



STATE OF  
COLORADO

Reilley - DNR, Robin <robin.reilley@state.co.us>

---

## Section 7 Consultation

1 message

---

**Reilley - DNR, Robin** <robin.reilley@state.co.us>

Thu, Nov 10, 2022 at 8:47 AM

To: grandjunctiones@fws.gov, Robin Reilley - DNR <robin.reilley@state.co.us>

Good Morning,

Please find DRMS's request for a Section 7 consultation regarding Trapper Mine Inc PR11 permitting request.

I'm available to answer any question you may have.

Thank you.

Robin Reilley, M.S. GISP  
Environmental Protection Specialist II



**COLORADO**  
Division of Reclamation,  
Mining and Safety  
Department of Natural Resources

P 303.866.3567 ext 8105 |

F 303.832.8106

Physical Address: 1313 Sherman Street St., Suite 215, Denver, CO 80203

Mailing Address: DRMS Room 215, 1001 E 62nd Ave, Denver, CO 80216

[robin.reilley@state.co.us](mailto:robin.reilley@state.co.us) | <http://mining.state.co.us>

---

### 3 attachments



**Section7Consult\_req\_TrapperPR11.pdf**  
234K



**Section7\_Consult\_PR6\_2009.pdf**  
336K



**USFWS\_BioOp\_April2013.pdf**  
2491K



9 November 2022

Assistant State Supervisor  
U.S. Fish and Wildlife Service  
Ecological Services  
445 W. Gunnison Ave, Suite 240  
Grand Junction, CO 81501-5711

**Re: Trapper Mine Inc. (Permit No. C1981010)  
Permit Renewal (PR11), and Section 7 Consultation**

Dear Sir or Madam:

The Division of Reclamation, Mining and Safety (DRMS), is reviewing an application (PR11), to revise an existing permit to conduct coal mining operations at Trapper Mine Inc.

The applicant, Trapper Mine Inc, proposes a 5-Year Mine Plan Update, comprising revised pit disturbance, reclamation, mining and a new bond calculation for permit term 2023-2027. The permitting action proposes and increase in the permit area and in affected area. The applicant is proposing additional surface disturbance outside of the area currently approved for disturbance.

The surface coal mining operation is on land located approximately 6 miles Southwest of Craig, Colorado. The relevant tracts of land are shown on the Castor Gulch USGS 7.5 minute Quadrangle map(s).

DRMS made a completeness determination on 26 October 2022. The Office of Surface Mining (OSMRE), has in the past requested the Section 7 consultation. As OSMRE no longer obtains the consultation, DRMS now makes this request.

The most recent Section 7 consultations in accordance with the Endangered Species Act were conducted for this mine site in 2009 and in 2013. These documents are attached for your review. Additional documents relevant to the PR11 Permitting action comprise:

Map 48B

Revision pages 2-122r

And permitting action RN8:

Section 2 page 2-121 and page 2-141 through 2-142.

DRMS is requesting your opinion regarding the need for another Section 7 consultation for the PR11 permit renewal. The applicant is required to publish notice in the *CO Mountain News Media - Craig Daily Press* that this permit revision application has been deemed complete. The



revision application, as well as all other permit documents, can be viewed at:

<https://dnrweblink.state.co.us/drms/search.aspx>

by searching C1981010 in the "*Permit No*" field. A user guide is available to help first time users of the imaged document system and can be viewed at:

[https://drive.google.com/file/d/118OUdf\\_Mpjo3kxIHkP5hMH-w7MeBtxX7/view](https://drive.google.com/file/d/118OUdf_Mpjo3kxIHkP5hMH-w7MeBtxX7/view)

Please respond to this letter at by the close of the public comment period, 23 December 2022 by sending me a letter via email to: [Robin.reilley@state.co.us](mailto:Robin.reilley@state.co.us) and by mail to:

DRMS Room 215  
1001 E 62nd Ave  
Denver, CO 80216

If you have any questions or comments, please do not hesitate to contact me via email or phone at: 303.866.3767 ext 8105.

