

ACQUISITION AGREEMENT

ELKHEAD RESERVOIR ENLARGEMENT

This Acquisition Agreement is entered into this 17th day of February, 2005, by and among the United States of America, Department of the Interior, Bureau of Reclamation ("Reclamation") and Fish and Wildlife Service ("Service"), both acting through the Secretary of the Interior, pursuant to the Act to Authorize the Bureau of Reclamation to Provide Cost Sharing for the Endangered Fish Recovery Implementation Programs for the Upper Colorado and San Juan River Basins, (October 30, 2000, 114 Stat. 1602, Public Law 106-392), and acts amendatory thereof or supplementary thereto, the Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise ("River District") and the State of Colorado, acting by and through the Colorado Water Conservation Board ("CWCB").

RECITALS

1. WHEREAS, the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin ("Recovery Program") dated September 29, 1987 was implemented by a Cooperative Agreement signed in January 1988 by the Secretary of the Department of the Interior, the Governors of the States of Colorado, Utah, and Wyoming, and the Administrator of the Western Area Power Administration. The Recovery Program is a coalition of agencies and organizations. The goal of the Recovery Program is to recover four species of endangered fishes while allowing water development to proceed consistent with state water law and in compliance with the Federal Endangered Species Act ("ESA") in the Upper Basin states of Colorado, Utah, and Wyoming; and
2. WHEREAS, section 2 of the Endangered Species Act, 16 USC. §§1531 (c) (2), declares that it is the policy of Congress for federal agencies to cooperate with state and local agencies on water resource issues in concert with conservation of endangered species; and the U.S. Fish and Wildlife Service is primarily charged with implementing the Endangered Species Act and ensuring the protection and recovery of threatened and endangered species; and
3. WHEREAS, pursuant to section 4(b)(2) of the ESA, on March 21, 1994, the Service designated certain reaches of the Yampa River as critical habitat for each of the four endangered fish species. The largest of these reaches extends from the State Highway 394 bridge in Craig, Colorado downstream to the confluence of the Green River. For the purposes of this Acquisition Agreement, this reach shall be described as extending from the confluence of Elkhead Creek downstream to the confluence of the Green River and shall be referred to as "the Critical Habitat Reach;" and
4. WHEREAS, the River District is a political subdivision of the State of Colorado created and existing pursuant to its Organic Act §§37-46-101, *et seq.* C.R.S., and other applicable statutes, with authority to aid in the conservation, use and development of the water

resources of the Colorado River and its principal tributaries, and is vested with sufficient authority to receive and manage funds and to coordinate certain activities under the Recovery Implementation Program-Recovery Action Plan ("RIPRAP") benefitting the four Colorado River endangered fishes and water resources in general. The River District owns and conducts a business engaged in water activities pursuant to the Colorado Water Activity Enterprise Act, Article 45.1 of Title 37, C.R.S., in order to provide for the beneficial use of water within the District. The River District's Board of Directors confirmed its authority to operate such a business by Resolutions adopted on July 16, 1985, October 19, 1993, October 19, 1999, and October 17, 2000. For purposes of this Acquisition Agreement, the River District is acting by and through its Colorado River Water Projects Enterprise and/or by and through its Board of Directors, or both, as determined by the River District. The River District has authority to perform all acts and things necessary or advisable to secure and insure an adequate supply of water, present and future," which includes the authority to construct, own, operate, and maintain water storage facilities; and

5. WHEREAS, the CWCB is a state agency within the Colorado Department of Natural Resources (DNR) created for the purpose of aiding in the protection and development of the waters of the state for the benefit of the state's present and future inhabitants. The CWCB is authorized by section 37-92-102(3), C.R.S., to acquire from any person, including any governmental entity, such water, water rights or interests in water as the CWCB determines may be required for instream flows to preserve or improve the natural environment to a reasonable degree and to take whatever action may be needed to ensure such instream flows remain in the river; and
6. WHEREAS, the Service and the CWCB entered into a Memorandum of Agreement dated September 21, 1993, attached hereto as Exhibit A, concerning enforcement and protection of endangered fish species' instream flows ("the Enforcement Agreement") and the Service is relying upon the CWCB to appropriate, acquire and enforce instream flow water rights for the listed species under state law; and
7. WHEREAS, pursuant to Article 92, Title 37, C.R.S., as amended, the State Engineer's Office is responsible for the administration and distribution of the waters of the State, and, under Article 92, Title 37, C.R.S., the CWCB may call upon the State Engineer and the Division Engineer for Water Division 6 ("Division 6 Engineer") to administer water, water rights or interests in water held by the CWCB for instream flows to preserve or improve the natural environment to a reasonable degree within the Critical Habitat Reach of the Yampa River, which enforcement actions are more fully described in the Enforcement Agreement and in this Acquisition Agreement; and
8. WHEREAS, the Service has agreed that any acquisition of water, water rights, or interests in water by the CWCB for the benefit of the four listed fish species shall be considered in determining whether there has been sufficient progress for the Recovery Program to

continue to function as a reasonable and prudent alternative to avoid the likelihood of jeopardy to those species from existing and new water developments; and

