

Appendix A

Cooperative Agreement to Implement the Management Plan for Endangered Fishes in the
Yampa River Basin

Proposed Draft Cooperative Agreement

To Implement the Management Plan for
Endangered Fishes in the Yampa River Basin

ENTERED BY

Colorado River Water Conservation District,
Colorado Department of Natural Resources,
Wyoming State Engineer's Office,
and U.S. Fish and Wildlife Service

- 1.1 The purpose of this Cooperative Agreement (Agreement) is to set forth our intent to implement the *Management Plan for Endangered Fishes in the Yampa River Basin* (Plan; November 2003) as a component of the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program), in accordance with the Cooperative Agreement implementing the Recovery Program (January 1988; extended December 2002), and consistent with the recovery plans for four endangered fish species of the Colorado River Basin.
- 1.2 The Plan is designed to facilitate compliance with the federal Endangered Species Act (ESA) for current depletions of approximately 125,000 acre-feet in Colorado and 43,000 acre-feet in Wyoming and new depletions in excess of current levels of approximately 50,000 acre-feet in Colorado and 23,000 acre-feet in Wyoming. New depletions in Colorado have been divided into two increments—an initial increment of 30,000 acre-feet and a second increment of 20,000 acre-feet.
- 1.3 By entering into this Agreement, the U.S. Fish and Wildlife Service (FWS) has undertaken a federal action and has completed formal intra-Service consultation as required under Section 7(a)(2) of the ESA. The product of that consultation was a Programmatic Biological Opinion (PBO) for the Yampa River Basin that concluded that the Recovery Program and the Plan can serve as the basis for offsetting impacts

from depletions and for determining that the water depletions described in the Plan are not likely to jeopardize the continued existence of the endangered fishes.

- 1.4 When the first increment of depletions in Colorado approaches full development, the impacts of developing a second increment and the status of the endangered fish species at that time will be re-evaluated pursuant to the PBO for the Plan. If necessary, formal consultation under ESA Section 7(a)(2) would be reinitiated to address those impacts.
- 1.5 The Plan provides for the Recovery Program to augment base flows; manage nonnative fish populations; evaluate fish passage and entrainment at existing diversion structures and develop necessary and appropriate measures to remediate any problems; stock endangered fishes; and monitor habitat and fish populations.
- 1.6 The Plan applies only to the Yampa River and its tributaries in Colorado and Wyoming.
- 1.7 This Agreement will become effective on the date of the last signature of the approving officials of the respective parties who sign the Agreement. By execution of this Agreement the parties state that they have the necessary authorization to implement the Plan and will implement the Plan.
- 1.8 Except as noted in Section 1.9 below, this Agreement shall remain in effect for as long as is necessary to implement the Plan and thereby avoid jeopardizing the continued existence of the endangered fishes. After these species are delisted, this Agreement shall remain in effect until the FWS determines that implementation of the Plan is no longer necessary or appropriate to ensure the long-term survival of these species.
- 1.9 This Agreement may be amended by mutual agreement of all parties hereto and may be terminated at any time by mutual agreement of all parties hereto. If any one or more of the parties gives 30 days written notice to all other parties of their intent to withdraw, the remaining parties must resolve or otherwise take corrective action to ensure continued implementation of the plan. The parties recognize that any such modification or termination may require that formal consultation under Section 7(a)(2) of the ESA be reinitiated for those actions covered by this Agreement and Plan.

- 1.10 This agreement cannot, and does not, in any way diminish, detract from, or add to the ultimate responsibility of the FWS to administer and abide by the provisions of the ESA, National Environmental Policy Act, or other applicable state and federal laws.
- 1.11 The parties recognize that certain actions may depend upon authorizations and/or appropriations beyond the direct control of the parties. No financial liability shall accrue to any of the parties for failing to implement those portion(s) of this plan for which separate authorization(s), appropriations or allotment(s) of funds are required, but not provided.
- 1.12 No Member of or Delegate to Congress or Resident Commissioner or official of the United States, the State of Colorado or the State of Wyoming shall benefit from this Agreement other than as a water user or landowner in the manner as other water users or landowners.
- 1.13 The parties recognize that implementation of certain elements of the plan requires the involvement and/or cooperation of the citizens of the Yampa Basin. To facilitate public involvement, the parties shall develop and maintain a cooperative process to implement the Plan, including recovery actions, and continue to work with and support the Yampa River Basin Partnership.