Sincerely

A handwritten signature in blue ink that reads "Robin Reilley".

Robin Reilley, M.S. GISP  
Environmental Protection Specialist II  
[Robin.reilley@state.co.us](mailto:Robin.reilley@state.co.us)



# United States Department of the Interior

OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
P. O. Box 46667  
Denver, Colorado 80201-6667

IN REPLY REFER TO:

CO-0013

June 15, 2009

**RECEIVED**

**JUN 17 2009**

Division of Reclamation,  
Mining and Safety

Mr. Al Pfister - Assistant Field Supervisor  
U.S. Fish & Wildlife Service  
Ecological Services  
Western Colorado Office  
764 Horizon Drive, Building B  
Grand Junction, Colorado 81506-3946

RE: Section 7 Consultation, Trapper Mining Inc. "Trapper" mine, Permit C-1981-010  
Proposed Trapper Mine Plan for 5 Year Permit Term 2008-2012, PR-06

Dear Mr. Pfister:

The Office of Surface Mining Reclamation and Enforcement (OSM) Western Region is processing a Mining Plan Modification for the above subject in conjunction with a permitting action to be taken by the Colorado Division of Reclamation, Mining and Safety.

The Trapper surface coal mine is located in Moffat County, Colorado, approximately six (6) miles south of the town of Craig, Colorado on State of Colorado, and private lands. The Trapper mine extends across the northern slope of the Williams Fork Mountains between elevations of 6,500 to 7,800 feet above sea level. The crest of the Williams Fork Mountains forms a ridge running east-west at elevations between 7,400 to 7,800 feet above sea level. The mining operations use a combination of dragline, truck/loader, and limited highwall miner mining methods. The average production rate is approximately 2.3 million tons per year from eight coal seams of the Williams Fork Formation but could reach a maximum production rate of 2.6 million tons per year.

The Yampa River flows generally east to west a short distance from the permit area and the Williams Fork River skirts the south side of the permit area and flows into the Yampa River approximately one mile west of the permit area. Within the permit area, on north facing slopes, include portions of the Buzzard, Coyote, No Name, Johnson, Pyeatte and Flume flow generally south to north primarily in response to snowmelt or heavy rains and all discharge eventually into the Yampa River. Drainages within the southern portion of the permit area include portions of Ute, Castor, Deer, Elk, and Horse Gulches flow generally southward into the Williams Fork River.

The mountain shrub community within the permit area gradually thins in term of density and cover from east to west giving way to a community of big sagebrush (*Artemisia tridentata*) and grasses to the western side of the permit area. Descending northward from the ridge of the

**TAKE PRIDE  
IN AMERICA** 

Williams Fork Mountains at elevations above 7,200 feet Gamble's oak (*Quercus gambelii*) dominates the mountain shrub community and serviceberry (*Amelanchier alnifolia*) and chokecherry (*Prunus virginiana*) are less abundant. Snowberry (*Symphoricarpos oreophilus*) is the most prominent understory component with occasional big sagebrush (*Artemisia tridentata*), rubber rabbitbrush (*Ericameria nauseosa*) or bitterbrush (*Purshia tridentata*). Gamble's oak becomes less dominate at lower elevations giving way to sagebrush, serviceberry, and chokecherry and only dominates east facing slopes. At the lowest elevations, serviceberry and chokecherry give way to a community dominated by sagebrush, rabbitbrush and grasses.

Specifically, PR-06 proposes to disturb an additional 312 acres within the existing 10,382.3 acre permit area to recover coal from portions of Federal leases C-07519 and C-079641 affected by a landslide by surface mining methods all or part of;

Township 5 North, Range 90 West 6<sup>th</sup> P.M.

Sections 5 and 6 portions thereof;

Township 6 North, Range 90 West 6<sup>th</sup> P.M.

