



Forest  
Service

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Colorado Water Conservation Board

Subject: Memorandum of Understanding (MOU) between the Rocky Mountain Region and the State of Colorado, RE: The Management of Water Resources on National Forest System Lands

To: Forest Supervisors

Enclosed is a signed and executed copy of an MOU between the State of Colorado Water Conservation Board (CWCB), the State of Colorado Department of Natural Resources (DNR), and the Rocky Mountain Region of the Forest Service concerning the respective authorities, roles, and responsibilities of each of these parties in the management of water resources on National Forest System lands in Colorado. This document replaces a similar MOU that had previously been entered into by these three parties in 2004. The previous MOU expired on its terms on April 14, 2009.

The framework and spirit of cooperation, communication, and mutual respect expressed in this MOU has served all of its signatories well over the course of the past 5 years. It has served as the foundation for the establishment and maintenance of open lines of communication that we now enjoy with the State concerning water related cases and issues of all sorts. Those have included potential concerns about water rights filings we've made in State water court, the hundreds of Ditch Bill Easement applications that we've processed, our development of a Regional Water Emphasis and Strategy, and the numerous meetings and discussions we've had concerning case-specific water projects such as reservoirs, hydropower projects, ditches, and diversions.

That is why this past spring, before the previous MOU was about to expire, we entered into discussions with the State to replace it with this one for another 5-year period. This version is more than 90% identical to the language contained in the 2004 MOU, with some editorial changes and a few changed or new conditions.

It is my expectation that whenever potential issues or concerns about water management activities, or water uses or developments on NFS lands appear to have the potential of becoming an issue of controversy or concern, you will make contact with this office so that we can keep the appropriate contacts of the CWCB and the State DNR apprised, as appropriate, in the spirit of this MOU.

If you have any questions or concerns, please contact Randy Karstaedt, Director of Physical Resources, at 303-275-5374.

*/s/ Susan E. Gray for*  
RICK D. CABLES  
Regional Forester

Enclosure

cc: Harris Sherman, Executive Director, Colorado Department of Natural Resources; Jennifer Gimbel, Director, Colorado Water Conservation Board; Randy Karstaedt; Cheri A Ford



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MEMORANDUM OF UNDERSTANDING  
BETWEEN  
STATE OF COLORADO  
DEPARTMENT OF NATURAL RESOURCES  
AND  
UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the State of Colorado Department of Natural Resources and its agencies, hereinafter referred to as the DNR, the Colorado Water Conservation Board, hereinafter referred to as the CWCB, and the United States Department of Agriculture Forest Service, hereinafter referred to as Forest Service.

A. PURPOSE:

To establish a framework for the Forest Service and the DNR to work together in a cooperative manner on issues regarding the management of water and water uses on National Forest System (NFS) lands in Colorado.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

Water is the lifeblood of Colorado, the allocation and management of which plays a crucial role in the vitality of Colorado's economy and way of life. Water dependent wildlife, fish, scenic, aesthetic, ecological and recreational values of NFS lands in Colorado contribute substantially to the economy of the state, and the enjoyment of the public.

The prior appropriation system was developed in Colorado to govern the appropriation, use and distribution of water tailored to Colorado's unique physiologic, hydrologic and climatic conditions. The Forest Service authorizes the use and occupancy of NFS lands for numerous water supply and transport facilities in Colorado that allow for the exercise of water rights under the prior appropriation system and federal law.

Federal and State interests in the management of water resources on NFS lands require coordination and cooperation between the DNR and the Forest Service. There are numerous federal and state laws pertaining to the management of land and water resources, and collaborative efforts consistent with state and federal law will lead to most effective management of water resources for all uses.

It is in the public interest to find reasonable solutions to challenging natural resource issues under cooperative agreements. Cooperation will result in more benefits to the public and the water resource than other means.

The Forest Service recognizes and respects the authority of the State to allocate water available for appropriation, respects valid water rights that are granted, exercised, and managed in accordance with state law, and will manage water resources on NFS lands to minimize impacts adversely affecting the exercise of such rights while meeting federal responsibilities.

**C. THE FOREST SERVICE AND THE DNR DO HEREBY AGREE:**

1. To respect both federal and state laws and regulations. The DNR's responsibilities include developing and implementing state water policy and administering all state water rights, and the Forest Service's responsibilities include managing water resources and third party uses of water facilities on NFS lands. The Forest Service and the DNR will seek to integrate federal and state responsibilities into our respective and mutual decision making processes under this MOU.
2. To explore creative ways to assure continued operation of water use facilities on NFS lands while protecting aquatic resources in a manner that facilitates and supports a constructive, trusting relationship between all parties. In this spirit, our respective staffs will focus on flexibility and opportunity.
3. That conflicts are best avoided by careful advance planning and a spirit of cooperation. When conflicts do arise, we agree that they should be resolved by federal and state authorities working together in cooperation with water right holders and where appropriate tribal and local governments and other interested parties.
4. That Forest Land and Resource Management Plans (Forest Plans) are the appropriate management tools for long term planning and decision making to assure continued operation of permitted water facilities on NFS lands. We agree to continue to work together during Forest Plan revision and implementation to recognize and plan for the continued exercise of these non-federal water rights as a valuable resource benefit of NFS lands.
5. That the reauthorization of existing water facilities on NFS lands will be done in cooperation and collaboration with the holders of the permits and with other parties such as local governments, tribes, and state and federal agencies to the extent consistent with federal law.

