



CITY COUNCIL WORK SESSION
Monday, May 6, 2024 - 10:00 AM
City Council Chambers, Elks Civic Building - 107 S. Cascade Ave.

Public participation for this meeting will be in person in the City Council Chambers. The meeting can be [viewed online via livestream](#) and video recordings of the meetings can be viewed on our [YouTube page](#).

Hearing assistance devices are available for public use. Please let us know if you need accommodation. The City also offers interpretation for Spanish speakers. Schedule time to book this resource, by [emailing the City](#) at least 3 days before the meeting.

1) DISCUSSION ITEMS

- A) Spruce Point Utility Service Agreement (15 minutes)
Staff: City Engineer Scott Murphy
- B) 2024 Water Supply and Runoff Forecast (15 minutes)
Staff: City Engineer Scott Murphy

2) GENERAL CITY COUNCIL DISCUSSION

3) STAFF COMMENTS

MEMORANDUM



TO: Honorable Mayor and Members of the City Council
FROM: Scott Murphy, *City Engineer*
DATE: April 15, 2024
RE: Spruce Point Utility Service Agreement
CC: William Bell, Shani Wittenberg, Chris Dowsey, David Bries

Action

Consider entering into a utility service agreement with Chipeta Water District and Spruce Point Development Company, LLC to provide City of Montrose water service to currently-undeveloped portions of the Spruce Point Subdivision.

Background

Municipal water service within the Uncompahgre Valley is supplied by six different water providers: the City of Montrose, Tri-County Water, Menoken Water, Chipeta Water, the Town of Olathe, and the City of Delta. These six entities, in partnership with the Uncompahgre Valley Water Users Association, purchase their treated water from the Project 7 water treatment authority and then distribute within their respective water service areas. In and around the City of Montrose, these water service area boundaries can be viewed online at <http://gis.cityofmontrose.org> under the “Water Districts” map layer.

The water service area boundaries were negotiated amongst the various water providers concurrent with the development of Project 7 and the US Bureau of Reclamation’s Dallas Creek Project (Ridgway Reservoir). The boundaries aim to maximize efficiency by centering around existing/proposed transmission infrastructure and take into consideration existing and anticipated land uses. For example, the City of Montrose water service area generally focuses on the City limits and portions of the City’s urban growth boundary likely to experience urban levels of development. The surrounding rural water providers (Tri-County, Chipeta, and Menoken) are setup for more rural styles of development and are typically unable to support higher-density, urban developments. An important distinction between the urban and rural water providers is in their ability to provide fire protection; with some exceptions, the City’s water system is hydraulically designed and operated to meet code-required minimum fire flows and pressures whereas the rural systems generally are not.

As part of the water service area agreements between providers, consideration is given to allow for modification of the boundaries themselves and/or to allow for service to be provided outside of the boundaries through written agreement between affected parties. This option has been utilized over the years for cases where infrastructure is not available within the established service area from its respective provider due to hydraulic limitations of a given system, or due to limitations in water resource availability.

The Spruce Point Subdivision is situated between 6400 and 6450 Roads, immediately north of the Cobble Creek Golf Course as shown in Figure 1. The subdivision’s eastern end has been developed as single-family residential lots (Subdivision Filings 1 through 3) on Chipeta’s water system. Current development plans for remaining undeveloped areas of Spruce Point call for a higher-density development pattern to include single-family housing, multifamily housing, independent living, assisted living, and senior apartments. The area is currently within Chipeta’s water service area; however, as part of recent design efforts performed

for the proposed future development, it became apparent that Chipeta's water system would not be able to support the proposed density without substantial, cost-prohibitive system upgrades. As a result, the developer has requested the City consider servicing the area. To that end, City staff have prepared the attached utility service agreement in cooperation with Chipeta Water and the developer. An overview of the proposed development and project-specific conditions are outlined in the agreement.

Water Resource Availability

As part of the Dallas Creek Project, the City of Montrose was allocated and has been paying for 10,000 acre-feet of Ridgway Reservoir's municipal and industrial (M&I) pool of water. The City also holds shares in the Cimarron Canal Company which are used to fill Cerro Reservoir; however, these shares are reserved for emergency use only. Total annual demands within the City of Montrose over the past several years have hovered around 4,500 acre-feet or about 45% of the City's total allocation from Ridgway Reservoir.

As part of the City's ongoing water resource master planning, the City has been working to project how much water would be needed to achieve full buildout of the City's water service area. Using conservative assumptions for the anticipated land-use density, water demand per capita, and relying on limited conservation programs to be implemented over time, these projections indicate that the City should have approximately 500 acre-feet of water to spare following full buildout. Said another way, at this time it appears that 500 acre-feet of water would be available to provide service outside of our existing water service area. It should be noted that these projections do carry a degree of uncertainty.

Of this available 500 acre-feet, it is anticipated that the proposed future development areas of Spruce Point would use approximately 80. The existing developed areas of Spruce Point (Filings 1 through 3, see Figure 1) would remain on Chipeta's water system and continue to be serviced by them.

