



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Alexander Funk, Agricultural Water Resources Specialist
Interstate, Federal, and Water Information Section

DATE: March 7, 2019

AGENDA ITEM: 22. Colorado River Storage Project Act (CRSP) Memorandum of Agreement (MOA) Update

Background:

In 2011, the Upper Colorado River Division States (Colorado, Wyoming, Utah, and New Mexico), the United States Bureau of Reclamation (Reclamation), the United States Department of Energy Western Area Power Administration, and the Colorado River Energy Distributors Association (CREDA) signed a Memorandum of Agreement (MOA) authorizing the use of the Upper Colorado River Basin Fund (Basin Fund) to further the purposes of the 1956 Colorado River Storage Project (CRSP) Act (Public Law 485). The MOA created a mechanism for the Upper Division States to access excess hydropower revenues for operations, maintenance and replacement costs (OM&R) for congressionally authorized CRSP Participating Projects (herein "Participating Projects") and to reduce the impact on the CRSP firm power rate by eliminating the collection of power revenues beyond that amount needed to repay the costs of the existing projects through Fiscal Year (FY) 2025. The Colorado Water Conservation Board (CWCB) represents Colorado in the implementation of the MOA and is responsible for ongoing project evaluation and prioritization.

Each Participating Project has one or more associated water conservancy district, irrigation company, or similar entity that is responsible for the management, maintenance, and operation of the project. These water users helped the State to identify their project priorities at the beginning of the MOA implementation process—for example, a pumping plant rebuild or piping of a canal. Since these water users directly benefit from the project, they are referred to as "Project Beneficiaries" in the context of the MOA.

Discussion:

At the January 2019 Board Meeting, staff presented to the Board on several accounting issues concerning the MOA. The Board, to help address these accounting concerns, directed staff to draft a proposed process for developing an annual list of the state's MOA project priorities based on criteria adopted by the Board in March 2015. In addition, the Board directed staff to develop guidelines for addressing MOA project cost overruns, incorporated certain concepts presented to the Board. Attached to this memo are CWCB staff's proposed process for



addressing MOA project budget increases and process for implementing an annual prioritization process.

Staff recommendation:

Staff recommends that the CWCB approve the proposed CRSP MOA Project Budget Adjustment Guidance and MOA Annual Prioritization Process documents.

Attachments: Executed MOA, Proposed CRSP MOA Project Budget Adjustment Guidance, Proposed MOA Annual Prioritization Process



Proposed MOA Annual Prioritization Process

Submitted for Colorado Water Conservation Board Approval on March 21, 2019

The Colorado Water Conservation Board (CWCB) represents Colorado in the implementation of the MOA and is responsible for ongoing project evaluation and prioritization. This document outlines the process for CWCB staff to develop an MOA annual prioritization process.

Priority Setting

The MOA states that “[i]t is the responsibility of each Upper Division State to determine the priority of projects within that state.” Under this authority, approved projects may proceed within any state, according to its priority list, if MOA revenues are available and as the projects are scheduled for work. In March 2015 the Board adopted criteria and guidelines to prioritize MOA projects, both proposed and approved (attached), in order to remain within Colorado’s overall MOA allocation. These criteria and guidelines contemplate that CWCB staff would develop a prioritization list of ongoing MOA projects each year. Additionally, the guidelines establish that approval of MOA projects does not guarantee that the project will receive funding. The purpose of these criteria and guidelines is to assist CWCB in identifying, recommending, and prioritizing future projects, as well as, to implement priority projects in an effective manner that avoids undue impacts to other approved MOA projects and maintains Colorado’s unobligated MOA funds as a buffer for unexpected project cost increases.

At the January 2019 CWCB Board meeting, the Board adopted the staff recommendation to draft a proposed process for developing an annual list of the state’s MOA project priorities. This process builds on the 2015 criteria and guidelines, adding elements to define and rank priorities. Staff’s ongoing discussions with Reclamation, beneficiaries and water users will further inform how priorities are identified.

The Criteria

The CWCB Staff will use the following criteria and guidelines in developing an annual prioritization list of all open and pending approved MOA projects. The criteria below are not listed in any order of importance or priority.

- **Water Supply** - The degree to which the project increases or conserves water supply for the Colorado River System, including, but not limited to, projects relating to water efficiency improvements, augmentation, weather modification, and tamarisk removal.
- **Public and Environmental Safety** - The degree to which the project addresses facility safety issues and ensures public safety to people, property, and the environment.
- **Water Quality** - The degree to which the project addresses issues of water quality and watershed health or provides targeted substance (e.g. salt and selenium) removal or control in the Colorado River System.
- **Water Information** - The degree to which the project improves the availability of, and access to, water information and provides data to the State of Colorado and water managers for improved water management decisions.

