



**Master Contract Between the United States of America and
Southeastern Colorado Water Conservancy District for the
Use of Excess Capacity in the Facilities of the
Fryingpan-Arkansas Project.**

December 23, 2016



SOUTHEASTERN COLORADO

Water Conservancy District

"Your investment in water"





United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Regional Office

P.O. Box 36900

Billings, MT 59107-6900

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Southeastern Colorado
Water Conservancy District

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OFFICIAL
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COPIED TO:

Bill
Jim
Lee
Lynn
Chris

Mr. Bill Long, President
Southeastern Colorado Water Conservancy District
31717 East United Avenue
Pueblo, CO 81001

Subject: Transmittal of Executed Excess Capacity Master Contract No. 16XX650031(Contract) Between the United States of America and Southeastern Colorado Water Conservancy District (District) for the Use of Excess Capacity in the Facilities of the Fryingpan-Arkansas Project, Colorado.

Dear Mr. Long:

Enclosed is the fully executed duplicate original of the above-subject Contract between the District and the United States.

If you have any questions, please contact Ms. Margaret Ventling, Repayment Specialist, at mventling@usbr.gov or 406-247-7740.

Sincerely,

L. Ann Petersen
Supervisory Repayment Specialist

Enclosure

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Fryingpan-Arkansas Project, Colorado

MASTER CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT
FOR THE USE OF EXCESS CAPACITY IN THE FACILITIES OF THE
FRYINGPAN-ARKANSAS PROJECT

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UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Fryingpan-Arkansas Project, Colorado

MASTER CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT
FOR THE USE OF EXCESS CAPACITY IN THE FACILITIES OF THE
FRYINGPAN-ARKANSAS PROJECT

THIS MASTER CONTRACT, made this 23RD day of December, 2016, between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," acting through the Secretary of the Interior, pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly, but not limited to, the Sundry Civil Expenses Appropriations Act of 1922 (41 Stat. 1404 (1921); 43 U.S.C. § 395) (commonly referred to as the "Contributed Funds Act"); Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197 (1939); 43 U.S.C. § 389); and the Fryingpan-Arkansas ("Fry-Ark") Project Act of August 16, 1962 (76 Stat. 389 (1962); 43 U.S.C. § 616), as amended, particularly, but not limited to, Pub. L. No. 111-11, § 9115 (123 Stat. 991, 1320 (2009)), all collectively known as the Federal Reclamation law, and the SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT, hereinafter referred to as the "District," each sometimes hereinafter individually called a "Party," and sometimes hereinafter collectively called the "Parties."

EXPLANATORY RECITALS

WITNESSETH, THAT:

The following statements are made in explanation:

- a. WHEREAS, the Fry-Ark Project, authorized by the Fry-Ark Project Act, is a transmountain, transbasin water storage and delivery system designed and built to provide water for irrigation, municipal, domestic, industrial, hydroelectric power, flood control, and other

incidental beneficial uses.

b. WHEREAS, the District is the repayment entity for the reimbursable costs of the Fry-Ark Project pursuant to Contract No. 5-07-70-W0086 (January 21, 1965), as amended, with the United States.

c. WHEREAS, the Arkansas Valley Conduit (AVC), which is the last remaining component of the Fry-Ark Project yet to be constructed, is designed to deliver water that meets federal and state drinking water standards and to provide for existing and future water demands of water users and communities located in southeastern Colorado.

d. WHEREAS, the proposed AVC was approved in the Bureau of Reclamation's Record of Decision (ROD) dated February 27, 2014, for the Arkansas Valley Conduit and Long-Term Excess Capacity Master Contract Final Environmental Impact Statement (FEIS) dated August 2013.

e. WHEREAS, Pueblo Reservoir, the largest reservoir of the Fry-Ark Project, has Excess Capacity at certain times and under certain hydrologic conditions and the Parties share the mutual goal of utilizing such Excess Capacity to maximize water availability and reliability and to generate revenues to: (i) complete repayment of existing features of the Fry-Ark Project pursuant to Pub. L. No. 111-11 (i.e., Ruedi Dam and Reservoir and Fountain Valley Pipeline); (ii) help fund upfront the actual cost of the AVC in conjunction with federal appropriations; and (iii) help repay the actual cost of the AVC upon the completion of construction.

f. WHEREAS, prior to execution of this Master Contract, the United States has been executing both one year and longer term contracts for the use of Excess Capacity in Fry-Ark Project facilities with various water users.

g. WHEREAS, the purpose of this Master Contract is to provide a long-term contract for the storage of Nonproject Water and Project Water Return Flows in Pueblo Reservoir, if and

when Excess Capacity is available, so that the District may then subcontract with Master Contract Participants to provide the Excess Capacity to the Master Contract Participants, as limited by the volumetric limits and the individual Master Contract Participants' water rights that were analyzed pursuant to the National Environmental Policy Act of 1969 (NEPA) (Pub. L. No. 91-190 (1970), 42 U.S.C § 4321) in the FEIS and ROD.

h. WHEREAS, execution of this Master Contract will reduce the administrative costs associated with the development and execution of multiple one year contracts for the use of Excess Capacity in Pueblo Reservoir and will provide convenience and long-term certainty for Master Contract Participants regarding the availability of and charges for such Excess Capacity.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

GENERAL DEFINITIONS

1. The definitions of terms used in this Master Contract apply only to this Master Contract and are not definitions for any other contract or agreement. Where used in this Master Contract, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the term:

a. "Arkansas Valley Conduit" and "AVC" shall mean the water delivery system for municipal and industrial water supplies, including the main and branch pipelines and related facilities as well as the pipeline connection between the north and south outlet works at Pueblo Dam, as authorized in the Fry-Ark Project Act and approved in the ROD.

b. "Contracting Officer" shall mean the Secretary of the United States Department of the Interior or the Secretary's duly authorized representative. Unless stated otherwise, the Contracting Officer shall be deemed to be the Secretary's authorized representative.