9. WHEREAS, the Recovery Program has determined a need to acquire 5,000 acre feet of water on a permanent basis (the "Permanent Water Supply") and up to 2,000 acre feet of water on a temporary basis (the "Short-Term Water Supply") to maintain occupied critical habitat for endangered fish in the Critical Habitat Reach of the Yampa River; and
10. WHEREAS, the River District has appropriated a conditional storage right for the Elkhead Reservoir Enlargement as more fully described in Water Court Case No. 6-02CW106 for piscatorial and recreational use (including in-river fish habitat and river flow maintenance and enhancement uses, and uses in furtherance of the Upper Colorado River Basin Endangered Fishes Recovery Program); and
11. WHEREAS, the River District and the Recovery Program have agreed to cooperate in the construction of an expansion of Elkhead Dam and Reservoir, located on Elkhead Creek, a tributary of the Yampa River in Sections 1, 2, 3, 4, 9, 10, 16, and 21, Township 7 North, Range 89 West, 6th Principal Meridian, Moffat and Routt Counties, Colorado, to develop a water supply that will be capable, subject to water availability based on hydrologic cycles, of providing the Recovery Program's Permanent and Short-Term Water Supply needs for endangered native fish species during the critical low-flow periods in the Yampa River Basin, and be available for other beneficial uses to contractees of the River District; and
12. WHEREAS, the River District has entered into the following agreements: an Intergovernmental Agreement between the River District and the City of Craig, dated February 1, 2002 (creating a joint venture between the River District and the City of Craig for the construction of the Elkhead Reservoir Enlargement); a Memorandum of Agreement between the River District, the City of Craig, and the Colorado Division of Wildlife, dated August 6, 2003 (granting the River District the right to interfere with certain interests owned by the Division in order to construct an enlargement of the existing Elkhead Reservoir); an Intergovernmental Agreement between the River District and the City of Craig, dated August 6, 2003 (setting forth the Agreement of the River District and the City of Craig related to the construction, operation, and maintenance of the Elkhead Reservoir Enlargement); and an Amended and Restated Agreement between the Yampa Participants, the River District, and the City of Craig dated January 21, 2005 (setting forth the Agreement of the River District, City of Craig, and Yampa Participants related to the post-construction operation, maintenance, and repair of the Elkhead Reservoir Enlargement). The above-described Agreements between the River District, Craig, Division of Wildlife, and the Yampa Participants confirm that title to the storage space created by the enlargement of Elkhead Reservoir will vest in the River District. The Elkhead Reservoir Enlargement will result in an estimated 11,750 acre-feet of additional storage capacity at the site of the Elkhead Reservoir. The above-described

Agreements are incorporated herein by reference and made a part hereof. The River District also has entered into a Grant Agreement with Reclamation, attached hereto as Exhibit B and incorporated herein; and an Agreement with Reclamation and the Service Concerning Elkhead Reservoir Enlargement to Facilitate Recovery of Endangered Fish Species in the Yampa River Basin ("Reservoir Enlargement Agreement"), attached hereto as Exhibit C and incorporated herein. Reclamation and the Service intend to work with the River District to perfect the conditional storage right for the Elkhead Reservoir Enlargement so that the River District can convey the storage space easement and 5,000 acre-feet of the absolute water right for the Permanent Water Supply to CWCB in perpetuity for Recovery Program purposes, including for piscatorial and recreational use (including in-river fish habitat and river flow maintenance and enhancement uses; and uses in furtherance of the Recovery Program); and

13. WHEREAS, the River District is willing to convey to the CWCB a 20/47th interest in the River District's ownership of the storage capacity of the Elkhead Reservoir Enlargement and in certain water rights owned by the River District decreed to fill the Elkhead Reservoir Enlargement to provide the Permanent Water Supply, after those water rights have been decreed absolute, in exchange for the Recovery Program paying for 20/47ths of the costs of constructing the Reservoir Enlargement. The River District, Reclamation and the Service shall be responsible for placing to beneficial use the water subject to the conditional water storage right prior to conveying that water right to the CWCB. Once the conditional water right has been placed to beneficial use, the River District will file the necessary pleadings, and prosecute the case, to make the right absolute. After the water storage right in the Reservoir Enlargement has been made absolute, the River District intends to convey a 20/47th interest in the storage capacity and the absolute water right to the CWCB for the Permanent Water Supply in perpetuity for uses including in-river fish habitat and river flow maintenance and enhancement uses, and uses in furtherance of the Upper Colorado River Basin Endangered Fishes Recovery Program; the CWCB will hold and administer these rights in furtherance of the Recovery Program; and
14. WHEREAS, the Reservoir Enlargement Agreement, *inter alia*, addresses the Recovery Program's long-term obligation to pay a pro-rata share of the River District's future Reservoir Enlargement operation, maintenance and repair costs allocated to the CWCB's Permanent Water Supply storage space easement; and
15. WHEREAS, the River District is willing to enter into a Short-Term (20 years) Water Supply Lease with Reclamation and the Service for up to 2,000 acre-feet of water annually to be used by the Recovery Program for the benefit of the endangered native fish species in the Yampa River Basin, which agreement is attached hereto as Exhibit D and incorporated herein, ; and
16. WHEREAS, Reclamation and the Service, on behalf of the Recovery Program, are

willing to make the Short-Term Water Supply water available for use by the CWCB to monitor and protect to and through the Critical Habitat Reach for the benefit of the endangered fishes.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CWCB, the River District, the Service, and Reclamation agree as follows:

TERMS AND CONDITIONS

I. DEFINITIONS

The definitions of terms set forth in paragraph I of the Reservoir Enlargement Agreement shall apply to those terms when used in this Acquisition Agreement.