Sections 31 and 32 portions thereof.

The above-mentioned tracts of land are also shown on USGS 7.5 minute quadrangle map of Castor Gulch.

### **Black-footed Ferret**

The black-footed ferret, (*Mustela nigripes*), is a fifteen to eighteen inch long, weasel-like with buff coloration, black feet, tail tip, and eye mask, with a blunt, light colored nose. The species occupies grassland plains in close association with prairie dog colonies at elevations of less than 10,500 feet above mean sea level. The Black-footed ferret preys on prairie dogs primarily and uses their burrows for shelter and denning.

Wildlife surveys of the Trapper mine permit area found no prairie dog (*Cynomys sp*) colonies on or adjacent to the permit area. Due to a lack of suitable habitat OSM has determined that the PR-06 will "not affect" the continued existence of the black-footed ferret.

### **Canada lynx**

The Canada lynx (*Lynx Canadensis*), is a medium-sized cat with long legs, well furred paws, long tufts on the ears, and a short black tipped tail. Adult males average 22 pounds and thirty-three inches in length head to tail. Adult females average nineteen pounds and measure thirty-two inches in length. Suitable habitat includes primary habitat of coniferous forests of spruce and fir or lodgepole pine, and secondary habitat of aspen or Douglas-fir mixed with the primary habitat at elevations between 8,000 and 11,500 feet. Lynx also periodically traverse other forested and non-forested habitats including lower elevation woodlands and shrublands.

Suitable or potentially suitable habitat that would support lynx, based on existing vegetation, does not exist on or adjacent to the permit area. Due to a lack of suitable habitat, OSM has determined that the PR-06 will “not affect” the continued existence of the Canada lynx.

### **Mexican spotted Owl**

The Mexican spotted owl (*Strix occidentalis lucida*), is medium sized with dark eyes and no ear tufts, brownish in color and heavily spotted with white or beige. This species occupies habitat ranging from mountains with dense, multi-storied forests with moderately closed canopies, to canyon systems with little or no tree cover ranging from 4,900 to 9,000 feet above mean sea level.

Suitable or potentially suitable habitat that would support a Mexican spotted Owl population based on existing vegetation does not exist on or adjacent to the permit area. Due to a lack of suitable habitat, OSM has determined that the PR-06 will “not affect” the continued existence of the Mexican spotted owl.

### **Ute ladies'-tresses (Yampa River floodplain)**

Ute ladies'-tresses (*Spiranthes diluvialis*) is a perennial terrestrial orchid with stems 8 to 20 inches tall arising from tuberously thickened roots. Its narrow leaves are approximately 11 inches long at the base of the stem and become reduced in size going up the stem. The flowers consist of 3 to 15 small white or ivory colored flowers clustered into a spike arrangement at the top of the stem. Flowering occurs from late July to September. The species can remain dormant without above ground growth for at least a year. The species occurs primarily on moist, subirrigated or seasonally flooded soils in valley bottoms, floodplains bordering springs, lakes, rivers, or perennial streams where vegetation is relatively open at elevations between 1,780 to 6,800 feet.

Suitable or potentially suitable habitat that would support Ute ladies'-tresses does not exist on or adjacent to the permit area. Due to a lack of suitable habitat, OSM has determined that the PR-06 will “not affect” the continued existence of the Ute ladies'-tresses.

### **Colorado pikeminnow**

The Colorado pikeminnow (*Ptychocheilus lucius*) is a torpedo-shaped fish with an olive-green and gold back, silver sides and white belly. The Colorado pikeminnow thrives in swift flowing muddy rivers with quiet, warm backwaters and are primarily piscivorous, but smaller individuals also eat insects and other invertebrates. These fish spawn between late June and early September and when they are 5 to 6 years old and at least 16 inches long. Spawning occurs over riffle areas with gravel or cobble substrate. The eggs are randomly splayed onto the bottom, and usually hatch in less than one week.

