



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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Denver, CO 80203

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Lauren Ris, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Lisa Bright-Unger, Water Resources Specialist
Stream and Lake Protection Section

DATE: July 16-17, 2025

AGENDA ITEM: #20a. One-Year Implementation of a Short-Term Lease from a Previously Approved Water Use Agreement with Ute Water Conservancy District to use Ruedi Reservoir Water for Instream Flow Use on the 15-Mile Reach of the Colorado River, Water Division 5 (only 1 meeting)

I. Staff Recommendation

- 1) Direct Staff to implement the third annual short-term lease of a previously approved five year water use agreement with Ute Water Conservancy District (“District”) for Ruedi Reservoir water to be released for instream flow (“ISF”) use in the 15-Mile Reach of the Colorado River.
- 2) Authorize an expenditure up to \$120,000 from the Species Conservation Trust Fund (“SCTF”) to fund the short-term lease of up to 6,000 acre-feet of Ruedi water.

II. Background

In May 2023, the CWCB approved a five-year renewable water use agreement (“Agreement”) with the District to lease their water (“Leased Water”) stored in Ruedi Reservoir to be released for ISF use by the CWCB in the 15-Mile Reach of the Colorado River. The Agreement with the District has a five-year term which allows for the implementation of up to five separate short-term annual leases of up to 12,000 acre-feet per year. With this year being the third short-term annual lease of the approved Agreement, the District is offering the possibility of up to 6,000



AF to the CWCB for ISF use. The CWCB has annually implemented short-term leases of Ruedi water with the District since 2015.

The Leased Water from Ruedi Reservoir will be released for Instream Flow (“ISF”) use in the 15- Mile Reach of the Colorado River to

- 1) preserve the natural environment by supplementing existing decreed ISF water rights; and
- 2) improve the natural environment by helping to meet the U.S. Fish and Wildlife Services’ (“USFWS”) flow recommendations to support the habitat of endangered fish species within the Colorado River ISF Reach 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. Flow targets issued by USFWS for the August - October baseflow period in the 15-Mile Reach vary depending on hydrologic year type and are not often met. It is anticipated that this year the Colorado River basin may experience some type of drought conditions.

A Location Map and the Agreement with the District are attached as Exhibits A & B, respectively.

III. Existing ISF water rights:

The CWCB currently holds ISF rights on the following reaches of the Colorado River:

Case No.	Stream	Segment	Length	Amount	Appropriation Date
92CW286	Colorado River 15-Mile Reach	Tailrace of Grand Valley Pumping Plant to confluence 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 confluence Gunnison River	Approx. 2 miles	300 cfs (7/1-9/30)	11/4/1994

IV. Annual Lease & Operations

The District owns 12,000 acre-feet of water in Ruedi Reservoir pursuant to its Repayment Contract (attached as Exhibit B) with the U.S. Bureau of Reclamation (“Reclamation”). Because the use of Leased Water under the proposed agreement is authorized by the Ruedi Reservoir decrees and the Repayment Contract with Reclamation, no water court approval is necessary.

The Agreement includes the following requirements:

- No later than August 31 of each year, CWCB and the District shall confer and determine whether Leased Water will be made available in that calendar year and in what amount, provided this determination is within the District's sole discretion. No minimum amount of Leased Water is guaranteed in any year. This year the District is offering the possibility of up to 6,000 AF of leased water at \$20/AF (“Annual ISF Lease”).
- The CWCB must obtain annual confirmation from the Water Division 5 Engineer that any Annual ISF Lease entered pursuant to this Agreement is administrable before release of Leased Water thereunder. The CWCB shall notify the Water Division 5 Engineer for water rights administration purposes when the Leased

Water is being released for ISF uses pursuant to any Annual ISF Lease.

- The CWCB shall keep records and make accountings as reasonably required by the State and Division Engineers to administer the Leased Water for ISF uses. The District will coordinate with the CWCB on providing any information the District possesses related to the Leased Water that is necessary for such record keeping and accounting.
- The CWCB will coordinate with USFWS and Reclamation on the release and delivery of the Leased Water during the weekly Green Mountain Historic Users Pool phone calls. The CWCB is responsible for coordinating with USFWS for releases of any Leased Water from Ruedi Reservoir, but the CWCB will notify the District (in advance if possible) of the timing and amount of Leased Water released from Ruedi Reservoir pursuant to this Agreement.
- The CWCB will coordinate with Reclamation to ensure that releases of the Leased Water from Ruedi Reservoir will not exceed 300 cfs and will not cause flows in the Fryingpan River below Ruedi Reservoir to exceed 350 cfs.

V. Funding Authorization Request

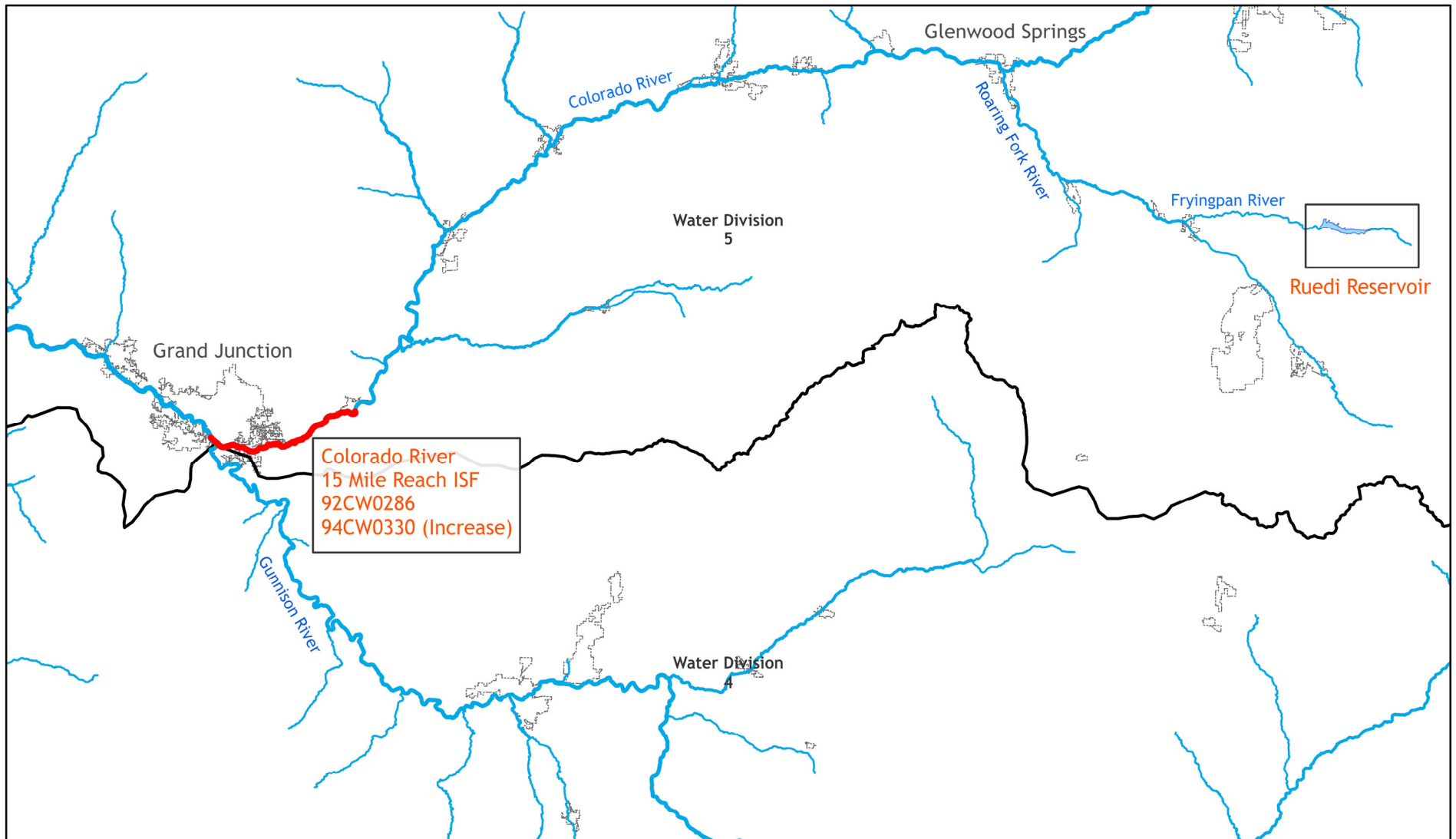
The 2025 CWCB staff funding request to acquire the Leased Water and implement an Annual ISF Lease is \$120,000. This amount will allow for the acquisition of up to 6,000 acre-feet of Leased Water from the District. The price of Leased Water remains at \$20 per acre-foot, consistent with the rate since 2020. The District recognizes the benefits these releases provide to the 15-Mile Reach and the Grand Valley. They have chosen to keep the rate affordable, charging only slightly above their Ruedi Reservoir operation and maintenance costs.