- **Operational Efficiency** - The degree to which the project improves the efficiency of the water monitoring, control and management facilities, and related operational effectiveness.
- **Fiscal Feasibility** - Overall cost effectiveness, local investment, and the level of matching funds and opportunity for cost sharing and leveraging amongst project sponsors will be considered. The extent, and to what degree, the project has the support of other interested stakeholders or government, as demonstrated by dedicated resources, including in-kind resources and cash resources. Previous fiscal history and responsibility concerning the project will also be considered.
- **Urgency and Readiness to Proceed** - Whether the project addresses an urgent issue and the projected start date of construction and length of time needed to implement the project i.e., projects should be able to be completed within the life of the MOA).
- **Replicable** - The degree to which the resources, expertise, and conditions associated with the project can be replicated, or applied to, other Colorado River Basin locations.
- **Local Prioritization** - The level to which the project addresses urgent and prioritized community needs, such as economic development and productive agriculture, as indicated and supported by the Colorado River Water Conservation District, Southwestern Water Conservation District, project beneficiaries, and local water managers.
- **Equitable Balance** - The degree to which the projects are balanced amongst qualifying MOA project areas. Projects should adequately and equitably represent the water management needs, and conservation opportunities, in the qualifying areas of the Colorado River System within Colorado.
- **Endangered Species and Species of Concern** - Whether the project will assist in, and not impair in any way, the protection, conservation and/or management of endangered species or species of concern.
- **Colorado's Water Plan** - The extent to which the project meets the goals of Colorado's Water Plan and aligns with Colorado's water values (e.g. multi-benefit, mitigate economic and social impacts on agricultural communities, included in Basin Implementation Plan overall fiscal and technical feasibility).
- **Congressionally Authorized Intended Purpose** - Whether, and to what degree, the project achieves the purposes for which the participating project was originally authorized and protect existing uses and fully develop it's the State's Colorado River compact entitlements.

A project does not have to meet all of the criteria to be considered a high priority. The criteria provide structure for considering and, if necessary, to determine the feasibility of each CRSP MOA project.

Certain criteria listed above may, if circumstances warrant, receive additional consideration by CWCB in determining priorities and reallocating funds such as public safety, local prioritization, urgency and readiness to proceed, fiscal feasibility, achievement of the

purpose of the participating project as authorized, protection of existing uses and the full development of the State's Colorado River compact entitlements, alignment with Colorado's Water Plan, and equitability.

Priority Setting Process

1. At the beginning of each calendar year, CWCB will confer with Colorado's Upper Colorado River Commissioner, each CRSP Participating Project, CRWCD, SWWCD, project beneficiaries, and other stakeholders to determine project priorities through an outreach process including, but not limited to, an annual meeting of Participating Projects. CWCB will also confer with Reclamation to determine the status of approved projects, including a timeline for design, permitting and construction of CRSP projects in the context of obligated and unobligated funds.
2. CWCB Staff will update the prioritization list for all open and pending approved projects that are scheduled to be completed within the active CRSP MOA contract period.
3. In conjunction with project beneficiaries, the CWCB will use these prioritization criteria to develop a prioritization plan for sequencing project implementation for all approved MOA projects to ensure that Colorado's total MOA balance is sufficient to cover the costs of all approved MOA projects. This sequencing will not influence projects already under construction but may affect the timing and/or feasibility of approved projects that are either pending or in the design phase.
4. If a project modification request made pursuant to the Communications Management Plan ("CMP") includes a request for more funds than the Participating Project's total balance of approved and unobligated MOA funds as set forth in the CRSP MOA Project Budget Adjustment Guidance approved by the CWCB Board of Directors in March 2019, CWCB staff will use Colorado's prioritization criteria and priority list in its annual assessment and to provide guidance whether to approve the request. For additional information, please refer to CWCB's "CRSP MOA Project Budget Adjustment Guidance."

CRSP MOA Project Budget Adjustment Guidance
CWCB's Process for Addressing MOA Project Budget Increases
Submitted for Colorado Water Conservation Board Approval on March 21, 2019

Introduction

Colorado has 39 approved MOA projects that were approved between 2012 and 2016. These projects were often submitted and approved with budgets that are now out of date or failed to account for Reclamation's non-contract and administrative costs to be charged to the projects. Eight years into implementation, materials are more costly than originally estimated. Additionally, Reclamation's design and technical services have proved more expensive than private sector alternatives and subject to lengthy delays, further increasing costs. These factors—along with project-specific nuances—have resulted in many MOA projects exceeding their budgets and requiring more funds than originally anticipated. This has placed considerable pressure on Colorado's overall MOA allocation and the ability to implement priority projects.

This document outlines the process for CWCB staff to apply when considering project budget adjustment requests going forward.

Guidelines for MOA Project Budget Adjustments

When a Participating Project has an approved project budget that requires additional CRSP MOA funds, Reclamation must obtain Colorado's approval. The steps set forth below provide a sequence for CWCB staff to follow when considering project budget adjustments.

- (1) CWCB staff will first confirm that the project remains a priority by consulting Colorado's MOA project prioritization list, a document that is updated annually and in accordance with the criteria adopted by the CWCB Board in March 2015 and as amended in March 2019 (CWCB Board approval pending).
- (2) If the project is determined by CWCB staff to still be a priority to be funded using MOA funds, CWCB will work with Reclamation and the appropriate Project Beneficiaries to determine if the project design or scope can be revised in order to remain within the budget originally approved by Reclamation.
- (3) If the project design and scope have been revised and there is still a need for a budget adjustment and/or if Reclamation's budget adjustment request to the originally approved budget is determined by CWCB staff to be necessary, reasonable and within the scope of the project as submitted by CWCB and approved by Reclamation, CWCB

staff will then assess whether the budget adjustment request could be met by reallocating the Participating Project's unobligated funds from that Participating Project's other pending or active, approved MOA projects. CWCB staff will consult Participating Project representatives and Project Beneficiaries as needed regarding any potential reallocation of unobligated funds as needed. If unobligated funds exist within the subject Participating Project's pending or active approved projects, CWCB staff may first look to redirect such unobligated funds from the pending or active projects to cover the requested budget adjustment. If the unobligated funds from pending or active approved projects within the subject Participating Project are insufficient to cover the entire requested budget adjustment, unobligated funds remaining from any completed but not yet closed projects within the subject Participating Project that have not yet been returned to the State of Colorado's general MOA allocation will then be considered. If CWCB staff determines that unobligated funds from the completed but not yet closed project(s) are available, CWCB staff may elect to redirect those excess funds to cover the budget adjustment request.

