

STATE OF COLORADO

COLORADO WATER CONSERVATION BOARD

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MEMORANDUM

RECEIVED

5 1989

Roy Romer
Governor
I. William McDonald
Director
David W. Walker
Deputy Director

TO: Members, CWCB

FROM: Bill McDonald

DATE: July 3, 1989

FISH & WILDLIFE ENHANCEMENT
1

SUBJECT: Agenda Item 8a, July 10-11, 1989, Board Meeting--
Colorado River Endangered Fishes Recovery
Implementation Program, Ruedi Reservoir Releases

Introduction

The June 15, 1987, biological opinion for round II water sales from Ruedi Reservoir and for Green Mountain Reservoir water sales concluded that implementation of two conservation measures would be required as conditions precedent to the marketing of water in order to insure that the effects of the proposed water sales would not be likely to jeopardize the continued existence of the Colorado squawfish, bonytail chub, and humpback chub. The first of those conservation measures involves the release of stored water from the regulatory capacity of Ruedi Reservoir for use in the occupied endangered fish habitat below Palisade in the 15 mile reach of the Colorado River from the Grand Valley Irrigation Company diversion dam downstream to the confluence with the Gunnison River (the "15 mile reach"). 5,000 acre-feet is to be available annually from water withheld from sale, with another 5,000 acre-feet available on an average of four out of five years through modified reservoir operations.

The biological opinion contemplates that the delivery of the 10,000 acre feet to and through the 15 mile reach will be accomplished pursuant to state law. The Board has been in discussions with the Bureau of Reclamation and the Fish and Wildlife Service for approximately the past year to determine how this would be done in a manner acceptable to each.

At the May Board meeting, I reported to you on the outlines, of a potential means of effecting the necessary deliveries to and through the 15 mile reach. However, we did not at that time have a solution to the Service's concern that the United States have a legally enforceable means, to insure that the

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Agenda Item 8a

June 29, 1989

Board called for the necessary administration of reservoir releases and/or instream flow water rights, sought to protect any instream flow water rights from injury and did not subordinate them to other water **rights**, etc.

In the course of examining this **problem**, I have, in consultation with the Colorado River Water Conservation District, re-thought the entire approach to insuring the delivery of the Ruedi releases to and through the 15 mile reach. As a consequence, this memorandum sets forth a new proposed course of action which I believe addresses all of the problems which the Board sought to solve or avoid.

Enforceability

With respect to water, water rights, or interests in water acquired (as opposed to appropriated) by the Board, the Board may enter into contracts with other parties which shall be enforceable in court. The relevant language of section 37-92-102(3), **CRS**, is as follows:

(3) ... The board also may acquire, by ... purchase, ... lease, ... or other contractual agreement from or with any person, including any governmental entity, such water, water rights, or interests in water as the board determines may be required for minimum streamflows ... to preserve the natural environment to a reasonable degree. At the request of any person, including any governmental entity, the board shall determine in a timely manner ... what terms and conditions it will accept in a contract or agreement for the acquisition by it from such person or governmental entity of water, water rights, or interests in water to be held by the board for minimum **streamflows** to preserve the natural environment to a reasonable degree. Any contract or agreement executed between the board and any person or governmental entity which provides water, water rights, or interests in water to the board shall be enforceable by either party thereto as a water matter under this article, according to the terms of the contract or agreement. ... Prior to the initiation of any such ... acquisition, the board shall request recommendations from the division of wildlife and the division of parks and outdoor recreation. The board also shall request recommendations from the United States

Agenda Item 8a
June 29, 1989

department of agriculture and the United States
department of the interior. ...

Given this language, I propose that the Board enter into a lease with the United States for the subject 10,000 acre feet. Article 6(b) of the Operating Principles for the Fryingpan-Arkansas Project (House Document 130, 87th Congress, 1st Session) specifically states that water stored in the regulatory capacity of Ruedi Reservoir "... may be sold or leased by the United States to water users in Colorado for any purpose recognized by the laws of the United States." Thus, it is clear that both the Board and the United States have the legal authority to enter into a contractually binding agreement. Through such a contractual arrangement with the United States, the Board can obligate itself to such terms and conditions of enforceability as it chooses.

