

AGENDA  
OURAY CITY COUNCIL

February 1, 2021

**VIRTUAL MEETING**

Join Zoom Meeting

<https://zoom.us/j/9349389230>

Meeting ID: 934 938 9230      Passcode: 491878  
Or dial:            408 638 0968      or    669 900 6833

**Regular Meeting 6pm**

- Changes to this agenda can be found on the bulletin board at City Hall
- Electronic copies of the Council Packet are available on the City website at [www.cityofouray.com](http://www.cityofouray.com). A hard copy of the Packet is also available at the Administrative Office for interested citizens.
- Action may be taken on any agenda item
- Notice is hereby given that a majority or quorum of the Planning Commission, Community Economic Development Committee, Beautification Committee, and/or Parks and Recreation Committee may be present at the above noticed City Council meeting to discuss any or all of the matters on the agenda below for Council consideration

**Regular Meeting 6pm**

1. CALL TO ORDER
2. ROLL CALL
3. CEREMONIAL/INFORMATIONAL – Ice Fest Recap
4. CITIZENS' COMMUNICATION
5. CITY COUNCIL REPORTS/INFORMATION  
    Glenn Boyd, Ethan Funk, Peggy Lindsey, John Wood, and Greg Nelson
6. DEPARTMENT REPORTS
  - a. City Administrator    **Page 2**
  - b. Police Chief           **Page 6**
  - c. Public Works Director   **Page 8**
  - d. City Resources Director   **Page 10**
7. CONSENT AGENDA  
    Liquor License Renewal – TAJ Company dba The Silver Eagle Saloon    **Page 11**
8. ACTION ITEM           **Page 12**  
    Heiland and Ouray Ditch Agreement    **Page 13**
9. DISCUSSION ITEM - Future Agenda Items
10. ADJOURNMENT

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## **City Administrator**

### **Report for February 1, 2021 City Council**

#### **January 18 – 29:**

The City is taking applications for the Hot Springs Pool Manager and Community Development Coordinator positions through today, February 1, 2021. Depending on applicant pool, interviews will begin very soon.

#### **Meetings Attended:**

Unified Command

COVID Recovery Working Group

Multi-Agency Coordination Group

City Council

Council Agenda Preparation Meeting

City Attorney

JVA (Waste Water Treatment Facility Bi-Weekly Project Meeting)

Joint Policy Group Work Session (Ouray; Ridgway; County of Ouray)

Leadership Team (Staff) Meeting

Box Canon Hot Springs Water Infrastructure Replacement Project with SGM

Backflow Prevention Meeting with Staff

Human Resources Meetings on Hot Springs Pool and Community Development Coordinator Positions

Ouray Tourism Advisory Committee (TAC) Meeting

## **Projects Updates:**

Update to Box Canon Geothermal Line Replacement Project per City Budget:

City staff met with SGM Engineering last week to review and receive a recommendation on the infrastructure repairs to increase flow and temperature of the geothermal water for the Hot Springs Pool. The amount of flow has decreased over time and this is a concern for maintaining the pool temperatures. There are two low spots in the geothermal line within the Box Canon that are believed to be causing an airlock and decrease flow volume. One area is along the stabilization walkway/railing and another where rocks and debris are sitting on the line due to sluffing along the hillside. The debris will need to be removed from the line and tied back into the rock for stabilization. While we were inspecting the geothermal water line with SGM, we opened the relief valve at the collection box to assist with removal of any buildup.

SGM is currently reviewing and updating the plans for the geothermal line replacement project. A recommendation will be presented in the near future. The recommendation will include improvements to both the current infrastructure within the canyon to decrease air buildup at the low spots in the line and replacement of a section of the non-insulated line. This will change the original scope of work due to the need to stay within the budget which only included replacement of the non-insulated line and not repairs to the existing line further in the canyon.

Pictures: Showing low spot in the line along the walkway and debris due to sluffing of the hillside in a separate area within Box Canon.



