

RESOLUTION NO. 1590

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING AN AGREEMENT WITH CLIMAX
MOLYBDENUM COMPANY TO LEASE UP TO 200 ACRE-FEET
OF WATER**


WHEREAS, Climax is the owner of certain water rights that are the subject of the decrees in Case Nos. 92CW233 and 92CW336, Water Division No. 5 for the State of Colorado (hereinafter referred to as the "Subject Water Rights") that it is willing to lease during all or a portion of 2005, and;

WHEREAS, City anticipates a need for additional water supplies for beneficial use during all or a portion of 2005.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

City Council hereby approves the agreement with Climax Molybdenum Company in essentially the same form as the copy of such agreement accompanying this resolution and authorizes the Mayor to sign.

Adopted this 8th day of September, 2005.




Charles J. Baroch
Mayor

ATTEST:



Susan M. Brooks, MMC
City Clerk

Approved as to form:



James A. Lindholz
City Attorney

AGREEMENT FOR LEASE OF WATER RIGHTS

This Agreement for Lease of Water Rights, ("Lease") is entered into this ___ day of _____, 2005 by and between the Climax Molybdenum Company, a Delaware Corporation ("Climax"), and the City of Golden ("City"):

WHEREAS, Climax is the owner of certain water rights that are the subject of the decrees in Case Nos. 92CW233 and 92CW336, Water Division No. 5 for the State of Colorado (hereinafter referred to as the "Subject Water Rights") that it is willing to lease during all or a portion of 2005, and;

WHEREAS, City anticipates a need for additional water supplies for beneficial use during all or a portion of 2005.

NOW, THEREFORE, in consideration of the forgoing recitals, and in consideration of the promises, payments and agreements hereinafter set forth, the adequacy and sufficiency of which are hereby acknowledged, Climax and City agree as follows:

1. **Term:** This Lease shall terminate on October 31, 2005.
2. **Volume:** City will be entitled under this Lease to divert and use 200 acre-feet of consumptive use water from the Subject Water Rights that is not used by Climax at the Climax Mine. The right of the City to water under this lease is subject and subordinate to delivery requirements of Climax under a prior lease to Gallaway, Inc., d.b.a. Blue Valley Ranch. The right of the City to water under this lease is further subject and subordinate to delivery requirements of Climax under a prior lease to the Colorado River Water Conservation District. Deliveries to City shall be limited to ensure delivery requirements under the prior leases and to ensure that the depletion limitations contained in paragraph 6.3.1 of the decree in Case Nos. 92CW233 and 92CW336, Water Division No. 5 for the State of Colorado, will not be exceeded by the total, combined amount of Climax Mine depletions and the consumptive use credits to be delivered to City.
3. **Delivery:** At such times as City desires water, City shall notify Climax of its desire for water by contacting Jay Cupp via telephone ((719) 486-2150) as confirmed by e-mail to jcupp@phelpsdodge.com. Requests for water shall specify the amount and timing of water deliveries desired by City. Upon such notification, to the extent that it has sufficient water available, Climax will release or otherwise provide water from the Subject Water Rights to meet the request of City, or so much thereof as Climax may possibly meet, and to offset transportation losses.
4. **Measurement:** City shall measure and record its diversions of water delivered from the Subject Water Rights.
5. **No Warranties:** Climax does not warrant: i) the quality of the water diverted by City under this Lease; ii) the administration for delivery of water released or otherwise provided pursuant to this Lease; or iii) the amount of water that will actually be yielded by, or delivered from, the Subject Water Rights.
6. **Rate and Payment:** City shall pay Climax \$1.00 per acre foot of water actually delivered to and diverted by City under this Lease. City shall transmit such payment(s), based on and with a copy of its measured and recorded diversions, on a monthly basis no later than thirty days after the last day of the month in which such diversions occur. Such payments shall be payable to Climax Molybdenum Company and transmitted to the following address:

Climax Molybdenum Company
Highway 91, Fremont Pass
Climax, CO 80429
Attention: Jay Cupp

7. **Modification:** Climax reserves the right to reduce the volume of water deliverable under this Lease at its sole discretion upon five days advance notice to City.
8. **Termination:** Climax reserves the right to terminate this Lease at its sole discretion upon five days advance notice to City.
9. **Reservation:** Climax reserves any and all rights of reuse of water diverted under this Lease.
10. **Non-Assignability:** City may not assign its rights under this Lease.
11. **Other Terms and Conditions:** This Lease is subject to the terms and conditions of the decree in Case Nos. 92CW233 and 92CW336, Water Division No. 5 for the State of Colorado.

CLIMAX MOLYBDENUM COMPANY a Delaware Corporation By: _____	CITY OF GOLDEN By: _____ Mr. Charles Baroch Mayor, City of Golden City Hall 911 10 th Street Golden, CO 80401
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Attest:

Susan M. Brooks, MMC
City Clerk