Ruedi Reservoir Decrees

A lease of water from the regulatory capacity of Ruedi Reservoir requires that the water first be lawfully stored in priority under the decrees for Ruedi Reservoir. In addition, the beneficial uses decreed for Ruedi Reservoir must encompass instream flow fishery purposes in order for the Board to be able to call for the delivery of storage releases to and through the 15 mile reach. Note that an instream flow appropriation by the Board is not involved, only the water right for Ruedi Reservoir.

The Board has, for a variety of reasons, been unwilling to interpret the reference to "piscatorial purposes" in the 1958 decree for Ruedi Reservoir as encompassing releases of stored water for downstream, in-channel fishery uses. Rather, it has been the Board's view that these piscatorial purposes were limited to fishery uses in the reservoir impoundment.

Be this as it may, there is additional language in an August, 1959, supplemental decree pertaining to the beneficial uses of Ruedi Reservoir. The position which I propose that the Board adopt regarding this language is as follows:

- (1) Section 5(e) of the authorizing legislation for the Fryingpan-Arkansas Project (the act of August 16, 1962 (76 Stat. 389), as amended) directs the Secretary of the Interior to comply with the above cited Operating Principles for the project and:

To comply with the laws of the state of Colorado relating to the control, appropriation, use, and distribution of

Agenda Item 8a
June 29, 1989

water therein, including those laws of the state of Colorado relating to the establishment of minimum streamflows for the reasonable protection of the natural environment to the extent that such laws are not inconsistent with the operating principles.

- (2) As noted above, article 6(b) of the Operating Principles provides that "water stored in the regulatory capacity of Ruedi Reservoir may be sold or leased by the United States to water users in Colorado for any purpose recognized by the laws of the United States."
- (3) The supplemental decree for the Fryingpan-Arkansas Project entered by the Garfield County District Court in civil action no. 4613 on August 3, 1959, similarly provides that "water stored in the regulatory capacity of Ruedi Reservoir may be sold or leased by the United States to water users in western Colorado for any purpose recognized by the laws of the United States."
- (4) The laws of the United States include section 5(e) of the federal authorizing legislation for the Fryingpan-Arkansas Project, which section 5(e) directs that the project be operated in compliance with Colorado law.
- (5) Colorado law provides for the establishment of minimum streamflows for the reasonable protection of the natural environment by the Board, making this a beneficial use for which Ruedi Reservoir is decreed.

Deliveries to Grand Valley Powerplant

At the May Board meeting, I reported to you that it was proposed that the United States enter into an agreement with the Orchard Mesa Irrigation District and the Grand Valley Water Users Association to deliver water to the Grand Valley Powerplant for power purposes, for which Ruedi Reservoir is clearly decreed. This would provide a means of getting water to the head of the 15 mile reach. Since a lease between the United States and the Board cannot be consummated in time to handle releases from Ruedi Reservoir this summer, I believe that the Board should request the United States and the District/Association to go forward with that proposed agreement so long as that agreement makes clear that the stored water released from the regulatory capacity of Ruedi Reservoir is being made available for power purposes at the Grand Valley

Agenda Item 8a
June 29, 1989

Powerplant with the return flows therefrom to the Colorado River having no legal stature as instream flow water rights or and not being legally protectable manner for instream flow uses in the 15 mile reach. (although the 15 mile reach will be coincidentally benefited).

U.S./Board Lease

I propose that that two party agreement be superseded by a lease of the 10,000 acre feet to the Water Conservation **Board**, which lease agreement I contemplate as a three party agreement between the United States, the Water Conservation Board, and the District and the Association (treating those two entities together as the third party). Such a three party agreement would expressly provide that the water leased to the Board for instream flow fishery uses in the 15 mile reach would first be available for diversion to the Grand Valley Powerplant for the benefit of the District and the Association.

Enclosed is a draft three party contract which would accomplish the proposed lease. Its major elements are as follows:

- (1) The explanatory recitals, especially those found on pp. 5-6, establish the legal framework for the lease.
- (2) It would be a standard Bureau of Reclamation 40 year lease, just like any other water service contract from Ruedi, terminable at an earlier date if an alternative to Ruedi Releases is implemented or if certain other circumstances occur (article 2).
- (3) There would be no charge to the Board for the water (article 4). However, the allocable costs of the regulatory capacity of Ruedi Reservoir would not be reduced thereby. Rather, the per unit cost to those contracting for water service will necessarily be higher than if 5,000 acre-feet were not being withheld from sale.
- (4) Releases would be delivered at the outlet works to Ruedi Reservoir (article 5.a). The Board would be obligated to call for the administration of the released water to and through the 15 mile reach (article 7.b). The District and Association would be able to divert releases through the Grand Valley Powerplant, a non-consumptive use, before the water was used by the Board in the 15 mile reach (article 6.a).

