

RESOLUTION NO. 2010-40
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF MONTROSE
STATE OF COLORADO

A RESOLUTION CONFIRMING THE INTENT OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MONTROSE TO APPROPRIATE WATER FOR DIRECT-FLOW USE AND STORAGE; TO CHANGE THE TYPE, PLACE, AND MANNER OF USE OF THE URAVAN TRUST WATER RIGHTS; AND TO APPROPRIATE RIGHTS OF EXCHANGE; AND AUTHORIZING THE FILING OF WATER COURT APPLICATIONS TO ADJUDICATE SUCH WATER RIGHTS

WHEREAS, Montrose County has examined the need for additional water supplies in the west end of the County, including but not limited to the portions of the San Miguel River basin and Paradox Valley located in the County, over the next fifty (50) years;

WHEREAS, Montrose County has determined that it, its current and future residents, and public water supply entities within the County, have a need for additional physical and legal water supplies for domestic, agricultural, industrial, and municipal use, and for the purposes of augmentation and exchange, enhancement or maintenance of water quality, recreation, piscatorial, and all other beneficial uses, together with the right of reuse, successive use, and disposition to extinction, and has diligently pursued the appropriation of conditional water rights for such uses; and

WHEREAS, Montrose County and its consultants have determined that present and future water users in the west end of the County require approximately 25,600 acre-feet of additional storage capacity and 7.22 c.f.s. of additional direct-flow water supplies that can, in the aggregate and together with changes of the Uravan Trust water rights, yield approximately 6,400 acre-feet/year of fully consumable and reusable water to help meet future water demands; and

WHEREAS, Montrose County is in addition desirous of and intends to appropriate such additional storage capacity as may be available in the reservoir sites described below for release for non-consumptive use to maintain and enhance water quality, recreation, piscatorial values, and for in-reservoir recreational and piscatorial uses; and

WHEREAS, Montrose County has identified and studied potential new reservoir sites on Maverick Draw, Tuttle Draw, Big Bucktail Creek, and Saltado Creek, as well as an expansion of the existing Town of Nucla Reservoir, as depicted together with the location of structures used to fill each structure on the map attached as Exhibit A, incorporated herein by this reference, for storage of new conditional water rights that Montrose County intends to appropriate for the beneficial uses described above, and other water rights in which the County has an interest to be stored in such reservoirs by means of exchange; and

WHEREAS, Montrose County has determined through engineering studies that there is sufficient physical and legal availability of water to fill and refill the foregoing reservoirs in the

following capacities, which reservoirs would individually or in combination be alternative places of storage to provide the aggregate new storage capacity for the consumptive uses as identified above as well as to provide capacity for non-consumptive uses:

- A. Maverick Draw Reservoir No. 1: 6,700 acre-feet, conditional, together with a right to successive refills in the cumulative amount of 6,700 acre-feet, conditional, on the channel of Maverick Draw;
- B. Maverick Draw Reservoir No. 2: 5,600 acre-feet, conditional, together with a right to successive refills in the cumulative amount of 5,600 acre-feet, conditional, on the channel of Maverick Draw;
- C. Tuttle Draw Reservoir: 1,200 acre-feet, conditional, together with a right to successive refills in the cumulative amount of 2,400 acre-feet, conditional, on the channel of Tuttle Draw and in addition to be filled via the CC Ditch at a rate of flow of 135 c.f.s.;
- D. Big Bucktail Reservoir: 6,100 acre-feet, conditional, together with a right to successive refills in the cumulative amount of 12,200 acre-feet, conditional, on the channel of Big Bucktail Creek and in addition to be filled via the CC Ditch at a rate of flow of 135 c.f.s.;
- E. Nucla Town Reservoir and First Enlargement: 300 acre-feet, conditional, together with a right to successive refills in the cumulative amount of 900 acre-feet, conditional, to be filled via the CC Ditch at a rate of flow of 135 c.f.s. and the Nucla Pump Site at a rate of flow of 3.11 c.f.s.;
- F. Marie Scott Reservoir: 15,000 acre-feet, conditional, together with a right to successive refills in the cumulative amount of 15,000 acre-feet, conditional, on the channel of Saltado Creek and in addition to be filled from Fall Creek through the JM Hughes Ditch at a rate of flow of 100 c.f.s.;

and

WHEREAS, Montrose County has identified a need for additional direct-flow diversions to meet future demands within the County, either directly or by means of exchange, at the following locations as depicted on Exhibit A and in the following amounts:

