

APPENDIX C

**WATER USER'S COMMITMENT LETTER
AND
DRAFT AGREEMENTS FOR THE INTERIM PROVISION OF WATER
TO THE 15-MILE REACH**

COLORADO RIVER WATER CONSERVATION DISTRICT

September 16, 1998

Mr. Ralph Morgenweck
Regional Director
U.S. Fish & Wildlife Service
P.O. Box 25486 DFC
Denver, CO 80225

Dear Ralph:

As Chairman of the subgroup addressing the permanent 10,825 acre-foot fish pool, I am pleased to report that the Colorado River water users have come to a contingent agreement on a plan for providing the 10,825 acre-feet of water for the fish that the Service identified as being needed to offset the impacts of the Category 1 depletions. The water users determined that the responsibility to provide the 10,825 acre-feet should be equally shared between East Slope and West Slope water users. Therefore, West Slope water users are responsible for 5,412.5 acre-feet and East Slope water users are responsible for 5,412.5 acre-feet based upon each entity's *pro rata* share of the total transmountain diversions from the Colorado River.

It is important for the Service to recognize that the water users need some flexibility in providing the 10,825 acre-feet. The needed flexibility is not in the annual volume (that volume is fixed at 10,825 acre-feet) but in how and from what sources that water is provided. As the following plans show, there are numerous interim sources for providing the water and long-term commitments to buy or develop permanent sources for providing the water. We could envision 10,825 acre-feet coming from a combination of Ruedi, Homestake and Williams Fork reservoirs one year, and from Williams Fork, Wolford and a third source the following year. The water users will convene an annual meeting to designate which sources will be used to provide the 10,825 acre-feet and the amount each source will provide. Also, the yearly meeting will be used to work with the Service on a delivery schedule for the 10,825 acre-feet.

West Slope Plan for Providing 5,412.5 Acre-Feet

1. Provide 5,412.5 acre-feet of water to be delivered to the 15-mile reach for the benefit of the native endangered fish. This water could be provided on an interim basis from one or more of the following sources:

SUITE #204 • 201 CENTENNIAL STREET
P.O. BOX 1120/GLENWOOD SPRINGS, COLORADO 81602
(970) 945-8522 • FAX (970) 945-8799

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- a. The unallocated portion of the River District's portion of Wolford Mountain Reservoir.
 - b. The unused portion of Ruedi Round II contracts.
 - c. Unused portions of reservoirs operated by Ute Water Conservancy District on Plateau Creek, or other currently under-utilized storage water available to participating West Slope users.
2. As demands approach full use of the above sources, the use of those sources would be reduced accordingly. At the same time, the West Slope would provide or secure funding to buy or build 5,412.5 acre-feet of permanent water for the fish, including constructing or cooperating with the transmountain diverters in the construction of off-stream reservoirs for the benefit of the fish.

Transmountain Diverters' Plan for Providing 5,412.5 Acre-Feet

1. Provide 5,412.5 acre-feet of water to be delivered to the 15-mile reach for the benefit of the fish. The water will be provided on an interim basis from one or more of the following sources:
 - a. Williams Fork Reservoir, Denver's pool in Wolford Mountain Reservoir, and Homestake Reservoir. Such operations would be recognized under the existing decrees for these reservoirs.
 - b. Subcontract from the River District for up to 1,500 acre-feet of water from Ruedi Reservoir with no cost mark-up beyond actual costs incurred by the River District to contract that amount of Ruedi Reservoir water from the Bureau of Reclamation. The subcontract would expire at the end of 2019 without option for renewal.
 - c. Explore options with the Bureau of Reclamation to use a portion of Southeast's 28,000 acre-foot replacement pool in Ruedi Reservoir and a portion of Northern's 52,000 acre-foot replacement pool in Green Mountain Reservoir for the benefit of the fish. The West Slope would be fully involved in this exploration.
2. As demands approach full use of the above sources, the use of those sources for the fish will be reduced accordingly. At the same time, transmountain diverters would

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provide or secure funding to buy or build 5,412.5 acre-feet of permanent water for the fish, including construction of a series of small off-stream reservoirs (2000-5000 acre-feet) for the benefit of the fish.

