



COLORADO
**Colorado Water
Conservation Board**
Department of Natural Resources

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Jared Polis, Governor

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TO: Colorado Water Conservation Board Members

FROM: Robert Viehl, Chief
Kaylea White, Senior Water Specialist
Stream and Lake Protection Section

DATE: July 17-18, 2024 Board Meeting

AGENDA ITEM: #6. One-Year Implementation of Previously Approved Lease Agreement to use Ruedi Reservoir Water for Instream Flow Use on the 15-Mile Reach (Water Division 5)
a. Garfield County

Staff Recommendation:

Authorize an expenditure up to \$25,637.50 from the Species Conservation Trust Fund to implement a short-term lease of up to 350 acre-feet of water from Garfield County.

Background:

In May 2023, the CWCB approved a two-year water use agreement of water stored in Ruedi Reservoir from Garfield County (Attachment A). The water use agreement includes: 1) the amount of water to be leased; 2) the timing and rate of releases; 3) payment procedures for the leased water; 4) approval of annual leases by Reclamation; 5) coordination on releases with outside entities such as Colorado Parks and Wildlife ("CPW") and United States Fish and Wildlife Service ("USFWS"); and 6) other provisions deemed necessary by the parties.

This water will be released for Instream Flow ("ISF") use in the 15- Mile Reach of the Colorado River to 1) supplement existing ISF water rights; and 2) help meet flow targets in support of the Upper Colorado River Endangered Fish Recovery Program. The 15-Mile Reach is critical habitat for four federally protected native fish species - the Colorado pikeminnow, razorback sucker, humpback chub and bonytail.

Water Proposed for Leased Acquisition and Location of Use:

The water leased to the CWCB under the agreement includes up to 350 acre-feet owned by Garfield County ("Leased Water"). All the proposed Leased Water is stored in Ruedi Reservoir pursuant to Garfield County's Repayment Contract with the U.S. Bureau of Reclamation ("Reclamation"). Because the use of leased water under the proposed agreements is authorized by the Ruedi Reservoir decrees and the repayment contracts with the Reclamation, no water court approval is necessary. The reach of stream proposed for use of the Leased Water is the



15-Mile Reach of the Colorado River, described below and shown on the attached Location Map (Exhibit B).

Existing ISF Water Rights:

The CWCB currently holds water rights on the following reaches of the Colorado River within which CWCB can use the Leased Water for ISF purposes:

Case No.	Stream	Segment	Length	Amount	Approp. Date
92CW286	Colorado River (15-Mile reach)	Tailrace of Grand Valley Pumping Plant to confl. Gunnison River	Approx. 15 miles	581 cfs (7/1-9/30)	3/5/1992
94CW330	Colorado River (15-Mile reach)	27.5 Road Gage to confl. Gunnison River	Approx. 2 miles	300 cfs (7/1-9/30)	11/4/1994

Use of the Leased Water:

The CWCB will use the Leased Water to supplement the existing ISF water rights in the 15-Mile Reach to preserve the natural environment, and to improve the natural environment by providing additional flows to help meet, or reduce shortfalls to, USFWS flow recommendations benefitting the threatened and endangered fish habitat. Flow recommendations for the August - October time-period in the 15-Mile Reach vary depending on hydrologic conditions but baseflow targets range between 810 and 1,630 cfs. These targets are not consistently met and therefore the CWCB's use of the Leased Water above the decreed ISF rates to help meet the USFWS flow recommendations will help to improve the natural environment to a reasonable degree. The CWCB, USFWS and Reclamation will coordinate on the timing and amount of releases.

Funding Authorization Request:

The 2024 CWCB staff funding request to acquire the Leased Water and implement an annual ISF lease is \$25,637.50. This amount will allow for the acquisition of up to 350 acre-feet of Leased Water from Garfield County. The price of Leased Water is \$73.25 per acre foot which is the same amount paid during the implementation of this lease in 2023.

Attachments

Exhibit A - Garfield County/ CWCB Water Use Agreement

Exhibit B - Location Map

WATER USE AGREEMENT

This Water Use Agreement ("Agreement") is entered into by and between the Board of County Commissioners, Garfield County, Colorado ("County"), and the Colorado Water Conservation Board, an agency of the State of Colorado ("CWCB"), Individually, "Party"; together, "Parties").