II. CONVEYANCES

A. Perpetual Water Storage Space Easement and Storage Water Right

1. After the water right for the Permanent Water Supply is placed to beneficial use for the purposes of piscatorial and recreational use (including in-river fish habitat and river flow maintenance and enhancement uses, and uses in furtherance of the Recovery Program) and the Recovery Program Obligation has been paid in full, the River District, after consultation with the parties hereto shall submit the necessary pleadings in the Water Court for Division No. 6 in the name of the River District and prosecute the case to make absolute those conditional water storage rights.
2. Once the water right decreed in Case No. 02CW106 has been decreed absolute for in-river fish habitat and river flow maintenance and enhancement uses, and uses in furtherance of the Recovery Program, the River District shall convey by special warranty deeds to CWCB and CWCB shall accept said absolute water right and a storage space easement, both described as follows:
 - a. A 5,000 acre-foot perpetual water storage space easement behind the Elkhead Reservoir Dam and within the Elkhead Reservoir Enlargement area located in Sections 1, 2, 3, 4, 9, 10, 16, and 21, Township 7 North, Range 89 West, 6th Principal Meridian, Moffat and Routt Counties, Colorado;

together with,

 - b. 5,000 acre-feet of the total 13,000 acre-feet water right decreed for storage in Elkhead Reservoir Enlargement with an appropriation date of October 16, 2002, as decreed in Case No. 02CW106, Water Division No. 6, for piscatorial and recreational use (including in-river fish habitat and river flow maintenance and enhancement uses, and uses in furtherance of the Recovery Program).

3. Said conveyance shall be by special warranty deeds, the forms of which are attached hereto as Exhibits E and F. The CWCB will hold this water right and storage space easement in perpetuity, except as provided for herein, for the benefit of, and at the direction of, the Recovery Program acting through Reclamation and the Service, and pursuant to the terms and conditions of this Acquisition Agreement.
4. The River District states, but does not in any way warrant, that it is, or will be upon completion of construction of the Reservoir Enlargement, the sole owner of the real property described in paragraph II.A.2 herein and that no prior easements and/or lease agreements, except those identified in this Acquisition Agreement, exist that will interfere with the easement conveyed by this Acquisition Agreement.
5. It is understood and agreed that the rights to be conveyed to the CWCB, as described in paragraph II.A.2 herein, shall be subject to the terms and conditions of the decree to be issued in Case No. 02CW106 (Water Division No. 6) but shall otherwise be free from lien or encumbrances that would impair the use of such rights for the purposes intended by the CWCB. Any lien or encumbrance shall be expressly agreed to by the parties at the time of conveyance.
6. The easement described in paragraph II.A.2 herein will be conveyed subject to the terms and conditions of this Acquisition Agreement as more particularly described herein.
7. The water storage easement and water storage rights to be conveyed are subject to the terms and conditions of the Amended and Restated Agreement between the River District, Craig and the Yampa Participants, attached as Exhibit G, the terms of which are incorporated herein. The CWCB's use of the water storage easement and water storage rights to be conveyed shall be exercised consistent with the provisions of the Amended and Restated Agreement between the Yampa Participants, the River District and the City of Craig.
8. Pursuant to the Amended and Restated Agreement between the Yampa Participants, the River District, and the City of Craig, the rights conveyed to the CWCB in paragraph II.A.2 herein are expressly subject to, and will share Pro-Rata together with the retained interests of the River District, in any loss of storage space as a result of sedimentation in the Reservoir Enlargement, any loss of storage water as a result of evaporation, any water shortage resulting from hydrological conditions, any water shortage resulting from an operational constraint on the Reservoir Enlargement, and/or any constraint on the ability to release water from the Reservoir Enlargement due to limitations on the reservoir outlet.
9. Payment of the full Recovery Program Obligation pursuant to the Reservoir Enlargement Agreement is a prerequisite to the River District executing the deeds transferring the interests described in paragraph II.A.2 herein to the CWCB. The parties agree and acknowledge that CWCB shall receive no partial interest in the Reservoir Enlargement

based on any partial payments, by any party, of the Recovery Program Obligation. The parties acknowledge that the obligations of Reclamation regarding payment of the Recovery Program Obligation and the River District regarding conveyance of the interests in the Reservoir Enlargement described in paragraph II.A.2. herein are set forth in the Reservoir Enlargement Agreement. The State of Colorado's obligation to provide funds to help satisfy the Recovery Program Obligation are described in the DNR Cost Share Contract, between the State of Colorado and the River District, dated the 2nd day of February, 2005. In the event that a default occurs in the obligations of Reclamation or the State of Colorado to pay the Recovery Program Obligation, any party may appropriate replacement funds to cure such default.

10. The River District's obligation to perform under this Acquisition Agreement is specifically subject to River District's rights described in paragraph VII (Construction Contingencies) of the Reservoir Enlargement Agreement.
11. The parties hereto acknowledge and understand that the River District will use the 5,000 acre-foot water right conveyed herein (the Permanent Water Supply) for piscatorial and recreational uses within the Elkhead Reservoir Enlargement while said water is stored prior to a release of the water scheduled by the Service for beneficial use by the CWCB. The Parties consent to the recreational use of the Reservoir Enlargement by the public, including on top of or in any water owned by the CWCB and stored in the Reservoir Enlargement, including but not limited to those recreational uses described in the Special Warranty Deed from the State of Colorado to the City of Craig dated March 28, 1991 and recorded October 1, 2002 at Document No. 2002L 4329 and October 4, 2002 at Document No. 570795 in the records of the Offices of the Clerk and Recorder for Moffat County and Routt County, respectively. Similarly, the parties consent to such management activities by the River District, Craig, the Colorado Division of Wildlife, and/or the Colorado Division of Parks, or such other contractor as may be designated by the River District, Craig or the Colorado Division of Wildlife as are necessary to develop, regulate, enhance, and manage the recreational use of the Reservoir Enlargement, wildlife and fish populations, and the water stored therein, including, but not limited to, those management activities described in the Special Warranty Deed from the State of Colorado to the City of Craig. However, the parties' consent to piscatorial and recreational uses within the Reservoir Enlargement shall not interfere in any way with the Service's right to schedule releases from the 5,000 acre-foot Permanent Water Supply pursuant to paragraph V herein for beneficial instream use by the CWCB. Additionally, nothing in this Acquisition Agreement shall be construed to interfere with the right of the Service to review and approve (or deny) the stocking of non-native fish species as provided under the "Procedures for Stocking Non-native Fish in the Upper Colorado River Basin" between the Colorado Division of Wildlife and the Service, dated September 5, 1996.
12. The River District reserves the right to develop a hydro-electric power generation

