

BRC95FIS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: UNITED STATES BUREAU OF
RECLAMATION AND UNITED STATES FISH AND WILDLIFE SERVICE

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: REDLANDS
DIVERSION DAM, CONSTRUCTION, OPERATION AND MAINTENANCE OF
FISH PASSAGE FACILITIES TO ENHANCE THE ENDANGERED FISH
SPECIES IN THE COLORADO RIVER BASIN (FISH LADDER)

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE



United States Department of the Interior

BUREAU OF RECLAMATION

Upper Colorado Region
Western Colorado Area Office

Northern Division
2764 Compass Drive
PO Box 60340
Grand Junction CO 81506-8785

DEC 22 1995

Southern Division
835 E 2nd Avenue
PO Box 640
Durango CO 81302-0640

GStone-ND
ENV-4.10

Mr. Gregory O. Trainor
Utilities Manager, City of
Grand Junction
250 North Fifth Street
Grand Junction CO 80501

Subject: Construction, Operation, and Maintenance Agreement for
Fish Passage Facilities at Redlands Diversion Dam

Dear Mr. Trainor:

Enclosed for your files is a fully executed original of the
subject agreement. We appreciate your cooperation and assistance
in the completion of this agreement.

If you have any questions, please contact Glenn Stone of our
Water Resources Group at (970) 248-0675.

Sincerely,

Ed Warner
Water Resources Group Chief

Enclosure

AGREEMENT
AMONG
U.S. BUREAU OF RECLAMATION,
U.S. FISH AND WILDLIFE SERVICE, AND
CITY OF GRAND JUNCTION
FOR
CONSTRUCTION, OPERATION AND MAINTENANCE
OF
FISH PASSAGE FACILITIES AT REDLANDS DIVERSION DAM
TO
ENHANCE THE ENDANGERED FISH SPECIES IN THE COLORADO RIVER BASIN

THIS AGREEMENT, made this 18th day of December, 1995, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly the Act of April 11, 1956 (70 Stat. 105), the Act of July 9, 1965 (70 Stat. 216), the Act of December 28, 1973 (87 Stat. 884), and the Fish and Wildlife Coordination Act (the Act of March 10, 1934 (48 Stat. 401)), among the UNITED STATES BUREAU OF RECLAMATION (Reclamation); the UNITED STATES FISH AND WILDLIFE SERVICE (Service); and the CITY OF GRAND JUNCTION (City), a Colorado home rule city;

WITNESSETH, that:

WHEREAS, under the Cooperative Agreement among the Governors of Colorado, Utah and Wyoming, the Secretary of the Interior, and the Administrator of the Western Area Power Administration, executed January 22, 1988, to implement the "Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin" (Recovery Program), it has been determined, by the Implementation Committee, that a fish passage facility should be constructed at the Redlands Diversion Dam; and

WHEREAS, the Gunnison River below its confluence with the Uncompahgre River is now occupied by endangered species and has been designated critical habitat for said endangered species; and

WHEREAS, the Redlands Water and Power Company (Company) owns and operates the Redlands Diversion Dam, hereinafter referred to as the Dam, and an associated Canal, which Dam is a physical barrier to access and migration of endangered species up and down the Gunnison River; and

WHEREAS, the Company was issued an "Order Granting Exemption from Licensing of a Small Hydroelectric Project of 5 Megawatts or

Less" from the Federal Energy Regulatory Commission, on April 29, 1983, wherein the Company agreed to comply with the conditions stated in a March 29, 1983 letter from the Department of the Interior that specifically states that the Company "shall agree to allow the Fish and Wildlife Service (FWS) to design and construct a fish passageway on the existing Redlands Diversion Dam;" and

WHEREAS, the Company has agreed to cooperate with the Service in allowing construction of fish passage facilities at the existing Dam so long as the fish passage facilities do not interfere with the Dam and canal usage or the City's pumping plant and intake structure and so long as the full expenses of operation of the fish passage facilities are borne by Reclamation and/or the Service; and

WHEREAS, the City, as a part of its municipal water supply system, has a pumping plant and intake structure just upstream of the Dam east abutment and operation and maintenance of said pumping plant and intake structure may be affected by the fish passage facilities and the parties desire to avoid adverse impacts thereon; and

WHEREAS, all parties hereto support the goal of endangered fish recovery and the success of the Recovery Implementation Program Recovery Action Plan and desire to enhance the endangered fish population in the upper Colorado River basin by the construction of fish passage facilities at the Dam while protecting their respective rights and interests;

NOW, THEREFORE, it is hereby agreed as follows:

1. A Contract and Grant of Easement has been signed between Reclamation, the Company, and the City which gives Reclamation a legal right to construct permanent fish passage facilities on the Company's property. Copies of the executed Contract and Grant of Easement shall be provided by Reclamation to all parties.