SPRUCE POINT UTILITY SERVICE AGREEMENT

This Utility Service Agreement (the “Agreement”) is entered into and effective this ____ day of _____, 2024 by and between the City of Montrose, a Colorado home rule municipal corporation, whose principal address is 400 East Main Street, PO Box 790, Montrose, Colorado 81402 (the “City”); Chipeta Water District, a Colorado special district formed pursuant to Title 32 of the Colorado Revised Statutes, whose principal address is 14738 6175 Road, Montrose, Colorado 81403 (“Chipeta Water”); and Spruce Point Development Company, LLC, a Colorado limited liability company whose principal address is 4643 S. Ulster St., Suite 1210, Denver, CO 80237 (the “Developer”). The City, Chipeta Water, and Developer may individually be referenced herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Developer is the sole owner of the property located in Montrose, Colorado, more fully described on **Exhibit A** attached hereto and incorporated into this Agreement (“Development Property”); and

WHEREAS, the Development Property was annexed into the City of Montrose in 2004 as a portion of the Spruce Point Addition; and

WHEREAS, the Developer intends to subdivide the Development Property into approximately 130 residential lots, plus approximately 130 units of senior independent living, senior apartment and senior assisted living facilities in general conformance with the Conceptual Site Plan included as **Exhibit B** attached hereto (“the Proposed Development”); and,

WHEREAS, any development of the Development Property must be performed in accordance with the City of Montrose’s comprehensive plan, subdivision regulations, engineering specifications, zoning codes, building codes, and other applicable statutory and local requirements; including the need to provide adequate fire protection in accordance with the International Fire Code; and

WHEREAS, the Development Property is currently situated within Chipeta Water’s service area, which gives Chipeta Water the first right to provide water service for any development of the Development Property; and

WHEREAS, Chipeta Water’s existing water distribution system is unable to meet code-required minimum water pressures and flows needed to support the Proposed Development without substantial, cost-prohibitive, system upgrades; and

WHEREAS, as a result of Chipeta Water’s lack of hydraulic capacity to support the Proposed Development, Developer wishes to connect to and be provided water service by the City through extension of water mains from the City’s water distribution system located east of the Development Property; and

WHEREAS, the City of Montrose completed supply and demand forecasting for its existing water service area and determined that surplus water rights currently exist beyond those needed to service full buildout of the existing service area; and

WHEREAS, the City is able to service select areas outside of its existing water service area but does so in a conservative manner and wishes to allocate this finite resource to areas experiencing active development; and

WHEREAS, the City may provide water service within Chipeta Water's water service area through a written agreement by the Parties, as required by the Service Area Agreement dated April 1, 1999, and currently in effect between the City and Chipeta Water; and

WHEREAS, Developer and Chipeta Water have negotiated and agreed to compensation of \$100,000.00 to be paid by the Developer to Chipeta Water for Chipeta Water to forego the opportunity to provide domestic water service to the Development Property and allowing such service to be provided by the City; and

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants, conditions, and agreements of Parties contained herein, the receipt and sufficiency of which is hereby acknowledged and accepted, the Parties hereby agree as follows:

1. CITY OF MONTROSE AND CHIPETA WATER

Chipeta Water shall allow the City to provide water service to the Development Property, within Chipeta Water's water service area pursuant to the Service Area Agreement. Once a residential lot has been created by recordation of a City-approved final plat while this Agreement is in effect ("Platted Area"), the City agrees to provide water to that lot into perpetuity, and such lot shall be recategorized to be included within the City's water service area, as per the terms of the Service Area Agreement. If the Developer has not met the conditions set forth in this Agreement, water service for any area within the Development Property for which a final plat has not been approved by the City ("Unplatted Area") as of the effective date of the termination of this Agreement shall revert to Chipeta Water. For any such area, the City shall give Developer and Chipeta Water 30-day notice in writing. The City may terminate this Agreement with respect to any Unplatted Area if it is found, in the City's sole discretion, that it does not have the capacity to service any Unplatted Area of the Development Property. Such termination shall be effective immediately. Upon any such termination or reversion, the Parties agree to record a notice running with the Unplatted Area that is so reverted ("Reverted Area").

2. DEVELOPER

Developer shall satisfy the following conditions. Failure of the Developer to meet these conditions or breach of this Agreement in anyway shall entitle the City to terminate the Agreement and revert any Unplatted Area of the Development Property back to Chipeta Water's service area.