We believe that these interim and long-term water sources faithfully meet the water users' commitment to provide the 10,825 acre-feet for the benefit of the fish. This proposal is contingent upon the Service's completion of an acceptable 15-mile reach biological opinion. Individual entities will have to approve their participation, possibly through the Recovery Agreement process, and it may be desirable for water users (East Slope, West Slope, or both) to develop intergovernmental agreements for implementation of the plan. With the aggressive completion of the 15-mile reach biological opinion, water deliveries pursuant to this plan could begin next summer (1999).

I look forward to your comments.

Sincerely,



R. Eric Kuhn
Secretary/General Manager

REK/vms

cc: Steve Arveschoug
Tom Pitts
Peter Evans
Wendy Weiss
Doug Kemper
Philip Saletta
Eric Wilkinson
Bud O'Hara
Jim Rooks
Glenn Porzak
Dave Little
Mark Pither

Mark Fuller
Larry Clever
Scott Balcomb
Jeff Haupt
Flint Ogle
Mark Hermundstad
Bealett Raley
Fred Aldrich
Dick Proctor
Stan Cazier
Henry Maddux
Dale Tooker

Agreement For The Interim Provision Of Water To The 15-Mile Reach Of The Colorado River

February 17, 1999

This Agreement for the Interim Provision of Water to the 15-Mile Reach of the Colorado River (the "Agreement") is entered into by and between the Colorado River Water Conservation District (the "River District"), the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water"), and the U.S. Fish and Wildlife Service (the "Service").

I. Recitals

- A. The River District is a political subdivision of the State of Colorado created and existing pursuant to its Organic Act, C.R.S. §37-46-101 *et seq.*, and other applicable Colorado law. The River District is responsible for promoting the conservation, use, and development of Colorado River water for the benefit of the district and its inhabitants and the State of Colorado.
- B. Denver Water is a municipal corporation created and existing under the Charter of the City and County of Denver and other applicable Colorado law. Denver Water is responsible to maintain a water works system necessary to supply the needs of the City and County of Denver and its contract distributors with water for all uses and purposes.
- C. The Service is a bureau in the U.S. Department of the Interior created pursuant to federal law. A mission of the Service is to work with others to conserve, protect, and enhance fish and wildlife and their habitats for the continuing benefit of the American people.
- D. The parties to this Agreement are participating in the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (the "Recovery Program"), designed to aid in the recovery of four species of fish listed as endangered under the Endangered Species Act, and in the development of a Programmatic Biological Opinion (the "PBO") for the Implementation of the Recovery Program in the 15-Mile Reach of the Colorado River.
- E. The Recovery Program and PBO contemplate a permanent commitment by water users in the State of Colorado to deliver 10,825 acre-feet of water per year to the 15-Mile Reach of the Colorado River for flow augmentation.
- F. This Agreement is made for the purpose of providing 10,825 acre-feet of water annually to the 15-Mile Reach for an interim period of ten (10) years.

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- G. Denver Water has a demonstrated need for the entire capacity and yield of its reservoirs for municipal purposes. Based upon recent estimates of demand, Denver Water has determined that for an interim period of 10 years water is available to be released from its reservoirs to meet the needs described in this agreement.
- H. In a letter to Ralph Morgenweck dated September 16, 1998, the Colorado water users described a, "[c]ontingent agreement on a plan for providing the 10,825 acre-feet of water for the fish that the Service identified as being needed to offset the impacts of the Category 1 depletions." The plan defined an interim solution and a permanent solution for providing the 10,825 acre-feet of water. This agreement only addresses the interim solution and does not modify the water users' commitment to provide the permanent solution for the 10,825 acre-feet of water.

II. Agreements

A. Rights and Responsibilities of the River District

1. The River District will provide 5,412.5 acre-feet of water per year on behalf of the Western Slope beneficiaries of the PBO. The River District's primary sources of water will be Wolford Mountain Reservoir (West Slope pool) and any unused Ruedi contract water which the River District or other Western Slope parties may have available. Other sources may be used from time to time.
2. The River District will retain the ability to use existing water rights and priority dates to refill the space in reservoirs vacated by the release of the 5,412.5 acre-feet of water.
3. Compensation of the River District by Western Slope beneficiaries of the PBO will be resolved among those parties, as appropriate.

