

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
STATE OF COLORADO  
DEPARTMENT OF NATURAL RESOURCES  
AND  
STATE OF 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 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 Interior, Bureau of Land Management, hereinafter referred to as the BLM.

**A. PURPOSE:**

To formalize a framework for the BLM, the DNR and the CWCB 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:**

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, 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 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. BLM will administer rights-of-ways for water infrastructure on BLM lands to prevent impacts on the exercise of water rights while still meeting the requirements of federal laws and regulations.

In cases where federal laws and regulations require BLM to consider new management prescriptions for existing structures in a way that could impact the exercise of water rights, BLM, DNR and CWCB 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, 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 BLM, THE DNR AND THE CWCB:

1. Agree to respect both federal and state laws and regulations. The DNR is responsible for the allocation of water available for appropriation, the CWCB is responsible for water policy and planning and the administration of the State's Stream and Lake Protection Program and has the exclusive authority to hold instream flow water rights under Colorado law, and the BLM is responsible for managing water resources on BLM lands. The BLM, the DNR and the CWCB will seek to integrate federal and state responsibilities into our mutual decision making processes under this MOU.

2. Agree to 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 to 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. Agree that conflicts are best avoided by careful advance planning and a spirit of cooperation. The parties 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.

4. Agree 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 reauthorization process for water facilities, and to recognize and plan for the continued exercise of these non-federal water rights as a valuable resource benefit of BLM lands.

5. Agree that reauthorization 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.

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 BLM lands:

a. The DNR, the CWCB and the BLM will continue to seek innovative ways to achieve instream flow protection in stream reaches significantly affected by existing water uses. These stream reaches include 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 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.

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 the instream flow water rights held by 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.

f. The BLM and CWCB will work together to create a work plan that identifies high priority stream reaches for protection. The plan 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 uses.

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

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

9. The parties agree to share information and data to further understanding of water needs on BLM lands, and to protect these resources consistent with state and federal law.

10. The parties 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 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 BLM, the DNR and the CWCB, 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 BLM, the CWCB or the DNR and the subsequent written concurrence of the other(s). Either the BLM, the CWCB 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 BLM, the DNR and the CWCB and their respective agencies and offices 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, 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.  
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**Cooperator Project Contact**

Mr. Dan Merriman  
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Protection Section  
Colorado Water Conservation  
Board  
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**BLM Administrative Contact**

Ms. Cyndi Horton  
Secretary  
Bureau of Land Management  
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E-Mail:  
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**Cooperative Administrative Contact**

Ms. Tara Larwick  
Program Assistant  
Executive Director's Office  
DNR  
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FAX: (303)866-2115  
E-Mail:  
[tara.larwick@state.co.us](mailto:tara.larwick@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 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. AUTHORIZATION 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

\_\_\_\_\_  
Russell George, Executive Director    DATE

\_\_\_\_\_  
Rod Kuharich, Division Director    DATE

U.S. DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT

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Ron Wenker, State Director    DATE