### **Back Flow Prevention Program:**

As the new City Administrator, I want to apologize to the public for the lack of information that was provided with the violation notice regarding backflow prevention. I have spent time this week learning about the historical backflow prevention program shortcomings and have begun planning efforts to get the City in compliance with the Colorado Department of Public Health and Environment (CDPHE). The lack of information provided to the public, and the violation in general, are both things I take very seriously.

I will provide a plan of action at the next Council meeting and am currently reviewing the historical documentation. This has proven difficult due to multiple employees working on this project that are no longer with the City.

Brief History (Based on my research so far; admittedly gaps may be present):

So far, it appears the first correspondence that was sent out to the community was in 2012 regarding the need for backflow prevention and cross connections. The next located correspondence to the community was upon adoption of Ordinance 1, Series 2018 - Backflow Prevention and Cross Connection. On February 11, 2019, the Building Inspector at the time, Mr. Dave Doherty, sent out a letter outlining the inspection process and requirements for backflow prevention. There is evidence that inspections did begin by Mr. Doherty. During these inspections, six locations were identified as not having the required backflow prevention device installed. The City was then without a Community Development Coordinator and there were multiple changes in the building inspector position. Mrs. Aja Tibbs was ultimately hired in 2020 and was made aware to begin working on the program. On November 11, 2020 the City provided the Backflow Prevention and Cross Contamination Annual Report to CDPHE. This report states the City has identified 72 properties that are believed to require a backflow prevention device. Out of those 72 properties, 70 properties had received a survey and 11 were identified as needing either to install a new backflow prevention device or provide the annual certification. Per CDPHE, all identified cross connections have to be rectified within 120 days. As reported, 5 of the 11 identified properties had become in compliance and 6 properties had not become in compliance within the 120 days. This non-compliance of the 6 properties is what triggered the mandatory form letter being sent out to all water customers. Based on our contacts to these properties, 4 of the 6 have installed a backflow

prevention device, 1 is still unknown if a device exists and 1 is currently working on installing a device.

Correspondence to Public after Form Letter (Should have been included with original letter):

To our community members as a follow-up to the backflow prevention violation form letter that was sent to all City of Ouray water users:

Please be aware there is no identified need to boil the City's municipal water or utilize alternative water sources at this time. There have been no changes to the City's municipal water supply or quality. Our water system is regulated and tested in accordance with the Colorado Department of Public Health and Environment (CDPHE). The City disinfects the water through chlorination to ensure safety from bacteria. The City has also not identified any contaminants entering our water supply and has not received any water quality violations.

The City has identified some private properties that are in need of backflow prevention devices to ensure the continued safety of our water supply. The City is working with these commercial, industrial, mixed-use and multi-family properties that need to install these devices to be in compliance with the Colorado Department of Public Health and Environment (CDPHE) and City Ordinance. Some identified locations are already in compliance. Proper reporting was however not conveyed to CDPHE within the 120 day requirement. This lack of reporting triggered the necessity for the form letter to be sent to our water customers. We apologize for the lack of clarity and information accompanying that letter. The City is working to ensure compliance with all CDPHE guidelines and the continued safety of our water.

The City of Ouray is committed to implementing this backflow prevention program to help ensure contaminants can never enter our municipal water system. This program began in 2018 and while there has been staff turnover and gaps in communication, the program is getting back on track. We hope the owners of the commercial, industrial, mixed-use and multi-family properties will assist the City staff by allowing inspections and coming into compliance with the backflow prevention guidelines. We are working to ensure the aforementioned violation letter will never have to be sent to our water customers again in the future by hiring a contractor to focus solely on this issue to bring us into compliance. Thank you for your understanding and support of the City of Ouray.

## **City of Ouray Police Department**

**January 2021**

For the month of January 2021 OUPD ran approximately 327 calls for service (as of 1/28)  
These included:

- **121 Patrol checks (includes safety patrols, directed patrols and security checks)**
- **58 Parking complaints; 15 other traffic related calls**
- **5 VIN certifications**
- **5 Alarms**
- **3 Medical Assists**
- **2 Code Violations**
- **1 arrest for Protective Order violation**

### **Upcoming Events:**

OUPD is has completed all of the mandatory training hours required by Colorado POST. We are well on our way to having completed the mandatory annual training in Community Policing, Anti-Bias and De-escalation. We completed training on the changes to City Ordinances recently enacted, and anticipate completing the yearly emergency driving course and firearms qualifications in the near future.

