

**INTERGOVERNMENTAL AGREEMENT  
TO IMPLEMENT THE FISH AND WILDLIFE MITIGATION AND ENHANCEMENT PLAN  
FOR THE NORTHERN INTEGRATED SUPPLY PROJECT**

This intergovernmental agreement ("IGA") is entered into this 3<sup>rd</sup> day of July, 2018, by and between the **Northern Integrated Supply Project Water Activity Enterprise (NISPWAE)**, a government-owned business within the meaning of Article X, Section 20(2)(d) of the Colorado Constitution, that is organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* and owned by the Northern Colorado Water Conservancy District, and the **State of Colorado**, acting through the Department of Natural Resources, for the use and benefit of the Colorado Division of Parks and Wildlife (CPW). NISPWAE and CPW are hereinafter referred to collectively as the "IGA Parties" or individually as a "Party."

**RECITALS**

WHEREAS, C.R.S. § 37-60-122.2 declares that fish and wildlife resources are a matter of statewide concern and requires that an applicant for any water diversion, delivery, or storage facility which requires an application for a permit, license, or other approval from the United States must submit a fish and wildlife mitigation proposal to the Colorado Parks and Wildlife Commission and the Colorado Water Conservation Board; and

WHEREAS, the Northern Integrated Supply Project ("NISP") is a proposed water storage and distribution project that will supply fifteen (15) towns, municipalities, and rural domestic water providers on the Eastern Slope of the continental divide with 40,000 acre feet of new, reliable water supplies, and will consist of two new reservoirs, forebay reservoirs, and pumping plants to deliver water from the Cache La Poudre and South Platte rivers to the reservoirs; pipelines to deliver water for exchange with irrigation companies and to deliver water to water users; and improvements to existing canals that divert water from the Cache La Poudre River; and

WHEREAS, NISPWAE has applied for a Clean Water Act Section 404 Permit ("404 Permit") from the U.S. Army Corps of Engineers ("Corps") as part of federal regulatory compliance for NISP, and in conjunction with that application, the Corps is required to comply with the National Environmental Policy Act ("NEPA") by preparing an Environmental Impact Statement ("EIS"). The EIS being developed as the result of this effort, and the Record of Decision ("ROD") will be issued by the Corps regarding whether to approve the 404 Permit. If a favorable decision is made, the ROD is expected to refer to the completion of the mitigation process outlined in C.R.S. § 37-60-122.2; and the ROD will provide the Corps' conditions of approval for the 404 Permit, which the Corps will ensure are met; and

WHEREAS, NISPWAE will also be subject to environmental mitigation requirements as part of the Clean Water Act Section 404 Permit process and other permits and permissions required for NISP; and

WHEREAS, pursuant to C.R.S. § 37-60-122.2, NISPWAE worked with CPW to develop mitigation measures to address impacts to fish and wildlife resources for NISP, and NISPWAE

documented these mitigation measures in a Fish and Wildlife Mitigation and Enhancement Plan (“FWMEP”); and

WHEREAS, in addition to the above-referenced mitigation measures, NISPWAE has voluntarily agreed to additional enhancement measures, which are not otherwise required as part of federal or state permitting or approvals for NISP, to improve existing aquatic habitat in the Cache La Poudre River and wildlife habitat in the Cache La Poudre River corridor; these additional enhancement measures are also included in the FWMEP; and

WHEREAS, the Colorado Parks and Wildlife Commission recommended that the FWMEP become the official state position regarding fish and wildlife mitigation for NISP on September 7, 2017; and

WHEREAS, the Colorado Water Conservation Board recommended the FWMEP on September 20, 2017, thereby making this plan the official state position on mitigation of impacts to fish and wildlife resources; and

WHEREAS, the final version of the FWMEP referred to herein is dated October 10, 2017; and

WHEREAS, the FWMEP was developed in accordance with C.R.S. § 37-60-122.2, which statutory requirements are separate from and in addition to any requirements contained in the ROD, the 404 Permit, and the other permits and permissions for NISP;

NOW THEREFORE, the IGA Parties agree as follows:

#### AGREEMENTS AND COMMITMENTS

1. The purpose of this IGA is to implement the FWMEP dated October 10, 2017, which by this reference is incorporated herein as if fully set forth.
2. As provided in the final FWMEP submitted to the Department of Natural Resources and dated October 10, 2017, NISPWAE agrees to be contractually bound upon the signing of this IGA to implement the FWMEP as approved.
3. CPW and NISPWAE agree that compliance with the FWMEP, including the specific actions and timeline set forth therein, will constitute adequate fish and wildlife mitigation necessary to satisfy any requirements imposed by C.R.S. § 37-60-122.2 upon NISPWAE for the life of the NISP project. CPW and NISPWAE agree that the FWMEP addresses the anticipated impacts of NISP at full build-out and, in the absence of additional actions agreed to in writing, material changes to the final configuration, infrastructure or operations of NISP itself which directly and materially affect the FWMEP the agreed upon mitigation will satisfy mitigation requirements for the life of NISP.
4. It is anticipated that NISPWAE will agree to utilize an adaptive management plan to address many impacts arising from NISP as part of the ROD. This is a different concept than

established in C.R.S. § 37-60-122.2. The FWMEP outlines adaptive management processes related to three specific areas of mitigation and enhancement: a.) the U.S. 287 Big Game Movement Adaptive Management Plan, as fully set forth in Section 5.3.2.2, b.) the Poudre River Adaptive Management Program, as fully set forth in Section 6.1.1.1, and c.) the Glade Reservoir Recreation and Wildlife Adaptive Management Plan, as fully set forth in Section 6.1.3.3. The Poudre River Adaptive Management Program and Glade Reservoir Recreation and Wildlife Adaptive Management Plan are beyond requirements of C.R.S. § 37-60-122.2, thus they are included in the FWMEP as enhancement measures. The IGA Parties agree to implement these adaptive management processes in good faith and to develop means to reasonably address impacts covered by these processes, including the potential sources of funding for those mitigation actions that cannot be covered by the funding committed to these adaptive management processes by the NISPWAE as described in the FWMEP. No other mitigation or enhancement measures in the FWMEP are subject to adaptive management.

5. NISPWAE acknowledges that the FWMEP was completed prior to the issuance of the ROD, the 404 Permit, and several other permits and permissions for NISP and agrees that it is obligated to comply with such other environmental mitigation requirements contained in those permits and permissions, if such permits and permissions are accepted by NISPWAE.

6. The State of Colorado, as provided in C.R.S. § 37-60-122.2(c), shall communicate to each federal, state, or other government from which NISPWAE must obtain a permit, license, or other approval that the FWMEP constitutes the official state position on mitigation of fish and wildlife resources required of NISP.

7. CPW, having studied the potential impacts of NISP on the state's fish and wildlife resources, agrees, accepts, and commits to participate in this mitigation and enhancement plan at the level and in the manner described in this IGA.

8. As more fully set forth in Section 6.1.3.1 of the FWMEP, CPW has developed an annual fish stocking plan and will maintain and manage a cool water fishery in Glade Reservoir as follows:

a. Implementation of the fish stocking plan will require CPW to expand certain existing fish hatcheries and fish units to accommodate increased production rates and therefore, as set forth in Section 6.1.3.1 of the FWMEP, NISPWAE will provide \$3.0 million for the expansion of such existing fish hatchery and fish unit facilities. NISPWAE will also provide CPW an amount of \$50,000 per year for annual expenses related to CPW's implementation of the Glade Reservoir fish stocking plan and management of the cool water fishery in Glade Reservoir. The implementation of the fish stocking plan and timing of NISPWAE funds will be worked out in a separate agreement pursuant to Paragraph (Miscellaneous) 4, below. The Parties agree that CPW's stocking commitment shall be dependent upon NISPWAE's payment of the funds described herein.

b. The IGA Parties' commitments under this paragraph 8 will extend for a period of 30 years, subject to renewal by the IGA Parties. However, if CPW determines in the future that stocking fish in the reservoir is no longer required or beneficial, CPW and NISPWAE will enter into a separate agreement that specifies the terms and conditions for

discontinuing the fish stocking plan and discontinuing NISPWAE's financial commitments set forth in Section 6.1.3.1 of the FWMEP.

c. The IGA Parties agree that NISPWAE's \$50,000 annual commitment is not subject to escalation for ten years after the initial payment of \$50,000 ("Initial Payment"). In the 10<sup>th</sup> year following the Initial Payment, the IGA Parties will evaluate the fish stocking plan and costs set forth in the FWMEP. If the IGA Parties determine that escalation is needed to achieve the intent of the Glade Reservoir fish stocking and management plan as outlined in the FWMEP, then the IGA Parties will mutually consider and implement an appropriate escalation rate to be applied to NISPWAE's prospective annual financial commitment through amendment of this IGA.