VI. Attachments

Exhibit A: Location Map

Exhibit B: 5-Year Water Use Agreement with Reclamation's Repayment Contract

Exhibit A



COLORADO
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Conservation Board**

Department of Natural Resources

July 16-17, 2025 CWCB Board Meeting
Agenda Item # 20a. Request for Implementation and
Funding for the 5-Year Water Use Agreement with
Ute Water Conservancy District to Lease Ruedi
Reservoir Water for Instream Flow Use on the
15-mile Reach for 2025, Water Division 5

0 5 10 20
Miles

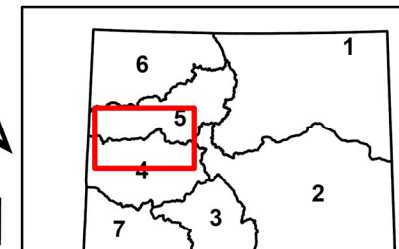


Exhibit B

WATER USE AGREEMENT

This Water Use Agreement ("Agreement") is entered into by and between the Ute Water Conservancy District, P.O. Box 460, Grand Junction, CO 81502 ("District") and the Colorado Water Conservation Board, 1313 Sherman St. # 724, Denver CO 80203 ("CWCB"). The District and CWCB are each individually a "Party" and 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. 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 ("ISF Lease Program").
- B. The District is a Colorado water conservancy district formed pursuant to C.R.S. § 37-45-101 et seq., that provides municipal and other water service within its jurisdictional boundaries in Mesa County, Colorado.
- C. The purpose of this Water Use Agreement is to make water controlled by the District available for use by the CWCB to preserve and improve the natural environment to a reasonable degree in the 15-Mile Reach of the Colorado River within Mesa County, Colorado extending from the tailrace of the Vinelands Power Plant to the confluence with the Gunnison River ("Colorado River ISF Reach") by supplementing the CWCB's existing decreed instream flow water rights in that reach and by providing water to help meet the U.S. Fish and Wildlife Service's ("USFWS") flow recommendations to support the habitat of several endangered fish species.
- D. The CWCB holds appropriated instream flow water rights on the Colorado River decreed in Case Nos. 92CW286 and 94CW330 ("Colorado River ISF Decrees") to preserve the natural environment to a reasonable degree by protecting flow rates up to a cumulative total of 881 cfs within the Colorado River ISF Reach.
- E. In September 2013, the District entered Repayment Contract No. 139D6C0111 with the U.S. Bureau of Reclamation ("Reclamation"), pursuant to which it purchased 12,000 acre-feet of water annually from the marketable yield of Ruedi Reservoir ("Ruedi Water") for municipal and industrial uses. Repayment Contract No. 139D6C0111 defines municipal and industrial uses, without limitation, as "use of water by municipalities, industrial users, commercial recreation entities, piscatorial users including delivery of water to supplement streamflow, and other water user entities not engaged in commercial agricultural production." To the extent its Ruedi Water is not immediately needed by the District for these municipal and industrial purposes, the District may elect to lease a portion of its excess Ruedi Water to CWCB for Instream Flow Uses within the Colorado River ISF Reach on a short-term annual basis ("Annual ISF Lease") subject to the terms of this Water Use Agreement and to the terms of the District's Repayment Contract.

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, CWCB and District 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 it is signed by both the CWCB and District.
 - 2.2 **Expiration Date.** Unless otherwise terminated pursuant to the terms set forth herein, this Agreement shall expire five (5) years after the Effective Date.
 - 2.3 **Renewability.** The Parties may renew this Agreement for successive five (5) year terms upon written agreement duly authorized by each.
3. **Source and Use of Water**
 - 3.1 **Source.** The source of water to be used in any Annual ISF Lease entered pursuant to this Agreement shall be the District's Ruedi Water stored and released from Ruedi Reservoir subject to the terms of Repayment Contract No. 139D6C0111 ("Leased Water").
 - 3.2 **Use.** The CWCB shall use the Leased Water made available to it, if any, to preserve the natural environment in the Colorado River ISF Reach to a reasonable degree under its Colorado River ISF Decrees, and to improve the natural environment in the Colorado River ISF Reach to a reasonable degree by providing water to help meet the USFWS's flow recommendations to support the habitat of endangered fish species within the Colorado River ISF Reach (collectively the "Instream Flow Uses").
 - 3.3 **Hydropower Use.** The Parties agree that Leased Water released from Ruedi Reservoir pursuant to this Agreement may be diverted from the Colorado River at the Grand Valley Project Diversion Dam (also known as the Roller Dam), be transported in Grand Valley Project facilities to and delivered through the Vinelands 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 be then discharged through the tailrace of the Vinelands Power Plant to the Colorado River immediately below the Grand Valley Irrigation Company diversion dam. The District is entitled to make appropriate arrangements and enter into contracts with Reclamation, GVWUA and/or OMID for such diversion, delivery and use of the Leased Water at the Vinelands Power Plant. The District agrees that any Leased Water that is diverted to and delivered through the Vinelands Power Plant shall not be checked back up the Colorado River above the Grand Valley Irrigation Company diversion dam using the Orchard Mesa Check structure, but shall flow through the Vinelands Power Plant tailrace directly to the Colorado River near the upstream terminus of the Colorado River ISF Reach after it is used to produce hydroelectric power.
 - 3.4 **Volume.** The amount of Leased Water available under any Annual ISF Lease subject to this Agreement shall not exceed 12,000 acre-feet annually, and the District is not obligated to provide any Leased Water for any individual Annual ISF Lease.
4. **Operation of Annual ISF Lease**
 - 4.1 **Decision to implement ISF Lease.** No later than August 31 of each year, CWCB and the District shall confer and determine whether Leased Water will be made available in that calendar year and in what amount, provided this determination is within the District's sole discretion. No minimum amount of Leased Water is guaranteed in any year. The decision to

execute an Annual ISF Lease in any year shall be made mutually between CWCB and the District.

- 4.2 Delivery. CWCB shall submit a delivery schedule to the District and the Bureau of Reclamation prior to operation under an Annual ISF lease. The CWCB shall be responsible for taking whatever actions it deems necessary to protect the Leased Water from diversion by third parties between the outlet works of Ruedi Reservoir and the Colorado River ISF Reach, subject to the provisions of Section 3.3 above. The District shall have no obligation to protect the released Leased Water from diversion by third parties, nor shall it be responsible for the control, carriage, use, handling, measurement, timing, distribution or accounting Leased Water released under an Annual ISF Lease pursuant to this Agreement.
- 4.3 Measurement. Any Leased Water shall be measured at the point at which it is released from Ruedi Reservoir, and there shall be no reduction in the Lease Price paid to the District for any transit losses between Ruedi Reservoir to and through the Colorado River ISF Reach.
- 4.4 Exclusivity. The CWCB shall have the exclusive right to use the Leased Water for instream flow use to preserve and improve the natural environment to a reasonable degree within the Colorado River ISF Reach, subject to Sections 3.2 and 3.3 above.
- 4.5 Coordination. The CWCB will coordinate with USFWS and Reclamation on the release and delivery of the Leased Water during the weekly Green Mountain Historic Users Pool phone calls. The CWCB is responsible for coordinating with USFWS for releases of any Leased Water from Ruedi Reservoir, but the CWCB will notify the District (in advance if possible) of the timing and amount of Leased Water released from Ruedi Reservoir pursuant to this Agreement.
- 4.6 Release Rates. The CWCB will coordinate with Reclamation to ensure that releases of the Leased Water from Ruedi Reservoir will not exceed 300 cfs and will not cause flows in the Fryingpan River below Ruedi Reservoir to exceed 350 cfs.
- 4.7 Release Schedule. Notwithstanding the term of any individual Annual ISF Lease entered pursuant to this Agreement, the CWCB's right to use the Leased Water shall be limited from the effective date of each Annual ISF Lease until 11:59 p.m. on December 31 of said year. The CWCB may not carry or book over Leased Water under any Annual ISF Lease that is not released in said year into another Annual ISF Lease year.
- 4.8 District Reservation of Use. The District reserves the right to use any of the District's Ruedi Water that is not made available to or used by the CWCB under this Agreement and any Annual ISF Lease for its own purposes. The District further reserves the right to use any of the District's Ruedi Water that is made available, released and used by the CWCB under this Agreement and any Annual ISF Lease for its own purposes after said water has passed through and below the Colorado River ISF Reach; CWCB shall have no use of the District's Ruedi Water below the Colorado River ISF Reach.
- 4.9 No Future or Third Party Reliance on Leased Water. The CWCB and District agree that this Agreement and any Annual ISF Lease entered hereunder is a short-term arrangement and that the use of the District's Ruedi Water to preserve and improve the natural environment in the Colorado River ISF is meant to be a temporary arrangement. The CWCB acknowledges and agrees that the Ruedi Water is critical to meeting the District's future needs and that the CWCB shall not be entitled to use, demand or otherwise rely on the availability or release of the Ruedi Water to maintain any of the CWCB's instream flow water rights in the Colorado River or its tributaries, to preserve or improve the natural environment in the Colorado River ISF or elsewhere, to meet USFWS endangered fish flow targets or for any other purpose after the expiration or termination of this Agreement. This