The Polaris UTV has been delivered to the dealership, we are waiting on the trailer to be delivered before we take possession of it. The 2008 Dodge Durango has been decommissioned as a police vehicle. It is currently in the process of having its equipment and police markings removed. Some of the emergency equipment will be reused in the new UTV. Once this is complete the Durango will be turned over to the city for use as service vehicle.

## **Ice Fest 2021 Critique**

Due to Covid-19 concerns this year's Ice Festival was sparsely attended in comparison to previous years. Action was taken by OIPI to limit the number of visitors to the competition by actively discouraging spectators, closing (with City Council authorization) that portion of the Ice Park used during the competition and by live streaming the event. These actions, combined with poor weather, resulted in few spectators.

Assuming a return to more normal conditions for the 2022 Ice Festival I would suggest the following recommendations:

- Parking is the biggest issue and the one that requires the greatest police response. That area known as the Lower Horseshoe provides the largest single parking area for the event. Overnight parking is not allowed in this area. I recommend that this area not be used for snow storage until after this event is over. This has been a relatively light snowfall year thus far, however the lot is at half of its summer capacity due to the amount of snow stored there. I would recommend that this snow be stored instead at that area known as the Upper Horseshoe lot.
- Recommend that CDOT be encouraged to keep the N/B portion of US 550 clear of snow at the shoulders. There is room for overflow parking along 550 for over a hundred yards south of the Lower Horseshoe where the shoulder is wide enough to allow ample room to park safely.
- Recommend that OIPI provide personnel to act as parking attendants in order to ensure that the limited parking space is used in a manner that maximizes the number of parking spots.
- Recommend that OIPI provide sufficient traffic cones (approx. 50) to allow for lane and corridor marking as well as cordoning off that area of 550 where the shoulder is too narrow to allow for safe parking.
- Recommend that OIPI provide a shuttle service between the Upper Horseshoe and the Lower Horseshoe to reduce the number of pedestrian spectators walking along or on 550. This shuttle should run regularly from both Horseshoe lots as well as to and from the Hot Springs parking lot if this is again used as a remote parking site.
- Recommend that OIPI provide reusable signage with parking instructions designed to direct traffic into designated parking areas and away from those areas closed to parking.
- Recommend that the City pursue permission from CDOT to have the area of US 550 between the Lower Horseshoe and Camp Bird Road used by pedestrians (and in the summer ATV/UTVs) well marked with signage and a crosswalk.
- Recommend a combined public information campaign designed to promote public awareness of the above recommendations well in advance of the 2022 Ice Festival

## **Public Works January 2021 Update**

### **Water**

- Water Usage Numbers for **December:**
  - Influent (Water from spring) – 22,404,704 Gallons
  - Effluent (Water to town) – 13,898,099 Gallons
  - Ice Park – 4,840,544 Gallons
  - Mineral Farms – 275,700 Gallons
- Two water turn off requests

### **Sewer**

- Continued effort to remove duckweed that grows on the surface of lagoon #2.
- Continue to skim the lagoons of debris as needed.
- Multiple vendor presentations regarding the selection of an MBBR (Moving Bed Biofilm Reactor).