9. As more fully set forth in Section 6.1.1.2 of the FWMEP, NISPWAE shall fund, in part or in whole, retrofits to four existing diversion points on the Poudre River with multi-objective diversion structure facilities. NISPWAE may complete some retrofits prior to receiving a final ROD in accordance with Paragraph (Miscellaneous) 2. CPW is currently developing plans to retrofit the diversion structure for the Watson Fish Hatchery ("Watson Fishway") ("Watson Fishway Project"), one of the structures identified for retrofit in the FWMEP. The Parties agree that NISPWAE can satisfy its obligation to retrofit one of the four structures through contribution to CPW for the Watson Fishway Project. The parties have agreed to a 60% design concept for the Watson Fishway that provides bypass of conveyance flows for NISPWAE. NISPWAE shall be responsible for the following: 1) payment of half the Watson Fishway Project cost, up to \$500,000; 2) payment of the full costs of designing, installing and maintaining measuring devices and automated gates needed to administer the bypass of NISPWAE conveyance flows, as agreed to in advance by the Parties; and 3) payment of all costs of any design modifications requested by NISPWAE, as agreed to by CPW. Upon signing this IGA, NISPWAE agrees funds will be available and that CPW will bill NISPWAE's portion of construction expenses quarterly as expenses are incurred by CPW. The IGA Parties agree that they will develop an implementation, operating and maintenance plan for the Watson Fishway before completion of construction of the Watson Fishway Project.

10. As more fully set forth in Sections 5.2.2.4 and 5.2.2.5 of the FWMEP, NISPWAE developed a Conveyance Refinement Concept to maintain certain flows in the Poudre River ("Conveyance Flows"). The Parties acknowledge that Colorado Senate Bill 18-170 was signed into law on April 6, 2018 and provides a mechanism for NISPWAE to pursue legal protection for Conveyance Flows. NISPWAE commits to seeking legal protection of the Conveyance Flows from diversion, exchange, or use by other water rights holders under SB 18-170.

11. In the event that management programs concerning fish and wildlife will be required by the 404 Permit, NISPWAE agrees to request and support CPW's participation in those management programs. If CPW is not permitted to participate in such program development, NISPWAE will consult with and seek input from CPW and otherwise keep CPW informed of the progress of any such program development.

12. The FWMEP and this IGA describe mitigation and enhancement commitments for the NISP configuration, infrastructure and operations as described in the FWMEP. If there are

material changes in the final configuration, infrastructure or operations of NISP, the IGA Parties agree to reopen only those portions of the FWMEP that are directly and materially affected by those changes and the IGA Parties agree to negotiate in good faith to modify the FWMEP, if necessary, to address those portions of the FWMEP accordingly.

13. NISPWAE and Colorado Division of Water Resources have developed an Administrative Protocol (attached hereto as Exhibit 1) for administration of the Peak Flow Operations Program (FWMEP section 5.2.2.6). The IGA Parties agree to administration of NISP water rights according to this Administrative Protocol.

14. The IGA Parties acknowledge and agree that the mitigation and enhancement commitments with "Cost Note" "b" in Table 11 and Table 13 of the approved FWMEP are outcome-based commitments meaning that the NISPWAE commits to meeting these obligations and that NISPWAE may seek alternative funding to implement those commitments. If the outcome-based commitments are fulfilled with substantive involvement and funding from the NISPWAE using alternative funding mechanisms, NISPWAE is not obligated to expend all or a portion of the funds identified as "Cost Note" "b" in Section 5.4 of the FWMEP.