- a. Developer shall not use City water for irrigation of common spaces. This includes, but is not limited to, open space tracts, HOA tracts, right of way landscaping, and publicly-owned park areas. City water is intended to be used solely for water service to residential or independent living lots and units.
- b. Developer shall incorporate requirements for water wise landscaping into their neighborhood codes, covenants, and restrictions.
- c. Development shall be in general conformance with the Conceptual Site Plan provided as **Exhibit B** or with any deviations therefrom that have been approved by the City.
- d. Developer shall obtain an approved preliminary plat from the City of Montrose for development of the property within five (5) years of the effective date of this agreement.
- e. Developer shall maintain a continuous pace of buildout for the Development Property. For the purposes of this Agreement, this shall be defined as ensuring that at least ten (10) residential lots or units are final platted every ten (10) years.
- f. Upon mutual execution of this Agreement, Developer shall pay to Chipeta Water the sum of \$100,000.00 as compensation for Chipeta Water foregoing its opportunity to provide water service to the Development Property and for allowing the City to do so. Compensation shall be paid within 30 days of the effective date of this agreement and shall be non-refundable.
- g. Developer shall be responsible for the design and construction of all necessary water main extensions and the water distribution network needed to service the Proposed Development. This includes the acquisition of any utility easements necessary where water mains cross neighboring properties. Water main extensions to the Proposed Development shall connect to the existing City of Montrose water distribution system in at least two (2) locations to be approved by the City Engineer.

3. GENERAL TERMS AND CONDITIONS

- a. **Covenant Running With the Land.** This Agreement shall constitute a covenant running with the Development Property and shall be binding on and shall inure to the benefit of Developer's successors in interest. A copy of this Agreement, or memorandum of this Agreement in a form acceptable to all Parties, shall be recorded in the chain of title for the Development Property with the Montrose County Clerk and Recorder.
- b. **Counterparts; Electronic Execution.** This Agreement may be executed in two (2) or more counterparts, all of which shall constitute a single instrument, and by one (1) or more of the Parties by facsimile or e-mail transmitted signature and all Parties agree that the delivery of an executed counterpart hereby by facsimile or e-mail will have the same force and effect as the delivery of an original executed counterpart hereof.
- c. **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any

other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

- d. **Signature Authority; Successors and Assigns.** The signatory for each Party hereby confirms such signatory is an authorized agent of the respective Party and has the full power and authority to execute and deliver this Agreement as a binding document on the Party. The promises made in this Agreement by the Developer shall be deemed to have been made by any corporation or other business affiliated with Developer that acquires ownership or possession of all or any portion of Development Property. Developer may assign this Agreement to any contract purchaser of the Development Property or any portion thereof.
- e. **Indemnification.** To the fullest extent permitted by law, the Developer agrees to indemnify and hold harmless the City, its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the performance of the services under this contract, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Developer, or any officer, employee, or agent of the Developer, or any other person for whom Developer is responsible. The Developer shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Developer's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.
- f. **Waiver.** Any waiver by the Parties of any term or condition of this Agreement shall not be deemed to be construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.
- g. **No Venture or Partnership.** No form of joint venture or partnership exists between the Parties and nothing contained in this Agreement shall be construed as making either the City or Developer joint venturers or partners of any kind.
- h. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. Jurisdiction and venue for any dispute concerning this Agreement shall be proper and exclusive in the district court for Montrose County, Colorado.
- i. **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable, the Parties shall negotiate in good faith so as to replace each invalid, illegal or unenforceable provision with a valid, legal and enforceable provision which will, in effect, from an economic viewpoint, most nearly and fairly approach the effect

of the invalid, illegal or unenforceable provision and the intent of the Parties in entering into this Agreement. The provisions of this Agreement shall be deemed to be severable, and if any term, phrase or portion of the Agreement shall be determined to be unlawful or otherwise unenforceable, the remainder of the Agreement shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties.

- j. **No Waiver of Legislative Authority.** Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the City's Charter, Code or ordinances or as a waiver of abnegation of the City's legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its inhabitants; nor shall this Agreement prohibit the enactment by the City of any fee permitted under the law.
- k. **Term of Agreement.** The Parties' rights and obligations under this Agreement shall commence as of the Effective Date and shall remain in full force and effect for a period of ten (10) years from and after the Effective Date, or until otherwise terminated as set forth herein. The Agreement shall automatically renew every ten (10) years if Developer continues the rate of development pursuant to Section 2 (c) of this Agreement.
- l. **Termination.** The City may terminate this Agreement based on Developer's failure to meet conditions or Developer's breach of this Agreement, at any time without prejudice to any other right or remedy of the City, upon giving the 30 days' written notice to all other Parties, which notice shall state the nature of the Developer's breach or failure to meet a condition and give Developer an opportunity to cure within ninety (90) days. If the City terminates this Agreement for lack of capacity as outlined in paragraph 1, such termination shall be effective immediately. Upon any such termination or reversion, the Parties agree to record a notice running with the Reverted Area.
- m. **TABOR.** The Parties agree that the City's payment of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado Constitution, as amended. The Parties further agree that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

CITY OF MONTROSE

CHIPETA WATER

By _____

By _____

Name

Title

DEVELOPER

By _____

Flint Ogle

President

State of _____)

) ss.

County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
_____, by

Witness my hand and official seal.

My commission expires: _____.

(Seal)

Notary

Spruce Point
Utility Service Agreement
Page 7

State of _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, _____ of Chipeta Water District.

Witness my hand and official seal.
My commission expires: _____.

(Seal)

Notary _____

State of _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by Flint Ogle, President of Spruce Point Development Company, LLC.

Witness my hand and official seal.
My commission expires: _____.