2. Notwithstanding other provisions of this agreement, it is understood and agreed by the parties hereto that title to the constructed fish passage facilities provided for herein shall be vested in Reclamation, subject to prior existing rights.

3. Any future proposal for construction, modification, or replacement of said fish passage facilities, or additional City pumping plants and intake structures above and beyond those contemplated or provided by this Agreement shall be submitted to all parties hereto for review and negotiation.

4. It is recognized by the parties that the City has a 120 cfs decreed right for domestic, municipal and industrial purposes at the east abutment of the Dam. Of this water right, 18.6 cfs is absolute and shall be diverted at times and up to 120 cfs may be diverted in the future. Future diversions may require modification

of the intake structure, pumping plant and discharge facilities. These existing and future diversions are and shall be administered by the Division 4 Engineer, Colorado Division of Water Resources in priority with other administered water decrees on the Gunnison River. Modifications of City pumping facilities, related to future diversions or physical expansion, shall be submitted for review as outlined in Article 3, and shall be accomplished at the City's sole expense.

5. All parties hereto shall immediately communicate and cooperate with each other party in the event of an emergency situation which may interfere with any party's normal facility operation.

6. All parties hereto shall meet annually to discuss and coordinate their respective structural maintenance plans with each other for the coming year.

7. The parties hereto shall each be responsible and liable for their own acts, omissions, and negligence. However, nothing in this agreement shall be construed to be an admission of fault or liability, and nothing shall limit the defenses and immunities legally available to each as against each other or others.

8. This agreement shall be effective upon execution and shall remain in effect for a period of twenty-five (25) years from the date hereof; provided however, that this agreement shall be extended for additional periods of twenty-five (25) years upon written agreement of all parties hereto. In the event the fish passage facilities are no longer needed, as determined by the United States, written notice of termination of this agreement shall be sent to all parties according to Article 9.

9. (a) Any notice, demand, or request authorized or required by this agreement shall be deemed to have been given on behalf of any party when mailed, postage prepaid, to the following:

(1)

Area Manager
Bureau of Reclamation
2764 Compass Drive
P.O. Box 60340
Grand Junction, Colorado 81506

(2)

City Manager (with a copy to the City Attorney)
City of Grand Junction
250 N. 5th Street
Grand Junction, Colorado 81506

(3)

Assistant Field Supervisor
Fish and Wildlife Service
Ecological Services

Western Colorado Office
764 Horizon Drive, South Annex A
Grand Junction, Colorado 81506-3948

(b) 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.

10. (a) The performance of work under this agreement by Reclamation and the Service shall be contingent upon appropriation or allotment of funds by Congress to Reclamation and the Service. Absence of such appropriations or allotment of funds shall not relieve obligations or inhibit rights of the City under this agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted for such work.

(b) Notwithstanding other provisions of this agreement, it is understood and agreed by the parties hereto that Reclamation and the Service may each, at their sole discretion, transfer or assign their respective responsibilities under this Agreement to another willing federal, state, or private entity who, in the judgment of Reclamation or the Service, is qualified to fulfill said responsibilities. Responsibilities eligible for transfer or assignment in this manner include those involving title, funding and/or staffing, such as are detailed in Articles 1, 2, 12, 13, 14, 15, 17, 18, 19, and 21 hereof.

11. No Member or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

Reclamation Responsibilities

12. The funding for the construction of the fish passage facilities at the Dam shall be provided by Reclamation.

13. Reclamation shall be responsible for the construction of the fish passage facilities as detailed in the plans and specifications, which shall become part of this agreement. Copies of said plans and specifications, as built, shall be provided by Reclamation to all parties.

14. Reclamation shall maintain the structural fish passage facilities at the Dam and shall provide said maintenance entirely at its expense. Reclamation shall secure funding to perform said maintenance. Maintenance normally shall be performed on an annual basis, with the exception of emergency situations. Maintenance shall include major activities which are critical to the long term operation of the fish passage facilities and integrity of the structures such as:

a. Maintenance of the flow measurement instrumentation for the fish passageway and bypass pipe.

b. Concrete repair and replacement.

c. Metalwork repair and replacement.

d. Electrical repair and replacement.

e. Painting.

f. Silt removal from the river channel and forebay and disposal offsite of said silt. Reclamation shall be responsible for acquiring permits necessary for this work.

g. Maintenance of outdoor lighting to illuminate the fish passage facilities.

h. Maintenance of security fencing around the perimeter of the fish passage facility and hazard warning signs.

15. Reclamation shall take all reasonable precautions not to disturb or damage the City's pumping plant and intake structure. To the extent provided for by law on the date of this Agreement, Reclamation shall be liable for any and all damages to property of the City resulting from its activities under or pursuant to this Agreement. Reclamation shall be responsible for repair in like kind and entirely at its expense, if damage is caused, incurred or occasioned by Reclamation activities.

16. Reclamation shall take all reasonable precautions to ensure that silt removal from the river channel in the vicinity of the fish passage facilities will not restrict the City's ability to divert water from the Gunnison River. Reclamation shall be responsible for acquiring necessary permits required for this work.