Agenda Item 8a
June 29, 1989

- (5) The amount and timing of releases of the **10,000** acre-feet would be at the United States' discretion (article 8).
- (6) Water could be provided from a reservoir other than Ruedi at the United States' discretion so long as the terms of article 12 are met. It is anticipated the Green Mountain Reservoir would be the alternative source. **However**, I have yet to study the Green Mountain decrees to see if this is possible.
- (7) Shortages are provided for an article 13 per the terms of the biological opinion.
- (8) In article **14**, the United States acknowledges that Ruedi water marketing can now go forward.
- (9) Enforcement of the contract in water court is provided for in article 16. This will enable the U.S. to ensure that the Board protects the Ruedi releases through the 15 mile reach.

Fryingpan-Arkansas Commission

Article 19 of the Operating Principles provides that to assure project operation in conformity with the Operating Principles, a commission shall be created with the **powers**, among others, to collect data and make findings of fact. The commission consists of five persons: one representative of the Southeastern Colorado Water Conservancy District, one representative of the Colorado **River** Water Conservation **Board**, one representative of the State of Colorado appointed by the Colorado Water Conservation Board, and two representatives of the United States. The Board's director has always been the state's representative, an arrangement which the Board confirmed in my case in the early 1980s.

In order to insure that there is agreement that the proposed lease of the 10,000 acre feet to the Board for instream flow uses in the 15 mile reach is consistent with the Operating Principles, I believe that the Board should propose that the Fryingpan-Arkansas Commission make appropriate findings in accordance with its authority to do so. A draft resolution in this regard is enclosed.

Recommendations

I recommend that the Board:

- (1) Recommend to the United States and the District and Association that they enter into an interim **agreement**

Agenda Item **8a**
June 29, 1989

for delivery of the 10,000 acre-feet to the Grand Valley Powerplant so long as the conditions described above are incorporated therein.

- (2) Request that the United States enter into negotiations with the Board for the lease of the 10,000 acre-feet and propose for the United States' consideration the enclosed draft contract, with any changes thereto which I negotiate being subject to Board approval at a subsequent meeting before the contract is executed.
- (3) Authorize me to request from the Division of Wildlife, Division of Parks and Outdoor Recreation, Bureau of Reclamation, Fish and Wildlife Service, and Forest Service, pursuant to section 37-92-102(3), **CRS**, recommendations on the proposed lease of the 10,000 acre-feet.
- (4) Authorize me to propose the enclosed resolution to the Fryingpan-Arkansas Commission for adoption and to negotiate any changes in wording thereto so long as those changes are not contrary to the interpretation of the decrees for Ruedi Reservoir and of the Operating Principles set forth above.

Before entering into the proposed lease, the Board will need to have a record before it to sustain the determination required by section 37-92-102(3), **CRS**. The necessary determination will need to be made at a subsequent Board meeting after recommendations are received from the agencies listed in (3) above. I hope to be able to do this at the September Board meeting.

JWM/gl

Enclosures: as stated

cc: (w/encs.)

Roger Patterson
Ray Willms
Walt Fite
John Hamill
Margot Zallen
John Hill
Wendy Weiss
Rolly Fischer
Don Hamburg

Agenda Item 8a
June 29, 1989

cc: (continued)
Paul Calder
Jim Dufford
Bill Klapwyk
Andy Williams
Tommy Thomson
Howard Holme
Tom Pitts
Oryln Bell
Larry Simpson
Bennett Raley
Fred Kroeger
Sam Maynes

McDonald
Draft
7/3/89

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION AND FISH AND WILDLIFE SERVICE

CONTRACT BETWEEN THE UNITED STATES OF **AMERICA**,
THE COLORADO WATER CONSERVATION **BOARD**,
THE ORCHARD MESA IRRIGATION **DISTRICT**, AND
THE GRAND VALLEY WATER USERS ASSOCIATION
FOR FURNISHING WATER SERVICE FROM RUEDI RESERVOIR
FRY INGPAN-ARKANSAS **PROJECT**, COLORADO