- A. Nucla Pump Site: 3.11 c.f.s., conditional;
- B. Paradox Valley Pipeline: 1.0 c.f.s., conditional;
- C. Highline Canal (CC Ditch): 3.11 c.f.s., conditional;

Total: 7.22 c.f.s.;

and

WHEREAS, Montrose County and the towns of Nucla and Naturita are parties to a March 20, 1991 Memorandum of Understanding with the Colorado Water Conservation Board concerning the potential disposition and use of certain water rights held by the Uravan Water Trust. A copy of said Memorandum, including a listing of the Trust water rights, is attached hereto as Exhibit B, and incorporated herein by this reference;

WHEREAS, Montrose County has determined that it would be advantageous to file an application for changes of the type, place, and manner of use of the Uravan Trust water rights to

allow those rights to be used for domestic, agricultural, industrial, and municipal use, and for the purposes of augmentation and exchange, enhancement or maintenance of water quality, recreation, piscatorial, and all other beneficial uses, together with the right of reuse, successive use, and disposition to extinction, in order to help meet future water demands; and

WHEREAS, Montrose County has determined that conditional appropriative rights of exchange would enable the County to efficiently use the foregoing water supplies by exchange to accomplish the foregoing beneficial uses throughout the basin of the San Miguel River and its tributaries in Montrose County, in the San Miguel River from the Uravan Gage to the San Miguel County line; and from the confluence of each tributary with the River to its headwaters, all as depicted on Exhibit C, incorporated herein by this reference, and set forth as follows:

- A. San Miguel River mainstem: at a rate of flow up to 10.0 c.f.s.;
- B. Coal Canyon: at a rate of flow up to 10 c.f.s.;
- C. Tuttle Draw: at a rate of flow up to 4.3 c.f.s.;
- D. Calamity Draw: at a rate of flow up to 2.3 c.f.s.;
- E. Bramiers Draw: at a rate of flow up to 2.7 c.f.s.;
- F. Naturita Creek: at a rate of flow up to 10 c.f.s.;
- G. Maverick Draw: at a rate of flow up to 10 c.f.s.;
- H. Unnamed Creek No. 1: at a rate of flow up to 1.1 c.f.s.;
- I. Unnamed Creek No. 2: at a rate of flow up to 1.0 c.f.s.;
- J. Unnamed Creek No. 3: at a rate of flow up to 0.3 c.f.s.;
- K. Unnamed Creek No. 4: at a rate of flow up to 0.2 c.f.s.; and
- L. Unnamed Creek No. 5: at a rate of flow up to 1.7 c.f.s.;

and

WHEREAS, Montrose County has determined that the following actions will supplement and enhance the County's water rights and water supplies, and the population of Montrose County will benefit from the associated increased water supply, water storage capacity, and water supply security arising therefrom: (1) appropriation of water for direct-flow use and storage in the amounts described above; (2) appropriation of rights of exchange in the amounts described above; and (3) changes in the manner, place, and type of use of the Uravan Trust water rights to allow use within Montrose County, either directly or by augmentation and exchange, all for the above listed uses; and

WHEREAS, the Board of County Commissioners has considered the foregoing; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONTROSE COUNTY, COLORADO THAT IT INTENDS TO APPROPRIATE WATER FOR DIRECT-FLOW USE AND STORAGE; TO CHANGE THE TYPE, PLACE, AND MANNER OF USE OF THE URAVAN TRUST WATER RIGHTS; AND TO APPROPRIATE RIGHTS OF EXCHANGE; AND TO FILE WATER COURT

APPLICATIONS TO ADJUDICATE SUCH WATER RIGHTS, AS MORE FULLY DESCRIBED ABOVE.

BE IT FURTHER RESOLVED that the Montrose County staff, its engineering consultants, and its special water rights counsel are authorized to file and proceed with the necessary applications, and other actions deemed advisable in their discretion, to adjudicate the water rights described above, and their actions are approved and ratified hereby.

