

04-103

MEMORANDUM OF AGREEMENT
BETWEEN
BOARD OF COUNTY COMMISSIONERS OF GUNNISON COLORADO
AND
OXBOW MINING, LLC

The memorandum of agreement, made this 15th day of October 2003, by and between the Board of County Commissioners of Gunnison County, Colorado (the County) and Oxbow Mining, LLC (Oxbow) provides that:

WHEREAS, the Oxbow provides a domestic water supply to the town site of Somerset, Colorado; and

WHEREAS, the Colorado Department of Public Health and the Environment has determined the current domestic water supply provided by Oxbow to the town site of Somerset, Colorado does not meet certain surface water standards for a potable water supply and is in need of construction of a water treatment plant; and

WHEREAS, the Board of County Commissioners of Gunnison County, Colorado has determined it to be in the public interest to assist Oxbow in implementing a corrective strategy which will result in the construction of a new water treatment plant to serve the needs of the town site of Somerset, Colorado; and

WHEREAS, the Board of County Commissioners of Gunnison County, Colorado applied to and received from the State of Colorado Department of Local Affairs financial assistance through the Energy and Mineral Impact Assistance Program in the amount of \$475,025.00.

NOW, THEREFORE, the Board of County Commissioners of Gunnison County, Colorado and Oxbow in consideration for the mutual covenants contained herein as follows;

- 1) Oxbow agrees to implement the work program under the Energy and Mineral Impact Assistance Program, which will result in the construction of a new Water Treatment Plant, Intake Gallery refurbishment and Water Storage Tank inspection and cleaning, which will serve the needs of the Somerset community. The work program under the Energy and Mineral Impact Assistance Program is attached as Exhibit A and the actual contract between Gunnison County and the Department of Local Affairs (DOLA) is attached as Exhibit B.
- 2) Oxbow agrees to maintain financial records relative to the project including copies of all contracts, invoices, and change orders directly related to the project.
- 3) Oxbow agrees that the total value of this agreement is \$525,025.00 (inclusive of a \$50,000.00 Gunnison County contribution, a \$375,025.00 DOLA grant, and a \$100,000.00 DOLA loan) and will be distributed on a reimbursement basis to Oxbow upon submission of payment requests to the County together with all appropriate documentation.
- 4) Oxbow agrees to seek transfer of ownership of the Water Treatment Plant and related facilities to the Somerset Water District upon completion of construction, with the intent being that one unit is transferred during active mine operations and the entire system at cessation of operations.

MEMORANDUM OF AGREEMENT
BETWEEN
BOARD OF COUNTY COMMISSIONERS OF
GUNNISON COUNTY, COLORADO
AND
SOMERSET WATER DISTRICT

The memorandum of agreement, made this 1ST day of November 2004 by and between Somerset Water District and the Gunnison County Board of Commissioners provides that:

WHEREAS, there have been historic problems with the Somerset Water System in terms of water quality and the Oxbow Mine who provides water to the District, has requested assistance from the Gunnison County Board of Commissioners in obtaining funds to assist in financing the cost of a new water treatment system program; and

WHEREAS, the Gunnison County Board of Commissioners are supportive of the objectives of improving the water quality of the system and insuring the system meets current public health standards; and

WHEREAS, the assistance for this project came in the form of a Department of Local Affairs grant and loan through the Mineral Impact Assistance Fund; and

WHEREAS, the loan must be paid back by the users of the Somerset Water District.

NOW, THEREFORE, the Gunnison County Board of Commissioners and the Somerset Water District agree in consideration for the mutual covenants contained herein as follows;

- 1) The Somerset Water District agrees to pay the Gunnison County Board of Commissioners 18 annual payments of \$8,024.26 and 1 annual payment of \$4,865.57 beginning on September 1 2005.
- 2) The Oxbow Mine has agreed through a separate agreement (See Attachment A) with Gunnison County to seek transfer of ownership of the Water Treatment Plant and related facilities to the Somerset Water District upon completion of construction, that one unit is transferred during active mine operations and the entire system at cessation of operations.
- 3) The Oxbow Mine has agreed through a separate agreement (See Attachment A) to enter into a management agreement with the Somerset Water District for the operation and maintenance of the Water Treatment Plant and related facilities.