- (4) If CWCB has evaluated and/or taken all the actions identified above and determined Reclamation has acted in good faith to avoid or reduce the amount of the requested budget adjustment, and there still exists a reasonable and necessary request for all or some portion of said budget adjustment, CWCB will once again consult with Reclamation and the appropriate Project Beneficiaries to determine where project scope can be revised or other cost savings can be found and/or, identify alternate funding sources.
- (5) If no alternate funding sources are identified and all of these steps have been taken, CWCB staff will evaluate the availability of Colorado's general MOA allocation. If CWCB staff determines that there are sufficient unobligated funds from Colorado's general MOA allocation for the requested budget adjustment and circumstances warrant accessing these funds, CWCB staff may elect to allocate those funds to the project.
- (6) If all previous steps have been taken and are not sufficient to ensure successful completion of the project, CWCB staff will consult with Reclamation and Project Beneficiaries to discuss the possibility that work may need to cease until additional sources of funds are identified and secured.

At no time are funds for all approved projects to exceed Colorado's entire MOA allocation.

CWCB staff will require that all budget adjustment requests are submitted in writing, via email and that no verbal or text requests for budget adjustments in any amount will be considered.

CWCB staff, based on the direction of the Board, has the discretion to render decisions for any budget adjustment requests that are less than \$250,000.00. For those budget adjustment requests in excess of \$250,000.00, approval must first be obtained from the CWCB Board. CWCB staff will require that all budget adjustment requests will be submitted by Reclamation no less than five days after Reclamation first learns of the potential need for any proposed budget adjustment. Budget reallocation requests greater than \$250,000, requiring Board approval will require additional time for approval and must be made at least a month in advance of a regularly scheduled CWCB Board meeting.

In no case shall funds in excess of the originally approved amounts will be applied to projects until the necessary project review and approvals have been obtained.

**MEMORANDUM OF AGREEMENT
CONCERNING THE UPPER COLORADO RIVER BASIN FUND**

This Memorandum of Agreement (MOA) is entered into effective as of Jan. 24, 2011, by and among the States of Colorado, New Mexico, Utah and Wyoming; the Colorado River Energy Distributors Association, Inc. (CREDA); the Department of the Interior, Bureau of Reclamation; and the Department of Energy, Western Area Power Administration (the "Parties").

RECITALS

The Recitals set forth below are material facts that are relevant to and form the basis for the agreement set forth herein.

I. Parties.

Title 43, section 620d(e) of the United States Code requires approval of a state's "legally constituted authority" before that state may waive its right to have its Upper Colorado River Basin Fund apportionment spent in another state.

A. State of Colorado.

1. Pursuant to the executive authority of the Governor of the state of Colorado as delegated by letter dated October 27, 2010, the Director of the Colorado Water Conservation Board, Jennifer L. Gimbel, is authorized to negotiate and enter into this agreement.
2. Section 37-60-106, subsections (e), (h), (i), and (k) of the Colorado Revised Statutes empowers and charges the Colorado Water Conservation Board "[t]o cooperate with the United States and the agencies thereof, and with other states for the purpose of bringing about the greater utilization of the water of the state of Colorado...; ... [t]o investigate and assist in formulating a response to the plans, purposes, procedures, requirements, laws, proposed laws, or other activities of the federal government and other states which affect or might affect the use or development of the water resources of this state; [t]o confer with and appear before the officers, representatives, boards, bureaus, committees, commissions, or other agencies of other states, or of the federal government, for the purpose of protecting and asserting the authority, interests, and rights of the state of Colorado and its citizens with respect to the waters of the interstate streams in this state; ...[and] [i]n general, to take such action and have such powers as are incidental to the foregoing specific provisions and to the general purposes of this article."

- B. State of New Mexico.** Pursuant to § 72-14-3 New Mexico Statutes Annotated 1978, the New Mexico Interstate Stream Commission is authorized to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of the State of New Mexico, interstate or otherwise. The Interstate Stream Commission also is authorized to institute or cause to be instituted in the name of the State of New Mexico any and all negotiations and/or legal proceedings as in its judgment are necessary to fulfill its statutory mandate.

By Resolution dated December 20, 2010, the Interstate Stream Commission authorizes the execution of this MOA and delegates its authority to the Secretary of the Interstate Stream Commission to sign on the Commission's behalf.