(Seal)

Notary

EXHIBIT A

LEGAL DESCRIPTION

The following described real property, all situated in U.S. Government Lots 19 & 20, Section 5, Township 48 North, Range 9 West, N.M.P.M.:

Tract A1 and Tract A2 of Spruce Point Subdivision Filing No. 1, Amended Plat of Open Space Tracts A1 and A2, Reception No. 881943, Montrose County land records, also known as Montrose County Parcel Number 399305310025;

Tract B of Spruce Point Subdivision Filing No. 1, Reception No. 770229, Montrose County land records, also known as Montrose County Parcel Number 399305310026;

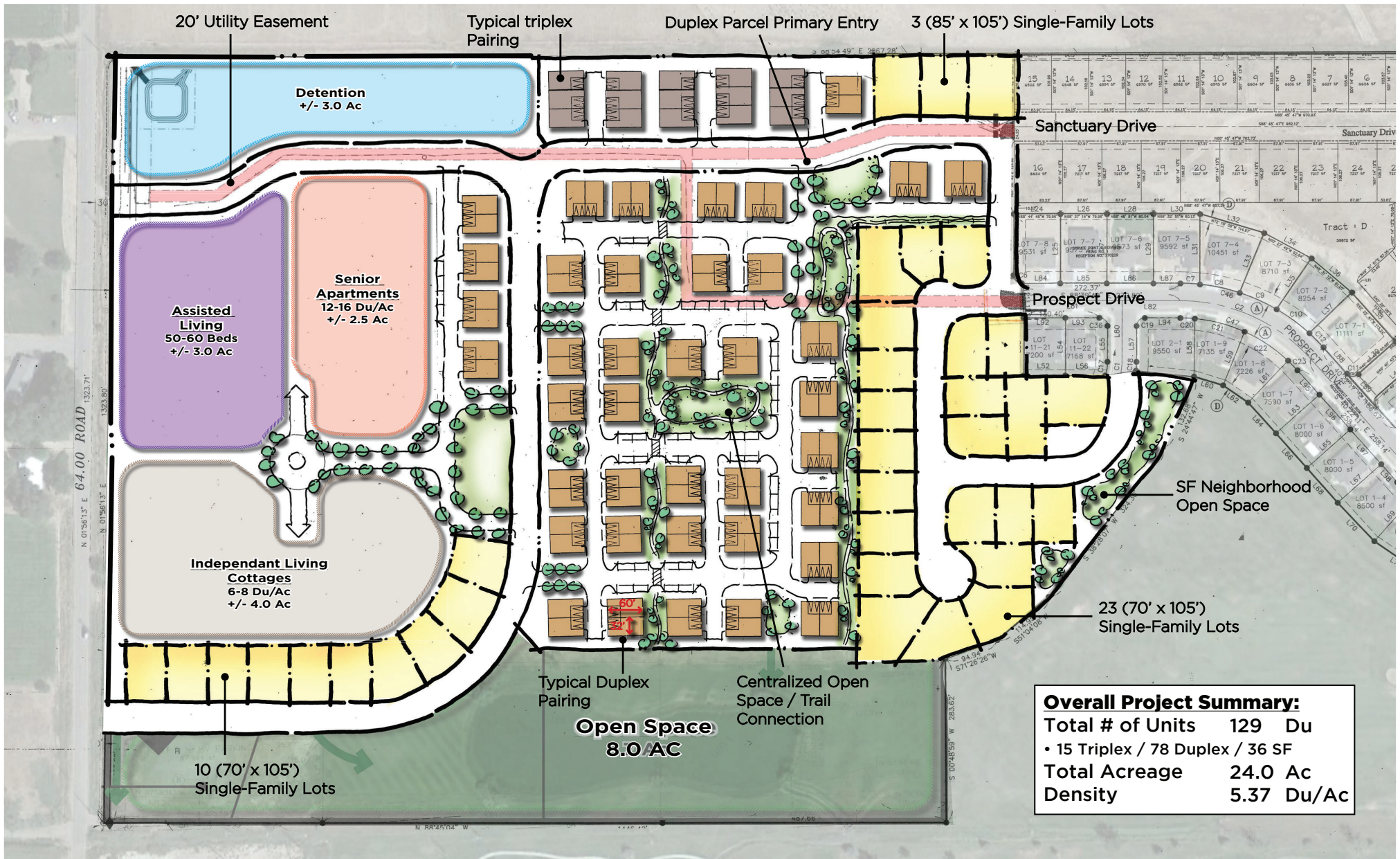
Outlot 1, Spruce Point Subdivision Filing No. 3, as depicted on the plat thereof recorded under Reception No. 958659, Montrose County land records, also known as Montrose County Parcel Number 399305225037;

Outlot 2 of Spruce Point Subdivision Filing No. 1, Reception No. 770229, Montrose County land records, also known as Montrose County Parcel Number 399305310028;

City of Montrose, County of Montrose, State of Colorado.