This Contract, made this _____ day of _____, 1989,
pursuant to the Act of June **17**, 1902 (32 Stat. **388**), and acts
amendatory thereof and supplementary thereto, particularly
section 301(b) of the Act of July **3**, 1958 (72 Stat. 319), and
the Act of August 16, 1962 (76 Stat. **389**), as **amended**,
collectively known as the Federal Reclamation Laws, is between
the UNITED STATES OF **AMERICA**, hereinafter referred to as the
"United States," represented by the Contracting Officers
executing this contract; the COLORADO WATER CONSERVATION **BOARD**,
hereinafter referred to as the "Board," an agency of the State
of Colorado; and the ORCHARD MESA IRRIGATION DISTRICT and the
GRAND VALLEY WATER USERS ASSOCIATION, hereinafter referred to
as the "District" and the "Association," respectively, the
District being an irrigation district organized and existing
under the laws of the State of Colorado with its principal
place of business at Palisade, Colorado, and the Association

being a corporation organized and existing under the laws of the State of Colorado with its principal place of business at Grand Junction, Colorado.

EXPLANATORY RECITALS

WHEREAS, the United States, acting through the Secretary of the Interior, constructed the Fryingpan-Arkansas Project, which Project the Secretary was authorized by the Act of August 16, 1962 (76 Stat. **389**), as amended by the Act of October 27, 1974 (88 Stat. 1497), the Act of October 21, 1976, (90 Stat. 2792), and the Act of November 3, 1978 (92 Stat. 2493), hereinafter collectively referred to as the "authorizing legislation," to construct, operate, and maintain in substantial accordance with House Document 187, 83rd Congress, 1st Session, as modified by House Document 353, 86th Congress, 2nd Session; and

WHEREAS, section 3 of the authorizing legislation states that the Fryingpan-Arkansas Project shall be operated in accordance with the operating principles set forth in House Document 130, 87th **Congress**, 1st Session, hereinafter referred to as the "Operating Principles;" and

WHEREAS, section 5(e) of the authorizing legislation directs the Secretary of the Interior in the operation and

maintenance of all facilities of the Fryingpan-Arkansas Project to comply with the laws of the State of Colorado relating to the control, appropriation, use, and distribution of water therein, including those laws of the State of Colorado relating to the establishment of minimum **streamflows** for the reasonable protection of the natural environment to the extent that such laws are not inconsistent with the Operating Principles; and

WHEREAS, Ruedi Reservoir is an authorized facility of the Fryingpan-Arkansas Project; and

WHEREAS, the regulatory capacity of Ruedi Reservoir is that portion of the reservoir's total capacity which is not needed for the storage of water to permit project diversions at times when such diversions could not otherwise be made because of simultaneous demands of senior diversions in western Colorado existing at the time of the adoption of the Operating Principles; and

WHEREAS, the capital costs for the construction of Ruedi Reservoir are allocated among its various authorized purposes, with the purposes served by the regulatory capacity having been allocated \$9,222,000, which sum includes initial construction costs plus interest during construction; and

WHEREAS, pursuant to section 2 of the authorizing legislation this allocation of capital costs is reimbursable with interest in not more than 50 years from August, 1969, that being when Ruedi Reservoir was placed into service; and

WHEREAS, the United States desires to market water from the regulatory capacity of Ruedi Reservoir in order to effect the required repayment of capital costs; and

WHEREAS, the United States cannot market water from nor effect the reimbursement of the capital costs allocable to the regulatory capacity of Ruedi Reservoir until it has complied with the Endangered Species Act (____U.S.C. _____, et seq.); and

WHEREAS, the Fish and Wildlife Service, United States Department of the Interior, pursuant to section 7 of the Endangered Species Act (____U.S.C. _____) rendered a biological opinion dated June 15, 1987, for Round II Water Sales from Ruedi Reservoir and Green Mountain Reservoir Water Sales, hereinafter referred to as the "Biological Opinion," wherein the Service concluded that implementation of two conservation measures would be required as conditions precedent to the marketing of water in order to insure that the effects of the proposed water sales would not be likely to jeopardize the continued existence of the Colorado squawfish, bonytail chub, and humpback chub; and