#### MISCELLANEOUS

1. If a dispute arises between the IGA Parties relating to this IGA, the following procedure shall be followed:

- a. The IGA Parties shall hold a meeting attended by persons with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution. The meeting shall be held promptly but in no event later than thirty (30) calendar days from initial written notice of the dispute. Such meeting shall not be deemed to reduce or eliminate the obligations and liabilities of the parties under this IGA or be deemed a waiver by a Party of any remedies to which such party would otherwise be entitled, unless otherwise agreed to by the IGA Parties in writing.
- b. If, within thirty (30) days after such meeting, the IGA Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of such mediation.
- c. The IGA Parties will jointly appoint a mutually acceptable mediator. If they shall fail to do so within twenty (20) days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint, within ten (10) days of their selection, a third mediator who shall, as the sole mediator, conduct mediation for the parties.
- d. The IGA Parties agree to participate in good faith in mediation and related negotiations for a thirty (30) day period. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the IGA Parties are not

successful in resolving the dispute through mediation, then the IGA Parties shall be free to litigate the matter.

- e. In the event that a dispute arises pursuant to paragraphs 8 or 9 of this Agreement, NISPWAE's remedy, if any, shall be limited to money damages not to exceed the amount of money already provided to CPW pursuant to this Agreement.

2. With respect to NISPWAE's commitments relating to the Watson Fishway Project described in Paragraph (Agreements and Commitments) 9 above and any provisions herein that are necessary for its implementation, this IGA shall become effective upon signature of this document. With respect to all other provisions and mitigation and enhancement commitments described herein, this IGA shall become effective when NISPWAE receives an acceptable final ROD and acceptable 404 Permit for NISP. NISPWAE may implement any portion of the mitigation and enhancement measures outlined in the FWMEP before the effective date of the subject measure in cooperation and consultation with CPW. In the event that the NISPWAE elects to implement a mitigation and enhancement measure before the effective date of the subject measure, upon completion of the measure, the NISPWAE will be deemed to have satisfied its obligations under this IGA and the FWMEP to implement such measure in the same manner as if it implemented it after the effective date of the subject measure. In the event the NISPWAE Board determines that NISPWAE will not construct NISP, NISPWAE's obligations to perform these mitigation activities shall cease, and NISPWAE will not be required to pay any unpaid obligations under this IGA.

3. Nothing herein shall limit NISPWAE from prepaying all or a portion of its obligations related to this IGA.

4. Within six (6) months of an acceptable ROD and 404 Permit being issued for NISP, CPW and NISPWAE shall develop and agree to a detailed FWMEP implementation schedule that will be designed to match any mitigation implementation schedule required by the 404 Permit. Except for adaptive management measures, mitigation obligations that require physical changes to the Poudre River will be complete prior to NISPWAE diverting any Poudre River native flows into Glade Reservoir. The Parties further agree that any agreement related to NISPWAE's funding for fish stocking, described in Paragraph 8 above, shall include the following guidelines: NISPWAE shall pay the \$3.0 million to CPW by the time construction of Glade Reservoir begins, and the \$50,000 per year payment will start the first year Glade Reservoir starts filling.

5. Any and all obligations of NISPWAE under this IGA, whether financial or otherwise, shall be payable solely from the revenues, income, rents, and receipts earned by NISPWAE. Nothing herein shall be deemed to prevent NISPWAE from making any payments from any other legally available source. In no event shall NISPWAE be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this IGA or which would cause NISPWAE to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, NISPWAE shall not be required to expend any funds or impair any assets of Northern Colorado Water Conservancy District in the performance of its obligations under this IGA. The obligations of

NISPWAE under this IGA do not constitute a debt or indebtedness of Northern Colorado Water Conservancy District within the meaning of any constitutional, charter, or statutory provision or limitation, and shall not be considered or held to be a general obligation of Northern Colorado Water Conservancy District.

6. The respective financial obligations of CPW and the NISPWAE under this IGA that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. All future CPW expenditures are subject to the State of Colorado Fiscal Rules.

7. This IGA shall remain in effect for so long as all permits and approvals for NISP remain in effect, unless terminated earlier by an executed written instrument.

8. This IGA represents the complete integration of all understandings between the IGA Parties, and all prior representations and understandings, oral and written, including the FWMEP of October 10, 2017, are merged herein. Prior or contemporaneous additions, deletions, or other amendments hereto shall not have any force or effect whatsoever, unless embodied herein.

9. This IGA may be modified by the IGA Parties only by an executed written instrument. The Parties anticipate that they will implement portions of the FWMEP and this IGA through additional implementation and operating agreements, which shall be attached hereto and incorporated to this IGA by addendum.

