



FS Agreement No. 15-MU-11020000-072

Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
STATE OF COLORADO
DEPARTMENT OF NATURAL RESOURCES
And The
COLORADO WATER CONSERVATION BOARD
And The
USDA, FOREST SERVICE
ROCKY MOUNTAIN REGION

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 USDA, Forest Service, Rocky Mountain Region, hereinafter referred to as the "U.S. Forest Service."

Background: This MOU replaces MOU number 09-MU-11020000-058 which expired July 10, 2015.

Title: Colorado Department of Natural Resources

I. PURPOSE:

The purpose of this MOU is to document the cooperation between the parties to establish a framework for the U.S. Forest Service, the DNR, and the CWCB 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, in accordance with the following provisions.

II. 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 collaborative 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.

In consideration of the above premises, the parties agree as follows:

III. THE FOREST SERVICE, THE DNR, AND THE CWCB DO HEREBY AGREE :

- A. 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. The CWCB's responsibilities include water policy and planning, and the administration of the State's Instream Flow and Natural Lake Level Program. The Forest Service's responsibilities include stewardship of water resources and permitting 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.
- B. To pursue collaborative 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.
- C. That conflicts are best avoided by careful advance planning and a spirit of cooperation. The parties agree that when conflicts arise, 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.
- D. 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. The parties



agree to continue to work together during Forest Plan revision and implementation to identify and address in advance issues that could be significant factors in the authorization and management of water supply facilities on NFS lands, and to recognize and plan for the continued exercise of these non-federal water rights as a valuable resource benefit of NFS lands.

- E. 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.
- F. To work together to identify steps that can be taken to better integrate federal and state laws and activities concerning protection and management of riparian resources, aquatic habitat, and instream flows on NFS lands.
 - 1. 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.
 - 2. 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.
 - 3. 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.
 - 4. 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.
 - 5. 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.
 - 6. 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.



- G. To meet at least annually 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.
- H. To maintain, protect, and restore watersheds as appropriate through cooperative adaptive management, including analysis and planning to maintain aquatic habitat or improve degraded aquatic habitat conditions where they exist.

IV. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Name: Linda Bassi, Chief Stream and Lake Protection Section, Colorado Water Conservation Board Address: 1313 Sherman Street Room 721 City, State, Zip: Denver, CO 80203 Telephone: 303-866-3441 x3204 FAX: 303-866-4474 Email: linda.bassi@state.co.us	Name: Doug Mahan, Office Coordinator Colorado Water Conservation Board Address: 1313 Sherman Street Room 721 City, State, Zip: Denver, CO 80203 Telephone: 303-866-3441 x 3244 FAX: 303-866-4474 Email: doug.mahan@state.co.us

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Cherie Hamilton, Acting Director Renewable Resources Address: 740 Simms Street City, State, Zip: Golden, CO 80401 Telephone: 303-275-5002 FAX: 303-275-5075 Email: cehamilton@fs.fed.us	Name: Rebecca Cuthbertson Address: 740 Simms Street City, State, Zip: Golden, CO 80401 Telephone: 303-275-5068 FAX: 303-275-5453 Email: rcuthbertson@fs.fed.us

- B. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the DNR and the CWCB is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:



To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To the DNR and the CWCB, at the DNR's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- C. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or the DNR and the CWCB from participating in similar activities with other public or private agencies, organizations, and individuals.
- D. ENDORSEMENT. Any of the DNR and the CWCB's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of the DNR and the CWCB's products or activities.
- E. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- F. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.



- G. **FREEDOM OF INFORMATION ACT (FOIA)**. Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- H. **TEXT MESSAGING WHILE DRIVING**. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- I. **TERMINATION**. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- J. **DEBARMENT AND SUSPENSION**. The DNR and the CWCB shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the DNR and the CWCB or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- K. **MODIFICATIONS**. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- L. **COMMENCEMENT/EXPIRATION DATE**. This MOU is executed as of the date of the last signature and is effective for five years from that date, at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- M. **AUTHORIZED REPRESENTATIVES**. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.



M. King

MIKE KING, Executive Director
State of Colorado, Department of Natural Resource

10/7/15
Date

J. Eklund
JAMES EKLUND, Director
Colorado Water Conservation Board

10/8/2015
Date

D. Jiron
DANIEL J. JIRON, Regional Forester
U.S. Forest Service, Rocky Mountain Region

9/30/15
Date

The authority and format of this agreement have been reviewed and approved for signature.

Rebecca Cuthbertson
REBECCA CUTHBERTSON
U.S. Forest Service Grants Management Specialist

9/22/15
Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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