

CDP97GJR

TYPE OF RECORD:	NON-PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	COLORADO DIVISION OF PARKS AND OUTDOOR RECREATION
SUBJECT/PROJECT:	GRAND JUNCTION REDLANDS TAILRACE WATER RIGHT, DUKE LAKE, CONNECTED LAKE, ENDANGERED SPECIES LAKE COLORADO RIVER STATE PARK
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	1997
EXPIRATION DATE:	06/47 RENEWABLE
DESTRUCTION DATE:	01/54

COOPERATIVE USE AGREEMENT

THIS AGREEMENT is entered into this 7 day of June, 1997, between the Colorado Division of Parks and Outdoor Recreation, 1313 Sherman Street, Room 618, Denver, Colorado 80203 ("Parks"), and the City of Grand Junction, 250 North 5th Street, Grand Junction, Colorado 81501 ("City").

Recitals

WHEREAS, the City is the owner of an eighteen (18) c.f.s. water right that was made absolute in Case No. 94CW215 for municipal purposes ("Grand Junction Redlands Tailrace Water Right"). The source of the water is the tailrace of the Redlands Power Plant. The water originates in the Gunnison River and is tributary to the Colorado River through the Redlands Water and Power Company Canal. The date of appropriation was June 1, 1977; and

WHEREAS, Parks is the owner of three lakes (Duke, Connected, and Endangered Species) ("Lakes") located within the boundaries of the Colorado River State Park. The lakes are located in the alluvium of the Colorado River. The water quality in the lakes and the maintenance of optimum water levels would be enhanced by the addition of a surface water supply; and

WHEREAS, both Parks and the City will benefit from the use of the City's absolute water right for municipal use, which includes use for irrigation, aesthetic, recreation, and piscatorial purposes in the Lakes; and

WHEREAS, the delivery of up to eighteen (18) c.f.s of water to the lakes should contribute significantly toward improving the water quality in the lakes and maintaining optimum water levels in the lakes; and

WHEREAS, the City agrees to allow Parks to use, on a cooperative basis, up to eighteen (18) c.f.s. of the Grand Junction-Redlands Tailrace water right for irrigation, aesthetic, recreation, and piscatorial purposes in Duke, Connected, and Endangered Species Lakes at the Colorado River State Park; and

WHEREAS, Parks, through its Director, and with approval of the Colorado Board of Parks and Outdoor Recreation, is authorized by Sections 33-10-107(1)(d) and 33-10-109(1)(c), C.R.S. to agree to this cooperative use agreement for use of water rights; and

WHEREAS, all approvals required for the execution of this Cooperative Use Agreement, including approval by the Colorado Board of Parks and Outdoor Recreation and the City Council of the City of Grand Junction, have been obtained.

Terms and Conditions

In consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Parks and the City agree as follows:

1. General. The City hereby agrees to allow Parks to use on a cooperative basis and at no cost up to eighteen (18) c.f.s. of the Grand Junction-Redlands Tailrace absolute water right (the "Water Right") for irrigation, recreation, and piscatorial purposes in Duke, Connected, and Endangered Species Lakes at the Colorado River State Park. The point of delivery ("Delivery") shall be at the Duke Lake Inlet Structure, which is located in the NE 1/4 of the NE 1/4 of Section 17, at a point that bears South 54°44'00" West 167.00 feet from the Northeast corner of said Section 17, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado ("Point of Delivery").

2. Term. This Cooperative Use Agreement shall commence on the date that it has been executed by both Parks and the City and shall be in effect for a period of fifty years from that date. Upon mutual agreement of the parties, this Agreement may be renewed after the expiration of the fifty-year period.

3. Deliveries. The parties understand and agree that up to eighteen (18) c.f.s. of the Water Right shall be available for use by Parks at the Point of Delivery to fill or raise the level of the Lakes. Parks will provide reasonable notice to the City of Parks' need for the City to curtail its use of up to eighteen (18) c.f.s. of the Water Right. Upon said notice, the City will curtail its use of the Water Right so that it will flow in the Redlands Tailrace Canal and, if available, may be taken by Parks at the Point of Delivery. Parks shall measure the amount of water taken at the Point of Delivery using a measuring device approved by the Division Engineer. Parks may provide notice of its need for water during all months of the year.

