

Moffat Collection System Project

Fish and Wildlife Enhancement Plan

Prepared for:
The Colorado Wildlife Commission
In accordance with **CRS 37-60-122.2**

Prepared by:
Denver Water

In Partnership With:
**Municipal Subdistrict,
Northern Colorado Water Conservancy District**

June 9, 2011

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1.0 INTRODUCTION

1.1 Enhancement Project Overview

The City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water) is proposing to construct the Moffat Collection System Project (Moffat Project), a project designed to provide 18,000 acre-feet (AF) per year of new water supply to Denver Water's customers. Denver Water proposes to enlarge its existing 42,000-AF Gross Reservoir, which is located in Boulder County, Colorado approximately 35 miles northwest of Denver and 6 miles southwest of the city of Boulder. Gross Dam would be raised 125 feet to provide an additional 72,000 AF of reservoir storage.

Pursuant to CRS 37-60-122.2(1), Denver Water and the Municipal Subdistrict, Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firming Project (WGFP) Water Activity Enterprise (Subdistrict) have agreed to participate with the Colorado Department of Natural Resources (DNR) and Colorado Division of Wildlife (CDOW) in concurrent development of Fish and Wildlife Mitigation Plans (FWMPs) for the Subdistrict's WGFP and Denver Water's Moffat Project. In addition to the concurrent FWMPs, Denver Water and the Subdistrict have decided to submit to the CDOW enhancement plans to improve existing fish and wildlife resources. These Enhancement Plans are submitted pursuant to regulations implementing CRS 37-60-122.2(2) and are intended to enhance fish and wildlife resources over and above the levels existing without the Moffat Project and WGFP. Denver Water and the Subdistrict are submitting their Enhancement Plans simultaneously with their FWMPs.

Denver Water is also providing the Wildlife Commission with a copy of the proposed "Learning by Doing" (LBD) Cooperative Effort Intergovernmental Agreement (IGA), which was developed as part of the proposed mediation agreement between the West Slope entities and Denver Water. In the mediation agreement (which is also referred to as the Proposed Colorado River Cooperative Agreement), Denver Water has committed to provide money for habitat improvements, water for environmental flows, and considerable system flexibility to provide flushing flows, all directed towards enhancing the current stream conditions and aquatic habitat in Grand County. The LBD effort, along with these mediation commitments, can provide considerable additional benefits to fish and wildlife resources.

1.2 Fish and Wildlife Enhancement Plan Stakeholders

Denver Water has been consulting and conferring with a broad range of federal and state agencies, as well as local governments and environmental groups, to solicit input on desired enhancements to existing fish and wildlife resources. These entities include:

- Governmental organizations: CDOW, Northern Water Conservancy District, Grand County, and Town of Hot Sulphur Springs
- Non-governmental organizations: Trout Unlimited and landowners along the upper Colorado River and in the Fraser River Basin

Although the CRS 37-60-122.2 procedures do not specify public involvement requirements, Denver Water and the Subdistrict acknowledge the Colorado Wildlife Commission's desire to provide ample opportunity for public participation. To date, the Wildlife Commission has provided the following opportunities for the public to provide mitigation and enhancement suggestions:

- Stakeholder Workshops, January 24-25, 2011, Winter Park – CDOW solicited input on options for fixing the upper Colorado River between Windy Gap and the Kemp-Breeze State Wildlife Area to ensure a functioning river that supports fish and wildlife resources given anticipated future flows.
- Public Comment Period on Draft Enhancement and Mitigation Plans, Feb. 10-24, 2011 – CDOW invited public review and comment on the February 9th draft plans. The input was reviewed by CDOW, Denver Water and the Subdistrict while preparing the April 7th plans.
- Wildlife Commission Meeting, March 10, 2011 – Members of the public provided comments on the draft February 9th plans and review process.
- Wildlife Commission Meeting, May 6, 2011 – Members of the public provided comments on the April 7th plans submitted to the Wildlife Commission on April 7, 2011. Time was also allowed for presentations from several groups on issues regarding the plans.

1.3 Concurrent and Related Activities

Windy Gap FIRMING Project

The Windy Gap FIRMING Project (WGFP) is a proposed water supply project that would provide more reliable water deliveries to Front Range and West Slope communities and industries. The Subdistrict is seeking to construct the project on behalf of the 13 WGFP Participants. Project Participants include the City and County of Broomfield, the towns of Erie and Superior, the cities of Evans, Fort Lupton, Greeley, Lafayette, Longmont, Louisville, Loveland, Little Thompson Water District, Central Weld County Water District, and the Platte River Power Authority.

The proposed WGFP is to add water storage and related facilities to the existing Windy Gap operations capable of delivering a firm annual yield of about 30,000 AF to Project Participants. The Subdistrict's Proposed Action is the construction of Chimney Hollow Reservoir to store Windy Gap Project water. The WGFP Draft EIS was issued by the U.S. Bureau of Reclamation (Bureau) in 2008.

The Moffat Project would increase diversions from the Fraser River Basin upstream of the Windy Gap Project diversion site on the Colorado River and would affect the availability of water for the WGFP. Diversions for the WGFP and Moffat Project would result in changes to flows in the Colorado River below the Windy Gap dam. Denver Water and the Subdistrict have agreed to cooperate with each other and with the DNR and CDOW in concurrent development of the mitigation plans required under CRS 37-60-122.2 for the two projects. They have jointly developed stream temperature monitoring stations as mitigation (refer to the Moffat Project FWMP). Additionally,

Denver Water and the Subdistrict have proposed enhancements with significant resources and funding to improve current conditions in the river.

2.0 ENHANCEMENTS

2.1 Upper Colorado River Habitat Project

The Upper Colorado River Habitat Project (Habitat Project) was designed in coordination with the Subdistrict to address concerns raised by CDOW and other stakeholders regarding the current conditions of the aquatic ecosystem in the Colorado River downstream of Windy Gap. CDOW studies have identified a decline in populations of *Pteronarcys californica* (giant stonefly), which, historically, has been a major source of food for trout in the Colorado River as well as other species of stoneflies and mayflies. Populations of the mottled sculpin (*Cottus bairdi*), a native fish that is also an important food source for trout and shares habitat with the *Pteronarcys*, have also declined. CDOW believes that riffle areas below the Windy Gap Reservoir have been altered by changes in flow regime, water depletions, sedimentation, and armoring of the channel bed. Trout populations between Windy Gap and Kremmling have declined. CDOW has expressed a desire to return the river to a more functional system considering current and future hydrology.

