

6/23/76

COOPERATIVE AGREEMENT

Between The

United States Department of Interior

Fish and Wildlife Service

and

Colorado Department of Natural Resources

Division of Wildlife

for the

Conservation of Endangered and Threatened Fish or Wildlife

This Cooperative Agreement is entered into pursuant to Section 6(c) 16 U.S.C. §1535(c) of the Endangered Species Act of 1973, 16 §1531-43 (Supp. IV 1974) (hereinafter referred to as "the Act"), and laws set forth in Title 33, Colorado Revised Statutes, 1973, between the U. S. Fish and Wildlife Service, U. S. Department of the Interior, and the Division of Wildlife, Colorado Department of Natural Resources. Hereinafter, the parties shall be referred to as the USFWS, and the DOW, respectively.

WHEREAS, the Congress of the United States has found that there are resident species of fish or wildlife which are in danger of extinction and that these species of fauna are of aesthetic, ecological, educational, scientific, economic, and other value to the State, Nation, and their peoples;

WHEREAS, it is the policy of the State of Colorado that the fish and wildlife and their environment, are to be protected, preserved, enhanced and managed for the use, benefit, and enjoyment of the people of this state and visitors; that all nongame fish and wildlife are to be managed for human enjoyment and welfare, for scientific purposes, and to insure their perpetuation as members

of ecosystems; that species or subspecies of fish and wildlife indigenous to this state which may be found to be Endangered or Threatened within the state should be accorded protection in order to maintain and enhance their numbers to the extent possible; that this state should assist in the protection of species or subspecies of fish or wildlife which are deemed to be Endangered or Threatened elsewhere;

WHEREAS, the purposes of the Act are to provide a means whereby the ecosystems upon which Endangered and Threatened fish or wildlife depend may be conserved, to provide a program for the conservation of such species, and to take such steps as may be appropriate to achieve the purposes of the various treaties and conventions related to the conservation of fish or wildlife;

WHEREAS, the purposes of the Colorado Nongame and Endangered Species Conservation Act and other wildlife laws are to provide a means whereby management programs are carried out to insure the continued ability of all fish or wildlife to perpetuate themselves successfully;

WHEREAS, the Congress of the United States has declared that encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in its fish or wildlife;

WHEREAS, the Secretary of the Interior has delegated his responsibilities under the Act to the Director, USFWS;

WHEREAS, the Director, USFWS, desires to enter into this cooperative Agreement for the purpose of assisting in the continued development of the Endangered and Threatened fish or wildlife conservation program of the State of Colorado;

WHEREAS, the State of Colorado, acting through the DOW, wishes to administer its program for the conservation of Endangered and Threatened fish or wildlife in harmony with the terms and spirit of the Act.

WHEREAS, the parties agree that programs applicable to the State of Colorado are designed to assist resident Endangered and Threatened fish or wildlife and that it is the mutual desire of the DOW and the USFWS, to work in harmony for the common purposes of planning, developing and conducting programs to protect, manage and enhance populations of all resident Endangered and Threatened fish or wildlife within Colorado.

WHEREAS, the Director, USFWS, has the statutory and administrative responsibility to establish programs for the conservation of Endangered and Threatened fish or wildlife; to provide periodic review of the State program at no greater than annual intervals; to provide funding to that program as such funding is available and in accordance with the terms of the Act; to provide coordination among the programs of the various States; and to exchange with the DOW such biological data or other information which may result in the enhancement of the opportunities for the continued survival of Endangered and Threatened fish or wildlife;

WHEREAS, the DOW has a statutory responsibility to protect, manage and enhance all resident Endangered and Threatened fish or wildlife which exist in the wild within the State of Colorado during any part of their lives; and

WHEREAS, the DOW (a) has the authority to conserve resident fish and wildlife determined by the Wildlife Commission or the Secretary to be Endangered or Threatened; (b) has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident fish or wildlife in the State which are deemed by the Secretary to be Endangered or Threatened and has furnished a copy of such a program together with all pertinent details, information, and data requested by the Secretary; (c) has the authority to conduct investigations to determine the status and requirements for survival of resident fish or wildlife; (d) has the authority to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident Endangered or Threatened species; and (e) has provided for public participation in designating resident fish or wildlife as Endangered or Threatened.