- c. “District” shall mean the Southeastern Colorado Water Conservancy District, organized under the laws of the State of Colorado.
- d. “Excess Capacity” shall mean capacity within Fry-Ark Project facilities that is excess to the needs of the Project at any given time as determined solely by the Contracting Officer within the bounds of applicable laws and regulations, and that can, therefore, be used to store, convey, or exchange Nonproject Water or Project Water Return Flows.
- e. “Fry-Ark Project Act” shall mean the Fryingpan-Arkansas Project Act of August 16, 1962 (76 Stat. 389 (1962); 43 U.S.C. § 616), as amended as of the date of execution of this contract or as it may be amended thereafter.
- f. “Fry-Ark Project” and “Project” shall mean the Fryingpan-Arkansas Project, Colorado, as authorized by the Fry-Ark Project Act.
- g. “Master Contract” shall mean this contract, number 16XX650031.
- h. “Master Contract Participants” and “Participants” shall mean those individual water users who elect to subcontract with the District for a portion of the Excess Capacity in Pueblo Reservoir made available by this Master Contract for the storage of Nonproject Water and Project Water Return Flows.
- i. “Nonproject Water” shall mean water that: (i) is not defined as Project Water herein; and (ii) was included in meeting the demands of the Master Contract Participants and was analyzed pursuant to NEPA.
- j. “Operating Principles” shall mean the Fry-Ark Project Operating Principles as set forth in House Document 130, 87th Congress, 1st Session, 1961, which Operating Principles were first adopted by the State of Colorado on April 30, 1959, and subsequently amended on December 30, 1959, and December 9, 1960.
- k. “Project Water” shall mean the water available to the Project through the State

of Colorado decreed water rights for the Project pursuant to the Operating Principles.

l. "Project Water Return Flows" shall mean the Project Water that is returned to the Project and accrues back to the District for its reuse.

m. "Spill" shall mean evacuation of stored water from Pueblo Reservoir pursuant to the spill priorities described in Article 13 of Contract Number 5-07-70-W0086 (January 21, 1965), as amended, between the District and the United States.

ENTIRE AGREEMENT

2. This Master Contract constitutes the entire agreement between the Parties relating to the subject matter of the Master Contract. This Master Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

EFFECTIVE DATE AND TERM OF MASTER CONTRACT

3. a. This Master Contract became effective on the date of execution and shall remain in effect for a period of 40 years unless terminated sooner in accordance with the provisions of Article 13 herein.

b. The District may request renewal of this Master Contract upon written request to the Contracting Officer on or before two years prior to the expiration of this Master Contract; *provided*, that upon such request, the Contracting Officer will enter into timely, good faith negotiations for the renewal of this Master Contract upon mutually agreeable terms and conditions and in accordance with the applicable federal laws and policies and state laws in effect at that time.

CONTRACTED SERVICE

4. a. Subject to the District's compliance with Article 6, beginning January 1, 2017, the District is authorized to annually utilize up to 29,938 acre-feet of Excess Capacity in Pueblo

Reservoir, if and when available, by subcontracting with Master Contract Participants for the storage of Nonproject Water and Project Water Return Flows in such Excess Capacity in accordance with Article 9 herein and subject to the terms and conditions of this Master Contract and to Federal Reclamation law.

b. The District understands that the Excess Capacity made available in Pueblo Reservoir under this Master Contract is limited to the maximum of 29,938 acre-feet of storage space as analyzed pursuant to NEPA in the FEIS and ROD. The District acknowledges that if it desires to exceed this maximum volumetric limit, change particular Master Contract Participants, or modify the water rights utilized by Master Contract Participants, then additional environmental analysis pursuant to NEPA may be required and, if required, will be at the sole expense of the District. The District also acknowledges that the Master Contract will need to be amended prior to the utilization of additional storage or to a change in Master Contract Participants or amounts of water stored by Master Contract Participants.

c. If the Contracting Officer determines that Project operations may require a Spill, the Contracting Officer shall notify the District as soon as reasonably possible of the quantity and timing of the water that may be spilled.

d. The amount of Nonproject Water and Project Water Return Flows that is not delivered or spilled during a given year, less the evaporation and other applied losses for that year as further described in Article 8, may be carried over to the next year while the Master Contract is in effect, but total Nonproject Water and Project Water Return Flows stored in the Excess Capacity in Pueblo Reservoir by the Master Contract Participants may not exceed the maximum of 29,938 acre-feet at any one time.

CHARGES FOR USE OF EXCESS CAPACITY IN PUEBLO RESERVOIR

5. a. The District shall be charged annually for each acre-foot of Excess Capacity

in Pueblo Reservoir which is made available to it for the storage of Nonproject Water and Project Water Return Flows.

(1) Beginning with calendar year 2017, the District shall pay for a minimum of 6,525 acre-feet of Excess Capacity each year. This minimum amount of Excess Capacity for which the District must pay cannot be decreased and shall be referred to as the “2017 Excess Capacity Floor.”

(2) The District is authorized to, and may at any time notify the Contracting Officer that it is going to, utilize Excess Capacity in an amount, including space needed for any Nonproject Water or Project Water Returns Flows carried over from a previous year, greater than the 2017 Excess Capacity Floor in a given year, up to the maximum of 29,938 acre-feet. In this event, the greater amount becomes a new Excess Capacity Floor and cannot be decreased.

(3) If the District gives notice after making the payment required by Article 6.a.(1) that it is going to utilize a greater amount of Excess Capacity than the Excess Capacity Floor which was in effect when it made payment for the following calendar year, then the increased amount becomes the Excess Capacity Floor for the entire calendar year no matter when notice is given.

b. The initial rate for an acre-foot of Excess Capacity (hereafter the “Excess Capacity rate”) will be \$40.04 per acre-foot for calendar year 2017.

(1) Each subsequent calendar year’s Excess Capacity rate shall increase by 1.79 percent per year over the preceding year’s rate and shall be the applicable rate set forth in Exhibit A, which is hereby made a part of this Master Contract.

(2) The Excess Capacity rates set forth in Exhibit A shall be the same regardless of the end use of the Nonproject Water or Project Water Return Flows which are stored in Excess Capacity (municipal, industrial, irrigation, or other beneficial use) or of the

means of delivery of such water (direct use, by exchange, or for a plan of augmentation).

c. The total annual charge for the use of Excess Capacity in Pueblo Reservoir for the storage of Nonproject Water and Project Water Return Flows (hereafter “Excess Capacity storage charge”) will be the Excess Capacity rate (expressed as dollars per acre-foot of storage space) for a given year multiplied by the Excess Capacity Floor (expressed in acre-feet) for that year.

PAYMENT OF EXCESS CAPACITY STORAGE CHARGES

6 a. Payment of Excess Capacity storage charges shall be made by the District as follows:

(1) The District shall submit an advance payment of the Excess Capacity storage charge due for a given calendar year pursuant to Article 5.c on or before November 1 of the preceding year based on the Excess Capacity Floor for that year.

