

What the water agreements mean for Homestake

Two deals. Who benefits. Who can still say no.

Whitney is not a done deal.

The agreements trade water benefits for cooperation. They help explain why some West Slope institutions work with the cities, and why protecting Homestake still depends on the decisions ahead.

The cities gained allies

Aurora and Colorado Springs secured cooperation for covered water development. Some local water providers received supply opportunities in return.

Some signers limited their opposition

Depending on the agreement, a signer may have to support an application or refrain from trying to block a covered project.

Whitney still needs approval

A promise between water users is not permission to build a reservoir. Permit authorities must apply the laws and standards governing their decisions.

The two agreements

MOU means Memorandum of Understanding.

1998: A deal to develop more water

Aurora, Colorado Springs and West Slope partners agreed to work toward a joint water project, with supplies for both sides.

2018: A deal to settle a water lawsuit

Aurora accepted water-release and operating commitments. West Slope parties accepted limits on opposition to specified projects and water-right changes.

The 2018 settlement generally leaves the earlier agreements in place.

Quick guide: pages 1-4. The detailed legal reference follows, with the full terms, signers, quantities and source links.

Sources: [1] 1998 Eagle River Memorandum of Understanding; [2] 2018 Busk-Ivanhoe agreement in Aurora's CWCB exhibits

2. Why did West Slope groups agree?

They had water needs and negotiating power of their own. The bargains offered local supplies, river releases and operating protections in exchange for cooperation.

1998: water for local needs

West Slope partners gained opportunities for dependable dry-year supply, purchase options and a Homestake water exchange. The cities gained a cooperative path toward additional supply.

2018: benefits from settling a dispute

After West Slope parties won a 2016 Supreme Court ruling sending Aurora's Busk-Ivanhoe case back for reconsideration, the settlement secured water and operating commitments while limiting further conflict.

What it means: Save Homestake's concern is where the cost falls: benefits elsewhere leave the valley's own water, wetlands and fens at stake.

Where does the promised water go?

The location matters as much as the amount. These benefits serve different rivers.

Homestake Creek · 1998

An exchange provides annual Homestake releases in return for replacement water for the cities.

Roaring Fork River · 2018

Aurora agrees to let water stay in, or release it into, this separate watershed. That water does not flow back into Homestake Creek.

Colorado River · Shoshone power plant · 2018

Aurora makes commitments about when it takes water upstream to help preserve Shoshone flows. Its promises cover its own interests; they cannot bind Colorado Springs' half of Homestake or Climax's separate interests.

Water released elsewhere cannot replace a fen flooded by a reservoir or put water back into a source creek upstream.

Sources: [1] 1998 Eagle River Memorandum of Understanding; [2] 2018 Busk-Ivanhoe agreement in Aurora's CWCB exhibits; [7] Grand Valley Water Users Association v. Busk-Ivanhoe, 2016 CO 75

3. What did the 1998 signers promise?

For the project covered by the MOU, support means practical help: pursuing permits together, providing favorable testimony and writing support letters.

Even without investing

A party that declines to fund a later phase must still support applications that fit the agreement.

The promise has consequences

The MOU's West Slope partnership can lose the Homestake exchange and promises giving some of its water rights priority if it fails its support duties.

What it means: This helps explain institutional support for covered development. The promise is tied to the MOU's project and agreed substitutes.

4. What did the 2018 signers promise?

The seven West Slope parties accepted several limits on how they could oppose Aurora's plans. The exact promise depends on the project.

Wild Horse and Box Creek

They agreed not to try to stop either reservoir entirely. Their permitting comments are limited to direct water-related impacts on the West Slope, with early notice and efforts to resolve concerns.

Homestake diversion points

They agreed not to oppose the need for specified changes to where water is taken under the identified cases and existing conditional rights. The clause also restricts actions that impede the necessary authorizations.

Eagle County's permit decisions

When a signer is the permitting authority for an identified project, paragraph 11.3 exempts it from paragraph 11 for that project.

What it means: These are meaningful limits on the signers. The agreement preserves a separate role for authorities deciding project permits.

Sources: [1] 1998 Eagle River Memorandum of Understanding; [2] 2018 Busk-Ivanhoe agreement in Aurora's CWCB exhibits

5. Who can still say no?

The permit authorities still have decisions to make. People and organizations that did not sign retain their own voice in the relevant proceedings.

