



United States Department of the Interior

BUREAU OF RECLAMATION

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Western Colorado Area Office

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WCG-KOzga  
WTR-4.00

Mr. Don Schwindt  
President  
Dolores Water Conservancy District  
P. O. Box 1150  
Cortez CO 81321

Subject: Operating Agreement, McPhee Dam and Reservoir, Contract No. 99-WC-40-R6100, Dolores Project, Colorado

Enclosed is a fully executed duplicate original of the subject agreement (dated April 25, 2000) and a copy of the associated categorical exclusion checklist which was completed in accordance with the National Environmental Policy Act.

We appreciate the time and effort your staff invested in the negotiation of this agreement and look forward to continuing our successful partnership.

Sincerely,

Ed Warner  
Resources Division Chief

cc: Ms. Janice Sheftel  
Maynes, Bradford, Shipps, & Sheftel LLP  
Attorneys at Law  
PO Box 2717  
Durango CO 81302-2717  
(w/encl)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

DOLORES PROJECT  
COLORADO RIVER STORAGE PROJECT

MCPHEE DAM AND RESERVOIR OPERATING AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
THE DOLORES WATER CONSERVANCY DISTRICT

THIS AGREEMENT, made this 25th day of April, 2000, between the UNITED STATES OF AMERICA, acting through the Department of the Interior's Bureau of Reclamation, (Reclamation), and pursuant to the Reclamation Act of 1902 (32 Stat. 388), the Reclamation Project Act of August 4, 1939 (52 Stat. 1187), the Colorado River Storage Project Act of April 11, 1956 (70 stat. 105), and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885) all as amended and supplemented by Federal Reclamation Laws, and the DOLORES WATER CONSERVANCY DISTRICT, a water conservancy district organized and existing pursuant to the laws of the State of Colorado, (District), with its principal place of business and office at Cortez, Colorado.

EXPLANATORY RECITALS

The following statements are made in explanation:

a) Under the specific authority of the Colorado River Storage Project Act of April 11, 1956 (70 stat. 105), as amended, and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, Reclamation has constructed the Dolores Project (Project).

b) Reclamation and the District entered into Contract No. 7-07-40-W0470, dated September 23, 1977, for repayment of certain Project costs, for the delivery of water from Project works for irrigation, municipal and industrial purposes (M&I), fish and wildlife purposes and for the operation, maintenance, and replacement (OM&R) of Project works, hereinafter referred to as the Repayment Contract.

1 c) Article 9(d)(iii)(c) of the Repayment Contract reserved to Reclamation the average annual  
2 use of 25,400 acre feet (AF) of the active capacity of McPhee Reservoir for release from McPhee  
3 Reservoir for downstream fish and wildlife purposes in accordance with a separate operating  
4 agreement to be executed by Reclamation and the District.  
5

6 d) The Definite Plan Report (DPR) and the Final Environmental Statement (FES) for the  
7 Project addressed releasing flows into the Dolores River for the benefit of downstream fish and  
8 wildlife purposes at the following specific levels, 78 cubic feet per second (cfs) during wet years, 50  
9 cfs during normal years, and 20 cfs during dry years, and set out the criteria for determining whether  
10 a year is wet, normal, or dry for these purposes.  
11

12 e) The DPR acknowledged that there are senior water rights downstream of McPhee  
13 Reservoir adjudicated in cubic feet per second in accordance with Colorado water law. The DPR  
14 estimated an average annual equivalent of up to 3,900 acre feet for the maximum historical usage of  
15 these senior water rights.  
16

17 f) Reclamation and the District, after consultation with the State of Colorado, and other  
18 Federal agencies and private organizations, have determined that using a managed pool of water in  
19 McPhee Reservoir from which to make downstream fish and wildlife releases into the Dolores River  
20 would allow better management of the Project water available for the fish than would the flow  
21 release criteria established in the DPR and FES. Under the managed pool concept, the rates and  
22 timing of releases would be determined by Reclamation or its designated assigns. As under the flow  
23 criteria, the annual volume of water actually available for fish and wildlife purposes in any year will  
24 depend on climatic conditions.  
25