EXHIBIT B

CONCEPTUAL SITE PLAN



Conceptual Site Plan

SPRUCE-POINT
Montrose, CO

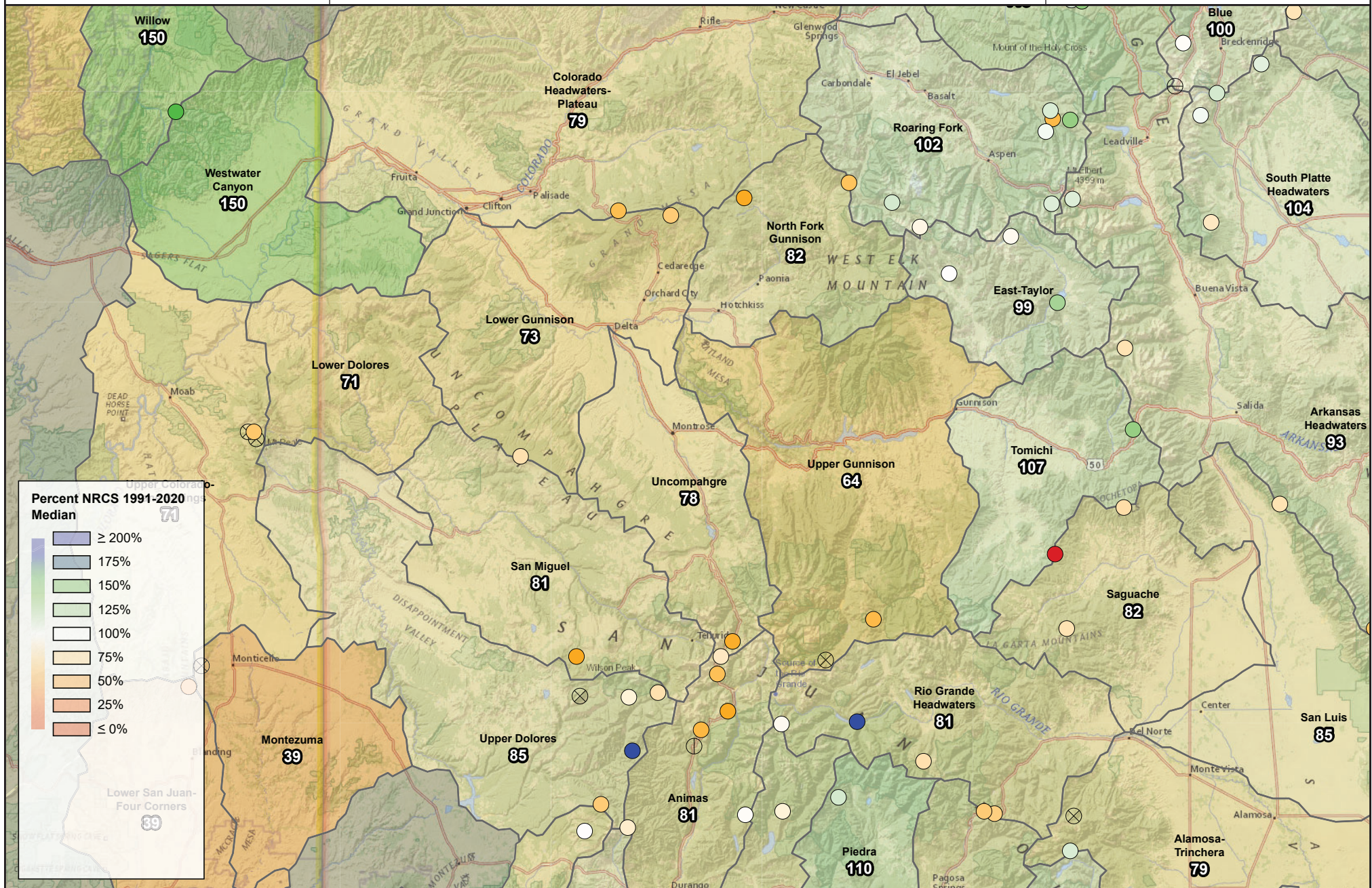
09.09.2022

Snow Water Equivalent