The goal of the Habitat Project is to design and implement a stream restoration program to improve the existing aquatic environment from the Windy Gap Diversion to the lower terminus of the Kemp-Breeze State Wildlife Area (Segment). Refer to Figure 1. The intent is for Denver Water and the Subdistrict to join with the CDOW, along with other stakeholders, in a cooperative effort to identify and address desired improvements to the stream environment.

Resources for the Project

- A. Funds Provided by Denver Water. To implement the Habitat Project, Denver Water will provide \$1.5 million.
- B. Funds Provided by Subdistrict. To implement the Habitat Project, the Subdistrict will provide \$3.0 million.
- C. Possible Funds from CDOW. In addition to designing the Habitat Project, CDOW may contribute \$500,000 to implement the Habitat Project.
- D. Possible Funds Provided by Learning by Doing. Denver Water and the Subdistrict will participate in the LBD Cooperative Effort, which is described in Section 2.2. In the LBD Cooperative Effort, Denver Water has committed money for habitat improvements, water for environmental flows, and considerable system flexibility to provide flushing flows, all directed towards enhancing the aquatic environment in Grand County (refer to Appendix A for details). Denver Water and the Subdistrict, as two members of the six-member Management Committee, will work with the other members of the committee to dedicate an additional \$1 million (from the funds committed to

LBD by Denver Water) to the Habitat Project, in addition to the amounts committed by Denver Water and the Subdistrict in paragraphs A and B above.

- E. Possible Matching Funds. Denver Water and Subdistrict have committed \$4.5 million for the Habitat Project described in A and B above and, as described below (Use of Funds), preference will be given to land that has public access. However, \$1.0 million of this amount is available as matching funds for private landowners to perform additional work in the Colorado River in areas of private land.
- F. Other Funding and Resources. If the Habitat Project participants desire additional resources beyond the \$6.0 million described above, the project participants will work with other stakeholders and granting agencies to seek other sources of funding (a possible source of funding is matching funds as described in E above). In addition, Denver Water and the Subdistrict will contribute in-kind resources such as labor, equipment, and materials if and when available as determined by Denver Water and the Subdistrict, to help maximize the value of funds described above. In addition, CDOW has indicated a willingness to provide in-house expertise and resources for stream restoration design.
- G. Future Funding/Enhancement Insurance Policy. The Subdistrict and Denver Water will contribute \$1.0 million and \$500,000, respectively, for a total of \$1.5 million to a fund to be used for adaptive management and/or maintenance in the Habitat Project segment. Adaptive Management in this case means that the \$1.5 million will be available to adjust elements of the stream restoration efforts that are not functioning as designed.

The funding for the Habitat Project is summarized in Table 1.

Table 1. Upper Colorado River Habitat Project Funding

<u>Source of Funding (Habitat Project)</u>	<u>Amount (millions of \$)</u>	
<u>Denver Water</u>	<u>\$1.5</u>	
<u>Subdistrict</u>	<u>\$3.0</u>	
<u>CDOW</u>	<u>\$0.5</u>	<u>Contingent upon CDOW approval</u>
<u>LBD</u>	<u>\$1.0</u>	<u>Contingent upon LBD approval</u>
<u>Subtotal</u>	<u>\$6.0</u>	
<u>Source of Funding (Future Funding)</u>		
<u>Denver Water</u>	<u>\$0.5</u>	
<u>Subdistrict</u>	<u>\$1.0</u>	
<u>Subtotal</u>	<u>\$1.5</u>	
<u>Total</u>	<u>\$7.5</u>	

Use of Funds. The public funds described above will be used for the Habitat Project to restore the Segment on public land. However, the public stream reaches are interrupted by reaches of private land. The effectiveness of habitat restoration work and overall stream health will be compromised if there is not some degree of stream enhancement continuity for the entire Segment. While preference will be given to work on public lands, public funds may be used for stream restoration on private land to provide continuity and prevent harm to the Habitat Project as a whole if CDOW determines that such work on private lands will provide benefits to the entire Grand County stream reach, and/or through a program of matching private funds with public funds. Proposed work on private land within the Segment will be developed in cooperation with the project participants and the land owner to ensure maximum benefit to the health of the river.

Any funds remaining after implementation of the Habitat Project will be used for additional projects to improve the aquatic environment on the Colorado River. Additional projects could include maintenance activities, a bypass around Windy Gap Reservoir or continuing stream improvements downstream to the confluence with Troublesome Creek (the lower terminus of the Gold Medal fishery designation). Other projects would be identified and agreed upon by the project participants.

Effective Date. The Habitat Project will commence when the Subdistrict and Denver Water have received acceptable Records of Decision and permits for their respective projects and have begun final design and construction activities. If a permit is appealed, the Habitat Project will commence after final resolution of the appeal and acceptance of the resolution by the Subdistrict and Denver Water.

Project Implementation. The Habitat Project will be implemented in collaboration with the LBD Cooperative Effort to ensure consistency and coordination with the overall stream enhancement efforts in Grand County. Section 2.2 describes the implementation of the Habitat Project and the goals and management structure of LBD.

2.2 Implementing the Habitat Project with the Learning by Doing Cooperative Effort

The Habitat Project will be implemented through an IGA among Denver Water, the Subdistrict, and CDOW. Denver Water and the Subdistrict will convey the committed dollars to CDOW and CDOW will design and implement the project. CDOW will also enter into any agreements, as needed, with private land owners or other funding sources. Additionally, the Habitat Project will be managed by CDOW in collaboration with the Habitat Project Stream Team.

Stream Team: The contributing members of the Habitat Project Stream Team include:

- Denver Water
- Subdistrict
- CDOW
- Grand County
- Other Parties that contribute financial resources to the Habitat Project, including but not limited to landowners

Advisory Team: Interested parties not contributing resources, including Trout Unlimited and landowners.

Implementation of Habitat Project: The Habitat Project will be managed by the Habitat Project Stream Team with advice from the Advisory Team. The Stream Team will make good faith efforts to resolve any conflicts. If the good faith effort does not result in consensus, the Habitat Project Stream Team will refer the issue to the Director of the DNR for resolution. Prior to referral, the unresolved issue will be summarized in writing with an explanation of any “competing views” and efforts to date to resolve the matter.