26 g) The DPR and FES made certain hydrologic assumptions regarding the delivery of water  
27 for downstream fish and wildlife purposes. Upon review of such assumptions, Reclamation and the  
28 District agreed upon a discrepancy of 3,900 acre feet in the original assumptions. On April 10, 1996,  
29 Reclamation acquired, through Grant Agreement No. 6-FG-40-18960, an additional 3,900 acre feet  
30 of Project water from the District to mitigate the discrepancy and supplement the amount previously  
31 reserved to the United States for release downstream of McPhee Dam for fish and wildlife purposes.  
32

33 h) In July of 1996, Reclamation completed an Environmental Assessment and made a  
34 Finding of No Significant Impact to modify McPhee Dam operations to accommodate the managed  
35 pool concept and the acquisition of additional water for fish and wildlife purposes downstream of  
36 McPhee Dam. The District agreed to the managed pool concept, although Project full service  
37 irrigators may suffer greater shortages in the future than was envisioned in the DPR under a flow  
38 release regime for downstream fish and wildlife purposes.  
39

40 NOW THEREFORE, in consideration of the terms and conditions herein contained,  
41 Reclamation and the District mutually agree as follows:  
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PRIOR CONTRACTS

1. This Agreement does not supersede any rights and obligations of the District and/or Reclamation under any other contracts previously entered into.

RESERVOIR OPERATIONS

2. a) Reclamation and the District will jointly develop an Annual Operating Plan (AOP) for McPhee Reservoir to optimize the use of available water supplies to provide water for irrigation, M&I uses, controlled flows for downstream fish and wildlife purposes, recreational boating opportunities, and electrical power generation, while assuring the structural and operational integrity of McPhee Dam and appurtenant structures. Although Reclamation and the U.S. Army Corps of Engineers found Project flood control benefits to be minimal, flood control remains an authorized Project purpose. Reclamation and the District will establish and maintain a list of principal contact individuals with the State of Colorado, other Federal agencies, Project water users, private organizations and the general public during the development and administration of the AOP. The AOP and any updates necessary throughout its administration shall be made available to the public by Reclamation. The District will direct the day-to-day operations of McPhee Reservoir, following the criteria set forth in the AOP. Reclamation will consult, as necessary, with the District regarding overall reservoir operations.

b) The AOP will be initially developed in November for the current water year (November 1 through October 31). The AOP will address the storage and release operations of McPhee Reservoir based on information from official snowmelt and river forecasts provided by the National Weather Service and Reclamation (Official Forecasts), water user demands, and available storage. Because the AOP will be dynamic, it will be updated as necessary throughout the water year to reflect changing conditions in both forecasted and actual water demands and inflow into the Reservoir. The AOP and updates to the AOP will define the criteria for managing inflow water exceeding user demands and available storage.

c) The District will provide an accounting of the water actually released from McPhee Dam to water users. The accounting period for all water users, except for the downstream release for fish and wildlife purposes, will be the period November 1 through October 31. The accounting period for the downstream release for fish and wildlife purposes will be the period April 1 through March 31. The District will utilize accepted water measurement practices and standard measurement locations to account for Project water use. No project water user shall have any holdover rights in McPhee Reservoir, in accordance with Article 9(a) of the Repayment Contract.

d) As part of the AOP, upon consultation and coordination with the District, Federal and State of Colorado wildlife agencies and other interested entities, Reclamation will develop criteria and a schedule for the downstream release of the pool of water designated for downstream fish and wildlife purposes, described in Article 3 herein (Managed Pool). Requests to the District for the downstream release of water for fish and wildlife purposes will be made by Reclamation or its designated assigns as outlined in Articles 5 and 9 herein.