Eagle County

The County did not sign the 1998 MOU. It signed the 2018 settlement, which protects its permitting role for projects it has authority to permit. Its local review is often called “1041 review.”

Federal and state agencies

The Forest Service, Army Corps and relevant state agencies did not sign either deal. Their decisions about public land, water quality and other approvals follow the laws that apply to them.

The public

Residents, Save Homestake and Tribal governments are not signers. Living in the watershed does not make you bound by these agreements.

What it means: A permit denial can stop a proposed project. In 1994, a court upheld Eagle County’s denial of the earlier Homestake II proposal on supported environmental grounds.

6. Who signed which agreement?

Aurora and the Colorado River Water Conservation District signed both. Colorado Springs signed only the 1998 MOU. Eagle County signed only the 2018 settlement.

A water district and a county government are separate organizations. One’s signature does not bind the other.

What the legal words mean

An acre-foot is a volume of water. A conditional water right keeps a future water-use claim alive while its requirements are met. A construction permit is a separate approval.

The detailed reference follows. On the website, open the details below each plain-language explanation to read the relevant clauses.

Sources: [1] 1998 Eagle River Memorandum of Understanding; [2] 2018 Busk-Ivanhoe agreement in Aurora's CWCB exhibits; [5] Colorado Springs v. Eagle County, 895 P.2d 1105 (Colo. App. 1994)

Two agreements, different purposes

The 1998 Eagle River Memorandum of Understanding, effective April 21, 1998, creates a framework for a joint water project in the Upper Eagle basin. It combines proposed West Slope supplies, additional city supplies, exchanges, shared development and limits on remaining conditional rights. Its text describes a contract and provides consequences for certain breaches.

The 2018 Busk-Ivanhoe settlement grew from litigation over Aurora's water from the Fryingpan headwaters, in the Roaring Fork basin. That is a different collection system from Homestake in the Eagle basin. The settlement reaches across systems: it also addresses Homestake diversion-point changes, Wild Horse and Box Creek reservoirs, Shoshone flows and the maintenance of conditional water rights.

The 2018 agreement generally preserves existing agreements unless it expressly changes them (paragraph 15.19). Aurora and the River District signed both. Eagle County signed only the 2018 settlement. Water rights, contractual promises and construction permits remain three different legal questions.

Legal instrument	What it decides
Water right and decree	The legal terms for using water. A conditional right preserves an unfinished appropriation subject to its requirements.
Agreement between parties	What the signatories promise one another: supply arrangements, cooperation, support and limits on opposition.
Project approvals	Whether the proposed facilities and operations satisfy the laws and standards governing each approval.

Sources: [1] 1998 MOU - II; V; XI-XII; printed pp. 1, 10-13, 19-20; [2] 2018 settlement - 2-3; 11; 15.19; 30-37; printed pp. 3-7, 14, 24-36; [5] County denial decision - see source list; [6] Diligence decision - see source list

Who signed?

Fourteen named entities appear across the two agreements. Aurora and the River District signed both. The table uses the legal names in the original instruments; successor and assignment provisions also matter.

Named entity	Role	1998	2018
City of Aurora	Front Range city	Yes	Yes, through its Utility Enterprise
Colorado River Water Conservation District	Regional West Slope water agency	Yes	Yes
City of Colorado Springs	Front Range city; its utility is CSU	Yes	No
Climax Molybdenum Company	Mining company	Yes	No
Eagle River Water and Sanitation District	Local water provider (ERWSD)	Yes	No
Upper Eagle Regional Water Authority	Local water authority (UERWA)	Yes	No
Vail Associates, Inc.	Ski-area company named in 1998	Yes	No
Busk Ivanhoe, Inc.	Aurora-owned ditch company	No	Yes
Basalt Water Conservancy District	West Slope water district	No	Yes
Board of County Commissioners of Eagle County	County government	No	Yes
Board of County Commissioners of Pitkin County	County government	No	Yes
Grand Valley Water Users Association	Irrigation organization	No	Yes
Orchard Mesa Irrigation District	Irrigation district	No	Yes
Ute Water Conservancy District	West Slope water supplier; not a Tribal government	No	Yes, through its Water Activity Enterprise

What the group names mean

In 1998, Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority and Vail Associates form the Vail Consortium. That consortium plus the River District is called the Reservoir Company. These are group labels, not additional signatories.