Agreement does not confer any rights or remedies upon any person or entity other than the Parties, and the Parties agree that neither the USFWS nor any other third party shall be entitled to use, demand or otherwise rely on the Ruedi Water or releases of the Ruedi Water for any purpose either during the term of this Agreement (including any amendment terms), or after its expiration or termination.

5. Approvals and Accounting

- 5.1 Reclamation Approval. Any Annual ISF Lease executed under this Agreement is subject to Reclamation's written approval. The CWCB and the District shall coordinate, at no material expense to the District, to obtain any necessary approvals required to implement an Annual ISF Lease under this Agreement, including approval by Reclamation. No Annual ISF Lease may be implemented under this Agreement unless and until this Agreement is approved by Reclamation. If Reclamation does not approve this Agreement, it shall automatically terminate.
- 5.2 Division Engineer Coordination. The CWCB must obtain annual confirmation from the Water Division 5 Engineer that any Annual ISF Lease entered pursuant to this Agreement is administrable before release of Leased Water thereunder. The CWCB shall notify the Water Division 5 Engineer for water rights administration purposes when the Leased Water is being released for Instream Flow Uses pursuant to any Annual ISF Lease.
- i. Accounting. The CWCB shall keep such records and make such accountings as reasonably required by the State and Division Engineers to administer the Leased Water for Instream Flow Uses. The District will coordinate with the CWCB on providing any information the District possesses related to the Leased Water that is necessary for such recordkeeping and accounting.
 - ii. Measurement. The CWCB shall install and maintain any measuring devices or structures reasonably required by the State and Division Engineers to administer the Leased Water for Instream Flow Uses, subject to the availability of funds.

6. Price and Payment Procedure

- 6.1 The District shall establish the per acre-foot price for Leased Water each year this Agreement is in force. The total cost of any Annual ISF Lease shall be the product of the amount of Ruedi Water under lease, in acre-feet, multiplied by the price per acre-foot ("Lease Amount"). In order to implement an Annual ISF Lease, CWCB must determine that adequate funding is appropriated and available to pay the Lease Amount.
- 6.2 If the District and CWCB mutually agree to implement an Annual ISF Lease in a given year, and the CWCB has determined that adequate funding is appropriated and available, the CWCB will issue a Purchase Order for the Lease Amount. Once a Purchase Order is issued, the District will invoice the CWCB for the Lease Amount. The Purchase Order and responsive District invoice, together and subject to this Agreement, shall constitute the Parties' written Annual ISF Lease, and the effective date of any Annual ISF Lease as to the Leased Water thereunder shall be the date of delivery of the District's invoice. In the event the terms of any Purchase Order issued by the CWCB or any invoice issued by the District conflict with the terms of this Agreement, the language of this Agreement shall control. The CWCB shall remit payment for the full Lease Amount invoiced by the District within thirty (30) days after invoice.
- 6.3 If, after entering an Annual ISF Lease in any year, the District determines that additional Ruedi Water is available for lease in said, the District and CWCB may increase the amount of Leased Water under the Annual ISF Lease, CWCB may issue additional purchase orders and

the District may submit additional invoices for the additional Lease Amount as described in this Section 6 above.

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 provide or utilize the Leased 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 provide or utilize the Leased Water.

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 District: Ute Water Conservancy District
Attention: Manager
2190 H ¼ Road
Grand Junction, CO 81505
Email: gwilliams@utewater.org

With a copy to: Balcomb & Green, P.C.
P.O. Drawer 790
Glenwood Springs, CO 81602
Email: chrisg@balcombgreen.com

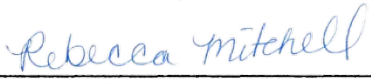
11. **Miscellaneous.**

- 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 District may elect to designate an agent to undertake specific responsibilities under this Agreement. Should the CWCB or District 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 District.
- 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.

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, Director

Date: 5-19-2023

UTE WATER CONSERVANCY DISTRICT



Gregory L. Green, President
Board of Directors

Date: 5-10-2023

LIST OF EXHIBITS

- Exhibit A. Repayment Contract
Exhibit B. Colorado River ISF Decrees

CONTRACT NO. 139D6C0111

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

RUEDI RESERVOIR
FRYINGPAN-ARKANSAS PROJECT, COLORADO
Ruedi Reservoir Round II Water Sales

REPAYMENT CONTRACT BETWEEN THE UNITED STATES
AND THE UTE WATER CONSERVANCY DISTRICT

THIS CONTRACT, Made this 3RD day of SEPTEMBER 2013, pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, particularly Section 9(c)(1) of the Reclamation Project Act of 1939 (53 Stat. 1187), Title III of the Act of July 3, 1958 (72 Stat. 320), and the Act of August 16, 1962 (76 Stat. 389), as amended, collectively referred to as the Federal Reclamation Laws, is between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," represented by the Contracting Officer executing this Contract, and the UTE WATER CONSERVANCY DISTRICT, hereinafter referred to as the "Contractor." The United States and the Contractor are sometimes referred to individually as the "Party" and collectively as the "Parties".

WITNESSETH THAT

EXPLANATORY RECITALS:

a. WHEREAS, the United States has constructed Ruedi Reservoir and related facilities as a feature of the Fryingpan-Arkansas Project as authorized by the Act of August 16, 1962 (76 Stat. 389), as amended by the Act of October 27, 1974 (88 Stat. 1486), the Act of November 3, 1978 (92 Stat. 2493) and the Act of March 30, 2009 (123 Stat. 1321), in substantial conformance with House Document No. 187, 83rd Congress, 1st Session, as modified by House Document No. 353, 86th Congress, 2nd Session, subject to the Operating Principles for the Fryingpan-Arkansas Project as set forth in House Document No. 130, 87th Congress, 1st Session.

b. WHEREAS, Ruedi Reservoir was authorized to provide storage capacity for replacement water for senior downstream diversion rights in western Colorado at times of Fryingpan-Arkansas Project diversions to the Arkansas River Basin in eastern Colorado, and to furnish regulatory storage capacity and water to users in western Colorado for any purpose recognized by the laws of the United States.

c. WHEREAS, paragraph 6(b) of House Document 130 (87th Congress, 1st Session, adopted March 15, 1961) provides that "the sale of water for use outside the natural basin of the Colorado River can only be made with the consent of the Colorado River Water Conservation District."

d. WHEREAS, on August 3, 1959, in Civil Action No. 4613 (Garfield County District Court, State of Colorado), the Court awarded the water storage right for Ruedi Reservoir and decreed that "the sale of water for use outside the natural basin of the Colorado River can only be made with the consent of the Colorado River Water Conservation District."

e. WHEREAS, the capital costs for the construction of Ruedi Reservoir are allocated among the authorized purposes, including \$9,312,000 allocated to the regulatory purpose consisting of the initial construction cost plus interest during construction. Pursuant to Section 2 of the Act of August 16, 1962, as amended, this amount is reimbursable with interest in not more than 50 years from September 30, 1969, when Ruedi Reservoir was placed in service. Under the provisions of the Water Supply Act of 1958 (72 Stat. 297), interest charges on the \$9,312,000 did not accrue for the 10-year period ending September 30, 1979. The \$9,312,000 of costs allocated to the regulatory purpose are further allocated to Ruedi Reservoir Round I and Ruedi Reservoir Round II water sales and are \$1,419,402 and \$7,892,598 respectively. As of September 30, 2012, the uncontracted capital costs, including accrued interest, operation, maintenance, and replacement costs for Ruedi Reservoir allocated to Ruedi Reservoir Round II water sales, hereinafter referred to as Round II were \$34,271,993.

f. WHEREAS, the Contractor desires to enter into a contract, pursuant to the Federal Reclamation Laws and the laws of the State of Colorado, for a quantity of water from the regulatory capacity of Ruedi Reservoir and to repay the reimbursable costs associated therewith as more specifically provided herein.

g. WHEREAS, the United States desires to provide the quantity of water requested by the Contractor pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

DEFINITIONS

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

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

b. "Contracting Officer" shall mean the Secretary of the Interior or a duly authorized representative.