- C. State of Utah. The Division of Water Resources (DWR) is the water resource authority for the State of Utah. Utah Code Ann. § 73-10-18. The Utah Department of Natural Resources Executive Director (Department), with the concurrence of the Utah Board of Water Resources (Board), appoints the DWR Director (Director). § 63-34-6(1). The Board makes DWR policy. § 73-10-1.5. The Board develops, conserves, protects and controls Utah waters, § 73-10-4(4), (5), and, in cooperation with the Department and the Governor, supervises administration of interstate compacts, § 73-10-4, such as the Colorado River Compact, §§ 73-12a-1 through 3, and the Upper Colorado River Basin Compact, § 73-13-10. The Board, with Department and Gubernatorial approval, appoints a Utah Interstate Stream Commissioner, § 73-10-3, currently the DWR Director, to represent Utah in interstate conferences to administer interstate compacts. §§ 73-10-3 and 73-10-4. These delegations of authority authorize the Utah Interstate Stream Commissioner/DWR Director to sign this document. He acts pursuant to a Board resolution, acknowledged by the Department, dated December 9, 2010.
- D. State of Wyoming. The governor's discretion under Wyo. Stat. Ann. § 9-1-210 (2010) to accept federal assistance on behalf of the State of Wyoming authorizes him to be Wyoming's legally constituted authority with regard to the Basin Fund and this Agreement. In signing this agreement, the Governor of Wyoming intends that this Agreement be mutually and equally binding between the parties.
- E. Colorado River Energy Distributors Association, Inc. (CREDA). CREDA is a non-profit Colorado corporation established in 1978 to represent its members in dealing with Colorado River Storage Project (CRSP) resource availability and affordability issues. CREDA represents its members in dealing with the Bureau of Reclamation and the Western Area Power Administration. CREDA's members are all non-profit organizations, serving over four million electric consumers in the six western states of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming. The Executive Director of CREDA is authorized to execute this MOA pursuant to resolution adopted by the CREDA Board of Directors on November 5, 2010.
- F. U.S. Department of the Interior, Bureau of Reclamation (Reclamation). Reclamation, through authorities provided to the Secretary of the Interior by Reclamation law including the Colorado River Storage Project (CRSP) Act of 1956 and subsequent amendments, is authorized to operate and maintain CRSP and participating project facilities.
- G. U.S. Department of Energy, Western Area Power Administration (Western). Western, pursuant to the Acts of Congress approved June 17, 1902 (32 Stat. 388); February 25, 1905 (33 Stat. 814); July 3, 1952 (66 Stat. 325); April 11, 1956 (70 Stat. 105); August 4, 1977 (91 Stat. 565); and the Acts amendatory or supplementary to the foregoing Acts, acting by and through the Colorado River Storage Project Manager, is authorized to execute this MOA.

II. Background.

- A. In 1956, Congress enacted the Colorado River Storage Project Act (CRSPA). Among the purposes of CRSPA is the “comprehensive development of the water resources of the Upper Colorado River Basin.” A feature of CRSPA, in section 5(e), is the use of hydroelectric power revenues to aid in the development and repayment of certain irrigation costs of participating projects within the Upper Colorado River Basin (aid-to-irrigation) 43 U.S.C. § 620d(e).
- B. In section 5(e) of CRSPA, Congress apportioned funds for aid-to-irrigation repayment to each of the Upper Division States as follows: 46.0% to the State of Colorado; 21.5% to the State of Utah; 17.0% to the State of New Mexico; and 15.5% to the State of Wyoming. For a variety of reasons, the application of this apportionment is resulting in the collection of revenues for aid-to-irrigation beyond what is necessary to repay the irrigation components of the completed and under construction irrigation projects as authorized in section 5(d)(4), 43 U.S.C. § 620d(d)(4).
- C. Section 5(e) of CRSPA allows an Upper Division State to consent to the use of revenues collected pursuant to 5(e) to be used in another Upper Division State.
- D. CREDA and the Upper Division States of Colorado, New Mexico, Utah, and Wyoming desire to enter into this interim agreement to implement Section 5(e) of CRSPA in a manner that reduces the CRSP firm electric service rate.
- E. The Parties desire to enter into this interim agreement to provide additional resources to further the purposes currently authorized in CRSPA 43 U.S.C. § 620(c)(1).
- F. This MOA does not imply support for or require the de-authorization of projects that are currently authorized. It does not prevent the states or parties within the states from seeking authorization of additional projects or from seeking appropriations for authorized projects under CRSPA, as amended and supplemented. It does not require cost sharing or matching funds by the state parties.
- G. It is the intent of the signatories not to seek any legislative changes to the apportionment process as it is currently described in CRSPA.

III. Purposes. The Parties intend that the actions by them contemplated in this MOA will:

- A. Reduce the impact on the CRSP firm power rate by eliminating the collection of power revenues beyond that amount needed to repay the costs of the projects identified in A.1-6 of the Agreement section below.
- B. Create a methodology for collecting MOA Revenues for use by Reclamation within the Upper Colorado River Basin for the benefit of the Upper Division States. Under this MOA, CRSP power revenues collected in accordance with this MOA will be used by Reclamation to further the purposes of CRSPA through application of those revenues to the costs of implementation of projects recommended by the Non-Federal Parties. The

Non-Federal Parties may adopt operating procedures to more fully explain the Parties' actions pursuant to the MOA.