17. If for any reason the fish passage facilities are no longer needed by the United States, Reclamation shall remove said fish passage facilities entirely at Reclamation's expense and, to the extent practicable, shall restore the land to a condition comparable to that which existed prior to construction; or at its option, Reclamation will compensate the City, as appropriate, for damage or loss based on an appraisal mutually agreeable to the United States and the City.

18. Reclamation shall include an alternate intake structure in the fish passage forebay at the Dam for the City's pumping plant to avoid interference with the City's operation and maintenance of its existing intake structure. Said alternate intake structure shall consist of a gate, 8 linear feet of 24-inch diameter pipe and a cap. The City acknowledges that they have reviewed and accepted the design of said alternate intake structure. Said alternate

intake structure shall be constructed by Reclamation and entirely at Reclamation's expense.

Service Responsibilities

19. The Service shall be responsible for operation of the fish passage facilities at the Dam and shall perform said operation entirely at its expense. The Service shall be responsible for securing funding to perform the operation. The operation shall also include all maintenance activities which are or may become associated with the day-to-day operation of the fish passage facilities such as:

a. Flushing/removal of sediment within the fish passage facilities. The Service shall be responsible for acquiring permits necessary for this work.

b. Trash removal from the log boom, trash racks, bars, screens and disposal offsite of trash (trash removal shall generally be performed on weekdays, not weekends or holidays, and trash may be temporarily and appropriately stored onsite until enough trash is accumulated to fill a haul vehicle).

c. Weed control (which also includes algae/moss control within the fish passage facilities).

d. Flow regulation in the fish passage facilities.

e. Payment of the monthly billing from Public Service Company of Colorado for electricity at the fish passage facilities.

20. The Service shall divert no more than 100 cfs for the operation of the fish passage facilities at the Dam and the 100 cfs shall be part of the water specifically released by Contract No. 95-07-40-R1760, as amended, from the Wayne N. Aspinall Unit, or part of the natural flow of the Gunnison River in excess of the City's diversions up to their decreed amount.

21. The Service shall take all reasonable precautions not to disturb or damage the City's facilities including pumping plant and intake structure. To the extent provided for by law on the date of this Agreement, the Service shall be liable for any and all damages to property of the City resulting from its activities under or pursuant to this Agreement. The Service shall be responsible for repair in like kind and entirely at its expense, if damage is caused, incurred or occasioned by Service activities.

City Responsibilities

22. At no cost and without further approval, the City shall have access over the fish passage facilities at the Dam to perform operation, maintenance, construction, or replacement of its pumping

plant and intake structure. The City shall notify all parties hereto two weeks prior to startup of its pumping plant facilities. The City shall coordinate with all parties hereto prior to said operation, maintenance, construction, or replacement to ensure that the fish passage facilities operation and maintenance at the Dam are not unreasonably affected.

23. The City shall take all reasonable precautions not to disturb or damage the fish passage facilities at the Dam, once said facilities are constructed. To the extent provided for by law on the date of this Agreement, the City shall be liable for any and all damages to property of Reclamation and/or the Service resulting from its activities under or pursuant to this Agreement. The City shall be responsible for repair in like kind and entirely at its expense, if damage is caused, incurred or occasioned by City activities.

24. The City shall not be responsible for any construction, operation, or maintenance of the fish passage facilities at the Dam.

25. The City shall be responsible for the removal and offsite disposal of silt and vegetation which the City removes from the entrance to and within the City's pumping plant and intake structure at the Dam. The City shall be responsible for acquiring permits necessary for this work.

26. The City shall operate its pumping plant in accordance with applicable law.

27. The City shall be entirely responsible for the operation, maintenance, and replacement of the alternate pumping plant intake structure after Reclamation constructs said alternate intake structure in the fish passage forebay. The City shall be responsible for silt removal at its alternate intake structure in the fish passage forebay above and beyond the silt removal which is necessary by Reclamation and the Service under normal maintenance. The City shall be responsible for acquiring permits necessary for this work. The City shall also be responsible for constructing the connection of the alternate intake structure in the forebay to its existing pumping plant structure at the Dam. The City shall perform said responsibilities entirely at the City's expense.

28. The City shall notify the Service two weeks prior to application of pesticides, which includes but is not limited to herbicides and insecticides, in the vicinity of the City's pumping plant and intake structure.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year hereinabove written.

U.S. BUREAU OF RECLAMATION

Carol DeAngelis
Area Manager
Western Colorado Area Office

Approved

Albert Foreles
Reg. Solicitor's Office

U.S. FISH AND WILDLIFE SERVICE

Joseph J. Webster
Regional Director
Region 6

CITY OF GRAND JUNCTION

Ken Mauzy
Mayor

ATTEST for CITY OF GRAND JUNCTION

Stephanie Nye
City Clerk

