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NANCY STUART
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RECEIVED
JUN 21 2012

BY:

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County Manager
ANTHONY J. DICOLA
County Attorney

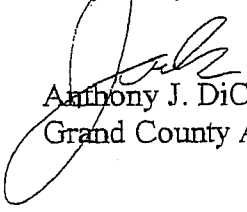
June 21, 2012

Peggy E. Montañó
Trout Raley Montañó Witwer & Freeman P.C.
1120 Lincoln Street, suite 1600
Denver Colorado, 80203

Dear Peggy,

As I told you last week, the staff has found your 1041 application to be complete. The County will charge the applicant its actual costs in connection with the permit. At this time, Lurline estimates that cost to be \$10,000.00. As we discussed, would you please have your client send a check for that amount to Kris Manguso in the planning department. When you get back in town, please give me a call so that we can discuss the planning commission hearing and the schedule for the actual 1041 hearing before the commissioners.

Very Truly Yours,


Anthony J. DiCola
Grand County Attorney

PUBLIC NOTICE

PUBLIC NOTICE IS HEREBY GIVEN that the Board of County Commissioners of the County of Grand, sitting as the Permit Authority, will hold a Public Hearing to consider the Windy Gap Firing Project on August 1, 2012 and August 2, 2012 and any date to which the public hearing may be continued. The Public Hearing will be held from 8:30 a.m. to 5:00 p.m. each day in the Commissioners Meeting Room, Grand County Administration Building, 308 Byers Avenue, Hot Sulphur Springs, Colorado.

The purpose of the public hearing is to consider an application under Grand County Administrative Regulations for Areas and Activities Designed as Matters of State Interest, Chapter 5, "Municipal and Industrial Water Projects" (1041 Permit) for the Windy Gap Firing Project.

Person(s) wishing to obtain information concerning the 1041 Permit application should contact the Grand County Manager's Office, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, Grand County Administration Building, 308 Byers Avenue, P.O. Box 264, Hot Sulphur Springs, Colorado 80451 or call (970) 725-3347.

The public hearing is open and all person(s) or organizations desiring to speak on the matter will be afforded the opportunity to be heard.

PUBLISHED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS,
GRAND COUNTY, COLORADO.



Sara L. Rosene
Grand County Clerk and Recorder

June 13, 2012

DATE:

(S E A L)

Please publish one (1) time in the June 21, 2012 issue of the Middle Park Times. Please provide proof of publication to the Department of Planning & Zoning.

6/21/12

MIDDLE PARK TIMES

MIDDLE PARK TIMES

PUBLIC NOTICE

Assess-
Property
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PUBLIC NOTICE IS HEREBY GIVEN that the Board of County Commissioners of the County of Grand, sitting as the Permit Authority, will hold a Public Hearing to consider the Windy Gap Firing Project on **August 1, 2012 and August 2, 2012** and any date to which the public hearing may be continued. The Public Hearing will be held from **8:30 a.m. to 5:00 p.m.** each day in the Commissioners Meeting Room, Grand County Administration Building, 308 Byers Avenue, Hot Sulphur Springs, Colorado.

Byers Avenue, P.O. Box 264, Hot Sulphur Springs, Colorado 80451 or call (970) 725-3347.

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PUBLISHED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS, GRAND COUNTY, COLORADO.

Sara L. Rosene
Grand County Clerk and Recorder

June 12, 2012
DATE:

(S E A L)

Published in the Middle Park Times June 21, 2012 (6024720)

The purpose of the public hearing is to consider an application under Grand County Administrative Regulations for Areas and Activities Designed as Matters of State Interest; Chapter 5, "Municipal and Industrial Water Projects" (1041 Permit) for the Windy Gap Firing Project.

Person(s) wishing to obtain information concerning the 1041 Permit application should contact the Grand County Manager's Office, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, Grand County Administration Building, 308

conditional for such uses. B. Description of Place Where

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Winter Park, CO 80482

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Legacy Building Specialties Inc.
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Granby, CO 80446

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P.O. Box 440
Granby, CO 80446

Town of Grand Lake
P.O. Box 6
Grand Lake, CO 80447

Town of Kremmling
P.O. Box 538
Kremmling, CO 80459

Town of Hot Sulphur Springs
P.O. Box 116
Hot Sulphur Springs, CO 80451

Town of Fraser
P.O. Box 120
Fraser, CO 80442

Town of Winter Park
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Kremmling, CO 80459

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Winter Park, CO 80482

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P.O. Box 188
Fraser, CO 80442

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Tabernash, CO 80478

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Denver, CO 80218

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P.O. Box 899
Grand Lake, CO 80447

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P.O. Box 7
Winter Park, CO 80482

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Estes Park, CO 80517-8397

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Grand County Commissioner

Gary Bumgarner
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Hot Sulphur Springs, CO 80451

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P.O. Box 555
Grand Lake, CO 80447

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Kremmling, CO 80459

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9921 US Highway 34 #20
Grand Lake, CO 80447

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Attn: Nathan Green

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Austin Pottorff
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Bruce Hutchins
Carol Sidofsky
Catherine Trotter - Town of Fraser
Chas McConnell
Chris Sammons
Deb Hess - Town of Granby
Debra Brynoff - Grand County Board of Realtors

Dennis Soles - East Grand Fire
Granby Sanitation District
Grand County Builders Association
Grand Fire Protection District No. 1
Grand Lake Fire Protection District
James Shockey - Town of Winter Park
Janie Glos
Jean Johnson - Mountain Parks Electric

Jennifer Baker
Jennifer Scott
Judi Luthy
Ken Haynes
Larry Gamble - Rocky Mountain National Park
Lurline Curran
Martha Schake - West Grand School District

Maura McKnight
Noel Wilson
Sally Blea - Three Lakes Water and Sanitation District

Scott Penson
Susan Cassel - Bureau of Land Management

Ted Soltis - Town of Kremmling
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Lori Canova
Lynette
Madison
Mark Brown
Mark Confido
Martha Schake
Matt and Julie Madden
Michael Alon
Michael Olsen
Michael Ray
Mike Crosby
Mike Kent
Nageler
Paula Sheridan
Popart
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Rod McGowan
Ron Jones
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DEPARTMENT OF PLANNING AND ZONING

308 Byers Ave • P.O. Box 239 • Hot Sulphur Springs • Colorado • 80451
970-725-3347 Ext 140 or Fax 970-725-3303

MEMO

TO: Review Agencies
FROM: Grand County Managers Office and the Department of Planning & Zoning
DATE: June 13, 2012
RE: Windy Gap Firing Project 1041 Permit Application

To Whom It May Concern:


Enclosed please find an electronic copy of an application made under Grand County Administrative Regulations for Areas and Activities Designed as Matters of State Interest, Chapter 5, "Municipal and Industrial Water Projects" (1041 Permit) for the Windy Gap Firing Project which has been filed with Grand County. A copy of the Public Notice setting the Public Hearing is also included.

This application is being submitted to your agency for comment. Responses are due back to this office by no later than July 12, 2012. Comments may be mailed to the Grand County Manager's Office, Attn: WGFP Comments, PO Box 264, Hot Sulphur Springs, CO 80451, submitted electronically to lcurren@co.grand.co.us or faxed to (970)725-0565.

In addition to your written comments, please see the attached Public Notice if you would like to provide further information at the Public Hearing on August 1, 2012 and August 2, 2012 and any date to which the public hearing may be continued. The Public Hearing will be held from 8:30 a.m. to 5:00 p.m. each day in the Commissioners Meeting Room, Grand County Administration Building, 308 Byers Avenue, Hot Sulphur Springs, Colorado.

Thank you.

Sincerely,


Luiline Underbrink Curran
Grand County Manager

Please verify receipt of the above referenced materials by returning this letter to the Grand County Department of Planning & Zoning, or emailing your confirmation to lwebb@co.grand.co.us.

Date Received: _____

Signature: _____

[Draft]
[Intergovernmental Agreement]

The Municipal Subdistrict, Northern Colorado Water Conservancy District and its Windy Gap Firming Project Water Activity Enterprise, Board of County Commissioners of Grand County, Colorado, Middle Park Water Conservancy District, Colorado River Water Conservation District and Northwest Colorado Council of Governments enter into this Windy Gap Firming Project Agreement ("WGFP Agreement") as of the latest date of execution of this WGFP Agreement by the Parties.

I) Definitions.

- A. Municipal Subdistrict, Northern Colorado Water Conservancy District, ("Subdistrict") is a political subdivision of the State of Colorado, and formed under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein and as created by the Decree dated July 6, 1970, Weld County District Court, State of Colorado.
- B. Municipal Subdistrict, Northern Colorado Water Conservancy District, Windy Gap Firming Project Water Activity Enterprise ("WGFP Enterprise") is a water activity enterprise of the Subdistrict organized under and pursuant to Article X, Section 20 of the Colorado Constitution and C.R.S. §§ 37-45.1-101 et seq.
- C. Grand County - ("Grand County") is a county of the State of Colorado created by Article XIV of the Colorado Constitution and C.R.S. § 30-5-128, for the purposes stated therein.
- D. Middle Park Water Conservancy District ("Middle Park") is a political subdivision of the State of Colorado, created under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein.
- E. Colorado River Water Conservation District, ("River District") is a political subdivision of and a body corporate under the laws of Colorado, created by the provisions of C.R.S. §§ 37-46-101, et seq., for the purposes stated therein.
- F. Northwest Colorado Council of Governments ("NWCCOG") is a regional planning commission organized pursuant to C.R.S. § 30-28-105, and an association of local governments contracting pursuant to Article XIV, Section 18 of the Colorado Constitution and C.R.S. §§ 29-1-201, et seq., comprising municipalities and counties within the geographic boundaries of the Colorado counties of Grand, Eagle, Summit, Jackson, Routt, and Pitkin.

[Draft]
[Intergovernmental Agreement]

The Municipal Subdistrict, Northern Colorado Water Conservancy District and its Windy Gap Firming Project Water Activity Enterprise, Board of County Commissioners of Grand County, Colorado, Middle Park Water Conservancy District, Colorado River Water Conservation District and Northwest Colorado Council of Governments enter into this Windy Gap Firming Project Agreement (“WGFP Agreement”) as of the latest date of execution of this WGFP Agreement by the Parties.

D) Definitions.

- A. Municipal Subdistrict, Northern Colorado Water Conservancy District, (“Subdistrict”) is a political subdivision of the State of Colorado, and formed under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein and as created by the Decree dated July 6, 1970, Weld County District Court, State of Colorado.
- B. Municipal Subdistrict, Northern Colorado Water Conservancy District, Windy Gap Firming Project Water Activity Enterprise (“WGFP Enterprise”) is a water activity enterprise of the Subdistrict organized under and pursuant to Article X, Section 20 of the Colorado Constitution and C.R.S. §§ 37-45.1-101 et seq.
- C. Grand County – (“Grand County”) is a county of the State of Colorado created by Article XIV of the Colorado Constitution and C.R.S. § 30-5-128, for the purposes stated therein.
- D. Middle Park Water Conservancy District (“Middle Park”) is a political subdivision of the State of Colorado, created under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein.
- E. Colorado River Water Conservation District, (“River District”) is a political subdivision of and a body corporate under the laws of Colorado, created by the provisions of C.R.S. §§ 37-46-101, et seq., for the purposes stated therein.
- F. Northwest Colorado Council of Governments (“NWCCOG”) is a regional planning commission organized pursuant to C.R.S. § 30-28-105, and an association of local governments contracting pursuant to Article XIV, Section 18 of the Colorado Constitution and C.R.S. §§ 29-1-201, et seq., comprising municipalities and counties within the geographic boundaries of the Colorado counties of Grand, Eagle, Summit, Jackson, Routt, and Pitkin.

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- G. "West Slope Parties" are Grand County, Middle Park, the River District, and NWCCOG.
- H. United States Bureau of Reclamation, Department of the Interior ("Reclamation") is referenced in but not a party to this WGFP Agreement.
- I. United States Army Corps of Engineers ("USACE") is referenced in but not a party to this WGFP Agreement.
- J. Northern Colorado Water Conservancy District ("Northern Water") is a political subdivision of the State of Colorado, created under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein, and is referenced in but not a party to this WGFP Agreement.
- K. "Windy Gap Project" is an existing water supply system that diverts Windy Gap Project Water from the Colorado River just below its confluence with the Fraser River.
- L. "Windy Gap Water Rights" are the water rights for the Windy Gap Project as defined in the Decrees entered on October 27, 1980 in Civil Action No. 1768, District Court, Grand County, State of Colorado and Case Nos. W-4001, 80CW108, and 85CW135, District Court, Water Division No. 5; [*add recent diligence cases?] the Decree entered on February 6, 1989 in Case No. 88CW169, District Court, Water Division No. 5, State of Colorado, and the Decree entered on July 19, 1990, in Case No. 89CW298, District Court, Water Division No. 5, State of Colorado ("Windy Gap Decrees") and any amendments thereto.
- M. "Amendatory Contract" is the Amendatory Contract for the Introduction, Storage, Carriage and Delivery of Water for Municipal Subdistrict, Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado dated March 1, 1990 among Reclamation, the Subdistrict and Northern Water and any amendments, replacements, or supplements thereto necessary to implement the WGFP.
- N. "Windy Gap Project Water" is any water stored or diverted pursuant to the Windy Gap Water Rights.
- O. "1980 and 1985 Agreements" are the April 30, 1980 "Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project" ("1980 Agreement") and the March 29, 1985 "Supplement to Agreement of April 30, 1980" ("1985 Agreement").

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- P. Windy Gap Firming Project (“WGFP”) is a proposed project that is described in the Final Environmental Impact Statement and Record(s) of Decision.
- Q. WGFP Participants (“WGFP Participants”) are those entities identified in the Final Environmental Impact Statement for the Windy Gap Firming Project, and also their successors and assigns, that hold a water allotment contract for the Windy Gap Project and own or are otherwise allocated a portion of the storage capacity of Chimney Hollow Reservoir.
- R. “Windy Gap Project Participants” are those entities that hold a water allotment contract for the Windy Gap Project.
- S. “Net Credited Storage,” is the amount of Windy Gap Project Water pumped at the Windy Gap Pumping Plant and conveyed to Granby Reservoir less any losses charged pursuant to the Amendatory Contract.
- T. Chimney Hollow Reservoir (“Chimney Hollow Reservoir”) is that reservoir located on the East Slope identified in the Final Environmental Impact Statement for the Windy Gap Firming Project as the proposed action and any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the Final Environmental Impact Statement (“Alternative Reservoir”), provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet.
- U. “Pumping Costs” incurred by Middle Park or Grand County pursuant to this Agreement are 110% of the average electrical power costs of pumping for the Windy Gap Project for that year on a per acre-foot basis for Net Credited Storage.
- V. “Active Storage” for Chimney Hollow Reservoir is that reservoir capacity contained between the invert of the reservoir outlet works and the normal high water line in Chimney Hollow Reservoir, or in the case of Alternative Reservoirs, the total capacity available for storage and release for the benefit of the WGFP.
- W. “Prepositioning” is the manner of integrated operations of the C-BT Project and WGFP described in the Final Environmental Impact Statement for the WGFP and as may be authorized by Reclamation in the Amendatory Contract and/or Reclamation’s Record of Decision for the WGFP.
- X. “WGFP Completion” is the first time that the combined volume of Windy Gap Project water stored in Chimney Hollow Reservoir and Windy Gap

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Project water stored on behalf of WGFP Participants in Granby Reservoir is equal to 32% of the Active Storage of the constructed capacity of Chimney Hollow Reservoir.

- Y. The "WG Volumetric Limits" shall be those limitations set forth in Paragraph 34 of the 1980 Agreement, as modified by Paragraph 2 of the 1985 Supplemental Agreement. The WG Volumetric Limits are not affected or modified by this WGFP Agreement.
- Z. "Water Apportionment" is Windy Gap Project Water that is made available for use by West Slope Parties pursuant to this WGFP Agreement.
- AA. "Carryover Balance" is a portion of a Water Apportionment that is available for use pursuant to this WGFP Agreement that can be stored for multiple years.
- BB. "Carryover Balance Limitation" is the maximum total Carryover Balance that can be credited to Middle Park or Grand County at any point in time.
- CC. "Accounting Year" for the Middle Park Water Apportionment will begin on August 1st and end on July 31st the following calendar year. Middle Park's Accounting Year shall become effective on August 1 following execution of this WGFP Agreement.
- II) Relationship to 1980 and 1985 Agreements. This Agreement supplements and partially amends the 1980 Agreement and the 1985 Agreement. The 1980 and 1985 Agreements remain valid and enforceable except as explicitly modified by this WGFP Agreement and noting that the 1985 Agreement deletes and supersedes Paragraphs 6, 7, 8, 9, 10, 11, 12, 17, 29, 30, 31, 33, 34, 35 and 39 of the 1980 Agreement. The specific provisions of the 1980 and 1985 Agreements that are modified by the WGFP Agreement are [This section needs to be verified]:
- A. Paragraph 2 of the 1985 Agreement is superseded and replaced, in part by III.3.E.(1)(c), (2), 3(a)(b)(c)(d)(e), 4, 5; F(1)(2); H
 - B. Paragraph 25 of the 1980 Agreement is superseded and replaced by Paragraph IV.B.
 - C. Paragraph 34 of the 1980 Agreement is superseded and replaced by IV.E, but only to the extent of Jasper Reservoir;
 - D. Paragraph V.C. supersedes and replaces in part Paragraph 41(f) of the 1980 Agreement;
 - E. Paragraph VI.D. replaces Paragraph 2 of the 1980 Agreement; and,
 - F. Paragraph IV.E. replaces Paragraph 14 of the 1980 Agreement.

III) Terms of the Agreement

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- A. Enhancements. The benefits provided in this WGFP Agreement are in addition to and are not a substitute for the mitigation required by governmental agencies with jurisdiction over the WGFP.
- B. Notification of Intent to Proceed with Windy Gap Firing Project.
- 1) The Subdistrict will proceed as expeditiously as reasonably possible using its best efforts to cause the construction of Chimney Hollow Reservoir. The Subdistrict shall notify the West Slope Parties in writing whether or not it intends to proceed with the Windy Gap Firing Project within 10 years of the issuance of the 404 Permit for the WGFP by the United States Army Corps of Engineers ("USACE") or upon execution of construction contracts for Chimney Hollow Reservoir, whichever occurs first.
 - 2) This Agreement shall terminate upon written notice to the West Slope Parties that the Subdistrict does not intend to proceed with the WGFP.
 - 3) If the Subdistrict notifies the West Slope Parties that it intends to proceed with the WGFP, then it shall have the right under this Agreement, but not the obligation, to construct and operate a total of 90,000 acre feet of storage on the Front Range. If the Subdistrict proceeds with the WGFP, then it shall provide all of the West Slope mitigation required by the Records of Decision for the WGFP and satisfy all of the obligations set forth in this WGFP Agreement, regardless of the storage capacity that is authorized by the 404 Permit issued by the USACE, or the storage capacity that is ultimately constructed or utilized for the WGFP.
- C. Except as necessary to ensure compliance with this WGFP Agreement, all parties agree not to take any official action that results in a restriction of the right of the Subdistrict to construct, operate and use the full 90,000 acre feet of storage capacity of the Chimney Hollow Reservoir or Alternative Reservoir.
- 1) In the event of a breach of this obligation by Grand County, Paragraph IV. J. 2) of this Agreement shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP Agreement and to Middle Park pursuant to Paragraph III.E. of this WGFP Agreement shall be subject to the proportional reduction determined using the methods described in III.D.1.
 - 2) In the event of a breach of this obligation by the River District, Paragraph IV. J. 2) of this Agreement shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP Agreement and to Middle Park pursuant to Paragraph

III.E. of this WGFP Agreement shall be subject to the proportional reduction determined using the methods described in III.D.1.

- 3) In the event of a breach of this obligation by Middle Park, Paragraphs III.E. of this Agreement shall terminate and Middle Park shall receive water pursuant to the 1980 and 1985 Agreements, and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP Agreement shall be subject to the proportional reduction determined using the methods described in III.D.1 .
- 4) In the event of a breach of this obligation by NWCOG, Paragraph IV. J. 2) of this Agreement shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP Agreement and to Middle Park pursuant to Paragraph III.E. of this WGFP Agreement shall be subject to the proportional reduction determined using the methods described in III.D.1.
- 5) The consequences provided for in Paragraphs III.C.1), III.C.2), III.C.3), and III.C.4) shall be suspended in the event that the Subdistrict later obtains the right to construct, operate, and use the full 90,000 acre feet of storage capacity of the Chimney Hollow Reservoir or Alternative Reservoir.

D. Proportional Reduction.

- 1) If a binding regulatory event, judicial determination, other implementation of existing or future legal requirements or restrictions, or other formal action of any entity causes or results in a permanent reduction in firm yield of the WGFP, other than a prohibition on prepositioning, then the West Slope Parties agree that the amount of water they receive pursuant to Paragraph III of this Agreement will be subject to proportional reduction. The Parties agree to jointly determine the amount of said proportional reduction at the time the event takes effect or, as an alternative to the proportional reduction, identify measures that can be implemented to mitigate the reduction in firm yield of the WGFP. A proportional reduction shall be made to the Middle Park Water Apportionment and in the Grand County Water Apportionment under this Agreement. In the event that the Parties cannot jointly determine what the proportional reduction should be, the issue of what constitutes a proportional reduction shall be resolved by a panel of three experts, one selected by the West Slope Parties, one selected by the WGFP Enterprise, and the third selected by the experts selected by the West Slope Parties and the WGFP Enterprise. If the determination of the expert panel is not acceptable, any Party may pursue any available judicial remedies.

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2) If a binding regulatory event, judicial determination, other implementation of existing or future legal requirements or restrictions, or other formal action of any entity causes or results in a prohibition of prepositioning, then the West Slope Parties agree that the amount of water they receive pursuant to Paragraph III of this Agreement shall be reduced in accordance with this Paragraph III.D.2).

(a) Middle Park Variable Water Supply will be reduced by reducing the 700 acre-feet option in spill years in proportion to the amount of Windy Gap water stored on August 1 in Chimney Hollow and Granby Reservoir, combined, as compared to the full storage capacity of Chimney Hollow Reservoir. If Middle Park elects to receive its portion of pumping in spill years, there shall be no reductions.

(b) Grand County Variable Water Supply shall not be subject to reductions.

(c) Middle Park Annual Water Supply shall not be subject to reductions.

(d) Grand County annual amount of Transfer Water shall be reduced by 15%.

E. Middle Park Water Apportionment.

1) Middle Park Election to Receive Water.

(a) Middle Park shall continue to receive water pursuant to the 1980 and 1985 Agreements until WGFP Completion. Middle Park shall have the right, within a year of WGFP Completion, to make a one-time and irrevocable election as to whether it will receive water pursuant to this WGFP Agreement or receive water pursuant to the 1980 and 1985 Agreements.

(b) If a binding regulatory event, judicial determination, or other implementation of existing or future legal requirements or restrictions occurs as provided in Paragraph III. D. then Middle Park shall have the right to make an election as to whether it will receive water pursuant to this WGFP Agreement, or receive water pursuant to the 1980 and 1985 Agreements. Subdistrict shall notify Middle Park within 60 days of each event or determination and shall explain to Middle Park its effect on water available to Middle Park pursuant to this WGFP Agreement. If Middle Park has not made this election pursuant to a previous event, this election will be made by Middle Park within one year after written notification of each event.

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- (c) In the event that Middle Park elects to continue to receive water pursuant to the 1980 and 1985 Agreements following WGFP Completion, such water shall be available for use on August 1 of the Accounting Year immediately following pumping (except that any water pumped in August will be credited to the current Accounting Year), and any such water, which is unused on July 31st of that Accounting Year shall be transferred to Grand County on August 1st for use in accordance with Paragraph III. F. 2) and Paragraph III.F.4).
- 2) If Middle Park elects to receive water in accordance with this WGFP Agreement, its apportionment will consist of the Middle Park Annual Water Supply and the Middle Park Variable Water Supply.
- 3) Middle Park Annual Water Supply.
- (a) For the purposes of this WGFP Agreement, Middle Park's Annual Water Supply is the combination of the 850 Acre Feet of Water defined in Section III.E.3)(b) and the 1450 Acre Feet of Water defined in Section III.E.3)(c). Middle Park Annual Water Supply is not eligible to become a part of or contribute to the Middle Park Carryover Balance.
- (b) 850 Acre Feet of Water. The Subdistrict and WGFP Enterprise will dedicate and set aside annually, but not cumulatively, at no cost to Middle Park, 850 acre-feet of Windy Gap Project Water, which shall be available each and every year.
- (c) 1450 Acre Feet of Water.
- (i) If the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir at any time between the start of pumping of the Windy Gap Project and August 1st of any year is equal to or greater than 32% of the constructed capacity of Chimney Hollow Reservoir, the Subdistrict and WGFP Enterprise will dedicate and set aside at no cost 1450 Acre Feet of Water for Middle Park.
- (ii) If the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project water stored on behalf of WGFP Participants in Granby Reservoir at any time between the start of pumping of the Windy Gap Project and August 1st of any year does not equal or exceed 32% of the constructed capacity of Chimney Hollow Reservoir, the 1450 Acre Feet of Water will be reduced at the same proportion as the maximum amount of storage of Windy Gap

Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of the WGFP Participants in Granby Reservoir during the period between the start of pumping and August 1 is to 32% of the constructed capacity of Chimney Hollow Reservoir.

- (iii) The Subdistrict and WGFP Enterprise shall provide Middle Park with the April 1st water supply forecast and any subsequent forecasts, which shall be used for planning purposes to estimate the amount, if any, of the reduction in the 1450 Acre Feet of Water.
 - (iv) In the event that Middle Park receives less than 1450 Acre Feet of Water pursuant to paragraph III.E.3)(c)(ii), Middle Park may retain and use any unused Annual Water Supply from the prior Accounting Year to make up the difference between the amount which it receives pursuant to paragraph III.E.3)(c)(ii) and 1450 Acre Feet of Water.
 - (d) The Middle Park Annual Water Supply is available to Middle Park during the Accounting Year. Unused water from the Middle Park Annual Water Supply from the prior Accounting Year will transfer on August 1st to Grand County pursuant to Paragraph III.F.2) unless some portion of the water from the prior year is required to make up for the reduction in the 1450 Acre Feet of Water pursuant to Paragraph III.E.3)(c)(iv). Grand County shall, subject to the limitations in Paragraph III.F.4), have the right to use Middle Park Annual Water Supply transferred from Middle Park to Grand County in accordance with this Paragraph III.E.3)(d).
 - (e) Middle Park's Annual Water Supply will not be reduced by any losses charged pursuant to the Amendatory Contract.
- 4) Middle Park Variable Water Supply.
- (a) Middle Park's Variable Water Supply is the water supply defined in this Paragraph III.E.4). Only Middle Park's Variable Water Supply is eligible to become part of or contribute to Middle Park's Carryover Balance and will be credited immediately upon pumping.
 - (b) The Subdistrict and WGFP Enterprise will provide a water supply forecast to Middle Park on April 1st.
 - (c) If the April 1st forecast does not anticipate a spill of Windy Gap Project Water, Middle Park may, on May 1st of that year, elect to receive 3.8% of the Windy Gap Project Water that will be diverted in

the current water year in excess of 15,000 acre-feet Net Credited Storage, up to a maximum of 1,500 acre-feet Net Credited Storage as further limited by Middle Park's Carryover Balance Limitation. If the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Middle Park has received 1,500 acre feet of Variable Water Supply, and the Windy Gap water rights are still in priority, Middle Park may request that the Subdistrict continue diversions of Windy Gap Project Water up to the 1,500 acre feet maximum, as limited by Middle Park's available Carryover Balance Limitation.

(d) If the April 1st forecast anticipates a spill of Windy Gap Project Water or if a spill has actually occurred, Middle Park shall, by May 1st, elect whether it will:

(i) Receive 3.8% of the Windy Gap Project Water diverted and stored in the current water year in excess of 15,000 acre-feet Net Credited Storage, up to a maximum of 1,500 acre-feet of Net Credited Storage, and as further limited by Middle Park's available Carryover Balance Limitation. If the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Middle Park has received 1,500 acre feet of Variable Water Supply, and the Windy Gap water rights are still in priority, Middle Park may request that the Subdistrict continue diversions of Windy Gap Project Water up to 1,500 acre feet maximum, as limited by Middle Park's Carryover Balance Limitation; or

(ii) Receive from the Subdistrict and WGFP Enterprise by substitution such additional amount of Windy Gap Project Water stored in Chimney Hollow Reservoir as is required to result in a total Carryover Balance of 700 acre feet of Middle Park Variable Water Supply, which 700 acre feet shall not be subject to spill; or

(iii) Middle Park may elect to not receive any Middle Park Variable Water Supply.

(e) Middle Park shall pay to the Subdistrict the Pumping Costs for pumping the Middle Park Variable Water Supply which it elects to receive pursuant to Paragraph III.E.4).

5) The Subdistrict will release Middle Park Annual Water Supply and Middle Park Variable Water Supply at the request of Middle Park for all beneficial uses allowed by the 1980 Agreement and 1985 Agreement.

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Such uses shall include direct use or use by substitution, augmentation, or exchange, including but not limited to, exchange into Wolford Mountain Reservoir or replacement to Denver Water by entities that have Middle Park Contracts, and any other use authorized in a subsequent written agreement between Middle Park, the Subdistrict, and WGFP Enterprise.

F. Grand County Water Apportionment.

- 1) For the purposes of this WGFP Agreement, the Grand County Water Apportionment consists of the Grand County Transfer Water, the Grand County Interim Transfer Water, and the Grand County Variable Water Supply described in this Paragraph III.F. The Grand County Water Apportionment shall be used as directed by Grand County and consistent with this WGFP Agreement.
- 2) Grand County Transfer Water.
 - (a) Grand County Transfer Water is any of the Middle Park Water Apportionment received by Middle Park which is transferred to Grand County on August 1st of each year pursuant to Paragraph III.E.1)(c) and Paragraph III.E.3)(d).
 - (b) Commencing on the first day of August, but no less than 12 months after the execution of this WGFP Agreement, the Subdistrict shall make available for Grand County's use 50% of any of Middle Park's unused water from the previous year (the "Grand County Interim Transfer Water"). Upon WGFP Completion, the Grand County Interim Transfer Water shall vest as 100% of the water provided by Paragraph III.E.1)(c) and Paragraph III.E.3)(d). In the alternative, the Subdistrict's provision of the Grand County Interim Transfer Water will cease upon notice pursuant to III.B.2) that the Municipal Subdistrict does not intend to proceed with the WGFP.
 - (c) Grand County Transfer Water must be either: (1) used between August 1st and October 15th of the then current water year, or (2) on October 15th become Grand County Carryover Balance, as limited by Grand County's available Carryover Balance Limitation.
 - (d) Grand County's Transfer Water shall not be subject to any losses charged pursuant to the Amendatory Contract until such water is transferred to Grand County's Carryover Balance, at which time it will be assessed the appropriate losses, if any, specified in the Amendatory Contract.
- 3) Grand County Variable Water Supply shall include the following elements:

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(a) Concurrent Pumping.

- (i) Grand County Concurrent Pumping shall become available at WGFP Completion.
- (ii) Grand County may, by May 1st of each year, elect to receive 3.8% of the Windy Gap Project Water diverted and stored in the current water year in excess of 15,000 acre-feet Net Credited Storage, up to a maximum of 1,500 acre-feet Net Credited Storage, and as further limited by Grand County's available Carryover Balance Limitation.

(b) Additional Pumping.

- (i) Grand County Additional Pumping shall become available at WGFP Completion.
- (ii) If Windy Gap Project Participants and WGFP Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Grand County has received 1,500 acre-feet of water from Concurrent Pumping and the Windy Gap Water Rights are still in priority, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions up to a combined maximum of 1,500 acre-feet of Concurrent and Additional Pumping, as further limited by the available Grand County Carryover Balance Limitation. The Subdistrict and WGFP Enterprise will make best efforts to provide five (5) days advance notice of the anticipated end of pumping for Windy Gap Project Participants and WGFP Participants.

(c) End of Year Pumping.

- (i) Prior to WGFP Completion, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions if the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping and the Windy Gap Project Water Rights are in priority, as limited by the Grand County Carryover Balance Limitation.
- (ii) After WGFP Completion, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions if the Windy Gap Project Participants, WGFP Participants, and Middle Park have a need for additional water but do not wish

to pay for the costs of additional pumping and the Windy Gap Project Water Rights are in priority, as limited by the Grand County Carryover Balance Limitation.

- (d) Grand County's Variable Water Supply shall be credited to Grand County's Carryover Balance immediately upon pumping.
 - (e) Grand County shall pay pumping costs for the Grand County Variable Water Supply provided pursuant to Paragraph III.F.3).
- 4) The Subdistrict will release the Grand County Water Apportionment from Granby Reservoir at the request of Grand County or its designee for diversion for irrigation, domestic, municipal or industrial uses on the West Slope allowed under the Windy Gap Water Rights provided that such uses will not require a change of water rights. The Parties acknowledge that Grand County intends to time such releases for beneficial use in a manner that results in optimizing the benefits to aquatic and recreation resources within the County and furthering the goals of the Learning by Doing Cooperative Effort (Attachment). The Parties intend that the Grand County Water Apportionment not be diverted for irrigation, domestic, municipal or industrial uses upstream of the confluence of the Colorado River and Blue River by any person.
- (a) The Parties intend for the reservoir releases of the Grand County Water Apportionment to increase the flow of water through the County above flows that would otherwise exist. To accomplish these objectives, the River District will make good faith efforts to arrange for the delivery of the Grand County Water Apportionment for diversion and beneficial use for irrigation, domestic, municipal or industrial uses on the Colorado River or its tributaries, below the confluence of the Blue and Colorado Rivers. Unless otherwise directed by Grand County, the River District's efforts will be focused on diversion and beneficial use downstream of the confluence of the Colorado and Roaring Fork Rivers but upstream of the Utah State Line.
 - (b) Grand County and the Subdistrict may request annual reports of the beneficial use made of the Grand County Water Apportionment. Any dispute regarding such use will be resolved in accordance with the Conflict Resolution provisions of this WGFP Agreement (Paragraph VI.L.). Regardless of the outcome of any dispute regarding this paragraph, the Parties agree that the River District shall not bear any liability regarding the beneficial use of, or the failure to arrange for the beneficial use any of, the Grand County Water Apportionment.

- (i) Following is a list of representative, but not exclusive, beneficial uses that the Parties agree satisfy the intent of this paragraph III.F.4):

Diversions for irrigation (including agriculture, lawn watering, parks, and stock-water), domestic, municipal, or industrial uses by: the Grand Valley Irrigation Company (irrigation, including uses incident of irrigation); Grand Valley Water Users Association (including irrigation, power generation, and uses incident to those uses); Orchard Mesa Irrigation District (irrigation, irrigation lift/pumping, power generation, and exchanges incident to such uses); Palisade Irrigation District (irrigation); Mesa County Irrigation District (irrigation); Ute Water Conservancy District (including municipal); Town of Clifton (municipal); Silt Water Conservancy District (irrigation and domestic); Town of Silt (municipal); Town of New Castle (municipal); City of Rifle (municipal); Battlement Mesa (municipal); diversions at the Bluestone or Town of DeBeque intakes (municipal, irrigation, and industrial); substitutions in lieu of releases from Wolford Mountain Reservoir or Ruedi Reservoir for municipal, irrigation or industrial uses under the River District's water marketing program; substitutions in lieu of releases from, or exchanges into, Williams Fork Reservoir to increase the amount of, or flexibility of use, of water in Grand County's account in Williams Fork Reservoir; transit losses attributable to such uses as may be assessed by the State Engineer.

5) The Parties agree that, if Grand County determines then-current stream flow conditions in the County are sufficient to satisfy the purposes of the releases of water as described in Paragraph III.F.4), including downstream of the confluence of the Colorado and Blue Rivers, then the Grand County Water Apportionment may be exchanged or substituted for water that otherwise would be released from Wolford Mountain Reservoir, Green Mountain Reservoir or Williams Fork Reservoir in order to assist Front Range and West Slope water users in managing limited water supplies for use in the upper Colorado River basin.

- G. Priority of Pumping. The right of Middle Park and Grand County to pump additional water pursuant to Paragraphs III.E.4)(c), III.E.4)(d)(i) and III.F.3)(b)(ii) shall be shared on an equal basis between Middle Park and Grand County.
- H. Middle Park and Grand County Water Apportionments, Carryover Balances, and Carryover Balance Limitations.

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- 1) Subject to the provisions of this Paragraph III.H., Middle Park and Grand County may each have a Carryover Balance derived from Water Apportionments made available pursuant to Paragraphs III.E.4), III.F.2) and III.F.3). The maximum Carryover Balance available to Middle Park and Grand County shall not exceed their respective Carryover Balance Limitation.
- 2) Middle Park shall have the right to a Carryover Balance Limitation of 3,000 acre feet for its Variable Water Supply for use in the then current or subsequent water years.
- 3) Grand County Carryover Balance Limitations.
 - (a) Upon execution of this WGFP Agreement and until WGFP Completion, Grand County shall have the right to accrue a maximum of 7,500 acre feet of Carryover Balance for use in the then current or subsequent water years.
 - (b) Grand County's Carryover Balance Limitation shall be reduced to 6,000 acre feet upon WGFP Completion.
 - (c) Grand County's Carryover Balance Limitation shall be reduced to 4,500 acre feet at such time as the Windy Gap Project Water stored in Chimney Hollow Reservoir has reached, at any point in time, 85% of the constructed active storage capacity of Chimney Hollow Reservoir.
 - (d) The permanent Grand County Carryover Balance Limitation shall be 4,500 acre feet. If Chimney Hollow Reservoir construction begins but is not completed as a result of actions by the West Slope Parties, any water stored in this account will revert to the Subdistrict.
- 4) Except during the first fill of Chimney Hollow, during which Paragraphs III.H.3) controls, Middle Park and Grand County can share a combined Carryover Balance Limitation of 7,500 acre feet. Middle Park and Grand County shall notify the Subdistrict before or during pumping of their intent to share the Carryover Balances and the respective amounts of water to be stored for each.
- 5) Any Carryover Balance of Middle Park or Grand County shall be reduced by any losses, if any, charged pursuant to the Amendatory Contract. Middle Park and Grand County shall be provided with documentation of such charges before any such reductions.
- 6) Any Variable Water Apportionment and any Carryover Balance made available to Middle Park or Grand County pursuant to this WGFP Agreement shall be subject to a pro rata share of monetary charges,

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payable by Middle Park or Grand County as applicable, for storage of Windy Gap Project Water in Granby Reservoir, if any, assessed pursuant to the Amendatory Contract. The Parties will advocate to Reclamation that no monetary charges be assessed for storage of Windy Gap Project Water in Granby Reservoir.

- 7) The Parties will advocate that Reclamation adopt specific and different shrink charges for introduction and storage of Windy Gap Project Water on the West Slope and conveyance and delivery of Windy Gap Project Water to the east slope.
- 8) All Carryover Balances referred to in this paragraph III.H. shall be Net Credited Storage.

I. Spill Criteria:

- 1) 1st to spill - Grand County Carryover Balance over 1,500 acre feet.
- 2) 2nd to spill - Any remaining Grand County Carryover Balance, any Middle Park Carryover Balance, and any Windy Gap Project Water stored on behalf of the WGFP Participants proportionally, based on Carryover Balances and Windy Gap Project Water in storage on behalf of the WGFP Participants as of the date(s) of spill.
- 3) 3rd to spill - Windy Gap Project Water stored on behalf of Windy Gap Project Participants that are not WGFP Participants.

J. No Paper Spills. In the event that Middle Park or Grand County have a Carryover Balance and the total amount of C-BT water in active storage in Granby Reservoir and Chimney Hollow Reservoir, combined, reaches 465,568 acre feet, Middle Park's and Grand County's Water Apportionments will only spill in the event of a physical spill from Granby Reservoir. Any physical spill will be allocated between WGFP Participants, Middle Park, and Grand County in accordance with Paragraph III.I.

K. Minimum Pumping. If the Windy Gap Project Water is not already being pumped, the Subdistrict shall not be required to pump Variable Water Supply for any party unless the Subdistrict's water supply forecasts predict that there will be a minimum of 1,000 acre feet of water available for diversion and storage under the Windy Gap Water Rights at the time of the proposed pumping during the current pumping season.

L. Pumping Costs. Pumping Costs shall be payable 30 days after the submission of an invoice by the Subdistrict at the end of the then current pumping season to the appropriate entity. The invoice shall include the actual bills from the power provider. In the event of a delinquency or failure to pay Pumping

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Costs by Middle Park or Grand County, the Subdistrict shall suspend release of any Variable Water Supply held by the Subdistrict for that entity and all future pumping for the delinquent Party pursuant to this WGFP Agreement until any delinquent payments have been made in full.