B. Rights and Responsibilities of Denver Water

1. Denver Water will provide 5,412.5 acre-feet of water per year for delivery to the 15-Mile Reach on behalf of the Eastern Slope beneficiaries of the PBO. Denver Water's primary source of water will be Williams Fork Reservoir. Denver Water may also use Wolford Mountain Reservoir (Denver Water's pool), Dillon Reservoir, Homestake Reservoir, and other sources from time to time, as necessary, to provide the 5,412.5 acre-feet. Use of Wolford Mountain Reservoir will not exceed the hydrologic limitations on Denver Water's use contained in the federal and local approvals for the reservoir including the Bureau of Land Management's

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Plan of Development, the United States Department of Defense Army Corps of Engineers' Section 404 Permit, or the Grand County Special Use Permit. During the term of this agreement, some Eastern Slope beneficiaries of the PBO may elect to use other sources available to them for providing their portion of the 5,412.5 acre-feet. If an Eastern Slope beneficiary of the PBO elects to use another source, it will be that entity's responsibility to assure that all legal and regulatory requirements are satisfied. For every 1 acre-foot an Eastern Slope beneficiary of the PBO elects to deliver from another source, Denver Water's commitment to provide 5,412.5 acre-feet per year will be reduced by 1 acre-foot.

2. Denver Water will retain the ability to use existing water rights and priority dates to refill the space in its reservoirs vacated by the release of the 5,412.5 acre-feet of water.
3. Denver Water will enter into separate agreements with other Eastern Slope beneficiaries of the PBO under which Denver Water will be reimbursed, on a pro-rated basis, for any power revenues lost as a result of releasing the 5,412.5 acre-feet of water.

C. Reliability of the 10,825 Acre-Foot During a Drought

1. During some drought conditions, the 10,825 acre-feet of interim water contemplated in this agreement may be reduced or eliminated due to hydrology conditions beyond the control of the parties. To the extent a reservoir operator decides to reduce the delivery of the 10,825 acre-feet in a drought year, the percent of reduction of the 10,825 acre-feet will not be any more or less than the percent reduction requested by the reservoir owners from other beneficiaries of that reservoir.
2. Denver Water reserves the right to reduce releases of the 5,412.5 acre-feet of water contemplated by this Agreement whenever water use restrictions are applied to all users within Denver Water's Combined Service Area. Water use restrictions include voluntary restriction programs designed to reduce total (as opposed to peak) water demand. The percentage by which releases are reduced below 5,412.5 acre-feet will equal the target use reductions for various levels of drought as described in Denver Water's July 1997 "Drought Response Plan."
3. The River District reserves the right to reduce releases of the 5,412.5 acre-feet of water contemplated by this Agreement in the event of a drought affecting Ruedi and/or Wolford Mountain reservoirs. A drought at Ruedi Reservoir is defined as a hydrologic condition forcing the Bureau of Reclamation to reduce the water available pursuant to its water contracts from the Regulatory Pool. A drought at Wolford Mountain Reservoir is defined as a condition where: (i) the Weather Service's May 1st estimate of

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the April to July forecast for runoff in the Muddy Creek Basin upstream of Ritshard Dam is less than "28,000 acre-feet"; and (ii) the June 1st reservoir level is less than "56,000 acre-feet".

1. If other beneficiaries of the PBO provide water for the interim 10,825 acre-feet per year similar drought requirements as those described in this section will be required.

D. Rights and Responsibilities of the Service

1. The Service agrees to accept the delivery of the water resources described herein, pursuant to Denver Water and the River District jointly or separately contracting with the Colorado Water Conservation Board, for the purpose of providing flow augmentation of the 15-Mile Reach of the Colorado River for the benefit of the Recovery Program and the listed fishes, within the safe and reasonable operation of the proposed sources, recognizing all existing prior contract obligations.
2. The Service agrees to include the arrangements contained in this agreement in the PBO. Hence, beneficiaries of the PBO who sign Recovery Agreements will thereby agree not to oppose the use of Williams Fork Reservoir and Wolford Mountain Reservoir for releasing the 10,825 acre-feet of water per year on an interim basis. Recovery agreements also will limit signatories' ability to oppose water rights which may be applied for in the future to replace such releases, but those entities may nevertheless take actions deemed necessary to ensure that such water rights are administered in priority and do not cause injury to previously decreed water rights.