(2) If the District elects pursuant to Article 5.a.(2) to utilize Excess Capacity in an amount greater than the Excess Capacity Floor which was in effect for a given year when payment was initially made, then it must submit payment for the additional Excess Capacity storage charge occasioned by such increase in the Excess Capacity Floor before Excess Capacity over and above the previous Excess Capacity Floor can be used.

b. The Excess Capacity storage charge shall be non-refundable even if the Contracting Officer determines, in his or her sole discretion, that the Excess Capacity Floor for a given year is not available or if the District does not use all of the Excess Capacity Floor for a given year for the storage of Nonproject Water and Project Water Return Flows.

c. In addition, the Excess Capacity storage charge shall be non-refundable even if the Master Contract Participants fail, or are unable, to use the quantities of Nonproject Water or Project Water Return Flows which they stored in the Excess Capacity in Pueblo Reservoir

pursuant to this Master Contract in any given year. Furthermore, such inability, failure, or refusal shall not relieve the District of the obligation to make the advance payment required by this article for the next year.

REVENUE CREDITING

7. a. Revenues which result from the payment by the District pursuant to Article 6.a of Excess Capacity storage charges shall be credited in accordance with the Fry-Ark Project Act and this Article 7.a.

(1) Before payout of the construction costs of Ruedi Reservoir and Fountain Valley Pipeline, such revenues will be credited as described in Exhibit B of this Master Contract, which is hereby made a part of this Master Contract.

(2) After payout of the construction costs of Ruedi Reservoir and Fountain Valley Pipeline, such revenues will be credited as described in Exhibit C of this Master Contract, which is hereby made a part of this Master Contract.

b. Unless prohibited by law, the Contracting Officer, acting in his or her sole discretion, may make changes to the revenue crediting arrangement described in Exhibit B. The Contracting Officer will consult with the District and provide notification to the District before making any changes to Exhibit B. Any such changes may be made without affecting other provisions of this Master Contract, provided that any changes must be consistent with the Fry-Ark Project Act, either as it existed at the time of the execution of this Master Contract or as it may be amended thereafter.

c. The Parties agree that Exhibit C of this Master Contract may be changed by mutual agreement of the Parties without affecting other provisions of this Master Contract, provided that any changes must be consistent with the Fry-Ark Project Act, either as it existed at the time of the execution of this Master Contract or as it may be amended thereafter.

d. The Contracting Officer shall account for all revenues arising from payment by any entity for the use of Excess Capacity in the Fry-Ark Project pursuant to this Master Contract and to any other contracts on a federal fiscal year (October 1-September 30) basis and shall provide such accounting in writing to the District by the following January 1.

**DELIVERY AND MEASUREMENT OF WATER, AND ACCOUNTING
FOR THE USE OF EXCESS CAPACITY**

8. a. If requested by the Contracting Officer, the District shall submit and revise, if necessary, a written schedule of the anticipated monthly demands for Excess Capacity in Pueblo Reservoir for the storage of Nonproject Water and Project Return Flows pursuant to this Master Contract.

b. The District shall work with the Participants to make whatever arrangements are necessary in order to make Nonproject Water and Project Water Return Flows available for storage in Excess Capacity under this Master Contract pursuant to Colorado law, including but not limited to, obtaining any necessary approvals of the State of Colorado's Division of Water Resources. The District is solely responsible for any transit and evaporation losses assessed by the State of Colorado's Division of Water Resources and/or associated with the use of Excess Capacity for the storage of Nonproject Water and Project Water Return Flows under this Master Contract. The Contracting Officer shall account for any transit and evaporation losses assessed on Nonproject Water and Project Water Return Flows stored and conveyed under this Master Contract.

c. The Contracting Officer shall provide for the daily accounting of water showing:

(1) The amount of water placed into storage in Pueblo Reservoir from all sources;

(2) The evaporation losses charged against the Nonproject Water and Project Water Return Flows, which shall be on a proportional basis with all other water stored in Pueblo Reservoir; and

(3) The amount of Nonproject Water and Project Water Return Flows remaining in storage at the end of each day (midnight).

d. Upon the Contracting Officer's request, the District shall furnish the Contracting Officer or the Contracting Officer's designee, without charge, such District records as may be required for such daily accounting. These records shall account for Nonproject Water and Project Water Return Flows according to the limitations in the water rights listed in the FEIS or in a subsequent NEPA analysis.

DISTRICT'S USE OF EXCESS CAPACITY IN PUEBLO RESERVOIR

9. The District may subcontract with Master Contract Participants for the use of a collective maximum amount of 29,938 acre-feet of Excess Capacity in Pueblo Reservoir for the storage of Nonproject Water and Project Water Return Flows, with such water to be used only in those areas that are within the boundaries of the District and only for lawfully decreed purposes that are consistent with this Master Contract and with applicable Federal, State, and local laws and that were analyzed in the FEIS and associated ROD or in a subsequent NEPA analysis. Changes resulting from any subsequent NEPA analysis must be approved in advance and in writing by the Contracting Officer.

LIMITATIONS

10. a. Nothing in this Master Contract affects Contract No. 5-07-70-W0086, as amended, concerning the Fry-Ark Project or the authorities applicable to that contract.

b. Except as explicitly provided in this Master Contract, nothing in this Master

Contract is to be construed to require a change in Fry-Ark Project operations, including, but not limited to, a change in the Spill priorities as established in Article 13 of Contract No. 5-07-70-W0086, as amended, nor to affect the District's rights under the said contract.

c. Nothing in this Master Contract is to be construed to require the Contracting Officer to take any action which, as determined solely by the Contracting Officer within the bounds of all applicable laws and regulations, may cause harm to the Fry-Ark Project.

d. Nothing in this Master Contract is to be construed to grant the District any right, title, or interest other than that explicitly provided for in this Master Contract.

e. The District's receipt of any benefit under this Master Contract is conditioned upon payment of the Excess Capacity storage charges due pursuant to Article 6 herein.

f. The rights of the District hereunder are subject to the following terms, conditions and limitations, to all intents and purposes as though set forth verbatim herein, and made a part hereof by reference to wit:

(i) The Boulder Canyon Project Act, approved December 21, 1928, (45 Stat. 1057; 43 U.S.C. §§ 617 *et seq.*).

(ii) The Colorado River Compact signed November 24, 1922.

(iii) The Upper Colorado River Basin Compact signed October 11, 1948.

(iv) The Boulder Canyon Project Adjustment Act, approved July 19, 1940 (54 Stat. 774, 43 U.S.C. §§ 681 *et seq.*).

(v) The Colorado River Storage Project Act, approved April 11, 1956 (70 Stat. 105, 43 U.S.C. §§ 620 *et seq.*).

(vi) The U.S. - Mexican Water Treaty signed November 14, 1944.

(vii) The Arkansas River Compact signed December 14, 1948.