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

d. "Year" shall mean the period beginning January 1 and ending on the following December 31.

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

f. "Replacement capacity" shall mean that portion of the total capacity of Ruedi Reservoir required to permit Project diversions at times when such diversions could not otherwise have been made because of simultaneous demands of senior diversions in western Colorado that existed on April 30, 1959, and as further defined in Section 6(a) of the Operating Principles, Fryingpan-Arkansas Project.

g. "Regulatory capacity" shall mean that portion of the total capacity of Ruedi Reservoir not needed for replacement purposes as further defined in Section 6(b) of the Operating Principles, Fryingpan-Arkansas Project.

h. "Municipal and industrial uses" shall mean use of water by municipalities, industrial users, commercial recreation entities, piscatorial users including delivery of water to supplement streamflow, and other water user entities not engaged in commercial agricultural production.

i. "Commercial agricultural uses" shall mean water used primarily for the commercial production of crops and livestock, which are the principle sources of income for the user of such water.

j. "Capital costs" shall mean the capitalized investment for Ruedi Reservoir including construction costs, interest during construction, accrued interest, and accrued unpaid annual operation, maintenance, and replacement costs, and interest thereon, and other appropriate costs allocable to the Regulatory capacity.

k. "Operation, maintenance, and replacement (OM&R) costs" shall mean those costs incurred to operate and maintain Ruedi Reservoir, including any administrative, overhead, or general expenses incurred by the United States, either directly or indirectly, in the operation and maintenance of Ruedi Reservoir and in the administration of this Contract and those costs incurred to remedy conditions brought about by the ordinary use of Ruedi Reservoir or to restore or replace components of the existing reservoir. For the purposes of this Contract, replacement costs shall be those costs allocable to the Regulatory capacity, but shall not include costs to increase the capacity of Ruedi Reservoir or to expand the purposes for which it was originally authorized and constructed.

1. "Marketable yield" shall mean the 46,500 acre-feet of water estimated to be available from the Regulatory capacity of Ruedi Reservoir, including the 7,850 acre-feet previously sold under Round I, and the remaining 38,650 acre-feet designated for the Round II water sales.

TERM OF THE CONTRACT

2. This Contract shall become effective on the date of execution and shall remain in effect unless terminated in accordance with the provisions of Article 9 hereof.

CONTRACTED WATER SUPPLY

3. a. The Contractor hereby contracts for 12,000 acre-feet of water annually from the Marketable yield of Ruedi Reservoir for Municipal and industrial use subject to the terms and conditions of this Contract.

b. The United States shall not enter into any contract that will result in the total amount of water marketed from the reservoir exceeding the Marketable yield, Provided, That the United States reserves the right to make short-term (5 years or less) sales or leases of water from the Regulatory capacity of Ruedi Reservoir for purposes recognized under the laws of the United States and the State of Colorado, as long as such sales or leases do not impinge upon the Contractor's entitlement to take delivery of water contracted for herein or adversely affect the determination of the Marketable yield.

c. The Contractor shall have no right to carryover storage of undelivered water from Year to Year under this Contract.

CONTRACTOR'S REPAYMENT OBLIGATION AND OTHER COSTS

4. a. For the water supply contracted for herein, the Contractor shall repay a proportionate share of the Capital costs allocable to Round II. As of September 30, 2012, the unpaid uncontracted Capital costs allocable to Round II were \$34,271,993. The Contractor's Capital cost repayment obligation of \$15,478,800.00 represents the Contractor's proportionate (12,000/[38,650 less previously marketed Round II water]) share of the unpaid Capital costs allocable to Round II. In 2012, the Parties executed a financial agreement which established the cost of the water at \$1,289.90 per acre-foot. In 2012, the Contractor paid \$71.90 per acre-foot toward repayment of the obligation, leaving a remaining outstanding balance of \$1,218.00 per acre-foot. The financial agreement also established that the per acre-foot costs would be indexed annually at 1.79% until this Contract was executed. Therefore, the \$1,218.00 per acre-foot is then indexed to 2013 dollars by an annual increase of 1.79%

$[(\$1,218.00 \times 1.79\%) + \$1,218.00]$, which establishes the Contractor's outstanding obligation of \$1,239.80 per acre-foot for a total remaining outstanding obligation of \$14,877,600.00.

b. The Contractor's outstanding Capital cost repayment obligation of \$14,877,600.00 shall be due and payable upon execution of this Contract.

c. If, subsequent to the execution of this Contract, additional Capital costs are incurred for the Regulatory capacity of Ruedi Reservoir, the Contractor shall pay a proportionate share of such additional costs allocable to Round II, as determined by the Contracting Officer, which share shall be in direct proportion to the contracted water supply specified in Article 3.a. above. Payment of such additional costs shall be upon such terms and conditions as determined by the Parties hereto, based on Reclamation policies and laws in effect at the time. Prior to incurring such costs, the Contracting Officer shall notify the Contractor in writing of any necessary additional Capital costs, including the basis for such costs and the Contractor's estimated proportionate share thereof.

d. The Contractor's Capital cost obligation is a fixed obligation of the Contractor and is payable as provided for herein whether or not the quantity of water contracted for in Article 3.a. above is available for delivery to the Contractor.

e. In addition to the Capital cost repayment obligation, the Contractor shall also pay a proportionate share of the actual annual reimbursable OM&R costs allocable to the Marketable yield. The Contractor's share of the actual annual reimbursable OM&R costs shall be in direct proportion to the contracted water supply specified in Article 3.a. above to the 46,500 acre-foot Marketable yield.

f. The annual OM&R charges shall be based on the Federal fiscal year (October 1 through the following September 30) accounting. Payment for the current fiscal year, as adjusted for actual OM&R charges for the previous fiscal year, shall become due and payable on or before January 1 of each Year.

g. The annual OM&R charge will be due and payable upon execution of this Contract and thereafter shall be due and payable on or before January 1 of each subsequent Year of the term of this Contract. The first fiscal year's charges, if less than a full fiscal year, shall be prorated on a monthly basis beginning with the first calendar month following execution of this Contract. The annual OM&R charge will be based on estimates prepared by the Contracting Officer. In the event the estimated OM&R costs fall short of the actual OM&R costs, or whenever it is determined by the Contracting Officer that a deficit will occur after January 1 of the fiscal year, supplemental notices may be issued by the Contracting Officer requesting additional funds to cover such shortfall or deficiency. Funds not expended during the fiscal year will be carried over and applied as a credit against the Contractor's charges for the following fiscal year.

h. No water will be delivered at any time the Contractor is in default of any payment required pursuant to this Contract. The Contractor shall make all payments required pursuant to this Contract whether or not the quantity of water specified in Article 3.a. above is available for delivery and whether or not the Contractor is capable of using the water delivered or scheduled for delivery.

i. Payments shall be made to a certain bank by a medium specified by the Contracting Officer, by check to a certain lock box, or by wire transfer to the United States Treasury, or to such other locations and by such other methods as the Contracting Officer may specify and as are readily available to the Contractor for its use.