component to the Reservoir Enlargement. In the event that the River District develops a hydro-electric power component to the Reservoir Enlargement, the parties hereto consent to the use of the parties' water through the hydro-electric power generation facility, in conjunction with a requested release of water by the parties from the Reservoir Enlargement, without payment or compensation. In the event that a hydro-electric power generation component to the Reservoir Enlargement is developed, the Recovery Program and/or the CWCB to the extent permitted by law shall have the right to participate in said hydro-electric power generation component by paying a Pro-Rata share of the development costs. The River District shall give the Recovery Program and/or CWCB notice of the planned development of a hydro-electric generation component in accordance with this Acquisition Agreement. The Recovery Program and/or CWCB shall indicate, in writing, its intent to participate in the hydro-electric generation component development within 60 days of the date of the notice. The development of a hydro-electric power generation component to the Reservoir Enlargement shall not interfere in any way with the Service's right to schedule releases from the 5,000 acre-foot Permanent Water Supply pursuant to paragraph V herein for beneficial instream use by the CWCB.

B. Short-Term Water Supply Sublease

1. The Lease provides up to 2,000 acre-feet of additional water annually for the Short-Term Water Supply for the benefit of endangered native fish species in the Yampa River. The Lease will be implemented through a 20-year contract with the River District, and Short-Term Water Supply water will be reserved by the Service for release on an "as-needed" basis, as outlined in the Lease.
2. Pursuant to the terms of the Lease, Reclamation will pay the River District for any water reserved for release from the Short-Term Water Supply. The CWCB will have no financial obligation with regard to the Short-Term Water Supply or the Lease.
3. Reclamation and the Service, on behalf of the Recovery Program, hereby sublease, at no cost to the CWCB, all of their right, title, and interest in the Short-Term Water Supply water leased annually from the River District for use by the CWCB pursuant to the Lease to monitor and protect to and through the Critical Habitat Reach of the Yampa River. The River District hereby consents to said sublease.
4. If the Lease is renewed pursuant to paragraph B therein, this sublease also may be renewed by letter agreement signed by the parties hereto.

III. TERMINATION OF SHORT TERM WATER SUPPLY SUBLEASE

In the event the Recovery Program, the Service and Reclamation determine that the Short-Term Water Supply provided for in the Lease is no longer needed to support instream flows within the Critical Habitat Reach, or in the event the Lease terminates as

provided for in paragraph B. therein, and upon written notice to the parties hereto, this sublease and all responsibilities and obligations identified in paragraph II.B herein shall be terminated.

IV. OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS (OM & R)

- A. The OM & R obligations associated with the Elkhead Reservoir Enlargement are more fully described in (1) the Reservoir Enlargement Agreement and (2) the Amended and Restated Agreement between the River District, the City of Craig, and the Yampa Participants, which provisions are incorporated herein by reference. The Recovery Program, through Reclamation, shall be responsible for payment of its Pro-Rata share of the River District's OM & R costs associated with the storage space easement described in paragraph II.A.2 herein. The CWCB shall have the right, but not the obligation, to fund annual OM & R costs for the Elkhead Reservoir Enlargement.
- B. In the event the Service, Reclamation and the Recovery Program determine that the Permanent Water Supply is no longer needed to maintain occupied habitat for endangered fish species in the Critical Habitat Reach pursuant to paragraph XII herein, Reclamation may choose not to pay the pro-rata share of the River District's OM&R costs allocated to the Permanent Water Supply storage space easement. In the event Reclamation chooses not to pay the pro-rata share of the River District's OM&R costs, the forfeiture provisions in paragraph IV.E. in the Reservoir Enlargement Agreement shall apply. Any disposition and use of the Permanent Water Supply and storage space easement shall be addressed pursuant to paragraph XII herein.

V. RELEASE SCHEDULE AND CONTACT PROCEDURES

- A. On account of drought, errors in operation, operational constraints imposed by the State of Colorado or otherwise, or other causes, there may occur at times a shortage during any year in the quantity of water available to be stored within the Reservoir Enlargement, and in no event shall any liability accrue against the parties hereto for any damage direct or indirect, arising therefrom. In any year in which there may occur such a shortage in the Reservoir Enlargement water supply, the River District and the CWCB shall share such shortage using the Pro-Rata Formula. The Pro-Rata Formula is the allocation of the storage space created by the construction of the Reservoir Enlargement, estimated to be 11,750 acre-feet, as follows: 27/47th interest (6,750 acre-feet) to the River District and 20/47th interest (5,000 acre-feet) to the CWCB. The Pro-Rata allocation is based on the percentage contributions of the parties to fund the total costs related to the construction of the Reservoir Enlargement as well as the long term costs of the Reservoir's operation, maintenance and repair allocated to the Reservoir Enlargement. In the event that the actual percentage contributions of the parties to fund the total costs related to the construction of the Reservoir Enlargement differ from the 27/47th and 20/47th relationship described herein, then the Pro-Rata Formula shall be adjusted in accordance

with the terms of paragraph II.B. of the Reservoir Enlargement Agreement.

