

**MEMORANDUM OF UNDERSTANDING
BETWEEN
STATE OF COLORADO
DEPARTMENT OF NATURAL RESOURCES
AND
COLORADO WATER CONSERVATION BOARD
AND
UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT**

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the State of Colorado Department of Natural Resources, hereinafter referred to as the DNR, and the Water Conservation Board, hereinafter referred to as CWCB, and the United States Department of Interior, Bureau of Land Management, hereinafter referred to as the BLM.

A. PURPOSE:

To formalize framework for the DNR, the CWCB and the BLM, to work together in a cooperative manner on issues regarding the management of water and water uses on BLM lands in Colorado.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The allocation and management of water plays a crucial role in the vitality of Colorado's economy and way of life. Water dependent wildlife, fish, scenic, aesthetic, ecological, agricultural, municipal, industrial and recreational values of BLM 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 BLM provides land, access and rights-of-way for numerous water supply and transport facilities in Colorado that allow for the exercise of water rights under the prior appropriation system.

Federal and state interests, in the management of water resources on BLM lands require coordination and cooperation between the DNR, the CWCB and the BLM. There are numerous federal and state laws pertaining to the management of land and water resources, and collaborative efforts consistent with the state and federal law will lead to the 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, to water resources, and to federal land than interaction through other means.

The BLM recognizes and respects the authority of the state to allocate water available for appropriation and respects valid water rights that are granted, exercised and managed in accordance with state law. The state recognizes and respects the authority of the BLM to approve and manage rights-of-way for water infrastructure located on BLM lands and also recognizes water rights adjudicated to the BLM. The BLM will seek to administer rights-of-way for water infrastructure on BLM lands to prevent impacts to the exercise of water rights while still meeting the requirements of federal laws and regulations.

In cases where federal laws and regulations require the BLM to consider new management prescriptions for existing structures in a way that could impact the exercise of water rights, the DNR, the CWCB and the BLM agree to explore innovative ways to assure continued operation of the water use facilities and undiminished historic use of water. For new water facilities on BLM lands, the BLM will seek to engage water users early in the permitting process to jointly develop terms and conditions that will meet and protect the water user's water rights and objectives while still meeting the requirements of federal laws and regulations.

C. THE DNR, THE CWCB AND THE BLM DO HEREBY AGREE:

1. To respect both federal and state laws and regulations. The DNR's responsibilities include developing and implementing state water policy. The CWCB is responsible for water policy and planning and the administration of the State's Instream Flow and Natural Lake Level Program, and has the exclusive authority to hold instream flow water rights under Colorado law. The BLM is responsible for managing water resources and water-dependent wildlife habitat on BLM lands, including habitat utilized by species protected under the Endangered Species Act. The DNR, the CWCB and the BLM will seek to integrate federal and state responsibilities into each agency's respective and mutual decision-making processes under this MOU.
2. To: (a) explore innovative ways to assure continued operation of water use facilities on BLM lands and undiminished historic use of water while protecting aquatic resources and water-dependent wildlife habitat; and (b) seek opportunities to further develop the collaborative relationship between the agencies. In this spirit, the parties will continue to commit staff and resources to this effort, with a focus on flexibility and opportunity.
3. That conflicts are best avoided by careful advance planning and a spirit of cooperation. The parties agree that when conflicts arise, they should, to the greatest extent possible, 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 BLM's Resource Management Plans (RMPs) are a critical tool for long term planning and decision-making. The parties agree to continue to work together during RMP revision and implementation to identify and address issues in advance that could be significant factors in the authorization and management of water supply facilities on BLM lands. The parties will recognize and plan for the continued exercise of non-federal water rights and non-federal water facilities as a valuable resource benefit of BLM lands, and will cooperate on analysis and planning for new water supply facilities that may be needed to

meet future municipal, industrial and agricultural water demands. In addition, the parties will cooperate on analysis and planning to maintain aquatic habitat conditions and improve degraded aquatic habitat conditions where they exist.

5. Many of the BLM's responsibilities under the Wild and Scenic Rivers Act are discharged during the RMP process, including identification of eligible and suitable stream segments. The parties agree to explore innovative ways to address the BLM's review of river segments under the Wild and Scenic Rivers Act and to protect Outstandingly Remarkable Values (ORVs) on those segments with the goal of achieving adequate protection of the ORVs without taking or diminishing existing water rights or historical water use.