The Habitat Project will likely consist of several phases:

- *Project Goals* – The Stream Team will begin by setting specific goals for the Habitat Project to promote functionality of the river system. Goals may include specific biological goals related to health of the aquatic ecosystem, including fish and macroinvertebrates (e.g. trout, *Pteronarcys* and sculpin). The Habitat Project goals will be consistent with the LBD Effort and the SMP.
- *Project Design* – The Team will evaluate the most effective and sustainable restoration opportunities for the Segment. Different designs or solutions may be appropriate and implemented for different parts of the Segment. The Team will evaluate restoration opportunities based on site-specific field evaluations, data from the SMP, and the specific objectives for a given reach.
- *Implementation* – The Team will prioritize proposed habitat improvements, as well as allocation of funding for public and privately-owned stream segments. The Habitat Project will be implemented over time as stream reaches are prioritized and designs are completed. The CDOW will be responsible for the final design, permitting and implementation of the stream restoration activities.
- *Monitoring* – The Team will determine the appropriate monitoring activities to measure outcomes from implementing the Habitat Project taking into consideration monitoring already in place or proposed as part of the LBD Effort. The CDOW will be responsible for the long-term monitoring and maintenance of the stream restoration activities.

Learning by Doing Cooperative Effort

The Habitat Project will be coordinated with the Learning by Doing Cooperative Effort to ensure consistency and coordination with the overall stream enhancement efforts in Grand County.

Denver Water and Grand County have spent over three years working cooperatively to resolve issues related to Denver Water's existing operations in Grand County. Denver Water and Grand County reached a proposed agreement on September 24, 2010 regarding Denver Water's commitments to enhance existing conditions in Grand County. Denver Water and Grand County are currently working with the State to assure that the benefits of Denver Water's commitments can be delivered and protected under Colorado's water rights system. Grand County Commissioners will also conduct a public process to gather input from county residents and other interested parties on the proposed agreement prior to a formal vote by the Commissioners on the agreement. A major component of the proposed agreement is the LBD Cooperative Effort. This is a cooperative, iterative and ongoing process to maintain, and when reasonably possible, restore or enhance the stream environment in the Fraser and Williams Fork river basins, and in the mainstem of the Colorado River from the outflow of Granby Reservoir to its confluence with the Blue River.

The Subdistrict has also been working cooperatively with Grand County and other West Slope stakeholders to develop an IGA regarding additional enhancements to existing conditions in Grand County. The IGA has not been completed, but the Subdistrict has committed to participate in the proposed LBD Cooperative Effort.

The Grand County Stream Management Plan (SMP) is the framework for the overall LBD Cooperative Effort. The SMP will be used as a "living" document that will be revised as additional monitoring data are gathered and as management goals for each stream reach are agreed upon. Types of restoration opportunities include channel bank revegetation, enhancing fish passage, applying enhancement flows to existing low and/or high flow conditions, and in-stream habitat restoration.

The LBD Effort will be implemented with the following management structure, as shown in Figure 2.

Management Committee: The LBD Cooperative Effort will be managed by representatives of the public entities contributing resources to the various activities and projects undertaken by the group. Resources are defined as funding, water, project design, and/or equipment and manpower to implement a project. The Management Committee will operate by consensus (unanimous vote) under the LBD Cooperative Effort IGA. A copy of the proposed IGA is included in Appendix A of this Enhancement Plan. The Management Committee will include one representative from:

- Denver Water
- Northern Colorado Water Conservancy District, Subdistrict
- Grand County

- Colorado River Water Conservation District
- Middle Park Water Conservancy District
- Trout Unlimited

The Management Committee may elect to invite others to participate as members of the Management Committee based on commitments to long-term contributions of funding or other tangible resources that will further the goals of the LBD Cooperative Effort. It is anticipated that CDOW will be invited to join the Management Committee if the LBD Cooperative Effort is signed by all the parties.

Advisory Committee; The Management Committee may request participation by other parties, such as representatives from environmental, recreational, governmental and agricultural interests, to provide expertise and technical advice. It is anticipated that the U.S. Forest Service and others, would be invited to be advisors.

Responsibilities – The responsibilities of the Management Committee, with input and assistance from the Advisory Committee, include:

- *Monitoring Plan* – A long-term monitoring plan will be developed and implemented to identify critical stream reaches and assign priorities for actions; identify changes in the aquatic environment; evaluate effectiveness of actions taken, and modify and refine strategies for achieving the goals of the LBD Cooperative Effort.
- *Operations Plan* – As stream reaches are prioritized and projects identified, the Management Committee will develop an annual Operations Plan to maximize the stream environmental benefits with the available resources such as water commitments, system flexibility and funding. The Management Committee will meet as frequently as necessary to explore opportunities to coordinate operations of all diversion structures and reservoir releases among all water users in Grand County.
- *Enhancements* – Denver Water committed in the proposed mediation agreement to provide substantial resources of money, water and system flexibility for the purpose of maintaining, restoring or enhancing the Upper Colorado, Fraser and Upper Williams Fork watersheds. Additional resources can be contributed by other parties to implement the LBD Cooperative Effort.
- *Annual Review* – The entire LBD Cooperative Effort, inclusive of coordinated operations, stream reach prioritization, stream improvement projects and monitoring programs, will be reviewed annually by the Management Committee in refining and updating the plans and projects.

Stream Projects

The Management Committee, with input from the Advisory Committee, will prioritize stream reaches for implementing stream improvement projects.

Stream Team: A specific stream project, as prioritized by the Management Committee, will be managed by a “Stream Team” comprised of organizations or individuals that have committed resources to that specific project. Resources are defined as funding, water, project design, and/or equipment and manpower to implement a specific project. Each Stream Team will consist of representatives of the Management Committee, who will be contributing resources, to ensure consistency and continuity with the LBD Cooperative Effort, plus any other contributing members. Each Stream Team will only develop and implement enhancement projects that support the goals and priorities of the LBD Effort. Private landowners who contribute resources would be invited to participate on the Stream Team for their respective segment of the river. These landowners would approve any projects proposed by the Stream Team on property they own.