IV) Additional Provisions

- A. **Wolford Protection.** The Subdistrict, and the WGFP Enterprise agree that the Windy Gap Project and the WGFP will be operated in a manner that does not diminish the ability of the Colorado River Water Conservation District to capture the natural flow of Muddy Creek up to a maximum of 65,998 acre-feet pursuant to the water rights, applicable permits, and operating criteria for Wolford Mountain Reservoir.
- B. **Future Uses.** The Subdistrict and WGFP Enterprise agree to not place a call under the Windy Gap Decrees on any present or future water rights on the Colorado and Fraser Rivers and their tributaries above Windy Gap Reservoir; Provided, however, the Windy Gap Project and WGFP may divert any water which can be diverted in priority at the decreed point of diversion without placing a call as described above except for water provided as described in paragraph IV. O. of this Agreement.
- C. **Open Space.** Upon execution of this WGFP Agreement, the Subdistrict agrees to negotiate with Grand County in good faith regarding the protection of open space on Subdistrict lands, including compliance with the existing Grand County Rural Land Use Process that allows cluster development in conformance with C.R.S. § 30-28-403, as exists now or may be amended in the future; provided, however, that nothing in this Agreement or in the deed restriction shall affect or preclude the sale or development of such parcel(s) pursuant to provisions of existing or future law that allow the sale or development of lands in a manner that is not within the definition of a "subdivision" or "subdivided land".
- D. **Public Access.** Upon execution of this WGFP Agreement, the Subdistrict will make arrangements with Northern Water to provide public access to that portion of Willow Creek located on Northern Water's lands for as long as Northern Water owns the lands adjacent to Willow Creek, if and to the extent that the public access will be managed by the Colorado Division of Parks and Wildlife or other entity acceptable to Northern Water.
- E. **Jasper Reservoir Conditional Water right.** The Subdistrict will abandon the conditional water right for Jasper Reservoir upon WGFP Completion.
- F. **Grand County Pump Fund.** Although the Subdistrict and Grand County have no existing obligation to do so, upon execution of this WGFP Agreement, the

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WGFP Enterprise will establish a \$120,000 fund for the repair, maintenance or replacement of the following pumps and related equipment:

Table A
ELIGIBLE PUMPS AND MEADOW PUMPERS

Eligible Pump/Water Right	Structure ID	Location (roughly Upstream to Down)	Meadow Pumper/Current Owner
1. Ennis Pump Ditch System	566		Carol Petersen Art Bruchez??
2. Holdcroft Pump No. 2	1275		Grady Culbreath??
3. Holdcroft Pump No. 2	1274		Carol Petersen
4. Thompson Pump No. 2	1149		BLM
5. TA Engle Ditch No. 3	927		BLM
6. McElroy State Pump	755		Sammons
7. McElroy No. 2 Ditch	613		Sammons
8. Thompson Pump No. 1	1148		Thompson
9. TA Engle Ditch No. 2	926		Thompson
10. TA Engle Ditch No. 1	651		Thompson
11. TA Engle Ditch No. 1	925		Thompson
12. McElroy Ditch No. 1	612		Sammons
13. Martin Pump No. 1 Ditch	694		Sammons 2 cfs Grand River 6 cfs??
14. McElroy Ditch No. 3	614	On Muddy Creek	Sammons

WGFP Enterprise will administer the fund with payments to, or as directed by, Grand County. Once the fund has been depleted for its purpose, the Subdistrict WGFP Enterprise, and Grand County have no further responsibility for claims for maintenance, replacement, or rehabilitation of pumps.

G. Flow Measuring Device Fund. The Upon execution of this Agreement the WGFP Enterprise will establish a \$380,000 fund for the reimbursement of the costs of installation of flow measuring devices on all surface water diversions capable of diverting 5 c.f.s. or more from the main stem of the Colorado River between Granby Reservoir and the confluence of the Colorado and Blue Rivers. The WGFP Enterprise shall use this fund to reimburse costs incurred for such purposes if and at such time as measuring devices have been installed, and approved by the Colorado State Engineer in writing, on all surface water diversions capable of diverting 5 c.f.s or more from the mainstem of the Colorado River below Granby Reservoir to the confluence of the Colorado and Blue Rivers, and Grand County has obtained the necessary permanent access agreements for installation, operation, maintenance, and replacement of the recording and telemetry devices.

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- 1) If measuring devices have not been installed pursuant to the necessary permanent access agreements and approved in writing by the Colorado State Engineer on all such surface water diversions within 10 years of the date of this WGFP IGA, one-half of the funds shall be transferred for use in the Learning by Doing Cooperative Effort and one-half of the funds shall be returned to WGFP Enterprise.
- 2) If measuring devices have been installed pursuant to the necessary permanent access agreements and approved in writing by the Colorado State Engineer on all such surface water diversions within 10 years of the date of this WGFP IGA and there are funds which remain in the Flow Measuring Device Fund, one-half of the funds shall be transferred for use in the Learning by Doing Cooperative Effort and one-half of the funds shall be returned to WGFP Enterprise.

H. Recording and Telemetry Devices. Recording and telemetry devices for flow measuring devices approved by the Colorado State Engineer pursuant to Paragraph IV.G. will be acquired, installed, operated, maintained and replaced by and at the expense of the WGFP Enterprise pursuant to permanent access agreements obtained by Grand County, as described in Paragraph IV.G. above.

I. Water Accounting. The Subdistrict agrees to submit detailed daily water accounting to the State of Colorado Division Engineer as required by the Division Engineer and provide copies to the West Slope Parties.

J. Future Water Development.

- 1) Compact Curtailment Plan. The Signatories agree to cooperate in good faith toward the development of a plan to avoid and address a potential curtailment of existing Colorado water rights under the provisions of the 1922 Colorado River Compact and the 1948 Upper Colorado River Compact. The Signatories agree to meet and confer before the Municipal Subdistrict or WGFP Enterprise take any action pursuant to Paragraph IV.J.3. of this WGFP Agreement.
- 2) The Subdistrict and WGFP Enterprise agree that, without the prior express written consent of Grand County and the Colorado River Water Conservation District, they will not (a) acquire any existing water rights in Grand County; (b) construct additional water supply facilities in Grand County; (c) appropriate new water rights in Grand County; or (d) appropriate any new water rights in Water Division No. 5 that will result in depletions of water from Grand County.

3) Compact Curtailment Actions.

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(a) To the extent, and during such time that the operation of the Windy Gap Project or WGFP, or the exercise of the Windy Gap Project Water Rights, is or may in the future be curtailed, limited, or otherwise restricted as the result of, or for the purpose of, compliance with the 1922 Colorado River Compact or 1948 Upper Colorado River Compact ("Compact Curtailment"), the Municipal Subdistrict or WGFP Enterprise may take any actions or use any existing or future facilities as may be required to provide a water supply to the Municipal Subdistrict or WGFP Enterprise, as limited by and subject to the WG Volumetric Limits ("Compact Curtailment Actions") and the express obligations of the Subdistrict and WGFP Enterprise under this WGFP Agreement. The Municipal Subdistrict or WGFP Enterprise may undertake such Compact Curtailment Actions as may be necessary to prudently plan and prepare in advance of any potential Compact Curtailment; Provided however, that any such advance Compact Curtailment Actions will be implemented only during such time that the quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of a Compact Curtailment. The West Slope Parties may oppose any Compact Curtailment Actions in any forum. Nothing in this Paragraph IV.J.3 shall affect the obligations of the Subdistrict and WGFP Enterprise under this Agreement.

(b) Nothing in this WGFP Agreement, including without limitation Paragraphs IV.J.1) and IV.J.2) above, shall affect, limit, or otherwise restrict the right of the Municipal Subdistrict or WGFP Enterprise to take any actions or to use any existing or future facilities as required to provide a water supply to the Municipal Subdistrict or WGFP Enterprise, as limited by and subject to the WG Volumetric Limits, in the event, to the extent, and during such time that the operation of the Windy Gap Project or WGFP, or the exercise of the Windy Gap Project Water Rights, is or may in the future be curtailed, limited, or otherwise restricted as the result of or for the purpose of compliance with the 1922 Colorado River Compact or 1948 Upper Colorado River Compact. Nothing in this WGFP Agreement shall limit or restrict the right of West Slope Parties to oppose any such actions or use of any such existing or future facilities.

(c) Nothing in this Paragraph IV.J.3 shall be construed to 1) allow the Subdistrict or WGFP Enterprise to increase the yield of the WG Project or WGFP at times other than when the quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of the enforcement of the 1922 Colorado River Compact or 1948 Upper Colorado River Compact, or 2) use any banked or stored water in a manner that causes an increase in the yield of the Windy Gap Project or WGFP at times other than when the

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quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of the enforcement of the 1922 Colorado River Compact or 1948 Upper Colorado River Compact. Nothing in this Paragraph IV.J.3) shall affect the obligations of the Subdistrict and WGFP Enterprise under Paragraphs III.D, III.E. and III.F. of this WGFP Agreement.

- 4) Nothing in this Agreement shall affect, limit, or otherwise restrict the right of the Municipal Subdistrict to fully utilize the Windy Gap Water Rights and associated existing facilities in Grand County or any existing or future facilities on the East Slope, or existing or future water rights in Water Division No. 1 in a manner that will not exceed the WG Volumetric Limits. The West Slope Parties reserve the right to oppose any actions taken by the Subdistrict intended to achieve the WG Volumetric Limits using existing or future facilities or water rights that are not expressly authorized by the 1980 Agreement, the 1985 Supplemental Agreement, and this WGFP Agreement.
- 5) Any consent of Grand County under Paragraph IV.J.2) shall not be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action to be taken thereunder by Grand County.
- 6) Nothing in this Agreement shall affect, limit, or otherwise restrict the maintenance, repair, replacement or rehabilitation of the existing Windy Gap Project facilities, replacement facilities, or rehabilitated facilities located in Grand County.

K. CWCB Instream Flow. The Subdistrict and WGFP Enterprise will support the entry of a decree in accordance with applicable law for a CWCB instream flow on the Colorado River mainstem from the confluence of the Blue and Colorado Rivers to a point immediately upstream of the confluence of the Eagle and Colorado Rivers if a) the CWCB instream flow is not used as a basis for imposing restrictions or limitations on the WGFP, b) the West Slope Parties agree that they will never assert in any forum that the CWCB Instream flow be used as a basis for restrictions or limitations on the WGP or WGFP, and c) the right is subject to substantively the same terms and conditions as are set forth in the Findings of the CWCB in declaring its intent to appropriate dated _____, 2011.

L. Grand County RICD. Subdistrict and WGFP Enterprise will not oppose the entry of a decree in Case No. 10CW298 consistent with the draft decree dated _____ 2012 and stipulation attached as Exhibit * to this Agreement.

M. Shoshone Outage Protocol.

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- 1) For purposes of this Agreement, the Shoshone Outage Protocol means that the Windy Gap Project will operate as described in this paragraph IV.M.1), IV.M.2), and IV.M.3) during periods when the Shoshone Power Plant is shutdown or otherwise not able to divert the full amount of its 1,250 cfs senior water right due to repair, maintenance, or other reasons ("Shoshone Outage"). When the Windy Gap Project's participation in the Shoshone Outage Protocol is in effect pursuant to this WGFP Agreement, the Windy Gap Project will bypass the amount of water that the Windy Gap Project would have been required to bypass if the Senior Shoshone Call had been in effect in order to result in a flow of not more than 1250 cfs at the Dotsero gage on the Colorado River (not including any water released for endangered fish species purposes). For purposes of this WGFP Agreement, a Shoshone Outage does not include a shutdown of the Shoshone Power Plant for regularly scheduled maintenance for a cumulative period of 17-days during the period of November 1 through March 15.
 - 2) The Windy Gap Project will operate in accordance with the Shoshone Outage Protocol from July 16-April 14th. Prior to WGFP Completion, the Windy Gap Project may operate in accordance with the Shoshone Outage Protocol during the period of April 15-July 15 on a voluntary cooperative basis. Following WGFP Completion, the Windy Gap Project will operate in accordance with the Shoshone Outage Protocol during the period April 15 – July 15 at any time during this period when the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project water stored on behalf of WGFP Participants in Granby Reservoir is greater than 50% of the Active Capacity of Chimney Hollow Reservoir.
 - 3) Participation in the Shoshone Outage Protocol by the Windy Gap Project during the period of April 15-July 15 will be limited to a total maximum volume of foregone pumping equal to 10,000 acre feet (30 days with one pump running) in one year, a total of 20,000 acre feet (60 days with one pump running) in any 3 consecutive year period, and a total of 30,000 acre feet (90 days with one pump running) in any 5 consecutive year period.
 - 4) The Subdistrict agrees that it will participate in good faith in negotiations to achieve permanent management of the flow of the Colorado River to address certain flow changes that result during a Shoshone Outage.
- N. Cooperative Effort for Aquatic Environment. The Subdistrict and the WGFP Enterprise, Grand County, Middle Park, and the River District agree to participate in the Learning by Doing Cooperative Agreement ("Cooperative Agreement") as defined in the Intergovernmental Agreement for The Learning by, Doing Cooperative Effort which is attached as Exhibit * but which is not a part of or incorporated within this WGFP Agreement. The Cooperative Effort

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may be amended by and with the mutual consent of all parties thereto. Any such amendments shall not require amendment or modification of this WGFP Agreement.

- O. Colorado River Cooperative Agreement. The Subdistrict and the WGFP Enterprise agree not to oppose or otherwise interfere with the efforts to obtain such court decrees and approvals as are necessary for the Colorado River Cooperative Agreement to the extent that the court decrees and approvals do not adversely affect the WGFP or Windy Gap Project. The Subdistrict further agrees that it will not divert water that would not have been available but for the actions of the Management Committee or Grand County pursuant to the Learning by Doing process.
- P. Wild and Scenic. Within one year of issuance of an acceptable permit for the WGFP, the Subdistrict shall pay \$50,000 and the River District shall pay \$25,000 to the Endowment Fund of the Upper Colorado River Wild and Scenic Stakeholder Group for use to protect Wild and Scenic resources identified in the Colorado River from Kremmling downstream to No Name. The Subdistrict's contribution provided herein shall satisfy the obligation of the Subdistrict and WGFP Enterprise to contribute endowment funds for Wild and Scenic purposes under this WGFP Agreement. The Subdistrict agrees that the River District's contribution provided herein shall satisfy the obligation of the River District to contribute endowment funds for Wild and Scenic purposes under the WGFP Agreement. The Subdistrict will contribute 20% of the amount contributed by the River District, not to exceed \$5,000 annually adjusted annually by the Denver-Boulder-Greely CPI-U, for annual operating costs of the Upper Colorado River Wild and Scenic Stakeholder Group.
- Q. Windy Gap Water Right Diversion at Granby Reservoir. Absent the express written consent of Grand County and the River District, the Subdistrict and WGFP Enterprise agree that neither will divert water at Granby Reservoir under the priority of the Windy Gap Decrees or during free-river conditions.
- R. Bypass of Windy Gap Reservoir. The Subdistrict will enter into an agreement with Colorado Division of Parks and Wildlife to provide up to \$250,000 to study methods for bypass of flows, sediment, and/or fish around or through Windy Gap Reservoir and identify potential modifications that would provide tangible benefits to aquatic resources below Windy Gap Reservoir. Issues to be studied include, but are not limited to sediment transport, water quality (effects on temperature and/or nutrients) and fish passage. The Subdistrict and the WGFP Enterprise will participate with all stakeholders in securing funding from other sources for any solution identified by the study, provided, however, that this WGFP IGA does not require any funding for such solutions. The study will be conducted as the first phase of the Upper Colorado River Habitat Project. The implementation of recommendations

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resulting from the study will not constitute a violation of or require amendment of this WGFP Agreement or the 1980 and 1985 Agreements.

V) West Slope Parties' Commitments

- A. No Opposition to WGFP. The West Slope Parties will not oppose final state and federal approvals of the WGFP, subject to performance of this WGFP Agreement by the Subdistrict and WGFP Enterprise and the performance of such mitigation, requirements, and conditions as are required in those approvals, including but not limited to the Records of Decision by Reclamation and USACE, the Amending Contract, 401 Certification, or the 404 Permit. Nothing herein shall affect any 1041 authority of Grand County.
- B. Reopen Approvals or Authorizations. The West Slope Parties will not request that any governmental approval or authorization of the Windy Gap Project or the WGFP be subject to provisions that have the effect of reopening the governmental approval or authorization. For a period of five years from the date of the first diversions into the constructed Chimney Hollow Reservoir, no party will unilaterally request, or cause others to request, that the United States Army Corps of Engineers or other regulatory agency with jurisdiction and authority over the WGFP, reopen a permit or license for the Windy Gap Project or WGFP for any reason except as may be necessary to preserve any right to undertake such action prior to expiration of any applicable legal deadline or statute of limitation. Each party reserves the right to oppose any such efforts to reopen the permits or licenses for the Windy Gap Project or WGFP. This Paragraph V.B. is not intended to prevent the West Slope Parties from commencing any legal action to enforce this WGFP Agreement or to request enforcement of specific terms of federal permits.
- C. Windy Gap Reservoir Conditional Storage Right. The West Slope Parties will not oppose future applications to make the remaining conditional portion (1,101.14 acre feet) of the existing Windy Gap Reservoir storage right absolute.
- D. Modification of Windy Gap Decree. The West Slope Parties will consent to the entry of a Decree consistent with the draft decree attached as Attachment * to this Agreement, modifying the existing Windy Gap Decrees to incorporate this WGFP Agreement and will not assert that a change of the water rights for the Windy Gap Project is required for the operations of the Windy Gap Project or WGFP in a manner consistent with this Agreement.

VI) Further Agreements of the Parties

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- A. The Parties reaffirm the validity of the 1980 and 1985 Agreements, agree that those Agreements remain in place except as explicitly modified by this WGFP Agreement, and that in the event of a determination by a governmental entity with jurisdiction that this WGFP Agreement or any provision is invalid or inadequate in any regard, the 1980 and 1985 Agreements shall remain valid and enforceable as if this WGFP Agreement did not exist. The provisions of the 1980 and 1985 Agreements which relate to the operation of the Windy Gap Project and the rights and interests of Middle Park shall remain in place until such time as WGFP Completion, and the approval of this Agreement by the Water Court, Water Division No. 5 by Decree not subject to appeal.
- B. No Party will oppose final state, local and federal approvals of the WGFP, subject to performance of this WGFP Agreement by the Subdistrict and WGFP Enterprise and the performance of such mitigation, requirements, and conditions as are required in those approvals, including but not limited to the Records of Decision by Reclamation and USACE, the WGFP Amendatory Contract, 401 Certification, or the 404 Permit. Nothing herein shall affect any 1041 authority of Grand County.
- C. The Subdistrict agrees that conditions of the federal authorization for the WGFP will include provisions that substantially conform to the following:
1. the total volume of C-BT Project water stored in the combination of Granby and Chimney Hollow Reservoirs will not exceed 465,568 acre-feet. For the purposes of this Paragraph of the WGFP Agreement, the amount of C-BT Project water in storage in Granby Reservoir shall be the amount of C-BT Project water stored above the invert of the Parr Pumping Plant Intake and below the normal high water line; and
 2. In any year in which the April 1st or subsequent projection by Northern Water anticipates a spill at Granby Reservoir, C-BT Project water then in storage in Chimney Hollow Reservoir shall not be released to satisfy delivery requirements to Colorado-Big Thompson Project Allottees if such release would allow the capture and storage of additional C-BT Project water in Granby Reservoir.
- D. Nothing in this WGFP Agreement shall be construed to limit the discretion of the Northern Colorado Water Conservancy District or Reclamation regarding the operation of the Colorado-Big Thompson Project, including, without limitation the pre-emptive release of Windy Gap Project water from Granby Reservoir that may increase the risk of or result in a spill of water provided to Middle Park or Grand County (any such spill in accordance with Paragraph III.I of this WGFP Agreement).

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- E. Except as necessary to comply with the express terms of this WGFP Agreement, nothing in this WGFP Agreement shall be construed to limit the discretion of the Subdistrict or WGFP Enterprise regarding the operation of the Windy Gap Project or Windy Gap Firming Project, including, without limitation, the pre-emptive release of Windy Gap Project Water from Granby Reservoir that may increase the risk of or result in a spill of water provided to Middle Park or Grand County in accordance with Paragraph III.I of this Agreement (any such spill in accordance with Paragraph III.I of this WGFP Agreement).
- F. The Parties agree that performance of this Agreement, compliance with any mitigation requirements for the WGFP imposed by a federal or state agency, and compliance with the requirements of a Grand County 1041 permit for the WGFP shall constitute full and complete satisfaction of the obligations of the Subdistrict and WGFP Enterprise to set forth and complete a plan which satisfies 37-45-118(1)(b)(II) of the Water Conservancy Act.
- G. This Agreement does not limit, change or expand the role of or protections afforded to all Parties with interests in the Colorado-Big Thompson Project as described in the Manner of Operation provisions of Senate Document No. 80, the 1961 Principles to Govern the Release of Water at Granby Dam To Provide Fishery Flows Immediately Downstream In The Colorado River ("1961 Principles"), and the Blue River Decrees. Water released from Granby Reservoir pursuant to this WGFP Agreement shall be in addition to the then current bypass of water under the 1961 Principles.
- H. The obligations of the Parties to this WGFP Agreement shall exist upon execution of this Agreement unless otherwise specified in this Agreement.
- I. This WGFP Agreement shall be incorporated within and be a non-severable part of the Windy Gap Decrees.
- J. The West Slope Parties agree to not assert that the WGFP and Moffat Collection System Project are interdependent or interrelated.
- K. This WGFP Agreement is an agreement between the Parties and does not bind or limit the authority or jurisdiction of agencies of the United States of America.
- L. Performance of the portions of this WGFP Agreement that require the expenditure of funds are subject to future budgeting and appropriation of funds by the governing bodies of the Subdistrict, WGFP Enterprise, Middle Park, Grand County, and the River District. The Parties agree to make good faith efforts to appropriate such funds.

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- M. The Parties agree that this Agreement is an intergovernmental agreement pursuant to Article XIV, Sec. 18 of the Colorado Constitution and C.R.S. § 29-1-201 et. Seq. inclusive, among all governmental entities hereto. The Parties further agree that the terms and conditions of this Agreement are enforceable by specific performance and agree not to bring any defense to specific performance based on the doctrine of governmental immunity. The Parties also agree that a breach of this Agreement will cause irreparable harm sufficient for injunctive relief.
- N. The Parties agree to work cooperatively to implement a stipulated resolution of the Green Mountain Reservoir Administrative Fill dispute.
- O. The Parties agree that if a dispute arises on any matter covered by this WGFP Agreement, the Parties will confer in good faith and endeavor to resolve the concern. If the Parties reach an impasse, they will select a neutral third party mediator who would seek an acceptable voluntary solution to the conflict. For conflicts that involve a technical or scientific matter, the neutral third party mediator may select an independent technical or scientific expert, acceptable to the Parties involved in the mediation, to review and make a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, then the affected Parties may pursue any available legal or administrative recourse. Nothing herein shall preclude the commencement of any action that would otherwise be barred by a statute of limitations or the timely participation in any judicial or administrative process.
- P. This WGFP Agreement is the result of negotiations between the Parties and their respective counsel. These negotiations produced numerous drafts which were prepared by one or more of the Parties. The Parties agree that these drafts, including omissions, do not provide or represent evidence of intent of any Party and may not be relied upon for purposes of construction and enforcement of this WGFP Agreement or for any other purpose.

VII. No Waiver

A. The Parties do not agree:

- 1) Whether amendment of the Blue River Decree or Senate Document No. 80 is required to authorize the storage of C-BT Project water in Chimney Hollow Reservoir,
- 2) Whether a change of water right is required to allow the storage of Windy Gap Firing Project water in Chimney Hollow Reservoir, or
- 3) Whether the Section 390b(d) of the Water Supply Act of 1958 requires Congressional approval for the Windy Gap Firing Project.

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4) Notwithstanding these disagreements, the West Slope Parties will not object to, litigate or otherwise dispute in any forum the storage of C-BT Project water in Chimney Hollow Reservoir or the storage of Windy Gap Firming Project water in Chimney Hollow Reservoir in accordance with, and subject to the following provisions:

- (a) The total volume of C-BT Project water stored in the combination of Granby and Chimney Hollow Reservoirs will not exceed 465,568 acre-feet. For the purposes of this Paragraph of the WGFP Agreement, the amount of C-BT Project water in storage in Granby Reservoir shall be the amount of C-BT Project water stored above the invert of the Farr Pumping Plant Intake and below the normal high water line.
- (b) In any year in which the April 1st or subsequent projection by Northern Water anticipates a spill at Granby Reservoir, C-BT Project water then in storage in Chimney Hollow Reservoir shall not be released to satisfy delivery requirements to Colorado Big Thompson Project Allottees if such release would allow the capture and storage of additional C-BT Project water in Granby Reservoir.
- (c) The implementation of this WGFP Agreement.
- (d) The Parties do not waive any rights regarding any other changes to the historical operations of the C-BT Project or Windy Gap Project.

B. No Waiver – C-BT. The Parties agree that the dispute concerning storage of C-BT Project water in Chimney Hollow Reservoir has not been litigated. The Parties agree that, except as provided for in this Agreement, in entering into the agreement and not litigating or otherwise objecting in any forum to the legal issues specified in Paragraph VII.A., above, that this Agreement shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue of claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the parties respective position regarding the storage of C-BT Project water and the Parties' respective interpretations of Senate Document No. 80, the 1961 Principles, the 1938 Repayment Contract, Reclamation Law, the Blue River Decrees, or Colorado law. The parties further agree that they do not intend this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter.

C. No Waiver – WGFP. The Parties agree that the dispute concerning storage of Windy Gap Project Water in Chimney Hollow Reservoir has not been litigated. The parties agree that, except as provided for in this WGFP

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Agreement, in entering into this WGFP Agreement and not litigating or otherwise objecting in any forum to the legal issues specified in Paragraph VII.A, above, that this Agreement shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the parties respective position regarding the storage of Windy Gap Firming Project water in Chimney Hollow Reservoir and the Parties' respective interpretations of federal or Colorado law. The Parties further agree that they do not intend this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter.

- D. The Parties do not agree whether Grand County has the authority to regulate the WGFP pursuant to C.R.S. § 24-65.1-101, et seq.
- 1) Notwithstanding these disagreements, the Subdistrict will not object to, litigate, or otherwise dispute in any forum the authority of Grand County to require a permit for the WGFP issued by Grand County pursuant to C.R.S. § 24-65.1-101, et seq. (1041 Permit), including any terms and conditions thereof once said Permit has been accepted by the Subdistrict.
 - 2) With the exception of a challenge to the County's authority to require a permit for the WGFP, the Subdistrict does not waive or relinquish its rights to raise any defense or assert in any forum that it has fully complied with and is not in violation of the WGFP 1041 Permit.
 - 3) The Subdistrict does not waive or relinquish its rights to object to, litigate, or otherwise dispute in any forum the authority of Grand County to modify, amend or terminate the WGFP 1041 Permit or to require a 1041 Permit or other Grand County Permit or authorization for any other existing or future project, action, or other activity of the Subdistrict.
- E. Preservation of Governmental Powers. Except as specifically provided herein, nothing in this Agreement shall be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action taken thereunder, by any governmental or quasi-municipal entity including, without limitation, the regulatory or quasi-judicial power or authority of Grand County.

**MEMORANDUM OF UNDERSTANDING
GRAND LAKE CLARITY PROJECT**

This Memorandum of Understanding by and between Grand County Board of County Commissioners (County), Northern Colorado Water Conservancy District (Northern), and United States Department of the Interior, Bureau of Reclamation (Reclamation), is made to be effective on this ___ day of _____, 20__.

I. DEFINITIONS

A. "Appraisal Study" is part of Reclamation's formal planning process which has been initiated with MOU No. 10AG6C0004 among Reclamation, County and Northern dated October 19, 2010.

B. "C-BT" means the Colorado-Big Thompson Project.

C. "Clarity Project" means the process to attain the Colorado Water Quality Control Commission clarity standards for Grand Lake now in effect or as may subsequently be adopted, in a manner consistent with Senate Document No. 80.

D. "Clarity Workgroup" is one of the Grand Lake Water Clarity Project's technical workgroups. The Three Lakes Technical Committee has invited the Clarity Workgroup to participate as part of its efforts.

E. "Effective Date" shall be the date upon which this Memorandum of Understanding has been signed by all the Parties.

F. "County" shall mean the Grand County Board of County Commissioners.

G. "Grand Lake Stakeholders Group" is comprised of representatives from federal, state and local agencies, the public and special interest groups to address Grand Lake clarity.

H. "Reclamation" shall mean the United States Department of the Interior, Bureau of Reclamation.

I. "Northern" shall mean Northern Colorado Water Conservancy District.

J. "MOU" shall refer to this Memorandum of Understanding.

K. "Nutrient Project" is the Three Lakes Nutrient Project jointly funded and overseen by Northern Water and Reclamation, which is part of the larger C-BT Nutrient Study.

L. "Parties" includes Grand County, Northern Water, and Reclamation.

M. "Three Lakes System" includes Grand Lake, Granby Reservoir and Shadow Mountain Reservoir.

N. "Three Lakes Technical Committee" is the committee providing oversight and technical guidance on the Three Lakes Nutrient Project.

O. Senate Document No. 80, 75th Congress 1st Session is one of the authorizing documents for the C-BT Project, and the "Manner of Operation of Project Facilities and Auxiliary Features" is relevant to this MOU.

II. EXPLANATORY RECITALS

A. WHEREAS, Grand Lake is Colorado's largest natural lake and was reported to have registered a single 9.0 meter Secchi depth measurement on September 6, 1941 during a study entitled "Diurnal Movements of Zooplankton Organisms in Some Colorado Mountain Lakes" by Robert Pennak, Biology Department, University of Colorado (1944) and also referenced in a

47 report entitled "Comparative Limnology of Eight Colorado Mountain Lakes" (9.2 meter Secchi
48 depth on September 6, 1941) by Robert Pennak, Professor of Biology, University of Colorado
49 (July 1955);

50 B. WHEREAS, a portion of Senate Document No. 80, entitled "Manner of Operation of
51 Project Facilities and Auxiliary Features" states that the C-BT Project "must be operated in such
52 a manner as to most nearly affect" five primary purposes;

53 C. WHEREAS, Grand County and other interested parties believe that the scenic attraction
54 of Grand Lake is diminished due to decreased clarity;

55 D. WHEREAS, in 2008 the Colorado Water Quality Control Commission adopted both a
56 narrative water quality standard and a numeric standard for clarity in Grand Lake which are
57 attached hereto;

58 E. WHEREAS, it is the goal of this MOU that the clarity in Grand Lake be improved to
59 meet the applicable standard of the Water Quality Control Commission;

60 F. WHEREAS, the Parties intend to work together to evaluate options for improving clarity
61 in Grand Lake while considering related issues;

62 G. WHEREAS, in order to begin this process, Reclamation, the County and Northern have
63 entered into a separate MOU to finance and participate in the Appraisal Study Process, the first
64 step in Reclamation determining its responsibility for clarity in Grand Lake associated with
65 operation of the C-BT Project, if any;

66 H. WHEREAS, the Parties intend to continue moving ahead with Reclamation's planning
67 process by initiating the development of a Statement of Work for a Feasibility Study Plan;

68 I. WHEREAS, a Grand Lake Stakeholders Group has been created.

69
70 **NOW, THEREFORE, in consideration of the above and the mutual covenants and**
71 **commitments made herein the Parties agree as follows:**

72
73 **III. OBJECTIVES:**

74 A. The Parties agree to jointly conduct the Clarity Project, which will have the following
75 objectives:

- 76 i. Identify and evaluate any and all concerns, issues, and factors that affect clarity in
77 Grand Lake;
 - 78 ii. Continue to develop and implement a coordinated water quality monitoring program
79 that will support the Clarity Project.
 - 80 iii. Explore options for identifying reasonable and effective measures that would attain
81 the clarity standards.
 - 82 iv. Identify and evaluate, with appropriate tools such as models, the feasibility of short,
83 intermediate and long term operational, nonstructural and structural alternatives (as
84 further described in the Appraisal Study) that can be implemented without adversely
85 impacting the C-BT Project yield.
- 86

87 **IV. PROJECT MANAGEMENT**

88 A. The Parties or their designees shall meet as necessary and provide direction and make
89 decisions concerning the Clarity Project. Whenever applicable, efforts associated with the Clarity
90 Project should be coordinated with the Nutrient Study; however, the parties understand that the
91 Clarity Project and Nutrient Study are separate projects with distinct management and goals.
92 Reclamation shall act as the coordinator for the Clarity Project covered by this MOU.

93 B. The Parties will keep the Town of Grand Lake and the Grand Lake Stakeholders Group,
94 as well as any other organizations or individuals expressing interest in participating at this level,
95 notified of upcoming meetings and the progress of the Clarity Project. The Grand Lake
96 Stakeholders Group, Town of Grand Lake, or interested parties will consult with and provide
97 input to the Parties with respect to implementation of this MOU.

98 C. The Parties may form technical workgroups as needed. Any technical workgroups shall
99 periodically report back to the Parties, Town of Grand Lake, and Grand Lake Stakeholders
100 Group. The Clarity Workgroup is one such group that has already been created.

101 D. The Parties will use the information and recommendations of both the Nutrient Project
102 and Clarity Project to determine what measures or changes that are necessary.
103

104 **V. PROJECT PLANNING**

105 A. In consultation with the Three Lakes Technical Committee, the Parties shall identify
106 studies, develop scopes of work, delineate phases of the studies, and clearly articulate the
107 objectives. The studies shall be completed according to sound scientific methods.

108 B. In consultation with the Three Lakes Technical Committee, the Parties shall coordinate
109 monitoring efforts with the various studies.

110 C. The Three Lakes Technical Committee will complete an annual report summarizing
111 activities and results of studies and monitoring efforts including both monitoring efforts for
112 special studies and on-going baseline water quality and clarity monitoring.

113 D. In consultation with the Three Lakes Technical Committee, the Parties will develop an
114 annual work plan for the upcoming year that will include schedules and deadlines for all Clarity
115 Project activities.
116

117 **VI. CONSULTANTS**

118 A. The Parties may engage consultants to conduct studies or prepare reports as necessary.

119 B. The Parties will jointly select consultants and develop and approve consultants' scopes of
120 work. The Parties will jointly review and approve invoices for work performed by the
121 consultant(s). Any consultant(s) shall be hired as an independent contractor.
122

123 **VII. FUNDING**

124 A. The Parties initial contribution to the Clarity Project shall be the services of their staff
125 members.

126 B. If the Clarity Project retains consultants, the Parties shall agree to a funding mechanism
127 at the time that the consultant is retained.

128 C. The Parties agree to provide funding for the Feasibility Study Plan.

129 D. The funding obligation of all Parties shall be subject to and contingent upon the annual
130 appropriation of funds therefore by their governing bodies in accordance with law.

131 i. Any agreement with consultants shall expressly recognize and implement such

132 limitation.

133 ii. The obligations of any governmental entity shall not constitute a general obligation,
134 indebtedness, or multiple fiscal year direct or indirect debt or other financial
135 obligation whatsoever, within the meaning of the Constitution or laws of the State of
136 Colorado.

137 iii. If alternatives are identified for implementation, the Parties will work together to
138 secure adequate sources of funding.

139 E. If Federal funds are available to support the goals of this MOU, they will be allocated to
140 the Clarity Project covered by this MOU. Reclamation will annually propose budget funding for
141 this MOU with all parties understanding that there is no guarantee of Federal funding.

142 F. Grand County does not accept responsibility for payment of any costs associated with
143 measures implemented to achieve the goal of this MOU.

144 G. Northern Water has a contractual relationship with the United States as defined by its
145 1938 Repayment Contract and related documents, nothing herein changes Northern Water's
146 obligations as defined by that contract and related documents, and Northern Water's
147 commitments under this MOU are separate from Northern Water's obligations under that
148 contract and related documents.

149 H. The Parties will use their best efforts to obtain an allocation of funds appropriated in the
150 Arapaho National Recreation Legislation for water quality efforts. If successful, the Parties will
151 work with the U. S. Forest Service to have those funds attributed to the long term effort to
152 improve clarity in Grand Lake.

153
154 **VIII. OTHER FACTORS.**

155 A. All parties to this MOU will work with land use authorities in the watershed to address
156 any land use or land management factors that could be or are affecting clarity in Grand Lake.
157

158 **IX. MODIFICATION AND WAIVER**

159 A. No modification or waiver of this MOU or any covenant condition or provision contained
160 herein shall be valid unless in writing and duly executed by all Parties to this MOU.
161

162 **X. BINDING AGREEMENT**

163 A. This MOU shall be binding upon the Parties, and their respective successors or assigns.
164 The Parties' rights and obligations under this MOU may not be assigned without the express
165 written consent of all the Parties.
166

167 **XI. ENTIRE UNDERSTANDING**

168 A. This MOU is the complete integration of all understandings between the Parties regarding
169 the Clarity Project. No prior or contemporaneous addition, deletion, or other amendment hereto
170 shall have any force or affect whatsoever, unless embodied herein in writing.
171

172 **XII. TERMINATION.**

173 A. Termination requires unanimous consent of the parties.
174

175 **XIII. THIRD PARTIES.**

176 A. The Parties do not intend to create in any other individual or entity the status of third-
177 party beneficiary, and this MOU shall not be construed so as to create such status. The rights,

78 duties and obligations documented in this MOU shall operate only between the Parties to this
179 MOU, and shall inure solely to the benefit of the Parties to this MOU.

180 B. The provisions of this MOU are intended only to assist the Parties in determining or
181 performing their obligations under this MOU.

182 C. The Parties to this MOU expressly agree that only Parties signatory to this MOU shall
183 have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of
184 a Party's performance or failure to perform any term or condition of this MOU, or to bring an
185 action for the breach of this MOU.

186 D. This MOU does not and shall not be deemed to confer upon or grant to any third-party
187 any right enforceable at law or equity arising out of any term, covenant, or condition herein or
188 the breach thereof.

189
190 **XIV. SEVERABILITY**

191 A. In case one or more of the provisions contained in this MOU, or any application hereof,
192 shall be invalid, illegal, or unenforceable in any respect the validity, legality and enforceability
193 of the remaining provisions contained in this MOU and the application thereof shall not be in any
194 way affected or impaired thereby.

195
196 **XV. COMPLIANCE WITH LAWS**

197 A. At all times during the performance of this MOU, the Parties shall strictly adhere to all
198 applicable federal, state and local laws, rules, and regulations that have been or may hereafter be
199 established.

200
201 **XVI. SOVEREIGN IMMUNITY**

202 A. The Parties do not waive their sovereign immunity by entering into this MOU, and each
203 fully retains all immunities and defenses provided by law with respect to any action based on or
204 occurring as a result of this MOU.

205
206 **XVII. EFFECTIVE DATE**

207 A. This MOU shall become effective the date upon which it has been signed by all the
208 Parties.

209
210 **XVIII. POINTS OF CONTACT**

211 A. Lurline Underbrink Curran, Senate Document 80 Representative and Grand County
212 Manager, Grand County

213 B. Don Carlson, Assistant Manager, Northern Colorado Water Conservancy District.

214 C. Carlie Ronca, Natural Resource Specialist- Project Manager, Eastern Colorado Area
215 Office, Bureau of Reclamation.

216
217

218 **IN WITNESS WHEREOF, the Parties hereto have signed this MOU effective as of the day**
219 **and year written above.**

220

221

222 **GRAND COUNTY BOARD OF COUNTY COMMISSIONERS**

223

224

225 By: _____

226 Title: _____ Date: _____

227

228 **NORTHERN COLORADO WATER CONSERVANCY DISTRICT**

229

230

231 By: _____

232 Title: _____ Date: _____

233

234 **BUREAU OF RECLAMATION**

235

236

237 By: _____

238 Title: _____ Date: _____

239

Discussion Draft

June 4, 2012

Intergovernmental Agreement between the Northern Colorado Water Conservancy District, Grand County, Middle Park Water Conservancy District and Colorado River Water Conservation District

1. Delivery of 5,412.5 acre feet of water from Granby Reservoir

- a. The Parties agree that the Colorado-Big Thompson Project should be operated by an unprejudiced agency in a fair and efficient manner, equitable to all parties having interests therein, and in conformity with Paragraphs (a) through (l) of the "Manner of Operations of Project Facilities and Auxiliary Features" of Senate Document No. 80. The Parties agree that Reclamation has been designated as the agency to fulfil that role.
- b. The Parties agree to support and not challenge the implementation of the Granby 5412.5 Contract(s).
- c. The parties agree that Northern Water shall enter into a contract for the delivery of C-BT Water to an entity or entities in Mesa County, Colorado in the amount of 5,412.5 acre feet annually.
 - i. The parties agree that the contract is subject to the written consent of the United States, which consent will be at the end of the contract.
 - ii. The parties do not object to the inclusion of the following language to implement the United States' consent (such language is general background language that is not intended to modify, change, or amend the applicable law):
 1. The United States hereby consents to the [description of specific contract].
 2. As the owner of Granby Reservoir and the Colorado-Big Thompson Project, the United States, Department of the Interior, Bureau of Reclamation ("Reclamation"), hereby concurs with and approves this contract among the Northern Colorado Water Conservancy District and the [applicable West Slope municipal entities].
 3. Reclamation hereby confirms its determination that the contract is consistent with all applicable legal authority and maintains the appropriate balance amongst all parties having interests in the Colorado-Big Thompson Project operations

required by Senate Document No. 80, the 1938 Repayment Contract and the Blue River Decrees.