10. Venue for any dispute resulting in litigation shall be in the District Court in and for the City and County of Denver. This IGA shall be governed by and construed under the laws of the State of Colorado.

11. All notices required to be given hereunder shall be sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to hardcopy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt. The individuals listed below are the principal representatives of the respective Parties. For the purposes of this IGA, the official representative(s) and addresses of the Parties are:

For NISPWAE:

Northern Integrated Supply Project Water Activity Enterprise,  
Northern Colorado Water Conservancy District  
220 Water Ave.  
Berthoud, CO 80513  
Attention: General Manager

For Colorado Division of Parks and Wildlife:  
Colorado Parks and Wildlife  
6060 Broadway  
Denver, CO 80216  
Attention: Aquatic Section Manager

12. The IGA Parties' rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the other Party. Any attempt at assignment, transfer, or subcontracting without such consent shall be void.

13. Unless otherwise provided herein, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the IGA Parties' respective legal representatives, successors, and assigns.

14. The captions and headings in this IGA are for convenience of reference only, and shall not be used to interpret, define, or limit the provisions of this IGA.

15. This IGA may be executed in multiple identical original counterparts, all of which shall constitute one IGA.

16. A Party shall be excused from performing its obligations under this IGA 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.

17. Nothing in this IGA shall be deemed or construed as granting or creating any property right or servitude whatsoever on any Party's water rights or facilities; nor shall this IGA be deemed or construed as creating any obligation on any Party to operate its water system or water rights in any particular manner beyond those commitments made in the FWMEP.

18. Notwithstanding anything herein to the contrary, provisions of this IGA requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Parties.

19. Enforcement of this IGA and all rights and obligations hereunder are reserved solely to the IGA Parties and not to any third party. Any services or benefits which third parties receive as a result of this IGA are incidental to the IGA, and do not create any rights for such third parties.

20. Waiver of any breach of a term, provision, or requirement of this IGA or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement.

21. No term or condition of this IGA shall be construed or interpreted as a waiver, expressed or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Constitution including TABOR, Colorado Constitution, Article X, § 20; the



Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*; or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 *et seq.*, as applicable now and hereafter amended.

22. The signatories to this IGA warrant that each has the authority to enter into this IGA on behalf of the party represented

**Northern Integrated Supply Project Water Activity  
Enterprise, NORTHERN COLORADO WATER  
CONSERVANCY DISTRICT**

By: Mike Applegate  
Mike Applegate, President

Date: 6/28/2018

**COLORADO DIVISION OF PARKS  
AND WILDLIFE**

By: Margaret Taylor-Veach  
Bob Broscheid  
For : Bob Broscheid, Director  
Colorado Parks and Wildlife

Date: 7/3/18



**COLORADO**  
Division of Water Resources  
Department of Natural Resources

May 24, 2018

Douglas M. Sinor  
Trout Raley Montano, Freeman, Sinor, &  
Thompson  
1120 Lincoln Street, Suite 1600  
Denver, Colorado 80203

RE: NISP Peak Flow Operations Protocol Approval

Dear Doug,

Through this letter, the Division of Water Resources provides an executed copy of the "Protocol for Administration of Grey Mountain Water Rights Under Poudre River Coordinated Peak Flow Operations Program Northern Integrated Supply Project" (Protocol) dated May 17, 2018. We want to expressly acknowledge the work of you and the staff at Northern Colorado Water Conservancy District (NCWCD) over the past year to cooperatively arrive at a final document.

Operation under this Protocol is intended to assist NCWCD in meeting some of the requirements of the Fish and Wildlife Mitigation and Enhancement Plan (FWMEP) for the Grey Mountain water right and support the Division of Water Resources in meeting our mandate of maximizing beneficial use of water within the priority system. To this end, we will recognize, operate and account for the Gray Mountain water rights peak flow operations consistent with and subject to the terms and limitations of the attached Protocol.

Please let us know if you have any questions.