### **Streets**

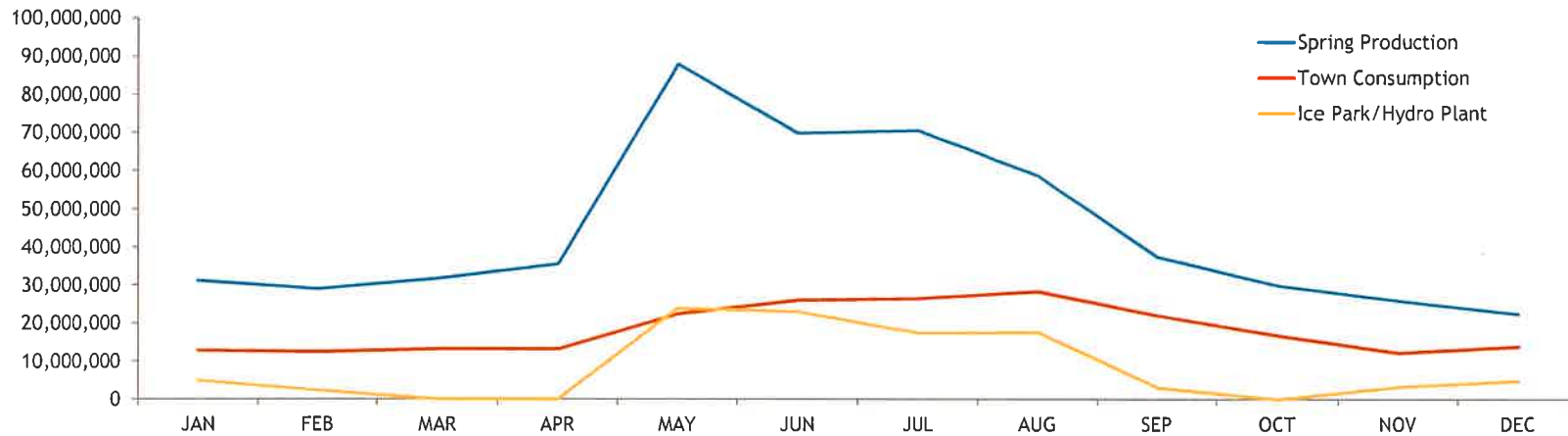
- Snow plowing operations, and snow removal on City streets.
- Early morning snow removal on HWY 550 parking spots (CDOT Right of Way) once in the month of January.
- Snow removal/widening of road on Fedel and Loretta Ct.

### **City Resources**

- Continued geothermal monitoring.
- Monthly water sampling for the Hot Springs Pool.
- Onsite meeting with SGM to discuss possible issues with the box canyon geothermal line closer to the source. There has been some sloughing off the hillside creating some concern about the stability of the water line. It has also created what looks like a low spot in the line. This can cause mineral deposits as well as air locking.
- All ductwork has been completed for the ventilation project upstairs at City Hall. The contractor is still waiting on the fresh air exchange unit to be delivered, once delivered they will install and the work at City Hall will be complete. Work is scheduled to begin at the Parks and Maintenance Building and the Public Works Shop the week of January 25<sup>th</sup>.
- Helped beautification remove decorations from the Christmas tree on Main St. Also, Public Works hauled the tree off to Rotary Park.



## 2020 Water Production/Usage



All numbers represent millions of gallons of water per month

REGION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL	%
Spring Production	31,153,244	28,986,752	31,715,585	35,556,544	87,947,200	69,837,696	70,576,320	58,732,840	37,511,168	29,881,472	25,926,528	22,404,704	530,230,053	
Town Consumption	12,869,300	12,482,300	13,183,398	13,227,900	22,408,299	26,042,810	26,470,387	28,347,761	22,058,621	16,776,080	12,240,720	13,898,099	220,005,675	
Ice Park/Hydro Plant	4,993,184	2,338,320	0	0	23,919,242	23,066,318	17,434,458	17,672,756	3,112,960	0	3,312,424	4,840,544	100,690,206	