### **razorback sucker**

The razorback sucker (*Xyrauchen texanus*) is brownish-green with a yellow to white-colored belly and has an abrupt, bony hump on its back shaped like an upside-down boat keel. Razorback suckers are found in deep, clear to turbid waters of large rivers and some reservoirs over mud, sand or gravel and like most suckers feeds on both plant and animal matter. Razorback suckers can spawn as early as age 3 or 4, when they are 14 or more inches long. Breeding males turn black up to the lateral line, with brilliant orange extending across the belly. Depending on water temperature, spawning can take place as early as November or as late as June. In the upper Colorado River basin, razorbacks typically spawn between mid-April and mid-June.

### **bonytail**

The bonytail (*Gila elegans*) is a member of the minnow family and has large fins and a streamlined body that typically is very thin in front of the tail with a slight hump behind the head. They are gray or olive-colored back, silver sides and a white belly. The bonytail typically lives in large, fast-flowing waterways of the Colorado River system. Adults feed on terrestrial insects, zooplankton, algae and plant debris. Young feed mainly on aquatic insects. They are capable of spawning at 5 to 7 years of age. During breeding, males turn red-orange on the belly and paired fins. No reproducing populations are known in the wild.

### **humpback chub**

The humpback chub (*Gila cypha*) is member of the minnow family that is olive-colored back, silver sides, a white belly, small eyes and a long snout that overhangs its jaw. The pronounced hump behind its head gives the humpback chub a striking, unusual appearance. The humpback prefers deep, fast-moving, turbid waters often associated with large boulders and steep cliffs feeding predominately on small aquatic insects, diatoms and filamentous algae. These fish spawn as young as 2-3 years and at lengths as small as 5 inches. Their spawning season is between March and July. During breeding, males develop red tinges on the venter and cheeks.

Candidates

### **Yellow-billed cuckoo**

The Yellow-billed cuckoo, (*Coccyzus americanus*), is a medium sized bird with a slender, long-tailed profile, slightly down-curved bill, which is blue-black with yellow on the lower half of the bill. Plumage is grayish-brown above and white below, with rufous primary flight feathers. This species occupies tall riparian habitat consisting of cottonwood over story and an under story of dense willow or tamarisk at elevations of less than 6,500 feet above sea level.

Suitable or potentially suitable habitat that would support a Yellow-billed cuckoo population based on existing vegetation, does not exist on or adjacent to the permit area. Due to a lack of suitable habitat, OSM has determined that the PR-06 will “not affect” the continued existence of the Yellow-billed cuckoo.

## Previous Consultations

The USF&WS has previously determined that water depletions in the Upper Colorado River System are a major source of impact to the endangered fish species. Continued water withdrawals have restricted the ability of the Colorado River system to produce the flow conditions required by the various life stages of these fish.

In a letter dated August 28, 1995, (E-6-RO-95-F-001-GJ73) USF&WS concurred with OSM's August 8, 1995 "not likely to jeopardize" determination for the Colorado pikeminnow, (*Ptychocheilus lucius*), boneytail (*Gila elegans*), and humpback chub (*Gila cypha*) due to a 7.59 ac/ft water depletion and waived the depletion fee.

OSM was unable to locate any further consultations addressing water depletions from the Colorado River system for the trapper mine. In response to OSM's request, Trapper Mining Inc. updated and revised its water depletion estimate. Based upon the information submitted to OSM, Trapper Mining Inc. estimates that 190.32 ac/ft are lost as a result of evaporative losses from existing and future sediment ponds, stock watering ponds and dust suppression activities. This 190.32 ac/ft loss however is offset by a 95.52 ac/ft augmentation from deep well pumping and pit dewatering from noncontributing aquifers below the Yampa River. Therefore, Trapper Mining Inc.'s net water depletion for the Trapper mine is 94.8 ac/ft per year.