Regards,

Kevin G. Rein, P.E.  
State Engineer

David L. Nettles, P.E.  
Division Engineer

Ec: Mark Simpson, District 3 Water Commissioner  
Laserfiche Filing (WDID 0303900)



**Protocol for Administration of Grey Mountain Water Rights Under  
Poudre River Coordinated Peak Flow Operations Program  
Northern Integrated Supply Project**

**1. Purpose**

The purpose of this Protocol is to provide a reference document for use by the State Engineer and Division Engineer for Water Division 1 (collectively “Engineers”) when administering the Grey Mountain Water Rights pursuant to their exclusive authority under § 37-92-501, C.R.S., at times when Glade Reservoir is operated for NISP in accordance with a Fish and Wildlife Mitigation and Enhancement Plan (FWMEP) proposed by the NISP Water Activity Enterprise and approved by the Colorado Parks and Wildlife Commission and the Colorado Water Conservation Board to satisfy the requirements of Colorado Revised Statute 37-60-122.2 and Section 5 of Chapter 266, Session Laws of Colorado 1987.

This Protocol describes how the Engineers will administer and account for operation of the Grey Mountain Water Rights under the applicable decrees, with consideration of the requirements for operation of Glade Reservoir under the FWMEP. This Protocol is intended only to assist the Engineers in meeting their statutory administrative duties and is not intended to, nor does it, create any right, benefit, claim, duty of obligation, implied or otherwise, enforceable at law or equity by any person. Further, if this Protocol is determined to be contrary to any applicable statutes, rules, or court rulings, the requirements of such statutes, rules, or court rulings shall control.

**2. Background**

The FWMEP includes a Peak Flow Operations Program to mitigate the impacts that NISP operations might have on fish and wildlife resources associated with reduced annual peak flows in the Poudre River resulting from NISP diversions at the Poudre Valley Canal. The Peak Flow Operations Program is designed and intended, as part of the FWMEP, to avoid and minimize the impacts of NISP operations on annual peak flows in the Poudre River, with minimal effects on NISP Firm Yield.

**3. Definitions.** The following definitions apply for purposes of this Administrative Protocol (“Protocol”). In addition, terms defined elsewhere in this Protocol shall have the meanings there provided.

- 3.1.1. Bypass:** A reduction in the amount of water diverted by NISP at the NISP Diversion Location for the specific purposes of the Peak Flow Operations Program and the FWMEP. The amount of water Bypassed shall be calculated as the difference between the Storable Inflow and the measured amount of water diverted.

- 3.1.2. Fish and Wildlife Mitigation and Enhancement Plan (FWMEP):** A Plan proposed by the NISP Water Activity Enterprise and approved by the Colorado Parks and Wildlife Commission and the Colorado Water Conservation Board for NISP, which includes the Peak Flow Operations Program, to satisfy the requirements of Colorado Revised Statute 37-60-122.2 and Section 5 of Chapter 266, Session Laws of Colorado 1987. The laws direct the Wildlife Commission (now the Parks and Wildlife Commission) and the Colorado Water Conservation Board or the Governor to determine an official State position on a wildlife mitigation plan submitted by an applicant proposing to construct, operate or maintain a water diversion, delivery or storage facility requiring federal approval.
- 3.1.3. Grey Mountain Water Rights:** Northern Water's 7/8 interest in the original Grey Mountain Dam and Reservoir water right (Case No. 80CW355), Glade Reservoir alternate place of storage (Case No. 03CW405), findings of reasonable diligence (consolidated Case Nos. 85CW206, 85CW207, 85CW208, 85CW209, 85CW210, and 89CW122; consolidated Case No. 01CW197; Case No. 11CW204) and numerous stipulations. The water rights have an appropriation date of May 2, 1980. The Grey Mountain Dam and Reservoir, and Glade Reservoir alternate place of storage, has a total decreed storage capacity of 220,000 acre-feet (Northern Water's 7/8 interest is 192,500 acre-feet). The Cache la Poudre Forebay Dam and Reservoir, and alternate place of storage Glade Forebay, have a total decreed storage capacity of 5,400 acre-feet. The total combined decreed rate of diversion for all decreed places of storage and points of diversion is 3,000 cubic feet per second (cfs).
- 3.1.4. Grey Mountain Diversion Location:** The existing location of the Poudre Valley Canal diversion structure on the Poudre River that will be used to divert water under the Grey Mountain Water Rights to Glade Reservoir and the Glade Reservoir Forebay. The Grey Mountain Water Rights describe the original point of diversion at the Grey Mountain Dam and Reservoir location, and alternate points of diversion at the Poudre Valley Canal Diversion, and the North Poudre Supply Canal Diversion Works (also known as the Munroe Canal). Through the FWMEP, NISP has stated that it will not divert the Grey Mountain Water Rights using the North Poudre Supply Canal.
- 3.1.5. NISP Firm Yield:** The ability to deliver 40,000 acre-feet of water annually to the NISP Participants under design drought conditions (1950-2005 historical hydrology).
- 3.1.6. Northern Integrated Supply Project (NISP):** A proposed water storage and distribution project that will supply 15 Northern Front Range water providers (Participants) with 40,000 acre feet of new, reliable water supplies. NISP would consist of two new reservoirs (including but not limited to Glade Reservoir); forebay reservoirs (including but not limited to the Glade Reservoir Forebay) and pumping plants to deliver water from the Cache la Poudre (Poudre) and South Platte rivers to the reservoirs; pipelines to deliver water for exchange with irrigation companies and to deliver water to water users; and improvements to existing canals that divert water from the Poudre River near the canyon mouth west of Fort Collins.