RECITALS

- A. The CWCB is an agency of the State of Colorado whose mission is to conserve, develop, protect, and manage Colorado's water for present and future generations;
- B. Pursuant to C.R.S. § 37-92-102(3) the CWCB may acquire water by contractual agreement for the purpose of preserving or improving the natural environment to a reasonable degree ("Instream Flow Use").
- C. The County has a perpetual contractual interest in 400 acre-feet of water stored in Ruedi Reservoir ("Ruedi Water") pursuant to the County's Repayment Contract with the United States of America Department of Interior Bureau of Reclamation ("Reclamation"), attached as Exhibit A.
- D. The CWCB holds appropriated instream flow water rights on the Colorado River decreed in Case Nos. 92CW286 and 94CW330 to preserve the natural environment to a reasonable degree within the 15-Mile Reach extending from the tailrace of the Grand Valley pumping plant to the confluence with the Gunnison River ("15-Mile Reach").
- E. The County may desire to lease Ruedi Water to the CWCB on an annual basis for use in the 15-Mile Reach to supplement CWCB's existing decreed instream flow water rights and to provide water to help meet the U.S. Fish and Wildlife Service's flow recommendations to support the habitat of threatened and endangered fish species ("Annual ISF Lease") subject to the terms of the following Agreement.

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 and County agree as follows:

AGREEMENT

- 1. **Incorporation.** The Parties hereby incorporate by this reference the recitals set forth above.
- 2. **Term.**
 - 2.1 **Effective Date.** This Agreement shall become effective on the date in which the Agreement is signed by the CWCB and the County.
 - 2.2 **Expiration Date.** Unless otherwise terminated pursuant to the terms set forth herein, this Agreement shall automatically expire two (2) years after the Effective Date.
- 3. **Source and Use of Water**
 - 3.1 **Source.** The source of water to be used in an Annual ISF Lease shall be Ruedi Water stored and released from Ruedi Reservoir pursuant to County's Repayment Contract with Reclamation.
 - 3.2 **Use.** Ruedi Water shall be used for instream flow purposes to preserve and improve the natural environment to a reasonable degree within the 15-Mile Reach of the Colorado River.

- 3.3 Hydropower Use. Ruedi Water may be diverted from the Colorado River at the Grand Valley Project Diversion Dam (also known as the Roller Dam), transported in Grand Valley Project facilities to and run through the Grand Valley Power Plant, owned by Reclamation and operated by the Grand Valley Water Users Association ("GVWUA") and the Orchard Mesa Irrigation District ("OMID") to produce hydroelectric power, and discharged through the tailrace of the Grand Valley Power Plant to the Colorado River immediately below the Grand Valley Irrigation Company diversion dam. Ruedi Water that is run through the Grand Valley Power Plant shall not be checked back up the Colorado River using the Orchard Mesa Check structure, but shall flow through the Grand Valley Power Plant tailrace directly to the Colorado River near the upstream terminus of the 15-Mile Reach after it is used to produce hydroelectric power.
- 3.4 Rates of Flow for ISF Use. Releases of Ruedi Water may be used to preserve and improve the natural environment within the 15-Mile Reach up to the target flow rates set by the U.S. Fish and Wildlife Service as part of the Upper Colorado Endangered Fish Recovery Program. Releases made to the 15-Mile Reach shall not cause the overall release from Ruedi Reservoir to exceed 300 cfs or cause the flow rate in the Fryingpan River below Ruedi Reservoir to exceed 350 cfs.
- 3.5 Volume. The amount of Ruedi Water available for an Annual ISF Lease subject to this Agreement shall not exceed 350 acre-feet annually.
4. Operation of ISF Lease
- 4.1 Decision to implement ISF Lease. No later than May 1 of each year, CWCB and the County shall meet and determine whether Ruedi Water will be available and in what amount. It shall be within the County's sole discretion as to the determination of whether Ruedi Water will be available and in what amount. No minimum amount of Ruedi Water is guaranteed in a given year. The decision to implement an Annual ISF Lease in a given year shall be made mutually between CWCB and the County.
- 4.2 Delivery. The CWCB shall submit a delivery schedule to the County and Reclamation prior to the operation of an annual ISF lease. The County shall be responsible for arranging the delivery of Ruedi Water at the outlet works of Ruedi Reservoir into the Fryingpan River consistent with the CWCB delivery schedule, provided that the releases can be made within the operational limitations of Ruedi Reservoir as determined by Reclamation.
- 4.3 Operations and Coordination. The CWCB shall coordinate with Colorado Parks and Wildlife, Reclamation, and the U.S. Fish and Wildlife Service on the timing and rate of releases of Ruedi Water. CWCB will notify the County of the timing and amounts of water called for by the CWCB (In advance if possible) pursuant to this Agreement.
- 4.4 Exclusivity. The CWCB shall have the exclusive right to use Ruedi Water for instream flow use to preserve and improve the natural environment to a reasonable degree, provided that the Ruedi Water will be used consistent with the County's Repayment Contract and in accordance with the Fryingpan-Arkansas Act and Operating Principles. Once an Annual ISF lease is implemented subject to Section 6.3, below, the CWCB's exclusive right to use the Ruedi Water for Instream Flow Use shall be in effect through December 31 of that year.
- 4.5 Administration. The CWCB is responsible for taking whatever actions it deems necessary to protect the Ruedi Water that is released from Ruedi Reservoir from diversion by third parties between the outlet works of Ruedi Reservoir and the 15-Mile Reach, subject to the provisions of Section 3, above. The County shall have no obligation to protect the released water from diversion by third parties, nor shall it be responsible for the control, carriage,