4. This Consent is in addition to, and shall not modify or amend, the 1938 Repayment Contract in any respect. This Consent shall not be a basis for any direct or indirect interpretation or construction of any provision of the 1938 Repayment Contract for any purpose. This Consent does not establish any factual or legal precedent, concession, or determination by the District or the United States. The United States and the District do not, by virtue of this Consent, waive or relinquish any legal or factual position.
- d. Northern Water and the River District each will support proposed legislation in Congress to provide 5,412 acre-feet of water for the endangered fish and an additional 2,000 acre-feet to address concerns associated with the delivery of 5,412.5 acre feet from Granby Reservoir, from Ruedi Reservoir on a non-reimbursable basis.
 - e. Deliveries of 5412.5 acre feet under the Recovery Program. Northern Water agrees to coordinate with Grand County, River District and Middle Park as part of the Learning by Doing Cooperative Effort ("Cooperative Effort") on the timing, schedule and amounts of release of 5412.5 acre feet of water each year for delivery to an entity or entities in Mesa County, Colorado, as referred to in Paragraph *. above, for Municipal-Recreational purposes, doing so in a manner that will also benefit and meet the FWS requirements for the Recovery Program [add formal title of RProgram].
 - f. Perpetual Deliveries If the Recovery Program No Longer Exists. Northern Water agrees to deliver 5,412.5 acre feet of water per year in perpetuity from Granby Reservoir pursuant to municipal-recreational contracts with an entity or entities in Mesa County, Colorado, if the releases are no longer required for protection of the endangered fish under the Upper Colorado River Basin Recovery Program. The Parties agree that the delivery of 5,412.5 acre feet in perpetuity is not contingent on or related to the successful permitting and construction of the Windy Gap Firming Project. The Parties further agree that an additional benefit that will be realized from the perpetual delivery of the 5412.5 acre feet is to maintain and enhance the condition of the aquatic environment in Grand County and that the water will be used for no other purpose within Grand County. The storage and delivery of water pursuant to this paragraph shall be at no cost or charge to any entities on the West Slope. Northern Water agrees to continue the Cooperative Effort on the timing, schedule and amounts of the releases of water from Granby Reservoir if the Recovery Program no longer exists as described in paragraph 1.*. The Parties to this Agreement will attempt to coordinate the releases under the circumstances described in this paragraph so as to maximize the benefits realized from efforts to maintain and enhance the conditions of the aquatic environment in Grand County.

*Alt Language for the above - The Parties agree that it is their intent to provide for deliveries of 5,412.5 acre feet of water per year in perpetuity from Granby Reservoir. If the releases are no longer required for protection of the endangered fish under the Upper Colorado River Basin Recovery Program, up to 5,412.5 acre feet of water will be released from Granby Reservoir with the release pattern determined as part of the Learning by Doing Cooperative Effort. The Parties will work cooperatively to make any arrangements necessary to facilitate these releases, including the possibility to continue exchanges to GMR as described below in *.*

- g. Exchanges to GMR. When releases from Granby Reservoir for Municipal-Recreational contract are not also needed to meet targeted stream flows in the 15 Mile Reach these releases will be stored in Green Mountain Reservoir by exchange pursuant to any federal contracts or approvals which may be required, consistent with the EA and ROD issued by Reclamation for the 10825 water, for later delivery to the 15 Mile Reach. If the Recovery Program no longer exists as described in paragraph 1..*, then the Parties will maintain the ability to exchange water to GMR, and the timing, schedule and amounts of release of the 5412.5 acre feet of water each year to an entity or entities in Mesa County, Colorado will be made in a manner that will maximize the benefits to the aquatic environment in Grand County , as determined by the Cooperative Effort.
- h. 5412.5 Acre Feet of Water Additive. Water released from Granby Reservoir pursuant to this Agreement shall be in addition to the bypass of water under the 1961 Principles to Govern the Release of Water at Granby Dam to Provide Fishery Flows Immediately Downstream in the Colorado River ("1961 Principles") and any other water released from, or bypassed by, Granby Reservoir, including but not limited to, the water made available to Middle Park Water Conservancy District and Grand County pursuant to the WGFP IGA.
2. Support of Green Mountain Reservoir Administration Solution. The Parties agree to work cooperatively to implement a stipulated resolution of the Green Mountain Reservoir Administration Fill Dispute, consistent with Exhibit _____ [Draft Administrative Protocol].
3. Shoshone Outage Protocol and Permanent Shoshone Solution. The Parties agree to work cooperatively to implement a stipulated resolution of the Shoshone Outage Protocol, consistent with Exhibit _____ [Draft Administrative Protocol]. Northern Water agrees that it will participate in good faith in negotiations to achieve permanent management of the flow of the Colorado River to address certain flow changes that result during a Shoshone Outage.

4. Wild & Scenic Commitment. Northern Water shall pay \$200,000.00 and the River District shall pay \$100,000.00 to the Endowment Fund of the Upper Colorado River Wild and Scenic Stakeholder Group for use to protect Wild and Scenic resources identified in the Colorado River from Kremmling to No Name. Northern Water's contribution provided herein shall satisfy its obligation to contribute endowment funds for Wild and Scenic purposes under this Agreement. The River District's contribution provided in this Agreement and the River District's contribution provided for in the WGFP IGA shall satisfy the River District's obligation to contribute endowment funds for the Upper Colorado River Wild & Scenic Stakeholder Group. Northern Water will contribute 80% of the amount contributed by the River District, not to exceed \$20,000 annually adjusted annually by the Denver-Boulder-Greely CPI-U, for annual operating costs of the Upper Colorado River Wild and Scenic Stakeholder Group.

5. CWCB Instream Flow. Northern Water will support the entry of decrees in Cases No. 11CW159, 11CW160, 11CW161, Water Division No. 5, in accordance with the applicable law for a CWCB instream flow on the Colorado River mainstem from the confluence of the Blue and Colorado Rivers to a point immediately upstream of the confluence of the Eagle and Colorado Rivers provided the right is subject to substantively the same terms and conditions as are set forth in the Findings of the CWCB in declaring its intent to appropriate dated _____ 2011.

6. Grand County RICD. Northern Water will not oppose the entry of a decree in Case No. 10CW298 consistent with the draft decree dated _____ 2012 and stipulation attached as Exhibit * to this Agreement.

7. Compact Curtailment Plan. The Signatories agree to cooperate in good faith toward the development of a plan to avoid and address a potential curtailment of existing Colorado water rights under the provisions of the 1922 Colorado River Compact and the 1948 Upper Colorado River Compact.

8. No Opposition to Colorado River Cooperative Agreement. *Northern Water agrees not to oppose or otherwise interfere with the efforts to obtain such court decrees and administrative approvals as are necessary for implementation of the agreement between the Denver Water Board and West Slope parties known as the Colorado River Cooperative Agreement. Northern Water further agrees that it will not oppose applications for reasonable diligence or to make absolute in whole or in part the conditional water rights in Case No. 11CW152.*

9. No Opposition to Windy Gap Firming Project IGA. Northern Water will not interfere with the management and delivery of Windy Gap Project Water stored in the C-BT Project if the management and delivery of Windy Gap Project Water is pursuant to

Comment [A1]: Probably OK in concept, but needs specificity.

the WGFP Agreement and the Amendatory Contract between Northern Water, the Subdistrict, and the United States.

10. No Waiver. The Parties do not agree:

Comment [A2]: OK in concept if identical except for required changes from IGA no waiver

A. Whether amendment of the Blue River Decree or Senate Document No. 80 is required to authorize the storage of C-BT Project water in Chimney Hollow Reservoir;

B. Whether a change of water right is required to allow the storage of Windy Gap Firming Project Water or C-BT Project water in Chimney Hollow Reservoir; or

C. Whether Section 390b(d) of the Water Supply Act of 1958 requires Congressional approval for the Windy Gap Firming Project.

D. Notwithstanding these disagreements, the West Slope Parties will not object to, litigate or otherwise dispute in any forum the storage of C-BT Project water in Chimney Hollow Reservoir or the storage of Windy Gap Firming Project water in Chimney Hollow Reservoir in accordance with, and subject to the following provisions:

i. The total active volume of C-BT Project water stored in the combination of Granby Reservoir and Chimney Hollow Reservoirs will not exceed 465,568 acre-feet. For the purposes of this Paragraph, the amount of C-BT Project water in storage in Granby Reservoir shall be the amount of C-BT Project water stored above the invert of the Farr Pumping Plant Intake and below the normal high water line.

ii. In any year in which the April 1st or subsequent projection by Northern Water anticipates a spill at Granby Reservoir, Northern Water will not release or cause the release of C-BT Project water then in storage in Chimney Hollow Reservoir to satisfy delivery requirements to Colorado-Big Thompson Project Allottees if such release would allow the capture and storage of additional C-BT Project water in Granby Reservoir.

iv. The Parties do not waive any rights regarding any other changes to the historical operations of the C-BT Project or Windy Gap Project.

Comment [A3]: iii is deleted because it inappropriately links the 10825 and other aspects of this Agreement with the No Waiver concept

11. No Waiver – CBT. The Parties agree that the dispute concerning storage of C-BT Project water in Chimney Hollow Reservoir has not been litigated. The Parties agree that, in entering into this Agreement and not litigating or otherwise objecting in any forum to the legal issues specified in Paragraph *, above, that this Agreement shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other

Comment [A4]: Text deleted because it applies to WGFP Agreement, not this one

similar position or defense concerning any factual or legal position regarding the parties respective position regarding the storage of CB-T Project water and the Parties' respective interpretations of Senate Document No. 80, the 1961 Principles, the 1938 Repayment Contract, Reclamation Law, the Blue River Decrees, or Colorado law. The parties further agree that they do not intend this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter.

12. No Waiver – WGFP. The Parties agree that the dispute concerning storage of Windy Gap Project Water in Chimney Hollow Reservoir has not been litigated. The parties agree that in entering into this Agreement and not litigating or otherwise objecting in any forum to the legal issues specified in Paragraph VII.A, above, that this Agreement shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the parties respective position regarding the storage of Windy Gap Firming Project water in Chimney Hollow Reservoir and the Parties' respective interpretations of federal or Colorado law. The Parties further agree that they do not intend this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter.

Comment [A5]: Text deleted because this is not the WGFP Agreement

13. Preservation of Rights. This Agreement does not limit, change or expand the role of or protections afforded to all Parties with interests in the Colorado-Big Thompson Project as described in the Manner of Operations provisions of Senate Document 80 [Add definition], the 1961 Principles, and the Blue River Decrees [Add definition].
14. Preservation of Governmental Power. Except as specifically provided herein, nothing in this Agreement shall be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action taken thereunder, by any governmental or quasi-municipal entity.
15. Open Space. Upon execution of this Agreement, Northern Water agrees to negotiate with Grand County in good faith to place deed restrictions to protect open space on Northern Water's lands, including compliance with the existing Grand County Rural Land Use Process that allows cluster development in conformance with C.R.S. § 30-28-403, as exists now or may be amended in the future.
16. Public Access. Northern Water agrees to provide public access to that portion of Willow Creek located on Northern Water's lands, for as long as Northern Water owns the lands adjacent to Willow Creek, provided that the public access will be managed by the Colorado Division of Parks and Wildlife or other entity acceptable to Northern Water.

Sent to E. W. 10.
7/12

PROCESSED MATERIAL SUPPLY AGREEMENT

THIS PROCESSED MATERIAL SUPPLY LICENSE AND AGREEMENT is made and entered into this _____ day of _____, 2012, by and between NORTHERN COLORADO WATER CONSERVANCY DISTRICT, a quasi-municipal entity and political subdivision of the State of Colorado, hereinafter referred to as "Northern Water," whose address is 220 Water Avenue, Berthoud, Colorado 80513, and GRAND COUNTY, COLORADO, a County of the State of Colorado, hereinafter referred to as "County," whose address is Grand County, Administration Building, 308 Byers Avenue, Hot Sulphur Springs, Colorado, 80451.

RECITALS

- A. Northern Water owns a sand and gravel quarry located on the Northern Water Ranch, County Road 40, Grand County, Colorado, hereinafter referred to as the "Gravel Quarry." The legal description of the Gravel Quarry is attached as Exhibit A.
- B. The County desires to use the Gravel Quarry as a source of processed material for its county road maintenance and construction activities.
- C. Northern Water and the County acknowledge the benefit of this cooperative action to both Northern Water and the County. Therefore, Northern Water is willing to allow the County to use the Gravel Quarry as a source of processed material pursuant to the terms and conditions of this Agreement, which also provides Northern Water and its Municipal Subdistrict (collectively "Northern Water") with an annual source of gravel.

AGREEMENT

- 1. **Grant of License.** Northern Water hereby grants to the County the license and right, subject to the terms and conditions of this Agreement, to use the Gravel Quarry for

June 20, 2012 1:30 pm

the production of processed materials, which includes pit run and processed materials, for County road maintenance and County road construction purposes for a period of five (5) years commencing on the date of execution of this Agreement. The County may not sell, trade, or provide any materials from the Gravel Quarry for private use. Public use by other federal, state or local governmental agencies may be allowed only upon prior written approval by Northern Water. Northern Water may operate and use the Gravel Quarry simultaneously with the County. The County shall have the right to place and maintain its equipment at or in the Gravel Quarry only for the purposes of preparing, producing, and storing processed material. The County will be allowed to place a portable fuel system on the property during processing operations. This system will be removed each year when annual processing operations have been completed. No storage of other equipment or materials of any kind will be allowed. The County shall be responsible for all maintenance, upkeep, protection, and insurance for its equipment placed at or in the Gravel Quarry.

2. **State Mined Land Reclamation Permit.** State Mined Land Reclamation Board Permit No. M 81-86, or any amendment of or replacement for this Permit, shall remain in the name of Northern Water. The County shall pay, when due, the annual permit fee and the annual premium, if any, for the reclamation bond posted by Northern Water under the Permit. If no bond is necessary, no premium shall be paid. Additionally, the County shall comply with all the terms and conditions of said Permit at all times in its operation, use, and occupancy of or in the Gravel Quarry. The County shall be responsible for the payment of any fines and/or the performance of any corrective action required by the State Mined Land Reclamation Board as a result of any violations of any of the terms and conditions of said Permit by the County

3. **Annual Operations.**

- a. The County shall produce and stockpile processed materials as required to provide the quantity and type of materials required by Northern Water pursuant to

Paragraph 5 and to provide processed material for its own use pursuant to this Agreement.

- b. Prior to processing materials under this Agreement in any calendar year the County shall notify Northern Water of the types of materials that the County intends to process and stockpile at the Gravel Quarry. Within 30 days after such notice, Northern Water shall notify the County of the types and quantities of each type of material to be processed by the County for Northern Water pursuant to Paragraph 5. If Northern Water requires the County to provide processed material that requires the County to rent equipment that the County would not otherwise need or use, then Northern Water must schedule, in advance, this need, and the County Road Superintendent will schedule the processing of the required material as equipment and manpower are available. Northern Water shall reimburse the County for the documented rental costs incurred by the County exclusively for processing the material required by Northern Water. Grand County reserves the right to stockpile, for Northern Water, up to 8,000 tons of processed material at any point in time in order to accommodate the County's crushing and processing schedule.
- c. County will provide tonnage numbers for the material conveyed by the processing equipment conveyor belt and placed in stockpiles. The County will submit a monthly report (Who will receive the monthly report) showing the tonnage and types of material processed and stockpiled, the location of those stockpiles within the Gravel Quarry, and the amount of pit run material removed directly from the Gravel Quarry (not processed) on behalf of the County. Monthly tonnage reporting will include the tonnage for both that reporting month and tonnage since the execution of this Agreement. The monthly tonnage report shall be submitted by the County to Northern Water no later than the 15th of the month following the month covered by the report. This tonnage report shall also report on the quantity, type, and location of materials processed by the County for Northern Water pursuant to Paragraph 5.

4. Processed Materials for the County.

- a. The County shall have the right, commencing on the date of execution of this Agreement, to remove from the Gravel Quarry an amount not to exceed 60,000 tons of processed material produced by the County(or pit run ,as referenced in item # 1) per calendar year during the term of this Agreement. No other materials shall be removed by the County from the Gravel Quarry without Northern Water's prior written consent.
- b. The County shall pay to Northern Water \$0.50 (fifty cents) per ton for materials stockpiled for, or for pit run material removed directly from the Gravel Quarry by, the County as quantified in accordance with measurements described in Paragraph 3.c. immediately above. The County will make one payment to Northern Water at the end of each calendar year of this five (5) year Agreement. If this Agreement is extended for an additional period of five (5) years in accordance with Paragraph 14, the payments will continue annually as described in this paragraph.

5. Processed Materials for Northern Water.

- a. The County shall produce and provide, at no cost to Northern Water, sufficient processed material to achieve an average annual production of 4,000 tons of processed material for the exclusive use of Northern Water beginning with production of processed material in the calendar year 2012. This material shall be separately stockpiled and signed and shall be available for the exclusive use of Northern Water at any time during or after the term of this Agreement. Materials produced and separately stockpiled for the exclusive use of Northern Water shall not be subject to the payments required in Paragraph 4.b.
- b. If Northern Water requires the production of more than 4,000 tons in a calendar year, it will make arrangements with the County sufficiently in advance to allow

the County to accommodate the required increase in production. The amount produced for Northern Water in excess of 4,000 tons in that calendar year will be deducted from the annual production requirements for Northern Water in future years if, and only to the extent that, the additional production causes the average annual production of processed material for the benefit of Northern Water to exceed 4,000 tons per year.

- c. Northern Water shall also have the right, at any time, to take any material which has been processed and stockpiled by the County from the Gravel Quarry for use by Northern Water, at no cost to Northern Water. Any processed materials taken by Northern Water from stockpiles created by the County and accounted for in accordance with the measurement method described in Paragraph 3.c. above shall result in a credit or commensurate reduction in payments made by the County in accordance with Paragraph 4.b. above. (Any processed material taken by Northern Water which would exceed the 20,000 ton allotment for the five year contract period will be calculated deducted from the County Royalty Fee at a rate based up on county production cost.)

6. Limitations and Restrictions.

- a. The County shall not allow the exposure of ground water to the surface of the Gravel Quarry.
- b. The County shall not cause nor permit to be caused by any of its contractors, agents, consultants, representatives or employees, any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), pollutants or contaminants, as defined by CERCLA, or hazardous wastes, as defined by the Resource Conservation and Recovery Act ("RCRA"), including, but not limited to asbestos, polychlorinated biphenyls ("PCB's") and/or urea formaldehyde, or any pollutants or toxic pollutants as defined by the Clean Water Act, and any

amendments thereto, to be dumped, spilled, released, permanently stored, or deposited on, over, or beneath the Gravel Quarry. Any hazardous, toxic or flammable substances used by the County or its agents, representatives, or independent contractors shall be utilized in a lawful manner and in compliance with all federal, state and local requirements relating to protection of health or the environment. Any such hazardous, toxic or flammable substances shall be removed by the County. The County, for itself and its contractors, agents, consultants, representatives and employees, hereby agrees to indemnify and hold Northern Water harmless to the extent permitted by law from any and all claims, demands, causes of action or damages (including reasonable attorney's fees and court costs) arising from any breach of the County's covenants and obligations under this section.

7. Warranties and Representations. The County warrants and represents as follows regarding County's current and past occupancy of the Gravel Quarry:

- a. There are no on-going requirements ordered by any agency or other governmental body for environmental cleanup required as a result of previous actions by the County with respect to the Gravel Quarry.
- b. There are no wastes or PCB's, or other toxic or hazardous substances which have been generated, transported, recycled or otherwise handled in any way on or in the Gravel Quarry.
- c. There is no location on or in the Gravel Quarry where hazardous wastes or substances have been stored, treated, recycled, disposed of, or otherwise managed.
- d. There is no litigation brought or threatened or any settlements reached by or with any parties alleging the presence, disposal, or release, or threatened release of any hazardous substance from or on the Gravel Quarry.
- e. There are no storage tanks for gasoline or any other substance which are or were located on, in or under the Gravel Quarry at any time during or prior to County's signing hereof.

8. Termination.

- a. Northern Water may terminate this Agreement upon 6-months written notice to the County. The County may terminate this Agreement upon 6-months written notice to Northern Water. In addition, the financial obligations of Northern Water and the County under this Agreement are subject to annual budgeting and appropriation of funds by the respective governing bodies of Northern Water and the County in future fiscal years. In the event that funds are not budgeted and appropriated by the governing body of either party for the performance of that party's financial obligations under this Agreement in a future fiscal year, the other party shall have the right to immediately terminate this Agreement. In the event of termination, all obligations of either party which accrue before the effective date of such termination including, but not limited to, the obligations of the County under Paragraphs 2,3,4,5,6,and 7 above, this Paragraph 8, and Paragraph 15 below shall not be extinguished, but shall continue until performed. All other obligations of the parties shall be extinguished upon the effective date of such termination. Excess stockpiled materials for which royalty payments have not been made or will not be made in accordance with Paragraph 4 above that may exist upon termination of this Agreement shall belong to Northern Water.

- b. Upon notice of termination of this Agreement and prior to the effective date of such termination, the County shall: a) process, prepare, and stockpile any processed material owed to Northern Water; b) remove all processed material stockpiled by the County on its behalf in accordance with measurement described in Paragraph 3 above and for which royalties have been paid as described in Paragraph 4 above; c) remove all of its equipment and other property from the Gravel Quarry prior to the effective date of termination; and d) reclaim and restore that portion of the Gravel Quarry used by the County under this Agreement, or under any other or prior similar agreement, either written or oral, as required under the terms of the Permit, or to the

reasonable satisfaction of Northern Water if reclamation and restoration are not required under the Permit(Does this mean we are accepting responsible for the reclamation of the pit from the last time the county was in there, if so that would fine as long as it is only for what the county has disturbed)

- c. In the event reclamation is not feasible prior to the effective date of termination of this Agreement, the County shall commence and complete the required reclamation within one hundred twenty (120) days after receipt of written notice from Northern Water to commence reclamation. Reclamation shall be limited to contouring, sloping, mulching, and seeding of exposed slopes per the conditions of the Mined Land Reclamation Permit, or to the reasonable satisfaction of Northern Water if reclamation and restoration are not required under the Permit. (Not sure what this means?)

9. **Insurance.** The County and Northern Water, during the full term of this Agreement, shall maintain in full force and effect public liability insurance insuring themselves and their officers, directors, and employees against their respective liabilities arising out of their ownership, use, or occupancy of the Gravel Quarry to the maximum extent of the recovery permitted under C.R.S. §§ 24-10-101 et seq., as amended. The County also shall maintain Workmen's Compensation coverage on all of its employees employed at or present for any reason at the site of the Gravel Quarry.

10. **Maintenance and Hours of Operation.** The County shall maintain the Gravel Quarry access road at the current level of maintenance, which will be documented upon execution of this Agreement and included as an attachment to this Agreement and shall maintain all appurtenances, including but not limited to all culverts, cattle guards, fencing, and the gates which are located at the point where the access road intersects County Road 40. The County shall lock all gates that access the Gravel Quarry at the end of each day. Hours of operation of, and hauling of material from, the Gravel Quarry by the County shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday. Northern Water recognizes that from time to time the County may

experience emergencies which would require the County to enter, operate, and/or haul from the Gravel Quarry outside of the operating limits stated above. Upon notification to Northern Water personnel of such emergency, this will be allowed.

11. **No Hunting or Fishing.** The County will not permit fishing or hunting on Northern Water's property adjacent to the Gravel Quarry. The County will post such "no trespassing" signs as requested by Northern Water and will assist Northern Water in every reasonable way to keep hunters and fishermen off Northern Water property in the vicinity of the Gravel Quarry.

12. **Right of First Refusal.** Northern Water grants to Grand County for the term of this Agreement a right of first refusal to purchase the Property described in Exhibit A, or such portion thereof or larger parcel containing the Property described in Exhibit A that Northern Water elects, in its sole discretion, to sell, on the same terms and conditions as a bona fide offer to purchase said property which is acceptable to Northern Water. The right of first refusal of the County shall be on the same terms and conditions of such bona fide offer and for the same exact lands as is the subject of the bona fide offer to purchase. The right of first refusal shall automatically terminate upon the County's failure to meet and accept in writing such bona fide offer within 30 days after notice thereof from Northern Water. Upon the termination of the right of first refusal by expiration of the 30 days, Northern Water shall be free to sell the property or portion thereof to any party.

13. **Special Use Permit.** A special use permit is not required for the operation of the Gravel Permit during the term of this Agreement. Northern Water and Grand County do not waive or relinquish their respective positions regarding the existence and scope of the authority of the County to require a special use permit for the Gravel Pit. If a special use permit is legally required but not granted by the County to Northern Water, this Agreement shall automatically terminate.

14. **Renewal.** This Agreement may be renewed by the Parties for additional five year

terms on such terms as are mutually agreeable to each Party.

15. Compliance with other Laws.

- a. The County shall comply with all applicable local, state, and federal requirements for dust control measures both within the Gravel Quarry and on access roads and, as required, county roads, any time it operates, processes, or takes material from the Gravel Quarry. All vehicles and equipment shall be operated at safe, reasonable speed while entering, traveling upon, and exiting from Northern Water's property.
- b. Grand County shall comply with all applicable local, state, and federal laws, permits, and regulations in its operation, use, and occupancy of the Gravel Quarry.

16. Assignment. This Agreement shall not be assigned by either party without the written consent of the other party.

17. Modifications to Agreement. Any modifications to the terms of this Agreement must be in writing and signed by Northern Water and the County.

18. No Waiver. Nothing contained within this Agreement shall constitute a waiver or partial waiver of Governmental Immunity.

GRAND COUNTY, COLORADO

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

BY _____

BY _____

TITLE _____

TITLE _____

ATTEST:

ATTEST:

PROCESSED MATERIAL SUPPLY AGREEMENT

THIS PROCESSED MATERIAL SUPPLY LICENSE AND AGREEMENT is made and entered into this _____ day of _____, 2012, by and between NORTHERN COLORADO WATER CONSERVANCY DISTRICT, a quasi-municipal entity and political subdivision of the State of Colorado, hereinafter referred to as "Northern Water," whose address is 220 Water Avenue, Berthoud, Colorado 80513, and GRAND COUNTY, COLORADO, a County of the State of Colorado, hereinafter referred to as "County," whose address is Grand County, Administration Building, 308 Byers Avenue, Hot Sulphur Springs, Colorado, 80451.

RECITALS

- A. A. Northern Water owns a sand and gravel quarry located on the Northern Water Ranch, County Road 40, Grand County, Colorado, hereinafter referred to as the "Gravel Quarry." The legal description of the Gravel Quarry is attached as Exhibit A.
- B. The County desires to use the Gravel Quarry as a source of processed material for its county road maintenance and construction activities.
- C. Northern Water and the County acknowledge the benefit of this cooperative action to both Northern Water and the County. Therefore, Northern Water is willing to allow the County to use the Gravel Quarry as a source of processed material pursuant to the terms and conditions of this Agreement, which also provides Northern Water and its Municipal Subdistrict (collectively "Northern Water") with an annual source of gravel.

AGREEMENT

- 1. **Grant of License.** Northern Water hereby grants to the County the license and right, subject to the terms and conditions of this Agreement, to use the Gravel Quarry for

the production of processed materials, which includes pit run and processed materials, for County road maintenance and County road construction purposes for a period of five (5) years commencing on the date of execution of this Agreement. The County may not sell, trade, or provide any materials from the Gravel Quarry for private use. Public use by other federal, state or local governmental agencies may be allowed only upon prior written approval by Northern Water. Northern Water may operate and use the Gravel Quarry simultaneously with the County. The County shall have the right to place and maintain its equipment at or in the Gravel Quarry only for the purposes of preparing, producing, and storing processed material. The County will be allowed to place a portable fuel system on the property during processing operations. This system will be removed each year when annual processing operations have been completed. No storage of other equipment or materials of any kind will be allowed. The County shall be responsible for all maintenance, upkeep, protection, and insurance for its equipment placed at or in the Gravel Quarry.

2. **State Mined Land Reclamation Permit.** State Mined Land Reclamation Board Permit No. M 81-86, or any amendment of or replacement for this Permit, shall remain in the name of Northern Water. The County shall pay, when due, the annual permit fee and the annual premium, if any, for the reclamation bond posted by Northern Water under the Permit. If no bond is necessary, no premium shall be paid. Additionally, the County shall comply with all the terms and conditions of said Permit at all times in its operation, use, and occupancy of or in the Gravel Quarry. The County shall be responsible for the payment of any fines and/or the performance of any corrective action required by the State Mined Land Reclamation Board as a result of any violations of any of the terms and conditions of said Permit by the County

3. **Annual Operations.**

- a. The County shall produce and stockpile processed materials as required to provide the quantity and type of materials required by Northern Water pursuant to

Paragraph 5 and to provide processed material for its own use pursuant to this Agreement.

- b. Prior to processing materials under this Agreement in any calendar year the County shall notify Northern Water of the types of materials that the County intends to process and stockpile at the Gravel Quarry. Within 30 days after such notice, Northern Water shall notify the County of the types and quantities of each type of material to be processed by the County for Northern Water pursuant to Paragraph 5. If Northern Water requires the County to provide processed material that requires the County to rent equipment that the County would not otherwise need or use, then Northern Water must schedule, in advance, this need, and the County Road Superintendent will schedule the processing of the required material as equipment and manpower are available. Northern Water shall reimburse the County for the documented rental costs incurred by the County exclusively for processing the material required by Northern Water. Grand County reserves the right to stockpile, for Northern Water, up to 8,000 tons of processed material at any point in time in order to accommodate the County's crushing and processing schedule.
- c. County will provide tonnage numbers for the material conveyed by the processing equipment conveyor belt and placed in stockpiles. The County will submit a monthly report showing the tonnage and types of material processed and stockpiled, the location of those stockpiles within the Gravel Quarry, and the amount of pit run material removed directly from the Gravel Quarry (not processed) on behalf of the County. Monthly tonnage reporting will include the tonnage for both that reporting month and tonnage since the execution of this Agreement. The monthly tonnage report shall be submitted by the County to Northern Water no later than the 15th of the month following the month covered by the report. This tonnage report shall also report on the quantity, type, and location of materials processed by the County for Northern Water pursuant to Paragraph 5.

4. Processed Materials for the County.

- a. The County shall have the right, commencing on the date of execution of this Agreement, to remove from the Gravel Quarry an amount not to exceed 60,000 tons of processed material produced by the County per calendar year during the term of this Agreement. No other materials shall be removed by the County from the Gravel Quarry without Northern Water's prior written consent.
- b. The County shall pay to Northern Water \$0.50 (fifty cents) per ton for materials stockpiled for, or for pit run material removed directly from the Gravel Quarry by, the County as quantified in accordance with measurements described in Paragraph 3.c. immediately above. The County will make one payment to Northern Water at the end of each calendar year of this five (5) year Agreement. If this Agreement is extended for an additional period of five (5) years in accordance with Paragraph 14, the payments will continue annually as described in this paragraph.

5. Processed Materials for Northern Water.

- a. The County shall produce and provide, at no cost to Northern Water, sufficient processed material to achieve an average annual production of 4,000 tons of processed material for the exclusive use of Northern Water beginning with production of processed material in the calendar year 2012. This material shall be separately stockpiled and signed and shall be available for the exclusive use of Northern Water at any time during or after the term of this Agreement. Materials produced and separately stockpiled for the exclusive use of Northern Water shall not be subject to the payments required in Paragraph 4.b.
- b. If Northern Water requires the production of more than 4,000 tons in a calendar year, it will make arrangements with the County sufficiently in advance to allow the County to accommodate the required increase in production. The amount

produced for Northern Water in excess of 4,000 tons in that calendar year will be deducted from the annual production requirements for Northern Water in future years if, and only to the extent that, the additional production causes the average annual production of processed material for the benefit of Northern Water to exceed 4,000 tons per year.

- c. Northern Water shall also have the right, at any time, to take any material which has been processed and stockpiled by the County from the Gravel Quarry for use by Northern Water, at no cost to Northern Water. Any processed materials taken by Northern Water from stockpiles created by the County and accounted for in accordance with the measurement method described in Paragraph 3.c. above shall result in a credit or commensurate reduction in payments made by the County in accordance with Paragraph 4.b. above.

6. Limitations and Restrictions.

- a. The County shall not allow the exposure of ground water to the surface of the Gravel Quarry.
- b. The County shall not cause nor permit to be caused by any of its contractors, agents, consultants, representatives or employees, any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), pollutants or contaminants, as defined by CERCLA, or hazardous wastes, as defined by the Resource Conservation and Recovery Act ("RCRA"), including, but not limited to asbestos, polychlorinated biphenyls ("PCB's") and/or urea formaldehyde, or any pollutants or toxic pollutants as defined by the Clean Water Act, and any amendments thereto, to be dumped, spilled, released, permanently stored, or deposited on, over, or beneath the Gravel Quarry. Any hazardous, toxic or flammable substances used by the County or its agents, representatives, or independent contractors shall be utilized in a lawful manner and in

compliance with all federal, state and local requirements relating to protection of health or the environment. Any such hazardous, toxic or flammable substances shall be removed by the County. The County, for itself and its contractors, agents, consultants, representatives and employees, hereby agrees to indemnify and hold Northern Water harmless to the extent permitted by law from any and all claims, demands, causes of action or damages (including reasonable attorney's fees and court costs) arising from any breach of the County's covenants and obligations under this section.

7. Warranties and Representations. The County warrants and represents as follows regarding County's current and past occupancy of the Gravel Quarry:

- a. There are no on-going requirements ordered by any agency or other governmental body for environmental cleanup required as a result of previous actions by the County with respect to the Gravel Quarry.
- b. There are no wastes or PCB's, or other toxic or hazardous substances which have been generated, transported, recycled or otherwise handled in any way on or in the Gravel Quarry.
- c. There is no location on or in the Gravel Quarry where hazardous wastes or substances have been stored, treated, recycled, disposed of, or otherwise managed.
- d. There is no litigation brought or threatened or any settlements reached by or with any parties alleging the presence, disposal, or release, or threatened release of any hazardous substance from or on the Gravel Quarry.
- e. There are no storage tanks for gasoline or any other substance which are or were located on, in or under the Gravel Quarry at any time during or prior to County's signing hereof.

8. Termination.

- a. Northern Water may terminate this Agreement upon 6-months written notice to the County. The County may terminate this Agreement upon 6-months

written notice to Northern Water. In addition, the financial obligations of Northern Water and the County under this Agreement are subject to annual budgeting and appropriation of funds by the respective governing bodies of Northern Water and the County in future fiscal years. In the event that funds are not budgeted and appropriated by the governing body of either party for the performance of that party's financial obligations under this Agreement in a future fiscal year, the other party shall have the right to immediately terminate this Agreement. In the event of termination, all obligations of either party which accrue before the effective date of such termination including, but not limited to, the obligations of the County under Paragraphs 2,3,4,5,6,and 7 above, this Paragraph 8, and Paragraph 15 below shall not be extinguished, but shall continue until performed. All other obligations of the parties shall be extinguished upon the effective date of such termination. Excess stockpiled materials for which royalty payments have not been made or will not be made in accordance with Paragraph 4 above that may exist upon termination of this Agreement shall belong to Northern Water.

- b. Upon notice of termination of this Agreement and prior to the effective date of such termination, the County shall: a) process, prepare, and stockpile any processed material owed to Northern Water; b) remove all processed material stockpiled by the County on its behalf in accordance with measurement described in Paragraph 3 above and for which royalties have been paid as described in Paragraph 4 above; c) remove all of its equipment and other property from the Gravel Quarry prior to the effective date of termination; and d) reclaim and restore that portion of the Gravel Quarry used by the County under this Agreement, or under any other or prior similar agreement, either written or oral, as required under the terms of the Permit, or to the reasonable satisfaction of Northern Water if reclamation and restoration are not required under the Permit.
- c. In the event reclamation is not feasible prior to the effective date of

termination of this Agreement, the County shall commence and complete the required reclamation within one hundred twenty (120) days after receipt of written notice from Northern Water to commence reclamation. Reclamation shall be limited to contouring, sloping, mulching, and seeding of exposed slopes per the conditions of the Mined Land Reclamation Permit, or to the reasonable satisfaction of Northern Water if reclamation and restoration are not required under the Permit.

9. **Insurance.** The County and Northern Water, during the full term of this Agreement, shall maintain in full force and effect public liability insurance insuring themselves and their officers, directors, and employees against their respective liabilities arising out of their ownership, use, or occupancy of the Gravel Quarry to the maximum extent of the recovery permitted under C.R.S. §§ 24-10-101 *et seq.*, as amended. The County also shall maintain Workmen's Compensation coverage on all of its employees employed at or present for any reason at the site of the Gravel Quarry.

10. **Maintenance and Hours of Operation.** The County shall maintain the Gravel Quarry access road at the current level of maintenance, which will be documented upon execution of this Agreement and included as an attachment to this Agreement and shall maintain all appurtenances, including but not limited to all culverts, cattle guards, fencing, and the gates which are located at the point where the access road intersects County Road 40. The County shall lock all gates that access the Gravel Quarry at the end of each day. Hours of operation of, and hauling of material from, the Gravel Quarry by the County shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday. Northern Water recognizes that from time to time the County may experience emergencies which would require the County to enter, operate, and/or haul from the Gravel Quarry outside of the operating limits stated above. Upon notification to Northern Water personnel of such emergency, this will be allowed.

11. **No Hunting or Fishing.** The County will not permit fishing or hunting on Northern Water's property adjacent to the Gravel Quarry. The County will post such "no

trespassing” signs as requested by Northern Water and will assist Northern Water in every reasonable way to keep hunters and fishermen off Northern Water property in the vicinity of the Gravel Quarry.

12. **Right of First Refusal.** Northern Water grants to Grand County for the term of this Agreement a right of first refusal to purchase the Property described in Exhibit A, or such portion thereof or larger parcel containing the Property described in Exhibit A that Northern Water elects, in its sole discretion, to sell, on the same terms and conditions as a bona fide offer to purchase said property which is acceptable to Northern Water. The right of first refusal of the County shall be on the same terms and conditions of such bona fide offer and for the same exact lands as is the subject of the bona fide offer to purchase. The right of first refusal shall automatically terminate upon the County’s failure to meet and accept in writing such bona fide offer within 30 days after notice thereof from Northern Water. Upon the termination of the right of first refusal by expiration of the 30 days, Northern Water shall be free to sell the property or portion thereof to any party.

13. **Special Use Permit.** A special use permit is not required for the operation of the Gravel Permit during the term of this Agreement. Northern Water and Grand County do not waive or relinquish their respective positions regarding the existence and scope of the authority of the County to require a special use permit for the Gravel Pit. If a special use permit is legally required but not granted by the County to Northern Water, this Agreement shall automatically terminate.

14. **Renewal.** This Agreement may be renewed by the Parties for additional five year terms on such terms as are mutually agreeable to each Party.

15. **Compliance with other Laws.**

- a. The County shall comply with all applicable local, state, and federal requirements for dust control measures both within the Gravel Quarry and on

access roads and, as required, county roads, any time it operates, processes, or takes material from the Gravel Quarry. All vehicles and equipment shall be operated at safe, reasonable speed while entering, traveling upon, and exiting from Northern Water's property.

- b. Grand County shall comply with all applicable local, state, and federal laws, permits, and regulations in its operation, use, and occupancy of the Gravel Quarry.

16. **Assignment.** This Agreement shall not be assigned by either party without the written consent of the other party.

17. **Modifications to Agreement.** Any modifications to the terms of this Agreement must be in writing and signed by Northern Water and the County.

18. **No Waiver.** Nothing contained within this Agreement shall constitute a waiver or partial waiver of Governmental Immunity.

GRAND COUNTY, COLORADO

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

BY _____

BY _____

TITLE _____

TITLE _____

ATTEST:

ATTEST:

June 20, 2012 1:30 pm

Lurline Curran

From: Bill Clark [bclark@co.grand.co.us]
Sent: Thursday, June 21, 2012 11:01 AM
To: 'Lurline Curran'; 'Ken Haynes'
Cc: 'Teri Mordick'; 'Robert Franek'
Subject: RE: Draft - Processed Materials Agreement
Attachments: image001.jpg; PROCESSED MATERIALS AGREEMENT SENTTOCOUNTY6-20-12 A (2).docx

Lurline, Ken and I looked over the contract and for the most part is fine. I will try to relay our comments in Red in a understandable fashion. First in response to the e-mail we added comments below. We have also added our comment to the attached contract, once again our comments are in Red.