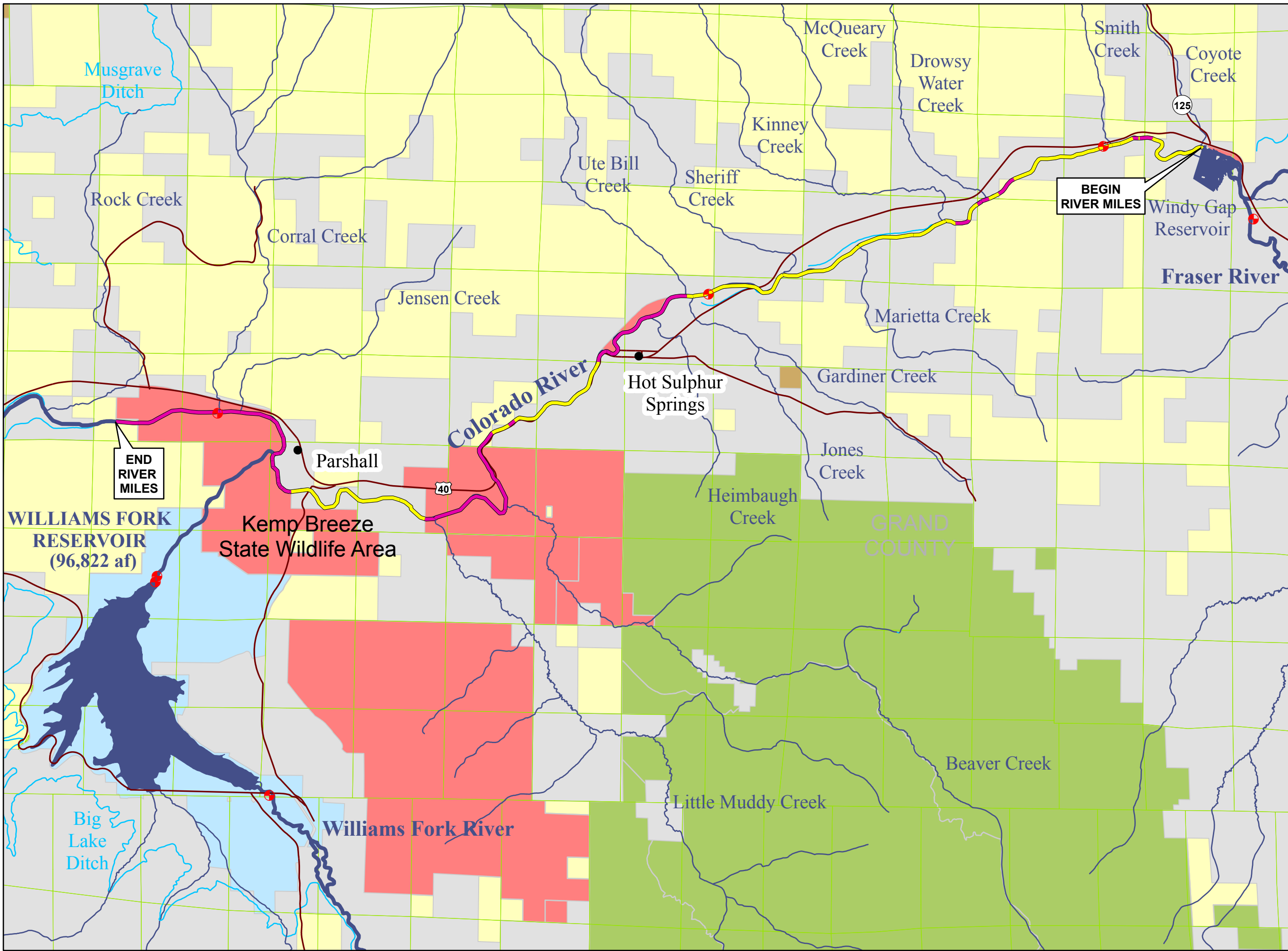
Advisory Team: The Stream Team will invite other interested parties such as representatives from environmental, recreational, governmental and agricultural interests, to serve as technical advisors on a particular project.

3.0 RELATIONSHIP TO PROJECT MITIGATION

Both Denver Water and the Subdistrict will comply with all mitigation measures required in the permits for their respective projects, Moffat Project and WGFP. Compliance with the mitigation measures in permits will be the sole responsibility of the permittee (i.e., Denver Water and the Subdistrict). However, Denver Water and the Subdistrict are members of the Management Committee, and will collaborate, to the extent practicable, to implement the mitigation measures in a manner consistent with the objectives of the LBD Cooperative Effort and specific Stream Team efforts.

The stream enhancement cooperative efforts, such as the Upper Colorado River Habitat Project and the LBD, are efforts to enhance the existing environment and are not intended to substitute for any mitigation required by the federal agencies for the projects. The goal is to coordinate the application of any required mitigation efforts with the voluntary and collaborative efforts of the stream enhancement projects to assure the maximum benefit for the stream environment.

Denver Water and the Subdistrict will enter into a binding agreement with CDOW for the Habitat Project, as described in section 2.1. If the Corps or the Bureau requires aquatic mitigation in the Segment, some or all of the committed resources listed in Table 1 will be enforceable through conditions in the permits rather than within the Habitat Project. The Habitat Project will be implemented in a manner that complements any mitigation measures required by the Corps for the Moffat Project or by the Bureau for the WGFP.



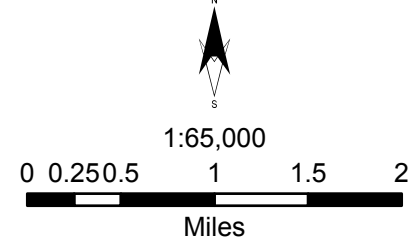
Upper Colorado River Vicinity
 Windy Gap to Williams Fork River
 FIGURE 1

Legend

- Town
- ⊕ Gaging Station
- Major Stream or River
- Major Canal, Aqueduct or Pipeline
- River access is Private
- River access is Public
- Roads
- Public Land Survey - Section Line
- BLM
- Colorado DOW
- Denver Water
- PRIVATE
- State Land Board
- USFS - Arapahoe Natl. Forest

Total river miles from Windy Gap Reservoir to the West end of Kemp Breeze SWA is 16.70.