use, handling, measurement or distribution of the Ruedi Water that is released from Ruedi Reservoir under this Agreement.

5. **Approvals and Accounting**

- 5.1 **Reclamation Approval.** An Annual ISF lease is subject to Reclamation's written approval. The CWCB and County shall coordinate on obtaining any necessary approvals of an Annual ISF Lease, including approval by Reclamation. No Ruedi Water shall be released from Ruedi Reservoir under this Agreement unless and until an Annual ISF Lease is approved by Reclamation.
- 5.2 **Division Engineer Confirmation.** The CWCB must obtain confirmation from the Water Division 5 Engineer that an Annual ISF Lease implemented under this Agreement is administrable.
- 5.3 **Accounting.** The Parties agree to communicate, coordinate and cooperate, if needed, on any required accounting as set forth by the Colorado Division of Water Resources or Reclamation.

6. **Price and Payment Procedure**

- 6.1 The County shall set the price per acre-foot of Ruedi Water annually. The total cost of an Annual ISF Lease shall be the amount of Ruedi Water to be leased, in acre-feet, multiplied by the price per acre-foot ("Lease Amount"). To implement an ISF Lease, CWCB must determine that adequate funding is appropriated and available.
- 6.2 If the County and CWCB mutually desire to implement an Annual ISF Lease in a given year, and the CWCB has approved funding for the Annual ISF Lease at a regularly scheduled Board meeting, and the County has approved the lease amount at a regularly scheduled Board meeting, the CWCB will issue a Purchase Order for the Lease Amount.
- 6.3 Once a Purchase Order is issued, the County will invoice the CWCB for the Lease Amount. Within thirty (30) days, the CWCB shall remit payment for the full amount invoiced by the County. An Annual ISF Lease is implemented once CWCB issues a Purchase Order and is invoiced by the County for the Lease Amount.

7. **Termination**

- 7.1 This Agreement may be terminated upon mutual agreement of the Parties or as described herein.
- 7.2 **Material Breach.** Either Party may terminate this Agreement for a material breach of the terms of this Agreement by the other Party; provided that the terminating Party has first given at least sixty (60) days prior written notice specifying in detail such alleged material breach and giving the other Party the right within such sixty (60) day period to cure and remedy such alleged material breach. Breach of any annual lease under this Agreement is not a breach of this Agreement.
- 7.3 **Ability to Perform Impaired.** Either Party may terminate this Agreement if its legal ability to deliver Ruedi Water is materially impaired or is eliminated because of the termination or adverse modification of the Repayment Contract, permits, decrees, or other authorizations or legal or administrative findings that are necessary to deliver Ruedi Water; provided that the terminating Party has first given at least sixty (60) days prior written notice to the other Party specifying the issue and steps taken to resolve the issue.
- 7.4 **Notice of Breach.** Prior to commencing any action for enforcement of this Agreement, the Party seeking enforcement shall give the other Party no less than sixty (60) days prior

written notice specifying in detail the basis for the enforcement action and the desired outcome that would resolve the perceived need for enforcement.