- 3.1.7. The NISP Water Activity Enterprise (NISPWAE):** NISPWAE , is a business owned by Northern Colorado Water Conservancy District (Northern Water) in accordance with Article X § 20 of the Colorado Constitution and Colorado statutes, which will manage the Northern Integrated Supply Project on behalf of the NISP participants.
- 3.1.8. Paper Fill:** Consistent with the Reservoir Guidelines , an accounting mechanism utilized by the Engineers for purposes of administration whereby water that is determined to be storable pursuant to a decreed water storage priority is charged against a storage water right either because the reservoir owner elected not to physically divert or store water under that right or a junior upstream reservoir diverted that water out-of-priority.
- 3.1.9. Peak Flow Operational Period:** As described in the FWMEP, is up to a 72-hour consecutive period, and any additional time, which additional time shall be kept to the minimum amount reasonably possible, required to ramp or transition diversions so as to not exceed the maximum rates of change described in the FWMEP within which NISPWAE would Bypass Storable Inflows for purposes of the Program. NISPWAE desires to time operations under the Program with actual annual peak flow occurrences at the Peak Flow Target Location to the extent possible.
- 3.1.10. Peak Flow Operations Program (Program):** As described more fully in the FWMEP, a program whereby Bypass operations may occur for up to 72 hours under certain conditions, to meet the Target Peak Flow Rate, as specified in the FWMEP. The Program will be based upon Peak Flow Operational Tiers, which are described in the FWMEP.
- 3.1.11. Reservoir Guidelines:** The Colorado Division of Water Resources General Administration Guidelines for Reservoirs, dated October 2011 and Amended February 2016.
- 3.1.12. Storable Inflow:** The amount of water that is determined by the Engineers for purposes of administration to be divertible in Glade Reservoir and the Glade Reservoir Forebay under the Grey Mountain Water Rights decrees, without consideration of the purpose and requirements of the Program and the FWMEP.
- 3.1.13. Target Peak Flow Flowrate:** As described in the FWMEP, the rate of flow in the Cache la Poudre River that is intended to be met when possible, during the Peak Flow Operational Period, by operation of Bypasses at the NISP Diversion Location, not by releases of water from Glade Reservoir or the Glade Reservoir Forebay.

#### **4. Administrative Protocol**

##### **4.1. Determinations and Notification Prior to the Peak Flow Operational Period**

- 4.1.1.** Within two weeks from the first day of the Seasonal Year, NISPWAE shall use the definitions described in this Protocol to define the initial applicable Peak Flow Operational Tier. If it is unclear which operational tier will be applicable to the current year, NISPWAE

shall define all potential Peak Flow Operational Tiers. NISPWAE shall submit an Initial Operating Report describing current conditions and its determination of the Peak Flow Operational Tier(s) to the Adaptive Management Committee and the Division Engineer.