1 e) The proper operation of McPhee Reservoir, to protect the structural integrity of  
2 McPhee Dam, optimize the amount of available water for Project purposes and benefit white water  
3 and recreational boating, may necessitate releases from McPhee Reservoir in anticipation of a  
4 forecasted spill (Managed Spills). The determination of the potential timing of Managed Spills will  
5 be made by Reclamation, upon consultation with the District, based on Official Forecasts. It is  
6 understood such forecasts are dynamic and may change abruptly based on changes in climatic  
7 conditions. Reclamation, in coordination with the District, will issue notices to the public of the  
8 timing, both beginning and ending, of such Managed Spills, with as much advance notice as  
9 possible. No assessment shall be made against that part of the Managed Pool described in  
10 paragraphs 3(b) and (c) during an actual spill or a Managed Spill.  
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12 f) The AOP and updates to the AOP will define the process and/or the criteria for the  
13 equitable administration of shortages to various Project uses in the event Project water supplies are  
14 inadequate to meet user demands. Like the AOP itself, the shortage determinations will be dynamic,  
15 based on changing climatic conditions. ~~As stated in Article 9(a) of the Repayment Contract, full~~  
16 delivery of water will be made to M&I commitments despite a shortage of Project water. If there is a  
17 water shortage, all Project irrigation water, and the total of 29,300 acre feet of water described in  
18 sub-Articles 3(b) and 3(c) herein, for release downstream for fish and wildlife purposes, will be  
19 reduced by an equal percentage, i.e., if a 20% shortage is determined, the available Project irrigation  
20 supply will be 80% of its allocated supply and the fish and wildlife pool of water will be 80% of its  
21 allocated amount. The existing downstream senior water rights, described in Article 3(a) herein, up  
22 to 3,900 acre feet, and any appropriative surface water rights acquired in the future for downstream  
23 fish and wildlife purposes will experience shortages in accordance with Colorado Law.

### 25 DOWNSTREAM FISH AND WILDLIFE RELEASES

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27 3. Subject to other terms and conditions herein, the following amounts of water are available  
28 annually as a managed pool to be released from McPhee Reservoir into the Dolores River for fish  
29 and wildlife purposes:  
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31 a) Up to 3,900 acre feet of non-Project water to satisfy senior water rights  
32 downstream of McPhee Reservoir, based on the DPR estimate of the average annual historic usage  
33 of these senior water rights. If, pursuant to the laws of the State of Colorado, the full decreed  
34 amount of these downstream senior water rights is not beneficially used, or the entitlement of these  
35 senior water rights is reduced, the managed pool will be reduced accordingly.  
36

37 b) 25,400 acre feet of the active capacity in McPhee Reservoir, identified in Article  
38 9(d)(iii)(c) of the Repayment Contract, subject to any shortages.  
39

40 c) 3,900 acre feet of Project water acquired by Reclamation from the District  
41 pursuant to the Grant Agreement No. 6-FG-40-18960 dated April 10, 1996, subject to any shortages.  
42

43 d) Any other water, either Project or non-Project, that may be leased, purchased or  
44 otherwise acquired by Reclamation or others and agreed upon as an addition to the Managed Pool.

1 The origin of such additional water will determine the shortage, if any, to be allocated to such water  
2 during shortage years. The parties hereto recognize that Reclamation has entered into Grant  
3 Agreement No. 6-FG-40-18660, dated July 3, 1996 with the Ute Mountain Ute Tribe to lease 3,300  
4 acre feet of Project water, allotted to the Tribe for irrigation purposes, for release downstream for a  
5 period of up to five years for the benefit of fish and wildlife purposes. The District and Reclamation  
6 will continue, as part of a coalition including other Federal and State entities and private interests, to  
7 explore the permanent acquisition of 3,300 acre-feet of additional water for downstream fish and  
8 wildlife purposes.  
9

#### 10 TERM OF THE AGREEMENT

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12 4. This Agreement shall become effective upon the date of execution and shall remain in  
13 effect for a period of 25 years from the date of execution. Prior to expiration, this agreement may be  
14 renewed for an additional term of 25 years upon mutual agreement of the parties hereto. Any such  
15 renewal shall be subject to Federal and State law in existence at the time of renewal.  
16

#### 17 ASSIGNMENT LIMITED

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19 5. The provisions of this agreement shall apply to and bind the successors and assigns of the  
20 parties hereto, but no assignment or transfer of this agreement or any part or interest therein shall be  
21 valid until approved by Reclamation and the District.  
22

#### 23 TERMINATION

24  
25 6. This Agreement will be terminated if Reclamation takes over the operation and  
26 maintenance of McPhee Dam pursuant to Article 12(g) of the Repayment Contract or if title to the  
27 Project is transferred to the District.  
28