WHEREAS, the first of those conservation measures involves the storage and release of certain amounts of water from the regulatory capacity of Ruedi Reservoir, hereinafter referred to as the "Ruedi Releases", for use in the occupied endangered fish habitat below Palisade, Colorado, in that reach of the Colorado River from the Grand Valley Irrigation Company diversion dam downstream to the confluence with the Gunnison River, hereinafter referred to as the "15 mile reach, said water to be stored, released, and delivered to and through the 15 mile reach pursuant to state law; and

WHEREAS, the Operating Principles provide that water stored in the regulatory capacity of Ruedi Reservoir may be sold or leased by the United States to water users in Colorado for any purpose recognized by the laws of the United States; and

WHEREAS, the Supplemental Decree for the Fryingpan-Arkansas Project entered by the Garfield County District Court, **Colorado**, in Civil Action No. 4613 on August 3, 1959, allows water stored in the regulatory capacity of Ruedi Reservoir to be sold or leased by the United States to water users in western Colorado for any purpose recognized by the laws of the United States; and

WHEREAS, the Board is authorized by section 37-92-102(3), Colorado Revised **Statutes**, to acquire by lease from any person, including any governmental entity, such water or interests in

water as the Board determines may be required for minimum **streamflows** to preserve the natural environment to a reasonable degree; and

WHEREAS, the Board has determined that leasing water from the regulatory capacity of Ruedi Reservoir for minimum streamflows in the 15 mile reach will contribute to preserving the natural environment to a reasonable degree and is consistent with the Board's authorities under section 37-92-102(3), Colorado Revised Statutes; and

WHEREAS, section 37-92-102(3), Colorado Revised Statutes, is not inconsistent with the Operating Principles and the use of water from the regulatory capacity of Ruedi Reservoir for the specified conservation measure must therefore, be accomplished pursuant to the laws of the State of Colorado; and

WHEREAS, the Biological Opinion stated that the United States would work with the Board, Colorado State Engineer, and others to develop a means of delivering Ruedi Releases to and through the 15 mile reach; and

WHEREAS, leasing water to the Board will enable the United States to comply with the Endangered Species Act so that it can market **water** from the regulatory capacity of Ruedi Reservoir

and hereby effect the repayment of capital costs allocable thereto; and

WHEREAS, the District and the Association operate features of the Grand Valley Project which divert water from the Colorado River to the Grand Valley **Powerplant**, which powerplant is located at the head of the 15 mile reach; and

WHEREAS, both the United States and the District and Association will benefit from the Ruedi Releases through increased water supply for the generation of hydroelectric energy.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

DEFINITIONS

1. Where used herein, unless specifically expressed otherwise or obviously inconsistent with the intent thereof, the term:

a. "United States" shall mean the United States of **America**, acting through the Secretary of the Interior (hereinafter the "Secretary") or his duly authorized representative or **representatives**.

b. "Contracting Officers" shall mean the Regional Director, Missouri River Region, Bureau of Reclamation and the Regional Director, Region 6, Fish and Wildlife Service. Unless stated otherwise, the Contracting Officers shall be deemed to be the Secretary's authorized representatives.

c. "Project" shall mean the Fryingpan-Arkansas Project, Colorado.

d. "Board" shall mean the Colorado Water Conservation Board, an agency of the State of Colorado created by section 37-60-102, Colorado Revised Statutes.

e. "District" shall mean the Orchard Mesa Irrigation District, an irrigation district organized and existing under the laws of the State of Colorado.

f. "Association" shall mean the Grand Valley Water Users Association, a corporation organized and existing under the laws of the State of Colorado.

g. "Year" shall mean the period beginning on January 1 and ending the following December 31, and the term "annually," as used herein, shall also mean this period of time unless otherwise specified.

h. "Replacement capacity" shall mean that portion of the total capacity of Ruedi Reservoir required to permit project diversions at times when such diversions could not otherwise be made because of simultaneous demands of senior diversions in western Colorado existing on April ~~30, 1959~~, and as further defined in article 6(a) of the Operating Principles.

i. "Regulatory capacity" shall mean that portion of the total capacity of Ruedi Reservoir not needed for replacement purposes and as further defined in article 6(b) of the Operating Principles.