C. Further the cooperative relationships among CRSP water and power beneficiaries.

DEFINITIONS

For the purposes of this Agreement, the following terms are defined as follows:

1. MOA Revenues. Power revenues collected pursuant to this MOA and CRSPA, as amended and supplemented, that are utilized by Reclamation for the purposes described in section B of this MOA.
2. Colorado River Storage Project. A Bureau of Reclamation project that includes four initial storage units: Glen Canyon, Flaming Gorge, Navajo, and the Wayne N. Aspinall Storage Unit. Authorized along with, but not part of the initial units listed above, are a number of participating projects whose irrigation construction costs are repaid by power revenues. These participating projects are listed in the authorization paragraphs of the Colorado River Storage Project Act and subsequent legislation, identified in this MOA as CRSP or CRSPA.
3. Colorado River Storage Project Act. Public Law 485, approved by the President of the United States on April 11, 1956, codified at 43 U.S.C. § 620 et seq., as amended and supplemented, identified in this MOA as CRSPA.
4. Cost Recovery Charge (CRC). An additional charge that may be imposed by Western on all delivered sustainable hydropower energy deliveries that may, at times, be applicable when cost recovery is at risk due to low hydropower generation and high power prices.¹ A CRC is imposed when necessary to adequately maintain a sufficient cash balance in the Upper Colorado River Basin Fund.² On an annual basis, Western estimates availability of revenue in the Basin Fund, at the beginning and end of the fiscal year, to maintain a Basin Fund target balance for the following year, and to limit the annual loss to the Basin Fund. Once Western determines the amount of revenue available in the Basin Fund for anticipated expenses, it will determine if additional revenue is needed and will include this amount in the customer's firm power bill through the assessment of a CRC.³
5. Federal Parties. The U. S. Department of the Interior, Bureau of Reclamation and the U. S. Department of Energy, Western Area Power Administration.
6. Interim Period. The period between the date on which the last Party executes this MOA and September 30, 2025.
7. Non-Federal Parties. The States of Colorado, New Mexico, Utah, and Wyoming and CREDA.

¹ Rate Order WAPA-117, January 18, 2005.

² Rate Order WAPA-137, September 4, 2008.

³ Rate Order WAPA-117, August 15, 2005.

8. Upper Colorado River Basin. Those parts of the States of Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River system above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River system which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry.
9. Upper Colorado River Basin Fund (Basin Fund). A separate fund in the United States Treasury established pursuant to Section 5(a) of CRSPA 43 U.S.C. §620(d)(a).
10. Upper Colorado River Commission. An interstate water administrative agency composed of one Commissioner representing each of the States of Colorado, New Mexico, Utah, and Wyoming and one Commissioner representing the United States as established pursuant to Article VIII of the Upper Colorado River Basin Compact of 1948, 63 Stat. 31.
11. Upper Division States. The States of Colorado, New Mexico, Utah, and Wyoming as defined in Article II(c) of the Colorado River Compact and Article II(c) of the Upper Colorado River Basin Compact.

AGREEMENT

In consideration of the above recitals and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Consent to Collection and Use of Apportioned Revenues Pursuant to Section 5(e) of CRSPA.

The Upper Division States consent pursuant to section 5(e) of CRSPA to the use of sufficient revenues apportioned and collected for each State to be used in another State for the repayment of projects as set forth below. The repayment figures included in this section of the MOA are based on Western's most recent power repayment study (Appendix B) which will be updated periodically.

The Parties intend that, as to the specifically enumerated projects below, the obligation to collect funds pursuant to section 5(e) of CRSPA will be met and at no time in the future will Reclamation or Western collect additional funds or include in the power repayment study any specified apportionment for the six projects listed below, beyond what is reflected in Western's most current power repayment study (Appendix B) for the particular project listed below when the project becomes due and payable.

1. Western will collect sufficient power revenues under CRSPA section 5(e) so that a total of approximately \$8,660,000 is collected for the Vernal Unit of the Central Utah Project in Utah for irrigation repayment in 2016.
2. Western will collect sufficient power revenues under CRSPA section 5(e) so that approximately \$3,194,000 is collected for the Smith Fork Project in Colorado for irrigation repayment, and approximately \$1,192,000 is collected for the Seedskadee Project in Wyoming for irrigation repayment in 2017.

3. Western will collect sufficient power revenues under CRSPA section 5(e) so that a total of approximately \$6,412,000 is collected for the Emery County Project in Utah for irrigation repayment in 2020.
4. Western will collect sufficient power revenues under CRSPA section 5(e) so that a total of approximately \$13,624,000 is collected for the Silt and Florida Projects in Colorado for irrigation repayment in 2021.
5. Western will collect sufficient power revenues under CRSPA section 5(e) so that a total of approximately \$23,666,000 is collected for the San Juan-Chama Project in New Mexico for irrigation repayment in 2023.
6. Western will collect sufficient power revenues under CRSPA section 5(e) so that a total of approximately \$99,070,000 is collected for the Duchesne Unit of the Central Utah Project in Utah for irrigation repayment in 2025.