- 4.1.2. No later than May 15, NISPWAE shall determine the Peak Flow Operational Tier, proposed operations for the selected Tier, and the estimated dates for the Peak Flow Operational Period in accordance with the FWMEP, and shall submit an Interim Operating Report documenting these decisions and proposed operations to the Division Engineer.
- 4.1.3. If at any time hydrologic or other conditions warrant modification of the Peak Flow Operational Tier or proposed operations for the selected Tier as provided in the FWMEP, NISPWAE shall submit a Modified Interim Operating Report documenting these changes and proposed operations to the Division Engineer.
- 4.1.4. NISPWAE shall notify the Division Engineer and Poudre River Water Commissioner, at least 24 hours in advance, the dates and times in that the Peak Flow Operational Period shall begin, and the dates and times during the Peak Flow Operational Period in which NISPWAE will Bypass Storable Inflows for purposes of the Program, and the date and time when Bypass operations for purpose of the Program will cease.

#### **4.2. Measurement**

- 4.2.1. NISPWAE will maintain streamflow gaging equipment that record and store data at a minimum 15-minute interval to be used for accounting purposes described herein. NISPWAE shall provide real-time monitoring capabilities on this equipment that can be viewed by the Division Engineer and the public.
- 4.2.2. The Target Peak Flow will be measured at the current location of the Cache la Poudre at Canyon Mouth near Fort Collins (CLAFTCCO) streamflow gage as currently administered by the Colorado Division of Water Resources, using gaging equipment operated and maintained by the Colorado Division of Water Resources, U.S. Geological Survey, or Northern Water.
- 4.2.3. The rate of Storable Inflow Bypassed at the NISP Diversion will be determined by the Division Engineer in accordance with the Reservoir Guidelines and based on streamflow data recorded at the Canyon Mouth gage location and information available to the Division Engineer regarding operation of other water rights.
- 4.2.4. During operations of the Program, NISPWAE shall coordinate with the Division Engineer and Poudre River Water Commissioner to maintain hourly accounting showing Storable Inflows, the amount of water diverted by NISP, the amount of Storable Inflows Bypassed for purposes of the Program, and streamflow at the Target Peak Flow Location. NISPWAE shall provide this accounting to the Division Engineer and Poudre River Water

Commissioner within 7 days following the completion of the Program through a Final Operating Report.

**4.3. Administration and Accounting for one fill and paper fill of the Grey Mountain Water Rights**

- 4.3.1. Water storage accounting year.** The water storage year, for purposes of defining the one fill and accounting, for the Grey Mountain Water Rights and the Glade Reservoir fill accounting shall begin on May 1.
- 4.3.2. Diversions to alleviate flooding.** If during any time when Storable Inflow is being Bypassed at the Grey Mountain Diversion Location, NISPWAE or the Division Engineer receives a request from any governmental or emergency agency to divert water at the Grey Mountain Diversion Location to assist in alleviating flooding conditions that have the ability to or are actively damaging life or property, and NISPWAE consents and water can be safely and legally diverted at the NISP Diversion Location, Bypass operations under the Program may cease.
- 4.3.3. Exercise of other water rights.** During the Peak Flow Operational Period, the Division Engineer and Poudre River Water Commissioner shall not prevent other water users from exercising decreed water rights or from diverting unappropriated flows.
- 4.3.4. One fill.** By virtue of its 7/8<sup>th</sup> ownership interest in the Grey Mountain Water Rights and the Grey Mountain Water Rights decrees, Northern Water is entitled to one annual fill of Glade Reservoir in combination with the Glade Reservoir Forebay, of 192,500 acre-feet. The Glade Reservoir Forebay may be filled and refilled without limitation, subject to the aggregate and cumulative annual fill limit described above.
- 4.3.5. Paper fill.** The Grey Mountain Water Rights will be paper filled—i.e., the Engineers will count Storable Inflow that is not diverted to storage by NISPWAE against the aggregate one fill volume of 192,500 acre-feet for Glade Reservoir and the Glade Reservoir Forebay at times when Storable Inflow is not diverted to storage, except as provided in paragraph 4.3.6 below.
- 4.3.6. Accounting for Bypassed water.** The Engineers will not count Bypassed water against Northern Water's aggregate one fill volume of 192,500 acre-feet for Glade Reservoir and the Glade Reservoir Forebay during the Peak Flow Operational Period for purposes of the Program, or when Storable Inflow is not diverted for other legitimate reasons consistent with the Reservoir Guidelines as determined by the Engineers. As provided in the Reservoir Guidelines, the Engineers may use discretion to not impose a paper fill for accounting and administrative purposes during times when conditions do not allow storage of water for a variety of reasons, including when necessary to accommodate other necessary activities.