4. Operation and Maintenance of Measuring Devices. Parks shall install, operate, and maintain all measuring and recording devices that are necessary to measure the delivery and use of the Water Right as required by the Division Engineer or the City of Grand Junction.

5. Record keeping and Reporting. Parks shall provide the City with records of actual deliveries and amounts used for various purposes such as filling of the Lakes or irrigation of Park's lands. These records shall be made available to the City upon its request. Parks shall file such reports as are required by the Division Engineer.

6. Liability Exposure. Parks and the City understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado and the City, the departments, institutions, agencies, boards, officials, and employees of both is controlled and limited by the provisions of section 24-10-101, *et seq.*, C.R.S., as amended, and section 24-30-1501, *et seq.*, C.R.S., as amended. Any provisions of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of Parks and the City to the above-cited laws.

7. Availability of Water. The City agrees to completely curtail its use of the Water Right, if it is available in the Tailrace, only when Parks needs up to eighteen (18) c.f.s. to fill the Lakes or raise the level of these Lakes because the Lakes have been drained, the dikes forming one of the Lakes has been breached, and/or to offset evaporative depletions during the irrigation season. Otherwise, Parks shall only be entitled to the flow rates necessary for use in maintaining the levels of the Lakes and providing a fresh supply of water thereto.

8. Beneficial Use of Water. Parks shall use its best efforts to ensure that the water delivered to the Duke Lake Inlet Structure is beneficially used for aesthetic, irrigation, recreation, and piscatorial purposes in Duke, Connected, and Endangered Species Lakes at the Colorado River State Park, and will keep and supply records of amounts used to the City.

9. Termination. This Agreement may be terminated as follows:

a. By mutual written agreement of the City and Parks;

or

b. by the City, upon Park's failure to perform any covenant contained herein and to correct such failure within thirty (30) days after mailing of the written notice of the City's intent to terminate the Agreement.

10. Failure to Perform Due to Conditions Beyond Control of Other Party. In the event that either party fails to perform under this Agreement and such failure is the result of conditions or occurrences beyond its control, the other party shall be relieved from all of its obligations under this Agreement.

11. Enforceability. The terms of this Agreement shall be enforceable by either party in an action for specific performance in a court of competent jurisdiction located in Mesa County, Colorado. This Agreement shall not create any third-party beneficiaries and shall not be enforced by anyone other than Parks and the City.

12. Effect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction located in Mesa County, Colorado, such portion shall be deemed severable and its invalidity or unenforceability shall not cause the entire Agreement to be terminated.

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

To Parks:

Director
Colorado Division of Parks and Outdoor Recreation
1313 Sherman Street, Room 618
Denver, CO 80203

With a copy to:

Colorado River State Park Manager
Colorado Parks & Recreation
P. O. Box 700
Clifton, CO 81520

To the City:

City Manager
250 North 5th Street
Grand Junction, CO 81501

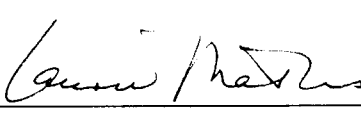
14. Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Colorado.

15. Binding Effect. This Agreement shall be binding on the parties and their respective successors and assigns.

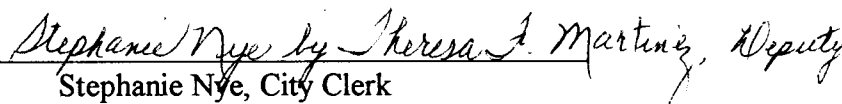
CITY OF GRAND JUNCTION

COLORADO DIVISION OF PARKS AND
OUTDOOR RECREATION

BY: 
Mark Achen, City Manager

BY: 
Laurie A. Mathews, Director



BY: 
Stephanie Nye, City Clerk