## **City Resources Department**

February 1, 2021

- A Lead Lifeguard has been promoted into the position of Pool Deck Supervisor. The person previously in this position resigned due to issues finding housing. Orientation and training are in process.
- Positions recently open at the Hot Springs Pool include Customer Service Associate and Pool Manager.
- Three staff members from the Hot Springs Pool completed the coursework to obtain Aquatic Facility Operator certification. Congratulations to all three.
- Through regional cooperation with the Durango Aquatic Center the Pool Deck Supervisor and one Lead Lifeguard will be receiving training to become Red Cross certified Lifeguard trainers. This will make it possible for lifeguards to be trained and certified in Ouray. Typically these classes are held on the Eastern slope but are mostly suspended due to the pandemic. Lifeguard certification is an approximately 30 hour class with a blend of online, book study, and in water exercises. The support from Durango is appreciated.
- The heat exchangers that provide heat for the bathhouse and heat water for domestic use have been rebuilt. These must be rebuilt every few years because of corrosion and mineral build-up.
- One of the doors in the bathhouse, between the lobby and the pool deck, had broken and was unusable. It has been repaired.
- The Hot Springs Pool closed approximately an hour and a half early on January 22 because of problems with the drains in the locker rooms. The drains were serviced by Roto-Rooter the following morning and the pool was able to reopen by the usual time. Cleaning of this drain has been placed on a maintenance schedule for the future. There was also a problem with access to the network server that was corrected the same day.
- Even with minimal snow the past several weeks, Lee's Ski Hill has provided many hours of activity for skiers and snowboarders. Ski Hill operators have done their best to shovel snow and to mark rocks when there hasn't been enough snow to cover. New snowfall in the past week has improved conditions on the ski hill. People with sleds are being directed to Vinegar Hill. The ski hill is not a safe place for sledding.
- The annually required pressure test of the Community Center elevator has been completed. This was the final test required to obtain a Certificate of Operation from the State of Colorado. Otis Elevator has been asked to develop a three year plan for upgrading mechanical and electrical components of the elevator, which is nearly 40 years old. The elevator is inspected annually for safety. A third party source has been located for replacement parts, if needed, that are no longer available from the manufacturer.



**THE SILVER EAGLE SALOON**  
**PO BOX 191**  
**Ouray CO 81427**

Fees Due		
Renewal Fee		500.00
Storage Permit	\$100 X _____	\$
Sidewalk Service Area	\$75.00	\$
Additional Optional Premise Hotel & Restaurant	\$100 X _____	\$
Related Facility - Campus Liquor Complex	\$160.00 per facility	\$
Amount Due/Paid		\$

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

## Retail Liquor or Fermented Malt Beverage License Renewal Application

Please verify & update all information below

Return to city or county licensing authority by due date

Licensee Name <b>TABJ COMPANY</b>		Doing Business As Name (DBA) <b>THE SILVER EAGLE SALOON</b>		
Liquor License # <b>03-07850</b>	License Type Tavern (city)	Sales Tax License # <b>31917484</b>	Expiration Date <b>04/05/2021</b>	Due Date <b>02/19/2021</b>
Business Address <b>617 MAIN STREET Ouray CO 81427</b>				Phone Number <b>9703254161</b>
Mailing Address <b>PO BOX 191 Ouray CO 81427</b>			Email	
Operating Manager <b>Wishna Johnson</b>	Date of Birth	Home Address		
1. Do you have legal possession of the premises at the street address above? <input checked="" type="radio"/> Yes <input type="radio"/> No Are the premises owned or rented? Owned <input type="radio"/> Rented* <input checked="" type="radio"/> *If rented, expiration date of lease _____				
2. Are you renewing a storage permit, additional optional premises, sidewalk service area, or related facility? If yes, please see the table in upper right hand corner and include all fees due. Yes <input type="radio"/> No <input checked="" type="radio"/>				
3a. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? Yes <input type="radio"/> No <input checked="" type="radio"/>				
3b. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.? Yes <input type="radio"/> No <input checked="" type="radio"/>				
4. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. Yes <input type="radio"/> No <input checked="" type="radio"/>				
5. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. Yes <input type="radio"/> No <input checked="" type="radio"/>				
6. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. Yes <input type="radio"/> No <input checked="" type="radio"/>				
7. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. Yes <input type="radio"/> No <input checked="" type="radio"/>				



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## ACTION ITEMS (February 1, 2021):

### a. Heiland and Ouray Ditch Agreement

**Action Requested** – *Will City Council approve the City of Ouray water lease agreement with the Heiland Ditch Company and Ouray Ditch Company?*

**Background** – The City of Ouray has historically leased our water rights in the Red Mountain Ditch to the Hieland Ditch Company and Ouray Ditch Company for irrigation purposes. The last lease expired in 2017, however the ditch companies have continued to use the water right according to past agreements. The term of this lease is for five calendar years commencing January 1, 2018 to December 31, 2023. The City Attorney, Ms. Carol Viner, will verbally provide additional information during the Council meeting.