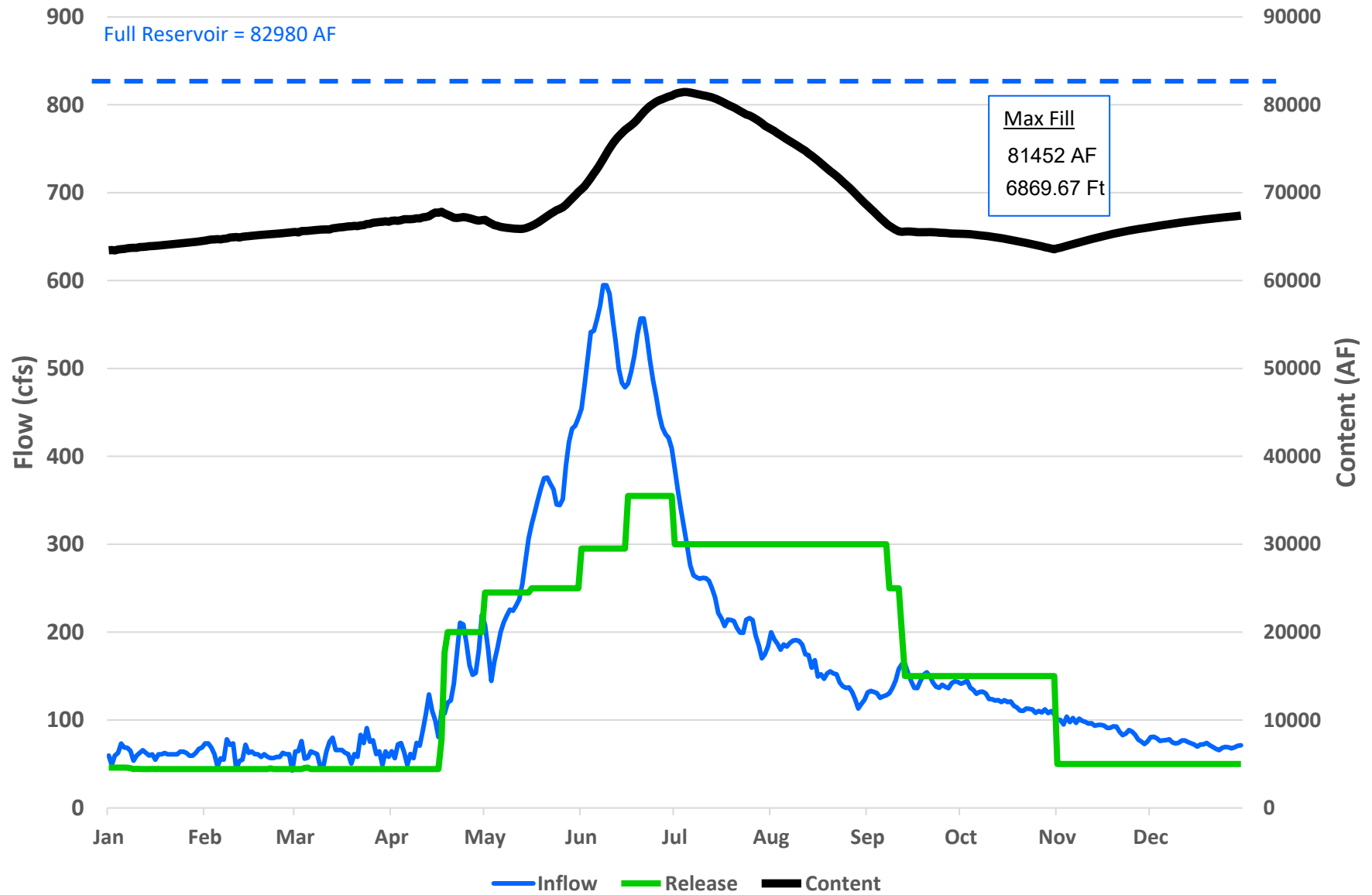
Colorado Sub-Basin Totals

April 21, 2024, end of day

Percent NRCS 1991-2020 Median



Ridgway Reservoir Operations Plan

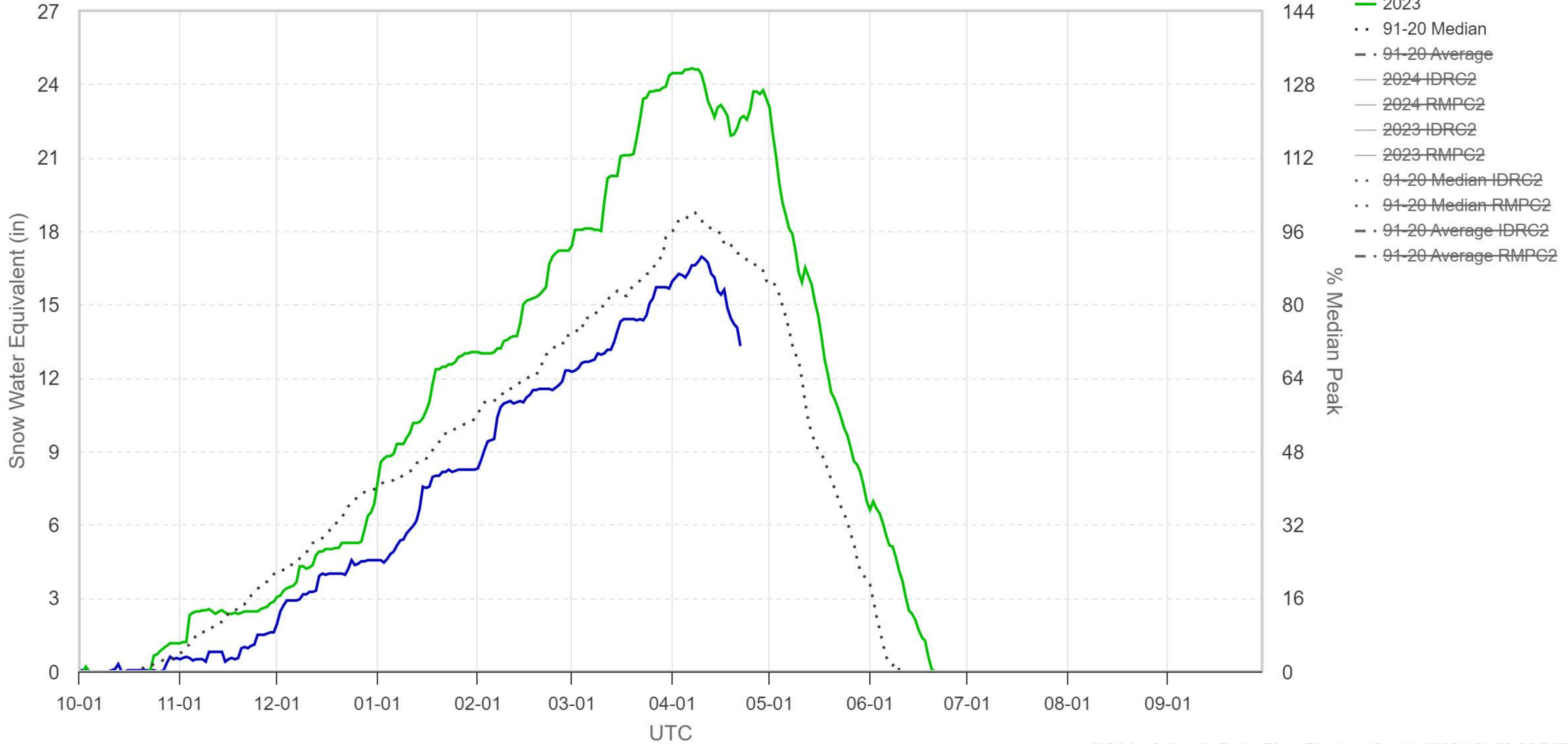