Funds will be distributed on a quarterly basis upon presentation of appropriate documentation in a form and format as prescribed by the administrator for this agreement.

The term of the agreement shall begin upon signing by all parties to the agreement and end once the final payment is made on September 1, 2024.

The Gunnison County Board of Commissioners designates the Gunnison County Chief Executive Officer as the Administrator for this agreement, and all questions in regard to this agreement should be referred to that person.

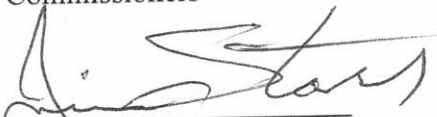
Somerset Water District agrees to defend, indemnify and hold harmless the Board of County Commissioners of Gunnison County, Colorado, and Gunnison County officers and employees, from and against any and all claims or actions for injury to persons or damage to property arising from activities associated with the Somerset Water District. Nothing in this Memorandum of Agreement is or shall be construed to be a waiver of Governmental Immunity by the Board of County Commissioners.

Any deviation from this agreement must be submitted to the County Manager prior to their occurrence for approval.

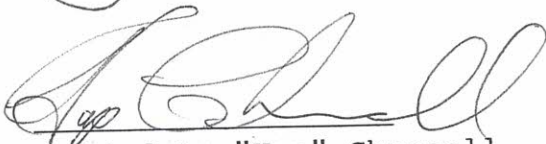
The total value of this agreement is \$149,302.25 (One Hundred Forty Nine Thousand Three Hundred Two dollars and twenty five cents).


Gunnison County Board of
Commissioners

Somerset Water District



Jim Starr, Chairperson

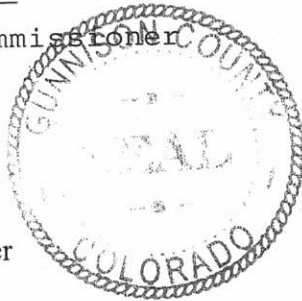



Howard L. "Hap" Channell


Paula Swenson, Commissioner

Attest:


Deputy, Clerk and Recorder



Signed by BOCC 3/15/05

MEMORANDUM OF AGREEMENT
BETWEEN
BOARD OF COUNTY COMMISSIONERS OF GUNNISON COLORADO
AND
OXBOW MINING, LLC

The memorandum of agreement, made this 15th day of October 2003, by and between the Board of County Commissioners of Gunnison Colorado (the County) and the Oxbow Mining, LLC (Oxbow) provides that:

WHEREAS, the Oxbow is responsible for provision of a potable water supply to the town site of Somerset Colorado; and

WHEREAS, the Colorado Department of Health has determined the current potable water supply provided by the Oxbow to the town site of Somerset Colorado does not meet safe drinking water standards and is in need of construction of a water treatment plant; and

WHEREAS, the Board of County Commissioners of Gunnison Colorado has determined it to be in the public interest to assist the Oxbow in implementing a corrective strategy which will result in the construction of a new water treatment plant to serve the needs of the town site of Somerset, Colorado; and

WHEREAS, the Board of County Commissioners of Gunnison Colorado applied to and received from the State of Colorado Department of Local Affairs financial assistance through the Energy and Mineral Impact Assistance Program in the amount of \$475,025.

NOW, THEREFORE, the Board of County Commissioners of Gunnison Colorado and the Oxbow in consideration for the mutual covenants contained herein as follows;

- 1) The Oxbow agrees to implement the work program under the Energy and Mineral Impact Assistance Program, which will result in the construction of a new Water Treatment Plant, Intake Gallery and Water Storage Tank, which will serve the needs of the Somerset Community. The work program under the Energy and Mineral Impact Assistance Program is attached as Exhibit A and the actual contract between Gunnison County and the Department of Local Affairs is attached as Exhibit B.
- 2) The Oxbow agrees to maintain financial records relative to the project including copies of all contracts, invoices, and change orders directly related to the project.
- 3) The Oxbow agrees the total value of this agreement is \$525,025 and will be distributed on a reimbursement basis upon submission of a payment request together with all appropriate documentation.
- 4) The Oxbow agrees to transfer ownership of the Water Treatment Plant and related facilities to the Somerset Water District upon completion of construction.
- 5) The Oxbow agrees to enter into a management agreement with the Somerset Water District for the operation and maintenance of the Water Treatment Plant and related facilities.
- 6) Gunnison County agrees to reimburse the Oxbow for all expenses under this Agreement up to the total value of the Agreement

The term of the agreement shall begin on October 15, 2003 and end December 31, 2004.

