

Statement of Andrew A. Mueller, President
Board of Directors
Colorado River Water Conservation District
Glenwood Springs, Colorado

S. 3387
**Ruedi Reservoir Water Releases for the Benefit of Endangered Fish
Habitat**

Subcommittee on Water and Power
Senate Committee on Energy and Natural Resources
United States Senate

June 9, 2010

I want to thank Chairman Stabenow and Senator Brownback for this opportunity to share the Colorado River Water Conservation District's position with the subcommittee regarding the importance of S.3387, which dedicates a portion of the Western Colorado Marketable Pool in Ruedi Reservoir to the Upper Colorado River Endangered Fish Recovery Program ("Recovery Program").

The Colorado River Water Conservation District ("River District") is the principal policy body focused exclusively on the Colorado River within Colorado. We are a political subdivision of the State of Colorado responsible for the protection and development of the Colorado River basin's water resources to which the State of Colorado is entitled under the 1922 and 1948 Colorado River interstate water compacts. The River District includes all or part of 15 counties in west-central and northwest Colorado, including the entirety of the mainstem of the Colorado River basin in which both Ruedi Reservoir and the critical habitat for four fish species listed as endangered occur.

The Colorado River provides water to almost the entire state of Colorado. Numerous transmountain diversions move water from the Colorado River's headwaters to each of Colorado's other major river basins. Among the largest of these diversions are two U.S. Bureau of Reclamation ("Reclamation") projects: the Colorado-Big Thompson and Fryingpan-Arkansas projects. The latter includes Ruedi Reservoir as a principal project feature and is the subject of this legislation. Additionally, non-federal projects provide vital water supplies to Colorado's metropolitan areas, including the Denver metro area, Colorado Springs, and Pueblo.

All these projects are 100% dependent on the continued success of the Recovery Program for continued service and water delivery. Technically, the Program serves as the "reasonable and prudent alternative" under provisions of the Endangered Species Act ("ESA"). The Recovery Program provides ESA compliance for approximately 1,800 water projects depleting 2.8 million acre-feet per year in the Colorado, Wyoming, and Utah portions of the Upper Colorado River Basin. These include every Reclamation reservoir and project in the Upper Colorado River basin.

A key component of the Recovery Program and ESA compliance is the 1999 U.S. Fish and Wildlife Service's programmatic biological opinion (PBO)¹ for the "15 Mile Reach" of the Colorado River in Colorado. Only with the PBO in place can the following five U.S. Bureau of Reclamation projects continue operations in compliance with the ESA:

- Fryingpan-Arkansas Project (including Ruedi Reservoir),
- Colorado-Big Thompson Project,
- Collbran Project,
- Grand Valley Project, and
- Silt Project.

The PBO also fulfills ESA requirements for all existing non-federal water projects and water uses of the Colorado River from its confluence with the Gunnison River at Grand Junction, Colorado to its headwaters. This amounts to total depletions (federal and non-federal) of one million acre-feet annually. Additionally, the PBO allows for 120,000 acre-feet/year of new water development.

As part of the PBO, Colorado water users, including Reclamation, agreed to provide 10,825 acre-feet/year of water permanently. The PBO explicitly recognized Ruedi Reservoir as a potential source of this permanent water.

S. 3387 permanently dedicates 5,412.5 acre-feet from the marketable pool of Ruedi Reservoir to fulfill half of the water users' commitment to provide 10,825 acre-feet of water annually to assist fish recovery. The marketable pool (51,500 acre-feet) in Ruedi Reservoir, as defined in the Fryingpan-Arkansas Project's Operating Principles, is dedicated to water uses on Colorado's west slope, consistent with Colorado water law.

The PBO provides for an additional 10,825 acre-feet of releases from Ruedi Reservoir on an interim basis through 2012. The PBO also requires replacement of an additional 5,412.5 acre-feet by east slope water users from other sources. Accordingly, with passage of S.3387, Ruedi Reservoir will have a net increase of 5412.5 acre-feet of water in its West Slope marketing pool after 2012.

The River District enjoys a long-standing and collaborative working relationship with Reclamation. We are therefore distressed that Reclamation opposes this legislation. From our discussions with Reclamation officials, we understand their principal concern is providing this water at no cost to water users. We respond in five parts.

¹ "Final Programmatic Biological Opinion for Bureau of Reclamation's Operation and Depletions, Other Depletions, and Funding and Implementation of Recovery Program Actions in the Upper Colorado river above the Confluence with the Gunnison River," December 20, 1999.

First, Reclamation seems to be ignoring the fact that other provisions of the PBO restore 5,412.5 acre-feet to the marketable pool at Ruedi. S.3387 is required to comply with the ESA, in particular with the PBO. Without the PBO, the restored water, plus the 5,412.5 addressed in the legislation, would be released annually from Ruedi for fish recovery under previous biological opinions. With this legislation, there is a net increase in the contracting pool of 5,412.5 acre feet of water. Without it, there is a substantial decrease in the contracting pool of water in Ruedi.