Ridgway - Group SNOTEL Plot

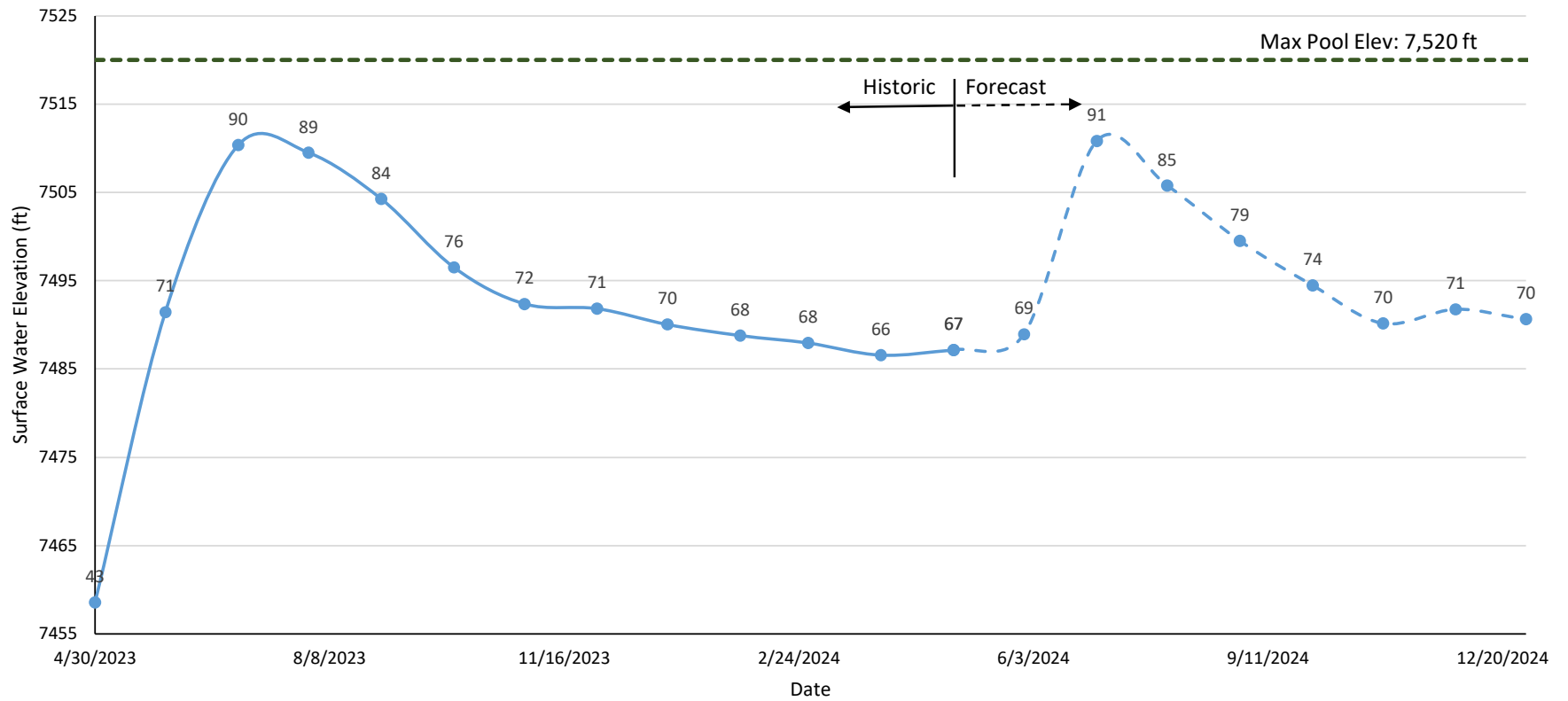
IDRC2,RMPC2

Ob (04-22): 13.30 in, 78% Med - Rate (in/dy): -0.30 (3-day), -0.70 (week)