B. Agreement For Collection and Use of MOA Revenues Pursuant to Section 5(c) of CRSPA, as Amended and Supplemented.

1. Collection and Use of MOA Revenues.

- a. By executing this MOA, the Parties agree to support the collection of an average of \$11,500,000 in revenues annually for a total of \$161,000,000 beginning in the federal fiscal year following approval of this MOA and continuing through the Interim Period. The MOA Revenues collected pursuant to this section B shall be assigned to projects within each of the four Upper Division States as follows: Colorado, 46.0%; New Mexico, 17.0%; Utah, 21.5%; and Wyoming, 15.5%; provided, however, that nothing herein shall prevent any state that otherwise lacks projects that qualify for MOA Revenues to allow, at the sole discretion of the state, its assigned MOA Revenues to be reallocated for implementing projects in other states. All MOA Revenues collected pursuant to this Section B shall be used in accordance with Section B of this MOA to the extent authorized by federal law.
- b. The collection of such MOA Revenues is subject to there being sufficient amounts in the Upper Colorado River Basin Fund such that a Cost Recovery Charge (CRC) will not be triggered. In the event a CRC is triggered by this MOA or any other cause through September 30 prior to October 1, 2023, the MOA Revenues associated with that year(s) not already obligated pursuant to contract will not be available for use in the year(s) a CRC is triggered, but will be made available within the next two years following a CRC-triggered year in which a CRC is triggered. It is the express intent of the Parties that while CRC triggers may affect funding availability for future projects, they will not affect the completion of projects for which studies have been completed and work has been initiated, even if additional contracting is necessary for such a project in the year(s) following a triggering of a CRC. By mutual agreement,

the Parties may adjust the schedule for collection of MOA Revenues; however, the total amount of MOA Revenues collected over the Interim Period shall be \$161,000,000, which is an average of \$11,500,000 per year. The Non-Federal Parties shall establish a schedule of MOA Revenues expected to be needed each year, taking into consideration, among other things, impacts to the most recent power repayment study. Any adjustments to the schedule for collection of MOA Revenues will be transmitted to Reclamation before the beginning of the next fiscal year.

- c. MOA Revenues collected pursuant to this subsection shall be separately accounted for in the Basin Fund by Western to fund approved projects identified by the Non-Federal Parties pursuant to this MOA and consistent with Reclamation law including CRSPA, as amended and supplemented.
- d. Reclamation will utilize the MOA Revenues provided hereunder to fund projects or activities within the Upper Colorado River Basin, which further the purposes of CRSPA, as amended and supplemented, are within Reclamation's authorities, and are recommended by the Non-Federal Parties. Reclamation will not transfer or reassign revenues provided under this MOA to projects or activities not recommended by the Non-Federal Parties.
- e. The Non-Federal Parties agree to support congressional budget authority, to the extent it is needed, to ensure that Reclamation has the necessary budget authority to utilize the MOA Revenues.

2. Determination of Projects and Priorities for MOA Revenues.

- a. The Non-Federal Parties shall, on a not less than annual basis, meet to discuss and make recommendations for scheduling projects and activities that would be funded by MOA Revenues. In scheduling projects for work, annual allocations of MOA Revenues may, for efficiency and by mutual consent of the Upper Division States, vary from the distribution of MOA revenue assignments described in section B.1.a of this MOA; provided, however, that the total amount of MOA Revenues over the term of this MOA shall be distributed to the states in conformance with the assignment percentages described in section B.1.a. Projects recommended for funding using MOA Revenues will include the estimated cost, anticipated commencement of construction or implementation and a timetable for completion of each project or activity.
- b. It is the responsibility of each Upper Division State to determine the priority of projects within that state. Projects may proceed within any state, according to its priority list, if MOA Revenues are available and as the projects are scheduled for work pursuant to 2.a. above, regardless of the status of projects in any other state. Examples of projects are shown in Appendix A, which is subject to revision.
- c. The Non-Federal Parties shall transmit a prioritized list of recommended projects to Reclamation along with any comments.

- d. CREDA will give the Upper Division States the opportunity to participate in the review and comment on Reclamation's OM&R work plans submitted to CREDA under Letter Agreement No. 92-SLC-0208, dated September 24, 1992.
- e. Upon request by an Upper Division State, Reclamation will provide technical and administrative support to identify and implement expanded operation, maintenance and replacement activities, including water conservation projects or activities, that would qualify for use of MOA Revenues under this Agreement. Such support will include conducting appraisal-level studies and cost estimates for potential activities and projects that may qualify for funding with MOA Revenues, in addition to performing final project design and implementation or construction management for projects recommended by the Non-Federal Parties for funding with MOA Revenues. The costs to Reclamation of performing these services and related environmental compliance activities shall be paid from MOA Revenues assigned or otherwise allocated to the state(s) in which the project is located.
- f. Western will update the power repayment study and complete a power rate adjustment process, if and when necessary, to implement the provisions of this MOA in a timely manner.

C. General Provisions.

- 1. Consistency with Existing Law. This MOA has been developed to be consistent with existing law, including the Upper Colorado River Basin Compact and CRSPA, as amended and supplemented.
- 2. Resolution of Claims or Controversies. In the event any dispute or controversy arises out of or relates to this MOA, the Parties agree to exercise their best efforts to resolve the dispute as soon as possible. The Parties shall, without delay, continue to perform their respective obligations under this MOA that are not affected by the dispute.
- 3. Reservation of Rights. Notwithstanding the terms of this MOA, the Parties reserve, and shall not be deemed to have waived, any and all rights, including any claims or defenses, they may have as of the date hereof or as may accrue during the term hereof, under any existing federal or state law or administrative rule, regulation or guideline, as applicable, including without limitation the Upper Colorado River Basin Compact, CRSPA, as amended and supplemented and any other applicable provision of federal law, rule, regulation or guideline. Notwithstanding anything in this MOA to the contrary, the terms of this paragraph shall survive the termination or expiration of this MOA.
- 4. No Third-Party Beneficiaries. This MOA is made for the benefit of the Parties. No Party to this MOA intends for this MOA to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise.
- 5. Joint Defense Against Third-Party Claims. The Parties will have certain common, closely parallel, or identical interests in supporting, preserving and defending the MOA. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the

Parties will mutually benefit from an exchange of information relating to the support, preservation and defense of this MOA, as well as from a coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge to the MOA by a third party, the Parties will cooperate to proceed with reasonable diligence and to use reasonable best efforts in the support, preservation and defense thereof, including any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this MOA, and will to the extent appropriate and allowable under federal law enter into such agreements, including joint defense or common interest agreements, as are necessary. Each Party shall bear its own costs of participation and representation in any such defense.