OPERATING PRINCIPLES

11. The United States will operate the Fry-Ark Project in accordance with the Operating Principles.

UNITED STATES NOT LIABLE

12. a. The United States is not responsible for the control, carriage, transportation losses, handling, use, disposal, or distribution of any Nonproject Water or Project Water Return Flows stored in Excess Capacity at Pueblo Reservoir beyond Pueblo Reservoir. The District, to the extent allowed by law, shall hold the Bureau of Reclamation harmless on account of damage, or claim for damage, of any nature whatsoever arising out of or connected with the control, carriage, transportation losses, handling, use, disposal, or distribution of such Excess Capacity.

b. The storage of Nonproject Water and Project Water Return Flows in Excess Capacity at Pueblo Reservoir will be subordinate to the storage of Project Water. The District agrees that the Excess Capacity made available pursuant to this Master Contract is in excess of the needs of the Fry-Ark Project's purposes as exclusively determined by the Contracting Officer. The United States shall not be responsible if Excess Capacity is not available in Pueblo Reservoir.

TERMINATION OF MASTER CONTRACT

13. a. Upon failure of the District to perform any of the obligations under this Master Contract, the Contracting Officer may give notice in writing of the nature of the default and require the District to perform within a period specified in such notice, but not less than 30 days except in the case of an emergency. Upon the District's failure to perform as required in the notice, the Contracting Officer may elect to terminate this Master Contract or may withhold use of Excess Capacity until the District performs. The Contracting Officer's options under this Article shall be in addition to any other remedies available under law or policy.

b. The District shall have the right to terminate this Master Contract in the event there is no further need of the Excess Capacity provided herein, as determined by the District in its sole discretion. Any such termination can take effect only on January 1 of the upcoming calendar year. Notice of intent by the District to terminate this Master Contract shall be provided in writing to the Contracting Officer not later than the preceding November 1.

c. Termination of this Master Contract for any cause shall not relieve the District of any obligations incurred by way of this Master Contract prior to termination.

d. No provision of this Master Contract will be construed to bind the United States after its expiration or termination; provided, however, that the United States shall remain obligated to complete the crediting of revenues received prior to the expiration or termination of this Master Contract in accordance with, and to provide the fiscal year accounting of revenues required by, Article 7 herein.

MASTER CONTRACT NOT A WATER RIGHT

14. No provisions of this Master Contract will be construed to be the basis of a water right.

ENVIRONMENTAL COMMITMENTS AND REVIEW

15. a. The Parties hereby agree that the environmental commitments exclusive to this Master Contract, as set forth in the FEIS and ROD, and as delineated on Exhibit D, shall be implemented by the Parties as follows:

(i) Implementation by the District:

(a) The District will continue voluntary commitment to the Upper Arkansas Voluntary Flow Management Program (Flow Program) and will work with Master Contract Participants to ensure their commitment to the Flow Program.

(b) The District will comply with its commitments set forth in the Pueblo

Flow Management Program, as outlined in the Six Party Intergovernmental Agreement.

(c) The District will provide \$50,000.00 for habitat improvements downstream from Pueblo Reservoir to mitigate moderate streamflow effects and minor aquatic life effects of the Comanche North Alternative during low-flow periods in the Arkansas River.

(ii) Implementation by the United States:

(a) The United States will support expansion of the Pueblo Fish Hatchery near the existing Pueblo Fish Hatchery, if requested and deemed feasible by the Department of Natural Resources, Colorado Parks and Wildlife, in conjunction with mitigation requirements set forth in the Southern Delivery System Environmental Impact Statement and Fish and Wildlife Mitigation Plan.

(iii) Joint Implementation by the District and the United States:

(a) The United States and the District will limit storage of Nonproject Water and Project Water Return Flows in Excess Capacity at Pueblo Reservoir when streamflow in the Arkansas River is less than 50 cfs, as measured by adding streamflow at the Arkansas River above Pueblo gage to fish hatchery return flows from the current hatchery discharge point, to mitigate moderate effects of occasional low streamflow immediately below Pueblo Reservoir, and the effects of this low streamflow on water quality and aquatic life. This applies only to water exchanged from below Pueblo Reservoir into Participant accounts that could reduce streamflow immediately below the reservoir.

(b) The District and the United States will provide coordination assistance with Master Contract Participants in managing storage and water releases in a manner that will assist in augmenting occasional moderate low streamflow effects in the Arkansas River downstream from Pueblo Reservoir to the Fountain Creek confluence. The Bureau of Reclamation will not modify operations that would impact Fry-Ark Project yield.

b. The District shall submit to the Contracting Officer by January 31 of each year a report, satisfactory to the Contracting Officer, that certifies progress in the previous year regarding successfully implementing the environmental commitments in a timely manner. If at any time during the term of this Master Contract the District fails to implement or comply with the environmental commitments, the Contracting Officer may immediately cease storage of Nonproject Water and Project Water Return Flows in the Excess Capacity at Pueblo Reservoir until the commitments are implemented and fulfilled to the satisfaction of the Contracting Officer. Failure to implement or comply with the environmental commitments may also result in the termination of this Master Contract by the United States in accordance with Article 13 herein.

c. The District shall be responsible for the costs of all current and future NEPA and Endangered Species Act compliance and mitigation measures associated with the use of the Excess Capacity described in this Master Contract.

SEVERABILITY

16. In the event that any one or more of the provisions contained herein is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this Master Contract, but this Master Contract is to be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause the fundamental benefits afforded the Parties by this Master Contract to become unavailable or materially altered.

CONFIRMATION OF MASTER CONTRACT

17. The District has provided a letter dated November 7, 2016 (Exhibit E), that adequately demonstrates to the Contracting Office that, pursuant to the laws of the State of

Colorado, the District is a legally constituted entity and this Master Contract is lawful, valid and binding on the District.

STANDARD CONTRACT ARTICLES

CHARGES FOR DELINQUENT PAYMENTS

18. a. The District shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the District shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the District shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the District shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The District shall also pay any fees incurred for debt collection services associated with a delinquent payment.

b. The interest rate charged shall be the greater of either 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. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

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

GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

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

b. The payment of charges becoming due pursuant to this Master Contract is a condition precedent to receiving benefits under this Master Contract. The United States shall not make Excess Capacity available to the District through the Fry-Ark Project facilities during any period in which the District is in arrears in the advance payment of any charges due the United States pursuant to this Master Contract.