DELIVERY OF WATER

5. a. Before June 1 of each Year, the Contractor shall submit to the Contracting Officer a written schedule of its anticipated monthly demand for the delivery of water for the following 12 months. The Contractor shall revise said schedule as necessary to reflect its expected demand schedule based on current hydrologic conditions. Notwithstanding the above, the Contractor shall be entitled to take delivery of water under this Contract at any time upon 24 hours notice to the Contracting Officer or a designated representative. All notices requesting delivery of water or a change in the delivery schedule shall be in writing. Orders which cannot be transmitted in writing due to urgency or emergency situations may be telephoned to the Contracting Officer's designated representative, Provided, That such orders shall be confirmed in writing by the Contractor.

b. The Contracting Officer will notify the Contractor and the Division No. 5 Engineer, Colorado Division of Water Resources, of the date, time, and amount of all water released from Ruedi Reservoir and delivered pursuant to this Contract.

c. The delivery of water pursuant to this Contract will be made into the Fryingpan River at the outlet works of Ruedi Reservoir. All delivery of water shall be limited by the outlet capacity of Ruedi Reservoir. All water delivered to the Contractor from Ruedi Reservoir will be measured at the outlet works of Ruedi Reservoir by the Contracting Officer with equipment owned, operated, and maintained by the United States. The United States will not be responsible for control, carriage, use, handling, or distribution of water delivered to the Contractor beyond the delivery point, and the Contractor shall hold the United States harmless from and against all claims, demands, and causes of action on account of property damage, personal injury, or death resulting from the control, carriage, use, handling, or distribution of water delivered to the Contractor.

d. The Contractor will not be responsible for the storage of water in or OM&R of Ruedi Reservoir and the United States shall protect, indemnify, and hold the Contractor harmless from and against all claims, demands, and causes of action of any nature whatsoever resulting from or in any manner connected with the storage of water in

or the OM&R of Ruedi Reservoir within the limits of the Federal Tort Claims Act (28 U.S.C. 2671-2680).

e. The United States reserves the right to release the water contracted for herein from an alternate reservoir or reservoirs, Provided, That such releases from an alternate reservoir or reservoirs shall neither diminish the water supply contracted for herein nor affect the Contractor's ability to use the water for the purposes, at the location and at the time(s) as contemplated herein.

CONTRACTOR'S USE OF WATER

6. a. Water delivered to the Contractor under this Contract will be used for Municipal and industrial uses directly, or by augmentation and exchange to replace out of priority water depletions to senior water rights in the Colorado River Basin. Place of use will occur within the Contractor's service area and potential service area which generally lie within the Colorado River and Gunnison River Basins, Mesa County, in the State of Colorado (See map, attached as Exhibit C, which is hereby made a part of this Contract by this reference.) Water may also be used to augment flows for Green Mountain Reservoir operations. Green Mountain Reservoir is located in Summit County, Colorado.

b. Lease, sale, donation, or other such disposal of any of the water contracted for herein shall require prior written approval of the Contracting Officer, Provided, That a municipal contractor may distribute the water contracted for herein to its customers and charge its customers such rates as permitted under Colorado law.

WATER SHORTAGE AND APPORTIONMENT

7. a. The Contracting Officer shall operate the Project in accordance with the Operating Principles for the Fryingpan-Arkansas Project as set forth in House Document No. 130, 87th Congress, 1st Session.

b. Water delivered pursuant to this Contract is provided from the Regulatory capacity of Ruedi Reservoir. Should shortages occur to the Regulatory capacity, as determined by the Contracting Officer, based on schedules furnished pursuant to Article 5.a. above, such shortages will be apportioned among the Ruedi Reservoir contractors in the following manner: first, deliveries to all temporary and short-term contractors will be proportionately reduced up to 100 percent of their respective contracted amounts; second, deliveries to all Round II contractors will be proportionately reduced up to 100 percent of their respective contracted amounts; third, deliveries to all Round I municipal contractors will be proportionately reduced up to 30 percent of their respective contracted amounts; and finally, deliveries to all Round I contractors will be reduced up to 100 percent of their respective contracted amounts based on contract execution dates with the earliest date having highest priority; Provided, That the deliveries to all contracts with the same

execution dates shall be proportionately reduced up to 100 percent of their respective remaining contracted amounts.

c. In administering shortage conditions, the Contracting Officer may require the Contractor to submit revised schedules pursuant to Article 5.a. above. The Contracting Officer reserves the right to limit the amount of water available for delivery under this Contract to the amount specified in such revised schedules. Should any revised schedule require less than the total amount of water under contract by an individual contractor to meet the Contractor's expected demands, the Contracting Officer reserves the right to use all or any portion of the water not so scheduled by the Contractor for redistribution to other contractors to mitigate the effects of the shortage. In no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, either direct or indirect, arising out of such shortage.

d. No adjustment will be made in the payments required pursuant to this Contract as a result of the Contracting Officer's inability to deliver water requested for delivery by the Contractor due to shortage conditions.

TERMINATION OF WATER DELIVERIES

8. Delivery of the water contracted for herein shall cease at the option of the United States upon failure of the Contractor to make payments as required by this Contract or upon failure of the Contractor to abide by any lawful notice, order, or final administrative or judicial determination that the Contractor has violated a rule or regulation of the United States or the State of Colorado directly relating to and affecting the furnishing of water hereunder; Provided, That water deliveries hereunder shall not cease unless such failure or violation continues 60 days after the United States gives the Contractor written notice to remedy the failure or violation.

TERMINATION OF THE CONTRACT

9. a. This Contract may be terminated and the delivery of water contracted for herein shall cease at the option of the United States upon failure of the Contractor to make payments as required by this Contract or upon failure of the Contractor to abide by any lawful notice, order, or final administrative or judicial determination that the Contractor has violated a rule or regulation of the United States or the State of Colorado directly relating to and affecting the furnishing of water hereunder; Except, That this Contract may not be terminated unless such failure or violation continues 60 days after the United States gives the Contractor written notice of such failure or violation.

b. The Contractor may terminate this Contract at the end of any Year by providing written notice of such termination to the United States pursuant to Article 11 below not less than 90 days prior to the effective date of termination, Provided, That such termination must be necessitated by the Contractor's inability to meet the payments

required hereunder due to the applicability of the Colorado Taxpayer's Bill of Rights Act (TABOR). Upon any such termination, the United States may make the water supply contracted for herein available to other contractors, or reallocate the contracted water supply to other purposes, and the Contractor has no prior claim or right to enter into a contract for such water supply or any portion thereof in the future.

ENVIRONMENTAL COMPLIANCE

10. a. Compliance with the provisions of the National Environmental Policy Act (NEPA), as amended, and the Endangered Species Act (ESA), as amended, are a prerequisite to execution of this Contract. The general environmental impacts associated with the Ruedi Reservoir Round II water marketing program under the preferred alternative with conservation measures are described in the Final Supplemental Environmental Statement (FSES) dated August 1, 1989. Site specific compliance in the form of Environmental Assessment No. EC-1300-13-003 was completed for this Contract. NEPA compliance for this Contract has resulted in a requirement to implement certain measures to avoid, minimize, or mitigate the environmental impacts associated with the Contractor's use of the water pursuant to this Contract. These requirements are described in Exhibit B, attached hereto and by this reference made a part of this Contract, and the Contractor agrees to abide by and comply with the terms and conditions stated herein. In the event of changed circumstances additional compliance may also be required on a site-specific basis and shall be the responsibility of the United States using data and information and a site-specific mitigation plan, if required, provided to the Contracting Officer for approval. The data, information, and mitigation cover those environmental impacts associated with the Contractor's diversions and on-site use of Ruedi Reservoir water. All costs associated with the preparation, approval, and implementation of NEPA and ESA compliance and mitigation plans, including costs incurred by the United States, shall be the responsibility of the Contractor.

b. The Contractor shall give notice to the United States concerning any changes in location of diversions, return flows, places or type of use, or diversion rates. The Contractor shall be responsible for any additional NEPA and ESA compliance or mitigation measures which may be required by the United States as the result of such changes and all associated costs, including costs incurred by the United States, shall be the responsibility of the Contractor.

c. The Contractor shall make advance payment for costs to be incurred by the United States, which are the Contractor's responsibility under this Article 10.

NOTICES

11. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed postage prepaid, or delivered to the Regional Director, Great Plains Region, Bureau of Reclamation, P.O.

Box 36900, Billings, Montana 59107-6900, and on behalf of the United States, when mailed postage prepaid or delivered to the Contractor, Ute Water Conservancy District, Attention: Manager, Larry Clever, 2190 H 1/4 Road, Grand Junction, CO 81505. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

ASSIGNMENT OF CONTRACT

12. a. No assignment or transfer of this Contract or any rights or interests herein shall be valid until approved in writing by the Contracting Officer.

b. The United States reserves the right to enter into agreements with third party agents for the administration of this Contract, *Provided*, That such agreements shall not adversely affect the rights of the Contractor to receive the water contracted for under this Contract.

STANDARD CONTRACT ARTICLES

13. The standard contract articles applicable to this Contract are listed below. The full text of these standard articles is attached as Exhibit A and is hereby made a part of this Contract by this reference.