6. Reaffirmation of Existing Law. Nothing in this MOA is intended to, nor shall this MOA be construed so as to, diminish or modify the right of any Party under existing law, including without limitation the Upper Colorado River Basin Compact and CRSPA, as amended and supplemented. The Parties hereby affirm the entitlement and right of the Upper Division States under such existing law to fully use and develop the waters of the Colorado River apportioned to them.
7. Effective Date and Term. This MOA shall be effective as of the date of the last signature hereto. This MOA will be effective for the Interim Period from the date of its full execution by the Parties. The Parties will commence a review of this MOA for consideration of modification, extension or termination no later than September 30, 2023. The MOA shall expire on September 30, 2025 unless modified or extended. Any MOA Revenues remaining on September 30, 2025 will continue to be available to fund projects identified by the Non-Federal Parties until September 30, 2030.
8. Authority. Each person executing this MOA represents its respective Party in the matters addressed in this MOA and has the full power and authority to bind the respective Party to the terms of the MOA. No Party shall challenge the authority of any person or Party to execute this MOA and bind such Party to the terms hereof, and the Parties hereby waive the right to challenge such authority.

D. Legal Authorities.

1. The purpose of the CRSPA includes in Section 1 "the comprehensive development of the water resources of the Upper Colorado River Basin."
2. Section 5(c) of the CRSPA states "all revenues collected in connection with the operation of the Colorado River Storage Project and participating projects shall be credited to the Basin Fund and shall be available, without further appropriation" as specified in Section 5(c).
3. Section 5(e) of the CRSPA states: "Revenues so apportioned to each State shall be used only for the repayment of construction costs of participating projects or parts of such projects in the State to which such revenues are apportioned and shall not be used for such purposes in any other state without consent, as expressed through its legally constituted authority, of the State to which such revenues are apportioned."

4. Section 5(g) of the CRSPA requires that "business-type budgets shall be submitted to Congress for all operations financed by the Basin Fund."

E. Points of Contact.

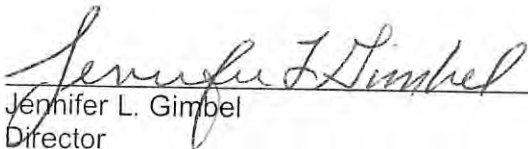
The points of contact for each of the Parties to this MOA are as follows:

1. Upper Division States: Upper Colorado River Commissioners for the States of Colorado, New Mexico, Utah, and Wyoming; and Executive Director and General Counsel of the Upper Colorado River Commission.
2. CREDA: Executive Director.
3. Bureau of Reclamation: Regional Director, Upper Colorado Region.
4. Western Area Power Administration: Manager, CRSP Management Center.

Each Party may revise its point of contact upon written notice to each other Party.

F. Signatures.

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by their proper officers on the dates indicated.


Jennifer L. Gimbel
Director

Colorado Water Conservation Board

Date

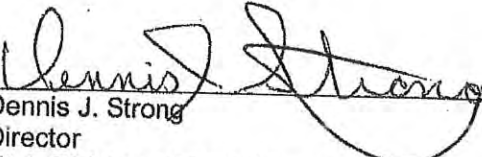

Dec. 22, 2010



John R. D'Antonio, Jr.
Secretary
New Mexico Interstate Stream Commission

12/21/10

Date


Dennis J. Strong

Director

Utah Division of Water Resources

Utah Department of Natural Resources

Date 1/10/11

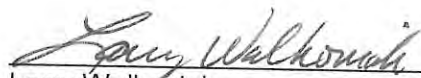


Matthew H. Mead
Governor
State of Wyoming

1/24/11

Date

Date 12/22/10



Larry Walkoviak
Regional Director, Upper Colorado Region
Bureau of Reclamation

12/23/2010

Date

Julia L. Kyriss
Julia L. Kyriss
Colorado River Storage Project Manager
Western Area Power Administration

Dec. 23, 2010
Date

APPENDIX A

The following are examples of activities that could be funded by MOA Revenues provided pursuant to this MOA. The list is not meant to be exhaustive, as projects and activities may change over time. The list applies only to the use of MOA Revenues. The use of Basin Fund revenues for these activities will be limited to the availability of MOA revenues as defined herein and is not intended to set a precedent for the use of Basin Funds in general. All projects must be approved by Reclamation in accordance with this MOA to ensure consistency in the application of Basin Fund revenues. The process for review will include asking the following: (1) Does the proposed project fall under a listed activity? (2) Does the proposed project have a link to the O&MR of Initial Units or Participating Projects? (3) What is the purpose of the proposed project? (4) Is it a viable project (provides efficiencies, cost savings or improvement)?