- B. The water rights conveyed pursuant to paragraph II.A.2. herein to the CWCB for the purpose of filling the water storage space easement shall have the same priority as those water rights used by the River District to fill the River District's water storage space in the Reservoir Enlargement. Fill of the water storage space easement granted to the CWCB shall be done on a Pro-Rata basis with the fill of the River District's water storage space in the Reservoir Enlargement. The parties acknowledge that the Yampa Participants and the City of Craig own water storage rights decreed for use at the existing Elkhead Reservoir that are senior to the water rights that will be adjudicated by the River District and conveyed to the CWCB in paragraph II.A.2. herein. The parties acknowledge that the River District's and CWCB's right to store water in the Reservoir Enlargement is subject to the water rights and priorities owned by the Yampa Participants, the City of Craig, and their successors and/or assigns.
- C. The River District agrees that the CWCB shall carry over for use in the next succeeding year any Permanent Water Supply water that was stored but not actually scheduled for release by the Service for beneficial use by the CWCB in the previous year. Any water remaining in the CWCB's storage pool for the Permanent Water Supply at the start of fill date established by the Restated and Amended Agreement between the Yampa Participants, the City of Craig and the River District, after subtracting for the past-year's releases, evaporation, and sedimentation, shall be credited to the CWCB's Permanent Water Supply storage pool. The CWCB may not carry over more than 5,000 acre-feet of Permanent Water Supply water in the Reservoir Enlargement at any time.
- D. The parties hereto shall meet annually and/or teleconference as needed to consult on schedules for releasing the Permanent Water Supply from the Reservoir to provide water during critical low-flow periods in the Yampa River Basin. The Service shall provide the parties hereto a preliminary written schedule of anticipated monthly demands on or before May 1 of each year. Following such consultations, the schedule provided by the Service (which shall make the final decisions regarding this schedule) shall serve as the release schedule to be used by the River District until the Service provides written notice of the schedule's modification. The Service may modify its schedule for releasing the Permanent Water Supply from the Reservoir Enlargement by providing the CWCB, the River District and the Division 6 Engineer with a written change order at least 24 hours in advance of such modification. For the purposes of this paragraph, written notice may consist of either electronic (email) or facsimile transmissions in lieu of correspondence through the U.S. Postal Service.
- E. Deliveries of water from the Permanent Water Supply shall occur at the outlet of the Elkhead Reservoir Enlargement. The River District shall have no responsibility once water stored in the Reservoir Enlargement by the CWCB is released at the outlet. The Division 6 Engineer may assess appropriate transit losses against the release of water

stored in the Reservoir Enlargement pursuant to the interests granted in paragraph II.A.2. herein.

- F. Operation of the Elkhead Reservoir Enlargement and apportionment of any water shortages shall be consistent with the provisions of (1) this Acquisition Agreement and (2) the Amended and Restated Agreement between the River District, the City of Craig, and the Yampa Participants.
- G. The 20 Year Lease describes the process for scheduling releases of water from the Short Term Water Supply. The Service shall provide CWCB, Division 6 Engineer, Reclamation, and the reservoir operator with written notice of any water releases or changes to release schedules 24-hours in advance so that CWCB can monitor and protect such releases to and through the Critical Habitat Reach of the Yampa River. The Service will consult with the CWCB during the release period to achieve the objectives of the Recovery Program, the Service and the CWCB.
- H. The River District shall annually provide Reclamation, the Service, and CWCB with a summary of releases from the Permanent Water Supply for the prior calendar year by April 1st of the following year.

VI. MONITORING AND ENFORCEMENT

- A. The Service, through the Recovery Program, shall install, operate, maintain, and replace any waterflow measuring and recording devices required by CWCB or the Division 6 Engineer to ensure that the water is delivered to and through the Critical Habitat Reach.
- B. The CWCB shall take such action under state law, including requesting administration by the State Engineer and the Division 6 Engineer and initiating water court proceedings, as may be necessary to fully exercise its water right, to deliver the water from the outlet works of the dam from which the water is released to the Critical Habitat Reach, and to protect the release from diversion by third parties within the Critical Habitat Reach, subject to such transit losses as may be imposed by the State Engineer or the Division 6 Engineer.
- C. The CWCB and the Service shall comply with the provisions of the Enforcement Agreement in the enforcement and protection of the water acquired herein.

VII. MEASUREMENT AND DELIVERY

- A. Releases of water from the Elkhead Reservoir Enlargement made pursuant to this Acquisition Agreement will be measured by the River District at the outlet works.
- B. The CWCB shall ensure that all water released by the River District at the direction of the

Service pursuant to this Acquisition Agreement, less transit losses, as measured at the Maybell gage or other appropriate locations, will be delivered and protected by the Division 6 Engineer to and through the Critical Habitat Reach.

- C. Neither Reclamation, the River District, nor the Service shall be responsible for the delivery, control, carriage, use, handling, or distribution of water provided pursuant to this Acquisition Agreement, delivered beyond the outlet works of the reservoir.

VIII. REPORTING AND ACCOUNTING

The Service shall prepare and provide an annual report to the parties hereto of water released from the Permanent and Short Term Water Supplies. The Service shall document the benefits of using the water stored in the Elkhead Reservoir Enlargement towards recovery of the Endangered Fish as part of its annual Recovery Program progress reports on this matter. The CWCB, in consultation with the Division 6 Engineer, shall provide an annual report to the parties hereto on the amount of water actually protected through the Critical Habitat Reach.

IX. SUFFICIENT PROGRESS

Use of this water for the benefit of endangered fish and protection of critical habitat in the Critical Habitat Reach shall contribute to completion of the Recovery Program's RIPRAP and shall be considered in determining whether there has been sufficient progress under the Recovery Program.

X. CWCB ACTION

Any action by CWCB to acquire the water, water rights or interests in water described herein shall comply with the Enforcement Agreement and the CWCB's Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules"). Notwithstanding the foregoing, the parties acknowledge and understand that the water rights acquired under this Acquisition Agreement are not subject to modification under section 37-92-102(4), C.R.S. or the ISF Rules.