In 2018, the seven West Slope Parties are the River District, Basalt, Eagle County, Pitkin County, Grand Valley Water Users, Orchard Mesa and Ute. Their duties are not identical to Aurora's or Busk Ivanhoe's.

Water district is not county or Tribal government

The River District and local water districts are separate entities from Eagle County. Ute Water Conservancy District is not a Tribal government; its signature is not Tribal consent. No Tribal government is listed in either agreement. Aurora and Ute signed the 2018 agreement through their named utility enterprises.

Sources: [1] 1998 MOU - Introduction; I; signature counterparts; printed pp. 1, 20-21; [2] 2018 settlement - Introduction and defined parties; printed p. 1

1998: what support actually requires

Support can mean actively helping an application succeed. The MOU links permit cooperation to the project it describes and to substitute configurations the parties subsequently agree upon. A party can decline to invest in a later phase while retaining duties to support an application consistent with the MOU.

Who	Commitment	Scope and limits
Participating 1998 parties	Cooperate and diligently pursue covered later-phase permits as co-applicants.	Federal, state and Eagle County approvals identified in V.B; agreed substitutions are included.
A 1998 party declining a later phase	Provide favorable testimony and support letters for MOU-consistent applications.	V.B.6 preserves support without requiring a financial contribution.
Aurora and Colorado Springs	Do not oppose Phase 1 land-use applications.	V.A is narrower than a promise to support every future application.
All 1998 parties	Withdraw or refrain from specified water-case opposition.	VIII.A lists the cases and conditions; the River District retains specified technical participation.

Which permits?

The listed later-phase approvals include an Army Corps Section 404 permit for covered dredge or fill, a Forest Service special-use permit with endangered-species consultation, state Section 401 water-quality certification, State Engineer design approvals, and an Eagle County land-use permit.

Why the promise has weight

If the Reservoir Company fails its support duties, the cities can be released from specified priority concessions and the Homestake exchange. A contested failure goes to Denver District Court. This gives the bargain consequences without turning support into a regulatory approval.

Sources: [1] 1998 MOU - III.D.4; V.A-B.7; VIII.A; printed pp. 6-7, 10-15

2018: a separate set of commitments

The settlement mixes limits on opposition with some affirmative support duties. The seven defined West Slope Parties are bound by paragraphs 11.1 and 11.2; other provisions identify different participants.

Who	Commitment	Scope and limits
2018 West Slope Parties	Observe restrictions concerning Wild Horse and Box Creek, identified diversion-point changes, tunnel work and a Ruedi contract.	11.1-11.3 contain different scopes, preserved comments and a permitting-authority exception.
Basalt Water Conservancy District	Provide written support for Box Creek when requested.	29 is an express support commitment tied to the settlement's storage arrangements.
All nine 2018 parties	Provide nonmonetary support/non-opposition for specified storage exchanges; refrain from specified diligence opposition.	24 covers defined Basalt/Aurora exchanges. 37 covers listed diligence matters, with express exceptions.

Wild Horse and Box Creek

Paragraph 11.1 says participating West Slope parties will not seek to prevent either project entirely. Their comments are limited to water-related impacts caused directly on the West Slope, with early notice and good-faith efforts to resolve concerns.

Homestake diversion-point changes

Paragraph 11.2 restricts opposition to the need for changes in diversion points under the identified cases and existing Homestake conditional rights. Its definition of non-opposition reaches actions impeding necessary authorizations, including 1041 approvals, and includes a repair/replacement qualification tied to existing decreed rights. Fair comments and Water Court participation remain subject to the agreement.

Keeping conditional rights alive

Paragraph 37's diligence restriction lasts 15 years from its defined Initiation Date, not simply from a signature date. It excludes claims to make rights absolute and preserves certain existing opposers' participation in cases identified as pending.

Sources: [2] 2018 settlement - 3.1; 11.1-11.3; 24; 29; 36-37; printed pp. 4, 7, 21, 24, 30-36

What participants receive in return

These are reciprocal bargains. They exchange supply opportunities, operating commitments and legal cooperation. These supply opportunities carry the purchase terms, availability limits and operating conditions specified in each agreement.