The following is a list of activities with some examples that will be considered for use of MOA revenues:

1. Replacements, Additions and Extraordinary Maintenance
 - Activities for the continued operation and maintenance of the Initial Units and participating projects.
 - For example, the stilling basin at Fontenelle needs repairing, and it has not been funded in the baseline funding.
 - CRRS Modeling
 - Snowpack data collection
 - Repair, refurbish and rehabilitate existing facilities
2. Water Conservation Activities
 - Activities that improve the efficiency and operation of CRSP Initial Units and participating projects. This activity needs to be separated into Federal and Non-Federal facilities, since there is a Reclamation-wide ceiling for Non-Federal grants.
 - For example, Reclamation could complete the placement of riprap on the upstream face of Fontenelle Dam.
 - Conserve reservoir storage
 - Water quality
 - Refurbishments
 - Lining of canals and laterals
 - Flow gaging/water monitoring
 - Water administration costs
 - Studies to define and develop water conservation projects
3. Environmental Compliance Activities
 - Costs of environmental compliance for CRSP initial units, including biological opinions or programmatic biological opinions and associated improvements that are necessary to satisfy compliance for continuation of operation of facilities.
 - For example, the biological opinion covering the Aspinall Unit will likely necessitate extensive funding within the Gunnison River Basin to reduce selenium concentrations in the Gunnison River.
 - Funding for improvements to support environmental compliance could be

applied to improvements on CRSP participating projects or other Reclamation projects, e.g., lining of canals, diversion structure improvements, efficiency improvements on pumping plants, or the construction of fish passage structures or temperature control structures. RIP costs

4. Stream Gaging
 - Installation and operation of gages necessary for the operation of CRSP Units. For example, expand USGS gaging sites and the SNOTEL network.
5. Consumptive Use and Quality of Water
 - Studies necessary and incident to more efficient present and future operation of the CRSP system. For example, Consumptive Uses and Losses studies, Quality of Water Studies, CRSS model development, climate change modeling, and reservoir water quality modeling and basin studies.
6. Salinity – Upper Colorado River Basin
 - Provides new, cost-effective opportunities to control salinity in the basin.
7. Global Climate Change
 - Provides for nationwide data collection and monitoring activities; relevant research; and activities to increase the efficiency of the use of water in the United States.
 - Reclamation also has a responsibility to take a lead role in assessing risks to the water resources of the United State and to develop strategies to mitigate impacts and ensure long-term water resources management.

APPENDIX B

Colorado River Storage Project

Aid to Participating Projects Irrigation Repayment Obligations and Apportioned Revenues Applied

FY 2009 PRS

Unit: \$ 1,000

Year	Colorado 46%				New Mexico 17%				Wyoming 15.5%				Total			
	Incremental Available	Cumulative Available	Incremental Available	Cumulative Available	Incremental Available	Cumulative Available	Incremental Available	Cumulative Available	Incremental Available	Cumulative Available	Incremental Available	Cumulative Available	Incremental Available	Cumulative Available	Incremental Available	Cumulative Available
	Obligation	Wappler	Obligation	Wappler	Obligation	Wappler	Obligation	Wappler	Obligation	Wappler	Obligation	Wappler	Obligation	Wappler	Obligation	Wappler
2015	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2016	-	18,417	-	18,417	-	6,806	-	6,806	-	6,206	-	6,206	-	6,206	-	6,206
2017	-	3,194	-	18,417	-	6,806	-	6,806	-	6,206	-	6,206	-	6,206	-	6,206
2018	-	-	-	18,417	-	6,806	-	6,806	-	6,206	-	6,206	-	6,206	-	6,206
2019	-	-	-	18,417	-	6,806	-	6,806	-	6,206	-	6,206	-	6,206	-	6,206
2020	-	11,682	-	32,099	-	11,863	-	11,863	-	10,816	-	10,816	-	10,816	-	10,816
2021	-	13,622	-	32,099	-	11,863	-	11,863	-	10,816	-	10,816	-	10,816	-	10,816
2022	-	-	-	32,099	-	11,863	-	11,863	-	10,816	-	10,816	-	10,816	-	10,816
2023	-	31,818	-	64,037	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2024	-	-	-	64,037	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2025	-	173,381	-	244,023	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2026	-	-	-	244,023	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2027	-	-	-	244,023	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2028	-	-	-	244,023	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2029	-	5,482	-	244,023	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2030	-	-	-	244,023	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2031	-	-	-	244,023	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2032	-	-	-	244,023	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2033	-	-	-	244,023	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2034	-	16,272	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2035	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2036	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2037	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2038	-	51,092	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2039	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2040	-	5,176	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2041	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2042	-	4,540	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2043	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2044	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2045	-	103,095	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2046	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2047	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2048	-	78,814	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2049	-	23,113	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2050	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2051	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2052	-	81,740	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2053	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2054	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2055	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2056	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2057	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2058	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2059	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2060	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2061	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2062	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2063	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2064	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2065	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2066	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2067	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2068	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2069	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
2070	-	-	-	254,294	-	23,666	-	23,666	-	21,578	-	21,578	-	21,578	-	21,578
Total	889,471	889,471	91,839	981,310	91,839	981,310	91,839	981,310	91,839	981,310	91,839	981,310	91,839	981,310	91,839	981,310

Note: Bolded yellow amounts trigger apportionment. Bolded green amounts indicate bids available with apportionment.