XI. MISCELLANEOUS PROVISIONS

- A. The provisions of this Acquisition Agreement shall apply to and bind the successors and assigns of the parties hereto and no assignment or transfer of this Acquisition Agreement or any right or interest herein, shall be valid until approved in writing by the parties hereto.
- B. All of the provisions of this Acquisition Agreement shall survive the closing of the conveyance required by paragraphs II.A and B herein, and shall not merge therewith.

- C. Nothing contained in this Acquisition Agreement shall be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by Congress, contributions from the States participating in the Recovery Program and Colorado River Storage Project Power Revenues provided for the purposes of this Acquisition Agreement for that fiscal year.
- D. The United States, its officers, agents, employees, and assigns do not assume any liability resulting from the granting of this Acquisition Agreement or the exercise thereof.
- E. No Member of or Delegate to Congress or Resident Commissioner or official of the United States or the State of Colorado shall benefit from this Acquisition Agreement other than as a water user or landowner in the same manner as other water users or landowners.
- F. It is the intent of the parties that this Acquisition Agreement and the Reservoir Enlargement Agreement be construed together to the extent possible. In the event of any irreconcilable conflict between the terms of this Acquisition Agreement and the terms of the Reservoir Enlargement Agreement, the terms of this Acquisition Agreement shall control.

XII. ASSIGNMENT OR DISPOSITION

In the event the Service, in consultation with the Recovery Program, determines that the Permanent Water Supply is no longer needed to maintain occupied habitat for endangered fish in the Critical Habitat Reach of the Yampa River, the CWCB may use or dispose of the water right and easement conveyed in paragraph II.A.2. herein. Within 120 days of such a determination by the Service, the parties hereto shall meet to discuss disposition and use of the Permanent Water Supply, and reallocation of the responsibilities and obligations of the United States, Reclamation, the Service and the Recovery Program. The CWCB shall have the right to pay a Pro-Rata share of the Reservoir Enlargement's OM&R costs and thereby continue to utilize the Permanent Water Supply solely for in-river fish habitat and river flow maintenance and enhancement uses in the Yampa River Basin.

In the event the CWCB, in consultation with the Service, Recovery Program and Reclamation, decides not to pay OM&R costs and use the Permanent Water Supply solely for in-river fish habitat and/or river flow maintenance and enhancement uses, then the CWCB may assign, transfer, sell, or convey any part or all of the property interests described in paragraph II.A.2. herein. Any disposition of any part or all of the property interests described in paragraph II.A.2. herein shall be in accordance with federal regulations, if any, that are in effect at the time of the disposition and are applicable to the disposition of property funded with federal contributions. The CWCB hereby gives the River District a first right of refusal to purchase such property interests or assume the

obligations which are the subject of the assignment or transfer of such property interests. Upon receiving notice, the River District shall have ninety (90) days to exercise the first right of refusal. Closing shall be within thirty (30) days of the River District providing the CWCBC with notice of its intent to exercise the first right of refusal. Any assignment, transfer, sale, or conveyance of any part or all of the property interests described in paragraph II.A.2. herein shall be expressly subject to the terms of this Acquisition Agreement and the Reservoir Enlargement Agreement (including the on-going obligation to pay a Pro-Rata share of the River District's OM&R costs). Any water right subject to an assignment, transfer, sale, or conveyance pursuant to this paragraph may be used for any beneficial use within the state of Colorado consistent with Colorado law. Nothing herein shall limit or preclude the River District from participating in any Water Court proceeding, initiated by any party, where the water rights decreed in 02CW106 (Water Division No. 6) are at issue.

XIII. ENFORCEMENT

- A. Pursuant to section 37-92-102(3), C.R.S., the terms of this Acquisition Agreement shall be enforceable by and between the River District and the State of Colorado as a water matter in the District Court for Water Division 6.
- B. The parties hereto shall have all rights and remedies provided under law for a breach or threatened breach of this Acquisition Agreement.
- C. Before commencing any action for enforcement of this Acquisition Agreement, in State or Federal court, the party alleging a breach shall notify the other parties in writing of the alleged breach, and the parties shall make a good-faith effort to resolve their differences through informal consultation.

XIV. NOTICES

All notices that are required to be given by parties shall be in writing and shall be sent by certified mail, postage prepaid, as follows:

Director
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

With a copy to:
Office of the Attorney General
Water Rights Unit, Natural Resources and Environment Section
1525 Sherman St., 5th Floor
Denver, CO 80203

General Manager
Colorado River Water Conservation District
201 Centennial
P.O. Box 1120
Glenwood Springs, Co 81602

With a copy to:
General Counsel
Colorado River Water Conservation District
P.O. Box 1120
Glenwood Springs, Co 81602

With a copy to:
Loyal E. Leavenworth, Esq.
Leavenworth & Karp, P.C.
P.O. Drawer 2030
Glenwood Springs, CO 81602

Director
Upper Colorado River Endangered Fish Recovery Program
c/o U.S. Fish and Wildlife Service
P.O. Box 25486, DFC
Denver, CO 80225

Area Manager
Bureau of Reclamation
Western Colorado Area Office
2764 Compass Drive, Suite 106
Grand Junction, CO 81506

With a copy to:
Regional Director
Upper Colorado Regional Office
125 State Street, Room 6107
Salt Lake City, UT 84138-1147

Assistant Field Supervisor
U.S. Fish and Wildlife Service
Ecological Services, Western Colorado Office
764 Horizon Drive, Building B
Grand Junction, CO 81506

With a copy to:
Regional Director
Mountain-Prairie Region
U.S. Fish and Wildlife Service
P.O. Box 25486, DFC
Denver, CO 80225

IN WITNESS WHEREOF, the parties execute this Agreement.