Now therefore the parties agree as follows:

1. Cooperative Program

- (a) The DOW will carry out the activities identified in their program for the benefit of the Endangered or Threatened fish or wildlife which are resident in the State of Colorado.
- (b) The Director, USFWS, may agree with the DOW to provide financial assistance for the implementation of acceptable projects for the conservation of Endangered or Threatened fish and wildlife. Such financial assistance will require the submission of an Application for Federal Assistance and the successful negotiation of a Project Agreement. These will comply with the Secretary's Rules and Regulations (50 CFR Part 81), and the USFWS Federal Aid Manual.

- (c) As a part of this cooperative program the law enforcement authorities of the USFWS and the DOW will assist each other in the detection, apprehension, and prosecution of violators of the Act or State laws and regulations intended to conserve Endangered or Threatened fish or wildlife.
- (d) As additional fish or wildlife resident to the State of Colorado are listed as Endangered or Threatened by the Wildlife Commission or the USFWS, the parties agree to cooperate in the development of programs and projects for the benefit of such species.
- (e) It is understood that any Federal funding pursuant to Section 6(d) of the Act is contingent on the continued implementation of an adequate and active program for the conservation of Federally-listed Endangered and Threatened fish or wildlife which are resident to Colorado. If the program for the conservation of such species is determined by the Director, USFWS, to be inadequate or inactive, this agreement and funding shall be terminated in accordance with Sections 5 or 7 of this agreement.

## 2. Permits

### General Rule

- (a) The DOW agrees that it will not engage in, or issue a permit authorizing, the taking of Federally listed Endangered or Threatened fish or wildlife without the prior issuance of a permit to the applicant by the Director, USFWS, except as authorized in subsections 2(b), (c), or (d) of this Agreement or pursuant to a special rule in 50 CFR §17,40-48.

## Endangered Species

(b) Any qualified employee or agent of the DOW who is designated by that Agency for such purposes, may, when acting in the course of his official duties, take any resident federally listed Endangered fish or wildlife for conservation purposes that are consistent with this Cooperative Agreement or any Project Agreement attached thereto, provided that such taking is not reasonably anticipated to result in the following unless otherwise authorized under provisions of a USFWS permit issued pursuant to subsection 2(a):

1. the death or permanent disabling of the specimen.
2. the removal of the specimen from Colorado.
3. the introduction of the specimen or any of its progeny into an area beyond the historical range of the species; or
4. the holding of the specimen in captivity for a period of more than 45 consecutive days.

## Threatened Species

(c) Any employee or agent of the DOW who is designated by that Agency for such purposes, may, when acting in the course of his official duties, take any resident federally listed Threatened fish or wildlife for conservation purposes that are consistent with the purposes of the Act, or this Cooperative Agreement or any Project Agreement attached thereto. Provided, that the authority conveyed to the DOW by this subsection may, at any time, be temporarily suspended for a particular project or conservation program by written notification from the

Regional Director, USFWS, upon his receipt of substantial evidence demonstrating the use of this authority for purposes inconsistent with the purposes of this Act. Upon notification of the temporary suspension and the reasons therefore, the DOW may request from the Director, USFWS, an opportunity to demonstrate compliance with the purposes of the Act. The Director shall promptly consider the evidence so submitted by the DOW and either reaffirm the conclusion of the Regional Director, USFWS, and revoke the authority temporarily suspended pursuant to this subsection, or reverse the conclusion of the Regional Director, USFWS, and reinstate the authority temporarily suspended.

#### Emergency Provisions

- (d) Any employee or agent of the DOW who is designated by that Agency for such purposes, may, when acting in the course of his official duties, take federally-listed Endangered and Threatened fish or wildlife without a permit if such action is necessary to:
1. aid a sick, injured, or orphaned specimen; or
  2. dispose of a dead specimen; or
  3. salvage a dead specimen which may be useful for scientific study; or
  4. remove specimens which constitute a demonstrable, but non-immediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live capturing and releasing the specimen unharmed; or

5. defend his own life or the lives of others.