- A. Charges for Delinquent Payments
- B. General Obligation--Benefits Conditioned Upon Payment
- C. Contingent on Appropriation or Allotment of Funds
- D. Officials Not to Benefit
- E. Books, Records, and Reports
- F. Rules, Regulations, and Determinations
- G. Quality of Water
- H. Water and Air Pollution Control
- I. Water Conservation
- J. Equal Opportunity
- K. Compliance with Civil Rights Laws and Regulations

L. Uncontrollable Forces

M. Medium for Transferring Payments

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the day and Year first above written.

THE UNITED STATES OF AMERICA

By 
Michael J. Ryan
Regional Director
Great Plains Regional Office
Bureau of Reclamation

UTE WATER CONSERVANCY DISTRICT


By _____
Neil Jaquet
President

ACKNOWLEDGMENT

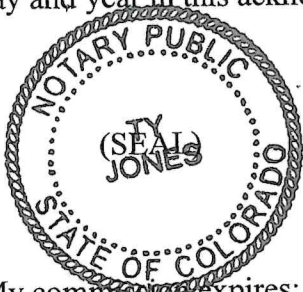
STATE OF COLORADO

COUNTY OF MEBA)

On 8/14/13, before me, Ty Jones

_____ appeared Neil Jaquet, the person whose name is
subscribed to the within instrument and known to me to have executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the
day and year in this acknowledgment first above written.



Notary Public

A handwritten signature in cursive script, appearing to read "Ty Jones", written over a horizontal line.

My commission expires:

6/17/14

EXHIBIT A

CONTRACT NO. 139D6C0111

STANDARD ARTICLES

A. CHARGES FOR DELINQUENT PAYMENTS

1. The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

2. The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

3. When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

B. GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1. The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of the individual water users in their obligations to the Contractor.

2. The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this Contract. No water will be made available to the Contractor from Project facilities during any period in which the Contractor may be in arrears in the advance payment of any OM&R charges due the United States or in arrears for more than 12 months in the payment of any construction charges due the United States. The Contractor shall not furnish water made available pursuant to this Contract for lands or parties which are in arrears in the advance payment of OM&R or toll charges or in arrears more than 12 months in the payment of construction charges as levied or established by the Contractor.

C. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

D. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in same manner as other water users or landowners.

E. BOOKS, RECORDS, AND REPORTS

The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial transactions, water supply data, water-use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each Party to this Contract shall have the right during office hours to examine and make copies of each other Party's books and records relating to matters covered by the Contract.

F. RULES, REGULATIONS, AND DETERMINATIONS

1. The Parties agree that the delivery of water or the use of Federal facilities pursuant to this Contract is subject to Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation law.

2. The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the expressed and implied provisions of this Contract, the laws of the United States and the State, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

G. QUALITY OF WATER

The OM&R of Project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

H. WATER AND AIR POLLUTION CONTROL

The Contractor, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

I. WATER CONSERVATION

1. The Contractor shall develop and implement an effective water conservation program based on the Contractor's water conservation plan that has been reviewed by the Contracting Officer and determined to meet the conservation and efficiency criteria established under Federal law. The water conservation program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives.

2. The Contractor shall submit to the Contracting Officer by December 31, of each calendar year a report on the status of the Contractor's implementation of its water conservation program.

3. At 5-year intervals, subsequent to the Contracting Officer's determination that the Contractor's water conservation program meets the conservation and efficiency criteria established under Federal law, the Contractor shall submit to the Contracting Officer for review and evaluation updated water conservation programs. The Contracting Officer shall review and evaluate the updated water conservation program and determine if they meet the conservation and efficiency criteria established under Federal law.

J. EQUAL OPPORTUNITY

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment,

upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs 1. through 7. in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, However, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

K. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the United States Department of the Interior and/or the Bureau of Reclamation.

2. These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

3. The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article, and that the United States reserves the right to seek judicial enforcement thereof.

L. UNCONTROLLABLE FORCES

Neither Party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed, for the purpose of this Contract, to mean any cause beyond the control of the Party affected, including, but not limited to, drought, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid. Either Party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

M. MEDIUM FOR TRANSFERRING PAYMENTS

All payments from the Contractor to the United States under this Contract shall be made by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks and/or wire transfers.

EXHIBIT B

CONTRACT NO. 139D6C0111

ENVIRONMENTAL COMPLIANCE

The site specific National Environmental Policy Act (NEPA) compliance for this Contract was evaluated and documented by Environmental Assessment and Finding of No Significant Impacts (FONSI) numbered EC-1300-13-003 dated July 25, 2013. The Contractor agrees to comply with the following Environmental Commitment(s) that were set forth in the FONSI:

The Contractor agrees to abide by the following stipulation as well as include it in any contracts with third parties:

“Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into waters of the United States. Contractors shall consult with the Army Corps of Engineers if construction of facilities necessary to use the contracted water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. §1531, et seq.) if Contractors propose physical alterations to designated critical habitat of the Colorado River endangered fish species. As of June 2013, designated critical habitat exists from the Colorado State Highway 13 Road Bridge Crossing of the Colorado River in Rifle downstream to the Colorado state line.”



DISTRICT COURT, WATER DIVISION 5, COLORADO

Case No. 92CW286

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE COLORADO
WATER CONSERVATION BOARD ON BEHALF OF THE PEOPLE OF THE STATE OF
COLORADO

IN THE COLORADO RIVER, A NATURAL STREAM

IN THE WATERSHED OF THE COLORADO RIVER BASIN

IN MESA COUNTY, COLORADO

This matter comes before the Court upon the application of the Colorado Water Conservation Board (CWCB), filed with the Water Clerk on December 17, 1992, for a water right to protect the natural environment to a reasonable degree. The Court has considered the pleadings, the stipulation of the parties and the evidence presented and, being fully advised in the premises, hereby enters the following Findings of Fact, Conclusions of Law, Judgment and Decree.

FINDINGS OF FACT

1. The name and address of the applicant are:

Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, Colorado 80203
(303) 866-3441

2. Timely and adequate notice of these proceedings has been given in the manner required by law. The time for filing statements of opposition and for seeking leave to intervene has expired. The Court has jurisdiction over the subject matter of this application and over all persons who have standing to appear herein, whether or not they have appeared.

3. Statements of opposition were timely filed by Na-Tec Resources, Inc.; Union Oil Company of California, d/b/a Unocal; Vail Associates, Inc.; Upper Eagle Regional Water Authority; Exxon Company U.S.A., a division of Exxon Corporation; Adam's Rib Ranch Corporation; Cyprus Climax Metals Company (substituted for Climax Molybdenum Company); Board of Summit County Commissioners;

City of Colorado Springs; Northern Colorado Water Conservancy District and Municipal Subdistrict; Copper Mountain, Inc.; Keystone Resorts Management, Inc. (substituted for Breckenridge Ski Corporation); and Main Elk Corporation and Mobil Oil Corporation. In addition, motions to intervene were timely filed by and granted for Basalt Water Conservancy District, the Southeastern Colorado Water Conservancy District, and the United States of America on behalf of the Fish and Wildlife Service. No other person or entity has filed a statement of opposition or motion to intervene in this matter.

4. The parties have stipulated to the entry of this Decree.

5. Name of stream: Colorado River (instream flow).

6. Source: Colorado River.

7. Legal description of the stream segment through which an instream flow is claimed:

The natural stream channel from the point at which the tailrace common to the Grand Valley Power Plant and the Orchard Mesa District pumping plant returns to the Colorado River below the Grand Valley diversion dam at lat 39 06 06N, long 108 20 48W as the upstream terminus and extending to the confluence of the Gunnison River at lat 39 03 44N, long 108 34 38W as the downstream terminus, a distance of approximately 15 miles (hereinafter referred to as the "15-Mile Reach"). This segment can be located on the Palisade, Clifton and Grand Junction U.S.G.S. quadrangles.

8. Use of the water:

Instream flows to preserve the natural environment to a reasonable degree.

9. Date of initiation of appropriation: March 5, 1992.

10. Date the water was applied to beneficial use:

The water was first applied to beneficial use on July 1, 1992 by action of the Colorado Water Conservation Board, pursuant to sections 37-92-102(3) and 103(4), C.R.S. (1990).

11. Amount of water claimed:

581 c.f.s. absolute from July 1 through September 30.

12. The instream flow water right adjudicated herein shall be administered with a 1992 priority date, and shall be junior to any water right decreed in Case No. 91CW247, Water Division 5. This water right shall not be used in any way to prevent operation of the Orchard Mesa Check, as more fully identified in Case No. 91CW247, to its existing full physical capacity.