Second, as mentioned above, Reclamation, specifically its five projects covered by the PBO, is the principal beneficiary of the PBO. Reclamation projects are the single largest water user in the mainstem basin of the upper Colorado River. As such, Reclamation is the primary beneficiary of the ESA protections of the Recovery Program and the PBO.

Third, water dedicated to fish and wildlife (and recreation and other environmental purposes) in Reclamation reservoirs is traditionally non-reimbursable, i.e., provided at no cost to water users. We simply seek similar treatment for this water.

Fourth, the authorizing legislation for the Fryingpan-Arkansas Project specifies, “. . . the Secretary of the Interior is directed . . . to comply with the laws of the state of Colorado relating to the control, appropriation, use and distribution of the water therein.”¹ “The primary purpose of Ruedi Reservoir . . . (is) the protection of western Colorado water users by the provisions of Colorado Revised Statutes” requiring “any works or facilities shall be designed for exportation of water from the natural basin of the Colorado River . . . shall be operated in such a manner that the present appropriations of water, and in addition thereto prospective uses of water . . . within the natural basin of the Colorado River . . . will not be impaired nor increased in cost at the expense of the water users with the natural basin.”² Dedicating a portion of this water to fish recovery efforts and fulfillment of the PBO, provides protections to Western Colorado water users consistent with the authorizing legislation and principal purpose of Ruedi Reservoir.

Fifth, this legislation represents no actual cost to the federal Treasury either in lost or foregone revenues, at least for the foreseeable future. Contracts for water from the Marketable Pool of Ruedi Reservoir have been available for 28 years. To date, less than half of that pool is under contract. There simply is little foreseeable demand for the remaining water from this pool; therefore, western Colorado water users are willing to permanently dedicate a small portion of its water in Ruedi to endangered fish recovery in order to provide ESA protection for approximately one million acre-feet of existing depletions (both federal and non-federal) plus 120,000 acre-feet of new depletions. Additionally, passage of this legislation yields a net increase to the marketable pool of 5412.5 acre-feet of water, more than offsetting any theoretical “loss.”

¹ P.L. 87-590, 76 Stat. 389 at Section 5(e).

² Page 2, Paragraph 7 of House Document 130 in accordance with House Resolution 91, 87th Congress, March 15, 1961.

Finally, there is a practical and institutional impossibility for western Colorado water users to pay the contract price for Ruedi Reservoir water if this legislation fails. Reclamation's Colorado water projects are the larger west slope projects covered by the PBO. Other water uses are predominantly small agricultural and municipal uses. These water users simply do not have the financial capacity to pay the contract price for Ruedi water for release to endangered fish habitat. The contract-purchase price of a 5412.5 acre foot contract for Ruedi water is forecast to be roughly \$8 million in 2013, when water deliveries from a permanent water source are required. Furthermore, neither the River District nor any other entity has the legal authority or institutional mechanism to impose a fee or levy a tax to provide the necessary revenues from water users for payment of a contract from Ruedi Reservoir.

The consequence of failure to secure annual water releases from Ruedi Reservoir with this legislation is reopening of the PBO and new ESA consultations on the five Reclamation projects and hundreds of individual water users and water projects in the Colorado River basin in Colorado.

Reclamation, as the largest water user in the basin, has the most at risk in the event of failure of the PBO. Non-compliance with the PBO and consequent reopening of the PBO creates serious regulatory and financial uncertainty for Reclamation and other water users, including possible imposition of expensive and open-ended selenium management program in the Colorado River basin, as was imposed in the Gunnison Basin under that basin's recent PBO for the same endangered fish.

The Recovery Program for the Endangered Fishes of the Upper Colorado River is the most successful recovery program in the nation. Its continued success for the benefit of the four listed fish species and federal and non-federal water projects is dependent on passage of S.3387. Accordingly, the Colorado River District respectfully urges the Subcommittee's support of S.3387.

Permanent assignment of 5,412.5 acre-feet of water in Ruedi Reservoir from the west slope's marketable yield pool to endangered fish recovery accomplishes several important federal goals:

- Ensuring continuing ESA compliance pursuant to the PBO for all east and west slope Colorado River mainstem water users upstream of the Gunnison River, including principally five U.S. Bureau of Reclamation projects;
- Fulfilling Congressional intent and ensuring compliance with Colorado law regarding the purposes of Ruedi Reservoir, namely that the marketable yield pool continues to be available for the benefit of west slope water users by providing ESA compliance for uses of this water;
- Restoring 5412.5 acre-feet to the Ruedi Marketing Pool for future use; and
- Maintaining consistency with long-standing Congressional policy and Reclamation law that water dedicated to fish and wildlife purposes from Reclamation projects is a non-reimbursable project cost.