**Recommendation** – Staff recommends approval

## **WATER LEASE HIELAND AND OURAY DITCHES**

This **Lease** is entered effective January 1, 2018, between the City of Ouray, Colorado, a home rule city (**City or Lessor**); and the Hieland Ditch Company, a Colorado not-for-profit corporation, with a principal address at 3410 Williams Drive Suite 420-139, Montrose, Colorado, 81401, and the Ouray Ditch Company, 20965 Hwy 550, Montrose, CO 81403, (**Lessees**). The Lessor and Lessees may be referred to as the Parties.

**WHEREAS**, the Lessor owns all of the water rights in the Red Mountain Ditch, Decreed in Case No. 1751-B, Water Division 7, for 6.0 c.f.s. of the water from Mineral Creek, tributary to the Rio Las Animas River (**Water Rights**)

**WHEREAS**, Lessor has leased and wants to continue to lease all of Water Rights to irrigate the lands historically served with irrigation water from the Red Mountain Ditch and other lands served by the Hieland and Ouray Ditches, in Ouray and Montrose Counties subject to the terms and conditions of this Lease; and

**WHEREAS**, Lessees desire to lease all of the Water Rights to irrigate the land historically served with irrigation water from Red Mountain Ditch and other lands served by the Hieland and Ouray Ditches, in Ouray and Montrose Counties, subject to the terms and conditions of this Lease.

**NOW THEREFORE**, in consideration of the foregoing recitals, the mutual promises contained herein, and the payments to be made hereunder, the Parties agree as follows:

### **1. Lease of Water Right.**

- a. The Lessor hereby lease to the Lessees the Water Rights. Any water delivered into the Uncompahgre River pursuant to the Water Rights will be diverted by Lessees into the Hieland Ditch or the Ouray Ditch and used on lands historically irrigated with water from the Red Mountain Ditch, as described in Exhibit A. The quantity leased will be the amount of the Water Rights delivered by the Red Mountain Ditch in priority, except as provided for in this paragraph. Lessor may cease or curtail supply of the Water Rights, when required to act in compliance with any decisions and actions of the Water Commissioner and will provide Lessees advance notice of potential and actual curtailment or cessation and an end of the curtailment or cessation.
- b. If there is sufficient water to irrigate other lands, such lands belonging to members of the Hieland and Ouray Ditch Companies may be irrigated. Failure by the Lessees to use the Water Rights as required by this paragraph will be grounds for termination of the Lease by the Lessor.

2. **Ownership of Water Rights.** The Parties expressly acknowledge that the Water Rights are not jointly owned by the Lessor. Any termination of this Lease under paragraphs 10 and 11 by one Lessor only would result in the reduction of the amount of the Water Rights available to Lessees under this Lease.
3. **Repair of Ditch.** The Parties expressly acknowledge that the City, as the holder of the ditch bill easement for Red Mountain Ditch, will be making repairs to the Red Mountain Ditch, in order to divert the Water Rights. Any delay or failure by the City to make such repairs or perform maintenance shall not constitute a default of this Lease.
4. **Term of Lease.** The Lease is for a term of five (5) calendar years commencing January 1, 2018, and terminating on December 31, 2023. If Lessees want to renew the Lease beyond its original term, then on or before October 1 of the last year of the current lease term, Lessees shall give the Lessor written notice of its desire to renew the Lease, and the term of the desired renewal. The Lessor shall have sixty (60) days after receipt of the Lessees' notice of its desire to renew the Lease to advise the Lessees, in writing, whether the Lessor will renew the Lease, and if so, the terms of the renewed lease.
5. **Payment.** Lessees have paid to the City the full five-year lease payment of \$500.00.
6. **Accounting Responsibilities.** The Lessor shall notify Lessees when water is physically being delivered into the Uncompahgre River for use under this Lease. Lessees shall report the amount of water used to the Water Commissioner, if required by the Water Commissioner in such form and at such times as required by the Water Commissioner. Lessees shall report the amount of water used to the Lessor on or before the first day of each month, beginning on the first day of the month after water is diverted into the Uncompahgre River, without a request from Lessor. Lessees' reports shall include the amount of water used, the number of acres irrigated, the location of the property where the water was used, the crops grown, the date irrigation commences and the date irrigation ceases as well as any other matters as requested by the Lessor in connection with the use of the Water Rights. Reports due to Lessor shall be sent pursuant to the addresses provided in paragraph 28.
7. **Change of Water Rights.** During the term of this Lease, the Lessor, jointly or individually, in their sole discretion, may adjudicate a change of water rights application that includes the Water Rights.