## Determinations of Effect

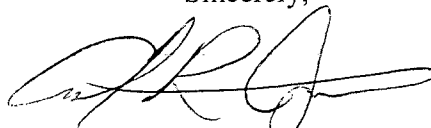
Based on the above information, OSM has determined that mining and reclamation operations associated with PR-06 at Trapper Mining Inc.'s Trapper mine "may affect / likely to adversely affect" the continued existence of the Colorado pikeminnow, humpback chub, boneytail, and razorback sucker. Therefore, OSM is requesting the initiation of formal Section 7 consultation for the net annual water depletion of 94.8 ac/ft.

Based on the above information, OSM has determined that mining and reclamation operations associated with PR-06 at Trapper Mining Inc.'s Trapper mine will have "no effect" on the black-footed ferret, Canada lynx, Mexican spotted owl, and Ute ladies'-tresses.

It is also OSM's determination that current mining and reclamation activities are not likely to jeopardize the Yellow-billed cuckoo. OSM understands that, should these species be listed in the future, the Regulatory Authority would need to reinstate consultation with your office.

If you have any questions regarding this formal consultation, please give me a call at (303) 293-5038.

Sincerely,



Carl R. Johnston

Natural Resource Specialist

cc: CO-DRMS





# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
764 Horizon Drive, Building B  
Grand Junction, Colorado 81506-3946



IN REPLY REFER TO:  
ES/GJ-6-CO-04-F-012-YP041  
TAILS 06E24100-2013-F-0098

13-04-08-18

April 5, 2013

### Memorandum

To: Environmental Protection Specialist, Office of Surface Mining, Reclamation and Enforcement, Denver, Colorado

From: Western Colorado Supervisor, Fish and Wildlife Service, Ecological Services, Grand Junction, Colorado *Russ Klatt*

Subject: Trapper Mine Permit Renewal Application No. 6 (RN-6)

This responds to your February 28, 2013, request for formal consultation under section 7 of the Endangered Species Act of 1973 (ESA), as amended, and additional information you provided via email on April 3, 2013. Your request is for the Trapper Mine permit renewal No. 6 (RN-6) located near Craig Colorado. The subject project will cause an average annual depletion of 160.10 acre-feet/year to the Yampa River, which may affect the endangered Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), humpback chub (*Gila cypha*), bonytail (*Gila elegans*), and their designated critical habitat.

A Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin was initiated on January 22, 1988. The Recovery Program was intended to be the reasonable and prudent alternative to avoid jeopardy to the endangered fishes from impacts of water depletions to the Upper Colorado River Basin. In order to further define and clarify the process in the Recovery Program, a section 7 agreement was implemented on October 15, 1993, by the Recovery Program participants. Incorporated into this agreement is a Recovery Implementation Program Recovery Action Plan (RIPRAP) which identifies actions currently believed to be required to recover the endangered fishes in the most expeditious manner.

On January 10, 2005, the Fish and Wildlife Service (Service) issued the final Programmatic Biological Opinion (PBO) on the *Management Plan for Endangered Fishes in the Yampa River Basin* (this document is available for viewing at the following internet address: <http://www.coloradoriverrecovery.org/documents-publications/section-7-consultation/yampa-river-pbo.html>). The Service has determined that projects that fit under the umbrella of the Yampa River PBO would avoid the likelihood of jeopardy and/or adverse modification of critical habitat for depletion impacts to the Yampa River basin. The Service has determined that if the

subject project meets the following criteria, then it fits under the umbrella of the Yampa River PBO.