8. **Remedies.**

8.1 **Available Remedies.** Remedies under this Agreement are limited to remedies available under Colorado law.

8.2 **Costs and Fees.** In the event of a dispute under this Agreement, each Party shall bear its own costs and fees, including attorney's fees.

9. **Force Majeure.** In the event either Party is unable to perform its obligations under the terms of this Agreement because of acts of God; natural disasters; epidemics; actions or omissions by governmental authorities; unavailability of supplies or equipment critical to perform; major equipment or facility breakdown; changes in Colorado or federal law, including, without limitation, changes in any permit; or other causes reasonably beyond that Party's control, such Party shall not be liable to the other Party for any damages resulting from such failure to perform or otherwise from such causes.

10. **Notices.** Any notice required or permitted to be given by a Party under or in connection with this Agreement shall be in writing and shall be deemed duly given when personally delivered or sent by: (a) registered or certified mail, return receipt requested, postage prepaid, (b) expedited courier service, or (c) email with confirmation of receipt, to the following:

If to CWCB: Colorado Water Conservation Board
Attention: Chief, Stream and Lake Protection Section
1313 Sherman Street, Room 718
Denver, CO 80203
Email: dnr_cwcbisf@state.co.us

With a copy to: CWCB ISF Program
Attention: Pete Conovitz
1313 Sherman St., Rm.718
Denver, CO 80203
Email: pete.conovitz@state.co.us

If to County: Garfield County
Attention: Fred Jarman, County Manager
108 8th Street, Suite 101
Glenwood Springs, CO, 81601
Email: fjarman@garfield-county.com,

11. **Miscellaneous.**

11.1 No Agency. Nothing in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the Parties. Notwithstanding the foregoing, the CWCB or County may elect to designate an agent to undertake specific responsibilities under this Agreement. Should the CWCB or County elect

to do so, it shall provide written notice to the other party of such designation including the identity of such agent; contact information for such agent, including a principle point of contact; and clearly defined description(s) of the responsibilities such agent shall undertake on behalf of the CWCB or County.

- 11.2 Heirs and Assigns. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and permitted assigns of the Parties.
- 11.3 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Colorado, as amended, without reference to conflicts of laws.
- 11.4 No Waiver of Immunities. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.
- 11.5 No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default or breach hereunder be deemed a waiver of any subsequent default or breach hereunder.
- 11.6 Assignment. This Agreement may be assigned by either Party upon the prior written consent of the other Party.
- 11.7 Amendment. No amendment, modification, or novation of this Agreement or its provisions and implementation shall be effective unless subsequently documented in writing that is approved and executed by both Parties with the same formality as they have approved and executed the original Agreement.
- 11.8 Severability. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain operative and binding on the Parties.
- 11.9 Merger. This Agreement constitutes the entire Agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any prior Agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.
- 11.10 No Third-Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties.
- 11.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 11.12 Non-Discrimination. The Parties will fulfill their obligations under this Agreement without discriminating, harassing, or retaliating on the basis of race, color, national origin, ancestry, sex, age, pregnancy status, religion, creed, disability sexual orientation, genetic information, spousal or civil union status, veteran status, or any other status projected by applicable law.
- 11.13 Authority. Each Party represents that it has obtained all necessary approvals, consents, and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding Agreement, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law, or

any other governing authority of that Party.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, CWCB and District execute this Agreement on the dates set forth below.