Any taking pursuant to this subsection 2(d) must be reported in writing within 5 days to the Regional Director, USFWS, for transmission to the Division of Law Enforcement, USFWS, in Washington, D.C. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the USFWS.

3. Records

The DOW agrees to maintain records of: (1) the federally funded projects for the conservation of Endangered and Threatened species in accordance with the USFWS Federal Aid Manual, and (2) the number of each species of federally listed Endangered and Threatened fish or wildlife taken by DOW employees or agents.

4. Notification

The DOW will promptly inform the USFWS of any change in circumstances which could cause the program to be out of conformance with the requirements of Section 6(c) of the Act. Included without limitation are changes in the DOW's relevant constitutional, statutory or regulatory authority. The DOW will promptly furnish the USFWS with an assessment of the effect of such a change on the State's ability to remain in compliance with the requirements of Section 6(c) of the Act. The Director, USFWS agrees to promptly notify the State of all regulations and rulemakings, in accordance with Section 4 of the Act, which might affect the DOW's program.

5. Effective Date and Renewal

- (a) This Agreement shall become effective when signed by the Director, USFWS, and the Director of the DOW and may be renewed in the following manner: Not later than June 30th of each year the DOW will submit to the Regional Director, USFWS, the following items: (1) the current lists of the Federal and State-listed Endangered and Threatened fish or wildlife which are resident in the State; (2) a memorandum of law analyzing any changes in the DOW's statutory authority or regulatory program for Endangered and Threatened fish or wildlife which were made since the date of the previous program submission. This memorandum will also analyze the application of Colorado law to any resident fish or wildlife which have been added to the Federal Endangered and Threatened species list since the date of the previous program submission; (3) a list of any substantial changes in the Endangered and Threatened fish or wildlife conservation program since the date of the previous program submission; and (4) a detailed description of the number of Endangered and Threatened species taken by State employees or agents pursuant to 50 CFR §§ 17.21(c)(5) and 17.31(b) as amended, the conservation purposes for which they were taken, and any mortalities or permanently disabling resulting from the taking.
- (b) USFWS, will on or before October 1st of each year, notify the DOW in writing either that the Cooperative Agreement is renewed effective October 1st of that year, or that the State's

program or authorities are not in compliance with the criteria of Section 6(c) of the Act and, unless appropriate changes are made by June 30th of the following year, this Agreement shall be terminated.

- (c) For purposes of this section, the phrase "previous program submission" means either the program submission of (1) the original Cooperative Agreement or (2) the most recent renewal application for the Cooperative Agreement.

6. Amendment

This Agreement may be amended at any time with the concurrence of the signatory parties.

7. Termination

This Agreement may be terminated: (a) by mutual agreement; (b) by the DOW upon 60 days written notice to the USFWS; or (c) notwithstanding the renewal provisions in section 5(b) of this Cooperative Agreement, by the USFWS upon 60 days written notice to DOW from the Regional Director, USFWS, stating reasons why the State's conservation program is no longer in compliance with the criteria of section 6(c) of the Act or that the State has violated a provision of this Agreement. The DOW may submit a written request for review to the Director, USFWS, within 30 days of receipt of the termination notice. The Director, USFWS, will consider all evidence submitted by the DOW in its request for review and either reaffirm the conclusion of the Regional Director and terminate this

Agreement at the end of the 60 day notification period, or reverse the conclusion of the Regional Director and revoke the notice of termination. All Federal funds which have been obligated to, but not encumbered by, the DOW as of the date of the termination notice shall be retained by the USFWS for reallocation pursuant to section 6(d) of the Act, unless: (1) those funds are specifically approved by the Regional Director for expenditure before the date of actual termination; or (2) the notice of termination is revoked by the Director, USFWS.

Director,  
United States Fish and Wildlife Service

*Sydney A. Greenwalt*

Date 6-23-76

Director,  
Division of Wildlife,  
Department of Natural Resources

*Jack R. Grieb*

Date 5-17-76