NOTICES

20. Any notice, demand, or request authorized or required by this Master Contract shall be deemed to have been given, on behalf of the District, when mailed, postage prepaid, or delivered to the:

Regional Director
Bureau of Reclamation
Great Plains Region
P.O. Box 36900
Billings, MT 59107-6900

and on behalf of the United States, when mailed, postage prepaid, or delivered to the District:

Southeastern Colorado Water Conservancy District
31717 East United Avenue
Pueblo, Colorado 81001

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.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

OFFICIALS NOT TO BENEFIT

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

CHANGES IN THE DISTRICT'S ORGANIZATION

23. While this Master Contract is in effect, no change may be made in the District's organization by dissolution, consolidation, or merger if that would affect the respective rights, obligations, privileges, and duties of either the United States or the District under this Master Contract, except upon the Contracting Officer's written consent.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

24. The provisions of this Master Contract shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Master Contract or any right or interest therein by either Party shall be valid until approved in writing by the other Party.

BOOKS, RECORDS, AND REPORTS

25. The District shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Master Contract, including the

District's financial transactions; water supply data; and such other matters that the Contracting Officer may require. Reports 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 Master Contract shall have the right during office hours to examine and make copies of the other Party's books and records relating to matters covered by this Master Contract.

PROTECTION OF WATER AND AIR QUALITY

26. a. Project facilities used to make available and deliver water to the District shall be operated and maintained by the United States in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided*, that the United States does not warrant the quality of the water delivered to the District and is under no obligation pursuant to this Master Contract to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the District.

b. The District shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Colorado; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the District; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to discharges generated through the use of Federal or District facilities.

c. This Article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

WATER CONSERVATION

27. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this Master Contract, the District shall develop a water conservation plan.

EQUAL EMPLOYMENT OPPORTUNITY

28. During the performance of this Master Contract, the District agrees as follows:

a. The District will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The District 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, sexual orientation, gender identity, disability, 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 District 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.

b. The District will, in all solicitations or advertisements for employees placed by or on behalf of the District, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

c. The District 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 labor union or workers' representative of the District's commitments under section 202 of Executive Order 11246 of September 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The District will comply with all provisions of EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The District will furnish all information and reports required by EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the District's noncompliance with the nondiscrimination clauses of this Master Contract or with any of such rules, regulations, or orders, this Master Contract may be canceled, terminated or suspended in whole or in part and the District may be declared ineligible for further Government contracts in accordance with procedures authorized in EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The District will include the provisions of paragraphs (a) through (g) 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 EO 11246, so that such provisions will be binding upon each subcontractor or vendor. The District 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 District becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the District may request that the United States enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

29. a. The District shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.) Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

b. These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Master Contract, the District agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

c. The District 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 District by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The District 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.

d. Complaints of discrimination against the District shall be investigated by the Contracting Officer's Office of Civil Rights.

CERTIFICATION OF NONSEGREGATED FACILITIES

30. The District hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The District agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this Master Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, disability, or otherwise. The District further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause. The certification may be submitted either for each subcontract or for all

subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001.

MEDIUM FOR TRANSMITTING PAYMENTS

31. a. All payments from the District to the United States under this Master Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

b. Upon execution of the Master Contract, the District shall furnish the Contracting Officer with the District's taxpayer's identification number (TIN). The purpose for requiring the District's TIN is for collecting and reporting any delinquent amounts arising out of the District's relationship with the United States.

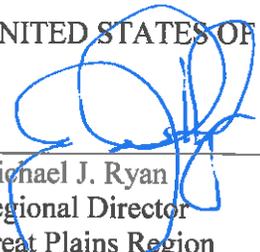
MASTER CONTRACT DRAFTING CONSIDERATIONS

32. This Master Contract has been, negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Master Contract pertains. Articles 1 through 17 of this Master Contract have been drafted, negotiated, and reviewed by the Parties, and no one Party shall be considered to have drafted the stated articles.

IN WITNESS WHEREOF, the Parties hereto have executed this Master Contract the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____


Michael J. Ryan
Regional Director
Great Plains Region
Bureau of Reclamation

SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT

By: _____


Bill Long
President

ATTEST:


Christy Wade

EXHIBIT A**Excess Capacity Rate**

Calendar Year	Excess Capacity Rate (\$/AF of storage space)
2017	\$ 40.04
2018	\$ 40.76
2019	\$ 41.49
2020	\$ 42.23
2021	\$ 42.99
2022	\$ 43.76
2023	\$ 44.54
2024	\$ 45.34
2025	\$ 46.15
2026	\$ 46.98
2027	\$ 47.82
2028	\$ 48.67
2029	\$ 49.55
2030	\$ 50.43
2031	\$ 51.34
2032	\$ 52.25
2033	\$ 53.19
2034	\$ 54.14
2035	\$ 55.11
2036	\$ 56.10
2037	\$ 57.10
2038	\$ 58.12
2039	\$ 59.16
2040	\$ 60.22
2041	\$ 61.30
2042	\$ 62.40
2043	\$ 63.52
2044	\$ 64.65
2045	\$ 65.81
2046	\$ 66.99
2047	\$ 68.19
2048	\$ 69.41
2049	\$ 70.65
2050	\$ 71.91
2051	\$ 73.20
2052	\$ 74.51
2053	\$ 75.85
2054	\$ 77.20
2055	\$ 78.59
2056	\$ 79.99

EXHIBIT B

GP-4100
WTR-4.00

OCT 19 2013

Mr. James W. Broderick
Executive Director
Southeastern Colorado Water
Conservancy District
31717 United Avenue
Pueblo, CO 81001

**Subject: Crediting of Miscellaneous Revenues Pursuant to the Section 9115, Public Law
111-11, Fryingpan-Arkansas Project, Colorado**

Dear Mr. Broderick:

It has come to my attention that you would like something in writing from the Bureau of Reclamation describing our approach to crediting Fryingpan-Arkansas Project miscellaneous revenues pursuant to Section 9115 of P.L. 111-11. To refresh our memories, please recall that on August 16, 2012, I received your letter recommending how you would like the future miscellaneous revenues to be credited. This letter was sent on behalf of the seven Colorado parties who had entered into discussions among themselves regarding the future crediting of miscellaneous revenues. After discussions with my staff and me, on May 14, 2013, Bill McDonald provided a memorandum (enclosed) to you that outlined the differences between your recommendation and Reclamation's decision on the crediting of miscellaneous revenues.

Since May 2013, Reclamation has executed contracts for the remaining 19,585.5 acre-feet from the regulatory capacity of Ruedi Reservoir. With the execution of these contracts, repayment of the costs allocable to these 19,585.5 acre-feet has been assured and, barring unforeseen circumstances, future miscellaneous revenues will not be needed for this purpose. Therefore, Reclamation will divide the miscellaneous revenues received for the Fryingpan-Arkansas Project between repayment of the outstanding costs allocable to the 5,412.5 acre-feet contracted for by the Colorado River Water Conservation District and repayment of the Fountain Valley Conduit. The 5,412.5 acre-feet will be used to fulfill a portion of the Colorado water users' obligation to provide 10,825 acre-feet of water for endangered fish under the 1999 Programmatic Biological Opinion issued by the U.S. Fish and Wildlife Service.