The Board of County Commissioners of Gunnison County Colorado designates the Gunnison County Chief Executive Officer as the Administrator for this agreement, and all questions in regard to this agreement should be referred to that person.

The Oxbow agrees to defend, indemnify and hold harmless the Board of County Commissioners of Gunnison County Colorado, and Gunnison County officers and employees, from and against any and all claims or actions for injury to persons or damage to property arising from activities associated with the Oxbow. Nothing in this Memorandum of Agreement is or shall be construed to be a waiver of Governmental Immunity by the Board of County Commissioners of Gunnison County, Colorado.

The relationship between the Board of County Commissioners of Gunnison County Colorado and the Oxbow is that of donor and donee. The Oxbow is not an agent of the Board of County Commissioner of Gunnison County Colorado, and the Board of County Commissioners of Gunnison County Colorado is not responsible for the acts or omissions of the Oxbow its officers, employees or agents.

The Oxbow agrees to submit a final project report in a form and format as prescribed by the Administrator of the agreement.

Any deviation from this agreement must be submitted to the Administrator of the agreement prior to their occurrence for approval.

The total value of this agreement is \$525,025.00(Five Hundred Twenty Five Thousand Twenty Five Dollars and no cents).

Board of County Commissioners
of Gunnison Colorado

Oxbow Mining, LLC

Fred Field, Chairperson

Jim Cooper,

Jim Starr, Commissioner

Attest:

Perry Anderson, Commissioner

Deputy Clerk and Recorder

STATE OF COLORADO
Department of Local Affairs
Energy and Mineral Impact Assistance Program Application
Public Facilities/Public Services/Community Development Projects

A. GENERAL AND SUMMARY INFORMATION

1. Name/Title of Proposed Project: Somerset Water System
2. Applicant: Gunnison County
3. Chief Elected Official
Name: Fred Field Title: Chairperson, Board of County Commissioners
Mailing Address: 200 E. Virginia, Gunnison, Colorado Phone: 970-641-0248
4. Designated Contact Person for the Application:
Name: John DeVore Title: County Manager
Mailing Address: 200 E. Virginia, Gunnison, Colorado Phone: 970-641-0248
5. Amount requested: \$485,025. Does the applicant jurisdiction have the ability to receive and spend state grant funds under TABOR spending limitations? Yes.
6. Brief Description of Proposed Project:
Historically, the original and subsequent operators of the underground coal mine located near the small community of Somerset, Colorado have the obligation to provide treated domestic water to residents of the Somerset community. The Oxbow Mine holds both the domestic and industrial-use water rights on the North Fork of the Gunnison River and serves as the public water supplier for the unincorporated town of Somerset. The Somerset Water District operates the distribution system and purchases the water from Oxbow Mine. In August of 2001 it was noted that treated water was turbid after a major storm event. An examination of the infiltration gallery surface revealed at least one location that indicated the occurrence of "preferential or pipe flow" of the surface recharge water through the infiltration media. As documented in a notice from the state, the results of the state required MPA test indicated the influence of surface water. This situation resulted in the domestic water not being in compliance with state regulations. The Oxbow mine has been working with the State Health Department in developing a plan of action to bring the system back into compliance. The Oxbow mine engaged Western Water & Land, Inc. to conduct an assessment of the system and recommend a solution to the problem, which will result in the system being in compliance with the State regulations. (See Attachment A) Western Water & Land's study indicated a number of possible water supply and treatment alternatives. The preferred alternative is the continued use of the gallery as the water supply structure, which requires the refurbishment of the upper infiltration media to reduce the occurrence of influence of surface water. The original plan called for the construction of a water treatment improvement system adjacent to the existing infiltration gallery and pump house, however the 100-Year Flood Limit Study indicates that the 100-year flood event will inundate the ground surface up to the base of the pump house. To minimize the risk to the water treatment system the preferred alternative proposes to install the water treatment

improvement system on the north side of Highway 133 at the interface of the mountain slope and the main access road to the Sanborn Creek Mine portal. The distribution system has had a history of major leaks. In 1997 the Gunnison County and the Oxbow Mine began working with the Somerset Domestic Waterworks District Board to correct the problems. This resulted in a financial partnership to install water meters. This project enabled the District to identify the leaks in the system as well as being able to bill the users for actual usage. All major leaks have been repaired and the meters have resulted in more conservative use.