8. **Title to Water Rights.** Nothing in this Lease is to be interpreted as giving the Lessees any legal or equitable title in or to the Water Rights.
9. **Pledge or Encumbrance.** Lessees shall not pledge or otherwise encumber this Lease or the Water Rights for any purpose including, without limitation, securing debt, augmenting past, present or future well depletions or repaying obligations to any ditch company or water conservancy district.
10. **Lessees' Obligations.** Lessees are jointly and severally liable for all obligations imposed on them by this Lease.
11. **Termination.**
- a. Any party may terminate, for any reason and without providing a notice of default and opportunity to cure as provided for in Paragraph 11 below, this Lease as it relates to that party upon sixty (60) days written notice to the other parties.
  - b. Notice of termination shall be in writing. The termination of this Lease shall not release Lessees from any obligations or liabilities incurred pursuant to the terms of this Lease. Lessees hereby agree, following the termination of this Lease, to execute any documentation requested by the Lessor for the purposes of documenting such termination and to consent to the recording of such documentation in the real property records for the historically irrigated land.
12. **Default, Right to Cure.** In the event that any party believes that the other is in default of any obligation under this Lease, the non-defaulting party, at its sole election, shall promptly give written notice of the default to the defaulting party. If a notice of default is provided, the party accused of the default shall either cure it or provide a written statement explaining why it is not in default. If the alleged default is not cured or otherwise resolved within thirty (30) days, the Parties may resort to their remedies.
13. **Default by Lessees.** The occurrence of anyone or more of the following events shall constitute a default and breach of this Lease by Lessees.
- a. The failure by Lessees to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessees.
  - b. The failure by Lessees to use the water as provided to irrigate the land historically irrigated by the Red Mountain Ditch, in which case the Lessor

may withhold and cease delivery of the Leased Water or terminate the Lease, or both.

- c. The failure by Lessees to timely make payment as required under the Lease.
- d. The failure by Lessees to make such reports and accounting as required, in which case the Lessor may retain a consultant to complete the required accounting and Lessees shall be responsible for the costs of such accounting including fees payable to such consultant for completion of such accounting.

**14. Remedies.**

- a. In the event that either party defaults in the performance of any of its obligations under this Lease, each party shall have all remedies provided in this Lease or by law or equity, but neither party shall have the right of specific performance against the other.
- b. The remedies listed above are not the Lessor' exclusive remedies but are in addition to any other rights or remedies which the Lessor may have by reason of such default or breach. If the Lessor terminates the Lease it shall be permitted to use the Water Rights or to re-lease the Water Rights to other water users.

**15. Assignment.** This Lease may be not assigned by Lessees.

**16. Amendment.** This Lease may be modified, amended, changed or terminated in whole or in any part only by an agreement in writing duly authorized and executed by the Parties.