13. The adjudication of this instream flow water right will contribute to sufficient progress toward the recovery of endangered Colorado River fishes pursuant to the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program). The adjudication of this water right is subject to and fully consistent with the Memorandum of Agreement between the United States Fish and Wildlife Service (USFWS) and the CWCB dated September 21, 1993 (MOA) and the Section 7 Consultation, Sufficient Progress, and Historic Projects Agreement dated October 15, 1993 (Section 7 Agreement).

14. The parties agree that the water rights decreed in this case and these Findings of Fact, Conclusions of Law, Judgment and Decree shall not be used directly or indirectly as a basis for the imposition of bypass flows or other regulatory requirements for the purpose of providing flows in the 15-Mile Reach, whether through permit proceedings or other regulatory actions. The water rights decreed in this case shall not be called or otherwise enforced if any federal agency uses, or seeks to use, directly or indirectly, these Findings of Fact, Conclusions of Law, Judgment and Decree in violation of this paragraph.

15. A. The water rights decreed in this case shall not be called or otherwise enforced if any federal agency requires the owner or operator of any water project which, prior to the date of this appropriation, has been operated or constructed or has received all federal authorizations necessary for construction, to release, forego, or bypass water which is physically available in priority to be diverted under the water rights and authorizations associated with the project, or to undertake any other measure that would decrease the water yield to the owner or operator of the project under those water rights and authorizations, for the currently listed endangered fishes or their critical habitat in the Colorado River below its confluence with Rifle Creek or for fishes listed or critical habitat designated in the future whose flow requirements could reasonably be incorporated into the Recovery Program. Provided, however, that this provision:

- (1) applies only to projects utilizing waters of the Colorado River or its tributaries upstream of the 15-Mile Reach, including Bureau of Reclamation projects;

- (2) shall not apply to changes in operation of federally owned projects, including diversions, storage, and releases, to provide water for the currently listed endangered fishes or their critical habitat in the Colorado River below its confluence with Rifle Creek or for fishes listed or critical habitat designated in the future whose flow requirements could reasonably be incorporated into the Recovery Program, so long as such changes do not reduce the water available for use under contracts and are consistent with the remaining provisions of this Decree, and the legally authorized purposes and decrees governing those facilities continue to be served and satisfied; and
- (3) shall not prevent the utilization of releases, bypass flows, or other measures where consent thereto has been provided by the owner or operator of the project or where the measures are required under a previously issued authorization for the project.

B. The water rights decreed in this case shall not be called or otherwise enforced if any federal agency, for the currently listed endangered fishes or their critical habitat in the Colorado River below its confluence with Rifle Creek or for fishes listed or critical habitat designated in the future whose flow requirements could reasonably be incorporated into the Recovery Program, requires the release or bypass of water by an individual or entity operating an exchange by a project meeting the requirements of paragraph A.

C. In the case of a project which does not meet the requirements of paragraph A, if:

- (1) the Recovery Program does not provide a reasonable and prudent alternative for the project;
- (2) the Recovery Program cannot be restored or amended to serve as a reasonable and prudent alternative for the project; and
- (3) the reasonable and prudent alternative developed for the project is (a) consistent with the project's intended purpose, (b) within the lead federal agency's legal authority and jurisdiction to implement, (c) economically and technologically feasible, and (d) consistent with the remaining provisions of this Decree,

releases, bypass flow conditions, or other federally required measures included in such reasonable and prudent alternative for the project shall not render the Decree herein unenforceable.

D. The CWCB, in consultation with the USFWS, shall determine whether the flow requirements of fishes listed or critical habitat designated in the future could reasonably be incorporated into the Recovery Program, based on the adequacy of water and funding available to meet the flow requirements of the new listing or designation. The parties shall make good faith efforts to incorporate such species or habitat into the Recovery Program.

E. As used herein, the term "owner or operator" shall include the contract repayment entity or entities for a Bureau of Reclamation project.

F. As used herein, the term "listed" shall include fishes listed as either threatened or endangered.

16. In addition to the reasons set forth in paragraphs 14 and 15 above, the instream flow right adjudicated herein shall be unenforceable if any one of the following occurs:

- A. the MOA is terminated pursuant to paragraph 2 of that Agreement;
- B. there is a final determination by a court of competent jurisdiction that the right adjudicated herein is no longer required for endangered Colorado River fish species in the 15-Mile Reach;
- C. written concurrence has been obtained from the USFWS that the Decree entered herein is no longer necessary for endangered Colorado River fish species in the 15-Mile Reach; or
- D. there is federal legislation or federal regulatory action which negates the need for flows for the benefit of the endangered Colorado River fish species in the 15-Mile Reach.

17. Prior to exercising a call of the instream flow right decreed herein, the CWCB agrees to confer with the USFWS concerning the coordination of delivery of water stored, pursuant to contract or otherwise, by or for the benefit of the CWCB, which water can be released for the benefit of the endangered fish in the 15-Mile Reach. Any request for the release of such water prior to the exercise of a call of the instream flow right shall be within the sole discretion of the CWCB, consistent with the Recovery Program, the MOA, and the Section 7 Agreement.

CONCLUSIONS OF LAW

18. The application herein is one contemplated by law, and this Court has jurisdiction over the subject matter of this proceeding.

19. Timely and adequate notice of the filing and contents of the application herein was given in the manner provided by law, and this Court has jurisdiction over all persons or entities affected hereby, whether or not they have appeared. § 39-92-302, C.R.S. (1990).

20. The Decree entered herein, including the conditions set forth in paragraphs 12 through 17, complies with C.R.S. § 37-92-102(3) and is otherwise consistent with the CWCB's statutory responsibilities.

21. The Findings of Fact, Conclusions of Law, Judgment and Decree entered herein have not been litigated, are the result of negotiation and compromise, and are entered pursuant to stipulation. The parties shall not be collaterally estopped or otherwise barred from asserting any factual or legal issue in any other case not involving this water right and this Decree shall not be used, considered, or cited as precedent in any other case except and only to the extent that the right decreed herein is at issue. The foregoing principle specifically includes, but is not limited to, the following:

A. Nothing herein shall be construed as agreement that the United States has or does not have any authority to require bypass flows, depletion charges, or other measures impacting the water yield to project beneficiaries, or to prevent any person from challenging the United States' authority to do so in any context whatsoever.

B. Nothing herein shall serve as precedent that the CWCB has or does not have authority to appropriate instream flows for fish recovery purposes.

C. The entry of this Decree shall not preclude the CWCB from applying for, adjudicating, or acquiring rights to additional amounts of water in the future, subject to the satisfaction of the applicable statutory criteria; provided, however, that the objectors retain the right to oppose such applications and shall not be precluded from raising any claim or defense to such other applications.

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WATER DIVISION 5
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JUDGMENT AND DECREE

WATER RESOURCES
STATE ENGINEER
COLO.

IT IS, THEREFORE, JUDGED AND DECREED:

1. Each of the foregoing Findings of Fact and Conclusions of Law is incorporated herein as if set out in full and is hereby modified to the extent necessary to make it a decree of the Court.

2. The application of the Colorado Water Conservation Board for an instream flow right to preserve the natural environment to a reasonable degree is approved, subject to the terms and conditions set forth in this Decree.

3. The Colorado Water Conservation Board shall install and maintain such measuring devices and maintain such records as the Division Engineer may require for administration of this right.

4. The priority herein awarded was filed in the Water Court in 1992, and shall be administered as having been filed in that year, and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical date of appropriation and not affected by the date of the entry of decree.

5. Copies of this Decree shall be filed with the Water Clerk, Water Division 5, the State Engineer and the Division Engineer.

Dated this 2nd day of September, 1997.

BY THE COURT



THOMAS W. OSSOLA
Water Judge
Water Division 5

Copies of the foregoing mailed to all
Counsel of record: ☒ Water
Reference: Div. Engineer and
State Engineer Date 09-03-97
M. J. Adams
Deputy Clerk, Water Div. No. 5

WEISS
MONTGOMERY
FORZAK
BUCHANAN
GREER
FERGUSON
NAZARENS
RUSSELL

DUDE
BALCOMB
LEONHARDT
BARTELL

DISTRICT COURT, WATER DIVISION 5, COLORADO

Case No. 94CW330

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE
COLORADO WATER CONSERVATION BOARD ON BEHALF OF THE PEOPLE OF THE
STATE OF COLORADO

IN THE COLORADO RIVER, A NATURAL STREAM

IN THE WATERSHED OF THE COLORADO RIVER BASIN

IN MESA COUNTY, COLORADO

This matter comes before the Court upon the application of the Colorado Water Conservation Board (CWCB), filed with the Water Clerk on December 27, 1994, for a water right to protect the natural environment to a reasonable degree. The Court has considered the pleadings, the stipulation of the parties and the evidence presented and, being fully advised in the premises, hereby enters the following findings of fact, conclusions of law, judgment and decree.

