department, and the Department, in its own name, shall have the sole right to enforce this contract and exercise all of the rights and powers of the Association with respect thereto, unless and until the Department shall give written notice to the water purchaser that the Association itself may resume the collection of moneys and the exercise of its powers hereunder. Moneys then to be paid by the water purchaser to the Department shall be paid at the office of such Department in Helena, Montana, or such other place as the Department shall appoint in writing.

Section 7. The payments and obligations of the water purchaser hereunder are for the privilege of obtaining water so long as the water purchaser shall not be in default under this contract or his rights terminated hereunder, and the water purchaser shall be obligated to pay such annual installments and perform his covenants and duties hereunder, notwithstanding the fact that no water shall be available by reason of a shortage or otherwise, or that no water is actually taken by the water purchaser, or that the Association or the Department may withhold water from the water purchaser by reason of his default under this contract. The obligation of the water purchaser to make the payments required hereby shall be absolute and unconditional so long as this contract remains in full force and effect. It is expressly understood that all right, title and interest in and to the Project and the water rights exercised in connection therewith shall be and remain in the Department, and that the water purchaser shall acquire no right, title or interest in the Project or such water rights. The water purchaser shall acquire no

rights or equities under this contract which will in any manner prejudice the right of the Association to terminate this contract in the event that the water purchaser shall be in default hereunder.

Section 8. It is understood that without regard to priority in the execution of this water purchase contract, or priority in the use of the water hereunder or any other reason, the water purchaser under this contract shall have no preference or priority entitling him to receive water from the Project in advance of other water purchasers who have entered into water purchase contracts for water from the Project (unless such contracts shall specifically provide to the contrary), all such water purchasers to have an equal and ratable right to water in accordance with the respective amounts to which they are entitled under their respective water purchase contracts.

Section 9. The provisions of the contract shall apply to and bind the successors and assigns of the respective parties, but the water purchaser shall make no assignment of this contract without the written consent of the Association (unless its rights hereunder have been terminated or water is being withheld from it) and the Department.

Section 10. The water purchaser hereby agrees that this water purchase contract covers water for domestic and agricultural purposes only.

IN WITNESS WHEREOF, the Rock Creek Water Users' Association pursuant to authority from its Department of Directors has caused the Contract to be executed in its corporate name by its President or Vice-President and attested by its Secretary, and the Department has caused this Contract to be executed in its corporate name and said parties have caused their respective corporate seals to be affixed hereto, and ~~the undersigned water purchasers have xxx~~ <sup>has</sup> hereunto set ~~his~~ <sup>their</sup> hand and seals all on the day and year first above written.

ROCK CREEK WATER USERS' ASSOCIATION

By *David D. Davis*  
President

ATTEST:

*Hilda Columbus*  
Secretary

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

By *Steve O. Fry*  
Supervisor, Water Projects

*Pauline Gradwohl* (seal)  
Water Purchaser Pauline Gradwohl

*Robert H. Gradwohl* (Seal)  
Water Purchaser Robert H. Gradwohl

Witness to Signature of Water Purchaser:

*Richard L. Gradwohl* (Seal)  
Water Purchaser Richard L. Gradwohl