Thanks,

Bill

From: Lurline Curran [mailto:lcurran@co.grand.co.us]
Sent: Wednesday, June 20, 2012 4:24 PM
To: 'Ken Haynes'; 'Bill Clark'
Cc: 'Teri Mordick'; 'Robert Franek'
Subject: FW: Draft - Processed Materials Agreement

Please give me your input asap. Thanks. Lurline

From: Eric Wilkinson [mailto:ewilkinson@northernwater.org]
Sent: Wednesday, June 20, 2012 1:24 PM
To: Lurline Curran
Cc: Jeff Drager; Don Carlson; Jim L. Struble
Subject: Draft - Processed Materials Agreement

Lurline:

Attached please find the above referenced document. Because of the number of changes that have been made to the document since its inception several months ago, the "organization" of the document was getting a little convoluted and confusing (at least from our standpoint). We took the liberty to "reorganize and rearrange" the document, trying diligently to maintain the same terms and conditions to the extent we could. I am providing only a clean copy of the document. If I provided a redlined comparison to the last version you sent me, it would be mostly red because of the rearranging done within the document.

To touch on a few points that I know are of interest to you:

You asked if "the pit expansion has been completed." I am unsure what you are asking but am assuming you are inquiring about the exploratory drilling of the site. That has been completed and we could share the findings with you if you prefer. Instead of the boring information, we are asking if the permitted acreage of the pit has been expanded since the last time the county was in the pit

• We addressed your question about the Special Use Permit in Paragraph 13 of the Agreement. We have a firm position on concerning a SUP for the Quarry, a position that might differ from the County's position. Paragraph 13 is an attempt to avoid that controversy.

• We have the legal description for the Quarry. We have not attached it to this draft but will attach it to the final Agreement. It would be nice to see a copy of the current State Permit.

• The term of the Agreement is five years based on input from Mike Applegate. OK

• We have included a renewal provision in the document (paragraph 14) that is standard language the Northern Water uses in its agreements. I hope this is adequate for you, as I have been told that we will not specify in this Agreement that the Agreement will be renewed on same terms and conditions as this Agreement (want to leave flexibility for modifications of various terms and conditions to accommodate changes in costs, conditions, etc. that might be experienced in the future). We will renew "on such terms as are mutually agreeable to each Party." OK

• We have compromised on the tonnage measurement methods and have tried to clarify tonnage reporting requirements. Micah will pull monthly reports form Pub Works and mail to Northern as required.

• Terms and conditions for the 4,000 tons of processed material to be provided to Northern Water have been modified slightly. OK

• We have added the provisions for the County's emergency operations in the Quarry. OK

• We have added a "County Right of first refusal" using language we are comfortable with, considering that Northern Water wants the flexibility in the future to package its property for sale in the most advantageous manner possible, should it ever choose to market the Quarry and/or its adjacent property. OK

• Your questions concerning what should be posted on the "No Trespassing" signs and on the speed limit signs are things that can be discussed and decided outside the Agreement and not included as terms and conditions within the Agreement. I am sure we can come to a mutual understanding on placing and maintaining signs at some later time.

We continue to try to come as far as we can toward your position on the various aspects of this Agreement and the content of the attached draft reflects that attempt. Please call with questions and please don't hesitate to send me an e-mail saying the Agreement is great and acceptable to the County.

Thanks,

Eric

Northern Water



Eric Wilkinson, P.E. | General Manager
220 Water Ave. | Berthoud, CO 80513
Direct 970-622-2201 | Cell 303-877-4188

Main 800-369-RAIN (7246) | Fax 877-851-0018
www.northernwater.org | [Find us on Facebook](#)

cc: *Lur*
P.H. file

RECEIVED
JUL 09 2012

BY:



PO Box 2308 • 249 Warren Ave • Silverthorne, CO 80498 • 970-468-0295 •
Fax 970-468-1208 • www.nwccog.org

July 6, 2012

Ms. Lurline Curran
Grand County Manager
PO Box 264
Hot Sulphur Springs, CO 80451

Re: Grand County 1041 Permit for the Windy Gap Firing Project

Dear Lurline,

This letter is in response to your referral of the Windy Gap Firing Project ("WGFP") to Northwest Colorado Council of Governments ("NWCCOG") for review. As you know, NWCCOG is the designated water quality management agency for the region of the state that includes the portions of the Upper Colorado River that will be impacted by the WGFP. On behalf of NWCCOG I have reviewed the WGFP. My review focused on whether the proposed project complies with the Areawide Water Quality Management Plan (208 Plan) for the NWCCOG region and provides for adequate water quality protection. My review is based on the information provided to me by Grand County in the 1041 permit application.

Based on my understanding of the proposed project, WGFP would require additional measures in order to comply with the policies of the 208 Plan. In addition I have also made certain recommendations intended to assist Grand County document the project effects. I have summarized my findings under the six 208 Plan Policies below.

208 Plan Policy 1. Protect and Enhance Water Quality

The surface and ground waters of the region shall be protected to minimize degradation of existing water quality and maintain existing and designated uses of those waters; waters not currently supporting designated uses shall be restored as soon as is financially and technically feasible.

Findings: The primary water quality issues associated with WGFP are:
1) water quality in the Three Lakes; 2) temperature in the Colorado River

downstream from the WG diversion.

1) Water quality in Three Lakes is potentially affected by increased nutrient loading from increased pumping of Colorado River water which would increase the nutrient stimulation of algae growth; by decreased DO concentrations as a consequence of increased algal growth and, associated with reductions in DO concentration is the likelihood of increased metals concentrations; and, most significantly, the impact on water clarity resulting from increased pumping of very fine non-algal organic matter and other detritus.

The applicant has proposed mitigation for increased nutrient loads by offsetting this load with improvements to the Fraser Valley regional WWTP to reduce nitrogen and phosphorus concentrations from the facility's discharge and reductions in nonpoint source nutrient loads associated with several agricultural operations. The concept is to make the increased volumes pumped to Three Lakes from the WGFP neutral from a nutrient loading perspective. These efforts are laudable and NWCCOG supports this nutrient neutral concept but has concerns about the implementation of the nonpoint source controls. Our concerns are that in spite of considerable effort and cost by the applicant to identify mitigation approaches to make the WGFP nutrient neutral measures to reduce about 2,785 kg/year or about 45% of total nitrogen mitigation load have not even been identified. Further, NWCCOG is skeptical that verification of the total loads of nitrogen and phosphorus removed from the changes in management at the two ranches is realistic to verify.

- In order for this aspect of the WGFP to comply with 208 Policy 1 Grand County must review and approve the monitoring plan used to verify compliance with the nutrient removal goal including the proposed agricultural nonpoint source nutrient control projects. In addition, the County should review and approve future mitigation measures intended to remove the remaining 2,785 kg/yr of total nitrogen, including the monitoring plan necessary to verify permanent removal of this additional load.

Water clarity in Three Lakes, specifically Shadow Mountain Reservoir and Grand Lake, is affected by C-BT pumping from Granby Reservoir. The negative effect of pumping on Grand Lake clarity appears to be the result of increased loads of non-algal organic matter and other detritus. The source of this material is currently being studied, but its role in diminishing clarity and increasing turbidity has been found to be more significant than algae growth associated with nutrient concentrations. WGFP will increase the level of this pumping. Therefore control of this

material is imperative to ensure compliance with the narrative and pending numeric clarity standards for Grand Lake, and to comply with the 208 Plan.

As part of the Enhancement Measures the applicant has indicated they intend to continue to provide substantial funding for monitoring and studies of this issue and to work with Grand County and the Bureau of Reclamation on the clarity issue, as outlined in the draft Grand Lake Clarity Project MOU. Some objectives of this MOU are to explore options and identify measures to attain the clarity standard and to identify and evaluate operational, structural and nonstructural alternatives that can be implemented without adversely impacting the C-BT project. However, there is no commitment to implement any appropriate measures that might be identified in the MOU process. This water quality problem is largely a C-BT issue, but it will be aggravated by the increased pumping associated with WGFP.

- In order to comply with 208 Plan Policy 1, the applicant must commit to participating in the implementation of the proportional share of any measure to reduce clarity impacts identified through the Grand Lake Clarity MOU in order to offset the impact to Grand Lake clarity associated with WGFP pumping.

2) Temperature in the Colorado River is projected to be effected by WGFP in about 5 of the 15 years modeled in the FEIS (page 3-147). Although the applicant states that the primary increases in stream temperature due to WGFP would occur between Windy Gap and the confluence with the Williams Fork, the State of Colorado has placed the Colorado River from CR 578 to the Blue River confluence on the 303(d) for temperature based on data indicating exceedances of both MWAT and DM in this reach. In other words, the aquatic life use is currently impaired for this entire reach of the river due to elevated water temperatures and the proposed WGFP is projected to cause or contribute to additional exceedances of water quality standard for temperature. On the positive side, a comparison of the modeled project impacts and cumulative impacts demonstrates that flow releases from Granby Reservoir as provided for in the voluntary stream flow enhancements and the cooperative endangered fish flow releases can result in measurable stream temperature improvements. In addition, the aquatic habitat improvement measures will likely benefit stream temperatures if the stream channel downstream of Windy Gap is improved.

The applicant proposes to mitigate the projected temperature impact by providing real time temperature monitoring of the Colorado River in

conjunction with Denver Water at Windy Gap and upstream of the Williams Fork confluence. Then, if after July 15 the MWAT standard is exceeded the Subdistrict will reduce or curtail WGFP pumping to the extent it will maintain compliance with the MWAT standard under certain conditions. In addition, the Subdistrict will reduce or curtail pumping for both WG and WGFP when a temperature is within 1° C of the daily maximum (DM) standard.

Limitations on this proposed mitigation include: a) that it only takes effect after July 15, b) the curtailment must demonstrate actual or modeled impact on water temperature, and c) for compliance with the MWAT standard, the only pumping that would be reduced or curtailed is pumping that would occur when Granby Reservoir is expected to spill (see definition of WGFP pumping, page 41 of 1041 application). NWCCOG is opposed to a) and c) above for reasons stated below.

First, WGFP should not cause or contribute to the exceedance of the temperature standard, regardless of the time of year or reservoir storage conditions. Policy 1 clearly states that waters not supporting designated uses, as is the case when a waterbody is on the 303(d) list, it should be restored, not exacerbated by the project. Second, the definition of WGFP pumping provided in this proposed mitigation measure is unique and not found in the modeling of operations in the FEIS or elsewhere. It is also completely counter to how WGFP will actually operate, indeed the 1041 application itself states on page 47 that WGFP operations will result in reduced water levels in Granby Reservoir. Since WGFP would not ever pump water that would spill from Granby Reservoir the proposed definition serves only to prevent any mitigation of exceedances of the MWAT standard. A more appropriate response would be when the proposed real time temperature monitoring indicates an exceedance of the MWAT temperature standard, simply take measurements just upstream and downstream of the diversion to determine if it is causing or contributing to exceedance of this standard and whether reduction or curtailment of diversions would result in a "material causal relationship", that is, reduce or eliminate the impact.

- In order to comply with 208 Plan Policy 1, the proposed mitigation of temperature should not be limited either by the July 15 date or by the definition of WGFP pumping proposed in paragraph 2 under "MWAT Chronic Threshold Exceedances – Reduction or Curtail of WGFP Pumping" on page 41 of the 1041 permit application.

208 Plan Policy 2. Water Use and Development

The impacts to water quality and the aquatic environment caused by water projects shall be mitigated by the project developer.

Findings: The temperature and Three Lakes water quality issues discussed under Policy 1 above apply under this Policy 2 as well. Those projected impacts must be mitigated to comply with Policy 2.

In addition, the existing conditions of the aquatic environment downstream of Windy Gap are compromised and declining. This conclusion is based on the recent CDOW reports as well as the recent Water Quality Control Commission inclusion of the Colorado River downstream of Windy Gap on the Monitoring and Evaluation list for Aquatic Life concerns and uncertainty about the macroinvertebrate data used in the State of Colorado's Multi Metric Index (MMI). The CDOW concludes that sedimentation and interstitial clogging is the overarching problem. The FEIS also projects a loss in trout habitat primarily in early spring and mid-summer as a result of WGFP. (FEIS pages 3-216 to 3-225). There are also times when habitat is projected to increase due to WGFP, however this occurs primarily when peak flows are reduced and so does not recognize the offsetting need for higher flushing flows to address the habitat degradation issues identified by CDOW.

In response to the existing habitat conditions the applicant is proposing to provide \$4 million toward habitat restoration and improvements for 14.4 miles of the Colorado River downstream of Windy Gap and \$250,000 for a study to assess a bypass around Windy Gap to improve fish and sediment issues. Additional flows provided for in the WGFP IGA, endangered fish releases from Granby Reservoir, and participation in the Learning by Doing process may also help ameliorate the existing habitat and declining aquatic species problems.

The applicant has proposed mitigation for WGFP by increasing the required flushing flows from 450 cfs for 50 hours once every three years to 600 cfs for 50 hours once every three years.

The aquatic habitat, macroinvertebrate and fish populations, and hydrology combine to establish the aquatic environment that is the focus of Policy 2. Uncertainty and even disagreement exists related to existing aquatic environment conditions, the net improvements associated with the proposed enhancement measures and the impact of WGFP. To address this situation NWCCOG recommends that the Subdistrict provide and implement a monitoring plan for fish and aquatic invertebrates. The purpose of the plan would be to assess the benefits of the proposed habitat

enhancements and additional flows provided in the WGFP IGA, the effect of the increased flushing flows, and aquatic life trends associated with the MMI.

208 Plan Policy 3. Land Use and Disturbance

Land uses and disturbance shall not result in significant degradation of water quality nor impair the natural protection and/or treatment processes provided by wetlands, floodplains, shorelines, and riparian areas.

Findings: The project will not be constructed in Grand County so erosion control during construction of facilities and other stormwater management concerns are not relevant. The 1041 application states (page 22) that impacts to wetlands and riparian areas are unlikely. However a slight decrease in bankfull flows in both Willow Creek and the Colorado River are projected in the FEIS. Bankfull flows are generally seen as necessary for recruitment and abundance of riparian species. Riparian functions are integral to the adjoining aquatic environment and may be tied to issues with the MMI. NWCCOG recommends the Subdistrict implement a monitoring plan to document potential degradation of riparian areas. The plan should include species inventory and photo documentation at a minimum.

208 Plan Policy 4. Domestic, Municipal, and Industrial Water and Wastewater Treatment Facilities

Decisions to locate water supplies, wastewater treatment systems, and other water and wastewater facilities shall be made in a manner which protects water quality and the aquatic environment. Where growth and development requires the need for additional facility capacity, existing facilities should be expanded in lieu of developing new facilities, unless expansion is not feasible because of technical, legal or political reasons.

Findings: The proposed project does not involve siting of new wastewater systems and the water supply facilities for the preferred alternative located in Region 12 are already in place. WGFP would be in compliance with 208 Plan Policy 4.

208 Plan Policy 5. Chemical Management

The uses of pesticides, fertilizers, algacides, road deicing and friction materials, and other chemicals which would temporarily or permanently cause a significant degradation of water quality or impair the current or designated uses of these waters should be regulated to the extent allowed by law.

Findings: This policy does not appear to apply to the aspects of the proposed WGFP project in Region 12.

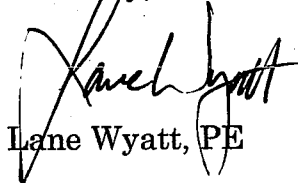
208 Plan Policy 6. Management System

The waters of the region shall be protected by a management agency structure within the existing governmental and regulatory framework that allows decisions to be made at the most appropriate level of control. For nonpoint source pollution control the recommended level of management is at the watershed level.

Findings: The proposed project is a nonpoint source pollution issue associated with hydrologic modifications. Grand County is the 208 Management Agency with appropriate jurisdiction over the proposed project under the 208 Plan through its 1041 permitting authority. The existing Windy Gap Project was permitted by Grand County. The proposed WGFP is a change in operations and facilities for that project and will therefore require a new or amended 1041 Permit. This approach complies with 208 Plan Policy 6.

I hope this review is useful. If my interpretation of the 208 Plan is disputed then these comments and recommendations can be appealed to the NWCCOG Board of Directors for review.

Sincerely,



Lane Wyatt, PE

CC: Liz Mullen, NWCCOG
Barbara Green, SullivanGreenSeavy

Carol Sidofsky

From: Carol Sidofsky [fsds@rkymtnhi.com]
Sent: Monday, July 09, 2012 12:25 PM
To: lwebb@co.grand.co.us
Subject: Letter to Grand Co. Planning Commission; put into official public comment record & read aloud at Wed. 7/11/2012 meeting.
Importance: High

Dear Lisa,

Fax with our signatures will follow this email.

Sincerely,
Carol Sidofsky and Dave Hazelrigg.

From:
Carol Sidofsky and Dave Hazelrigg
P.O. Box 362
Winter Park, CO 80482
Monday, July 9, 2012

To : Grand County Planning Commission:

Please put our letter into the official public comment record, and please read our letter out loud, at the Wednesday, July 11, 2012 Grand County Planning Commission meeting in Hot Sulphur Springs, Colorado:

Ideally, Grand County should just say NO to granting a 1041 permit, that would sell or lease water to or for any additional entity, because Grand County's water is already being taken away (water diversion) from us and from downstream users, in way too large an amount!

Both Grand County and the east slope water users must learn how to SAVE (conserve) water, instead of lavishly wasting it. Educating both sides of the continental divide users, regarding where water comes from, and where it goes, must be required. All new front range construction projects must prohibit/forbid "required" watering. Lawns, front and back yards, etc., should be composed of grasses &/or other plants that don't require watering, other than natural rain.

This project would result in too many negative impacts for Grand county.

The project must take into account the cumulative effects of all other water diversion projects, already existing, planned or proposed, on the entire river basin. It would be foolhardy for Grand County to wear

7/9/2012

See p 2 & 3 ↘

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"blindness", &/or to put fingers in ears, while saying, "La, la, la, la, I can't hear you!", when considering this project.

Grand County should require provisions to reduce turbidity of water, especially in waters such as Grand Lake.

Grand County should monitor and take steps to decrease rising water temperatures that were increasing due to the continually decreasing water flows.

Grand County should prevent other negative impacts while complying with Senate Document 80.

Mitigation (allowing bad things to happen, while making feeble attempts to deal with the bad things) is a poor substitute for doing good things, that would reverse and prevent future damage. Mitigation makes us--Grand County--end up being a loser.

Because decreased river flows and increased pumping to the eastern slope has already caused serious problems for our environment, and because it would be highly irresponsible to allow an increase in water diversion activities, Grand County must, instead, INCREASE river flows here, and DECREASE PUMPING water to the eastern slope.

If a 1041 permit were to be granted (and I am opposed to it), the permittee must be required to pay for staff salaries and expenses, court and legal expenses and commissioners' expenses in dealing with this project. The tax payers of Grand county should not be forced to pay the bill.

The permit applicant, if granted the permit, should also do the following:

- pay for improving water clarity of Grand Lake,
- pay for sewer plants to reduce their nutrient loading,
- be responsible for reversing future damages, because just as all the harmful impacts weren't anticipated with the first permit, neither would they be anticipated with a second permit, or renewed permit,
- provide money for monitoring negative impacts, and provide money for preventing future negative impacts, and for reversing present negative impacts,
- pay Colorado Parks and Wildlife for public access at Willow Creek.

It appears that the supposed basis of need for this project, other than an increase in the number of entities using the water, is that Windy Gap has been

found to NOT function well enough, in either dry or wet years.

Also, it is a very bad idea, that some west slope water may be used for fracking. Why?

Because precious drinking and irrigation water would be lost, and resulting contamination of drinking water by both poisonous hydrocarbons (oil & gas) and toxic fracking chemicals, would make well water unusable, dangerous to our health to drink, and even flammable!

Allowing fracking could cause even more demand for west slope water. Therefore, the applicant must provide Grand County with a written document banning fracking, before any permit were to be granted.

Sincerely,
Carol Sidofsky and Dave Hazelrigg

Carol Sidofsky and Dave Hazelrigg

P.O. Box 362
Winter Park, CO 80482
970-531-5000 (cell)
fsds@rkymtnhi.com

p. 3 of 3

Melanie Zwick
Box 367
Winter Park, CO 80482

July 9, 2012

Re: Windy Gap Firing Project 1041 Application

Grand County Planning Commission:

As I am unable to attend this hearing, please include these comments as part of the official public hearing on July 11, 2012.

I am opposed to allowing more water be diverted to the east slope. There is nothing good about it. This 1041 permit would be detrimental to the health and welfare of the people and environment of Grand county.

If entities can continue to increase their customer base and continue to need more and more water, a never ending cycle of increasing demand is created. Grand county water is already sucked dangerously dry. Any permit issued by Grand County must address and disallow sales or leases of water to or for additional entities.

Conserve, conserve, conserve. An education program for east slope water users about where their water comes from and how it gets to them must be mandated. Landscapes that require watering must be prohibited on all new front range construction projects.

This project would result in a number of negative impacts for Grand county. The project must absolutely consider the cumulative effects of all other water diversion projects, in place, planned or proposed on the entire river basin. It is wrong to be looking through a "peephole" when considering this project.

I support that Grand County is stipulating provisions to reduce the increase in turbidity of especially, Grand Lake and monitor and mitigate the increased water temperatures due to the yet again decreased water flows, mitigation of other negative impacts and complying with Senate Document 80. Mitigation has never been enough. Grand county comes out the loser. Mitigation requirements must be specific and strong. The current decreased river flow and pumping has already caused serious problems for our environment and it is irresponsible to allow an increase in those activities.

The permittee must be required to pay for staff salaries and expenses, court and legal expenses and commissioners expenses in dealing with this project. The tax payers of Grand county should not be footing the bill. The permittee should also pay for improving the water clarity of Grand Lake, pay for sewer plants to reduce their nutrient loading, be responsible for future mitigation because just as all the detrimental impacts were not anticipated with the first permit, neither would they be with a second permit, provide

funds for monitoring impacts and pay Colorado Parks and Wildlife for public access at Willow Creek. No expense of this project must be borne by the constituents, customers of affected entities or tax payers of Grand County.

It seems that the main basis of need for this project, other than such an increase in the number of entities receiving the water, is the fact that Windy Gap does not function well in either dry or wet years. Another "oversight" of this nature must not be allowed to occur and there should be consequences in place for such.

It is extremely bothersome that some west slope water may be used for fracking. Not only that water is lost, but other water and soils it eventually comes in contact with will become unusable. Consider that this could be a cause for even more demand for west slope water. Instead of within 30 days after signing, permittee must provide the County with a written document of how use for fracking satisfies the criteria of the permit before the permit will be granted, or better yet, no permit will be granted if it is used for fracking.

I am opposed to granting a permit that will allow decrease of our stream flows yet again. Mitigation does not restore that and does a disservice to the other areas of impact. Mitigation is, in fact, mostly a joke. The east slope requests for west slope water have to stop somewhere and this is a good place to do that. If this cycle is not broken, there would be reservoir after reservoir built with no flowing water in the direction gravity intended. Look how dry Grand county is now. This will be nothing if these requests continue. If you can't say NO, at the least, tighten up the conditions of the permit terms.

Sincerely,

Melanie Zwick

cc: Lurline Curran



COLORADO PARKS & WILDLIFE

Northwest Regional Service Center
711 Independent Ave., Grand Junction, CO 81505
Phone (970)255-6100 • FAX (970)255-6111
wildlife.state.co.us • parks.state.co.us

RECEIVED
JUL 12 2012

BY: _____

July 9, 2012

Grand County Manager's Office
Attn: WGFP Comments
P.O. Box 264
Hot Sulphur Springs, CO 80451

RE: Windy Gap Firming Project 1041 Permit Application

Dear Ms. Curran:

Thank you for the opportunity to provide comments on the Windy Gap Firming Project 1041 permit application for Grand County. Colorado Parks and Wildlife (CPW) has been actively involved in this water supply project for many years. The Colorado Wildlife Commission has reviewed and approved plans designed to mitigate impacts and perform enhancement projects including the *Windy Gap Firming Project Fish and Wildlife Mitigation Plan* and the *Windy Gap Firming Project Fish and Wildlife Enhancement Plan*.

The Colorado River through Grand County offers a highly valuable public fishery resource nationally known as a quality trout stream which provides a significant economic contribution to local communities. CPW appreciates Grand County's efforts to maintain the County's aquatic and riparian environments and considers the *Grand County Stream Management Plan* an important document towards maintaining the health of the Upper Colorado River System. CPW and Northern Water addressed recommended Colorado River flushing flows in the Windy Gap Mitigation Plan where Northern agreed to increase the flow component from 450 cfs to 600 cfs. This and other flow related provisions were accepted by the proponents and endorsed by the CPW Commission.

West Slope stakeholders and CPW have expressed concerns that Windy Gap reservoir has caused changes in water quality and sediment transport which may be related to changes in populations of macroinvertebrates (Pteronarcys and other species) and sculpin below the reservoir. In addition, some stakeholders have expressed a desire for structural modifications that would allow free migration of fish around the Windy Gap dam. CPW secured \$250,000 in funding from the project proponents to identify potential modifications that would provide tangible benefits to aquatic resources below Windy Gap Reservoir. Issues to be studied include sediment transport, water quality (effects on temperature and /or nutrients) and fish passage. If studies identify significant, measurable benefits and there is stakeholder consensus to pursue the project, we would encourage Grand County's further participation in bypass construction discussions.

STATE OF COLORADO

John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources
Rick D. Cables, Director, Colorado Parks and Wildlife
Parks and Wildlife Commission: David R. Brougham • Gary Butterworth, Vice-Chair • Chris Castilian
Dorothea Farris • Tim Glenn, Chair • Allan Jones • Bill Kane • Gaspar Perricone • Jim Pribyl • John Singletary
Mark Smith, Secretary • Robert Streeter • Lenna Watson • Dean Wingfield
Ex Officio Members: Mike King and John Salazar

EXHIBIT

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CPW has been an active participant in the 10,825 proposal discussions and requested additional temperature modeling work be performed by the USBR to examine temperature impacts associated with the operation of Windy Gap. The modeling results suggested the release of 5,412.5 AF of endangered fish water from Granby Reservoir would benefit the Colorado River through Grand County and reduce temperature exceedence issues in some years.

CPW is proceeding in the belief that the "Learning By Doing" Cooperative Effort Intergovernmental Agreement as modified to include CPW membership on the LBD committee will be signed by all stakeholders.

Application Attachment B (proposed Intergovernmental Agreement) contains several elements that we believe have the potential to benefit the ecological health of the river, such as the Grand County Transfer Water and the Shoshone Outage Protocol. We look forward to discussing possible public access to that portion of Willow Creek located on Northern Water lands and a possible agreement for land management between Northern Water and CPW. We commend the participants in this IGA for their hard work in drafting this agreement.

CPW appreciates Grand County's efforts to maintain these important aquatic and riparian environments and would like to thank you for the opportunity to comment on the 1041 permit application for this project.

Sincerely,



Ron Velarde
Northwest Regional Manager

cc: Dean Riggs, Assistant NW Regional Manager
Lyle Sidener, Area Wildlife Manager
Sherman Hebein, Senior Aquatic Biologist, NW Region
Ken Kehmeier, Senior Aquatic Biologist, NE Region

Attachments:

Windy Gap Firing Project Fish and Wildlife Mitigation Plan
Windy Gap Firing Project Fish and Wildlife Enhancement Plan

Windy Gap Firming Project

Fish and Wildlife Mitigation Plan

Prepared for:
The Colorado Wildlife Commission
In accordance with CRS 37-60-122.2

Prepared by:
Municipal Subdistrict
Northern Colorado Water Conservancy District

June 9, 2011

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EXECUTIVE SUMMARY

The Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict), on behalf of 13 East Slope Windy Gap Project participants, is pursuing a project that will improve the reliability of the water supplies and deliveries from the existing Windy Gap Project. The purpose of this Fish and Wildlife Mitigation Plan (FWMP) for the Windy Gap Firing Project (WGFP) is to comply with the requirements of Colorado State law (CRS 37.60.122.2), including the Procedural Rules for the Wildlife Commission (Chapter 16).

The WGFP is also required to comply with the National Environmental Policy Act (NEPA) by preparing a Final Environmental Impact Statement (FEIS) and with Section 404(b) (1) of the Clean Water Act by applying for a "404 Permit." As part of the 404 permit process, a 401 certification from the Colorado Department of Public Health and Environment is required.

The WGFP participants are committed to comply with all mitigation measures required by the FWMP, the FEIS (and associated Record of Decision), the 404 Permit, and the 401 Certification.

The Subdistrict is also submitting a separate Fish and Wildlife Enhancement Plan (Enhancement Plan) in cooperation with Denver Water to enhance fish and wildlife resources over and above the levels existing without the WGFP and Moffat Project.

In addition to the required mitigation measures in the FWMP and enhancements in the Enhancement Plan, the Subdistrict is participating with several East Slope and West Slope water users, numerous state and federal agencies, and West Slope private entities to enhance the flows in the Colorado River in Grand County by managing and coordinating the release of approximately 5,400 AF of water (1/2 of 10825 Water) that will benefit the Upper Colorado River Endangered Fish Recovery Program.

The goal of the Subdistrict and the WGFP participants is to mitigate for environmental impacts of the WGFP through the measures identified in this Fish and Wildlife Mitigation Plan and to improve the aquatic and riparian habitat of the Colorado River in Grand County with measures identified in the separate Enhancement Plan, while at the same time improving the reliability of the Windy Gap Project water supplies.

This FWMP for the WGFP addresses two main impact areas. On the East Slope the proposed action primarily consists of the construction and operation of a new 90,000 AF water storage facility, Chimney Hollow Reservoir. Although there will be no new construction on the West Slope and all future operations of the Windy Gap Project will be within historic water rights limitations, there will be increased diversions of Colorado River water over the actual amounts historically diverted.

WINDY GAP FIRING PROJECT
FISH AND WILDLIFE MITIGATION PLAN

The associated impacts to the Colorado River stream and aquatic resources are addressed in this plan.

With respect to the Colorado River below the Windy Gap diversion, both the WGFP and Denver Water's Moffat Collection Project (Moffat Project) diversions can sometimes have cumulative, or combined, impacts to the river. Since the Moffat Project is also seeking approval through the state and federal regulatory processes, both the Subdistrict and Denver Water have agreed to cooperate in a process of simultaneous development of the mitigation and enhancement plans pursuant to CRS 37-60-122.2. The WGFP Enhancement Plan is being provided to the Wildlife Commission concurrently with this FWMP in a separate document.

WINDY GAP FIRING PROJECT FISH AND WILDLIFE MITIGATION PLAN

1.0 INTRODUCTION

The Windy Gap Firing Project (WGFP) is a proposed water supply project that would provide more reliable water deliveries to Front Range and West Slope communities and industries. The Municipal Subdistrict, Northern Colorado Water Conservancy District, acting by and through the WGFP Water Activity Enterprise (Subdistrict) is seeking to construct the project on behalf of the 13 WGFP Participants. Project Participants include the City and County of Broomfield; the towns of Erie and Superior; the cities of Evans, Fort Lupton, Greeley, Lafayette, Longmont, Louisville, and Loveland; the Little Thompson Water District; the Central Weld County Water District; and the Platte River Power Authority.

This Fish and Wildlife Mitigation Plan (FWMP) was developed to satisfy the requirements of Colorado Revised Statute (CRS) 37-60-122.2 and outlines the actions that Project Participants will implement to mitigate the impacts that the WGFP may have on fish and wildlife. The FWMP also addresses concerns regarding WGFP impacts that were identified by CDOW staff in a detailed review of the DEIS impacts. The Subdistrict has also prepared a separate Fish and Wildlife Enhancement Plan (Enhancement Plan), pursuant to CRS 37-60-122.2 to address issues raised by Colorado Division of Wildlife and other stakeholders regarding the current condition of the aquatic environment on the Colorado River, which includes proposed enhancement measures to enhance fish and wildlife resources over and above levels existing without the WGFP.

2.0 PROJECT BACKGROUND

2.1 COLORADO-BIG THOMPSON PROJECT

The Colorado-Big Thompson Project was developed by the U.S. Bureau of Reclamation on behalf of the Northern Colorado Water Conservancy District between 1938 and 1957. The project was designed to provide water for agricultural, municipal, and industrial beneficial uses. The C-BT Project provides supplemental water to 33 cities and towns and is used to help irrigate more than 600,000 acres of northeastern Colorado farmland. On average, about 220,000 AF of water is delivered to northeast Colorado.

Twelve reservoirs, 35 miles of tunnels, 95 miles of canals, and 700 miles of power transmission lines comprise the complex C-BT collection, distribution, and power systems. Willow Creek Reservoir, Shadow Mountain Reservoir, Grand Lake, and

Lake Granby on the west of the Continental Divide collect and store C-BT water from the upper Colorado River basin. Water is pumped from Lake Granby into Shadow Mountain Reservoir where it flows by gravity into Grand Lake. From there, the 13.1-mile Adams Tunnel transports the water under the Continental Divide to the East Slope.

Once the water reaches the East Slope, it is used to generate electricity as it descends almost one-half mile through five power plants on its way to Colorado's Front Range. Carter Lake, Horsetooth Reservoir, and Boulder Reservoir store the water. C-BT water is delivered as needed via canals and pipelines to supplement native water supplies in the South Platte River Basin.

2.2 WINDY GAP PROJECT

During the 1960s, the cities of Boulder, Greeley, Longmont, Loveland, Fort Collins, and the Town of Estes Park determined that additional water supplies were needed to meet their projected municipal demands. The Municipal Subdistrict, Northern Colorado Water Conservancy District, consisting of the incorporated areas of the six entities, was formed in 1970 to develop the Windy Gap Project. Prior to project construction, the Platte River Power Authority acquired all of the City of Fort Collins' allotment contracts, as well as one-half of the City of Loveland's and one-half of the Town of Estes Park's contracts. Allotment contracts are used to allocate 480 units of Windy Gap Project water. Each Windy Gap unit represents a yield of up to 100 AF and, similar to C-BT units, can be bought and sold. The Windy Gap unit holders have changed since the original project was completed.

The Windy Gap Project consists of a diversion dam on the Colorado River, a 445-AF reservoir, a pumping plant, and a 6-mile pipeline to Lake Granby. Currently, Windy Gap Project water is stored and conveyed through C-BT Project facilities prior to delivery to Windy Gap Project allottees. Middle Park Water Conservancy District contractees on the West Slope use Windy Gap water to replace out-of-priority diversions by release of water directly from Lake Granby to the Colorado River.

2.2.1 Windy Gap Project Environmental Impact Statement

In April 1981, Reclamation completed the Final EIS on the effects of using C-BT Project facilities for the "storage, carriage and delivery" of Windy Gap Project water. The 1981 Record of Decision (ROD) for the original Windy Gap Project EIS allowed Reclamation to negotiate a contract with the Subdistrict and the NCWCD for the storage, conveyance, and delivery of Windy Gap Project water using facilities of the C-BT Project.

The original EIS determined that about 56,000 AF of water could be diverted annually from the Colorado River and that about 48,000 AF would be available for delivery to East Slope Windy Gap unit holders after subtracting 3,000 AF for MPWCD and allowances for various storage and conveyances losses. Windy Gap diversions are limited to a rate of 600 cfs and occur primarily during the months of

April to July. Total Windy Gap diversions are measured at the Adams Tunnel and are limited to a maximum of 90,000 AF in any one year and a maximum of 650,000 AF during any consecutive 10-year period pursuant to the *Agreement Concerning the Windy Gap Project and Azure Reservoir and Power Project*, dated April 30, 1980 and the Windy Gap water rights.

2.2.2 Mitigation Measures Included in the Original Windy Gap EIS

The 1981 Windy Gap Project EIS and ROD, as well as subsequent agreements, included a variety of mitigation measures to compensate and offset the effects associated with construction of the Windy Gap Project and its water diversions. Operational mitigation measures are still in place and funding and compensatory mitigation measures have been paid. Mitigation measures are summarized below.

Minimum Streamflow. A Memorandum of Understanding between the Municipal Subdistrict, Northern Colorado Water Conservancy District, NCWCD, and Colorado Division of Wildlife (June 23, 1980) established the following minimum streamflows on a 24-mile reach of the Colorado River downstream of the Windy Gap Project to the mouth of the Blue River that apply when the Windy Gap Project is pumping:

- From the Windy Gap Diversion Point to the mouth of the Williams Fork River: 90 cfs
- From the mouth of the Williams Fork River to the mouth of Troublesome Creek: 135 cfs
- From the mouth of Troublesome Creek to the mouth of the Blue River: 150 cfs

If flows are less than those specified above, Windy Gap must curtail diversions except that the project cannot be required to bypass more than the natural inflow. Additionally, bypass of at least 450 cfs for at least 50 hours during the period of April 1 through June 30 is required at least once every 3 years.

Endangered Species. Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service concluded with a Biological Opinion (March 13, 1981) determination that Windy Gap depletions, with the conservation measures listed below is not likely to jeopardize the existence of the endangered squawfish or humpback chub. The Subdistrict agreed to payment of \$100,000 for a habitat project and \$450,000 for biological investigations on the Colorado River as conservation measures to compensate for the adverse effects of the Windy Gap Project. Specific conservation and recovery measures included:

- The establishment of backwater habitat areas along the mainstem of the Colorado River
- Support of a field research team for 3 years to evaluate habitat improvement techniques for endangered fish
- Bypass flow agreements with CDOW for trout habitat to benefit Colorado River endangered fish downstream of the project area

Azure Agreement. Western Slope objections to the Windy Gap project were resolved in the *Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project* dated April 30, 1980, entered into by the Subdistrict and several West Slope entities that had been opposed to the project because of anticipated West Slope impacts. Following negotiations between the Subdistrict and the Colorado River Water Conservation District (CRWCD), a settlement was reached and mitigation measures acceptable to the parties were identified. Other parties to this agreement included: the Northwest Colorado Council of Governments (NWCCOG), Grand County, MPWCD, Three Lakes Water and Sanitation District, the towns of Granby and Hot Sulphur Springs, Winter Park Water and Sanitation District, and 30 ranchers. The purpose of this agreement was to provide compensation to West Slope entities from the transbasin diversion of water and associated impacts. Principal agreements included:

- A commitment by the Subdistrict to fund the construction of the Azure Reservoir and Power Plant, or if infeasible, fund an alternative project or a cash payment to the CRWCD
- Payment of \$25,000 to Grand County for salinity studies of the Colorado River
- Payment of \$150,000 to the Town of Hot Sulphur Springs for assistance in improving its water treatment facility and \$270,000 for improving its wastewater treatment facility
- Payment of \$500,000 to plan, construct, and design facilities needed for ranchers to maintain their diversion structures on the Colorado River
- An agreement by the Subdistrict to subordinate its Windy Gap decrees to all present and future in-basin irrigation, domestic, and municipal uses, excluding industrial uses, on the Colorado and Fraser rivers and their tributaries above the Windy Gap Reservoir site
- An agreement by the Subdistrict to volumetric limits on diversions, which included a maximum single-year diversion of 90,000 AF/year and a maximum of 650,000 AF during any consecutive 10-year period. Per the *1985 Supplement to the 1980 Azure Settlement Agreement*, these diversion limitations apply to deliveries through the Adams Tunnel, as opposed to diversions at Windy Gap Reservoir
- An agreement by the Subdistrict to bypass flows necessary to meet senior downstream water rights
- An agreement by the NCWCD to allow Grand County's use of a rock and gravel quarry on their property
- An agreement by the Subdistrict to cooperate with CDOW and others to allow public use for recreation at Windy Gap Reservoir

In return for these mitigation measures, West Slope interests agreed to drop objections to the Windy Gap conditional water right decrees and cooperate with all the necessary permitting requirements to allow construction of the project. The *1985 Supplement to the 1980 Azure Settlement Agreement* was later signed on March 29, 1985 by the Subdistrict, CRWCD, NWCCOG, Grand County

commissioners, and the MPWCD. This agreement was implemented after the planned Azure Reservoir was determined infeasible. The 1985 agreement included the following compensation to West Slope entities:

- Payment of \$10.2 million, which was used to fund construction of Wolford Mountain Reservoir on Muddy Creek north of Kremmling, and release of obligations for funding of the Azure Project
- The Subdistrict's agreement to set aside annually, but non-cumulatively, at no cost to the MPWCD, 3,000 AF of water in Lake Granby that is produced each year from Windy Gap supplies, for beneficial use without waste in the MPWCD for all beneficial uses, except instream uses and industrial uses
- Subordination of Windy Gap water rights to either Rock Creek or Wolford Mountain projects; Wolford Mountain Reservoir was completed in 1996

The 1980 and 1985 agreements were incorporated as integral parts of the Windy Gap water rights decrees.

2.3 WINDY GAP FIRING PROJECT

The proposed WGFP would entail construction of a new water storage reservoir that would provide more reliable water deliveries to Front Range and West Slope communities and industry. Due to limitations and constraints with the existing system, the current Windy Gap facilities, which were completed in 1985, are unable to deliver the anticipated firm yield of water. Water deliveries from the West Slope are limited by storage capacity in Lake Granby and by the delivery capacity of the Adams Tunnel, which delivers water from Grand Lake to the East Slope. As a result, a group of the Windy Gap Project unit holders, working through the Subdistrict, have initiated the proposed WGFP which will firm all or a portion of their individual Windy Gap units to meet a portion of existing and future municipal and industrial water requirements. The proposed action is to add water storage and related facilities to the existing Windy Gap operations that would be capable of delivering a firm annual yield of about 30,000 AF to Project Participants.