Agreement	Benefits and corresponding commitments
1998: West Slope Reservoir Company	Opportunity for up to 10,000 AF of firm dry-year yield; specified priority concessions; purchase options; and Homestake releases exchanged for replacement supplies.
1998: cities	A cooperative route toward additional supply and permit support, within the MOU's yield framework and conditions.
1998: Climax	Conditional storage of up to 3,000 AF and cooperation on specified water-right cases.
1998: limits on later development	After full city-project development, remaining Eagle River conditional rights must be dedicated as specified, with no further city diversions or out-of-basin transfers under those remaining rights.
2018: Aurora/Busk Ivanhoe	Settlement toward an agreed Busk-Ivanhoe decree and regional cooperation; Aurora also accepts operating and water-delivery obligations.
2018: West Slope interests	Conditional Roaring Fork releases/bypasses, Basalt storage arrangements, Shoshone-related protections and reciprocal protection of listed conditional rights.

The water amounts, separated by place

Homestake Creek, 1998: 500 acre-feet of annual releases are exchanged for at least 800 acre-feet of replacement supplies for the cities, subject to the MOU’s terms.

Roaring Fork River, 2018: the general annual commitment is 900 acre-feet, subject to drought, available yield and operating conditions. A separate additional 100 acre-feet is conditional.

Shoshone, 2018: Aurora’s operating commitments concern its own interests and include exceptions. The agreement expressly leaves Colorado Springs’ half of Homestake and Climax’s separate interests outside Aurora’s promise.

Why a West Slope institution might agree

Local providers had supply interests of their own. In 2016, West Slope parties also won a Supreme Court ruling requiring reconsideration of Aurora's Busk-Ivanhoe change case. The later settlement exchanged litigation leverage for specified water and operating commitments. Institutional support should be read alongside these obligations and benefits.

Save Homestake's concern is where the costs fall. Regional supply and river benefits matter, while releases in another watershed do not maintain Homestake's source flows or replace its fens.

Sources: [1] 1998 MOU - IV; VIII.A-B; VIII.D Excess Water Rights; printed pp. 7-10, 14-19; [2] 2018 settlement - 3; 18-19; 23-29; 31-37; printed pp. 4, 15-24, 25-36; [7] Busk-Ivanhoe decision - see source list

Who still decides, and who is not a party?

Eagle County did not sign the 1998 MOU. The applicants agreed to seek certain County concessions; that is not an agreement by the County to grant them. Eagle County did sign the 2018 settlement, with an express protection for its permitting role.

Paragraph 11.3 exempts a party that is a permitting authority for an identified project from paragraph 11 for that project. The exemption turns on whether Eagle County is a permitting authority for that identified project; it does not automatically cover every project on which the County comments.

The U.S. Forest Service, Army Corps, U.S. Fish and Wildlife Service, Colorado State Engineer, Colorado Water Conservation Board and Colorado Department of Public Health and Environment are not listed parties to either agreement. Neither are Tribal governments, Save Homestake or the public. Their roles arise from applicable law, not from signatures on these two agreements.

Decision or role	Responsible body
Local land-use and 1041 review	Eagle County, within its jurisdiction and applicable standards.
Use of National Forest land	U.S. Forest Service, under the applicable authorization and land-management rules.
Covered dredge/fill and water quality	Army Corps and Colorado agencies, within their respective jurisdictions.
Species consultation	U.S. Fish and Wildlife Service works with the federal action agency under applicable species law.
Water-right terms and administration	Water Court determines rights and decree terms; State and Division Engineers administer them.
Public participation	People and organizations participate under the rules of the relevant proceeding.

A permit denial can matter

In 1994, the Colorado Court of Appeals upheld Eagle County's Homestake II permit denial on supported wetland-mitigation and construction-impact grounds. The cities' water rights did not entitle them to build that particular project. The decision preserved the possibility of alternative proposals.

Conditional rights can survive and support another proposal. The 1987 Homestake diligence decision recognized work on an integrated system, including rights associated with Whitney and Peterson. Protecting a place from one project and permanently resolving all remaining rights are different outcomes.

