

MEMORANDUM OF UNDERSTANDING
BETWEEN
STATE OF COLORADO
DEPARTMENT OF NATURAL RESOURCES
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

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 Colorado Water Conservation Board, hereinafter referred to as CWCB, and the United States Department of Agriculture Forest Service, hereinafter referred to as Forest Service.

A. PURPOSE:

To establish a framework for the Forest Service and the DNR to work together in a cooperative manner on issues regarding the management of water and water uses on National Forest System lands in Colorado.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

Water is the lifeblood of Colorado, the allocation and management of which plays a crucial role in the vitality of Colorado's economy and way of life. Water dependent wildlife, fish, scenic, aesthetic, ecological and recreational values of National Forest System (NFS) lands in Colorado contribute substantially to the economy of the state, and the enjoyment of the public.

The prior appropriation system was developed in Colorado to govern the appropriation, use and distribution of water tailored to Colorado's unique physiologic, hydrologic and climatic conditions. The Forest Service provides land, access and right-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 NFS lands require coordination and cooperation between the DNR and the Forest Service. There are numerous federal and state laws pertaining to the management of land and water resources, and collaborative efforts consistent with state and federal law will lead to most effective management of water resources for all uses.

It is in the public interest to find reasonable solutions to challenging natural resource issues under cooperative agreements. Cooperation will result in more benefits to the public and the water resource than other means.

The Forest Service recognizes and respects the authority of the State to allocate water available for appropriation, respects valid water rights that are granted, exercised, and managed in accordance with state law, and will manage water resources on NFS lands to minimize impacts adversely affecting the exercise of such rights while meeting federal responsibilities.

C. THE FOREST SERVICE AND THE DNR:

1. Agree to respect both federal and state laws and regulations. The DNR is responsible for the allocation of water available for appropriation, and the Forest Service is responsible for managing water resources on NFS lands. The Forest Service and the DNR will seek to integrate federal and state responsibilities into our mutual decision making processes under this MOU.
2. Agree to explore creative ways to assure continued operation of water use facilities on NFS lands while protecting aquatic resources and to seek opportunities that can be implemented relatively soon to demonstrate a constructive, trusting relationship upon which to build. In this spirit, we will commit staff and resources to this effort with instructions to focus on flexibility and opportunity and not be constrained by old ways or failed experiences.
3. Agree that conflicts are best avoided by careful advance planning and a spirit of cooperation. We agree that when conflicts arise, they should be resolved by federal and state authorities working together in cooperation with water right holders and where appropriate tribal and local governments and other interested parties, not through unilateral regulatory action by the Forest Service.
4. Agree that Forest Land and Resource Management Plans (Forest Plans) are the best management tools for long term planning and decision making to assure continued operation of permitted water facilities. We agree to continue to work together during Forest Plan revision and implementation to recognize and plan for the continued exercise of these non-federal water rights as a valuable resource benefit of NFS lands.
5. Agree that reauthorization of existing water facilities on NFS lands will be done in cooperation and collaboration with the holders of the permits and with other parties such as local governments, tribes, and state and federal agencies, as appropriate.
6. Agree to work together to identify steps which can be taken to better integrate federal and state laws and activities concerning protection and management of instream flow resources on NFS lands:
 - a. The CWCB and the Forest Service will seek ways to achieve instream flow protection in high priority stream reaches through innovative measures consistent with state and federal law.

- b. Where the Forest Service has secured 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 Forest Service to identify monitoring and stream gauging needs on stream reaches deemed of special importance to the Forest Service, and the Forest Service and the CWCB will jointly identify funding sources for additional stream monitoring and stream gauges on such stream reaches.
 - d. To the extent that funding allows, the Forest Service will work together with the CWCB and the Colorado Division of Wildlife to determine if the flow amounts of the instream flow water right currently held by the CWCB on NFS lands are adequate to satisfy the instream flow needs for National Forest purposes. If we determine the flows are inadequate for National Forest purposes, we agree to explore mechanisms to assure adequate protection for such purposes consistent with state and federal law.
 - 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.
7. We agree to share information and data to further understanding of water needs on national forest system lands, and to protect these resources consistent with state and federal law.
8. We agree to maintain, protect, and restore watersheds as appropriate through cooperative adaptive management.

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

- 1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service 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 Forest Service and the Colorado Department of Natural Resources, and shall remain in effect for 5 years from the date of execution. This MOU may be extended or amended upon written request of either the Forest Service or the DNR and the subsequent written concurrence of the other(s). Either the Forest Service or the DNR may terminate this MOU with a 60-day written notice to the other(s).

4. **RESPONSIBILITIES AND LEGAL AUTHORITIES OF PARTIES.** The Forest Service and the DNR and their respective agencies and office will 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. 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:

Forest Service Project Contact

Ms. Polly Hays
Regional Hydrologist

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Cooperator Project Contact

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Section
Colorado Water Conservation Board

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Forest Service Administrative Contact

Ms. LuAnn Waida
Regional Grants and Agreements
Coordinator
US Forest Service Rocky Mt. Region
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Cooperator Administrative Contact

Ms. Kimberly Seymour
Program Assistant

Executive Director's Office, DNR

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6. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOU shall obligate either the Forest Service or the DNR to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and the DNR 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 at 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. AUTHORIZED REPRESENTATIVES. By signature below, the parties certify that the individuals listed in this document as 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

USDA FOREST SERVICE, ROCKY
MOUNTAIN REGION

Russell George, Executive Director DATE Rick Cables, Regional Forester DATE

Rod Kuharich, Division Director DATE

The authority and format of this instrument has been reviewed and approved for signature.

LuAnn Waida DATE
FS Agreements Coordinator