The intent of the WGFP is to improve the reliability of the Windy Gap Project and the existing Windy Gap water rights by increasing the firm yield from the existing Windy Gap Project water supply. The Subdistrict's Proposed Action is the construction of Chimney Hollow Reservoir to store Windy Gap Project water. To improve yield, the Subdistrict also is requesting integration of the Colorado-Big Thompson Project (C-BT) and Windy Gap Project operations so that C-BT water can be stored in Chimney Hollow Reservoir. The Proposed Action would require new connections to C-BT East Slope facilities and continued use of C-BT storage and conveyance systems and other existing pipelines, canals, and diversions to deliver Windy Gap water to Project Participants.

The Preferred Alternative includes construction of the 90,000-AF Chimney Hollow Reservoir with a surface area of about 740 acres. This alternative includes

prepositioning, which is the storage of C-BT water, as well as Windy Gap water, in the new reservoir. Water would be conveyed to Chimney Hollow Reservoir via a new pipeline connection to existing East Slope C-BT facilities at the upper end of the existing Flatiron Penstocks, where a new buried pipeline would deliver water to Chimney Hollow Reservoir or Carter Lake. Connections between Chimney Hollow Reservoir and Carter Lake would allow delivery of water to Participants using existing infrastructure. Reservoir construction would require relocation of about 3.8 miles of an existing 115-kV transmission line.

The new Chimney Hollow Reservoir would be located on Subdistrict land, and these lands, along with adjacent Larimer County open space lands, would be managed by Larimer County for recreation. Combined Subdistrict and Larimer County lands would provide about 3,400 acres including the reservoir for recreation and fish and wildlife habitat. Anticipated recreation features include a parking area, trails, boat dock and ramps, picnic facilities, and vault toilets. No overnight camping would be allowed.

2.3.1 Relationship of the Original Windy Gap EIS to Current Firing Project EIS

The WGFP EIS evaluates the potential effects of alternatives associated with firming the yield of the water diverted under the terms of the original Windy Gap Project EIS. The proposed WGFP would not exceed the average annual diversion of 56,000 AF evaluated in the 1981 EIS and ROD or any other diversion-related limitations or water rights. Additional reservoir storage capacity is needed in the WGFP because of the limitations in the C-BT system to store Windy Gap water when it is available. The WGFP EIS evaluates the direct, indirect, and cumulative effects of any new physical disturbances or changes in operation needed by the WGFP. As described above, the original EIS included a number of mitigation measures to offset impacts, several of which are ongoing.

3.0 OTHER CONCURRENT OR RELATED ACTIVITIES

3.1 MOFFAT COLLECTION SYSTEM PROJECT

The Moffat Collection System Project is currently proposed by Denver Water (Denver) to develop 18,000 AF/year of new annual yield to the Moffat Treatment Plant to meet future raw water demands on the East Slope. This project is anticipated to result in additional diversions, primarily from the upper Fraser River and Williams Fork River basins. Denver's proposed additional Fraser River diversions would be located upstream of the Windy Gap Project diversion site on the Colorado River and would directly affect the availability of water for the WGFP. The Moffat Collection System Project Draft EIS prepared by the Corps was released for public review in 2009.

Diversions for the WGFP and Moffat Project would result in changes to flows in the Colorado River below the Windy Gap dam. Denver Water and the Subdistrict have

agreed to cooperate with each other and with the Colorado Department of Natural Resources (DNR) and CDOW in concurrent development of the mitigation plans required under CRS 37-60-122.2 for the two projects. They have jointly developed stream temperature monitoring stations as mitigation (refer to Section 5.3.3 of this FWMP). Additionally, Denver Water and the Subdistrict have proposed enhancement with significant resources and funding to improve current conditions in the river. The WGFP Enhancement Plan is being provided to the Wildlife Commission concurrently with this FWMP in a separate document.

3.2 UPPER COLORADO RIVER ENDANGERED FISH RECOVERY PROGRAM

Reclamation is preparing an Environmental Assessment (EA) to assess the effects of proposed contracts that would provide for permanent release of 10,825 AF/yr of water to the 15-Mile Reach of the upper Colorado River. As a condition of a 1999 Programmatic Biological Opinion (PBO) (U.S. Fish and Wildlife Service 1999), a group of East and West Slope water users is committed to make releases of "10825 water" in late summer and fall in support of the recovery of endangered fish species in the 15-Mile Reach near Grand Junction. The EA will document whether a Finding of No Significant Impact (FONSI) can be issued for the proposed contracts.

The Proposed Action Alternative would use releases from Ruedi Reservoir and Lake Granby, and to a limited extent, storage in and releases from Green Mountain Reservoir when excess capacity is available, to provide 10,825 AF/yr of water for the 15-Mile Reach.

The Proposed Action Alternative involves release of 5,412.5 AF/year from Lake Granby. Releases from Lake Granby would range from 20 to 50 cfs during the period from July 15 to September 30, depending upon the hydrologic year type. This alternative was not included in the hydrologic analyses for either the WGFP or Moffat Project. Accordingly, the flows in the Colorado River below Lake Granby would be increased over flows shown in the Draft EIS for each project.

3.2.1 Coordination of 10825 Project Releases from Lake Granby

Each year, a total of 5,412.5 AF of water is to be released from Lake Granby. The water will be released to benefit the 15-Mile Reach on a fixed delivery schedule to be agreed upon by the parties in the future, and pursuant to applicable federal and state laws. The parties anticipate that the release pattern will depend on the type of hydrologic year (dry, average, or wet) and will be based on the target stream flow in the Colorado River between Lake Granby and Kremmling during late summer and early fall. Releases from Lake Granby will be pursuant to a municipal-recreation contract with a Grand Valley municipal entity within or downstream of the 15-Mile Reach.

Under some hydrologic conditions, releases from Lake Granby made to meet targeted stream flow in the Colorado River downstream of Lake Granby may not coincide with the FWS requirements for the 10825 water at the 15-Mile Reach. In these instances, water released from Lake Granby will be stored in Green Mountain

Reservoir by exchange or substitution pursuant to a contract with Reclamation (subject to availability of storage capacity and exchange potential). This water will then be released at the request of the Service to benefit the 15-Mile Reach.

An Operations Group will be established, consisting of representatives from the water users, FWS, Reclamation, and the State of Colorado Division 5 Engineer. The Operations Group will meet each spring to develop a plan for releasing the 10,825 AF of water during the coming 12 months, and at other times as necessary to fulfill the purposes of this Project. The Subdistrict will propose that CDOW be added as a member of the Operations Group.

4.0 REGULATORY PROCESS

The WGFP is required to obtain numerous federal and state permits, licenses, and approvals. The primary regulatory processes related to the C.R.S. 37-60-122.2 requirement for fish and wildlife mitigation are described below.

4.1 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REVIEW

The Subdistrict is seeking approval from Reclamation for approval of a physical connection to C-BT Project facilities and for operations of the Chimney Hollow Reservoir in order to implement the project. As the lead federal agency, Reclamation prepared a Draft Environmental Impact Statement (Reclamation 2008) for the proposed project. The U.S. Army Corps of Engineers (Corps), Western Area Power Administration (Western), and Grand County are cooperating agencies. A Final EIS is expected to be published in mid-2011. If impacts to fish and wildlife are identified in the FEIS that were not identified in the DEIS, Reclamation will coordinate with CDOW and other state agencies as required under the Fish and Wildlife Coordination Act and will make adjustments to project mitigation as appropriate.

4.2 SECTION 404 PERMIT

Because the proposed WGFP would involve the discharge of dredged and fill material into wetlands or other waters of the U.S., a permit is required from the Corps under Section 404 of the Clean Water Act. The Subdistrict, acting by and through the Windy Gap Firing Project Water Activity Enterprise, has notified the Corps that it will seek a Section 404 permit for the WGFP. Issuance of a permit would be a Corps federal action.

4.3 COLORADO FISH AND WILDLIFE MITIGATION PLAN

This FWMP is prepared to satisfy the requirements of C.R.S. 37-60-122.2. The first portion of this statute states:

(1)(a) The general assembly hereby recognizes the responsibility of the state for fish and wildlife resources found in and around state waters which are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities. The general assembly hereby declares that such

fish and wildlife resources are a matter of state-wide concern and that impacts on such resources should be mitigated by the project applicants in a reasonable manner. It is the intent of the general assembly that fish and wildlife resources that are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities should be mitigated to the extent, and in a manner, that is economically reasonable and maintains a balance between the development of the state's water resources and the protection of the state's fish and wildlife resources.

FWMPs for water projects considered under C.R.S. 37-60-122.2 are to be developed by the project applicant, working in cooperation with CDOW, and submitted to the Colorado Wildlife Commission (CWC). If the CWC and applicant agree on the mitigation plan, the CWC forwards the mitigation plan to the Colorado Water Conservation Board (CWCB) for adoption as the official state position on the mitigation actions required of the applicant.

4.3.1 Mitigation and Enhancement Plans

C.R.S. 37-60-122.2 makes a specific distinction between mitigation of impacts caused by the proposed project, and enhancing fish and wildlife resources over existing conditions. This distinction is further defined in the Procedural Rules for the Wildlife Commission (Chapter 16), and clarified in a memorandum dated December 9, 2010 to the Director of the Colorado Division of Wildlife and the Wildlife Commission from the First Assistant Attorney General, Natural Resources and Environment Section. Accordingly, this FWMP includes mitigation measures to address the direct impacts that have been identified for the proposed project. The Subdistrict has also prepared a separate Enhancement Plan, in accordance with CRS 37-60-122.2 to address issues raised by Colorado Division of Wildlife and other stakeholders regarding the current condition of the aquatic environment on the Colorado River, which includes proposed enhancement measures to enhance fish and wildlife resources over and above levels existing without the WGFP. The Subdistrict, as an applicant for one or more federal permits, or licenses, is required by C.R.S. 37-60-122.2 to submit a proposed mitigation plan, but submittal of an enhancement plan is voluntary.

4.3.2 Consultation, Coordination and Public Input

The Subdistrict consulted with Colorado Division of Wildlife (CDOW) U.S. Fish and Wildlife Service (FWS) representatives during preparation of this Plan. In addition, CDOW and FWS were provided an opportunity to review and comment on the Wildlife Resource Technical Report (ERO 2008) and Aquatic Resource Technical Report (Miller Ecological 2008) prepared as part of the EIS process. Both of these reports provide additional details on the impacts of the alternatives evaluated in the EIS. The CDOW and FWS also were given an opportunity to review and comment on the draft EIS.

CRS 37-60-122.2 requires CDOW and Colorado Water Conservation Board review and input on mitigation for fish and wildlife impacts resulting from a federally

approved water project. The review process is intended to provide a balanced review between fish and wildlife protection and water development.¹ Although the procedures for CRS 37-60-122.2 do not require public review and input, the Subdistrict and CDOW have been involved in extensive efforts to allow for public participation. To date, the Wildlife Commission has provided the following public meetings to solicit input on the potential impacts and mitigation for the Moffat Project:

- Wildlife Commission Workshop, October 7, 2010, Las Animas – CDOW presented the proposed fish and wildlife impacts of the WGFP
- Wildlife Commission Public Meetings (“1313” Meetings), October 13, 2010 in Loveland and October 21, 2010 in Granby – Wildlife Commissioners solicited public comment on the potential impacts of the WGFP
- Stakeholder Workshops, January 24-25, 2011, Winter Park – CDOW solicited input on enhancement options for fixing the upper Colorado River between Windy Gap and the Kemp-Breeze State Wildlife Area to ensure a functioning river that supports fish and wildlife resources given anticipated future flows. (Refer to the *WGFP Enhancement Plan* for details.)
- Public Comment Period on Draft Enhancement and Mitigation Plans, Feb. 10-24, 2011 – CDOW invited public review and comment on the February 9th draft plans. The input will be reviewed by CDOW, Denver Water and the Subdistrict while preparing the final plans.
- Wildlife Commission Meeting, March 10, 2011 – Member of the public provided comments on the February 9th draft plans and review process.
- Wildlife Commission Meeting, May 6, 2011 – Members of the public provided comments on the April 7th plans submitted to the Wildlife Commission.

Input from all of these processes has been used to help prepare this plan.

5.0 PROPOSED FISH AND WILDLIFE MITIGATION PLAN

This section constitutes the Mitigation Plan for fish and wildlife impacts that are expected to be caused by the proposed WGFP. Mitigation measures have been developed to address impacts identified in the Draft EIS. The mitigation measures are also intended to address concerns regarding WGFP impacts that were identified by CDOW staff in a detailed review of the DEIS impacts. The impacts are based on a comparison of the existing conditions scenario to the Preferred Alternative, which consists of a 90,000 AF reservoir at the Chimney Hollow site. A detailed description of existing conditions in the project area and the analysis and identification of project impacts are included in the Draft EIS. The Draft EIS and associated Technical Reports prepared in conjunction with the DEIS are the only studies that

¹ See Testimony of Clyde Martz, Direction of the Department of Natural Resources, Senate Testimony HB 87-1158, April 9, 1987

have been conducted that specifically analyze the incremental impacts of the WGFP.

5.1 WGFP PROJECT AREA

The WGFP would have effects on both the east and west sides of the Continental Divide. The West Slope project area shown on Figure 1 includes the Colorado River below Lake Granby, which is affected by changes in Lake Granby spills and increased Windy Gap diversions at the existing Windy Gap Reservoir. Willow Creek below Willow Creek Reservoir is also included in the project area because of small changes in Willow Creek Feeder Canal diversions. Lake Granby is included because water levels would decrease as a result of storage of a portion of Windy Gap water in Chimney Hollow Reservoir. Shadow Mountain Reservoir and Grand Lake are included in the project area because of potential water quality effects, but there would be no change in lake levels.

The East Slope project area shown in Figure 2 includes the Chimney Hollow Reservoir site located west of Carter Lake, which is also shown on Figure 3. Hydrologic changes would occur in the Big Thompson River below Lake Estes from the import of additional Windy Gap water and from slight increases in flow that would occur below Participant wastewater treatment plants (WWTPs) on the Big Thompson River, St. Vrain Creek, Big Dry Creek, and Coal Creek. Carter Lake and Horsetooth Reservoir would experience a change in reservoir levels with the WGFP.

Proposed mitigation measures for the West Slope (Colorado River) area and the East Slope (South Platte Tributaries and Chimney Hollow Reservoir) are described below in separate sections.

5.2 AVOIDANCE AND MINIMIZATION

The Preferred Alternative for the WGFP was selected to minimize environmental impacts as a result of a detailed alternatives analysis conducted by Reclamation and a Section 404(b)(1) alternatives analysis prepared in coordination with the Corps. The alternatives analysis evaluated over 170 project elements which included both structural and non-structural alternatives. The Preferred Alternative consists of a 90,000 AF reservoir at the Chimney Hollow site and has been designed to minimize direct effects to wetlands and other waters of the U.S.

As part of the federal and state permits and approvals, the Subdistrict will implement a variety of best management practices (BMPs) during design and construction to reduce impacts to the environment, including fish and wildlife. Some of the environmental permits and approvals with BMPs and environmental protection measures include:

- Migratory Bird Treaty Act Compliance
- CDPHE Fugitive Dust Control Plan

- CDPHE Stormwater Management Plan
- CDPHE Section 401 Water Quality Certification

The CDOW has developed BMPs and actions to minimize adverse impacts to wildlife resources. The BMPs were specifically developed for the oil and gas industry; however, they can also be applicable to other major construction projects. These BMPs will be considered by the Subdistrict when preparing final design and construction plans. The Subdistrict will consult with the CDOW to implement the appropriate BMPs to avoid or minimize impacts on fish and wildlife resources.

5.3 PROPOSED MITIGATION MEASURES FOR WEST SLOPE (COLORADO RIVER) IMPACTS

Table 1 summarizes West Slope impacts and the proposed mitigation measures for each identified impact. The table also includes a column that outlines issues and concerns regarding WGFP impacts that were identified by CDOW staff in a detailed review of the DEIS impacts. The mitigation measures identified in the table are described in more detail in this section.

5.3.1. Modified Prepositioning to Maintain Higher Water Levels in Lake Granby

This measure addresses Impact CR-3, as well as CR-16, CR-23, ES-1, ES-2, and ES-29.

In any year when Lake Granby is projected to fall below an elevation of 8,250 feet, modified prepositioning, which reduces the delivery of C-BT water from Lake Granby to Chimney Hollow Reservoir, will be implemented to maintain higher water levels in Lake Granby.

Details of this measure will be developed by the Subdistrict and incorporated into a proposed agreement between Reclamation and the Subdistrict with a concurrence by the Corps. The objective is to minimize the adverse effects of prepositioning on water levels in Lake Granby. This measure will minimize any potential negative effects on aquatic resources and recreation in Lake Granby that may be caused by reduced water levels from prepositioning.

5.3.2 Improvements to Flushing Flows in the Colorado River

This measure addresses Impact CR-6, as well as CR-2, CR-14, CR-15 and CR-17.

The Windy Gap Project is currently required to bypass 450 cfs for 50 hours once in every 3 years, if such flows are naturally available in accordance with the *Memorandum of Understanding Between Municipal Subdistrict, Northern Colorado Water Conservancy District and Division of Wildlife, Colorado Department of Natural Resources, Relating to Minimum Stream Flow in Association with the Windy Gap Diversion Project*, dated June 23, 1980. The Subdistrict will modify project operations as follows:

- The flushing flow provision of the 1980 MOU will be modified to increase the required flushing flow from 450 cfs to 600 cfs.
- In any year when flows below Windy Gap have not exceed 600 cfs for at least 50 consecutive hours in the previous two years, and total Subdistrict water supplies in Chimney Hollow and Granby Reservoirs exceed 60,000 AF on April 1, the Subdistrict will cease all Windy Gap pumping for at least 50 consecutive hours to enhance peak flows below Windy Gap.

The intent of this measure is to enhance peak flows below Windy Gap . The Subdistrict will coordinate with CDOW and other water suppliers, including Denver Water, to maximize benefits of the higher flows and minimize any potential negative impacts to aquatic resources.

5.3.3 Temperature Mitigation

This measure addresses Impact CR-9, as well as CR-11 and CR-24.

- **Monitoring Stations.** The Subdistrict will work with Denver Water to install, operate and maintain two continuous real-time temperature-monitoring stations on the Colorado River; one at the Windy Gap gage and one upstream of the confluence with the Williams Fork River.
- **Temperature Thresholds.** For the purposes of this mitigation plan, the threshold temperatures will be the following, as measured at the temperature monitoring stations identified above:
 1. MWAT Chronic Threshold: 18.2°C (64.8° F), based on current Maximum Weekly Average Temperature (MWAT) Chronic Standard
 2. DM Acute Threshold: 23.8°C (74.8° F), based on current Daily Maximum (DM) Acute Standard
- **MWAT Chronic Threshold Exceedances - Reduction or Curtailment of WGFP Pumping .** For the period after July 15th of each year:
 1. At such times as the Weekly Average Temperature (WAT) exceeds the MWAT Chronic Threshold,, the Subdistrict will reduce or curtail WGFP pumping at the Windy Gap diversion to the extent necessary to maintain temperatures within the MWAT Threshold. Reduced pumping may not be sufficient to maintain temperatures below the threshold.

2. Pumping for the original Windy Gap Project, now and after the WGFP is in operation, may occur at any time that the Windy Gap water rights are in priority and sufficient space is available in Lake Granby that such water pumped will not be reasonably expected to spill from the reservoir. Therefore, WGFP pumping will be defined as pumping that occurs at such times as the Northern Colorado Water Conservancy District determines, based on its most probable forecasts of inflows to Lake Granby, that a spill of water from Lake Granby is reasonably foreseeable. All other pumping will be considered to be for the original Windy Gap Project.
- DM Acute Threshold Exceedances - Reduction or Curtailment of Pumping for the WGFP and the original Windy Gap Project .
 1. At such times as the Daily Maximum temperature is within 1 °C of the DM Acute Threshold, the Subdistrict will reduce or curtail pumping for the original Windy Gap Project or the WGFP at the Windy Gap diversion to the extent necessary to maintain temperatures within the DM Threshold. Reduced pumping may not be sufficient to maintain temperatures below the threshold. In the future, the 1 degree buffer may be altered, based on experience, to maintain compliance with the DM Threshold.
 - Limitations on Reduction or Curtailment of Windy Gap pumping. The temperature mitigation measures identified above will be suspended in the event that and at such times as there is no material causal relationship between Windy Gap Project or Windy Gap Firing Project operations and any exceedence of the MWAT Chronic threshold or DM Acute threshold at the monitoring stations identified above. For the purposes of this Paragraph a "material causal relationship" is defined as either an actual measureable impact on temperature using readily available monitoring technology or a modeled impact on temperature that is not *de minimus* and is based on a computer model or studies accepted by the Colorado Division of Wildlife. The Subdistrict will cooperate with future studies to determine what factors, other than flow changes, have effects on water temperatures in the Colorado River below Windy Gap.
 - Use of the Windy Gap Bypass Valve and Auxiliary Outlet. The Subdistrict will use the Windy Gap Project Bypass Valve and Auxiliary Outlet to the maximum extent practicable, without causing adverse effects to the Windy Gap Project facilities or operations for the bypass of water that is otherwise bypassed from the Windy Gap Project. This measure is intended to make releases of water from these outlets deeper in the reservoir that may be colder than water bypassed over the spillway.

5.3.4 Nutrient Mitigation to Offset Impacts to Grand Lake Water Quality

This measure addresses Impact CR-10, as well as CR-12, CR-13, CR-26, and ES-8.

The Subdistrict will develop a proposed nutrient reduction mitigation plan for Reclamation and Corps approval. The plan includes point source nutrient reductions from WWTP discharges in the Fraser River and nonpoint source nutrient reductions from agricultural land in the Willow Creek watershed. Other nutrient reduction measures would be implemented as necessary to meet the requirement to provide a documented nutrient reduction credit factor of 1:1 to satisfy Reclamation and the Corps mitigation requirements.

5.3.5 Participation in Upper Colorado River Recovery Program

This measure addresses Impact CR-20.

The Subdistrict will complete Section 7 consultation and compliance consistent with the requirements of the Programmatic Biological Opinion (PBO). The Service issued a Biological Opinion on February 12, 2010 for the Preferred Alternative indicating WGFP coverage under the PBO with Participation in Upper Colorado River Recovery Program and payment of a depletion fee for additional depletions attributable to the WGFP.

Documentation of Section 7 consultation will be submitted to the Corps in order to meet requirements for the Fish and Wildlife Coordination Act.

5.3.6 Curtailment of Windy Gap Diversions during Gore Race

This measure addresses Impact CR-22 and CR-25.

WGFP diversions would be suspended during the Gore Race in August if flows drop below preferred range (1,250 cfs).

5.4 PROPOSED MITIGATION MEASURES FOR EAST SLOPE (SOUTH PLATTE TRIBUTARIES AND CHIMNEY HOLLOW RESERVOIR) IMPACTS

Table 2 summarizes East Slope impacts and the proposed mitigation measures for each identified impact. The table also includes a column that outlines issues and concerns regarding WGFP impacts that were identified by CDOW staff in a detailed review of the DEIS impacts. The mitigation measures identified in the table that are relevant to fish and wildlife resources are described in more detail in this section.

5.4.1 Revegetation and Weed Control on Areas Impacted by Construction

This measure addresses Impact ES-11.

Revegetation and weed control on all disturbed areas in accordance with an erosion control plan to be developed by the Subdistrict and approved by Reclamation and the Corps. Plan will be developed in coordination with CDOW and incorporate CDOW Oil & Gas BMPs where appropriate.

5.4.2 Wetlands Mitigation

This measure addresses Impact ES-13, ES-14, and ES-15.

Avoid, minimize and mitigate wetland impacts as specified in the 33 CFR Part 332 (Mitigation Rule, 10-Apr-08) and as approved by the Corps. Wetlands would be mitigated by contribution to an approved wetland mitigation bank.

5.4.3 Wildlife Habitat Mitigation at Chimney Hollow Reservoir Site

This measure addresses Impact ES-16 and ES-17.

Subdistrict will develop a plan to replace the values provided by habitat lost or altered by construction of Chimney Hollow Reservoir. Mitigation of impacts to wildlife resources will involve a combination of mitigation strategies and tools, including:

- Restoring habitats temporarily disturbed during reservoir and facility construction
- Working with Larimer County to restore or enhance degraded habitat surrounding Chimney Hollow Reservoir
- Working with CDOW and Larimer County to establish hunting access on the Chimney Hollow property
- Conducting management and education activities to minimize human-wildlife conflicts
- Implementing a migratory bird management plan
- Implementing seasonal restrictions and buffer zones

Details of this plan will include:

Restoration of Temporary Disturbances. The temporary loss of 123 acres of wildlife habitat will be mitigated through reclamation and revegetation of all habitats disturbed during construction and relocation of the transmission line and towers. Temporary loss of vegetation communities due to construction of dams, pipelines, staging, and access roads will be restored with plantings and seed mixes that replicate the vegetation cover types. Vegetation restoration of the transmission line corridor will involve working closely with Western to incorporate strategies for maintenance of stable low-growing vegetative communities that include mechanical cutting, removal of timber, on-site treatment of slash, and planting sustainable, low-growing shrubs and grasses. Plantings and seed mixes will focus on restoring diverse vegetation communities that provide wildlife forage, particularly during fall and winter. A reclamation plan will be developed as part of the construction program and the Stormwater Management Plan.

Habitat Enhancement. Subdistrict will work with Larimer County to develop a land management plan that will include habitat enhancement of vegetation communities surrounding Chimney Hollow Reservoir, which involves planting native species beneficial to wildlife where appropriate. The Subdistrict will provide \$50,000 to Larimer County to use in their ongoing habitat management plan. A weed control plan would be developed in cooperation with Larimer County prior to implementing habitat enhancement to improve the quality of lands not specifically within the areas of vegetation enhancement. Weed management will focus on monitoring restored habitats and implementing an integrated weed management approach of mechanical, chemical, and biological control strategies. Integrated weed management strategies also will be used to control existing areas of noxious and invasive species, particularly large patches of thistle and cheatgrass. The weed management plan will be developed prior to construction disturbances and updated periodically through implementation of wildlife enhancement.

Hunting Opportunities. Larimer County will develop a management plan for the Chimney Hollow area. As part of this process, the Subdistrict and Larimer County will work with CDOW and Larimer County to explore opportunities to provide seasonal hunting on portions of the Chimney Hollow Reservoir site and open space to assist with game management and provide additional recreation.

Minimization of Human-Wildlife Conflicts. The displacement of elk and bear into surrounding residential areas as they search for lost food resources will be offset by the habitat enhancement activities and hunting opportunities described above. Additionally, the Subdistrict will work with Larimer County and CDOW to reduce/eliminate wildlife attractants from recreation facilities and establish education/outreach programs and information kiosks/signs informing the public on the dangers of close interactions with wildlife, and methods to avoid and minimize potentially dangerous encounters.

Implementing Migratory Bird Avoidance Plan. The active nesting season for most migratory bird species in Colorado is between April 1, and August 15. Over the past few years, FWS and CDOW have suggested that the best way to avoid a violation of the Migratory Bird Treaty Act (MBTA) is to remove vegetation outside of the active breeding season. The Subdistrict will develop BMPs in accordance with CDOW guidance to avoid disturbing active bird nests at the Chimney Hollow Reservoir site. *Note: Implementing these BMPs demonstrates a good faith effort to avoid incidental violation of the MBTA, but does not guarantee that migratory birds will not still nest in some areas despite these efforts.*

Seasonal Restrictions and Buffer Zones for Raptors. Avoidance and mitigation options for nesting raptors at the Chimney Hollow Reservoir site consists of: 1) conducting nest surveys prior to construction, 2) establishing

reasonable site-specific buffers and seasonal restrictions, 3) implementing seasonal restrictions to avoid and minimize disturbance, and 4) removing inactive nests from the transmission line corridor, construction footprints, reservoir pool area, or other areas of permanent impacts. Currently, there are no expected permanent impacts to existing raptor nests; however, there is the possibility that a new active raptor nest could be established in areas slated for disturbance or inundation. The intent of any mitigation is to encourage individual raptor pairs to nest at selected and more secure locations. BMPs will be developed in accordance with CDOW guidance to avoid, minimize and mitigate potential impacts.

5.4.4 Air Quality Mitigation

This measure addresses Impact ES-23 and ES-24.

Subdistrict will develop a fugitive particulate emissions control plan and BMPs to minimize air quality and noise impacts to wildlife.

5.5 MITIGATION COSTS AND SCHEDULE

Estimated mitigation costs are shown in the following table. Total project costs are estimated to be \$273,000,000, which includes construction costs of about \$237,000,000. The mitigation schedule will be contingent on the issuance of permits and licenses, construction timetables, project completion, and the ability of the Subdistrict to fill the reservoir. The schedule provided in the following table provides a timetable based on these contingencies.

Mitigation Insurance Policy - The mitigation listed above is based on the Draft EIS for the WGFP that was released for public comment in August of 2008. Since that time and based on comments to the Draft EIS, Reclamation has conducted additional studies related to the preparation of the Final EIS, that in part are designed to further refine the analysis of environmental impacts of the proposed action. If new impacts to fish and wildlife resources are identified in the Final EIS that were not discussed in the Draft EIS and not addressed in this mitigation plan, the Subdistrict will propose mitigation for these new impacts. The additional mitigation will be developed in cooperation with the CDOW prior to submittal to Reclamation for its consideration as a permit condition. The Subdistrict will reserve \$600,000 for any new impacts to fish and wildlife resources identified by the Final EIS and required by Reclamation. If Reclamation does not identify new impacts requiring mitigation, the Subdistrict will have no further obligation to reserve this money.

WINDY GAP FIRING PROJECT
FISH AND WILDLIFE MITIGATION PLAN

West Slope

Mitigation Measure	Scheduled Start	Scheduled End	Estimated Cost
Modified repositioning to reduce Lake Granby fluctuations	Concurrent with project start up	Permanent change in WGFP operation	\$0 May have minor effect project yield
Improvements to flushing flows in Colorado River	Concurrent with project start up	No end date	May have effects on project yield but cost cannot be estimated.
Temperature mitigation	Temperature monitoring would begin within one year after issuance of permits. Curtailed diversions occur when Chimney Hollow Reservoir is completed and diversions increase	Diversion curtailments per the established criteria would continue as long as the WGFP is in operation	\$50,000 for monitoring stations May have effects on project yield but cost cannot be estimated.
Nutrient mitigation to offset impacts to Grand Lake water quality – will also improve water quality in Colorado River below Windy Gap	Monitoring of baseline conditions will begin in 2011 and nutrient removal will begin concurrent with project start up	Monitoring will continue until 1:1 nutrient offset has been verified. Operation of nutrient reduction projects will continue as long as the WGFP is in operation	\$4.3 million (estimated)
Participation in Upper Colorado River Recovery Program	Payment upon issuance of permits; expected by 2011	One time upfront fee	\$405,000 (estimated)
Curtailed diversions for annual Gore Race, if needed	Concurrent with project start up	Permanent change in WGFP operation	

WINDY GAP FIRING PROJECT
FISH AND WILDLIFE MITIGATION PLAN

East Slope

Mitigation Measure	Scheduled Start	Scheduled End	Estimated Cost
Revegetation and weed control on areas impacted by construction	Immediately upon completion of specific habitat-disturbing activity	Three years post-restoration or until success criteria are met	\$25,000
Wetland mitigation	Within one year of issuance of permit	One time upfront fee	\$115,000
Wildlife habitat mitigation at Chimney Hollow Reservoir site	Concurrent or following construction depending on location	Three years post-construction or until success criteria are met	\$50,000 (estimated)
Air quality mitigation	Concurrent or following construction depending on location	Until completion of construction	\$0

6.0 CONCLUSIONS

The FWMP presents a broad range of mitigation actions to address the potential fish and wildlife impacts of the WGFP. If accepted by the Colorado Wildlife Commission and CWCB, this mitigation plan will represent the official state position on mitigation for the WGFP. Since the state-adopted FWMP is not enforceable by itself, the Subdistrict anticipates that Reclamation and the Corps will determine these mitigation measures are adequate and will impose them within their regulatory requirements for Reclamation's approvals and the Section 404 Permit, respectively.

REFERENCES

- AMEC (AMEC Earth & Environmental, formerly Hydrosphere Resource Consultants). 2008a. Windy Gap Firing Project Lake and Reservoir Water Quality Technical Report. Prepared for U.S. Bureau of Reclamation.
- AMEC (AMEC Earth & Environmental, formerly Hydrosphere Resource Consultants). 2008b. Windy Gap Firing Project Three Lakes Water Quality Model Documentation. Prepared for U.S. Bureau of Reclamation.
- ERO (ERO Resources Corporation). 2000. Preble's Meadow Jumping Mouse Trapping Survey for Chimney Hollow; Larimer County, Colorado. Prepared for Northern Colorado Water Conservancy District. October 9.
- ERO (ERO Resources Corporation). 2003. Preble's Meadow Jumping Mouse Habitat Assessment for the proposed Chimney Hollow Reservoir Site. Prepared for U.S. Bureau of Reclamation and Municipal Subdistrict, Northern Colorado Water Conservancy District.
- ERO (ERO Resources Corporation). 2008. Windy Gap Firing Project Wildlife Technical Report. Prepared for U.S. Bureau of Reclamation.
- ERO (ERO Resources Corporation). 2008b. Windy Gap Firing Project Water Resource Technical Report. Prepared for U.S. Bureau of Reclamation.
- ERO and Boyle (ERO Resources Corporation and Boyle Engineering). 2007. Windy Gap Firing Project Water Resource Technical Report. Prepared for U.S. Bureau of Reclamation.
- ERO and AMEC (ERO Resources Corporation and AMEC Earth and Environmental) (formerly Hydrosphere Resource Consultants). 2008a. Windy Gap Firing Project Stream Water Quality Technical Report. Prepared for Bureau of Reclamation, Eastern Colorado Area Office.
- ERO and AMEC (ERO Resources Corporation and AMEC Earth and Environmental) (formerly Hydrosphere Resource Consultants). 2008b. Stream Water Quality Modeling Report. Prepared for Bureau of Reclamation, Eastern Colorado Area Office. Fuller and Mosher. 1987.
- Miller Ecological (Miller Ecological Consultants, Inc.). 2008. Windy Gap Firing Project Aquatics Technical Report. Prepared for Bureau of Reclamation, Eastern Colorado Area Office.
- Reclamation (U.S. Bureau of Reclamation). 2008. Windy Gap Firing Project Draft EIS.

Windy Gap Firming Project Proposed Mitigation

Table 1: WEST SLOPE - Colorado River

Item No.	EIS Impacts	CDOW Issues	Proposed Mitigation	Mitigation Agency
Surface Water Hydrology				
CR-1	Reduced spills from Lake Granby to the Colorado River as a result of fewer Windy Gap spills.	Fewer spills may mean decreased sediment transport in the Colorado River downstream to the Fraser River confluence. Reduced flows impact other resources: -Stream Morphology and Sediment Transport -Surface Water Quality -Aquatic Resources (habitat) -Recreational Fishing -Riparian Health	None Reclamation minimum flow releases below Lake Granby would be maintained. See Proposed Mitigation for Stream Morphology and Surface Water Quality. Note: Current minimum bypass flows below Windy Gap Reservoir will continue per existing agreements. To assure that water diverted from the Colorado River is used as efficiently as possible, Reclamation will require that all participants in the Windy Gap Firming Project have Water Conservation Plans in accordance with the requirements of CRS 37-60-126 prior to the initial delivery of any water after construction of the WGFP.	Reclamation
CR-2	Reduced flows in Colorado River below Windy Gap diversion.	Lower water levels in Granby (when fisherman access to water is considered) reduce mysid impacts on kokanee growth - a beneficial impact.	In any year when Lake Granby is projected to fall below an elevation of 8,250 feet, modified prepositioning, which reduces the delivery of C-BT water from Lake Granby to Chimney Hollow Reservoir, will be implemented to maintain higher water levels in Lake Granby. Details of this measure will be developed by the Subdistrict and incorporated into a proposed agreement between Reclamation and the Subdistrict with a concurrence by the Corps. The objective is to minimize the adverse effects of prepositioning on water levels in Lake Granby.	Reclamation
Groundwater				
CR-4	Small changes in Colorado River and Willow Creek stream stage would not significantly impact alluvial groundwater levels.	Addressed in terms of stage change as percentage of total flow. Negligible impact on fisheries and riparian zone.	None	
CR-5	Small changes in surface water quality in West Slope streams and reservoirs would have minor effect on groundwater quality.	Addressed in terms of stage change as percentage of total flow. Negligible impact on fisheries and riparian zone. Corrected by NPDES discharge.	None	
Stream Morphology and Floodplain				
CR-6	Decrease in frequency of 2-year peak discharge and in channel maintenance flows in the Colorado River.	Effects of lower flows on stream morphology and sediment transport and potential impacts on aquatic ecosystem, including riparian vegetation, fish and macroinvertebrates.	Note: Mitigation from the original Windy Gap Project would be modified (current flushing flow of 450 cfs below Windy Gap Reservoir for 50 hours from April 1 to June 30 every 3 years would be increased to 600 cfs). At any time when flushing flows have not occurred in previous 2 years, and total Subdistrict water supplies available in Granby and Chimney Hollow Reservoirs exceed 60,000 acre-feet, the Subdistrict will, in coordination with CDOW, cease pumping for 50 hours to enhance peak flows below Windy Gap.	CDOW, Reclamation
CR-7	Small decrease in frequency of 2-year peak discharge and in channel maintenance flows in Willow Creek.		None	CDOW, Reclamation
CR-8	Potential for flooding along the Colorado River and Willow Creek would decrease.		None	CDOW, Reclamation

Windy Gap Firing Project Proposed Mitigation

Table 1: WEST SLOPE - Colorado River

Item No.	EIS Impacts	CDOW Issues	Proposed Mitigation	Mitigation Agency
CR-9	Colorado River temperature between Windy Gap Reservoir and Williams Fork may exceed 18.2 degree centigrade chronic maximum weekly average temperature (MWAT) or 23.8 degree centigrade daily maximum (DM) acute state standard as a result of WGFP diversions that lower flows in the Colorado River. Impact is most likely in the occasional years when WGFP diversions occur after July 15.	Add DM (daily maximum) temperature to the list of monitored statistics. Criteria for use of MWAT and DM; associated decision tree needs to be developed.	1. Install and maintain, for the life of the WGFP, two real time temperature gages in the Colorado River. One will be located downstream of WG Reservoir and one immediately upstream of the Williams Fork at locations agreed to by Reclamation, the Corps, and the Colorado Division of Wildlife. 2. After July 15 if the MWAT temperature threshold (18.2°C, 64.8° F) is exceeded at either station, WGFP pumping will be reduced or curtailed as necessary to maintain temperatures below the threshold. 3. If the DM temperature is within 1°C of the threshold (23.8°C, 74.8° F) at either station, WG and WGFP pumping will be reduced or curtailed as necessary to maintain temperatures below the threshold. 4. The Subdistrict will use the Windy Gap Project Bypass Valve and/or Auxiliary Outlet, to the maximum extent practicable, to release colder water for required project bypasses. The Subdistrict will develop a proposed nutrient reduction mitigation plan for Reclamation and Corps approval. The plan includes point source nutrient reductions from WWTP discharges in the Fraser River and nonpoint source nutrient reductions from agricultural land in the Willow Creek watershed. Other nutrient reduction measures would be implemented as necessary to meet the requirement to provide a documented nutrient reduction credit factor of 1:1 to satisfy Reclamation and the Corps mitigation requirements.	CDOW, Reclamation
CR-10	Additional WGFP pumping would increase nutrient (nitrogen and phosphorus) loading in Lake Granby, Shadow Mountain Reservoir, and Grand Lake, resulting in increased chlorophyll a, and manganese (Mn)		Mitigation for temperature (CR-9) and aquatic resources effects should improve and maintain DO levels above state standard. Nutrient mitigation described in CR-10 in the Windy Gap watershed will reduce nutrient loading to the Colorado River below Windy Gap. The nutrient mitigation plan required by CR-10 must be reviewed and approved by Reclamation and the Corps. Nutrient mitigation described in CR-10 in the Willow Creek watershed will reduce nutrient loading to the creek. The nutrient mitigation plan required by CR-10 must be reviewed and approved by Reclamation and the Corps. Metal concentrations will remain within state standards.	Reclamation, Corps
CR-11	Decrease in Colorado River DO below Windy Gap Reservoir. DO concentrations predicted to remain above 6.0 mg/L standard. DO could fall below fish spawning standard of 7.0 mg/L between Windy Gap Reservoir and Williams Fork at low flows.			CDOW, Reclamation
CR-12	Higher concentration of nutrients in the Colorado River below Windy Gap Reservoir as a result of WGFP pumping that reduces dilution flows.			Reclamation, Corps
CR-13	Slight increase in nutrient and metal concentrations in Willow Creek.			Reclamation, Corps
CR-14	Decrease in the amount and frequency of available fish habitat in the Colorado River and an increase in stream temperature.	Decrease in habitat during pumping may not be limiting - the decrease is probably related to forgone changes in channel morphology and other factors (upstream development, water quality, other factors in addition to Windy Gap). Concerns about current condition of fishery, including recent trend of lower fish populations, loss of pteronercys, sculpin, and other aquatic life.	See proposed mitigation for Surface Water Quality (CR-9).	Reclamation, Corps, CDOW
CR-15	Decrease in the amount and frequency of available fish habitat in Willow Creek.			
CR-16	Lower water levels in Lake Granby would slightly reduce available fish habitat.	Negligible impact under expected operations.	See proposed mitigation for Surface Water Hydrology (CR-3)	Reclamation