Additional adjacent land-use totals:
 Private = 9.40
 Public = 7.30



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Land Ownership compiled by the Natural Resources Ecology Lab (NREL) at Colorado State University, Fort Collins, CO as COMaP v.7.
 Theobald, D.M., G. Wilcox, S.E. Linn, N. Peterson, and M. Lineal. 2008. Colorado Ownership, Management, and Protection v7 database. Human Dimensions of Natural Resources and Natural Resources Ecology Lab, Colorado State University, Fort Collins, CO. 15 September. www.nrel.colostate.edu/projects/comap

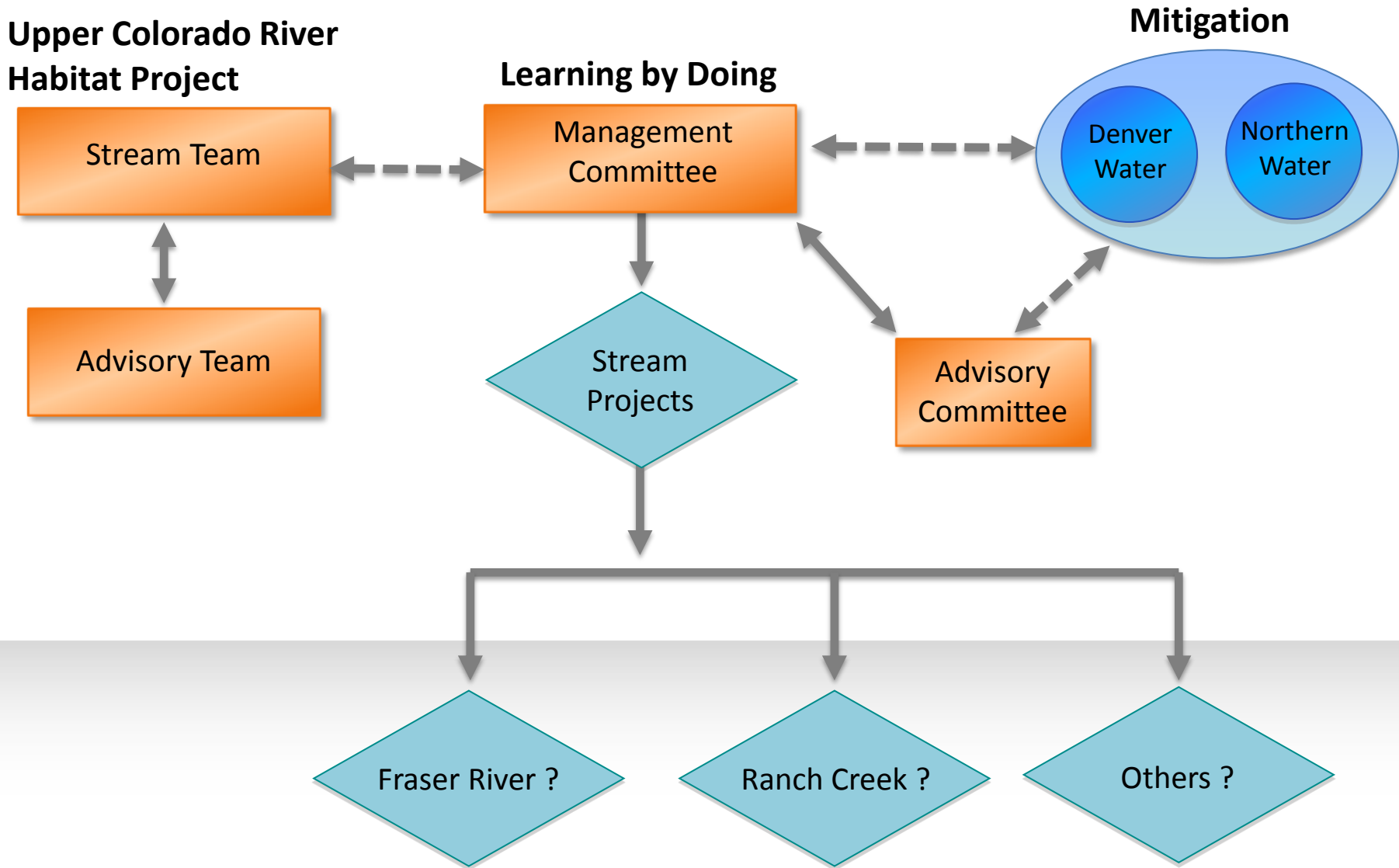


Figure 2. Implementing the Habitat Project with Learning by Doing

Appendix A

Summary of the Proposed Colorado Cooperative Agreement

and

Proposed Intergovernmental Agreement for the Learning By Doing Cooperative Effort (Aug 27, 2010 unsigned)

Summary of the Proposed Colorado River Cooperative Agreement

As part of negotiations between West Slope parties and Denver Water, Grand County and Denver Water have reached a proposed agreement that addresses some of the issues related to Denver Water's existing operations in Grand County. In the Proposed Colorado River Cooperative Agreement (proposed agreement), Denver Water has committed to the LBD Cooperative Effort and the following resources to provide environmental enhancements to benefit the aquatic environment in the Fraser, Williams Fork and upper Colorado rivers. A copy of the proposed LBD IGA is included in this Appendix. Denver Water and Grand County are currently working with the State to assure that the benefits of the commitments can be delivered and protected under Colorado's water rights system. Also, the Grand County Commissioners are conducting a public process about the proposed agreement, including LBD, to allow the citizens of Grand County and other interested parties to comment on the agreement prior to the Commissioners considering approval of the agreement. Under the proposed agreement, the following assets will be provided by Denver Water.

- \$2,000,000 to address nutrient loading. If the Mitigation Plan required in the permitting process for the Moffat Project mandates funds for this purpose, then this \$2,000,000 would be proportionately reduced.
- \$1,000,000 for aquatic habitat improvements. For example, this money could be applied to the Upper Colorado River Habitat Project.
- A second \$1,000,000 for aquatic habitat improvements. If the Mitigation Plan required in the permitting process for the Moffat Project mandates funds for this purpose, then this \$1,000,000 would be proportionately reduced.
- Operation of and \$50,000 contribution to construction of the Berthoud Pass sediment basin
- \$2,000,000 for future environmental enhancements
- \$1,000,000 to contribute to the costs of pumping Windy Gap water for environmental purposes
- 1,000 acre-feet annually of bypass water from the Fraser Collection System for environmental purposes
- Up to 1,000 acre-feet annually of releases from Williams Fork Reservoir and 2,500 acre-feet of carry over storage in Williams Fork Reservoir for environmental purposes
- Agree to not reduce USFS bypass flows during a drought unless Denver Water has banned all residential lawn watering in its service area (Denver Water has never banned residential lawn watering).
- Agree to a joint study to determine how best Denver Water's rights in Rich, Hammond no.1 and Big Lake ditches can be used to enhance stream flows and maximize environmental benefits
- Agree to a joint study of Denver Water lands in Grand County to identify those lands that could be set aside for wildlife habitat and public fishing access

With regard to impacts caused by the future operation of the Moffat Project, Denver Water agreed to abide by the mitigation requirements that would be required by the U.S. Army Corps of Engineers in the Section 404 permit for the project.