Reclamation will apply the first \$944,818.84 of miscellaneous revenues to satisfy the obligation within the 5,412.5 acre-foot contract. Following full repayment of the obligation within the 5,412.5 acre-foot contract, the miscellaneous revenues will be applied as tail-end credits to repayment of the Fountain Valley Conduit. The use of miscellaneous revenues for the Fountain Valley Conduit will not reduce the annual amounts due from the Fountain Valley Authority

EXHIBIT B

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members per repayment contract number 9-07-70-W0315, but will reduce the total amount paid by the members. The miscellaneous revenues will be annually accounted for by Reclamation and communicated to the Fountain Valley Authority in the annual payout schedule letter.

I want to commend the seven Colorado parties for your joint efforts to address the issues regarding the repayment of the remaining reimbursable costs of Ruedi Reservoir's regulatory storage capacity and the future disposition of miscellaneous revenues from excess capacity and exchange contracts within the Fryingpan-Arkansas Project. Reclamation greatly appreciates what you have done to help bring these two matters to a final conclusion.

If you have any questions or concerns, please feel free to contact me at 406-247-7600.

Sincerely,

Michael J. Ryan

Michael J. Ryan
Regional Director

Enclosure

Identical Letter Sent To:

Mr. Tyler Allison
President
Fountain Valley Authority
13520 Ray Nixon Road
Fountain, CO 80817

Mr. James Eklund
Director
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203

Mr. Eric Kuhn
General Manager
Colorado River Water Conservation District
201 Centennial Street
Glenwood Springs, CO 81602

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cc: Ms. Noreen Walsh
Regional Director
U.S. Fish and Wildlife Service Mountain-Prairie Region
34 Union Blvd.
Lakewood, Colorado 80228

Mr. Tom Chart
U.S. Fish and Wildlife Service
Mountain-Prairie Region
34 Union Blvd.
Lakewood, Colorado 80228

Mr. Terry Book
Pueblo Board of Water Works
P.O. Box 400
Pueblo, Colorado 81002-0400

Mr. Wayne Vanderschuere
Fountain Valley Authority
13520 Ray Nixon Road
Fountain, CO 80817

Mr. Mark Fuller
Director
Ruedi Water and Power Authority
238 Fawn Drive
Carbondale, CO 81623

Mr. Andy Colosimo
Colorado Springs Utilities
121 South Tejon Street
Colorado Springs, CO 80947-0950

Ms. Christine Arbogast
Kogovsek and Associates
8547 East Arapahoe Road #J
Greenwood Village, CO 80112

Mr. Glenn Porzak and Ms. Kristin Moseley,
Porzak, Browning, and Bushong, LLP
Outside Counsel to Exxon Mobil Corporation
929 Pearl Street, Suite 300
Boulder, CO 80302

EXHIBIT B

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Mr. Bill McDonald
McDonald Water Policy Consulting, LLC
11380 West Rader Court
Boise, ID 83713

bc: GP-1000, GP-3300 (WDixon, MScanson, PRohde)
GP-4100 (TKinsey)
EC-1000 (MCollins, JGould)
EC-1300 (CRonca)
EC-1310 (RRicc, JHarger)
(w/encl to each)

WBR:TKinsey:awhittington:9/30/2013:406-247-7650
Rewritten:RPeterson:sbirdwell:10/8/13:406-247-7730
T:\Shared\RDsupport\FrontOffice\Correspondence\4000-misc\Broderick-Response to CO Parties
w-all changes incorporated RFP 10.3.13 (3).docx

EXHIBIT B

McDonald Water Policy Consulting, LLC
Consulting Services in Water Resources Policy and Management

11380 West Rader Court, Boise, ID 83713
McDWaterPolicy@aol.com
208-672-8560 (office/fax); 208-859-2534 (cell)

MEMORANDUM

To: Jim Broderick, Executive Director
Southeastern Colorado Water Conservancy District

From: Bill McDonald *Bill McDonald*

Date: May 14, 2013

Subject: Reclamation's Decision on the Future Crediting of Miscellaneous Revenues,
Fryingpan-Arkansas Project. Pursuant to Section 9115, P.L. 111-11

Introduction

The seven Colorado parties who entered into discussions in 2011-12 regarding the future crediting of miscellaneous revenues from excess capacity and exchange contracts at Pueblo Reservoir made a proposal to the Bureau of Reclamation (Reclamation) in an August 16, 2012, letter to Mike Ryan, Regional Director of Reclamation's Great Plains Region. Subsequently, Reclamation entered into a December 26, 2012, contract (enclosed) with the Colorado River Water Conservation District (River District) for 5,412.5 acre feet for fish purposes to fulfill a portion of the Colorado water users' obligation to provide 10,825 acre feet for endangered fish under the 1999 Programmatic Biological Opinion (PBO) issued by the U.S. Fish and Wildlife Service. This contract represents, in effect, Reclamation's response to the Colorado parties' August 16 proposal.

You have asked me to review the contract and advise as to whether it reflects the Colorado parties' proposal. Since I am no longer under contract to all seven parties, but am under contract to provide consulting services to both the River District (on the contract negotiations for the remaining 19,586 acre-feet of Ruedi Reservoir's marketable yield) and the Southeastern District (on such matters as requested), I advised Dan Birch at the River District of your request that I render this service, to which he does not object. As I told both Dan and you in the separate telephone conversations which I had with each of you on May 7, I will make this memorandum available to the other six Colorado parties and maintain the neutral third party moderator/facilitator role which I had last year if further discussions among the parties or contacts with Reclamation are in order. Since I talked with Mike Ryan about the contract, I am also copying him on this memorandum as a courtesy.