FINDINGS OF FACT

1. The name and address of the applicant are:

Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203
(303) 866-3441

2. Timely and adequate notice of these proceedings has been given in the manner required by law. The time for filing statements of opposition and for seeking leave to intervene has expired. The Court has jurisdiction over the subject matter of this application and over all persons who have standing to appear herein, whether or not they have appeared.

3. Statements of opposition were timely filed by Union Oil Company of California, d/b/a Unocal; the City of Colorado Springs; Copper Mountain, Inc.; Mobil Oil Corporation; the Southeastern Colorado Water Conservancy District; Copper Mountain Consolidated Metropolitan District; Middle Park Water Conservancy

District; the City of Grand Junction; and the City of Aurora. No other person or entity has filed a statement of opposition or motion to intervene in this matter.

4. The parties have stipulated to the entry of this decree.

5. Name of stream: Colorado River (instream flow).

6. Source: Colorado River.

7. Legal description of the stream segment through which an instream flow is claimed:

The natural stream channel from the 27.5 Road gage at NE/4, SW/4, Sec. 24, T1S, R1W, UPM as the upstream terminus and extending to the confluence of the Gunnison River at NW/4, NE/4, Sec. 22, T1S, R1W, UPM as the downstream terminus, a distance of approximately 2.0 miles. This segment can be located on the Grand Junction U.S.G.S. quadrangle. This stream segment is the downstream two miles of what is commonly referred to as the "15-Mile Reach."

8. Use of the water:

Instream flows to preserve the natural environment to a reasonable degree.

9. Date of initiation of appropriation: November 4, 1994.

10. Date the water was applied to beneficial use:

The water was first applied to beneficial use on July 1, 1995.

11. Amount of water claimed:

300 c.f.s. absolute of accretions to the downstream two miles of the 15-Mile Reach from July 1 through September 30.

12. The water right adjudicated in this decree cannot be exercised to call out appropriators of water on the Colorado River or its tributaries upstream of the 15-Mile Reach. The Board will not assert this right to make a claim for maintenance of historic return flows or surface runoff to the 15-Mile Reach, in quantity, location, or timing, that may otherwise be reduced or changed by water conservation measures undertaken by the holders of water rights or the United States. The Board will not assert this right as the basis for opposing future water right applications (including applications for exchanges, changes of

water rights, and plans for augmentation) in the Colorado River basin upstream of the 15-Mile Reach. In addition, the Board is aware that water rights owned by the Grand Valley Irrigation Company (GVIC) may be used anywhere in the area served by GVIC. The Board will not exercise this right to prevent GVIC shares from being moved within the GVIC service area.

13. The Board will not exercise this right as a basis for objecting to the Clifton Water District's use of GVIC shares for the watering of lawns and gardens within the District or as a basis for opposing future applications by the District to change shares of the GVIC that it presently owns or may in the future acquire to municipal use within the District. The Board further agrees not to exercise this right as a basis for objecting to changes in the District's water distribution, treatment plant discharge points, or return flows.

14. The CWCB claims for accretions in the 15 mile reach, decreed herein, shall not affect or restrict the City of Grand Junction's existing or future use, re-use, or storage of its GVIC shares from any point along the GVIC canal system. Further, the CWCB claims for accretions, decreed herein, shall not affect the City of Grand Junction's existing or future use, re-use, or storage of the Grand Junction/Colorado River Pipeline water right from any point of diversion from the Colorado River. Nor shall the claims, as decreed herein, affect or restrict any change of water rights applications to change GVIC shares (which the City of Grand Junction now or in the future may own) to municipal use by the City of Grand Junction and to take the water from the river for municipal use and storage from new or different points of diversion. The foregoing principles shall also be applicable to any future storage, use, or reuse that any other municipal or quasi-municipal water user in Colorado's Grand Valley (such as Clifton Water District and Ute Water Conservancy District or their successors) might make of the City of Grand Junction's GVIC shares or its Grand Junction/Colorado River Pipeline water right.

15. The adjudication of this instream flow water right will contribute to sufficient progress toward the recovery of endangered Colorado River fishes pursuant to the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program). The adjudication of this water right is subject to and fully consistent with the Memorandum of Agreement between the United States Fish and Wildlife Service (USFWS) and the CWCB dated September 21, 1993 (MOA) and the Section 7 Consultation, Sufficient Progress, and Historic Projects Agreement dated October 15, 1993 (Section 7 Agreement).

16. The parties agree that the water rights decreed in this case and these Findings of Fact, Conclusions of Law, Judgment and Decree shall not be used directly or indirectly as a

basis for the imposition of bypass flows or other regulatory requirements for the purpose of providing flows in the 15-Mile Reach, whether through permit proceedings or other regulatory actions. The water rights decreed in this case shall not be called or otherwise enforced if any federal agency uses, or seeks to use, directly or indirectly, these Findings of Fact, Conclusions of Law, Judgment and Decree in violation of this paragraph.

17. This right is intended for use in conjunction with the water right decreed in Case No. 92CW286. In the event that the decree entered in Case No. 92CW286 should ever become unenforceable, the decree entered herein shall not be called or otherwise enforced so long as the decree in Case No. 92CW286 remains unenforceable.

CONCLUSIONS OF LAW

18. The application herein is one contemplated by law, and this Court has jurisdiction over the subject matter of this proceeding.

19. Timely and adequate notice of the filing and contents of the application herein was given in the manner provided by law, and this Court has jurisdiction over all persons or entities affected hereby, whether or not they have appeared. § 39-92-302, C.R.S. (1990).

20. The Decree entered herein, including the conditions set forth in paragraphs 12 through 17, complies with C.R.S. § 37-92-102(3) and is otherwise consistent with the CWCB's statutory responsibilities.

21. The Findings of Fact, Conclusions of Law, Judgment and Decree entered herein have not been litigated, are the result of negotiation and compromise, and are entered pursuant to stipulation. The parties shall not be collaterally estopped or otherwise barred from asserting any factual or legal issue in any other case not involving this water right and this Decree shall not be used, considered, or cited as precedent in any other case except and only to the extent that the right decreed herein is at issue. The foregoing principle specifically includes, but is not limited to, the following:

A. Nothing herein shall be construed as agreement that the United States has or does not have any authority to require bypass flows, depletion charges, or other measures impacting the water yield to project beneficiaries, or to prevent any person from challenging the United States' authority to do so in any context whatsoever.

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WATER DIVISION 5
94CW330

B. Nothing herein shall serve as precedent that the
CWCB has or does not have authority to appropriate instream flows
for fish recovery purposes.

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C. The entry of this Decree shall not preclude the
CWCB from applying for, adjudicating, or acquiring rights to
additional amounts of water in the future, subject to the
satisfaction of the applicable statutory criteria; provided,
however, that the objectors retain the right to oppose such
applications and shall not be precluded from raising any claim or
defense to such other applications.

WATER RESOURCES
STATE ENGINEER
COLO.

JUDGMENT AND DECREE

IT IS, THEREFORE, JUDGED AND DECREED:

1. Each of the foregoing findings of fact and conclusions
of law is incorporated herein as if set out in full and is hereby
modified to the extent necessary to make it a decree of the
Court.

2. The application of the Colorado Water Conservation
Board for an instream flow right to preserve the natural
environment to a reasonable degree is approved, subject to the
terms and conditions set forth in this decree.

3. The Colorado Water Conservation Board shall install and
maintain such measuring devices and maintain such records as the
Division Engineer may require for administration of this right.

4. The priority herein awarded was filed in the Water Court
in 1994, and shall be administered as having been filed in that
year, and shall be junior to all priorities filed in previous
years. As between all rights filed in the same calendar year,
priorities shall be determined by historical date of
appropriation and not affected by the date of the entry of
decree.

5. Copies of this decree shall be filed with the Water
Clerk, Water Division 5, the State Engineer and the Division
Engineer.

Dated this 2nd day of September, 1997.

BY THE COURT

Copy of the foregoing mailed to all
Council of record - Water
Division - Div. Engineer and
State Engineer - Date 9-5-97
THOMAS W. OSSOLA
Deputy Chief, Water Div. No. 5

THOMAS W. OSSOLA
Water Judge
Water Division 5

WEISS BALCOMB LEONHARDT
CAZIER DINGESS MONTGOMERY
DUDE SCHROEDER