August 27, 2010

INTERGOVERNMENTAL AGREEMENT FOR THE LEARNING BY DOING COOPERATIVE EFFORT

This Intergovernmental Agreement (Agreement) is entered into between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (Board); GRAND COUNTY BOARD OF COUNTY COMMISSIONERS (Grand County) MIDDLE PARK WATER CONSERVANCY DISTRICT (Middle Park) and COLORADO RIVER WATER CONSERVATION DISTRICT (River District), collectively, the “parties.”

WHEREAS, the Board, Grand County, Middle Park, and the River District desire to engage in a cooperative, iterative and on-going process (Cooperative Effort) to maintain, and when reasonably possible, restore or enhance the stream environment in the Fraser and Williams Fork River Basins and in the mainstem of the Colorado River from the outflow of Windy Gap Reservoir to its confluence with the Blue River (the Cooperative Effort Area); and

WHEREAS, in addition to other data and information, this Cooperative Effort will rely on the information contained in the draft Grand County Stream Management Plan (SMP). The current draft SMP is dated August 2010, but the parties anticipate that the SMP will evolve over time with the addition of real time information and data; and

WHEREAS, this Cooperative Effort is intended to address impacts that may be associated with existing operations by the Board, Grand County and other water users in the Cooperative Effort Area. Any new impacts to the stream environment projected to be caused by the Board’s proposed Moffat Project will be addressed by mitigation plans to be developed by regulatory agencies as part of the permitting process for the Moffat Project; and

WHEREAS, the parties to this Cooperative Effort will develop a process to monitor the stream conditions to identify and respond to potential changes in or desired improvements to the stream environment, based upon the concepts embodied in this Agreement; and

WHEREAS, the Cooperative Effort will allow the participants to identify and react to changes in the stream environment in a manner that maximizes the benefits to be realized from the defined resources available to the entities, and that minimizes adverse changes to the stream environment whenever possible; and

WHEREAS, the parties are authorized to enter into this Agreement by, *inter alia*, Section 29-1-201, *et seq.*, C.R.S.; Section 29-10-101, *et seq.*, C.R.S.; and Article XIV, Section 18(2) of the Colorado Constitution.

NOW THEREFORE, the parties agree to implement this Cooperative Effort in accordance with the following provisions:

I. Guiding Principles

The overarching goal for the Cooperative Effort is to maintain and, where reasonably possible, restore or enhance the condition of the stream environment in Grand County. The Upper

August 27, 2010

Colorado River system and the Fraser and Williams Fork rivers serve as a critical municipal, agricultural, recreational and industrial water supply source for the state as a whole and provide important aquatic habitat. The participants in the Cooperative Effort have a mutual interest in protecting the stream environment and commit to work together in a cooperative and comprehensive manner to address issues related to maintaining and, when reasonably possible, enhancing the condition of the stream environment in Grand County. To that end, the parties agree to the following principles to build and promote a stable, permanent, relationship that respects the interests and legal responsibilities of the parties, while achieving the goals of the Cooperative Effort.

- A. The Cooperative Effort will not seek a culprit for changes in the condition of the stream, but will provide a mechanism to identify issues of concern and focus available resources to address those issues.
- B. The parties to this Agreement have been involved since 2007, along with numerous other West Slope entities, in negotiating an agreement (Mediation Agreement) to resolve longstanding issues. The Board has committed to Grand County a substantial, but defined amount of resources described in Article III.E of the Mediation Agreement for the purpose of maintaining, restoring or enhancing the Upper Colorado, Fraser and Williams Fork watersheds. Grand County commits to using the resources provided under Article III.E of the Mediation Agreement in a manner consistent with the purposes of the Cooperative Effort. In addition, Grand County, Middle Park and the River District agree to contribute resources to the Cooperative Effort on an ongoing basis, as available and appropriate. Because resources available to the Parties are limited, the use of those resources will be prioritized as part of the Cooperative Effort. Grand County agrees, consistent with the provisions of Article III.E.9 of the Mediation Agreement, that amounts in excess of \$2 million in the WG Pumping Fund will be dedicated to the Cooperative Effort.
- C. The Cooperative Effort does not constitute mitigation for the Moffat Project. The Board agrees to undertake all mitigation measures related to Grand County (Mitigation Measures) required in the permit for the Moffat Project to be issued by the Corps of Engineers (COE). The parties to the Cooperative Effort agree not to pursue a challenge to the Mitigation Measures described in the COE permit for the Moffat Project. All the parties to the Cooperative Effort will work in good faith to implement the Cooperative Effort in a way that complements the Mitigation Measures.
- D. If the Management Committee desires additional resources beyond the Grand County Article III.E resources, and resources contributed by Middle Park, Grand County and the River District, to implement the Cooperative Effort, the parties will work with other stakeholders, granting agencies, and identify other sources of funding to provide additional resources. If mutually defined additional resources are still desired, the parties may agree to consider contributing more of their own resources on a case-by-case basis and within the context of the other principles listed herein. Each party retains its sole discretion whether to provide any additional resources without future judgment or prejudice by the other parties.

- E. The parties to this Agreement agree that active participation in the Cooperative Effort by the Board will commence after Issuance and Acceptance by the Board of Permits Necessary for the Moffat Project, as defined in the Mediation Agreement. Prior to the issuance and acceptance of permits, the parties agree that they will continue to work together on completing and improving the draft SMP.
- F. The parties acknowledge that actions not the subject of other contractual obligations that would impair a party's ability to meet its water supply commitments will not be undertaken as part of the Cooperative Effort, unless agreed to voluntarily by the owner of the water supply.
- G. For a period of five years from the date of the first diversions into the constructed Moffat Project, no party will unilaterally request, or cause others to request, that the COE or other applicable regulatory agencies reopen a permit or license for the Moffat Project for any reason. Each party reserves the right to oppose any such efforts to reopen the permits or licenses for the Moffat Project.