Peak (04-10): 16.95 in (90.00 % Med Pk) - Med Peak (04-07): 18.75 in

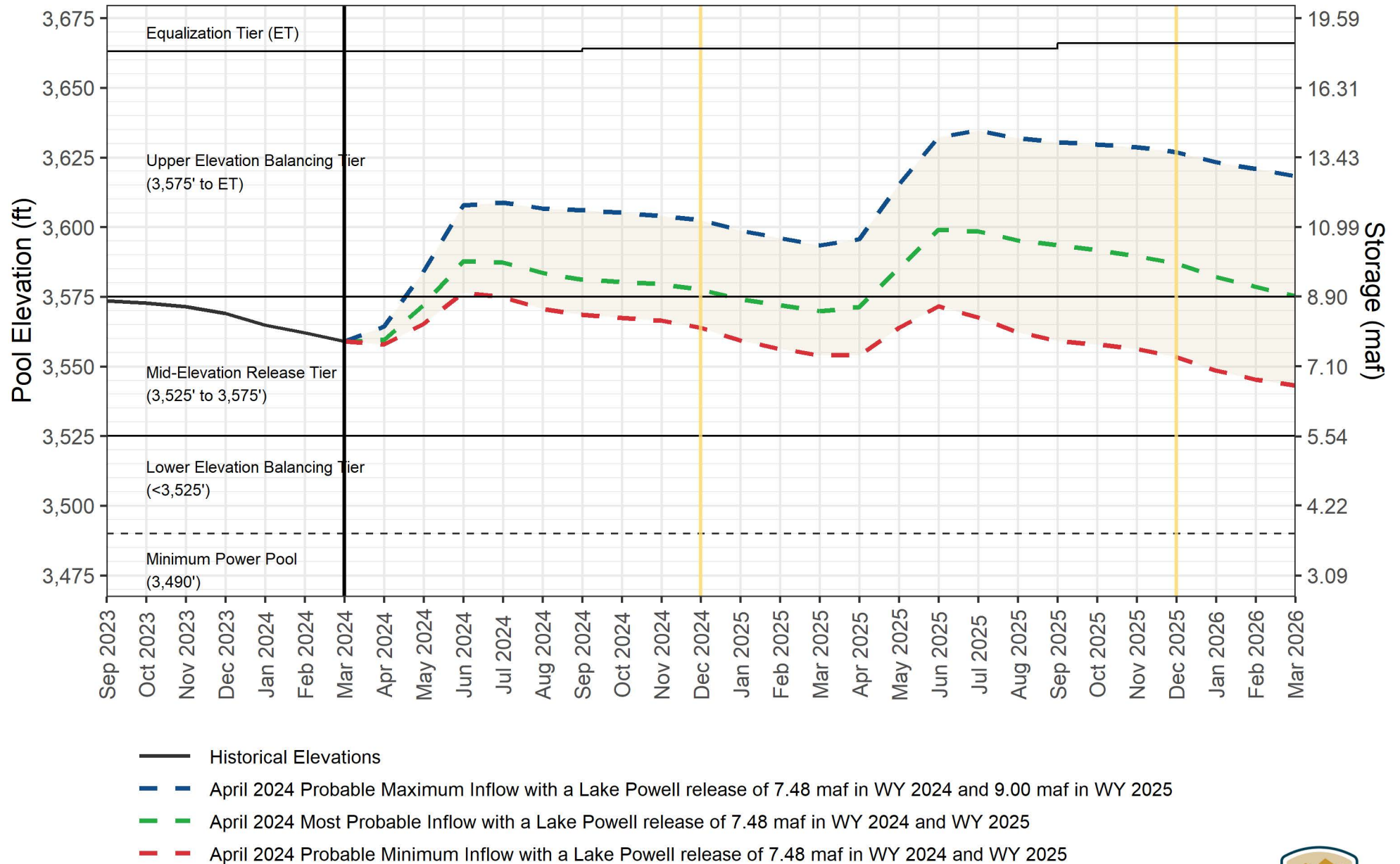


Blue Mesa Reservoir Elevation and Percent Full
Based on BOR April 2024 24 Month Study



Lake Powell End-of-Month Elevations

Projections from April 2024 24-Month Study Inflow Scenarios



The Drought Response Operations Agreement (DROA) is available online at <https://www.usbr.gov/dcp/finaldocs.html>.