1. The project depletes water from the Yampa River basin.
2. The applicant signs the attached Recovery Agreement and returns it to the Service.
3. The subject project will deplete 160.10 acre-feet of water. In order to rely on the Recovery Program to offset the subject depletions, the project sponsors are to make a one-time monetary contribution for water depletions greater than 100 acre-feet to help fund their share of the costs of recovery actions. The one-time payment is calculated by multiplying the project's average annual new depletion (160.10 acre-feet) by the water users share of Recovery Program costs (the charge) in effect at the time payment is made. For Fiscal Year 2013 (October 1, 2012, to September 30, 2013), the charge is \$19.82 per acre-foot for the average annual depletion which equals a total contribution of \$3,173.18 for this project's share of the Recovery Program costs. This amount will be adjusted annually for inflation on October 1 of each year based on the Consumer Price Index. Total payment, will be provided to the Service's designated agent, the National Fish and Wildlife Foundation (Foundation), at the time of issuance of the Federal approvals from the agency. The payment will be included by the agency as a permit stipulation. The funds will be used for acquisition of water rights (or directly-related activities) to meet the instream flow needs of the endangered fishes; or to support other recovery activities for the endangered fishes described in the RIPRAP. All payments should be made to the Foundation.

National Fish and Wildlife Foundation  
Attn: Donna McNamara, Finance Department  
1133 15th Street, NW, Suite 1100  
Washington DC 20005

Each payment is to be accompanied by a cover letter that identifies the Project and Biological Opinion (BO) number ES/GJ-6-CO-04-F-012-YP041, that requires the payment, the amount of payment enclosed, check number, and any special conditions identified in the BO relative to disbursement or use of the funds (there are none in this instance). Also, please reference Upper Colorado Fish Recovery Program, NA.1104 on each check submitted. A copy of the cover letter and of the check is to be sent directly to the Service field office that issued the BO. The cover letter shall identify the name and address of the payor, the name and address of the Federal Agency responsible for authorizing the Project, and the address of the Service office issuing the BO. This information will be used by the Foundation to notify the payor, the lead Federal Agency, and the Service that payment has been received. The Foundation is to send notices of receipt to these entities within 5 working days of its receipt of payment.

4. The Service requests that the Office of Surface Mining (OSM) retain discretionary Federal authority for the subject project in case reinitiation of section 7 consultation is required.

The OSM should return the Recovery Agreement, signed by the applicant and provide a letter from the applicant stating that they agree to make the subject payment within the time frames outlined above. The OSM should also provide a statement that they intend to retain discretionary Federal authority for the subject project in case reinitiation of section 7 consultation is required. These documents should be sent to the following address.

Kurt Broderdorp  
U. S. Fish and Wildlife Service  
Ecological Services  
764 Horizon Drive, Building B  
Grand Junction, Colorado 81506

When the Service receives the signed Recovery Agreement and any other required documentation, the Service will provide the OSM with documentation that the project may rely on the RIPRAP to offset its impacts as described in the Yampa River PBO.

If you have any questions regarding this consultation or would like to discuss it in more detail, please contact Kurt Broderdorp of our Grand Junction Ecological Services Field Office at (970) 243-2778, extension 24.

Attachment: Recovery Agreement

KBroderdorp:OSMTrapperMineRN6BOYP041.docx:040513:KM

## RECOVERY AGREEMENT

This RECOVERY AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the United States Fish and Wildlife Service (Service) and Trapper Mining Inc (Water User).

WHEREAS, in 1988, the Secretary of Interior, the Governors of Wyoming, Colorado and Utah, and the Administrator of the Western Area Power Administration signed a Cooperative Agreement to implement the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program); and

WHEREAS, the Recovery Program is intended to recover the endangered fish while providing for water development in the Upper Basin to proceed in compliance with state law, interstate compacts and the Endangered Species Act; and

WHEREAS, the Colorado Water Congress has passed a resolution supporting the Recovery Program; and

WHEREAS, on January 10, 2005, the Service issued a programmatic biological opinion (2005 Opinion) on the *Management Plan for Endangered Fishes in the Yampa River Basin* concluding that implementation of specified elements of the Recovery Action Plan (Recovery Elements), along with existing and a specified amount of new depletions, are not likely to jeopardize the continued existence of the endangered fish or adversely modify their critical habitat in the Yampa River subbasin and Green River subbasin downstream of the Yampa River confluence; and

WHEREAS, Water User is the operator of Trapper Mine requesting permit renewal (Water Project), which causes or will cause depletions to the Yampa River subbasin; and

WHEREAS, Water User desires certainty that its depletions can occur consistent with section 7 and section 9 of the Endangered Species Act (ESA); and

WHEREAS, the Service desires a commitment from Water User to the Recovery Program so that the Program can actually be implemented to recover the endangered fish and to carry out the Recovery Elements.