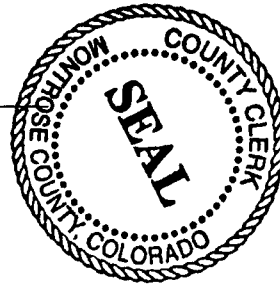
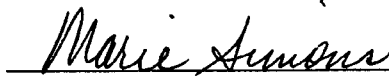
ADOPTED THIS 13th DAY OF DECEMBER, 2010.

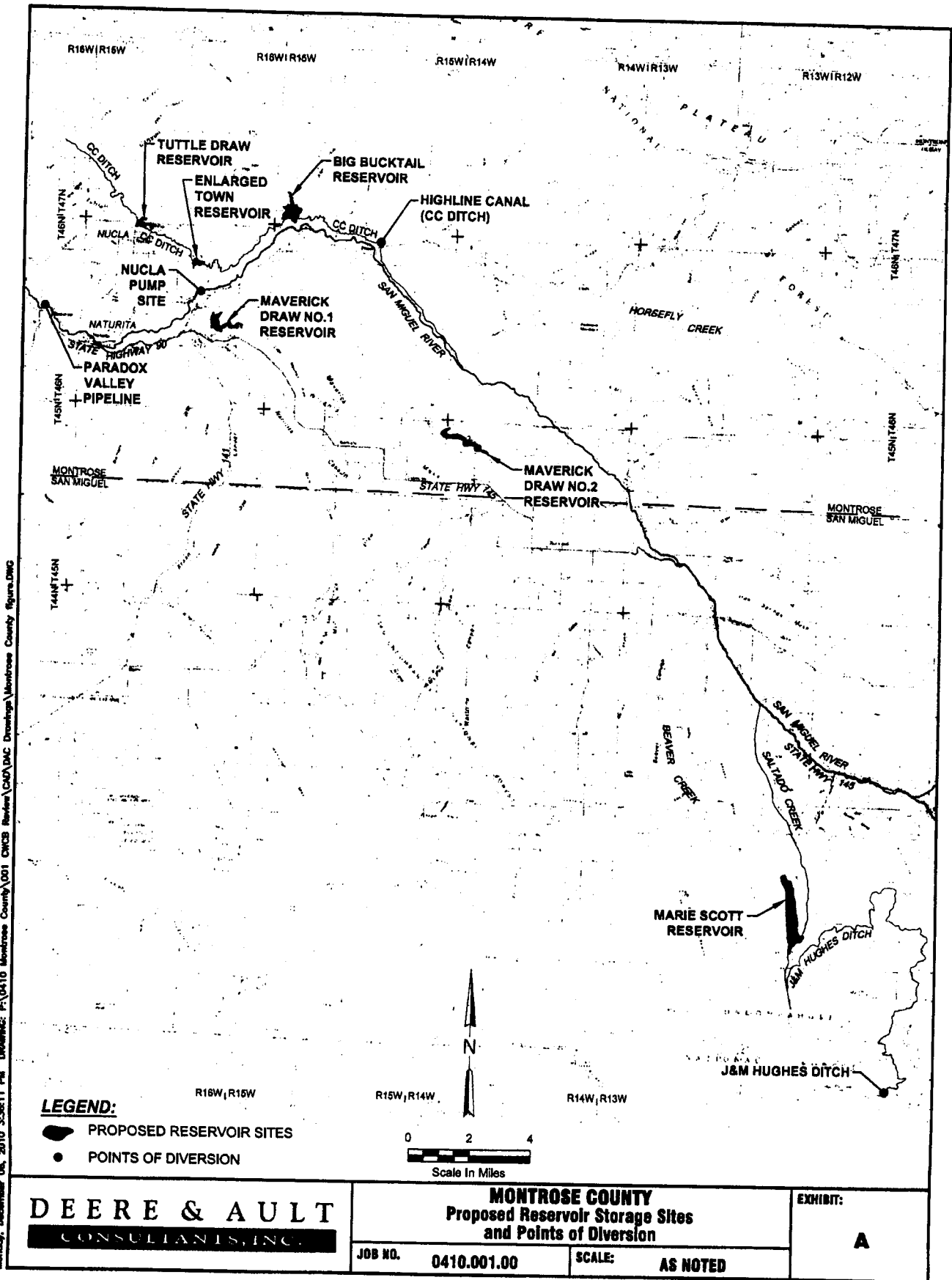
COUNTY OF MONTROSE
STATE OF COLORADO

By and Through its
BOARD OF COUNTY COMMISSIONERS



ATTEST:





Monday, December 06, 2010 3:35:11 PM DRAWING: F:\0410 Montrose County\001 CWSB Review\CAD\DAC Drawings\Montrose County figure.DWG

Exhibit B

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this 20th day of March, 1991, between the Water Conservation Board, Department of Natural Resources, State of Colorado, and Montrose County, the Town of Nucla, and the Town of Naturita (the "local governments").

WHEREAS, the State of Colorado, Union Carbide Corporation, and Umetco Minerals Corporation entered into a Final Consent Decree, Order, Judgment and Reference to Special Master ("Consent Decree") in the case styled The State of Colorado v. Union Carbide Corporation and Umetco Minerals Corporation, Civil Action No. 83-C-2384, United States District Court for the District of Colorado, which Consent Decree was approved by the court, Jim R. Carrigan, Judge, on February 12, 1987;

WHEREAS, by operation of the Consent Decree, the Water Conservation Board on behalf of the State of Colorado has received by quit claim deed a right of appropriation for power purposes decreed for the San Miguel River Ditch No. 222, in the amount of 240 c.f.s., priority No. 286 in Water District 60, decree dated October 22, 1926, with an historic date of appropriation of April 28, 1914, as affected by the December 30, 1985, Final Decree on Tabulation of Water Rights of the Colorado District Court, Water Division No. 4, in the case captioned "In the Matter of the Abandonment List of the Division Engineer for Water Division No. 4, State of Colorado," 84-CW-93;

WHEREAS, the Consent Decree created the Uravan Water Trust to which Umetco Minerals Corporation and Union Carbide Corporation have transferred by quit claim deed dated May 6, 1987, certain water rights comprising approximately 50.55 c.f.s. from the Johnson Ditch and approximately 2.19 c.f.s. from various wells, all as more specifically described in schedule A attached hereto, which water right will be conveyed by quit claim deed to the Water Conservation Board upon termination of the trust; and

WHEREAS, the parties hereto recognize that the use and disposition of the above-described water rights is a matter of concern both to state and local governments.

4514E

Exhibit B

NOW THEREFORE, this Memorandum of Understanding is entered into to define the relationship of the parties regarding the above-described water rights.

1. The Water Conservation Board will utilize the above-described water rights in accordance with its statutory powers and duties subject, however, to the understandings and agreements described below.

2. The Water Conservation Board shall fully and completely consult with the local governments regarding the use, disposition, or abandonment of the water right for the San Miguel River Ditch No. 222 prior to taking any action regarding that water right.

3. The Water Conservation Board shall notify the local governments of the termination of the Uravan Water Trust within 180 days of such termination.

4. Subject to any requirements imposed upon it by law, the Board agrees not to sell, lease, grant, or otherwise dispose of any of the above-described water rights for use outside of the San Miguel River Basin.

5. The local governments shall have a right of first refusal regarding the acquisition of any of the above-described water rights, as follows:

- a. If the Water Conservation Board decides to give serious consideration to a third party's bona fide offer to purchase all or any portion of any of the above-described water rights, it shall promptly notify the local governments of the terms of said offer.
- b. Within 90 days of receipt of such notice, the local governments, or any of them, may submit an offer which matches the terms of the third party's offer ("a matching offer"). During that period, the Water Conservation Board shall not accept the third party's offer unless each of the local governments waives its right of first refusal.

Exhibit B

c. If the local governments make a matching offer, it shall be accepted and the third party's offer shall be rejected. In the event that one or more of the local governments submits a matching offer, the Water Conservation Board may accept any of the matching offers.

This constitutes the full and complete understanding between the parties.