j. "Ruedi Reservoir" shall mean the dam, reservoir, and related facilities as presently constructed on the Fryingpan River above the town of Basalt as a feature of the Fryingpan-Arkansas Project.

k. "Municipal use" shall mean use of water furnished to municipalities or other entities for municipal, domestic and miscellaneous related purposes, as those terms are traditionally and commonly construed, excluding use for industrial and commercial agricultural purposes.

l. "Industrial use" shall mean use of water for producing or processing a nonagricultural product for sale. For purposes of this definition, the use of **less** than 100

acre-feet annually by any one user shall be conclusively presumed to be nonindustrial.

m. "Operation and maintenance costs" shall mean, and shall be limited solely to, those ordinary and necessary expenditures directly incurred to operate and maintain Ruedi Reservoir to the extent and for the purpose for which it was originally authorized and constructed. Operation and maintenance costs shall not include expenditures required to remedy deficiencies in the original construction.

n. "Ruedi Releases" shall mean the stored water released from the regulatory capacity of Ruedi Reservoir in order to effect the first conservation measure specified in the Biological Opinion.

o. "Biological Opinion" shall mean the June 15, 1987, biological opinion rendered by the Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act for Round II Water Sales from Ruedi Reservoir and Green Mountain Water Sales.

p. "Operating Principles" shall mean the operating principles for the Fryingpan-Arkansas Project set forth in House Document 130, 87th Congress, 1st Session.

TERM OF THIS CONTRACT

2. This contract shall take effect on January ~~1, 1990,~~ and shall remain in effect until whichever of the following occurs first:

a. December 31, ~~2029,~~

b. The United States has determined that the Ruedi Releases are no longer needed to avoid jeopardy to the endangered Colorado squawfish in the 15 mile reach,

c. The Colorado squawfish is declared extinct by the United States.

d. The Colorado squawfish is delisted as a threatened or endangered species by the United States and the United States determines that Ruedi Releases are not needed to prevent the species from being re-listed.

e. The United States has determined that means other than Ruedi Releases for offsetting the likelihood of jeopardy to the Colorado squawfish in the 15 mile reach from Ruedi Reservoir round II water sales and from Green Mountain Reservoir water sales are ~~acceptable to it,~~ or

f. The District and the Association are no longer signatory to a contract for the operation and maintenance of the Grand Valley **Powerplant**, in which event only Article 6 of this contract shall be terminated while all other provisions as to the United States and the Board shall remain in full force and effect.

CONTRACTED SERVICE

3. The United States hereby leases to the Board 10,000 acre feet, as defined in article 13 hereof, of water service from the regulatory capacity of Ruedi Reservoir subject to the terms and conditions of this contract. Water shall be released from Ruedi Reservoir for use by the Board in and through the 15 mile reach as described in Article 7 hereof. It is further contemplated that, prior to use by the Board, the water may be diverted by the District and Association through the Grand Valley Powerplant as described in article 6 hereof.

WATER SERVICE CHARGES

4. In consideration of the District, Association, and Board agreeing to take delivery of Ruedi Releases on schedules determined by the United States at its discretion in order that the first conservation measure required by the Biological Opinion can be effected to the benefit of the United States, the District, Association, and Board will not be charged for

the water which they receive from Ruedi Reservoir. **However,** the capital costs allocable to the regulatory capacity of Ruedi Reservoir will not be reduced by virtue of this fact.

DELIVERY OF WATER

5. a. The United States shall deliver water under this contract into the Fryingpan River at the outlet works of Ruedi Reservoir. All delivery of water will be limited by the outlet capacity of Ruedi Reservoir and will be made in compliance with the Biological Opinion.

b. The United States will timely notify the District, Association, Board, and the Division Engineer for Water Division No. 5, Colorado Division of Water Resources, of the date, time, and **amount** of the water being released from Ruedi Reservoir pursuant to this contract.

c. All water delivered at the outlet works will be measured by the Contracting Officer with equipment furnished, operated and maintained by the United States. At its **expense,** the United States shall install, operate, maintain, and replace any water flow measuring and recording devices necessary to implement this contract, including devices needed in the 15 mile reach.