EXHIBIT B

Discussion

I reviewed the December 26, 2012, contract and discussed it with Mike Ryan and his staff to be sure that I was properly reading it. Based on that review and my conversation with Mike, I offer the following points:

1. In principal, the contract reflects the Colorado parties' request that miscellaneous revenues be divided annually between repayment of the 5,412.5 acre-feet of Ruedi water and of the Fountain Valley Pipeline, rather than being devoted 100 percent to Ruedi Reservoir until the outstanding repayment obligation allocable to the 5,412.5 acre-feet is repaid. While Article 4 of the contract does not explicitly state this, it is implicit in the language of that article when coupled with the language of section 9115 of P.L. 111-11.
2. Reclamation did not, however, accept the specific terms of the Colorado parties' August 16 proposal. Mike advised me that Reclamation considered the Colorado parties' proposal and made its decision prior to negotiating the contract with the River District.
3. Reclamation's decision differs from the Colorado parties' proposal in three regards.
 - a. First, the interest rate used in the contract is the project interest rate of 3.046 percent, not the proposed 2.125 percent rate (which was the rate at the time on 10 year Treasuries). Note, however, that Reclamation did agree to the parties' proposal that the interest rate under the Water Supply Act of 1958 no longer apply.
 - b. Second, the contract requires level annual payments of \$944,818.84 from 2013 through 2019, to be covered by the use of miscellaneous revenues. Thus, what Reclamation decided to do was apply straight line amortization, at an interest rate of 3.046 percent, to the outstanding balance of \$5,876,297.12 (\$6,981,583.75 allocable to the 5,412.5 AF as of Sept. 30, 2011, less a lump sum payment of \$1,105,286.63 (i.e., 5,412.5 AF x \$204.21/AF) made by the River District upon the execution of the contract. In contrast, the parties' proposal called for \$386,857 of miscellaneous revenues to be applied to Ruedi in 2012, increasing annually in specified amounts to \$1,343,031 in 2019.
 - c. Third, Mike Ryan told me that Reclamation has split the miscellaneous revenues which accrued in FY 2012 between Ruedi Reservoir and the Fountain Valley Pipeline based on the agreement which the parties had originally reached in August, 2011, for FYs 2010-12. The Colorado parties' requested this split of revenues in a letter to Mike Ryan dated September 5, 2011. This split was different than what the parties subsequently proposed in their August 16, 2012, letter. My understanding from Mike is that \$451,471 of miscellaneous revenues was credited to Ruedi from FY 2012 miscellaneous revenues, whereas the parties' proposal had been for \$386,857. The Fountain Valley Pipeline was credited with the remainder of the miscellaneous revenues for FY 2012, which was \$728,537.

EXHIBIT B

It would have been \$793,151 had Reclamation agreed to the parties' August 16 proposal.

4. The net effect of Reclamation's decision is that Ruedi Reservoir will receive \$6,613,731.88 of miscellaneous revenues, rather than the \$6,445,411.76 which would have resulted from the parties' proposal (which is actually overstated by \$789.35 as explained in the attachment). Put another way, the Fountain Valley Pipeline will receive \$168,320 (which is understated by the \$789.35) less in miscellaneous revenues under Reclamation's decision than it would have received under the parties' proposal (assuming the parties' projections of future miscellaneous revenues proved to be true). These numbers are documented in the attachment to this memorandum.
5. Since the miscellaneous revenues applied to the Fountain Valley Pipeline are a "tail end" credit, Fountain Valley's annual repayment obligation of \$5.353 million is unaffected. What will happen given Reclamation's decision is that Fountain Valley, in the final year of repayment, will have \$168,320 more to be repaid than under the parties' proposal (since miscellaneous revenues will not have covered that amount). I did not calculate the extra interest charges, if any, that Fountain Valley might accrue as a result of Reclamation's decision.
6. Articles 4.a and 4.b. of the contract impose on the River District the obligation to pay off the amount owed on the 5,412.5 acre-feet of miscellaneous revenues through FY 2019 prove to be insufficient to do so.

Recommendation

While the contract for the 5,412.5 acre-feet, and my discussion of it with Mike, essentially tells us what Reclamation's decision on the parties' proposal for the use of miscellaneous revenues has been, the parties have not received a specific written response to their August 16, 2012, letter. Thus, I suggest that the parties ask Mike to confirm by letter that Reclamation does intend to divide miscellaneous revenues for FYs 2013-19 between Ruedi and the Fountain Valley Pipeline in the manner implied by the contract when read in light of section 9115 of P.L. 111-111.

I anticipate that Mike would be willing to do that, but likely with the caveat that a final and formal decision will be contingent upon execution of contracts for the remaining 19,586 acre-feet of Ruedi's marketable yield. The reason for the caveat is that absent those contracts, Reclamation would more than likely apply 100 percent of future miscellaneous revenues to Ruedi Reservoir in order to recover the unpaid construction costs, deficit O&M costs, and accrued interest associated with whatever portion of the 19,586 acre-feet did not get marketed.

Encl.s: as stated (2)

cc: Dan Birch, Colorado River Water Conservation District
Mark Fuller, Ruedi Water and Power Authority
Jennifer Gimbel and Ted Kowalski, Colorado Water Conservation Board
Terry Book, Pueblo Board of Water Works

EXHIBIT B

Wayne Vanderschuer, Fountain Valley Authority
Andy Colosimo, Colorado Springs Utilities
Mike Ryan, Bureau of Reclamation

EXHIBIT B

Comparison of Colorado Parties' August 16, 2012, Proposal to Reclamation's Decision Regarding the Future Use of Miscellaneous Revenues

May 14, 2013

Colo. Parties' Proposal per Spreadsheet Transmitted with Aug. 16, 2012, letter to Mike Ryan

The spreadsheet enclosed with the August 16, 2012, letter showed the outstanding balance allocated to the 5,412.5 AF as \$5,876,297.13, and then began calculations with CY 2012. The \$5,876,297.13 (which is one cent too large) was the outstanding balance of \$6,981,583.75 allocable to the 5,412.5 AF as of Sept. 30, 2011, less an upfront, lump sum payment of \$1,105,286.63 (i.e., 5,412.5 AF x 204.21/AF) which was made by the River District upon execution of the contract.

The below table summarizes the parties' spreadsheet as actually computed. Note that this table shows the number used in the spreadsheet (\$1,372,359.66) for the amount of miscellaneous revenues to be applied at the end of CY 2019. The number used in the spreadsheet correctly reflected the fact that interest would accrue during CY 2019 and would need to be paid off. However, that number would have resulted in miscellaneous revenues over paying principal by \$789.35 (which shows in the spreadsheet and in the below table as a negative balance of \$789.35 for the "remaining principal" after the final payment at the end of CY 2019).

The letter to Mike Ryan uses the figure of \$1,343,030.90 for the amount of miscellaneous revenues to be used for Ruedi in 2019, but this did not account for the interest which would accrue during CY 2019 and have to be paid off. Thus, the spreadsheet and the below table, not the letter, are the more accurate statement of the miscellaneous revenues which the parties proposed be used for Ruedi, although they overstate by the \$789.35 the amount of miscellaneous revenues that would be needed for Ruedi repayment under the parties' proposal.