II. The Cooperative Effort

A. Organization.

1. **Management Committee.** The parties will form a Management Committee within six months after this Agreement becomes effective.
2. **Representation.** The initial Management Committee will comprise five members, one representative each from Grand County, the Board, the River District, Middle Park, and Trout Unlimited. If Grand County and Northern Colorado Water Conservancy District (Northern Water), and the Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict) enter into an agreement similar to this agreement, the Management Committee will be expanded by one to accommodate a representative from Northern Water or the Subdistrict. The Management Committee may decide to invite others to be members, such as representatives from agricultural, environmental, recreational, industrial, and governmental interests. It is anticipated that the Colorado Division of Wildlife and the United State Forest Service will be invited to play an advisory role in the Management Committee. Any decision to add other members to the Management Committee will be by consensus, with consideration being given to the resources and contributions other potential members may provide to the Cooperative Effort.
3. **Decision-making.** The Management Committee will operate by consensus; i.e. unanimous vote. The Management Committee will make a good faith effort to resolve any issues. If the good faith effort does not result in

consensus, the Management Committee will implement the Conflict Resolution process.

4. **Organizational Structure.** The Management Committee may establish a not-for-profit organization to implement the Cooperative Effort if it determines that such a vehicle is the most effective means for accomplishing its objectives.

B. Tasks and Responsibilities. The following are expected under the Cooperative Effort:

1. **Continue to Improve the Grand County Stream Management Plan.** Phase 1, 2, and 3 of the draft SMP have been completed. The parties will continue to adapt and improve the draft SMP cooperatively as additional information is developed, the understanding of desired stream conditions is better defined, and the management goals for each stream reach are agreed upon.
2. **Management Goals and Priorities.** The Management Committee will define the management goals for each stream reach of interest. By way of example, one reach may be managed to increase the fishing experience for rainbow trout, while another reach may be managed for a specific stream characteristic such as macro-invertebrate diversity. Which management goals are practicable for a specific reach could be influenced by the resources available for use in that reach. It is expected that the Management Committee might also define secondary management goals for specific reaches. Once the management goals for the stream reaches are agreed upon, the Management Committee will prioritize the reaches based upon the agreed upon management goals, the desired stream conditions for each reach, and the available resources.
3. **Coordinate with the COE.** If applicable, the Management Committee may work with the COE to coordinate, to the extent practicable, Mitigation Measures for the Moffat Project with the management goals, priorities and projects undertaken as part of the Cooperative Effort. The Management Committee will work to ensure that the Board is not required to engage in duplicative or conflicting actions, nor implement measures that do not accomplish their stated benefits.
4. **Water Quality Standards.** CDPHE has listed several stream reaches in the Cooperative Effort Area on the 2010 303d list of impaired waters. The Cooperative Effort will participate in developing the appropriate management actions for these segments.
5. **Monitoring Plan.** The ability to fully identify cause and effect relationships in a complex aquatic environment is difficult. Therefore, the parties agree to implement a monitoring plan to identify undesirable changes in, and agree

upon desired modifications to, the stream environment, and to measure the effectiveness of actions taken to protect or improve the stream environment. This approach will allow the available resources to be focused on avoiding problems, responding to changing conditions, and achieving stream goals. The Cooperative Effort will rely on existing data and new data gathering under existing programs to provide the primary source of information for designing the management goals and for prioritizing those goals and reaches where the goals will be applied. The Management Committee can initiate additional monitoring, data gathering and analysis, and may choose to focus on specific measurable indicators, as circumstances warrant, to guide in applying the resources and to monitor the effectiveness of the resources in meeting a management goal. The principles of the potential monitoring plan are described in Attachment A.

6. **Implementation.** The Management Committee will review the results of monitoring to evaluate the effectiveness of the Cooperative Effort and of the allocation of available resources in meeting the management goals and priorities. The results of the monitoring program also may be used to identify measures that might be desirable to maintain or improve the stream environment.
7. **Independent Experts.** The Management Committee may retain independent experts and consultants if deemed necessary to perform the Committee's work. The cost of such independent experts and consultants shall be allocated among the parties as agreed to by the Management Committee.
8. **Operations Plan.** The Management Committee will develop an annual operations plan to maximize the stream environmental benefits of the available resources (including water commitments, system flexibility and funding). The plan will explore opportunities for coordinated operations of diversion structures and reservoir releases among all water users in Grand County, including Northern Water; the Subdistrict; the Bureau of Reclamation, the Board; Middle Park; River District; and in-county diversions for agricultural, municipal, industrial, and others uses. The purpose of coordinated operations is to allow the water users to meet the supply requirements of their systems, while maximizing the effectiveness of the Cooperative Effort. Subject to any contractual commitments regarding system operations, all water users retain sole discretion over their water supply system demands and opportunities and available system flexibility. The decisions and actions by the Management Committee in developing and implementing the operations plan shall take into account water rights priorities, draft SMP flow ranges as they change over time, naturally occurring hydrologic conditions, recreational flow needs, CWCB instream flows, and the results of monitoring.

9. **Incorporate New Knowledge into Management Actions.** As the results of testing various operational changes, monitoring the effectiveness of measures, and collecting and analyzing additional data, the Management Committee will have new information to inform its decision-making. The Management Committee will address data management and access issues in a timely fashion.
10. **Obtain and Manage Funding.** The Management Committee will explore whether the most effective use of funds made available for the benefit of the stream environment is to set up an endowment fund dedicated to the goals of the Cooperative Effort. For example, the interest from such a fund could be used as matching funds for grants. The Management Committee also will research available sources of funding for planning, monitoring and implementing measures identified during the Cooperative Effort, including, but not limited to grants, contributions, assessments, or fees on water or sewer services.
11. **Weekly Coordination.** The Management Committee will conduct weekly coordination meetings or calls from May through September or at such other times as mutually agreed by the Management Committee. The purpose of these meetings/calls is to highlight upcoming operational issues, discuss potential options to reduce possible negative impacts to the stream environment, and to coordinate implementation of actions under the Cooperative Effort. The Management Committee can agree to include other entities in the meetings or calls, as a general practice or as warranted. However, the other entities participating in these calls would act as advisors only unless they were providing water, usable resources, or system flexibility to a particular solution or action of the Management Committee.
12. **Annual Review and Stream Management Plan Adaptations.** The Management Committee will conduct an annual review in January or February before the next spring and summer field season to assess whether management goals are being met, evaluate the monitoring data gathered, assess the use of available resources, identify additional data and analysis needs, determine if refinements are needed to the Grand County draft SMP or the operations plan, and provide an annual summary to each of the parties.