**17. Waiver.** Failure of either party to exercise any right hereunder shall not be deemed a waiver of such party's right and shall not affect the right of such party to exercise, at some future time, such right or rights or any other right it may have hereunder. No waiver of any of the provisions of this Lease shall be deemed or shall constitute a waiver of any other provision, whether similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**18. Entire Agreement, Modification.** This Lease constitutes the entire agreement between the Parties pertaining to the subject matter described in it and supersedes any and all prior contemporaneous agreements, both written and oral, representations, and understandings between the Parties. Unless otherwise provided for in this Lease, no supplement, modification, or amendment of this Lease shall be binding unless executed in writing by all Parties.



19. **Headings for Convenience Only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Lease.
20. **Non-Severability.** Each section in this Lease is intertwined with the others and are not severable unless by mutual written agreement of the Lessor and Lessees.
21. **Governing Law and Venue.** This Lease and its application shall be construed in accordance with the laws of the State of Colorado. The Parties agree that venue for any litigated disputes regarding this Lease shall be the Water Court or, if the matter in dispute is not a water matter as defined by statute, the Ouray County District Court.
22. **Effect of Invalidity.** If any provision or portion of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable for any reason by a Court of competent jurisdiction, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.
23. **Binding Effect.** This Lease and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns, if any.
24. **Multiple Originals.** This Lease may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same Lease.
25. **No Fees and Expenses and Apportionment.** Except as otherwise expressly set forth in this Lease, each of the Parties hereto will bear its own expenses in connection with the transactions contemplated by this Lease.
26. **Joint Draft.** The Parties agree they drafted this Lease jointly with each having available the advice of legal counsel and an equal opportunity to contribute to its content.
27. **No Third-Party Beneficiaries.** This Lease is intended to describe the rights and responsibilities of and between the Parties hereto and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto, nor to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of either party or any other governmental entity not a party hereto.

28. **Notice.** All notices to be given with respect to this Lease shall be in writing. Each notice shall be sent by United States mail, first class postage prepaid, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. Nothing herein shall be construed to preclude personal service of any notice in the manner prescribed for personal services of a summons or other legal process. All notices required to be given to the Lessor hereunder shall be delivered to:

City of Ouray  
P.O. Box 468  
Ouray, Colorado 81427

or at such other address as the Lessor may direct in accordance with this paragraph.

All notices required to be given to Lessees hereunder shall be delivered to

Ouray Ditch Company c/o Doug Flowers  
20965 Hwy 550  
Montrose CO 81403

Hieland Ditch Company c/o Joe Kellerher  
3410 Williams Drive Suite 420-139  
Montrose, Colorado, 81401

or at such other address as Lessees may direct in accordance with this paragraph.


29. **Calculation of Time Periods.** In computing any period prescribed or allowed by this agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Thereafter, every day shall be counted, including holidays, Saturdays or Sundays. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. The "next day" is determined by continuing to count forward when the period is measured after an event and

backward when measured before an event. As used herein, "legal holiday" means any day except Saturday or Sunday when the courts of Colorado are scheduled to be closed.

30. **Attorney Fees and Costs.** In the event of any litigation, mediation, arbitration or other dispute resolution proceedings arising out of or related to this Lease, each party agrees to be responsible for its own attorney's fees and other professional fees, costs and expenses associated with any such proceedings.
31. **No Rights Conferred.** Except as otherwise provided in this Lease, the Parties acknowledge that all water leased hereunder is intended for the present and future use of the Lessor. It is further understood and agreed to by the Parties that this Lease shall confer no rights other than expressed herein upon Lessees.
32. **Right to Enter into Lease.** Each party hereby warrants and represents that it has the full right and lawful authority to enter this Lease.

[Signatures on next page]

IN WITNESS WHEREOF, the Lessor and Lessees have executed this Water Lease on their respective behalf and by their proper officers.

Lessor: City of Ouray:	Lessee: Ouray Ditch Company:
   _____ Date _____ Mayor	   _____ Date <u>1-28-2</u> Doug Flowers President, Ouray Ditch Company
Attest   _____ Date _____ City Clerk	Lessee: Heiland Ditch Company   _____ Date _____ Joe Kellerher President, Hieland Ditch Company