NOW THEREFORE, Water User and the Service agree as follows<sup>1</sup>:

1. The Service agrees that implementation of the Recovery Elements specified in the 2004 Opinion will avoid the likelihood of jeopardy and adverse modification under section 7 of the ESA, for depletion impacts caused by Water User's Water Project. Any consultations under section 7 regarding Water Project's depletions are to be governed by the provisions of the 2004 Opinion. The Service agrees that, except as provided in the 2004 Opinion, no other measure or action shall be required or imposed on Water Project to comply with section 7 or section 9 of the ESA with regard to Water Project's depletion impacts or other impacts covered by the 2004 Opinion. Water User is entitled to rely on this Agreement in making the commitment described in paragraph 2.
2. Water User agrees not to take any action which would probably prevent the implementation of the Recovery Elements. To the extent implementing the Recovery Elements requires active cooperation by Water User, Water User agrees to take reasonable actions required to implement those Recovery Elements. Water User will not be required to take any action that would violate its decrees or the statutory authorization for Water Project, or any applicable limits on Water User's legal authority. Water User will not be precluded from undertaking good faith negotiations over terms and conditions applicable to implementation of the Recovery Elements.
3. If the Service believes that Water User has violated paragraph 2 of this Recovery Agreement, the Service shall notify both Water User and the Management Committee of the Recovery Program. Water User and the Management Committee shall have a reasonable opportunity to comment to the Service regarding the existence of a violation and to recommend remedies, if appropriate. The Service will consider the comments of Water User and the comments and recommendations of the Management Committee, but retains the authority to determine the existence of a violation. If the Service reasonably determines that a violation has occurred and will not be remedied by Water User despite an opportunity to do so, the Service may request reinitiation of consultation on Water Project without reinitiating other consultations as would otherwise be required by the "Reinitiation Notice" section of the 2004 Opinion. In that event, the Water Project's depletions would be excluded from the depletions covered by 2004 Opinion and the protection provided by the Incidental Take Statement.
4. Nothing in this Recovery Agreement shall be deemed to affect the authorized purposes of Water User's Water Project or The Service' statutory authority.
5. The signing of this Recovery Agreement does not constitute any admission by Water User regarding the application of the ESA to the depletions of Water User's Water Project.

---

<sup>1</sup>Individual Recovery Agreement may be changed to fit specific circumstances.



6. This Recovery Agreement shall be in effect until one of the following occurs.

- a. The Service removes the listed species in the Upper Colorado River Basin from the endangered or threatened species list and determines that the Recovery Elements are no longer needed to prevent the species from being relisted under the ESA; or
- b. The Service determines that the Recovery Elements are no longer needed to recover or offset the likelihood of jeopardy to the listed species in the Upper Colorado River Basin; or
- c. The Service declares that the endangered fish in the Upper Colorado River Basin are extinct; or
- d. Federal legislation is passed or federal regulatory action is taken that negates the need for [or eliminates] the Recovery Program.

7. Water User may withdraw from this Recovery Agreement upon written notice to the Service. If Water User withdraws, the Service may request reinitiation of consultation on Water Project without reinitiating other consultations as would otherwise be required by the "Reinitiation Notice" section of the 2004 Opinion.

\_\_\_\_\_  
Water User Representative                      Date

\_\_\_\_\_

\_\_\_\_\_  
Western Colorado Supervisor                      Date  
U.S. Fish and Wildlife Service

\_\_\_\_\_