Windy Gap Firing Project Proposed Mitigation

Table 1: WEST SLOPE - Colorado River

Item No.	EIS Impacts	CDOW Issues	Proposed Mitigation	Mitigation Agency
CR-17	Effects to riparian vegetation along Colorado River from reduced streamflow.	None.		Reclamation, Corps, CDOW
CR-18	Effects on wetlands adjacent to the Colorado River and downstream of the Windy Gap diversion.	None		
CR-19	Change in streamflow in the Colorado River and Willow Creek is unlikely to affect terrestrial wildlife resources.	None		
CR-20	Threatened and Endangered Species Depletion to Colorado River Impacts T&E fish.		Section 7 consultation and compliance consistent with the requirements of the Programmatic Biological Opinion (PBO). The Service issued a Biological Opinion on February 12, 2010 for the Preferred Alternative indicating WGFP coverage under the PBO with participation in Upper Colorado River Recovery Program (UCRRP) and payment of depletion fee for additional depletions attributable to the WGFP. Documentation of Section 7 consultation will be submitted to the Corps in order to meet requirements for the Fish and Wildlife Coordination Act.	Continued participation in the Upper Colorado River Endangered Fish Recovery Program per the USFWS Biological Opinion.
CR-21	Reduction in preferred kayaking flow days in Byers Canyon. In 29 of 47 years in the period of record there would be no change. In other years there would be a slight decrease in average number of days per year with preferred kayaking flows.	None		
CR-22	Preferred rafting and kayaking flows in Big Gore and Pumphouse would decrease. A decrease and increase in the number of days within preferred flow range that averages less than 3 days per year.	None, except WGFP diversions would be suspended during Gore Race in August if flows drop below preferred range (1,250 cfs).		
CR-23	Access to Lake Granby boat ramps at Arapaho Bay, Stillwater, and Sunset could diminish in some months.	Proposed change in project operation in dry years will keep Granby higher. Includes float fishing.	None. Modified prepositioning discussed in CR-3 would maintain higher water levels in Lake Granby during years when the reservoir is anticipated to fall below elevation 8,250 msl thereby improving boat ramp access.	Reclamation
CR-24	Effects on recreational fishing in the Colorado River downstream of the Windy Gap diversion from habitat loss and temperature impacts between Windy Gap and the Blue River.		Proposed mitigation for Surface Water Quality should reduce effects on recreational fishing.	Reclamation, Corps, CDOW

Windy Gap FIRMING Project Proposed Mitigation

Table 1: WEST SLOPE - Colorado River

Item No.	Socioeconomics	EIS Impacts	CDOW Issues	Proposed Mitigation	Mitigation Agency
CR-25	<p>Lost recreational boating value in the Colorado River in some years due to lower flows.</p> <p>Although preferred boating flows are not always met, rafting and kayaking opportunities would remain (i.e. flows would rarely drop below minimum flows needed for boating).</p>	<p>Reduction in aesthetic value in Grand Lake if algae concentrations increase.</p>	<p>Additional issues in Shadow Mountain.</p>	<p>Nutrient mitigation measures discussed in CR-10 would offset nutrient loading from increased WGFP pumping.</p>	<p>Reclamation, Corps</p>
CR-26					

Windy Gap FIRMING Project Proposed Mitigation

Item No.	EIS Impacts	CDOW Issues/Concerns	Proposed Mitigation	Mitigation Agency
Table 2. EAST SLOPE South Fork Vrain and Chimney Hollow Reservoir				
Surface Water Hydrology				
ES-1	Lower water levels in Carter Lake (~1').	Earlier fill is better for walleye.	None. However, modified prepositioning as discussed in CR-3 would result in smaller changes in water levels (<1' lower).	Reclamation
ES-2	Lower water levels in Horseshoe Reservoir (6' lower on avg.).	Higher nutrients and lower DO may complicate 303D listing status.	None. However, modified prepositioning as discussed in CR-3 would result in smaller changes in water levels (<2' lower).	Reclamation
Groundwater				
ES-3	Small changes in East Slope stream stage that would not significantly impact alluvial groundwater levels.	Addressed in terms of stage change as percentage of total flow. Negligible impact on fisheries and riparian zone.	None	
ES-4	Small changes in surface water quality in East Slope streams and reservoirs would have minor effect on groundwater quality.	Addressed in terms of stage change as percentage of total flow. Negligible impact on fisheries and riparian zone. Corrected by NPDES permits.	None	
Stream Morphology and Hydrology				
ES-5	Increased flows on East Slope streams below WWTPs could have slight effect on channel morphology.		None	
ES-6	Flows in East Slope streams would increase slightly.		None	
Surface Water Quality				
ES-7	Increased ammonia concentrations in St. Vrain Creek, Big Dry Creek, Coal Creek as a result of increased discharges from Participant WWTP's.	Based on standards and NPDES permits. Participants must meet ammonia discharge limitations in accordance with Colorado water quality standards and as part of their NPDES Permit for WWTP discharges.	None	
ES-8	Nutrient increases (TP, TN) resulting in higher chlorophyll a concentrations and a decrease in DO in Carter Lake and Horseshoe.		None. In accordance with CR-10, plans to monitor and mitigate nutrient increases in the Three Lakes system should address this issue and the plans must be approved by Reclamation and the Corps.	Reclamation, Corps
Aquatic Resources				
ES-9	Construction of Chimney Hollow Reservoir would create potential flat water fishing opportunities if a fishery is established in Chimney Hollow.	Construction of reservoir will replace terrestrial environment, displacing terrestrial wildlife and allowing the replacement by aquatic wildlife.	None	
ES-10	Lower water levels in Carter Lake and Horseshoe Reservoir would slightly reduce available fish habitat.	Negligible impact under expected operations.	None. However, modified prepositioning as discussed in CR-3 would result in smaller changes in water levels.	

Windy Gap Firing Project Proposed Mitigation

Table 2: EAST SLOPE - South Platte Tributaries and Chimney Hollow Reservoir

Item No.	EIS Impacts	CDOW Issues/Concerns	Proposed Mitigation	Mitigation Agency
ES-11	Vegetation Temporary impact to 123 acres of vegetation during construction of Chimney Hollow Reservoir.	Includes pipeline ROW and contractor staging area. Reveg with wildlife friendly seed mixes. 1298 Final BMPs Hunting Access	Revegetation, and weed control on all disturbed areas in accordance with an erosion control plan to be developed by the Subdistrict and approved by Reclamation and the Corps. Plan will be developed in coordination with CDOW and incorporate CDOW Oil & Gas BMPs where appropriate.	Reclamation, Corps, CDOW
ES-12	Permanent loss of 786 acres of vegetation from inundation and dam at Chimney Hollow.		None. Larimer County maintains land management plan for Chimney Hollow open space area which includes forestry, vegetation management, and weed control.	CDOW
Wetlands ES-13	Temporary disturbance of about 0.2 acres of wetlands during Chimney Hollow Reservoir construction.	Corps issue-compensatory mitigation.	Avoid, minimize and mitigate wetland impacts as specified in the 33 CFR Part 332 (Mitigation Rule, 10-Apr-08) and as approved by Reclamation and the Corps.	Corps
ES-14	Permanent impact to about 2 acres of wetlands at Chimney Hollow Reservoir.	Corps issue-compensatory mitigation.	Avoid, minimize and mitigate wetland impacts as specified in the 33 CFR Part 332 (Mitigation Rule, 10-Apr-08) and as approved by the Corps.	Corps
ES-15	Permanent impact to about 0.5 acres of waters of the U.S. along Chimney Hollow.	Corps issue-compensatory mitigation.	Avoid, minimize and mitigate wetland impacts as specified in the 33 CFR Part 332 (Mitigation Rule, 10-Apr-08) and as approved by Reclamation and the Corps.	Corps
Wildlife ES-16	Loss of 810 acres of elk winter range, mule deer winter range and concentration area, and black bear foraging area at Chimney Hollow. General loss of habitat for other terrestrial species, birds, amphibians, reptiles, and butterflies at Chimney Hollow.	Access for hunting; improve vegetation to draw elk and/or bears. Includes reservoir inundation area and pipeline ROW. ~ 2 mile loss of riparian habitat in inundated stream channel.	Subdistrict will work with CDOW and Larimer County to allow hunting access on property to minimize displacement of game animals to other areas. Revegetation and weed control on all disturbed areas in accordance with an erosion control plan to be developed by the Subdistrict and approved by Reclamation and the Corps. Plan will be developed in coordination with CDOW and incorporate CDOW Oil & Gas BMPs where appropriate. Implement migratory bird management plan and seasonal restrictions and buffer zones.	
ES-17	Loss of 7 acres of bald eagle winter range at Chimney Hollow.		None	
ES-18	This effect is minor as there is sufficient bald eagle wintering habitat in the area. New reservoir would provide open water foraging habitat for bald eagles.		None	
Threatened and Endangered Species ES-19	No impact at Chimney Hollow.		None	
Geology ES-20	Potential for uncovering fossils during Chimney Hollow Reservoir construction.		Paleontological survey would be conducted prior to construction and the Denver Museum contacted if important fossils discovered. Paleontological resources will be dealt with in accordance with the programmatic agreement or memorandum of agreement between Reclamation, the State Historic Preservation Officer, the Subdistrict, and possibly the Advisory Council.	Reclamation
Soils ES-21	Temporary and permanent loss of soil during Chimney Hollow Reservoir construction.	BMPs for pipelines, dam construction, SWMP (CDPHE) by contractor.	Erosion control and revegetation.	Reclamation
ES-22	Shoreline erosion at Chimney Hollow Reservoir.		None	
Air Quality ES-23	Dust and vehicle emissions during Chimney Hollow Reservoir construction.	Adaptive management, blasting for three years.	A fugitive particulate emissions control plan and BMPs would be developed and must be approved by the Corps in order to meet requirements for Colorado Air Quality Control Standards.	Reclamation
ES-24	Increased ambient noise from construction of Chimney Hollow Reservoir.	Displacement of wildlife.	BMPs to minimize noise.	

Windy Gap Firing Project Proposed Mitigation

Item No. / Land Use	EIS Impacts	CDOW Issues/Concerns	Proposed Mitigation	Mitigation Agency
ES-25	A portion of Chimney Hollow would be located on private property or Larimer County property.	Near CH dam - loss of 35 acre parcels on ridge, purchase of horizontal land on edge of CH. Reservoir on USBR land - easement w/USBR.	Private land acquisition or the necessary access rights and easements.	Reclamation
ES-26	A portion of Chimney Hollow Reservoir facilities would be located on Reclamation property.	Facilities around Filation Reservoir on USBR land - easement w/USBR.	Easements or appropriate permits from Reclamation would be acquired.	Reclamation
ES-27	Sandstone quarry operations could be affected by southern access road to Chimney Hollow Reservoir.	Road uncertainty, could be used for hunting access; seasonal closure?	Quarry access would be maintained.	Reclamation
ES-28	Increased construction traffic on CR 18E and CR 31 and impacts to roads during reservoir construction and from recreation access to Chimney Hollow Open Space managed by Larimer County.	Potential for elk/car/truck encounters- add signing.	The Subdistrict would comply with all County road and permitting requirements.	Reclamation
Recreation				
ES-29	Access to the South Bay-South boat ramp in Horseshoe could be impacted.		None. Modified prepositioning discussed in CR-3 would maintain higher water levels in Lake Granby during years when the reservoir is anticipated to fall below elevation 8,250 msl thereby improving boat ramp access.	Reclamation
Cultural Resources				
ES-30	Twenty-four eligible or potential eligible cultural resources could be impacted by construction of Chimney Hollow Reservoir.		Compliance with Section 106 of the National Historic Preservation Act including additional evaluation and mitigation will be conducted in coordination with Reclamation, the Corps of Engineers, and SHPO. Cultural resources will be dealt with in accordance with a Programmatic Agreement or MOA to be developed and signed by Reclamation, the SHPO, and the Subdistrict.	Reclamation, Corps, SHPO
Visual Quality				
ES-31	Temporary impacts from construction of Chimney Hollow Reservoir.	Mostly human, not wildlife.	Revegetation and BMPs.	Reclamation
ES-32	Permanent changes in landscape. Relocation of transmission line.	115KV line, inline construction, tall poles - raptor protection included in WAPA design standards.	Revegetation, weed control, maintenance. Visual sensitivity analysis conducted in filling relocated transmission line. Non-specular, non-reflective wire would be used and possibly non-reflective steel poles. All site disturbances would be revegetated following construction.	Reclamation
ES-33				Reclamation
Socioeconomics				
ES-34	Property Acquisition.		None Any properties required to be purchased for the project would be purchased for just compensation following an appraisal in accordance with the Water Conservancy Act (CRS-27-45-101 to 153) and other applicable state laws.	

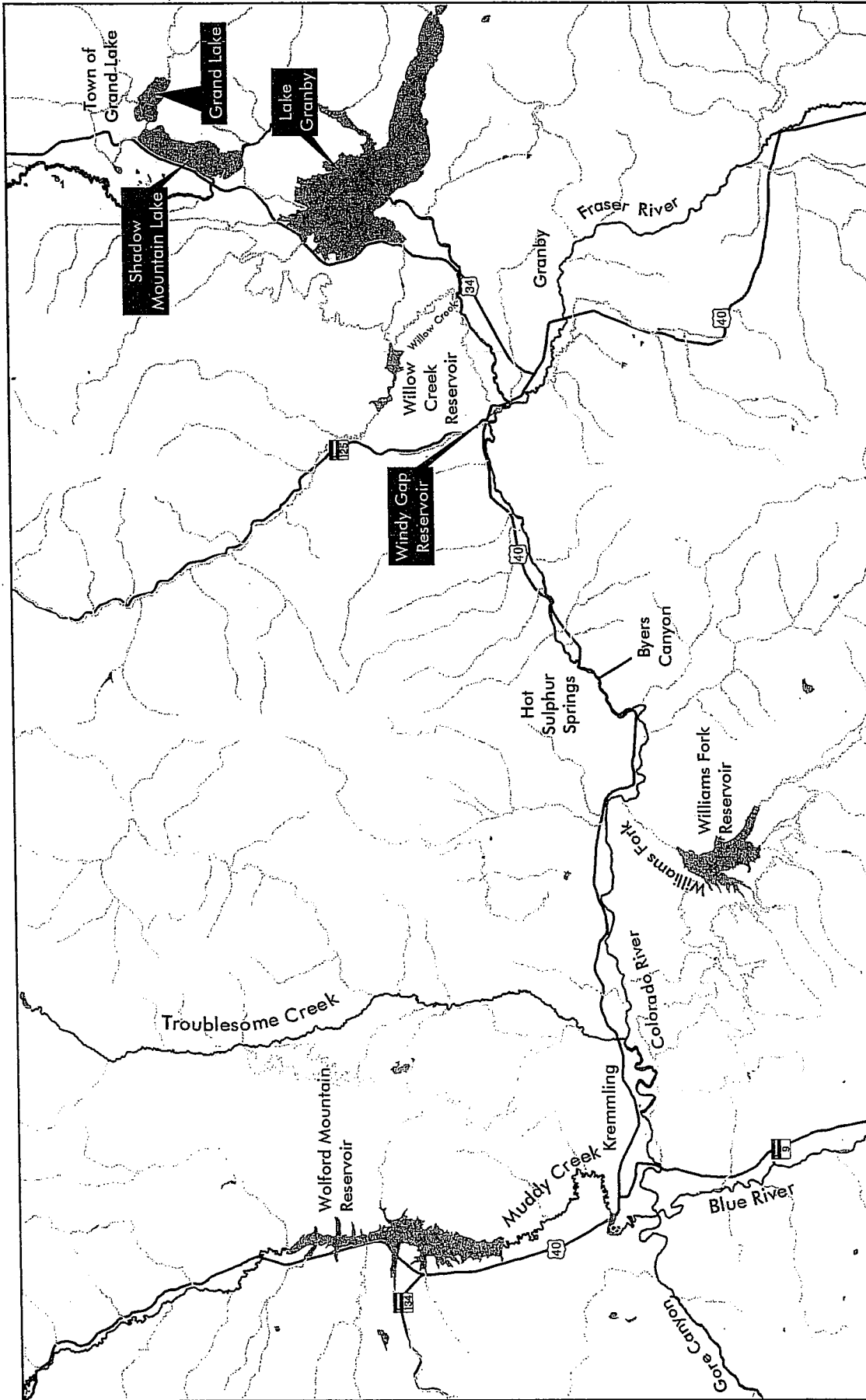





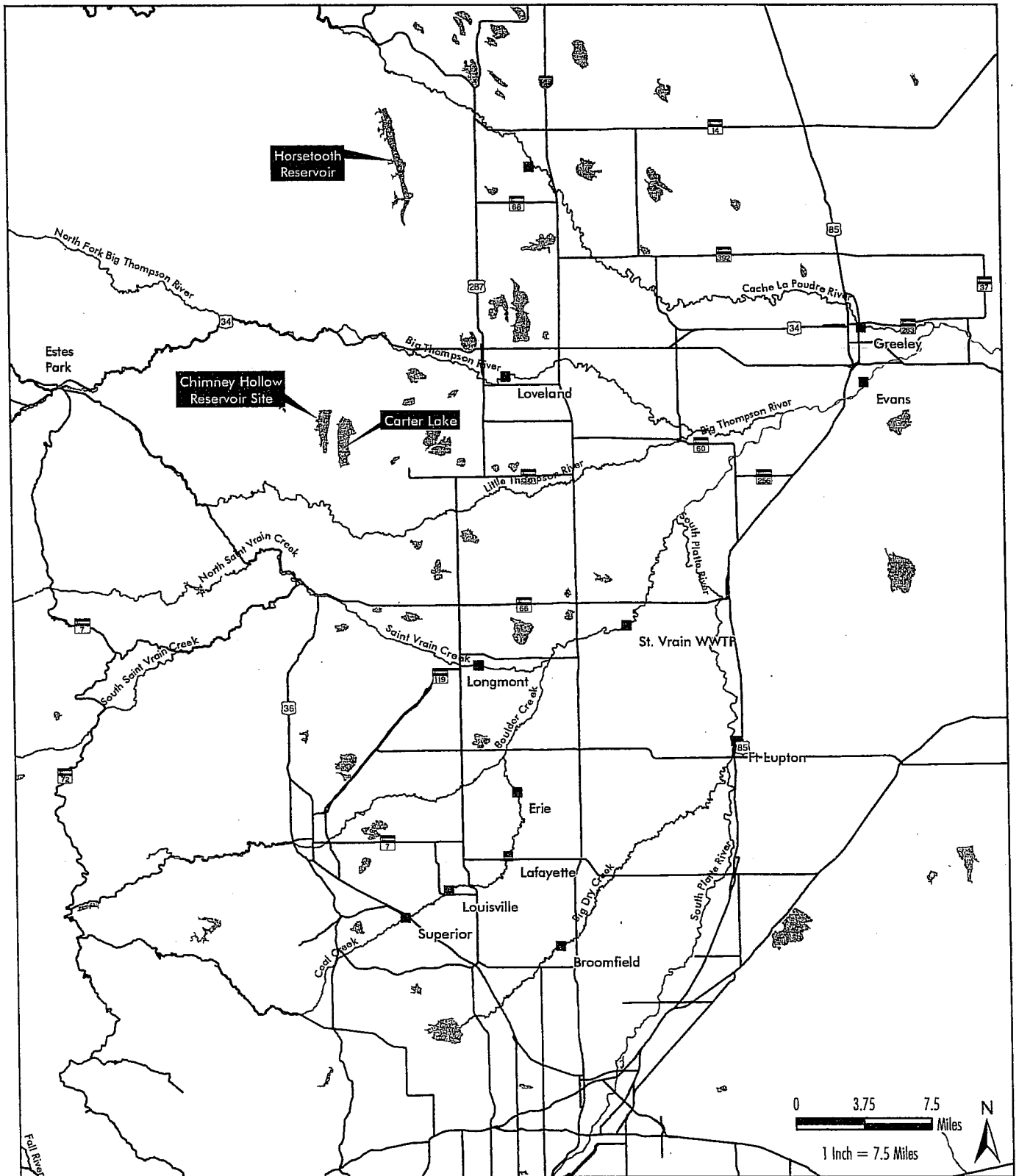


Figure 1
West Slope Project

Prepared for: Windy Gap Firming Project
 File: 2390 EIS\WM_WestSlopeWaterResource.mxd (1P)
 July 2009

-  City
-  Lake or Reservoir
-  Major Streams
-  Minor Streams
-  Highway

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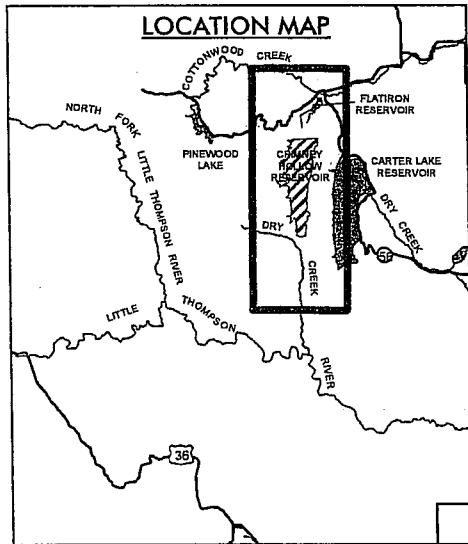
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- Waste Water Treatment Plant
- ☞ Lake or Reservoir
- Highway
- ~ Major Streams
- City

Figure 2
East Slope Project

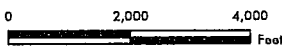
Prepared for: Windy Gap Firing Project
 File: 2390 EIS\WM_EastSlopeWaterResource.mxd (JP)
 June 2009



- Inlet - Outlet Tunnel
- Spillway and Channel
- New Pipeline
- Potential Disturbance Area
- Transmission Line Corridor
- Chimney Hollow Reservoir
- Dam

NOTES:

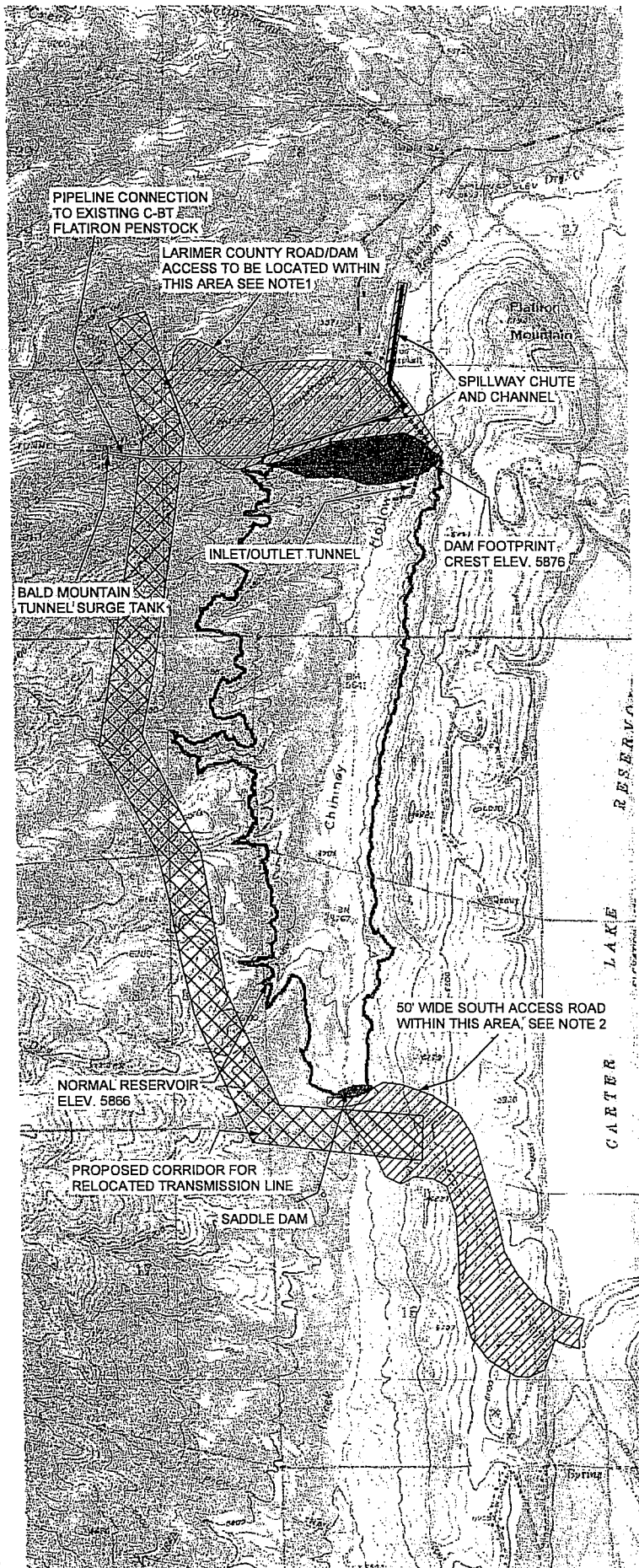
1. FINAL LOCATION OF DAM CREST ACCESS ROAD TO BE DETERMINED THROUGH LARIMER COUNTY PARK PLANNING PROCESS.
2. SOUTH ACCESS ROAD DURING CONSTRUCTION - GATED WITH NO PUBLIC ACCESS FOLLOWING CONSTRUCTION.



"USGS MAP OF THE CARTER LAKE RESERVOIR QUADRANGLE, BOULDER AND LARIMER COUNTIES, COLORADO" SITE SPECIFIC TOPOGRAPHY BASED ON AERIAL SURVEY, APRIL 2003

WINDY GAP FIRING PROJECT

Figure 3
Chimney Hollow Reservoir (90,000 AF)



Windy Gap Firming Project Fish and Wildlife Enhancement Plan

Prepared for:
The Colorado Wildlife Commission
In accordance with **CRS 37-60-122.2**

Prepared by:
**Municipal Subdistrict,
Northern Colorado Water Conservancy District**

In Partnership With:
Denver Water

June 9, 2011

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WINDY GAP FIRING PROJECT FISH AND WILDLIFE ENHANCEMENT PLAN

1.0 INTRODUCTION

1.1. Enhancement Project Overview

The Windy Gap Firing Project (WGFP) is a proposed water supply project that would provide more reliable water deliveries to Front Range and West Slope communities and industries. The Municipal Subdistrict, Northern Colorado Water Conservancy District, acting by and through the WGFP Water Activity Enterprise (Subdistrict) is seeking to construct the project on behalf of the 13 WGFP Participants. Project Participants include the City and County of Broomfield; the towns of Erie and Superior; the cities of Evans, Fort Lupton, Greeley, Lafayette, Longmont, Louisville, and Loveland; the Little Thompson Water District; the Central Weld County Water District; and the Platte River Power Authority. The proposed action is to add water storage and related facilities to the existing Windy Gap operations that would be capable of delivering a firm annual yield of about 30,000 AF to Project Participants.

Pursuant to CRS 37-60-122.2(1), Denver Water and the Municipal Subdistrict, Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firing Project (WGFP) Water Activity Enterprise (Subdistrict) have agreed to participate with the Colorado Department of Natural Resources (DNR) and Colorado Division of Wildlife (CDOW) in concurrent development of the Fish and Wildlife Mitigation Plan (FWMP) for the Subdistrict's WGFP and Denver Water's Moffat Project. In addition to the concurrent FWMP's, Denver Water and the Subdistrict have elected to submit to the CDOW enhancement plans to improve existing fish and wildlife resources to the CDOW. These enhancement plans are submitted pursuant to regulations implementing CRS 37-60-122.2(2) and are intended to enhance fish and wildlife resources over and above the levels existing without the Moffat Project and WGFP. Denver Water and the Subdistrict are submitting their Enhancement Plans simultaneously with their FWMP's.

1.2. Fish and Wildlife Enhancement Plan Stakeholders

The Subdistrict has been consulting with a broad range of federal and state agencies, as well as local governments and environmental groups, to solicit input on desired enhancements to existing fish and wildlife resources. These entities include:

- Governmental organizations: CDOW, Denver Water, Grand County, and Town of Hot Sulphur Springs
- Non-governmental organizations: Trout Unlimited, and landowners along the upper Colorado River

Although the CRS 37-60-122.2 procedures do not specify public involvement requirements, Denver Water and the Subdistrict acknowledge the Colorado Wildlife Commission's desire to provide ample opportunity for public participation. To date, the Wildlife Commission has provided the following opportunities for the public to provide mitigation and enhancement suggestions:

- Stakeholder Workshops, January 24-25, 2011, Winter Park – CDOW solicited input on options for fixing the upper Colorado River between Windy Gap and the Kemp-Breeze State Wildlife Area to ensure a functioning river that supports fish and wildlife resources given anticipated future flows.
- Public Comment Period on Draft Enhancement and Mitigation Plans, Feb. 10-24, 2011 – CDOW invited public review and comment on the February 9th draft plans. The input was reviewed by CDOW, Denver Water and the Subdistrict while preparing the April 7th plans.
- Wildlife Commission Meeting, March 10, 2011 – Member of the public provided comments on the February 9th draft plans and review process.
- Wildlife Commission Meeting, May 6, 2011 – Members of the public provided comments on the April 7th plans submitted to the Wildlife Commission on April 7, 2011. Time was also allowed for presentations from several groups on issues regarding the plans.

1.3 Other Concurrent and Related Activities

Moffat Collection System Project

The Moffat Collection System Project is currently proposed by Denver Water (Denver) to develop 18,000 AF/year of new annual yield to the Moffat Treatment Plant to meet future raw water demands on the East Slope. This project is anticipated to result in additional diversions, primarily from the upper Fraser River and Williams Fork River basins. Denver's proposed additional Fraser River diversions would be located upstream of the Windy Gap Project diversion site on the Colorado River and would directly affect the availability of water for the WGFP. The Moffat Collection System Project Draft EIS prepared by the Corps was released for public review in 2009.

Diversions for the WGFP and Moffat Project would result in changes to flows in the Colorado River below the Windy Gap dam. Denver Water and the Subdistrict have agreed to cooperate with each other and with the DNR and CDOW in concurrent development of the mitigation plans required under CRS 37-60-122.2 for the two projects. They have jointly developed stream temperature monitoring stations as mitigation (refer to Section 5.3.3 of this FWMP). Additionally, Denver Water and the Subdistrict have proposed enhancement with significant resources and funding to improve current conditions in the river.

2.0 ENHANCEMENTS

2.1 Upper Colorado River Habitat Project

The Upper Colorado River Habitat Project (Habitat Project) was designed in coordination with the Subdistrict to address concerns raised by CDOW and other stakeholders regarding the current conditions of the aquatic ecosystem in the Colorado River downstream of Windy Gap. CDOW studies have identified a decline in populations of *Pteronarcys californica* (giant stonefly), which, historically, has been a major source of food for trout in the Colorado River as well as other species of stoneflies and mayflies. Populations of the mottled sculpin (*Cottus bairdi*), a native fish that is also an important food source for trout and shares habitat with the *Pteronarcys*, have also declined. CDOW believes that riffle areas below the Windy Gap Reservoir have been altered by changes in flow regime, water depletions, sedimentation, and armoring of the channel bed. Trout populations between Windy Gap and Kremmling have declined. CDOW has expressed a desire to return the river to a more functional system considering current and future hydrology.

The goal of the Habitat Project is to design and implement a stream restoration program to improve the existing aquatic environment from the Windy Gap Diversion to the lower terminus of the Kemp-Breeze State Wildlife Area (Segment). Refer to Figure 1. The intent is for Denver Water and the Subdistrict to join with the CDOW, along with other stakeholders, in a cooperative effort to identify and address desired improvements to the stream environment.

Resources for the Project

- A. Funds Provided by Denver Water. To implement the Habitat Project, Denver Water will provide \$1.5 million.
- B. Funds Provided by Subdistrict. To implement the Habitat Project, the Subdistrict will provide \$3.0 million.
- C. Possible Funds from CDOW. In addition to designing the Habitat Project, CDOW may contribute \$500,000 to implement the Habitat Project.
- D. Possible Funds Provided by Learning by Doing. Denver Water and the Subdistrict will participate in the LBD Cooperative Effort, which is described in Section 2.2. In the LBD Cooperative Effort, Denver Water has committed money for habitat improvements, water for environmental flows, and considerable system flexibility to provide flushing flows, all directed towards enhancing the aquatic environment in Grand County (refer to Appendix A for details). Denver Water and the Subdistrict, as two members of the six-member Management Committee, will work with the other members of the committee to dedicate an additional \$1 million (from the funds committed to LBD by Denver Water) to the Habitat

WINDY GAP FIRING PROJECT
FISH AND WILDLIFE ENHANCEMENT PLAN

Project, in addition to the amounts committed by Denver Water and the Subdistrict in paragraphs A and B above.

- E. Possible Matching Funds. Denver Water and Subdistrict have committed \$4.5 million for the Habitat Project described in A and B above and, as described below (Use of Funds), preference will be given to land that has public access. However, \$1.0 million of this amount is available as matching funds for private landowners to perform additional work in the Colorado River in areas of private land.
- F. Other Funding and Resources. If the Habitat Project participants desire additional resources beyond the \$6.0 million described above, the project participants will work with other stakeholders and granting agencies to seek other sources of funding (a possible source of funding is matching funds as described in C above). In addition, Denver Water and the Subdistrict will contribute in-kind resources such as labor, equipment, and materials if and when available as determined by Denver Water and the Subdistrict, to help maximize the value of funds described above. Both Denver Water and Northern Water maintain significant workforces and equipment in Grand County as well as a quarry owned by Northern Water. In addition, CDOW has indicated a willingness to provide in-house expertise and resources for stream restoration design.
- G. Future Funding. The Subdistrict and Denver Water will contribute \$1.0 million and \$500,000, respectively, for a total of \$1.5 million to a fund to be used for adaptive management and/or maintenance in the Habitat Project segment. Adaptive Management in this case means that the \$1.5 million will be available to adjust elements of the stream restoration efforts that are not functioning as designed.

The funding for the Habitat Project is summarized in Table 1.

Table 1. Upper Colorado River Habitat Project Funding

<u>Source of Funding (Habitat Project)</u>	<u>Amount (millions of \$)</u>	
<u>Denver Water</u>	<u>\$1.5</u>	
<u>Subdistrict</u>	<u>\$3.0</u>	
<u>CDOW</u>	<u>\$0.5</u>	<u>Contingent upon CDOW approval</u>
<u>LBD</u>	<u>\$1.0</u>	<u>Contingent upon LBD approval</u>
<u>Subtotal</u>	<u>\$6.0</u>	

WINDY GAP FIRING PROJECT
FISH AND WILDLIFE ENHANCEMENT PLAN

<u>Source of Funding (Future Funding)</u>		
<u>Denver Water</u>	<u>\$0.5</u>	
<u>Subdistrict</u>	<u>\$1.0</u>	
<u>Subtotal</u>	<u>\$1.5</u>	
<u>Total</u>	<u>\$7.5</u>	

Use of Funds. The public funds described above will be used for the Habitat Project to restore the Segment on public land. However, the public stream reaches are interrupted by reaches of private land. The effectiveness of habitat restoration work and overall stream health will be compromised if there is not some degree of stream enhancement continuity for the entire Segment. While, preference will be given to work on public lands, public funds may be used for stream restoration on private land to provide continuity and prevent harm to the Habitat Project as a whole if CDOW determines that such work on private lands will provide benefits to the entire Grand County stream reach, and/or through a program of matching private funds with public funds. Proposed work on private land within the Segment will be developed in cooperation with the project participants and the land owner to ensure maximum benefit to the health of the river.

Any funds remaining after implementation of the Habitat Project will be used for additional projects to improve the aquatic environment on the Colorado River. Additional projects could include maintenance activities, a bypass around Windy Gap Reservoir or continuing stream improvements downstream to the confluence with Troublesome Creek (the lower terminus of the Gold Medal fishery designation). Other projects would be identified and agreed upon by the project participants.

Effective Date. The Habitat Project will commence when the Subdistrict and Denver Water have received acceptable Records of Decision and permits for their respective projects and have begun final design and construction activities. If a permit is appealed, the Habitat Project will commence after final resolution of the appeal and acceptance of the resolution by the Subdistrict and Denver Water.

Project Implementation. The Habitat Project will be implemented in collaboration with the LBD Cooperative Effort to ensure consistency and coordination with the overall stream enhancement efforts in Grand County. Section 2.2 describes the implementation of the Habitat Project and the goals and management structure of LBD.

2.2 Implementing the Habitat Project with the Learning by Doing Cooperative Effort

The Habitat Project will be implemented through an IGA among Denver Water, the Subdistrict, and CDOW. Denver Water and the Subdistrict will convey the committed dollars to CDOW and CDOW will design and implement the project. CDOW will also enter into any agreements, as needed, with private land owners or other funding sources. Additionally, the Habitat Project will be managed by CDOW in collaboration with the Habitat Project Stream Team.

Stream Team: The contributing members of the Habitat Project Stream Team include:

- Denver Water
- Subdistrict
- CDOW
- Grand County
- Other Parties that contribute financial resources to the Habitat Project, including but not limited to landowners

Advisory Team: Interested parties not contributing resources, including Trout Unlimited and landowners.

Implementation of Habitat Project: The Habitat Project will be managed by the Habitat Project Stream Team with advice from the Advisory Team. The Stream Team will make good faith efforts to resolve any conflicts. If the good faith effort does not result in consensus, the Habitat Project Stream Team will refer the issue to the Director of the DNR for resolution. Prior to referral, the unresolved issue will be summarized in writing with an explanation of any "competing views" and efforts to date to resolve the matter.

The Habitat Project will likely consist of several phases:

- *Project Goals* – The Stream Team will begin by setting specific goals for the Habitat Project to promote functionality of the river system. Goals may include specific biological goals related to health of the aquatic ecosystem, including fish and macroinvertebrates (e.g. trout, *Pteronarcys* and sculpin). The Habitat Project goals will be consistent with the LBD Effort and the SMP.
- *Project Design* – The Team will evaluate the most effective and sustainable restoration opportunities for the Segment. Different designs or solutions may be appropriate and implemented for different parts of the Segment. The Team will evaluate restoration opportunities based on site-

specific field evaluations, data from the SMP, and the specific objectives for a given reach.

- *Implementation* – The Team will prioritize proposed habitat improvements, as well as allocation of funding for public and privately-owned stream segments. The Habitat Project will be implemented over time as stream reaches are prioritized and designs are completed. The CDOW will be responsible for the final design, permitting and implementation of the stream restoration activities.
- *Monitoring* – The Team will determine the appropriate monitoring activities to measure outcomes from implementing the Habitat Project taking into consideration monitoring already in place or proposed as part of the LBD Effort. The CDOW will be responsible for the long-term monitoring and maintenance of the stream restoration activities.

Learning by Doing Cooperative Effort

The Habitat Project will be coordinated with the Learning by Doing Cooperative Effort to ensure consistency and coordination with the overall stream enhancement efforts in Grand County.

Denver Water and Grand County have spent over three years working cooperatively to resolve issues related to Denver Water's existing operations in Grand County. Denver Water and Grand County reached a proposed agreement on September 24, 2010 regarding Denver Water's commitments to enhance existing conditions in Grand County. Denver Water and Grand County are currently working with the State to assure that the benefits of Denver Water's commitments can be delivered and protected under Colorado's water rights system. Grand County Commissioners will also conduct a public process to gather input from county residents and other interested parties on the proposed agreement prior to a formal vote by the Commissioners on the agreement. A major component of the proposed agreement is the LBD Cooperative Effort. This is a cooperative, iterative and ongoing process to maintain, and when reasonably possible, restore or enhance the stream environment in the Fraser and Williams Fork river basins, and in the mainstem of the Colorado River from the outflow of Granby Reservoir to its confluence with the Blue River.

The Subdistrict has also been working cooperatively with Grand County and other West Slope stakeholders to develop an IGA regarding additional enhancements to existing conditions in Grand County. The IGA has not been completed, but the Subdistrict has committed to participate in the proposed LBD Cooperative Effort.

The Grand County Stream Management Plan (SMP) is the framework for the overall LBD Cooperative Effort. The SMP will be used as a "living" document that will be revised as additional monitoring data are gathered and as management goals for

each stream reach are agreed upon. Types of restoration opportunities include channel bank revegetation, enhancing fish passage, applying enhancement flows to existing low and/or high flow conditions, and in-stream habitat restoration.