Cindy K. Bowen 7/10/91
Date
CHAIRMAN OF THE BOARD
BOARD OF COMMISSIONERS for
Montrose County

David W. Walker
Date
DAVID W. WALKER, DIRECTOR
WATER CONSERVATION BOARD
Department of Natural Resources
State of Colorado

William F. Bunker 4/12/91
Date
MAYOR
TOWN OF NATURITA

John S. Boudry 4/12/91
Date
MAYOR
TOWN OF NUCLA

ATTESTED:

Leslie Trachsler
Leslie Trachsler, Town Clerk

Exhibit B

SCHEDULE A

Description of Water Rights

- (a) 3.80 c.f.s. from the Johnson Ditch, with a priority date of April 10, 1891, original decree date of June 10, 1891; priority no. 46 in Water District 60 for irrigation, domestic, industrial and power use.
- (b) 3.75 c.f.s. from the Johnson Ditch, with a priority date of February 16, 1903, original decree date of June 3, 1911; priority no. 4058 in Water District 60 for irrigation, domestic, industrial and power use.
- (c) 26.20 c.f.s. from the Johnson Ditch, with a priority date of February 16, 1903, original decree date of October 31, 1911; priority no. 22 in Water District 60 for irrigation, domestic, industrial, and power use.
- (d) 16.80 c.f.s. from the Johnson Ditch, with a priority date of July 21, 1913, decree date of February 16, 1920; priority no. 139 in Water District 60 for irrigation, domestic, industrial and power use.

By decree entered in Case No. 7107 in Montrose County District Court on January 25, 1956, the above described decreed priorities may be diverted from any of the alternative points of diversion described below:

- (a) A point on the North Bank of the San Miguel River from which the Northeast Corner of Section 34 T.48N., R.17W., N.M.P.M., bears North 33° 22' West a distance of 4830 feet;
- (b) A point on the North Bank of the San Miguel River from whence the Northeast Corner of Section 34, T.48N., R.17W., N.M.P.M., bears North 40° 06' West a distance of 5414 feet;

Exhibit B

(c) A point on the South Bank of the San Miguel River from whence the Northeast Corner of Section 34, T.48N., R.17W., N.M.P.M. bears North 34° 32' West a distance of 1776 feet.

Mineral Camp Well: located in the SW1/4NW1/4NW1/4, Section 28, Township 48 North, Range 17 West of the New Mexico Principal Meridian, having the San Miguel River as its source, for 0.0550 c.f.s. with an appropriation date of May 1, 1958, and an adjudication date of December 31, 1971.