UNITED STATES, BUREAU OF RECLAMATION

Approved as to Form:

By: Connie L. Rupp
Rick Gold, Regional Director

By: [Signature]
Office of the Regional Solicitor

U. S. FISH & WILDLIFE SERVICE

Approved as to Form:

By: _____
Ralph Morgenweck, Regional Director

By: [Signature]
Office of the Regional Solicitor

COLORADO WATER CONSERVATION BOARD

By: _____
Rod Kuharich, Director

With a copy to:
Regional Director
Mountain-Prairie Region
U.S. Fish and Wildlife Service
P.O. Box 25486, DFC
Denver, CO 80225

IN WITNESS WHEREOF, the parties execute this Agreement.

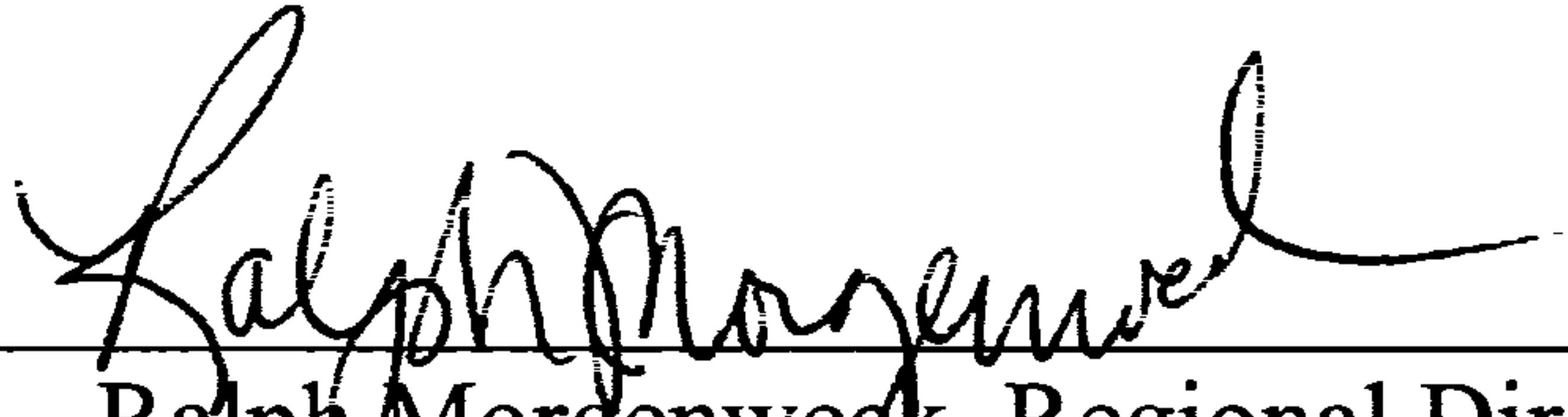
UNITED STATES, BUREAU OF RECLAMATION

Approved as to Form:

By: _____
Rick Gold, Regional Director

By: _____
Office of the Regional Solicitor

U. S. FISH & WILDLIFE SERVICE

By:  _____
Ralph Morgenweck, Regional Director

*the Regional Solicitors Office
says that only one Solicitor needs
to sign this document.*
By: _____
Office of the Regional Solicitor

COLORADO WATER CONSERVATION BOARD

By: _____
Rod Kuharich, Director

With a copy to:
Regional Director
Mountain-Prairie Region
U.S. Fish and Wildlife Service
P.O. Box 25486, DFC
Denver, CO 80225

IN WITNESS WHEREOF, the parties execute this Agreement.

UNITED STATES, BUREAU OF RECLAMATION

Approved as to Form:

By: _____
Rick Gold, Regional Director

By: _____
Office of the Regional Solicitor

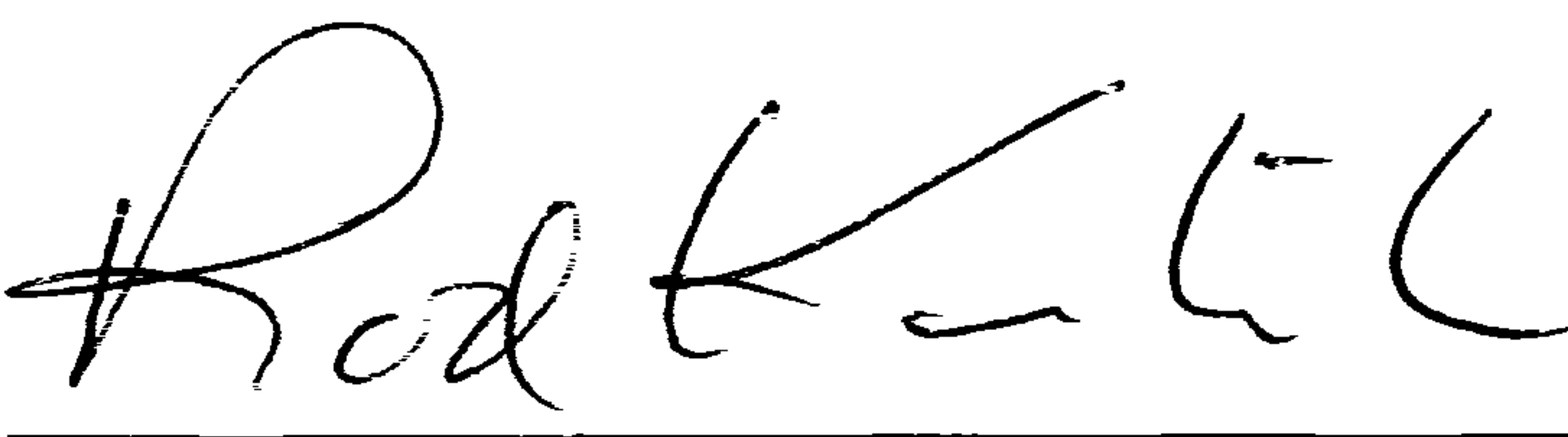
U. S. FISH & WILDLIFE SERVICE

Approved as to Form:

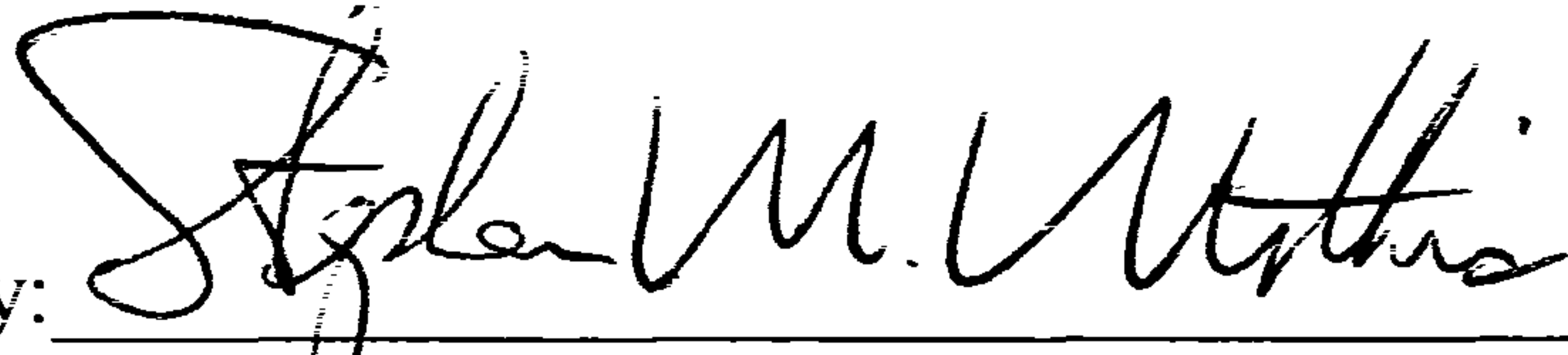
By: _____
Ralph Morgenweck, Regional Director

By: _____
Office of the Regional Solicitor


COLORADO WATER CONSERVATION BOARD

By:  _____
Rod Kuharich, Director

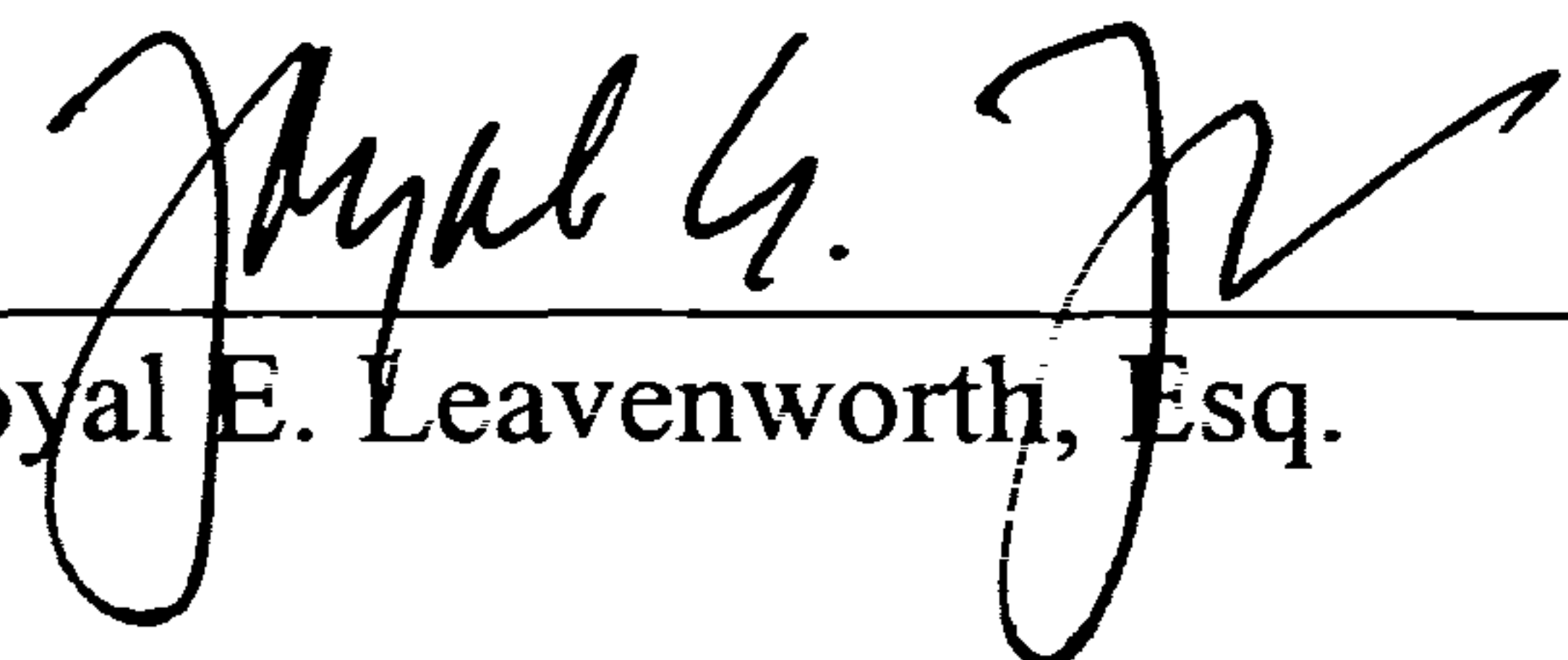
**COLORADO RIVER WATER CONSERVATION DISTRICT,
ACTING BY AND THROUGH ITS COLORADO RIVER WATER
PROJECTS ENTERPRISE**

By: 
Stephen Mathis, President

ATTEST:

By: 
Eric Kuhn, General Manager

Approved as to Form:


Loyal E. Leavenworth, Esq.