Dec. 31 of CY	Total to be Paid Using Misc. Rev.s	Prin. To be Paid Using Misc. Rev.s	Interest Paid @ 2.125% w/ Misc. Rev.s	Remaining Principal Bal. After CRWCD's Upfront Pymt.
Starting bal.				5,876,297.13
2012	386,857.36	386,857.36	0	5,489,439.76
2013	561,753.26	445,102.67	116,650.59	5,044,337.10
2014	570,389.49	463,197.33	107,192.16	4,581,139.77
2015	578,168.98	480,819.76	97,349.22	4,100,320.01
2016	615,311.13	528,179.33	87,131.80	3,572,140.68
2017	1,033,737.67	957,829.68	75,907.99	2,614,311.00
2018	1,326,834.21	1,271,280.10	55,554.11	1,343,030.90
2019	1,372,359.66	1,343,820.25	28,539.41	-789.35
TOTALS	6,445,411.76	5,877,086.48	568,325.28	

EXHIBIT B

5.412 Contract as Actually Executed by Reclamation (dated Dec. 26, 2012)

The following table simply reflects the numbers used in Art. 4.a of the contract.

Dec. 31 of CY	Total to be Paid Using Misc. Rev.s	Prin. to be Paid Using Misc. Rev.s	Interest Paid @ 3.046% w/ Misc. Rev.s	Remaining Principal Bal. After CRWCD's Upfront Pymt.
Starting balance				5,876,297.12
2013	944,818.84	765,826.83	178,992.01	5,110,470.29
2014	944,818.84	789,153.92	155,664.92	4,321,316.37
2015	944,818.84	813,191.55	131,627.30	3,508,124.82
2016	944,818.84	837,961.36	106,857.48	2,670,163.46
2017	944,818.84	863,485.66	81,333.18	1,806,677.80
2018	944,818.84	889,787.44	55,031.41	916,890.36
2019	944,818.84	916,890.36	27,928.48	0.00
TOTALS	6,613,731.88	5,876,297.12	737,434.78	

EXHIBIT C

**Crediting of Revenue Following Payout of
Ruedi Reservoir and Fountain Valley Pipeline**

Following payout of Ruedi Reservoir and Fountain Valley Pipeline, unless directed otherwise in legislation enacted after the effective date of this Master Contract, all revenues addressed by Article 7.a of this Master Contract shall first be treated as upfront funding, available without appropriation, for the actual cost of the Arkansas Valley Conduit in conjunction with the upfront funding provided by federal appropriations, and then, upon completion of AVC, shall be applied towards the repayment of the federal appropriations used for the planning, environmental compliance, design, and construction of the AVC, plus interest, in accordance with the Fry-Ark Project Act, particularly, but not limited to, the amendment made by Pub. L. No. 111-11, § 9115 (123 Stat. 991, 1320) (2009)).

EXHIBIT D
Environmental Commitments Exclusive to Master Contract
FEIS and ROD (Appendix A)

A. Best Management Practices

- 1) Participants will participate and comply with Southeastern's commitments in the Pueblo Flow Management Program, as outlined in the Six Party Intergovernmental Agreement.
- 2) Participants will continue voluntary commitment to operations of the Fry-Ark Project and other non-Fry-Ark water supplies in accordance with the Upper Arkansas Voluntary Flow Management Program.

B. Mitigation Measures

- 1) Reclamation will limit excess capacity contract operations when streamflow is less than 50 cfs, as measured by adding streamflow at the Arkansas River above Pueblo gage to fish hatchery return flows from the current hatchery discharge point, to mitigate moderate effects of occasional low streamflow immediately below Pueblo Reservoir, and the effects of this low streamflow on water quality and aquatic life.
- 2) Reclamation will provide coordination assistance with participants in managing storage and water releases in a manner that will assist in augmenting occasional moderate low streamflow effects in the Arkansas River downstream from Pueblo Reservoir to the Fountain Creek confluence. Reclamation will not modify operations that would impact Fry-Ark yield.
- 3) Reclamation will provide \$50,000 for habitat improvements downstream from Pueblo Reservoir to mitigate moderate streamflow effects and minor aquatic life effects of the Comanche North Alternative during low-flow periods in the Arkansas River. Design and location of improvements will be coordinated between Reclamation and Colorado Parks and Wildlife, including site-specific NEPA compliance.

To mitigate moderate reservoir effects in the Lower Arkansas River Basin on aquatic life, Reclamation will support expansion of the Pueblo Fish Hatchery near the existing Pueblo Fish Hatchery, if requested and deemed feasible by Colorado Parks and Wildlife, in conjunction with mitigation requirements set forth in the Southern Delivery System EIS and Fish and Wildlife Mitigation Plan. Hatchery expansion will occur through a mutually acceptable agreement between Colorado Parks and Wildlife and Reclamation, and the location of the expansion and site-specific NEPA compliance will be coordinated between Reclamation and Colorado Parks and Wildlife. The State will be responsible for construction, operation, and maintenance of fish production ponds and associated facilities. This includes providing all water necessary for these ponds, including, but not limited to, water for filling the ponds, and augmenting evaporation from the ponds, in accordance with Colorado state.

EXHIBIT E
Confirmation of Contract Letter



SOUTHEASTERN COLORADO
Water Conservancy District
"Your investment in water"

November 7, 2016

Michael J. Ryan
Regional Director
Great Plains Region
Bureau of Reclamation
P.O. Box 36900
Billings, MT 59107

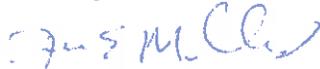
Dear Mr. Ryan:

I am the General Counsel for the Southeastern Colorado Water Conservancy District ("District"). Paragraph 17 of the "Master Contract between the United States of America and Southeastern Colorado Water Conservancy District for the Use of Excess Capacity in the facilities of the Fryingpan-Arkansas Project" requires that the District provide a letter "that adequately demonstrates to the Contracting Office that, pursuant to the laws of the State of Colorado, the District is a legally constituted entity and this Master Contract is lawful, valid and binding on the District."

The District was established as a Water Conservancy District pursuant to section 37-45-101 et seq., C.R.S., by the findings and decree of the Pueblo County District Court in Case No. 40487 (April 29, 1958). Section 37-45-118 provides the general powers of a Water Conservancy District, which includes the authority to enter contracts with the U.S. Government.

Based on my review of the findings and decree establishing the District, and the authorities provided to the District under section 37-45-101 et seq., C.R.S., and other statutory authorities, the District is a legally constituted entity and this Master Contract is lawful, valid and binding on the District.

Sincerely,



Lee E. Miller
General Counsel