6. To work together to identify steps which can be taken to better integrate federal and state laws and activities concerning protection and management of riparian resources and instream flows on NFS lands:
  - a. The CWCB and the Forest Service will seek ways to achieve instream flow protection in high priority stream reaches through innovative measures consistent with state and federal law.
  - b. Where the Forest Service has secured appropriated water rights appurtenant to land acquisitions, it may enter into agreements with the CWCB in regards to changing the use of such water rights to instream flows and protecting and enforcing those rights consistent with federal and state laws.
  - c. The CWCB will work with the Forest Service to identify monitoring and stream gauging needs on stream reaches deemed of special importance to the Forest Service, and the Forest Service and the CWCB will jointly identify funding sources for additional stream monitoring and stream gauges on such stream reaches as necessary or appropriate.
  - d. The CWCB and the Forest Service will work together concerning the operation and maintenance of stream gauges on stream reaches deemed of special importance to the Forest Service by providing funding or in-kind services where possible.
  - e. Where appropriate, The CWCB and the Forest Service will work together when water users on NFS lands wish to donate, sell or lease water to the CWCB as a means of providing for instream flow protection purposes.
  - f. The CWCB will aggressively monitor and enforce instream flow water rights and file Statements of Opposition in water court if a water right application is determined to injure the CWCB's instream flow water rights within the boundaries of National Forest and Grasslands.
7. To share information and data to further the understanding of water needs on national forest system lands, and to protect these resources consistent with state and federal law.
8. To maintain, protect, and restore watersheds as appropriate through cooperative adaptive management.

D. Further, USFS and DNR MUTUALLY UNDERSTAND AND AGREE THAT:

1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
2. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the parties from participating in similar activities with other public or private agencies, organizations, and individuals.
3. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU takes effect upon the signature of the Forest Service and the Colorado Department of Natural Resources, and shall remain in effect for 5 years from the date of execution. This MOU may be extended or amended upon written request of either the Forest Service or the DNR and the subsequent written concurrence of the other(s). Either the Forest Service or the DNR may terminate this MOU with a 60-day written notice to the other(s).
4. RESPONSIBILITIES AND LEGAL AUTHORITIES OF PARTIES. The Forest Service and the DNR and their respective agencies and office will handle their own activities and utilize their own resources, including the expenditure of their own funds in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner. Each party reserves the right to consult with its respective legal counsel at any time during the implementation of this MOU to assure that it has the legal authority to undertake any activity provided for in this MOU, including the provisions contained in Section C.
5. EFFECT OF THIS DOCUMENT ON THE PARTIES' AUTHORITIES. This instrument is in no way intended to create, interpret, alter, or limit the legal authorities of the parties. Moreover, the parties agree not to use this document in any judicial or administrative proceeding as evidence of their authorities, nor do they intend for it to be used by any third party in any judicial or administrative proceeding as evidence of the parties' authorities.

6. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

<i>Forest Service Project Contact</i>	<i>Cooperator Project Contact</i>
Mr. Randall Karstaedt Director, Physical Resources  US Forest Service Rocky Mt. Region Regional Office 1740 Simms Street Golden, CO 80401-4720 Phone: (303) 275-5374 FAX: (303) 275-5122 E-Mail: rkarstaedt@fs.fed.us	Ms. Linda Bassi Chief, Stream & Lake Protection Section  Colorado Water Conservation Board  1313 Sherman Street, Suite 718 Denver, CO 80203 Phone: 303-866-3441 X3204 FAX: 303-866-4474 E-Mail: linda.bassi@state.co.us
<i>Forest Service Administrative Contact</i>	<i>Cooperator Administrative Contact</i>
Ms. LuAnn Waida Regional Grants and Agreements Coordinator US Forest Service Rocky Mt. Region Regional Office 1740 Simms Street Golden, CO 80401-4720 Phone: (303) 275-5280 FAX: (303) 275-5453 E-Mail:	Ms. Suzy Williams Program Assistant  Executive Director's Office, DNR  1313 Sherman Street, Suite 718 Denver, CO 80203 Phone: 303-866-3441 X8657 FAX: 303-866-2115 E-Mail: suzy.williams@state.co.us

7. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOU shall obligate either the Forest Service or the DNR to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and the DNR will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
8. ESTABLISHMENT OF RESPONSIBILITY. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, the State of Colorado, or either of its agencies, its officers, or any person.

9. AUTHORIZED REPRESENTATIVES. By signature below, the parties certify that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this MOU.

THE PARTIES HERETO have executed this instrument.

COLORADO DEPARTMENT OF  
NATURAL RESOURCES

USDA FOREST SERVICE, ROCKY  
MOUNTAIN REGION

Harris Sherman 7/1/09 Rick D. Cables 7-10-09  
Harris Sherman, Executive Director DATE Rick Cables, Regional Forester DATE

Jennifer Gimbel 7/6/09  
Jennifer Gimbel, Director, CWCB  
DATE

The authority and format of this instrument has been reviewed and approved for signature.

LuAnn Waida 7/10/09  
LuAnn Waida DATE  
FS Grants & Agreements Coordinator