6. That re-authorization of existing water facilities on BLM 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, as appropriate.

7. 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 and instream flows on BLM lands:

a. The DNR, the CWCB and the BLM will continue to seek innovative ways to achieve instream flow protection instream reaches that support exceptional aquatic and riparian values and instream reaches significantly affected by existing water uses. These stream reaches include reaches that provide habitat for sensitive aquatic and riparian species, reaches located close to state boundaries, reaches that flow only seasonally, reaches flowing through a mix of public and private lands, and reaches located below significant diversions and significant return flow locations. These innovative measures will be consistent with state and federal laws.

b. Where the BLM 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 BLM to identify monitoring and stream gaging needs on stream reaches deemed of special importance to the BLM, and the parties will jointly identify funding sources for additional stream monitoring and stream gages on such stream reaches as necessary or appropriate. Additionally, the DNR, the CWCB and the BLM will work together concerning the operation and maintenance of stream gages on stream reaches deemed of special importance to the BLM by providing funding or in-kind services where possible.

d. To the extent that funding and personnel allow, the BLM will work together with the CWCB and the DNR to determine if the flow amounts of instream flow water rights held by the CWCB are adequate to satisfy the instream flow needs for BLM purposes. If the parties determine the flows are inadequate for BLM purposes, the parties agree to explore mechanisms to assure adequate protection for such purposes consistent with state

and federal laws without taking or diminishing existing water rights or historical water use.

e. 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 on streams that flow through BLM lands.

f. The BLM and the CWCB will work together to identify high priority stream reaches for protection. These identified reaches will be used to facilitate discussions with water users to identify innovative protective measures that will protect water-dependent values while protecting the exercise of existing water rights.

g. Where appropriate, the CWCB and the BLM will work together when water users on BLM lands wish to donate, sell or lease water to the CWCB as a means of providing for instream flow protection.

8. That when the BLM receives land use authorization applications for significant new stream diversions on BLM lands, the BLM will notify the CWCB as early as possible to create a coordinated approach on instream flow protection.

9. That when the CWCB is considering funding a water development project that would be located upon BLM lands or would significantly affect streams crossing BLM lands, the CWCB will notify the BLM as early as possible to coordinate land use, permitting and instream flow issues.

10. To share information and data to further the understanding of water needs and resources on BLM lands, and to protect these resources consistent with state and federal law.

11. To maintain, protect and restore watersheds as appropriate through cooperative adaptive management, which is a systematic process for continually improving management policies and practices by learning from the outcomes of previously employed policies and practices.

D. 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 MOU takes effect upon the signature of the DNR, the CWCB and the BLM, and shall remain in effect for five years from the date of execution. This MOU may be extended or amended upon written request of either the DNR, the CWCB or the BLM and the subsequent written concurrence of the

other(s). Either the DNR, the CWCB or the BLM may terminate this MOU with a 60-day written notice to the other(s).

4. RESPONSIBILITIES AND LEGAL AUTHORITIES OF PARTIES. The BLM, the DNR 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 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. 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) 239-3808
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

BLM Administrative Contact

Ms. Tammy Strahan, Secretary
Bureau of Land Management
2850 Youngfield St.
Lake wood, CO 80215
Phone: (303) 239-3733
FAX: (303) 239-3808
E-Mail: tstrahan@blm.gov

Cooperative Administrative Contact

Ms. Suzy Williams
Program Assistant
Executive Director's Office
DNR
1313 Sherman St., Suite 718
Denver, CO 80203
Phone: (303) 866-3311, ext. 8670
FAX: (303) 866-2115
E-Mail: suzy.willams@state.co.us

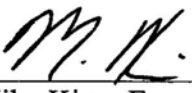
6. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOU shall obligate the parties to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the parties will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU 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 MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable 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 MOU.

THE PARTIES HERETO have executed this instrument.

COLORADO DEPARTMENT
OF NATURAL RESOURCES

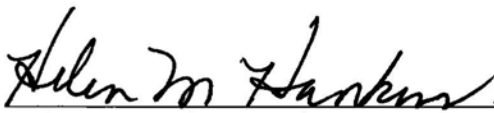


Mike King, Executive Director 12/21/11
DATE



Jennifer Gimbel, Division Director 12-21-11
DATE

U.S. DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT



Helen M. Hankins, State Director 12-16-11
DATE