COLORADO WATER CONSERVATION BOARD, an agency of the State of Colorado:

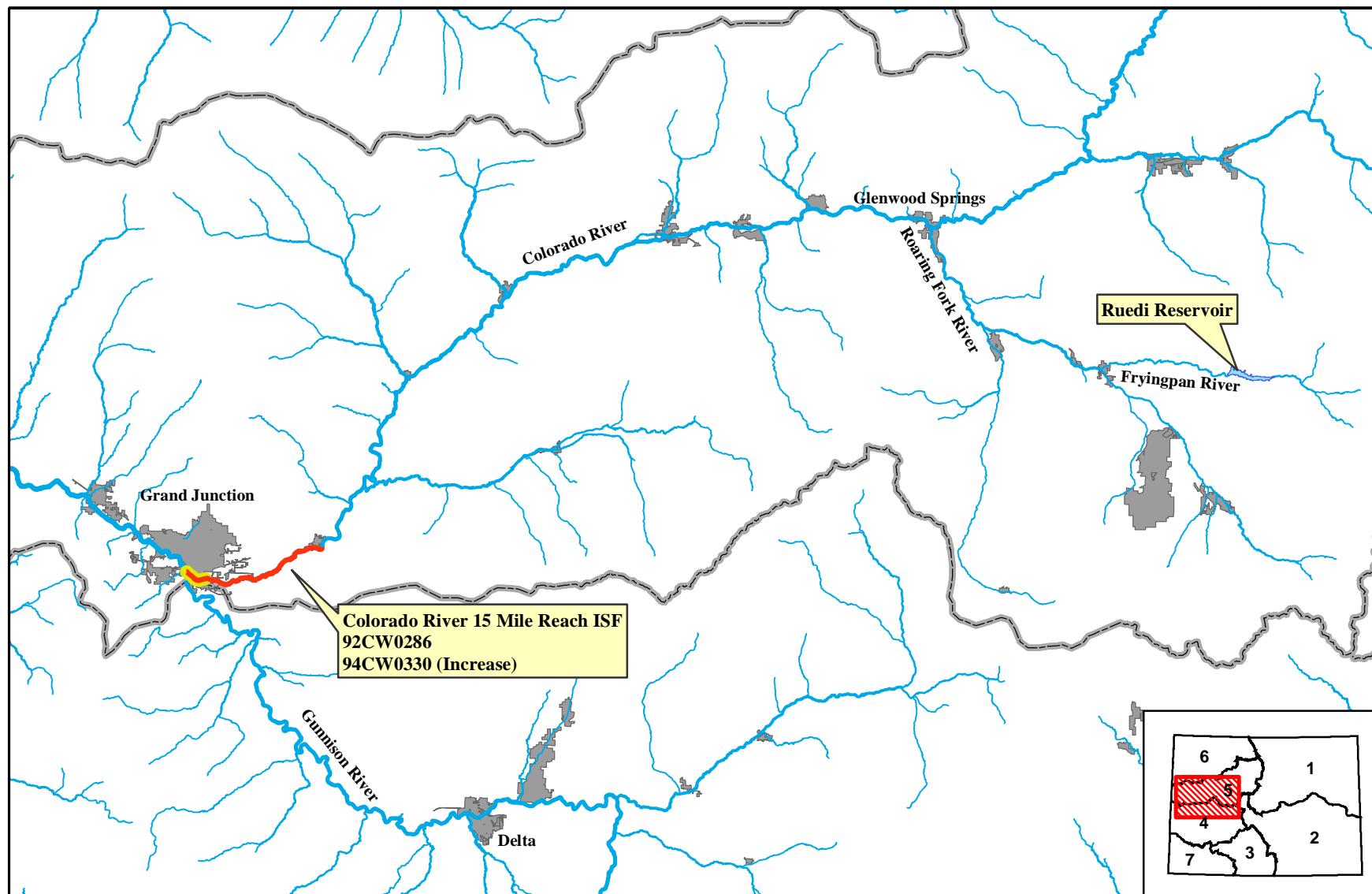
Rebecca Mitchell Date: 5-19-2023
Name: Rebecca Mitchell, Director

Garfield County, by and between the Board of County Commissioners, Garfield County, Colorado

John Martin Date: May 1 2023
Name: John Martin, Chairman of the Garfield
County Board of County Commissioners

LIST OF EXHIBITS

Exhibit A. Repayment Contract



COLORADO
Colorado Water Conservation Board
Department of Natural Resources

July 17-18 2024 CWCB Board Meeting
Agenda Item 6: #6. One-Year Implementation of Previously Approved Lease Agreement to use Ruedi Reservoir Water for Instream Flow Use on the 15-Mile Reach (Water Division 5)
a. Garfield County

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