#### 29 OFFICIALS NOT TO BENEFIT

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31 7. No Member of or Delegate to Congress or Resident Commissioner or official of the  
32 United States shall benefit from this agreement other than as a water user or landowner in the manner  
33 as other water users and landowners.  
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#### 36 APPROPRIATIONS

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38 8. Nothing contained in this agreement shall be construed as binding the United States to  
39 expend in any one fiscal year any sum in excess of appropriations made by Congress for the  
40 purposes of this agreement for that fiscal year or as involving the United States in any contract or  
41 other obligation for the further expenditures of money in excess of such appropriations.  
42

#### 43 NOTICES

1 9. Any notice, demand, or request authorized or required by this agreement shall be deemed  
2 to have been given, on behalf of the District, when mailed postage prepaid, or delivered to the  
3 Western Colorado Area Office, Bureau of Reclamation, 835 E. 2nd Avenue, Durango, Colorado  
4 81301, and on behalf of Reclamation, when mailed, postage prepaid, or delivered to the Dolores  
5 Water Conservancy District, P.O. Box 1150, Cortez, Colorado 81321.  
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7

8 UNITED STATES OF AMERICA  
9 BUREAU OF RECLAMATION

10 APPROVED

11  
12 Christopher B. Rice  
13 Field Solicitor's Office  
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19 By: Charles A. Calhoun  
20 Charles Calhoun  
21 Regional Director  
22 Upper Colorado Region  
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24

25 ATTEST:

26 By: Billy F. Smart  
Secretary

DOLORS WATER CONSERVANCY DISTRICT  
By: Donald W. Schwindt  
Donald W. Schwindt, President

ENV-6.00

CATEGORICAL EXCLUSION CHECKLIST - ROUTING

WCN-CE#: (CY-#) 0--4

Project; Action (Brief Name): McPhee Op Agreement

Prepared/Submitted by: mccall

	NAME	INITIALS	DATE
REQUESTOR (Review, pass on if accurate)	mccall	SM	2/4
ARCHEOLOGIST (Initial Item 7 if you concur)	Steve McCall	SM	2/4
ITA DESIGNEE (Initial Item 10 if you concur)		SM	2/4
ENVIRONMENTAL OFFICER (Sign/date CEC if you concur)	Steve McCall	SM	2/4
APPROVING MANAGER (Sign/date CEC if you Approve)	Ed Warner Sue Meyer	EW	2/4
<u>MAIL &amp; FILES</u>	M/F (copies)		
Please check for approvals, make 2 copies of this form and APPROVED attachments, and route to:	REQUESTOR _____ (copy is for YOUR project file)		
	Steve McCall (Insert into ERG CE file)		
	LAST: M/F (File approved original in ENV-6.00 for this calendar year)	M/F (file)	



1. This action would have significant adverse effects on public health or safety. No  Uncertain\_\_ Yes\_\_

2. This action would affect unique geographical features such as: wetlands, wild or scenic rivers, refuges, flood plains, rivers placed on the nationwide river inventory or prime and unique farmlands. (Delta County will be responsible for any permits under the Clean Water Act) No  Uncertain\_\_ Yes\_\_  
(There will be no change in reservoir levels or operation plans as a result of the agreement being executed)

3. This action will have highly controversial environmental effects. No  Uncertain\_\_ Yes\_\_

4. This action will have highly uncertain environmental effects or involve unique or unknown environmental risk. No  Uncertain\_\_ Yes\_\_

5. This action will establish a precedent for future actions. No  Uncertain\_\_ Yes\_\_

6. This action is related to other actions with individually insignificant but cumulatively significant effects. No  Uncertain\_\_ Yes\_\_

7. This action will affect properties listed or eligible for listing in the National Register of Historic Places. No  Uncertain\_\_ Yes\_\_

**Office Archeologist Concurrence**

*SKM*

8. This action will adversely affect a species listed or proposed to be listed as Endangered or Threatened. No  Uncertain\_\_ Yes\_\_  
(See June 5, 1996 letter from FWS)

9. This action threatens to violate Federal, State, and local, or tribal law or requirements imposed for protection of the environment. No  Uncertain\_\_ Yes\_\_