The LBD Effort will be implemented with the following management structure, as shown in Figure 2.

Management Committee – The LBD Cooperative Effort will be managed by representatives of the public entities contributing resources to the various activities and projects undertaken by the group. Resources are defined as funding, water, project design, and/or equipment and manpower to implement a project. The Management Committee will operate by consensus (unanimous vote) under the LBD Cooperative Effort IGA. A copy of the proposed IGA is included in Appendix A of this Enhancement Plan. The Management Committee will include one representative from:

- Denver Water
- Northern Colorado Water Conservancy District, Subdistrict
- Grand County
- Colorado River Water Conservation District
- Middle Park Water Conservancy District
- Trout Unlimited

The Management Committee may elect to invite others to participate as members of the Management Committee based on commitments to long-term contributions of funding or other tangible resources that will further the goals of the LBD Cooperative Effort. It is anticipated that CDOW will be invited to join the Management Committee if the LBD Cooperative Effort is signed by all the parties.

Advisory Committee – The Management Committee may request participation by other parties, such as representatives from environmental, recreational, governmental and agricultural interests, to provide expertise and technical advice. It is anticipated that the U.S. Forest Service and others, would be invited to be advisors.

Responsibilities – The responsibilities of the Management Committee, with input and assistance from the Advisory Committee, include:

- ***Monitoring Plan*** – A long-term monitoring plan will be developed and implemented to identify critical stream reaches and assign priorities for actions; identify changes in the aquatic environment; evaluate effectiveness of actions taken, and modify and refine strategies for achieving the goals of the LBD Cooperative Effort.
- ***Operations Plan*** – As stream reaches are prioritized and projects identified, the Management Committee will develop an annual Operations Plan to maximize the stream environmental benefits with the available resources

such as water commitments, system flexibility and funding. The Management Committee will meet as frequently as necessary to explore opportunities to coordinate operations of all diversion structures and reservoir releases among all water users in Grand County.

- **Enhancements** – Denver Water committed in the proposed mediation agreement to provide substantial resources of money, water and system flexibility for the purpose of maintaining, restoring or enhancing the Upper Colorado, Fraser and Upper Williams Fork watersheds. Additional resources can be contributed by other parties to implement the LBD Cooperative Effort.
- **Annual Review** – The entire LBD Cooperative Effort, inclusive of coordinated operations, stream reach prioritization, stream improvement projects and monitoring programs, will be reviewed annually by the Management Committee in refining and updating the plans and projects.

STREAM PROJECTS

The Management Committee, with input from the Advisory Committee, will prioritize stream reaches for implementing stream improvement projects.

Stream Team – A specific stream project, as prioritized by the Management Committee, will be managed by a “Stream Team” comprised of organizations or individuals that have committed resources to that specific project. Resources are defined as funding, water, project design, and/or equipment and manpower to implement a specific project. Each Stream Team will consist of representatives of the Management Committee, who will be contributing resources, to ensure consistency and continuity with the LBD Cooperative Effort, plus any other contributing members. Each Stream Team will only develop and implement enhancement projects that support the goals and priorities of the LBD Effort. Private landowners who contribute resources would be invited to participate on the Stream Team for their respective segment of the river. These landowners would approve any projects proposed by the Stream Team on property they own.

Advisory Team – The Stream Team will invite other interested parties such as representatives from environmental, recreational, governmental and agricultural interests, to serve as technical advisors on a particular project.

•

2.3 Funding and Support for Windy Gap Bypass Studies

This measure addresses concerns raised by CDOW and other stakeholders regarding the current condition of the aquatic ecosystem in the Colorado River downstream of Windy Gap Reservoir. West Slope stakeholders and CDOW have expressed concerns that the reservoir has caused changes in water quality and sediment transport below the dam, which may be related to changes in populations of macroinvertebrates (Pteronarcys and other species) and sculpin below the

reservoir. In addition, stakeholders have expressed a desire for structural modifications that would allow free migration of fish around the Windy Gap dam.

The Subdistrict will provide up to \$250,000 to fund detailed studies of methods for bypass of flows, sediment, and/or fish around Windy Gap Reservoir. CDOW would direct these studies to identify potential modifications that would provide tangible benefits to aquatic resources below Windy Gap Reservoir. Issues to be studied include sediment transport, water quality (effects on temperature and/or nutrients) and fish passage. If studies identify significant, measurable benefits and there is stakeholder consensus to pursue the project, the Subdistrict will provide site access, in-kind service for design and construction of any facilities, and long-term operation and maintenance of the facility. All stakeholders will be responsible for investigation of potential sources of funding and procurement of funding for any identified improvements.

3.0 RELATIONSHIP TO PROJECT MITIGATION

Both Denver Water and the Subdistrict will comply with all mitigation measures required in the permits for their respective projects, Moffat Project and WGFP. Compliance with the mitigation measures in permits will be the sole responsibility of the permittee (i.e., Denver Water and the Subdistrict). However, Denver Water and the Subdistrict are members of the Management Committee, and will collaborate, to the extent practicable, to implement the mitigation measures in a manner consistent with the objectives of the Habitat Project, LBD Cooperative Effort and specific Stream Team efforts.

The stream enhancement cooperative efforts, such as the Upper Colorado River Habitat Project and the LBD, are efforts to enhance the existing environment and are not intended to substitute for any mitigation required by the federal agencies for the projects. The goal is to coordinate the application of any required mitigation efforts with the voluntary and collaborative efforts of the stream enhancement projects to assure the maximum benefit for the stream environment.

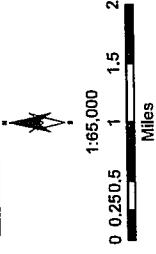
Denver Water and the Subdistrict will enter into a binding agreement with CDOW for the Habitat Project, as described above. If the Corps or Reclamation requires aquatic mitigation in the Segment, some or all of the committed resources listed above will be enforceable through conditions in the permits. In that case, an IGA would not be needed for those portions of the Habitat Project required by the Corps or Reclamation as aquatic mitigation and included in the permit conditions for the Moffat Project and the WGFP. The Habitat Project will be implemented in a manner that complements any mitigation measures required by the Corps for the Moffat Project or by Reclamation for the WGFP.

Upper Colorado River Vicinity
 Windy Gap to Williams Fork River
FIGURE 1

Legend

- Town
- Gauging Station
- Major Stream or River
- Major Canal, Aqueduct or Pipeline
- River access to Private
- River access to Public
- Roads
- Public Land Survey - Section Line
- BLM
- Colorado DOW
- Denver Water
- PRIVATE
- State Land Board
- USFS - Anapahoe Natl. Forest

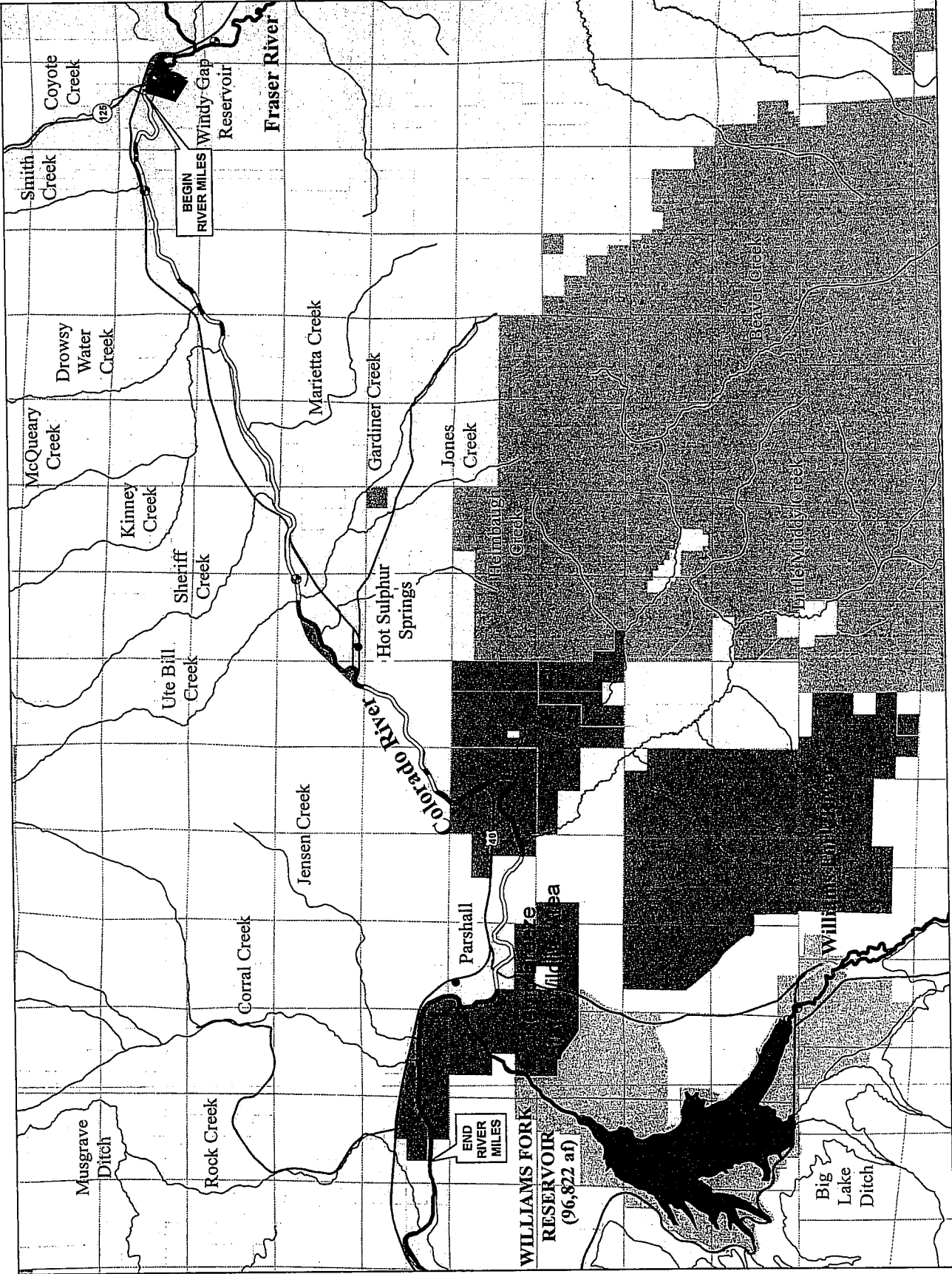
Total river miles from Windy Gap Reservoir to the West end of Kemp Breze SVA is 16.70.
 Additional adjacent land-use totals:
 Private = 8.40
 Public = 7.30



DRAFT - WORKING COPY

DENVER WATER

Land Ownership Data Provided by the Natural Resources Conservation Service, U.S. Department of Agriculture, Fort Collins, CO 80526-7000.
 © 2004, Denver Water. All Rights Reserved. This map is a draft and is not intended for use as a legal document. It is subject to change without notice. The information on this map is not intended to be used for any purpose other than that for which it was prepared. The information on this map is not intended to be used for any purpose other than that for which it was prepared.



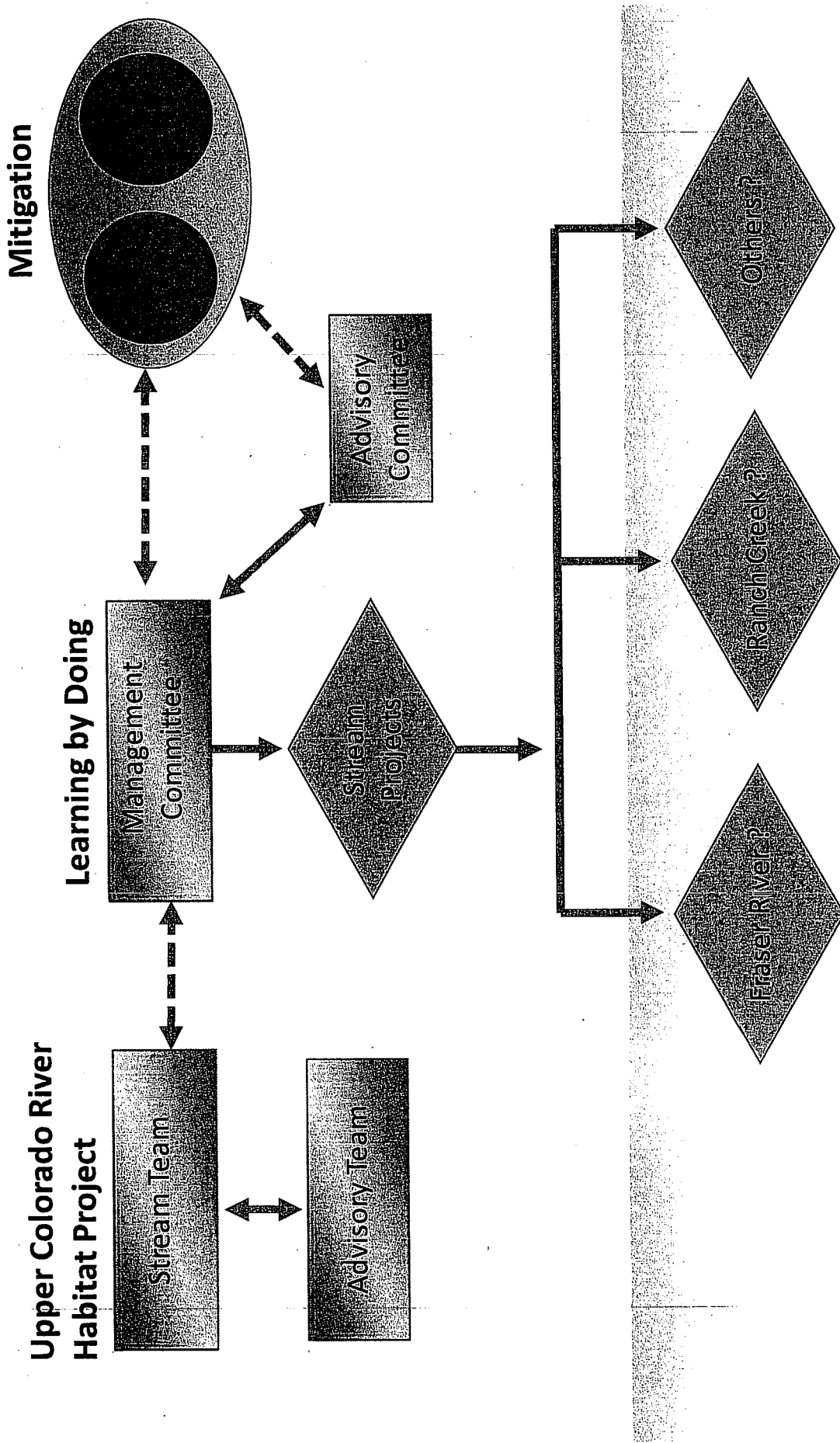


Figure 2. Implementing the Habitat Project with Learning by Doing

July 9, 2012 Update to draft WGFP IGA - Section IV.C (page 17):

IV. Additional Provisions

C. Open Space. Upon execution of this WGFP Agreement, the Subdistrict agrees to **impose a deed restriction on the sale of any parcel that requires subsequent development of the property be approved subject to the existing Grand County Rural Land Use Process in conformance with C.R.S. 30-28-403, as it exists now or may be amended in the future.** ~~negotiate with Grand County in good faith regarding the protection of open space on Subdistrict lands, including compliance with the existing Grand County Rural Land Use Process that allows cluster development in conformance with C.R.S. § 30-28-403, as exists now or may be amended in the future;~~ provided, however, that nothing in this Agreement or in the deed restriction shall affect or preclude the sale or development of such parcel(s) pursuant to provisions of existing or future law that allow the sale or development of lands in a manner that is not within the definition of a "subdivision" or "subdivided land".

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GRAND COUNTY MANAGER'S OFFICE

308 Byers Ave • P.O. Box 264 • Hot Sulphur Springs • Colorado • 80451
970-725-3347

CERTIFICATE OF RECOMMENDATION

TO: GRAND COUNTY PLANNING COMMISSION

FROM: Grand County Manager's Office

DATE: July 11, 2012

RE: 1041 Permit – 2012 Windy Gap Firming Project

APPLICANT: Municipal Subdistrict of the Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firming Project Water Activity Enterprise.

LOCATION: As described in the Final Environmental Impact Statement for locations within Grand County, Colorado

ZONING: Forestry and Open Zone District (F)

APPLICABLE SECTION OF CODE: Grand County Administrative Regulations for Areas and Activities Designated as Matters of State Interest and Grand County Master Plan.

STAFF CONTACT: Lurline Underbrink Curran, County Manager

EXHIBITS: Letter of Application and 1041 Application Packet

REQUEST: Applicant is requesting approval of a 1041 Permit for the 2012 Windy Gap Firming Project in order to firm up the yield originally contemplated by the Windy Gap Project.



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RECOMMENDATION 20

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DISCUSSION:

The Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict) is the owner of the Windy Gap project. The Subdistrict, acting by and through the Windy Gap Firming Project Water Activity Enterprise, has proposed the Windy Gap Firming Project (2012 WGFP) which would firm up the yield contemplated in the Windy Gap Project. The Subdistrict has submitted an application for a permit under Grand County Areas and Activities Designated as Matters of State Interest (1041 permit) for the 2012 WGFP. The Subdistrict has applied for the Grand County 1041 permit under protest. Applying under protest means that the Subdistrict is reserving all of its legal arguments as to why they do not need a new permit.

The Subdistrict bases its protest on the County's issuance of the original Windy Gap Permit which it feels covers the depletions contemplated as well as mitigates the impacts to Grand County. Further, the 2012 WGFP does not require any construction or alteration of the current Windy Gap Project in Grand County.

Listed below are some of the new issues that were not considered in the Original Windy Gap Project permit:

1. The 2012 WGFP proposes a different operational regime for the Windy Gap water rights known as repositioning. Repositioning was never contemplated or permitted with the original Windy Gap Project and it changes the timing and magnitude of diversions from those originally taken into account by Grand County. Repositioning is a method whereby Colorado Big Thompson Project (C-BT) water will be delivered through the system to the preferred alternative Chimney Hollow Reservoir, a non-federal facility thereby making additional room in Granby Reservoir. When Windy Gap or 2012 WGFP water is delivered into Granby Reservoir, the C-BT water in Chimney Hollow would be exchanged for a like amount of Windy Gap water (both 2012 WGFP and Windy Gap) in Granby Reservoir. Repositioning requires an amendment to the existing Amendatory Contract (Carriage Contract). The Carriage Contract is a contract issued by Bureau of Reclamation (Reclamation) to allow Windy Gap water to be transported through the C-BT project. Repositioning would allow not only the 2012 WGFP water to be transported but also allows C-BT water to be stored in a non-federal facility until the substitution is made. The 2012 WGFP will change the impacts to the Colorado River over those being caused by the Windy Gap Project.
2. The amendments to the Carriage Contract are a Major Federal Action under NEPA that required the Bureau of Reclamation to prepare and Environmental Impact Statement to disclose the new impacts associated with the 2012 WGFP. In addition, Reclamation must make a determination that Windy Gap Firming Project is in compliance with Senate Document 80. The original Windy Gap Agreement, also known as the Azure Agreement and the Windy Gap Supplement (1980 and 1985 Agreements) are incorporated into the Windy Gap water rights decrees. The draft Windy Gap Firming Project Intergovernmental Agreement (WGFP IGA) which is an attachment to the application amends the 1980 and 1985 Agreements and will be incorporated into the Windy Gap decrees.
3. The 1980 Grand County 1041 Permit was issued to the Subdistrict for the cities of Estes Park, Boulder, Longmont, Greeley, and Loveland as well as the Platte River Power Authority

and their projected needs by the year 2000. The 2012 WGFP participants are City and County of Broomfield, Central Weld County Water District, Town of Erie, City of Evans, City of Fort Lupton, City of Greeley, City of Lafayette, Little Thompson Water District, City of Longmont, City of Louisville, City of Loveland, Platte River Power Authority and Town of Superior. The Subdistrict explains this difference by the fact that participants can sell or lease their respective shares and that the original Windy Gap Project was never intended to limit the original participants to the project forever. The additional participants change the demand from the demand projected in 2000. Grand County's 1980 Permit was based on the Purpose and Need as stated in the Environmental Impact Statement which did not discuss the possibility of sale or lease.

4. There is additional impact to the aquatic habitat and terrestrial life that were not considered in the original EIS or permit issued by Grand County. Even though the application submitted for the 2012 WGFP acknowledges there will be a loss of habitat, it states that it will not be substantial because it is less than 15%, Grand County does not use a 15% threshold to determine whether will be significant deterioration or degradation.

HISTORY OF EXISTING WINDY GAP PROJECT

In order provide a complete review of the 2012 WGFP it is useful to understand the history of the original Windy Gap Project which is a diversion at the Windy Gap Reservoir that is pumped through a pipeline into and via the C-BT project to the front range to an identified group of participants.

1. **The 1980 Azure Agreement and 1985 Supplement.** West slope objections to the Windy Gap water rights led to the 1980 Azure Reservoir and Power Project Agreement (1980 Agreement). The 1980 Agreement was Attachment 1.A. of the Final Environmental Impact Statement (Final EIS) for the existing Windy Gap Project, as well as an attachment to the 1041 permit, and the Windy Gap water right decrees.

The 1980 Agreement was executed by the Subdistrict , Colorado River Water Conservation District, (River District), Grand County Board of County Commissioners, Northwest Colorado Council of Governments, Three Lakes Water and Sanitation District, Winter Park Water and Sanitation District, Middle Park Water Conservancy District, Town of Hot Sulphur Springs, Town of Granby, Ritschard Cattle Company, Inc. Colorado River Land Corporation, Jacques Ranch I, Jacques Ranch II, David Mayhoffer, Lloyd A. Palmer, Edna L. Palmer, Leo Marte, Eunice Marte, Jessie Joyce Thompson, David Howard Thompson, Joseph McElroy, Isabel McElroy, John H. McElroy, Mary K. McElroy, John Sheriff, Ida L. Sheriff. H. Grady Culbreath, Richard P. Doucette, Christine O. Doucette, Gene Ritschard, William Henry Thompson, Anita Lewis Thompson, Stanley Broome.

West slope objections centered on the Subdistrict's failure to prepare a compensation plan as required by the Water Conservancy District Act. Whenever facilities are constructed by a conservancy district that diverts water from the Colorado River a compensation plan is required. Key elements of the 1980 Agreement are:

- Commitment by the Subdistrict to fund the construction of the Azure or a replacement Reservoir and Power Plant, or if infeasible, fund an alternative project or a cash payment to the CRWCD.
- Payment of \$25,000 to Grand County for salinity studies of the Colorado River.
- Payment of \$150,000 to the Town of Hot Sulphur Springs for assistance in improving its water treatment facility and \$270,000 for improving its wastewater treatment facility.
- Payment of \$500,000 to plan, construct, and design facilities needed for ranchers to maintain their diversion structures on the Colorado River.
- An agreement by the Subdistrict to subordinate its Windy Gap decrees to all present and future in-basin irrigation, domestic, and municipal uses, excluding industrial uses, on the Colorado and Fraser rivers and their tributaries above the Windy Gap Reservoir site.
- An agreement by the Subdistrict to volumetric limits on diversions, which included a maximum single-year diversion of 90,000 AF/year and a maximum of 65,000 AF during any consecutive 10-year period. Per the 1985 Supplement to the 1980 Azure Settlement Agreement, these diversion limitations apply to deliveries through the Adams Tunnel, as opposed to diversions at Windy Gap Reservoir.
- An agreement by the Subdistrict to bypass flows necessary to meet senior downstream water rights.
- An agreement by the NCWCD to allow Grand County's use of a rock and Gravel quarry on their property.
- An agreement by the Subdistrict to cooperate with CDOW and others to allow public use for recreation at Windy Gap Reservoir.

The parties to the 1980 Agreement also agreed that:

3. "Implementation of the provisions of this Agreement will constitute compliance with all objections to the Draft Environmental Impact Statement for the Windy Gap project by any Party hereto, furnishes satisfactory mitigation measures for the development of the Windy Gap Project and following a hearing and decision of the Grand County Commissioners under paragraph 36 (assuming the decision is favorable) will constitute compliance with all valid permitting requirements imposed by any of the Parties". 1980 Agreement Part IV, paragraph 3.

All parties to the 1980 Agreement, paragraph #35, agreed that *"All environmental concerns among the Parties have been resolved by this Agreement regardless of whether none, all or only one facility is constructed and operated"* The parties further recognized the Windy Gap project and the Azure Reservoir and Power Plant Project were separate and that if the Azure Project could not be built for any reason, that an alternative project could be selected. Both Windy Gap and the alternate to the Azure Project, Wolford Mountain, were constructed. **(Paragraph #35 was deleted and superseded by the 1985 Supplement).**

In 1985, under Resolution 1985-3-5, the 1980 Agreement was supplemented to amend and/or deleted parts of the 1980 agreement (1985 Supplement). The Rock Creek Reservoir was originally considered as the replacement source for the Azure Power Project. The 1985 Supplement resulted in the construction of the Wolford Mountain Project instead.

The 1985 Supplement had two purposes 1) It provided western Colorado with financial assistance (\$10,000,000) to enable the Colorado River Water Conservation District to construct a water storage facility in Water Division No. 5 (the Wolford Mountain Project was permitted by Grand County in 1990 with both a 1041 Permit and Special Use Permit); 2) It remove the Subdistrict from any obligation under the April 30, 1980 Agreement to construct the Azure Reservoir and Power Project or alternate facility and removed the restriction on Windy Gap diversions stated in paragraph 15 of the 1980 Agreement which restricted Windy Gap from diverting any water from the west slope of Colorado through Windy Gap prior to the initiation of construction of Azure Reservoir and Power Project or an alternate reservoir agreed to by the River District. The 1985 Supplement designated the measuring point for diversion as the Adams Tunnel (previously it was measured at Windy Gap).

2. Volumetric Limitations on Windy Gap Water Rights.

The 1980 Agreement, paragraph #34, states that the *“Subdistrict may divert under its decrees an amount of water not in excess of 90,000 acre feet in any one year, and not to exceed an average of 65,000 acre feet per year in any consecutive ten year period. It is anticipated by the parties that the long term annual yield of water to the Subdistrict will be approximately 54,000 acre feet”*.

The Final EIS for the Windy Gap project also states under Purpose and Need that *“current and prospective West Slope water rights and users of Colorado River water would be compensated for loss of an annual average depletion of 54,000 acre-feet of water”*. The average annual firm yield expected of the Windy Gap project was 48,000 AF delivered to the east slope, 3000 AF to Middle Park Water Conservancy District (Middle Park), and “shrink” charges of 10%. Shrink is attributable to evaporation and system losses during storage and delivery.

The Record of Decision (ROD) issued by the Reclamation and a Record of Decision Permit Application No. 6520 issued by the U. S. Army Corp of Engineers (Corps) for the Windy Gap Project also refers to volumetric limitation.

The ROD (Paragraph II. A. 2.) states that

“the Windy Gap Project would divert a long term annual average of about 56,000 acre-feet from the Upper Colorado River Basin near Granby, Colorado. The diverted water would be pumped from the West Slope through Colorado-Big Thompson Project facilities to the East Slope cities of Estes Park, Boulder, Longmont, Greeley, Loveland, and Platte River Power Authority.”

The 1980 Agreement documented the amount that could be diverted at Windy Gap Reservoir as a means of limiting the Windy Gap Project. The Subdistrict states that it can pump whatever water is in priority from the Colorado River, subject to storage capacity in Granby, as long as the

amount of water transported through the Adams Tunnel is within the decreed limits. As previously stated, the 1985 Supplement designated the measuring point for diversion as the Adams Tunnel (previously measured at the Windy Gap Reservoir).

3. Mitigation for Original Windy Gap Project.

The 1980 Agreement contained some mitigation for the impacts of the Windy Gap Project. The ROD for the original Windy Gap Project incorporates the 1980 Agreement and refers to additional mitigation.

Section V of the ROD provides in pertinent part:

"The following mitigation measures have been agreed to by the sub district: (1) about 11,000 acre-feet of the average annual project yield of 56,000 acre-feet will be committed to maintain minimum "instream flows; (2) existing and some future water rights will be protected; (3) disturbed soil and vegetation will be reclaimed; (4) various commitments by the sub district to West Slope interests will protect prospective West Slope uses of Colorado River water; and (5) threatened and endangered fish will be protected by resolution of the sub district to provide certain conservation measures".

The Record of Decision Permit No. 6520 states under paragraph 2. "... and current and prospective West Slope water rights and users of Colorado River water would be compensated for loss of an annual average depletion of 54,000 acre-feet of water". The permit goes on to apply mitigation.

"All practicable means to avoid or minimize environmental harm from the project have been adopted. As identified in the EIS, the following mitigation measures will be incorporated to substantially reduce impacts associated with the project:

A minimum flow agreement between Northern Colorado Water Conservancy District and the Division of Wildlife was signed 23 June 1980. The terms of the agreement will lessen the adverse impacts of the project on aquatic life.

The pipeline route will be revegetated and vegetation will be planted around the reservoir to minimize impacts on vegetation.

A plan to mitigate wetlands inundated by the reservoir will be prepared and coordinated with the Environmental Protection Agency.

Reservoir operations and architectural controls on structures are being utilized to lessen the impacts of aesthetics.

Impacts on cultural resources are being mitigated through controlled surveys and data gathering.

Roads will be permanently and temporarily relocated to reduce interference with normal traffic flow.

Conservation measures to aid recovery of endangered fishes in the Colorado River will be accomplished.

Mitigation associated with salinity increases and reduced flows downstream is being handled by the Colorado River Salinity Control Project.

Monitoring of pre- and post-project water temperatures will occur to direct and possibly correct and post-project temperature changes.”

The instream flows were implemented through a Memorandum of Understanding between the Subdistrict, Northern and Division of Wildlife, Colorado Department of Natural Resources, Relating to Minimum Stream Flow in Association with the Windy Gap Diversion Project, it was agreed to the following fixed rates of flows:

- From Windy Gap Diversion Point to the mouth of the Williams Fork River: 90 cfs.
- From the mouth of Williams Fork River to the mouth of Troublesome Creek: 135 cfs.
- From the mouth of Troublesome Creek to the mouth of the Blue River: 150 cfs.
- In addition, once in every three years, if equivalent flushing flows do not otherwise occur pas the Windy Gap Diversion Point, sub district shall release on call by the Colorado Water conservation Board, on the recommendation of the Division of Wildlife, a total of 450 cfs of water for fifty hours, or its equivalent, during the period of April 1 through June 30, for flushing flow purposes.

Colorado Water Conservation Board (CWCB) decrees for instream flows in these amounts were issued under 80CW446, 80CW447 and 80CW448 dated September 24, 1982.

4. The Windy Gap Project 1041 Permit.

The Windy Gap Project was permitted in 1980 by the Grand County Board of County Commissioners acting as the 1041 Permit Authority by Resolution 1980-6-1. The permit was reviewed and issued under Chapter 5 of the Grand County 1041 Regulations for Municipal and Industrial Water Projects. Grand County also issued a Special Use Permit for the Windy Gap Project under Board of Commissioner Resolution 1980-6-4. Grand County's Zoning Regulations required a Special Use Permit for reservoirs impounding 100 acre feet or more of water.

The 1041 Permit that was issued by Grand County relied upon the Draft EIS and the 1980 Agreement. The Purpose and Need stated in the Final EIS was "*to supply the municipal and industrial water needs of the cities of Estes Park, Boulder, Loveland, Longmont, and Greeley; and Platte River Power Authority. The Project would supply all of the additional municipal and industrial water needs of the service area projected for the year 2000*". It further relied on the outcome of a Final EIS in substantial accord with the Draft EIS as well as the ROD issued by Reclamation and Record of Decision Permit issued by the Corps.

Grand County's 1041 permit allowed the design, construction and operation of the Windy Gap Project, Reservoir and Pipeline, as proposed and described in the Environmental Impact Statement. The permit also requires the Subdistrict to comply with all terms and provisions of Senate Document 80.

The 1041 Permit was amended in 1985 to recognize the 1985 Supplement.

5. Special Use Permit.

The County also issued a Special Use Permit for the project. Recent case law clarifies that the County does not have jurisdiction to require that the Subdistrict obtain a Special Use Permit for the 2012 WGFP. See *Board of County Commissioners of the County of Boulder vs. Hygiene Fire Protection District* dated December, 2009. This decision says that no County zoning or land use regulations (other than 1041) apply to special districts or governmental entities. When a project is proposed to a county by a governmental entity, the C.R.S. § 30-28-110(1)(c) "location and extent" controls.

6. Other Agreements

In 1988, Grand County entered into a Water Allotment Contract with Middle Park. This allotment was based on Grand County's desire to obtain a portion of Middle Park's water designated to be stored in Granby Reservoir. The allotment contract was specifically subject to and described in the Windy Gap Agreement and Supplemental Agreement. Grand County was responsible for obtaining whatever Court proceedings were necessary to transfer the rights to the location and use necessary for the County. Middle Park agreed to convey to Grand County 15 acre feet per year of water free of charge which was transferred to the County in the form of a Quit Claim Deed.

PROPOSED WINDY GAP FIRING PROJECT INTERGOVERNMENTAL AGREEMENT

The Subdistrict first approached Grand County prior to the Preliminary EIS for the 2012 WGFP to discuss possible enhancements to the existing conditions in the Colorado River. The existing Windy Gap Project has had impacts to the aquatic environment of the Colorado River that were not predicted in the original EIS or ROD. Over the past several years, County staff, Middle Park, and the River District have been negotiating a draft Intergovernmental Agreement (WGFP IGA) with the Subdistrict and Northern that would address some of these exiting impacts.

The benefits that would be provided as a result of the WGFP IGA are referred to as “enhancements” and are not intended to mitigate the new impacts caused by the 2012 WGFP. The Subdistrict has included a copy of the draft WGFP IGA in the application packet. This WGFP IGA is still in draft form as the Board of County Commissioners has not approved the WGFP IGA. If approved, some of the contents may have to be modified depending on the outcome of the 1041 permit review and hearings, as well as State of Colorado’s finding on the legality of implementation strategies for some of the offerings.

The WGFP IGA provides enhancements to Grand County and Middle Park as well as certain assurances to the River District in its mission to protect the Colorado River.

A summary of the negotiated enhancements for the Colorado River in Grand County include:

- An opportunity for Grand County to pump and store water in Granby Reservoir for release to the environment as directed through the effort termed Learning by Doing. This effort assesses the stresses on the river systems in Grand County and utilizes the resources provided by Denver Water in the Colorado Cooperative Agreement as well as those offered in the WGFP IGA, if executed, to address and minimize existing impacts. Most of the current stresses to the river occur in the late summer and early fall, typically when Windy Gap or the proposed 2012 WGFP would not be pumping. The proposed WGFP IGA provides water for Grand County under three scenarios.
 - a. Transfer Water. Middle Park calls for water for its contractees at the beginning of the pumping season. Any water not released for Middle Park at the end of the season reverts back to the Subdistrict and is transported to the east slope. Under the WGFP IGA, the water that Middle Park does not use at the end of the season is transferred to Grand County to be released to the environment or stored for the next season in space provided in Granby Reservoir. Grand County is provided with 4500 AF of storage space and Middle Park 3000 AF for a total of 7500 AF, which can be shared between the two entities. If the Subdistrict is issued all of the necessary permits for construction of Chimney Hollow Reservoir and accepts the permits, the transfer water will be available to Grand County on a shared basis until Chimney Hollow is constructed.
 - b. Variable Water. Grand County would have an opportunity to pump water on completion of WGFP. Grand County would receive 3.8% of the 2012 WGFP pumping after the project pumps 15,000 AF up to a net credited storage of 1500 AF. If the 2012 WGFP participants stop pumping prior to the time Grand County has received 1500 AF

and the rights are still in priority, Grand County can elect to continue pumping to attain the 1500 AF if there is storage available.

c. Year End Pumping. After the 2012 WGFP ceases to pump, Grand County can elect to continue pumping Windy Gap water constrained only by the carryover storage available.

- The WGFP IGA firms water for Middle Park Water Conservancy District and describes how that firm water will be delivered to Middle Park.
- Public access and protection of open space. Jasper Water rights will be abandoned. There will be a pump fund established for the Meadow Pumpers above Kremmling to assist with repair and replacement of pumps. A flow measuring fund will be established, however if not used in ten years, will be split between the Subdistrict and Learning by Doing.
- Future water acquisition, appropriation and development of projects in Grand County are curtailed unless approved by Grand County and the River District. Shoshone outage protocol is included for the Subdistrict, participation in Learning by Doing and study of a bypass though Windy Gap Reservoir is provided. A complete draft of the WGFP IGA is included in the application packet and is made an exhibit to this permit application review.

List of Agreements to be Executed together with WGFP IGA (closing documents)

- Agreement with Northern Water
- Grand Lake Clarity Agreement
- Appraisal Study now know as Alternates Development Report
- Processed Materials Agreement
- Windy Gap Decree
- Grand County RICD Stipulation
- Learning by Doing Cooperative Effort
- Green Mountain Reservoir Administration
- Contracts for Delivery of Water to Grand Valley
- Guidelines for Meadow Pumpers Fund
- Guidelines for Measuring Devices Fund
- Form of Easement for Access for Telemetry
- Agreement Among Middle Park, Grand County and River District on Operating and Administering Water Apportionments and Carryover Balances
- Amendatory Contract (Carriage Contract)
- Side letter from Subdistrict to River District re: no opposition to use of WG water for uses incidental to irrigation such as fish screen, fish ladder, etc.

DESCRIPTION OF THE PROPOSED 2012 WINDY GAP FIRING PROJECT APPLICATION

The Subdistrict has requested that the original Windy Gap 1041 Permit remain in effect with no changes as a vested right regardless of the outcome of the 2012 WGFP 1041 permit, however it also states that if the 2012 WGFP Permit conflicts with 1980 Windy Gap Permit, the 2012 WGFP provisions will control. This request raises legal issues that will be evaluated during the course of permit hearings. The County Attorney will consider and respond to the relationship between the two permits and advise the Permit Authority.

The Subdistrict acting by and through the Windy Gap Firing Project Water Activity Enterprise, has applied for a permit utilizing Grand County's regulations of Areas and Activities Designated as Matters of State Interest (1041) for the 2012 WGFP. The 2012 WGFP proposes to firm 30,000 AF with the construction of a 90,000 AF. Chimney Hollow Reservoir, which is the preferred alternative identified in the Final EIS for the project. The Final EIS for the 2012 WGFP identifies the relationship with the original Windy Gap EIS and the 2012 WGFP EIS in section 1.4.2.2 on page 1-7. This section states:

The proposed Firing Project would not exceed the average annual diversion of 56,000 AF evaluated in the 1981 EIS and ROD or any other diversion-related limitations or water rights.

The Windy Gap Project has not met the firm yield expectation of the Subdistrict nor the original participants. Because Windy Gap must rely on space in Granby Reservoir and delivery capability of the C-BT Project through the Adams Tunnel, there has been many times when delivery and space available for Windy Gap water was not possible, especially in wet years. The original Windy Gap Project was estimated to deliver about 48,000 AF of firm yield following conveyance and evaporation losses (shrink) and allocations to Middle Park Water Conservancy District (3000 AF). Each Windy Gap participant was entitled to 1/480th share (units) of the annual yield which was expected to provide 100 AF per year. According to the Final EIS for the Windy Gap Firing Project (WGFP Final EIS) between 1985 and 2004, Windy Gap was only able to deliver an average of less than 10,000 AF per year or 20 AF per unit. (See Section 1.5.2, WGFP EIS).

Table ES-2 of the WGFP Final EIS shows that, on average, the project has delivered 36,532 AF and would anticipate delivering on average 46,084 if the project is permitted, therefore only increasing diversions by 9500 AF. The 9500 AF projected increase is somewhat misleading; actual deliveries for a 19 year period averaged 10,000 AF with the largest deliveries occurring in the last seven years of 14,700 AF on average.

To address the Windy Gap Project's problems, the 2012 WGFP contemplates constructing Chimney Hollow Reservoir in Larimer County and "prepositioning" which was not part of the original project.

The WGFP IGA, if approved, "allows for the construction of a 90,000 AF Chimney Hollow Reservoir or any reservoir or reservoirs on the East Slope that are constructed as an alternative or

in addition to the reservoir identified in the Final Environmental Impact Statement (Alternative Reservoir) provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet as long as the environmental footprint in Grand County is not affected.

The WGFP Final EIS proposes mitigation for impacts of the 2012 WGFP that were identified in the EIS process. Comments submitted to the Corps and the Reclamation on the 2012 WGFP DEIS and Final EIS question whether the proposed mitigation is adequate to address the new impacts to the Colorado River, Grand Lake, and Willow Creek. The County received copies of those concerns. They are part of the record of this proceeding and will be introduced at the public hearing.

The Subdistrict submitted a Wildlife Mitigation and Enhancement Plan to the Colorado Wildlife Commission that proposed substantially the same mitigation that was proposed in the WGFP Final EIS. The Commission approved this mitigation plan as submitted by the Subdistrict. The 2012 WGFP application to Grand County does not propose any additional mitigation to satisfy Grand County 1041 criteria.