III. Conflict Resolution

The parties agree that, if the Management Committee cannot adequately address an issue to the satisfaction of one of the parties, the parties will confer in good faith and endeavor to resolve the concern.

Where the Management Committee cannot make a decision by consensus and any single entity believes that issue warrants mediation, the Management Committee will select a neutral third party mediator who would seek an acceptable voluntary solution to the conflict.

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For conflicts that involve a technical or scientific matter, the neutral third party mediator may select an independent technical or scientific expert, acceptable to all parties, to review and make a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, then the Management Committee would agree to disagree, and move forward with the other elements of the Cooperative Effort where they had reached agreement.

In the specific case of water resources included in Article III.E of the Mediation Agreement, those water resources will continue to be released annually in the pattern and location previously agreed to by the Management Committee to protect the environment until another pattern or location is identified by the Management Committee.

If the conflict cannot be resolved by the efforts of the mediator and the Management Committee is prevented from moving forward with the other aspects of the Cooperative Effort, then the parties can pursue any available legal or administrative recourse.

IV. Effective Date

This Agreement shall become effective upon the Issuance and Acceptance by the Board of Permits Necessary for the Moffat Project, as defined in the Mediation Agreement.

V. Miscellaneous Provisions

A. Regulatory Action or Litigation

In the event any person or entity files a petition to the COE, FERC or other regulatory agency for regulatory action, or commences litigation, which would materially adversely affect the Moffat Project (Adverse Action), the parties to the Cooperative Effort agree to meet and discuss in good faith the potential detrimental effect of such Adverse Action, with the goal of determining whether any action by one or more parties could avoid the Adverse Action or mitigate its impact on the affected party. Each party agrees to evaluate in good faith whether it can implement changes in its operations or undertake other efforts that would achieve this goal, and to implement any such efforts as may be agreed to by the parties. If the Moffat Project is denied an acceptable permit, or if the Board decides not to proceed with its project, then the Board shall provide notice to the parties to this Agreement within ten days of the decision and shall be released from its obligation to participate in the Cooperative Effort. Nothing in this paragraph modifies the Board's independent obligations under Article III.E of the Mediation Agreement.

B. No Property Rights or Servitude

Nothing in this Agreement shall be deemed or construed as granting or creating any property right or servitude whatsoever on any party's water rights or facilities. The foregoing sentence shall not impair the rights of any party to specific performance of this Agreement.

C. No Operating Obligation

Except for those Article III E resources which will require operational changes, nothing in this Agreement shall be deemed or construed as creating any obligation on any party to

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operate its raw or treated waterworks system in any particular manner, so long as the party complies with the terms of this Agreement. Each party retains sole and exclusive discretion concerning the operation of its system.

D. Right of Specific Performance

If any party shall fail to cure any default or breach of this Agreement within 120 days after receipt of notice from the non-defaulting or non-breaching party, then the non-defaulting or non-breaching party may elect to file suit, without further notice, for specific performance of this Agreement. The parties agree that the terms and conditions of this Agreement are enforceable by specific performance, and the parties hereby waive any defenses to specific performance based on the doctrine of sovereign immunity

E. Force Majeure

A party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, provided that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the party not performing.

F. Severability

If any provision of this Agreement shall prove to be illegal, invalid, unenforceable or impossible of performance, the remainder of this Agreement shall remain in full force and effect.

G. Assignment

Neither this Agreement nor any of a party's rights, obligations, duties or authority hereunder may be assigned in whole or in part without the prior written consent of the other parties.

H. Colorado Law

This Agreement shall be construed in accordance with the laws of the state of Colorado.

I. Termination

This Agreement will remain in effect unless terminated in writing by all the parties.

I. Admission of New Parties

The original parties to this Agreement may, upon unanimous consent, admit new parties upon such terms and conditions as they determine appropriate.

August 27, 2010

**CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS**

ATTEST:

By: _____
Secretary

By: _____
President

Date: _____

APPROVED:

By: _____
Director of Planning

APPROVED AS TO FORM:

By: _____
Legal Division

COLORADO RIVER WATER
CONSERVATION DISTRICT

MIDDLE PARK WATER
CONSERVANCY DISTRICT

By: _____

By: _____

Date: _____

Date: _____

GRAND COUNTY BOARD OF
COUNTY COMMISSIONERS

By: _____

ATTEST: _____

Date: _____

ATTACHMENT A Monitoring Plan

Some level of effective monitoring of the stream environment is essential to understanding and measuring success of applied prescriptions. The Management Committee will design an Aquatic Resource Monitoring Plan, which will cover the Cooperative Effort Area. The Monitoring Plan will focus on understanding the resource and preparing to measure the success of the applied prescriptions.

The Monitoring Plan will be developed and implemented as part of the Cooperative Effort, and will incorporate the elements of the monitoring plan prepared during Phase 3B of the draft SMP that the Management Committee determines are appropriate. The monitoring data will be used by the Management Committee for its decision-making. For example, monitoring will be used to identify changes in the aquatic environment, identify critical stream reaches, assign priorities for action steps, evaluate the effectiveness of actions taken, and to modify and refine strategies for achieving goals of the Cooperative Effort.

The elements of the plan will be determined as part of the Cooperative Effort. The Plan could include some or all of the following elements:

- Identification of key stream segments and groundwater to monitor.
- Existing hydrologic conditions.
- Specific existing ecological conditions at key locations.
- Permanent stream transects to monitor and evaluate any future changes in ecological conditions (e.g., shifts in riffle/pool ratios, increases in sedimentation, reduction in stream habitat diversity) associated with changes in channel maintenance and applied flushing flows proscribed in the Cooperative Effort.
- Establish key indicators of aquatic life and stream health (e.g., fish biomass) and threshold levels at specific locations that reflect increases or declines in aquatic life and stream health from application of measures defined in the Cooperative Effort.