7. a. Local Priority: 1
- b. What is the composition of the countywide impact team? County Commissioners, energy/industry representation, municipalities. Gunnison County does not have a countywide impact team; we discuss our various projects with all the municipalities to make sure everyone is supportive of the direction we are headed.

B. DEMOGRAPHIC AND FINACIAL INFORMATION.

1. a. What was the 1990 Census population of the applicant jurisdiction? 10,910
- b. What is the current estimated population for the applicant jurisdiction? 14,033 (Current most recent lottery distribution estimate is acceptable) What is the source of the estimate? 2000 U.S. Census extrapolated to July 2001 by the State Demographers Office.
- c. What is the population projection for the applicant in 5 years? 15,549 What is the source of the projection? State Demographer.

2. Financial Information
(Provide for all municipalities, counties, and districts directly participating in the application and for any entity on whose behalf the application is being submitted: Attach additional Sheets if necessary.)

	Gunnison County	
a. Assessed Valuation Year 2002	\$366,225,770	
b. Mill Levy/Annual Revenue	13.049	\$4,832,789
c. Overlapping Mill Levy	46.223	
d. Sales Tax Rate(%)/Annual Revenue	1.00%	\$1,129,600
e. Long-term Debt. By Type/Amount	See Attachment B	
f. Annual Budget General Fund		
Total Year 2003	\$7,210,230	
Carry Forward as of 1/1/03	\$1,875,754	

**BUDGET &
INFORMATION**

**1. Project Budget &
Funding Sources**

Project Funding				
	Total Cost	Impact Assistance	Other Funds Requested or Committed Committed	Status
Project Activities				
Alternatives Analysis	\$39,100	\$-0-	39,100	Oxbow Mine
Water Treatment Plant	\$48,100	\$11,000	\$37,100	Oxbow Mine
1. Design application	\$184,000	\$134,000	\$50,000	Gunnison County
2. Treatment System	\$198,500	\$198,500		
3. Engineering and Construction				
Water Intake Gallery	\$ 55,800	\$55,800		
Water Storage Tank	\$ 6,000	\$ 6,000		
15% Contingency	\$ 69,725	\$69,725		
Total Cost	\$601,225	\$475,025	\$126,200	

D. Relationship to Energy/Mineral Impact: The statutory purpose to the Energy and Mineral Impact Assistance program is to provide financial assistance to “political subdivisions socially or economically impacted by the development processing or energy conversion of minerals and mineral fuels. This section of the application is intended to provide an opportunity for the applicant to describe its energy/mineral impacts, both direct and indirect, and the relationship of application to those impacts.

1. Explain how this project is directly or indirectly related to energy/mineral impacts, including whether it mitigates any adverse impacts. Somerset is directly impacted by the operations of the Oxbow mine. The main entry to the mine as well as the load out facility are located in the middle of Somerset. The town site was originally owned by the mining company but now the homes are privately owned. There are currently 54 homes occupied in

the town site. Over the past several years, Gunnison County has expended over two million dollars in rebuilding County Road 3, which provides access to the Marble area. During fiscal year 2001 \$425,000 was expended in this area because of the impact of the Yule Marble Quarry. The changes in shipping have created the need for semi-trucks to come into Marble from Highway 133 to pick up the product. Gunnison County is also a financial partner with the North Fork Coal working group in addressing the down stream railroad safety issues. This partnership requires the expenditure of funds to address this issue, which could be expended elsewhere if this problem did not exist. Gunnison County also has 1 and ¾ FTE's stationed full time in Somerset and 2 full time FTE's stationed in Marble who work for the Public Works Department and 1 full time FTE stationed in Somerset who works for the Sheriff's Department.

2. a. What energy/mineral impacts are being experienced by the applicant? As was stated in number one, the Oxbow mining operation is in the town site of Somerset.

b. What types and amounts of local funds and resources are being used by the applicant to address direct energy/mineral impacts? \$425,000 was expended in Sales Tax funds during 2001 in the rebuilding of County Road 3. Gunnison County also contributed \$75,000 in sales tax funds to the North Coal working group for railroad safety improvements in 2001 and 2002, and has budgeted an additional \$75,000 in sales tax funds for 2003. Gunnison County has also financially participated in assisting with the improvements to the water distribution system in Somerset. Gunnison County also operates the sewer system, which serves 22 homes in Somerset.