USE OF WATER

6. a. The Association and District shall be obligated to divert and carry Ruedi Releases through their respective project facilities to the Grand Valley Powerplant whenever the total water available in priority to the District's and Association's decrees for irrigation and to the United States' decree for power for the Grand Valley Powerplant is less than the capacity of the Government Highline Canal at the diversion dam therefore. The District shall return any Ruedi Releases so diverted to the Grand Valley Powerplant to the Colorado River no further downstream than under the radial gate at the District's check structure below the Grand Valley Powerplant. The District shall have the option, at its sole discretion, to check Ruedi Releases back up to the Grand Valley Irrigation Company's diversion dam to be run over the dam.

b. The United States agrees that delivery of Ruedi releases to the Grand Valley Powerplant will not impair the District's or Association's rights to the use of Green Mountain Reservoir water pursuant to Senate Document 80 (June 15, 1937, 75th Congress) and the December, 1983, operating policy, as amended (Federal Register, September 11, 1987, Volume 52, No. 176).

c. The District shall not pump Ruedi Releases at its 29 and C Roads pumping facility, but it shall in no other way be limited under the water right decree for that pumping facility to pump Colorado River water or releases of water from Green Mountain Reservoir pursuant to Senate Document 80.

7. a. Ruedi Releases, whether or not delivered to the Grand Valley Powerplant, shall be used by the Board in the 15 mile reach for minimum **streamflows** to preserve the natural environment to a reasonable degree for the benefit of the Colorado squawfish.

b. The Board will take such action under state **law**, including requesting administration by the Division Engineer and initiating water court proceedings, as may be necessary to protect the Ruedi Releases from diversion by third parties from the outlet works of Ruedi Reservoir through, and to the downstream terminus of, the 15 mile reach. The United States will cooperate with the Board to protect the Ruedi Releases from the outlet works of Ruedi Reservoir through, and to the downstream terminus of, the 15 mile reach.

8. The amount and timing of Ruedi Releases shall be determined by the Contracting Officer for the Fish and Wildlife Service after discussion with the Board and Contracting Officer for the Bureau of Reclamation; provided, however, that releases

shall be made only between July and October , inclusive,
and in amounts not exceeding _____ cubic feet per second.

9. Water delivered to the District and Association and to the Board under this contract will be used only for the purposes specified in Articles 6.a and 7.a hereof. No **lease**, sale, donation, or other disposal of any of the water contracted for herein will be permitted without prior written approval of the Contracting Officers.

10. a. The United States will not be responsible for the control, carriage, use, handling or distribution of water delivered to the District, Association, or Board beyond the outlet works of Ruedi Reservoir, except for the measuring devices required by article 5.c hereof. The District, Association, and Board shall hold the United States harmless from and against all claims, demands, and causes of action on account of property damage, personal injury, or death resulting from the control, carriage, use, handling, or distribution of water delivered to the District, Association, or **Board**, provided that such water is delivered by the United States in a safe and reasonable manner.

b. The District, Association, and Board will not be responsible, collectively or individually, for the storage of water in, or the operation and maintenance of, Ruedi Reservoir. The United States shall protect, indemnify, and

hold the **District**, Association, and Board, both collectively and individually, harmless from and against all **claims**, demands, and causes of action of any nature whatsoever resulting from or in any manner connected with the storage of water in or the operation and maintenance of Ruedi Reservoir within the limits of the Federal Tort Claims Act (28 **USC 2671-2680**).

11. The United States reserves the right to make interim and future sales and leases of water from the regulatory capacity of Ruedi Reservoir so long as such sales do not limit the United States' ability to meet its obligations to deliver water under this contract.

12. The United States reserves the right to supply Ruedi Releases from water which has been lawfully stored in priority in storage reservoirs other than Ruedi Reservoir; provided, however, that releases from alternate storage reservoirs must be in conformity with the water rights decrees for such reservoirs and must comply with state law.

WATER SHORTAGE AND APPORTIONMENT

13. The 10,000 acre feet of water leased to the Board from the regulatory capacity of Ruedi Reservoir shall be subject to the following terms and conditions:

a. 5,000 acre feet shall be withheld from sale and shall be available annually without reduction in case of shortages in the yield of the regulatory capacity of Ruedi Reservoir unless and until the United States determines that a demand exists for 40,000 acre feet of water under contract from Ruedi Reservoir. When such a demand exists, and should shortages occur, then this 5,000 acre feet shall be treated in the same manner as water made available by contract for industrial use.

b. The remaining 5,000 acre feet, which shall not further reduce the water available for sale, shall be available on an average of four out of five years through modified operations of Ruedi Reservoir. Should shortages occur, this 5,000 acre feet will be reduced first to **cover** any such shortage before any reductions are made in the water service provided under any contract.

