

## **ENFORCEMENT AGREEMENT**

This Enforcement Agreement (“Agreement”) is hereby made and entered into by and between the Colorado Water Conservation Board, hereinafter referred to as CWCB, and the United States Department of the Interior, Bureau of Land Management, hereinafter referred to as the BLM.

### **A. FACTUAL RECITALS**

1. The Dominguez Canyon Wilderness Area (“Wilderness Area”) was created on March 30, 2009, as part of the 2009 Omnibus Public Lands Management Act of 2009 (“Act”). Among other things, the Act established the Wilderness Area “. . . to conserve and protect for the benefit and enjoyment of present and future generations . . . the water resources of area streams, based on seasonally available flows, which are necessary to support aquatic, riparian, and terrestrial species and communities.”
2. The Act provides that the Secretary of the Interior (“Secretary”) shall not pursue adjudication of any Federal instream flow water rights if: (1) the Secretary determines, upon adjudication of instream flow water rights by the CWCB, that the CWCB holds water rights sufficient in priority, amount and timing to fulfill the purposes of the Act; and (2) the Secretary has entered into a perpetual agreement with the CWCB to ensure full exercise, protection and enforcement of the CWCB’s water rights within the Wilderness Area to reliably fulfill the purposes of the Act. 123 Stat. 991, 1105, Sec. 2405(h)(2)(E)(i) and (ii).
3. On January 25, 2010, the BLM submitted a formal written recommendation to the CWCB for instream flow (“ISF”) appropriations on Big Dominguez Creek and Little Dominguez Creek within the Wilderness Area boundaries.
4. On July 21, 2010, the CWCB appropriated ISF water rights on Big Dominguez Creek and Little Dominguez Creek as recommended by the BLM. On December 27, 2010, the CWCB filed applications in Division 4 Water Court for those ISF water rights in Case No. 10CW184 for Little Dominguez Creek and Case No. 10CW185 for Big Dominguez Creek (collectively the “ISF Water Rights”).
5. On both creeks, the CWCB appropriated and applied for ISF water rights in the amounts of all of the flow that is annually available minus quantified allowances on each creek for future water uses, hereinafter referred to as “Development Allowances.”
6. The CWCB and BLM are entering into this Agreement to fulfill the requirement of the Act for a perpetual agreement between BLM and CWCB to ensure full exercise, protection and enforcement of the ISF Water Rights within the Wilderness Area to reliably fulfill the purposes of the Act.

### **B. THE BLM AND THE CWCB DO HEREBY AGREE:**

1. The CWCB shall take such action under state law, including requesting administration by the State Engineer and the Division Engineer for Water Division 4 and initiating water court proceedings, as may be necessary to exercise fully the ISF Water Rights. The CWCB shall enforce the ISF Water Rights within the entire stream reaches for which the appropriations are made.

2. The CWCB shall not abandon, in whole or in part, subordinate, lease, sell, donate, or otherwise dispose of, compromise, injure, subjugate, modify or encumber the ISF Water Rights in any manner whatsoever without the written consent of the BLM State Director. This provision does not apply to the Development Allowances established in the decrees for the ISF Water Rights.
3. The BLM State Director may consent in writing to what otherwise would be a violation of paragraph 1 above.
4. Measuring devices are not currently necessary for administration of the ISF Water Rights. Should the Division Engineer for Water Division 4 deem a measuring device necessary, BLM and CWCB agree to work cooperatively to attempt to satisfy the Division Engineer's requirements for administration of the ISF Water Rights. Nothing herein obligates BLM or CWCB to expend funds to satisfy this provision. The CWCB may install measuring devices it deems necessary for administration of the ISF Water Rights, regardless of whether the Division Engineer has required such devices. Any measuring device required by the Division Engineer or installed by the CWCB shall not be deemed prohibited water resource facilities under section 2405(h)(5)(A) of the Act because it will ensure the full exercise, protection, and enforcement of the ISF Water Rights.
5. The CWCB shall notify the BLM in writing when it requests the Division of Water Resources to administer the ISF Water Rights.
6. If BLM determines that one or more of the ISF Water Rights is being injured by out-of-priority diversions or depletions, the BLM State Director may write the CWCB to request administration of such water rights. The CWCB shall inform the BLM State Director in writing within 60 days of actions taken in response to such a request. If the BLM believes the CWCB has failed to adequately enforce the ISF Water Rights, the BLM State Director shall notify the CWCB in writing. The parties shall thereafter work in good faith to resolve any such dispute over enforcement within 180 days. The CWCB shall be responsible for monitoring the water court resume and tracking the amount of the development allowance used under new water court applications when decreed. The CWCB shall notify the BLM in writing when a claim for part of the development allowance has been filed in water court.

C. THE PARTIES MUTUALLY UNDERSTAND AND AGREE THAT:

1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the BLM 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 Agreement will become effective upon the signature of the BLM and the CWCB, and shall remain effective until termination in writing by either party.
4. RESPONSIBILITIES AND LEGAL AUTHORITIES OF PARTIES. The BLM and the CWCB and their respective agencies and offices 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, consistent with its legal obligations. Each party reserves the right to consult with its respective legal counsel at any time during the implementation or administration of this Agreement to assure that it has the legal authority to undertake any activity provided for in this Agreement.

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

**BLM Project Contact**

Mr. Roy Smith  
Instream Flow Coordinator  
Bureau of Land Management  
2850 Youngfield St.  
Lakewood, CO 80215  
Phone: (303) 239-3940  
FAX: (303) 239-2933  
E-Mail: r20smith@blm.gov


**Cooperator Project Contact**

Ms. Linda Bassi  
Stream and Lake Protection Section  
Colorado Water Conservation Board  
1313 Sherman St., Suite 721  
Denver, CO 80203  
Phone: (303) 866-3441, ext. 3204  
FAX: (303) 866-4474  
E-Mail: [linda.bassi@state.co.us](mailto:linda.bassi@state.co.us)


6. NON-FUND OBLIGATING DOCUMENT. Nothing in this Agreement shall obligate the parties to obligate or transfer any funds to the other party. Specific work projects or activities that involve the transfer of funds, services, or property among the parties 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 Agreement does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
7. ESTABLISHMENT OF RESPONSIBILITY. This Agreement is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity by a party against the United States, the State of Colorado, or either of its agencies, its officers, or any person.
8. AUTHORIZATION REPRESENTATIVES. By signature below, the parties certify that the individuals listed in this document are representatives of the cooperator are authorized to act in their respective areas for matters related to this Agreement.

THE PARTIES HERETO have executed this instrument.

COLORADO WATER CONSERVATION BOARD

 12-4-12  
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Jennifer Gimbel, Director DATE

U.S. DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

 11-28-12  
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Helen M. Hankins, State Director DATE