E. Implementation

1. An Operations Group will be established, consisting of representatives from the River District, Denver Water, the Service, the U.S. Bureau of Reclamation, and the State of Colorado Division V Engineer. The Operations Group will meet each spring to develop a plan for releasing the 10,825 acre-feet of water during the coming summer and fall. Prior to the first Operations Group meeting, representatives from the River District, Denver Water, and the Service will meet and agree on a procedure for releasing the 10,825 acre-feet of water. A list of some operation needs to be addressed is attached hereto as Exhibit A.
2. If the Service determines that delivery of less than the full 10,825 acre-feet is needed in any given year, deliveries of the reduced amount of water shall be divided evenly between Denver Water's sources and the River District's sources.

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3. The parties agree to jointly cooperate in securing the necessary agreements with the Colorado Water Conservation Board for protection of the 10,825 acre-feet of water to and through the 15-Mile Reach.

F. Term

This Agreement shall be effective beginning the January 1st following the date of issuance of a final PBO which is acceptable to the parties to this Agreement, and shall continue for a period of ten years or for as long as the PBO is in effect, whichever is less. The term of this Agreement may be extended upon the mutual written agreement of the parties for up to five additional years.

G. Termination

This Agreement may be temporarily suspended or terminated by any of the parties hereto if any of the following conditions occur:

1. The Service fails to comply with paragraph D.1. above;
2. The River District or Denver Water fail to deliver their 5,412.5 acre-feet of water in any given year as required by this Agreement, except as provided in Section C;
3. The Colorado Water Conservation Board refuses to accept delivery of the 10,825 acre-feet of water pursuant to a contract;
4. The State or Division Engineer interferes with the right of the River District and Denver Water to use existing water rights and priority dates to refill the space in the reservoirs vacated by the release of any portion of the 10,825 acre-feet of water; or
5. The Bureau of Reclamation does not allow the delivery of unused but available Ruedi Reservoir contract water to the 15-Mile Reach as contemplated in paragraph A.1. above.

If this Agreement is terminated, the action item in the PBO for providing the 10,825 acre-feet of water per year will be deemed not to have been accomplished.

H. Entire Agreement and Amendments

This Agreement, with any exhibits hereto, is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment of this Agreement shall have any force or effect unless embodied in a written modification executed and approved by all parties.

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I. Notices

- 1. The River District designates its Secretary/General Manager, whose address and telephone number for notices and communications is:

COLORADO RIVER WATER CONSERVATION DISTRICT
 P.O. Box 1120
 Glenwood Springs, Colorado 81602
 Phone: (970) 945-8522
 Fax: (970) 945-8799

as its representative to act for the River District in connection with this Agreement.

- 2. Denver Water designates its Director of Planning, whose address and telephone number for notices and communications is:

DENVER WATER
 1600 West 12th Avenue
 Denver, Colorado 80254
 Phone: (303) 628-6501
 Fax: (303) 628-6852

as its representative to act for Denver Water in connection with this Agreement.

- 3. The Service designates its Director, Upper Basin Recovery Program, whose address and telephone number for notices and communications is:

U.S. Fish and Wildlife Service
 P.O. Box 25486
 Denver Federal Center
 Denver, Colorado 80225
 Phone: (303) 236-2985
 Fax: (303) 236-5262

as its representative to act for the Service in connection with this Agreement.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms, conditions, and provisions stated above.

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**COLORADO RIVER WATER
CONSERVATION DISTRICT**

ATTEST:

Paul Ohri, President

Richard Eric Kuhn, Secretary

DENVER WATER

H. J. "Chips" Barry, Manager

**U.S. FISH AND WILDLIFE
SERVICE**

Ralph Morgenwech, Regional Director

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Exhibit A Operation Needs

- Define the release period.
- How to assure that the release plan is designed within the operational constraints of the reservoirs, including dam safety, maintenance requirements, and water rights.
- How to assure that the release plan considers the effect of reservoir releases on reservoir and stream recreation, trout fisheries, and downstream inundation. The goal is to avoid or minimize, to the extent possible, the detrimental effects on trout fisheries and fishing, whitewater recreation, reservoir recreation, and other related interests. Downstream flooding is to be avoided.
- The first priority for use of the outlet capacity at the reservoirs must be for water supply purposes. Recovery Program releases must be made such that the outflow from the reservoirs will not exceed the safe and normal operating capacity as determined by Denver Water and the River District.
- Develop a scheduling procedure that meets the advance notice needs of the reservoir operators.