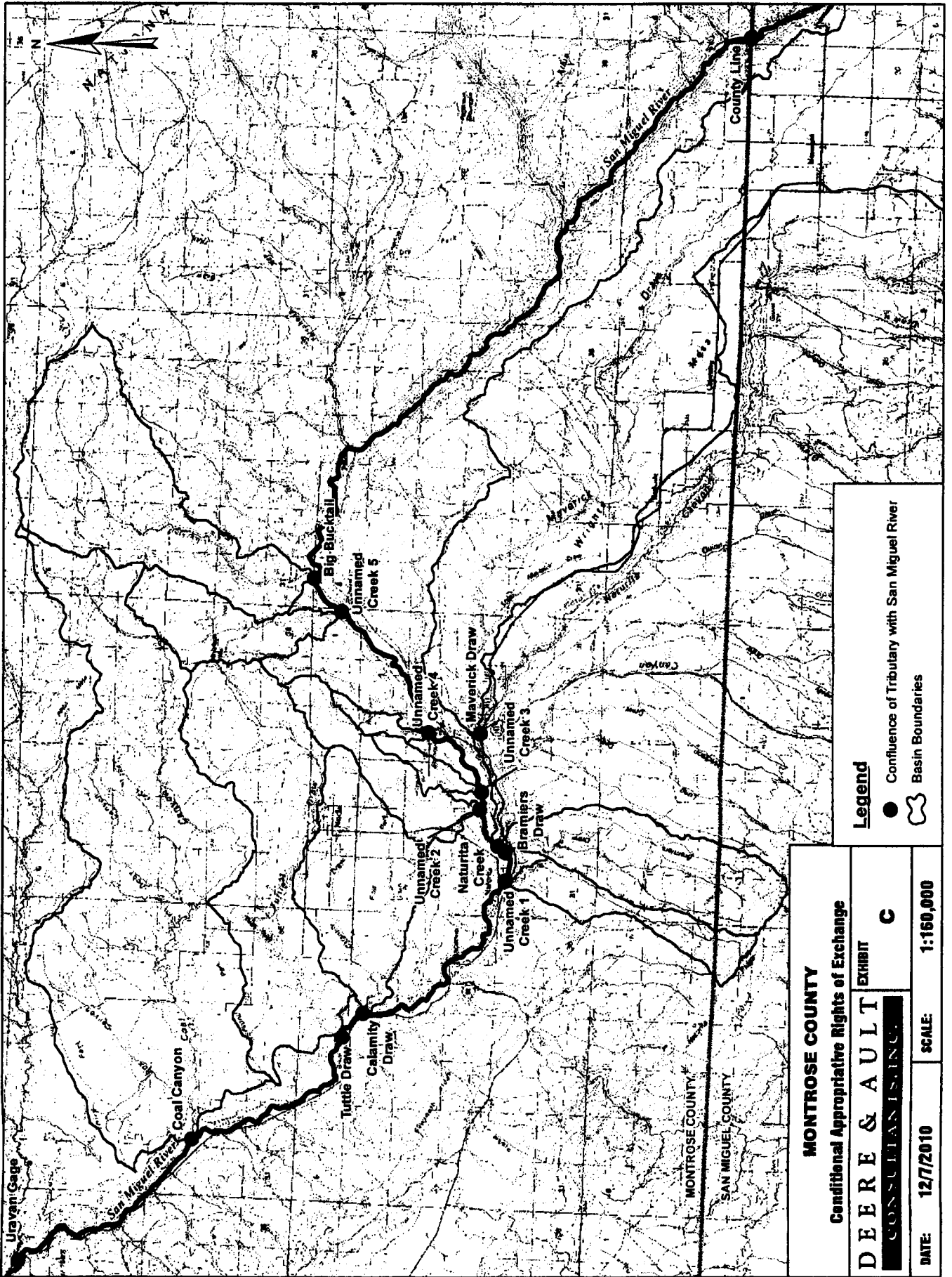
Urevan No. 1 Well: located in the NW1/4NW1/4, Section 34, Township 48 North, Range 17 West of the New Mexico Principal Meridian, having the San Miguel River as its source, for 0.290 c.f.s. with an appropriation date of May 13, 1959, and an adjudication date of December 31, 1971.

Urevan No. 2 Well: located in the NW1/4SE1/4, Section 34, Township 48 North, Range 17 West of the New Mexico Principal Meridian, having the San Miguel River as its source, for 1.100 c.f.s. with an appropriation date of December 2, 1959, and an adjudication date of December 31, 1971.

Tabeguache Well No. 1: located in the NW1/4NE1/4, Section 1, Township 47 North, Range 17 West of the New Mexico Principal Meridian, having the West Tabeguache Creek as its source, for 0.440 c.f.s. with an appropriation date of July 23, 1973, and an adjudication date of December 31, 1973.

Tabeguache Well No. 2: located in the SE1/4NE1/4, Section 1, Township 47 North, Range 17 West of the New Mexico Principal Meridian, having the West Tabeguache Creek as its source, for 0.280 c.f.s. with an appropriation date of July 23, 1973, and an adjudication date of December 31, 1973.

Eula Belle Mine Well: located in the SE1/4NE1/4, Section 31, Township 49 North, Range 17 West of the New Mexico Principal Meridian, having the West Dolores River as its source, for 0.0310 c.f.s. with an appropriation date of January 15, 1961, and an adjudication date of December 31, 1971.



Legend
 ● Confluence of Tributary with San Miguel River
 ☞ Basin Boundaries

MONTROSE COUNTY
 Conditional Appropriative Rights of Exchange
DEERE & AULT EXHIBIT **C**
 CONSULTING
 DATE: 12/7/2010 SCALE: 1:150,000