3. List energy/mineral activities (past, present and future) affecting the applicant. Be as specific as possible by listing company names, location, production levels employment levels, etc. Include not only production projects but also processing transmission.

Currently there are three. Oxbow mine operating in Somerset is currently producing approximately 4 million tons of coal per year which is shipped by rail. This facility is back to full production after experiencing two problems. A fire shut down the operation approximately a year and a half ago and they have had a methane problem shortly after. This facility currently employ's approximately 170. The West Elk mine had a fire in 2000 and also had a methane problem this year. They currently employ 350 and have a payroll of about \$25 million annually. While their production was down to about 25 to 35 percent of capacity during the methane problem, they are now back to about 75 to 80 percent of capacity since they did the boreholes. Although this current situation has been mitigated, they need to obtain the appropriate approvals from the Forest Service in order to drill the GOB boreholes in the next area to be mined. These holes need to be in place before the end of December in order to provide for a smooth transition with no loss of production. If the methane problem is controlled they will be back to full production. This facility is permitted for 8.5 million tons annually, but anticipate that their production will probably be in the 5.5 million-ton range for the foreseeable future. The Yule Marble Quarry has had a difficult history. Sierra Minerals took over the operation approximately two years ago. They are now in production and are expanding their markets. Although this facility does not employ a lot of people it is the only significant employer in the Marble area as well as being a significant tourist attraction because of its history.

4. Are energy/mineral companies that impact the applicant jurisdiction aware of and supportive of this request? Yes X No _____ Attach supporting documentation when appropriate.

E. OTHER PROJECT INFORMATION

1. Why is the project needed? Oxbow Mine is responsible for supplying the domestic water to the town site of Somerset. The system is currently out of compliance with State Health Department regulations. The water district is responsible for the distribution of the water. The Oxbow does not have the ability to pass the cost of improvements to the end users.
2. How were the cost estimates arrived at? Western Land & Water developed the cost estimates for the project. Have preliminary architectural/engineering studies been completed? Yes. What additional design work must still be completed? None.
3. a. Describe local commitment to the project, including local fees or regulations altered to ensure project success, local taxing efforts to address continuing development and maintenance needs, and local citizen support. Describe any in-kind contributions by type and value in support of this project. As discussed previously both Gunnison County and the Oxbow Mine are contributing hard dollars towards this project as well as in the case of Oxbow, significant staff time. Also the Oxbow has covered the cost of all the studies and engineering services to date. The hard dollar contribution by Oxbow does not include personnel expenses, land value, value of water or other existing system components. b. Was the cash value of the in-kind contributions calculated into the Project Budget? NO
4. What other funding alternatives have been explored? None. Between the Oxbow and West Elk mining operations a little over 1.4 million dollars were contributed to the Energy Impact Fund in 2002.
5. Has the applicant jurisdiction been subject to any refund under TABOR or statutory tax limitations? No. Has the applicant sought voter approval to keep revenues above fiscal spending limits? Yes. In 1996 the voters approved removing the TABOR limits on everything but property tax revenues. In 2000, the voters approved removing the TABOR limit on property taxes.
6. If applicant jurisdiction is classified as an enterprise under TABOR, will acceptance of a state grant affect this status? N/A
7. If the project is funded, what on-going operational obligations will be incurred? Oxbow will continue to have the responsibility to provide domestic water to the town site of Somerset. What is the applicant's plan for addressing these additional costs? N/A.
8. When do you expect the project to start? August or September of 2003. When will it be completed? October or November 2003.

9. Indicate below whether any of the proposed activities: Will be undertaken in flood hazard areas. List flood plain maps/studies reviewed in reaching this conclusion. Describe alternatives considered and mitigation proposed. N/A
- b. Will affect historical, archeological or cultural resources, or be undertaken in geological hazard area? No.
- c. Create or fail to address any other related public health or safety concerns. NO.

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To the best of my knowledge and belief, the statements and data in this application are true and correct.

Signature, Chief Elected Official
Fred Field
Chairperson, Board of County Commissioners