Public participation remains independent

Being a watershed resident does not make someone a party to either agreement. The 2018 agreement excludes third-party beneficiaries and restricts signatories from encouraging others to undermine covered interests. These provisions concern different questions: public participation, contract enforcement, and a signatory's own conduct.

Sources: [1] 1998 MOU - I; V.B.3; printed pp. 1, 11-12; [2] 2018 settlement - Introduction; 10-11.3; 15.15; 35.2; printed pp. 1, 6-7, 11, 29; [5] County denial decision - see source list; [6] Diligence decision - see source list; [8] Forest Service rules - see source list; [9] Dredge/fill rules - see source list

Storage, annual yield and existing exports are different

Figure	Meaning
6,850-20,000 AF	Reservoir storage alternatives described in CSU's March 2022 fact sheet; not an annual Whitney withdrawal figure.
20,000 AF on a 25-year rolling average	The MOU's city-yield framework for additional development; not a fixed annual delivery or a maximum in every individual year.
Up to approximately 3,500 AF additional	A possible increment described in the 2024 application resume, subject to the MOU's conditions; not automatic.
Up to 10,000 AF firm dry-year yield	The Reservoir Company's different supply metric; not another storage figure.
Existing Homestake exports	Existing-system water, distinct from the additional conditional-development objective.

Read the figures together

The MOU conditions extra city yield on a declined West Slope allocation and one-for-one replacement releases. Equal volumes released elsewhere do not necessarily replace source-creek habitat. The 2024 court resume describes several overlapping limits, but it is an application summary, not the executed decree. Neither the MOU's headline quantities nor the cited fact sheet assign a specific annual take to each of Fall, Peterson and Resolution creeks.

Sources: [1] 1998 MOU - IV.A-C.3.d; printed pp. 7-10; [3] CSU fact sheet - printed pp. 1-2; [4] 2024 application resume - 24CW3092, 3.4.8; printed p. 23

A few terms that prevent confusion

Term	Meaning
AF	Acre-foot: a unit of water volume. Storage measures capacity; annual yield measures supply over time.
Conditional water right	A right for an appropriation not yet completed to beneficial use. Maintaining it is different from receiving a construction permit.
Diligence	A Water Court determination concerning progress toward completing a conditional appropriation. It does not itself approve a dam.
1041 review	County review of designated activities or areas of state interest under Colorado law.
CSU	Colorado Springs Utilities in this guide.

Protect Homestake

Save Homestake opposes Whitney Reservoir and new or expanded interbasin diversions from Homestake Valley. Agreements among water providers leave the project subject to the approvals and protections that apply. The landscape, its connected waters and the consequences of development belong in those decisions.

Read the source documents

This guide explains the two agreements and the cited decisions. Complete contract terms, applicable amendments and controlling court orders govern particular disputes.

1. 1998 Eagle River Memorandum of Understanding

Original signed-counterpart scan. References use printed pages; the final signature page is printed page 21, PDF page 25.

2. 2018 Busk-Ivanhoe agreement in Aurora's CWCB exhibits

Agreement filed August 3, 2018 in 09CW142. Agreement printed page 1 begins on PDF page 6; add five to other printed page references.

3. CSU Eagle River Joint Use Water Project fact sheet, March 2022

Project supply objective, potential source creeks and reservoir-capacity alternatives.

4. June 2024 Water Division 5 application resume

Case 24CW3092, section 3.4.8, printed/PDF page 23. Applicants' summary of water-right conditions, not a substitute for the executed decree.

5. Colorado Springs v. Eagle County, 895 P.2d 1105 (Colo. App. 1994)

Pages 1110-1116: County denial, water rights and alternative proposals.

6. Vail Valley Consolidated Water District v. Aurora, 731 P.2d 665 (Colo. 1987)

Pages 668-672: integrated-system diligence and Homestake conditional rights.

7. Grand Valley Water Users Association v. Busk-Ivanhoe, 2016 CO 75

2016 reversal and remand addressing quantification of Aurora-owned Busk-Ivanhoe rights.

8. 36 CFR 251.54: Forest Service special-use proposals and applications

Proposal screening, application review and authorization decisions.

9. 40 CFR 230.10: restrictions on dredge/fill discharges

Covered discharge review, alternatives, significant degradation and minimization.

Public guide dated October 9, 2026. Read and share the web edition at savehomestake.com/documents/water-agreements/.