ENVIRONMENTAL_COMPLIANCE

14. a. The United States acknowledges that the District, Association, and Board are not required to obtain any federal permits, licenses, or approvals in order to enter into and receive water pursuant to this contract.

b. The United States acknowledges that implementation of this contract fully satisfies the requirement for the first conservation measure identified in the Biological Opinion and enables the Bureau of Reclamation to consummate contracts for round II water sales from Ruedi Reservoir.

c. The United States shall consider the implementation of this contract as having contributed to progress under the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River **Basin**, dated September **29**, 1987.

SEVERABILITY

15. In the event of nonperformance of this contract by the Board or by the District and Association, the terms of this contract which are applicable solely to the nonperforming party or parties shall be severed and all other terms shall remain in full force and effect as between the United States and the performing party or parties.

ENFORCEMENT

16. The terms of this contract shall, pursuant to section **37-92-102(3)**, Colorado Revised Statutes, be enforceable by any party as a water matter in the Water Court for Water Division No. 5, State of Colorado; provided, **however**, that before commencing an action for enforcement of this contract, the

party alleging violation shall notify the other parties in writing of the alleged violation and the parties shall make a good **faith** effort to resolve their differences through informal consultation.

[Note: Additional "**boilerplate**" provisions will be included covering such things as notices, assignment of the **contract**, civil rights compliance, equal opportunity, officials not to benefit, etc.]

In witness whereof, the parties hereto have executed this contract the day and year first above written.

THE UNITED STATES OF **AMERICA**

ORCHARD MESA IRRIGATION
DISTRICT

By
Regional Director
Lower Missouri Region
Bureau of Reclamation

_____ By _____
President

Attest _____
Secretary

By
Regional Director
Region 6
Fish and Wildlife Service

_____ GRAND VALLEY WATER
USERS ASSOCIATION
By _____
President

Attest _____
Secretary

COLORADO WATER CONSERVATION
BOARD

By _____
Director

McDonald
Draft
7/3/89

RESOLUTION OF THE
FRYINGPAN-ARKANSAS COMMISSION

WHEREAS, [same recitals as in 7/3/89 draft contract between the U.S., Board, District, and Association through the first full whereas clause on p. 6]; and

WHEREAS, [recital at bottom of p.6 and top of p. 7]; and

WHEREAS, paragraph 19 of the Operating Principles provides that in order to assure project operation in conformity with the Operating principles the Commission shall have the power, inter alia, to collect data and make findings of fact.

NOW THEREFORE, be it resolved by the Fryingpan-Arkansas Commission that it does hereby find that;

- (1) The laws of the United States include section 5(e) of the authorizing legislation,
- (2) Section 5(e) directs the Secretary to operate the project in compliance with those state laws, inter alia, relating to the establishment of minimum **streamflows** to the extent such laws are not inconsistent with the Operating Principles,
- (3) Section 37-92-102(3), Colorado Revised Statutes, is not inconsistent with the Operating Principles, and
- (4) therefore, the use of water from the regulatory capacity of Ruedi Reservoir for minimum streamflows to preserve the ~~natural environment to a reasonable~~ degree must be ~~accomplished pursuant to state law~~ ...

BE IT FURTHER RESOLVED that the Commission hereby finds that article 6(b) of the Operating Principles permits the United States to lease water from the regulatory capability of Ruedi Reservoir to the Colorado Water Conservation Board for use by the Board pursuant to section **37-92-102(3)**, Colorado Revised Statutes, for minimum **streamflows** to preserve the natural environment to a reasonable degree in the 15 mile reach for the benefit of the Colorado squawfish.

Entered this _____ day of _____, **1989**, pursuant to a telephonic conference call.

SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT

by _____

COLORADO RIVER WATER CONSERVATION DISTRICT

by _____

COLORADO WATER CONSERVATION BOARD

by _____

UNITED STATES OF AMERICA

by _____

by _____