The Subdistrict also submitted an enhancement plan to the Wildlife Commission which includes money from the Subdistrict and Denver Water to address stream restoration in the Colorado River. No specific restoration projects have been proposed at this time. The Subdistrict may demonstrate at the hearing that the proposed WGFP IGA and/or the Enhancement Plan will benefit the aquatic environment in a way that addresses some of the County 1041 criteria.

DISCUSSION OF COMPLIANCE OF GRAND COUNTY'S REGULATIONS FOR AREAS AND ACTIVITIES DEEMED AS MATTERS OF STATE INTEREST

According to Grand County's Regulations for Areas and Activities Deemed as Matters of State Interest, Chapter 5, Municipal and Industrial Water Projects, section 5-103 Definitions:

"Municipal and industrial water project" means a system and all integrated components thereof through which a municipality or industry derives its water supply from either surface or subsurface sources. This includes a system and all integrated components thereof through which a municipality or industry derives water exchanged or traded for water it uses for its own needs".

The source development area for the project means, "that geographic area or region wholly or partially within this County which will be developed or altered in connection with the development of a municipal or industrial water project as these terms are defined in §5-102(3).

§5-102(3) is in the Purpose and Intent for the project, and reads as follows:

"Insure that municipal and industrial water projects are developed in such a manner so as not to pollute rivers, streams, lakes, reservoirs, ponds and aquifer recharge areas within the source development area".

Section 1-305 Approval or Denial of Permit Application

- (1) If the Permit Authority finds that there is not sufficient information concerning any material feature of a proposed development or activity, the Permit Authority may deny the application or it may continue the hearing until the additional information has been received. However, no such continuance may exceed sixty (60) days unless agreed to by the applicant.*
- (2) The Permit Authority shall approve an application for a permit to engage in development in an area of state interest or development for the conduct of an activity of state interest if the proposed development or activity complies with the provisions of the regulations governing such area or activity. If the proposed development does not comply with such regulations, the permit shall be denied.*
- (3) The Permit Authority conducting a hearing pursuant to this section shall state, in writing, reasons for its decision and its findings and conclusions.*
- (4) The Permit Authority shall reach a decision on a permit application within one hundred twenty (120) days after the completion of the permit hearing, or the permit shall be deemed approved.*

Review of the EIS for the 2012 WGFP, associated information, studies and permits included in the application packet and other pertinent information, along with public testimony will determine if the source development area will be adequately protected given the additional diversions and method of storage and transfer contemplated.

5-306 Approval of Permit Application. A permit application for development of a municipal or industrial water project shall be approved if the proposed development complies with the following criteria (County criteria is in **bold type**):

(a) The need for the proposed water project can be substantiated.

The application substantiates the need for the project at pages 8-14, and 53 of the application. A new need that is not defined in the Purpose and Need but is disclosed on page 19 of the application causes concern.

New industrial uses such as “fracking” for water on the front range can expand without limitation thereby increasing the likelihood of future diversions from Grand County. The draft WGFP IGA (IV. J. 2.) attempts to address this concern by stating that Grand County *“will not allow Subdistrict or the WGFP Enterprise, without prior express written consent of Grand County and the Colorado River Water Conservation District to acquire any existing water rights in Grand County, construct additional water supply facilities in Grand County, appropriate new water rights in Grand County, or appropriate any new water rights in Water Division No. 5 that will result in depletions of water from Grand County”*.

RECOMMENDATION: This criterion 5-306(a) appears to be satisfied.

(b) Assurances of compatibility of the proposed water project with federal, state, regional and county planning policies regarding land use and water resources.

1. Identified Plans. The application lists the applicable plans, permits, and approvals at page 53 of the application:

- Clean Water Act 404 permit
- CDPHE 401 certification
- Fish and Wildlife Mitigation Plan, C. R. S. § 37-6-122.2
- Water Conservancy Act, C.R.S. § 37-45-101 et seq.
- Clean Water Act 208 Plan (NWCCOG 208 Plan)
- Grand County 1041 Permit
- Grand County Stream Management Plan.

The proposed WGFP IGA is intended to satisfy section 37-45-118(1)(b)(II) of the Water Conservancy Act. *See* WGFP IGA Section VI F.

The Fish and Wildlife Mitigation Plan has been approved by the Colorado Wildlife Commission. As a matter of federal law, the 2012 WGFP cannot be constructed until the 404 permit has been issued by the Corps of Engineers and Colorado Water Quality Control Commission has issued the 401 Certification.

The Stream Management Plan will guide the Learning By Doing process in which the Subdistrict will participate.

2. Other Plans Not Included in Application. The following applicable plans, permits and approvals are not identified in the application:

Grand County Master Plan. Grand County Master Plan was last updated in 2011. This plan had broad community input and support. The Plan contains seven elements which are considered the core of the plan. Those elements include Natural Resources; Land Use – Growth and Development, Development: the Build Environment; Community and Public Facilities; Transportation; Economic Base; and Administration & Process. Each section contains a number of subsections. Grand County’s 1041 process incorporates these Master Plan provisions into the permit process through reference to plans in 5-306b. Sections of the Master Plan relevant to this application are Natural Resources, Land Use-Growth and Development, Community and Public Facilities, and Economic Base.

Natural Resources

Natural Resources include several subsections, but those under which this application will be reviewed are wildlife, wetlands, and water resources, and visual resources:

Wildlife: The quality, integrity and interconnected nature of critical wildlife habitat in Grand County should be preserved and protected. In order to accomplish this goal, there has to be recognition of the economic, recreational, environmental and cultural importance of hunting, fishing, and wildlife watching in Grand County, and the minimization of impacts to critical wildlife habitat and/or corridors.

The 2012 WGFP application, and the WGFP IGA and closing documents, contain elements that would address these requirements are the stream restoration and temperature requirement in the Fish and Wildlife Mitigation Plan. Participation in the Learning by Doing sustain this effort for the future.

Wetlands: Provide for the long-term protection of wetland functions and values.

The 2012 WGFP application addresses wetlands, but does not address long term protection as could be associated with the stream depletions. There will be conditions recommended to address this goal under criterion (f).

Water Resources: The long term protection of water resources and water quality in Grand County is the goal.

This section includes working with entities and other parties to maximize water levels in the Colorado River and, other water bodies while exploring the feasibility of in-stream flows for environmental and recreational purposes, maintaining optimum flows in streams and rivers, working to retain and protect existing water rights for use in Grand County, and supporting projects that restore stream channels and natural conditions, and improve fish and wildlife habitat.

These goals could be met by the additional water to Grand County provided in the proposed WGFP IGA and through the endangered fish releases from Granby Reservoir. Also, protection of water rights in Grand County from future transbasin diversion by the Subdistrict and Northern, and restoration of stream channels through the approved State Fish and Wildlife Enhancement Plan, could help to achieve this goal. Participation in Learning by Doing would support this goal.

Visual Resources: Visual resources play a major role in the county's character, quality of life and economy. Recognition of the importance of visual resources by maintaining those resources to promote overall rural character, quality of life and the tourist and recreation based economy.

The 2012 WGFP could meet this goal with the WGFP IGA and associated documents which would work to improve the water clarity in Grand Lake, maintain lake levels for recreation, provide additional public access around Willow Creek and specify development of Subdistrict land to the Grand County Rural Land Use Process.

Land Use, Growth and Development

Land Use, Growth and Development include several subsections, but those under which this application will be reviewed are Pattern of Development, Rural and Open Land Pattern:

Generally under all of the subsections mentioned, Grand County's goal is to direct development so as to preserve economic success by striking a balance between quality of life, preservation of the environment and the County's rural character.

The 2012 WGFP application and WGFP IGA with associated documents will require that future development of lands held by the Subdistrict would proceed under the Rural Land Use Process. The WGFP IGA provides water for the environment, restoration opportunities through the Fish and Wildlife Mitigation Plan, and lake level preservation. Through Learning by Doing, the Subdistrict and Northern participate in ongoing efforts to maintain the environment.

Community and Public Facilities

Community and Public Facilities include several subsections, but the one associated with this application is Recreation Facilities:

Recreation Facilities: Develop recreational resources within the county to meet the needs of all age and interest groups.

The WGFP IGA and associated documents requires the Subdistrict and Northern to remove their objections to the Recreational Instream Channel Diversion that Grand

County is pursuing. Additional water released for the endangered fish as well as Grand County environmental water will help preserve existing recreational resources.

Economic Base

Economic Base includes numerous subsections, but those appropriate to this review are Recreation & Tourism Based Industry and Natural Resource Based Industry.

Recreation and Tourism Based Industry: *Encouragement and support of year-round recreation while making effort to retain Grand County's unique rural, western and scenic character that is so appealing to tourists.*

The 2012 WGFP IGA and closing documents will help support the year-round recreation by providing water resources, a process for improving clarity in Grand Lake and protection of the rural, western and scenic character by committing to development of it properties under the Rural Land Use Plan.

The WGFP IGA also provides that the Subdistrict will arrange with Northern to allow for public access along Willow Creek, and the designated area is to be managed by the Colorado Parks and Wildlife or other agency approved by Northern. However, the public access could be revoked if Northern were to sell its property. If this provision is to be considered to help address the requirements of the Master Plan, then the Subdistrict must provide a plan for how it would replace the value of the public access that would be lost if Northern sells its property and revokes the public access.

Natural and Resource Based Industry: *Encouragement and support of natural resource based industry and renewal energy such that it compliments and/or enhances the County's rural character and natural setting and sustains quality of life for County residents.*

The 2012 WGFP IGA and associated documents provide funding for irrigators above Kremmling to repair and replace pumps necessary to access agricultural water. The agricultural base of Grand County is essential to sustaining the quality of life for County residents.

Compliance with the Grand County Master Plan could be satisfied with the following conditions:

1. The WGFP IGA and closing documents are executed and made a part of any permit issued by the County.
2. The Subdistrict provide a plan for how public access will be compensated if the public access provided in the WGFP IGA were to be revoked due to the sale of the property by Northern.

Senate Document 80. The 2012 WGFP must comply with Senate Document 80. This is also a requirement of the WGFP IGA. The requirement to comply with Senate Document 80 also applies to the on-going operations of the C-BT.

Grand Lake is Colorado's largest natural lake and was conscripted into the C-BT Project as a conduit for water. Senate Document 80 provided assurances from the C-BT Project to both the East and West Slope. There are five primary purposes stated in Senate Document 80 under which the project must be operated. Those five purposes are:

To preserve the vested and future rights in irrigation.

To preserve the fishing and recreational facilities and the scenic attractions of Grand Lake, the Colorado River, and Rocky Mountain National Park.

To preserve the present surface elevations of the water in Grand Lake and to prevent a variation in these elevations greater than their normal fluctuation.

To so conserve and make use of these waters for irrigation, power, industrial development, and other purposes, as to create the greatest benefit.

To maintain conditions of river flow for the benefit of domestic and sanitary uses of this water.

2012 WGFP compliance with Senate Document 80 is covered in detail in Section 5-306(d), below.

Bureau of Land Management Resource Management Plan. The 2012 WGFP was considered to be included in the Wild and Scenic portion of the BLM Resource Management Plan and has been agreed to by all parties participating. Northern will make a contribution to this effort as described in the WGFP IGA.

Arapahoe National Recreation Area Policies (ANRA) – The ANRA was created in 1978:

“...so as to Protect the area's enduring scenic and historic wilderness character and its unique wildlife and to preserve the areas' scientific, educational, recreational, and inspirational resources and challenges; and

So as to preserve and protect the natural scenic, historic, pastoral, and wildlife resources of the area and to enhance recreational opportunities.

Administration of the ANRA provides that

the Secretary shall administer the area in accordance with laws and regulations applicable to the national forests so as to protect recreation and enjoyment, conservation and development of the scenic, natural, historic and pastoral values; utilize and dispose of natural resources that will not impair the purposes for the recreation area; and manage for water quality.

The Secretary shall develop an overall management plan for the ANRA.

Compliance with the ANRA policies could be met with the provisions provided WGFP IGA and closing documents. If the U. S. Forest Service requires additional mitigation, these measures will be included in any permit issued by Grand County.

Amendatory Contract with the Bureau of Reclamation. The 2012 WGFP will require an amendment or new contract for the operation contemplated.

Additional Reviews:

There are several review agencies that are allowed to comment on this project. They include Northwest Colorado Council of Governments (NWCCOG) with regard to the 208 Water Quality Plan, Colorado Department of Public Health and Environment, and Colorado Parks and Wildlife. The comments by these agencies are due July 12, 2012, so will not be included in the Planning Commission Review of the 2012 WGFP, but will be made part of the review before the Permitting Authority.

RECOMMENDATION: *This criterion would be satisfied if the following conditions are met:*

1. The 2012 WGFP project requires federal and state approvals and cannot go forward without them. Consequently if the County issues a 1041 permit for the project, all the terms and conditions on those permits and approvals will become County conditions, and any permit issued by the County will not become effective until all those permits are issued and Grand County is provided copies of same.
2. The County recognizes that Grand Lake water quality is already a problem, however evidence on the record indicates that additional pumping by the 2012 WGFP is likely to exacerbate the issue. This condition is likely to be satisfied if the proposed WGFP IGA and all other documents and agreements associated with the WGFP IGA are executed, and the 2012 WGFP project is operated in compliance with that WGFP IGA and related documents, permits, and approvals at all times.

3. The WGFP IGA and closing documents are executed and made a part of any permit issued by the County.
4. The Subdistrict provide a plan for how public access will be compensated if the public access provided in the WGFP IGA were to be revoked due to the sale of the property by Northern.
5. If the U. S. Forest Service requires additional mitigation or information to comply with the policies of the ANRA, that mitigation and/or information will become part of any permit issued by Grand County.

(c) Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of storm water and sanitation systems shall be accompanied in a manner that will prevent the pollution of aquifer recharge areas.

The application describes efficient use of the water, recycling and reuse of water at pages 17-20 of the application. The Subdistrict also indicates that some of the water will be used for fracking in the oil and gas industry.

Fracking water is typically injected into the ground and not reused or recycled.

Efficient use of water also is discussed in the Final EIS as well as specific mitigation required to guarantee efficient use is detailed in Table 3-164 (1b) of the Final EIS. One of the mitigation measures stated is the need for all project participants to have conservation plans prior to the delivery of water.

According to the 1041 application (at pg 18)

“ nine of the participants, Broomfield (City and County), Erie, Greeley, Evans, Fort Lupton, Central Weld, Lafayette, Little Thompson Water District, and Longmont have approved Colorado Water Conservation Board (CWCB) conservation plans since the passage of the Water Conservation Act of 2004 (Colorado House Bill 04-1365). Louisville anticipates completing its plan in 2012. Platte River is an industrial water user not covered by HB 04-1365, but implements measures for efficient use and reuses its water supply to extinction. As a component of the Water Conservation Act, project participants would update their conservation plans approximately every seven years”.

The application states, at pg 18, that the Subdistrict is a raw water provider and cannot enforce water conservation through its allotment contracts, but the mitigation in the EIS does not recognize that distinction. In order to meet the mitigation required, the Subdistrict will be need to

verify that not only does every participant comply with the conservation plan requirement of the EIS as well as the Water Conservation Act, as currently in effect or which may be amended in the future, but also that each project participant updates their plans approximately every seven years. The Subdistrict may have to amend its allotment contracts to comply with law and mitigation requirements.

The Subdistrict has stated that according to its policies, the project participants are allowed to sell or lease their shares (units). Because of the mitigation requirement for conservation as well as compliance with the Water Conservation Act, no sale or lease of participant shares to other municipalities will be allowed unless the new owner or lessee has a valid conservation plan in place and updates every seven (7) years as required.

The current participants own 440 of the 480 shares (units). The remainder is owned by some of the original Windy Gap Participants or other entities that have since purchased them. The City of Boulder and the Town of Estes Park collectively own 40 Windy Gap shares (units). These two Windy Gap participants currently have other sources of water supply and/or storage for Windy Gap water.

According to the EIS, (pg 1-3) delivery of 40 shares of water will be similar to current operation and may increase over time as demand grows. The EIS states "*the amount of water delivered to these entities will not be expanded or diminished by WGFP*".

The WGFP IGA reaffirms the 1980 and 1985 Agreements as they relate to volumetric limits and state that those limits apply to both the Windy Gap Project and the 2012 WGFP. To be clear, those limits, 90,000 AF of diversion in any one year, and not to exceed an average of 65,000 in any ten year running average, apply cumulatively to both projects and NOT to each one individually. The WGFP IGA also does not allow the expansion of the C-BT project storage with the combination of water stored in Chimney Hollow and Granby Reservoir. As previously discussed, the Subdistrict states that it can pump whatever water is in priority from the Colorado River, subject to storage capacity in Granby, as long as the amount of water transported through the Adams Tunnel is within the decreed limits.

Any permit issued by Grand County should be clear that volumetric limits and their application to both the Windy Gap and 2012 WGFP participant's use of water is in compliance with the Windy Gap decrees and Colorado law.

There is no construction within Grand County so there will be no effect on storm water and sanitation systems or pollution of aquifer recharge systems.

RECOMMENDATION: This criterion would be satisfied if the following conditions are met:

1. Subdistrict shall provide the County with documentation of conservation plans for all municipal project participants prior to delivery of water through the 2012 WGFP, and that participants are complying with the Water Conservation Act with regard to updating the conservation plans every seven years.

2. Subdistrict shall provide written notice to the County when shares of the 2012 WGFP are sold or leased and verification that the new owner or lessee has complied with conservation requirements.

3. Within 30 days of acceptance of an approved 1041 permit, the Subdistrict shall provide the County with written documentation of how use of water for fracking satisfies this criterion.

4. Any permit issued by Grand County is subject to the volumetric limits of the WGFP IGA and the requirements of the 1980 Agreement or 1985 Supplement that may remain in effect if not changed by the WGFP IGA.

(d) Provisions to insure the proposed water project will not contaminate surface water resources.

The application, at p. 55, states that the 2012 WGFP water will not contaminate surface water resources as it will be transported through existing facilities. The County disagrees with this statement because the transport of water through the C-BT system will exacerbate the water quality in the Three Lakes (Granby Reservoir, Shadow Mountain Reservoir and Grand Lake) by increasing introductions of lower quality water from Windy Gap into Granby Reservoir, and increased diversions of particulate-laden water through Shadow Mountain Reservoir and Grand Lake. Although the Subdistrict has proposed mitigation of nutrient loading, no mitigation is proposed for the non-algal particulates.

The clarity in Grand Lake has been an issue since the C-BT Project began pumping. The first documented concern was in 1952 from the City of Loveland to the Bureau of Reclamation complaining about algae in its water supply after the Farr Pumping Plant began to transport water into the C-BT. Reporting on water quality from both east and west slopes continued intermittently until the late 1990's when a group of citizens around Grand Lake worked to heighten awareness and sought Grand County's support to rectify the loss of Grand Lake's scenic attraction as protected in Senate Document 80. For the last decade, there has been a concerted effort to bring the clarity in Grand Lake back to its pre-C-BT project clarity of 9 meters.

In 2006, Northern Water, Grand County, and several other entities began participation in the Nutrient Study for the Three Lakes System (Grand Lake, Shadow Mountain and Granby Reservoirs). A spin off from this study group is the Three Lakes Technical Committee which focuses primarily on west slope water quality. In 2006, it was thought that nutrient loading was the root cause of most of the water quality issues in the Three Lakes, including Grand Lake clarity, but years of additional study, monitoring and reporting have proven that nutrients are not the only cause of reduced clarity.

In 2008, the Colorado Water Quality Control Commission adopted two standards for clarity in Grand Lake: a narrative standard supporting "the highest level of clarity attainable, consistent with the exercise of established water rights and the protection of

aquatic life”, along with a numeric standard of 4 meter Secchi disk depth with 85% compliance in any given year for the months of July, August and September. The numeric standard becomes effective January 1, 2015.

Pumping from Granby Reservoir to Shadow Mountain Reservoir, and subsequent water transfer to the east slope via the Adams Tunnel, causes decreased clarity in Grand Lake, as evidenced by stop-pump trials, water quality monitoring, and photographic records. Two two-week stop pump trials (2008 and 2009), as well as a seven-week stop pump in 2011 made possible by extremely high runoff and full storage all resulted in improved clarity: the 2011 “gift of nature” resulted in the best clarity in Grand Lake since the C-BT became operational.

Recent studies have identified non-algal particulate matter as being considerably more important to clarity as nutrient loading. The source of the non-algal organic particulates is currently under investigation.

The Subdistrict is proposing that reductions in nutrient loading will come from a combination of wastewater treatment improvements to reduce point source nutrient loading above Windy Gap as well as land use changes that would reduce non-point source nutrient loading. Wastewater treatment plants above Windy Gap were evaluated to determine which, if any, treatment plants, would be capable of achieving the level of nutrient loading reduction required to meet the 1:1 (nutrient neutral) standard applied in the Final EIS. The Fraser Valley Consolidated Plant is the only one capable of meeting a portion of the reduction necessary. By financing improvements to the Fraser Valley Consolidated Plant, it is expected that 822 kg/year of Nitrogen and 774 kg/year of Phosphorus will be removed. The cost of the plant improvements is estimated to be \$3.3M with increased annual operating costs ranging from \$120,000 to \$230,000/year.

Part of the non-point source reduction proposed by the Subdistrict will come from two ranches in the Willow Creek drainage above Windy Gap. The 265 acre E-Diamond H Ranch is currently irrigated and periodically fertilized. To reduce nutrient discharges from run-off, the ranch will no longer be irrigated or fertilized. It is estimated that this will reduce total nitrogen loading by 685 kg/year and total phosphorus by 117 kg/year. C Lazy U Ranch would implement best management practices on 300 acres by a reduction in chemical fertilizer application, use of vegetated buffer strips adjacent to Willow Creek and stream bank restoration to reduce erosion. This action is estimated to produce a reduction of total nitrogen loading of 1,836 kg/year and 237 kg/year of total phosphorus loading.

Even with these actions, the Subdistrict notes that the total nitrogen loading must be reduced by another 2,785 kg/year to be nutrient-neutral. The Subdistrict is proposing that the additional reduction in total nitrogen loading will be met prior to construction of the 2012 WGFP in cooperation with Reclamation and Corps of Engineers. Grand County must be provided with documentation of how the Subdistrict intends to meet the additional reductions in nitrogen.

According to the Final EIS (Table ES-6, p. ES16), and the application (p. 24 and 25) manganese and chlorophyll- α are predicted to increase, and dissolved oxygen (DO) would decrease in the

entire Three Lakes System. The lower DO levels would contribute to continued exceedance of manganese standard in the Three Lakes. Secchi disk depth would decrease in Grand Lake.

In addition to increasing nutrients, a report titled *2010 Water Quality Report Flowing Sites* prepared by Northern identifies higher conductivity and total organic carbon in flows pumped from Windy Gap, meaning that dissolved constituents in additional pumped flows are likely to increase under the 2012 WGFP. A report titled *Factors Controlling Transparency in Grand Lake, Colorado* prepared for Three Lakes Technical Committee documents that non-algal particulates are also a contributing factor to reduced water quality in Grand Lake. While this information was not available in time for publication of the Final EIS, it is also not mentioned or provided in the application. It is relevant to the impact of the 2012 WGFP.

The application states that the 2012 WGFP impact on particulate transfer is not currently known but that the flow increase through the C-BT project is relatively small when compared to the C-BT diversions. To date, the amount of Windy Gap water than has been pumped through the C-BT system is relatively small, but if the 2012 WGFP is approved, this will no longer be insignificant when compared to the C-BT overall volume.

The application further states that it is possible that the particulates are substantially moved during the "first flush" of pumping and/or natural runoff into the lakes, in which case 2012 WGFP would have no additional effect (at pg 30 of the application). These statements are not supported by the conclusions in *Operational and Water Quality Summary Report for Grand Lake and Shadow Mountain Reservoir: 2010* prepared for Northern, Reclamation, and Grand County, which shows that turbidity is highest in Grand Lake at high rates of reverse flow through Shadow Mountain Connecting Channel, and that many of the native inflows to the Three Lakes are pristine even in high flow conditions.

The Subdistrict has identified other ongoing processes related to Grand Lake water clarity on page 29 of the application:

Reclamation, Grand County, and Northern Water have entered into a separate MOU to finance and begin an Appraisal Study, the first step in Reclamation's Planning Process (Reclamation has since determined that the Planning Process is not the appropriate avenue in which to contemplate corrections to the C-BT Project, and this report has been retitled the Preliminary Alternatives Formulation Report);

Grand County, Reclamation, and Northern Water are continuing to move ahead with Reclamation's process by participating in a Contributed Funds Act Agreement for executing a C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study; and

Grand County and Northern Water have agreed to enter into the Memorandum of Understanding, known as the Grand Lake Clarity project.

The C-BT Project is a Reclamation Project and it is imperative to solicit its cooperation in addressing the Grand Lake clarity issue. The Memorandum of Understanding known as the Grand Lake Clarity project must also gain the approval of the Reclamation, and the draft agreed to by Grand County and Northern has been sent to Reclamation, hopefully for approval and execution.

The application, at pg 55, states that "Although not specifically related to the WGFP, Northern Water and Grand County have agreed to enter into an agreement with Reclamation (Grand Lake Clarity MOU) to identify causes and potential solutions to Grand Lake clarity issues". Grand County does not agree that clarity is not related to the 2012 WGFP because the FINAL EIS discloses that Secchi disk depth will be reduced.

RECOMMENDATION: This criterion 5-306(d) would be satisfied if the following conditions are met:

1. The 1041 permit, if issued, will not be effective until the Clarity Project MOU and the C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study are executed.
2. Prior to the beginning of construction for Chimney Hollow Reservoir, Grand County must be provided with a copy of an executed agreement between the Subdistrict and the wastewater treatment provider(s) who will be contracted with to remove some of the nutrient loading. This agreement must include the cost of improvements required plus whatever operation and maintenance costs the provider(s) require for the future.
3. The Subdistrict shall submit the Nutrient Reduction Plan to Grand County for review and approval at the same time it is submitted to Reclamation and the Corps but no later than the execution of the WGFP IGA and related documents and agreements.
4. The Subdistrict must submit a robust monitoring plan to assure that nutrient loading from the 2012 WGFP for total nitrogen and total phosphorus are adequately reduced to meet the 1:1 level; that manganese, mercury, and chlorophyll a do not increase; that DO does not decrease; and that Secchi disk depth does not decrease in Grand Lake. The monitoring plan shall include a schedule for monitoring and reporting. Grand County must be included in all reporting. The project must be operated in compliance with the Nutrient Reduction Plan and monitoring plan.

(e) The proposed water project is capable of providing water pursuant to standards of the Colorado Department of Health.

The application, at pg 55, states that the 2012 WGFP provides raw water to a number of municipal users. The water will be treated by those end users as required by Colorado law.

RECOMMENDATION: This criterion appears to be satisfied.

(f) The proposed diversion of water from the source development area will not decrease the quality of peripheral or downstream surface and subsurface water resources in the source development area below that designated by the Colorado Water Quality Control Division on January 15, 1974 and effective June 19, 1974 or below stricter standards subsequently adopted.

Granby Reservoir is currently on the State of Colorado's 303(d) list for impaired waters due mercury. This likely occurs from atmospheric deposition from coal fired power plants. The application, at pg 55, states that the 2012 WGFP does not affect this impairment. As with manganese (p. 25 app.), lower dissolved oxygen (DO) levels would contribute to continued exceedance of the mercury standard in Granby Reservoir.

Sections of the Colorado River are also on the Colorado Water Quality Control Commission 303(d) list for existing temperature exceedances. In Grand County this includes the mainstem from Granby Reservoir to the where the Colorado River leaves Grand County (this exceedance extends to the Roaring Fork River). Exceedances are especially critical in the reach from Windy Gap to the Williams Fork where chronic and acute temperature standards are being exceeded especially during the summer months.

The 2012 WGFP is predicted to exacerbate these exceedances of temperature standards. The federal Clean Water Act prohibits a permitted project from causing or contributing to the violation of a water quality standard. Mitigation for the impacts of the WGFP on temperature has been proposed in the Fish and Wildlife Mitigation Plan approved by the Colorado Wildlife Commission. The Army Corps of Engineers may add additional requirements or adopt the mitigation proposed in the State plan.

According to the State Fish and Wildlife Mitigation Plan, the Subdistrict, working with Denver Water, will install, operate and maintain two continuous real time monitoring stations on the Colorado River, one at Windy Gap gage and one upstream of the confluence of the Williams Fork River. The Fish and Wildlife Mitigation Plan provides that the Subdistrict will implement the following mitigation for temperature:

Temperature Thresholds: The threshold temperatures will be the following, as measured at the temperature monitoring stations identified above:

MWAT Chronic Threshold: 18.2°C (64.8° F), based on the Water Quality Control Commission

current Maximum Weekly Average Temperature (MWAT) Chronic Standard

DM Acute Threshold: 23.8°C (74.8° F), based on current Water Quality Control Commission Daily Maximum (DM) Acute Standard.

Mitigation for MWAT Chronic Threshold Exceedances – The Fish and Wildlife Mitigation Plan proposes that for the period after July 15th of each year:

At such times as the Weekly Average Temperature (WAT) exceeds the MWAT Chronic Threshold, the Subdistrict will reduce or curtail WGFP pumping at the Windy Gap diversion to the extent necessary to maintain temperatures within the MWAT Threshold. Reduced pumping may not be sufficient to maintain temperatures below the threshold.

The Fish and Wildlife Mitigation Plan defines “WGFP pumping” as “pumping that occurs at such times as the Northern Colorado Water Conservancy District determines, based on its most probable forecasts of inflows to Lake Granby, that a spill of water from Lake Granby is reasonably foreseeable.” All other pumping will be considered to be for the original Windy Gap Project.

Nonetheless, no project can cause or contribute to a violation of a water quality standard.

What this limitation means is that the Subdistrict will not reduce or curtail exceedances of the MWAT unless 2012 WGFP is pumping, and whether WGFP is pumping will be based on whether Northern forecasts that a spill is probable from Lake Granby. However, as stated above, **no project can cause or contribute to a violation of water quality standards.** Therefore, any violation of this standard, whether 2012 WGFP or original Windy Gap project is operating, pumping must be curtailed to not exceed the temperature standards.

Mitigation for DM Acute Threshold Exceedances - The Fish and Wildlife Mitigation Plan proposes that:

“At such times as the Daily Maximum temperature is within 1°C of the DM Acute Threshold, the Subdistrict will reduce or curtail pumping for the original Windy Gap Project or the WGFP at the Windy Gap diversion to the extent necessary to maintain temperatures within the DM Threshold. “Reduced pumping may not be sufficient to maintain temperatures below the threshold. In the future, the 1 degree buffer may be altered, based on experience, to maintain compliance with the DM Threshold.”

According to the Fish and Wildlife Mitigation Plan, the temperature mitigation measures will be suspended when there is “no material causal relationship between Windy Gap Project or Windy Gap Firing Project operations and any exceedance of the MWAT Chronic threshold or DM Acute threshold at the monitoring stations identified above.”

The Plan defines a “material causal relationship” as “either an actual measureable impact on temperature using readily available monitoring technology or a modeled impact on temperature

that is not de minimus and is based on a computer model or studies accepted "by the Colorado Division of Wildlife."

This limitation is problematic because it leaves it up to the Division of Wildlife (now Parks and Wildlife) to make a judgment on impacts to water temperature. The proper entity for approving of such a model should be the Water Quality Control Commission. The Management Committee to the Stream Management Plan also should be consulted.

Other than the proposed mitigation, other actions could have a positive effect on temperature in the Colorado River below Windy Gap. The first is the 5412.5 AF of water for the Endangered Fish (10825 FONSI in application) that will be released from Granby Reservoir. According to the Programmatic Biological Opinion (Opinion) for the Endangered Fish, 5412.5 AF of water will be released for each of the east slope and west slope diversions. For the first ten years of the Opinion, Denver Water released for the east slope diverters and the River District for the west. The Opinion calls for a permanent source of water as Denver and the River District would not commit to releasing water after their committed period. The permanent source of 5412.5 AF of water for the east slope is from Granby Reservoir provided by Red Top Valley Ditch water owned by Northern. The west slope contribution will come from Ruedi Reservoir. If for some reason the endangered fish water is no longer required in the future, Northern, by separate agreement, has guaranteed this water for release to the Grand County environment for perpetuity.

As early as 2013, this 5412.5 AF of water could be released during the later part of the summer and early fall. If the U. S. Fish and Wildlife Service do not call for the water for the endangered fish, Grand County, through Learning by Doing, could call for the water for environmental purposes. When the water arrives at the confluence of the Blue River, it would be booked back into Green Mountain Reservoir for release at such time as the U. S. Fish and Wildlife Service call for the water.

Secondly, Grand County, through the proposed WGFP IGA, could have up to 4500 AF of water stored in Granby Reservoir to be used for the environment. This amount of stored water could be increased by sharing the 3000 AF of storage space with Middle Park. Again, through Learning by Doing, this water could be released to offset temperature exceedances.

RECOMMENDATION: This criterion would be satisfied if the following conditions are met:

1. Installation and maintenance of real time temperature gauges. The Fish and Wildlife Mitigation Plan requires the installation of real time temperature gauges below Windy Gap Reservoir and above the confluence of the Colorado and Williams Fork. This installation will also be a condition to any permit issued by Grand County, but in addition, the Subdistrict must verify every spring, before the beginning of pumping, that these gauges are in good working order, that they remain so during each annual pumping season, and that they are replaced or repaired when necessary and timely to their need in reporting temperature.

2. Grand County feels the bypass study should begin immediately and that if proven beneficial, the alteration within the Windy Gap Reservoir should commence upon acceptance by the Subdistrict of the 1041 permit so as to address ongoing conditions below Windy Gap.
3. Curtailment of Pumping in the Event of Threshold Exceedances. In addition to the proposed temperature mitigation in the Fish and Wildlife Mitigation Plan and other terms and conditions to address temperature that may be imposed as part of the 401 Certification or federal approvals for the WGFP, the Subdistrict shall reduce or curtail pumping at the Windy Gap Diversion if the MWAT Threshold is exceeded after July 15th of any year as long as WGFP is pumping during that time period. If the MWAT is exceeded, the Subdistrict shall immediately notify the County, and the County and the Subdistrict will determine whether WGFP is pumping. Temperature mitigation may be suspended when there is no material causal relationship between Windy Gap Project or Windy Gap Firming Project operations. The determination of a causal relationship shall be based upon a model approved by the Colorado Parks and Wildlife, Grand County, and the Water Quality Control Division.
4. The delivery of 10825 endangered fish water from Granby Reservoir must be approved.

(g) The proposed development and the potential diversions of water from the source development area will not significantly deteriorate aquatic habitats, marshlands and wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitat, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreational areas, and unique areas of geologic, historic or archaeological importance.

Aquatic Habitat

The application states, at pgs 8, 37, 42-43 and 57, the greatest decrease in fish habitat would occur from Windy Gap to Williams Fork with the greatest decrease in July and August. In this section there could be a decrease of 34% in the adult Rainbow population and 8% in the Brown Adult in August. Diversions, according to the modeling, would increase in August from 6 times in 47 years to 15 times in 47 years. Decreased habitat of up to 15% is predicted below Williams Fork for juveniles of both Rainbow and Brown Trout. No adverse impacts are expected for spawning.

The impacts predicted by diversions in August are stated to be infrequent in the application and offset by considerations in the Fish and Wildlife enhancement plan which includes habitat improvement below Windy Gap, additional water committed to Grand County for the environment and to be used through Learning by Doing as well as the 10825 endangered fish water. However there is no way to know if these enhancements and improvements will actually address the loss of aquatic habitat and no mitigation has been proposed.

The Nehring Report, *Colorado River Aquatic Resources Investigation Federal Aid Project F-237R-18* identifies a relationship between hydrologic modifications and macro invertebrates and concludes that the 2012 WGFP and Denver's Moffat Firming Project combined are likely to exacerbate these problems.

The additional water from the WGFP IGA along with the 10825 endangered fish water could help maintain the riparian habitat when coupled with the downstream restoration proposed by the Fish and Wildlife Mitigation Plan.

The Fish and Wildlife Mitigation Plan requires an increase in flushing flows from 450 c.f.s. for 50 hours, 1 out of 3 years, to 600 c.f.s., if at any time in the previous two years the flows have not exceeded 600 c.f.s for 50 hours. However it carries the caveat that storage in the Subdistrict's Chimney Hollow and Granby Reservoirs must exceed 60,000 AF. on April 1st and then the Subdistrict will cease pumping for 50 consecutive hours to enhance peak flows below Windy Gap.

Previous to the Windy Gap project, the median flushing flows May through June were 1145 and 1795 c.f.s. respectively according to Grand County's Stream Management Plan (SMP) (p. CR4-7). The SMP recommends a **minimum** flow of 600 c.f.s. every other year, and this flow would only move spawning gravel and not larger cobble needed to maintain stream health. Channel maintenance flows are unknown and there is conflicting data around this issue.

Grand County has requested Reclamation, in the decision for the Carriage Contract for the 2012 WGFP, to apply a shrink lesser than 10% to water stored on the western slope in the C-BT Project and not transported through the system to the east slope. The Subdistrict has requested the same. If this is granted, the Subdistrict will gain water to the project.

If the Subdistrict were to "bank" this additional water for a five year period, and in the 6th year provide a flushing flow of 1145 c.f.s. for 72 hours, it would not lose yield anticipated with this project. For example, 5% instead of 10% of 56,000 AF annual yield results in 2800 AF average annual or 1400 c.f.s. In five years, depending on conditions, this could more than provide the 1145 c.f.s. for 72 hours plus not interfere with the County's possible year-end pumping. This would not be tied to reservoir levels as the release could be planned for in a five year period.

In the proposed WGFP IGA, the Subdistrict has offered \$250,000 to study a bypass/through of Windy Gap Reservoir when not pumping. The intent of this study is to determine if re-establishing a natural channel through the reservoir when not pumping could benefit the aquatic environment. The Subdistrict is currently negotiating an agreement with the Department of Natural Resources, Trout Unlimited and certain landowners to address implementation of the study if a bypass is proved beneficial to the aquatic environment.

RECOMMENDATION: This criterion pertaining to aquatic habitat would be satisfied if the following conditions are met:

1. The Subdistrict shall prepare and submit to Grand County a fish and aquatic invertebrates monitoring plan to determine if the enhancements for habitat restoration and additional water provided in the WGFP IGA would prevent the predicted loss of aquatic habitat. This information will assist the Learning by Doing effort in making decisions for the future of the aquatic habitat. The monitoring will continue as long as the Learning by Doing effort requires this information. If the bypass/through is constructed, this monitoring plan can be adapted as necessary to analyze the benefits of the bypass/through.

2. The original Windy Gap 1041 permit does not allow the creation of mud flats at Windy Gap Reservoir. If the bypass/through were to be implemented, mud flats are likely to be created at the time the channel would be operating. The Subdistrict shall prepare and submit to the County an aquatic vegetation/revegetation plan to minimize mudflats protect against blowing dust.

3. If, during a five (5) year period, natural conditions meet or exceed flows of 600 c.f.s. as recommended by the SMP so that the Subdistrict is not required to make releases to achieve recommended stream conditions, then in the sixth year, Subdistrict shall provide a 1145 c.f.s. flow for 72 hours to move large cobble and dearmour the stream. This condition is not tied to reservoir levels as is the Fish and Wildlife Mitigation Plan.

Marshlands and Wetlands

The application states, on pgs 22 and 23, that changes in stream stage is unlikely to adversely affect riparian and wetland vegetation along Colorado River and Willow Creek. However there are reductions in stream flow and bank full conditions that could affect riparian vegetation.

RECOMMENDATION: This criterion pertaining to marshlands and wetlands would be satisfied if the following condition is met:

1. Vegetation Monitoring Plan for Colorado River and Willow Creek. Subdistrict shall prepare and submit to the County for approval a monitoring plan for vegetation along the Colorado River and Willow Creek within thirty days of issuance of the ROD by the Corps of Engineers. Monitoring will continue until the LBD management team has determined that riparian and wetland vegetation has not been adversely affected, or has recovered due to mitigation or other efforts. At a minimum this monitoring must continue at least ten (10) years after commencing of pumping for the 2012 WGFP.

Groundwater Recharge Areas

The application states, at pgs 23 and 56, that there will be no effects on groundwater levels and groundwater quality.

RECOMMENDATION: This criterion pertaining to groundwater recharge areas appears to be satisfied.

Steeply Sloping and Unstable Terrain

The application states, at pg 23 and 56, impacts are considered minimal or non-existent and are not discussed. Most of this impact will be associated with the Chimney Hollow construction.

RECOMMENDATION: This criterion pertaining to slopes and terrain appears to be satisfied.

Forest and Woodlands

The application states, at pgs 23 and 56, impacts are considered minimal or non-existent and not discussed. Most of this impact will be associated with Chimney Hollow construction.

RECOMMENDATION: This criterion pertaining to forest and woodlands appears to be satisfied.

Critical Wildlife Habitat, Big Game Migratory Routes, Calving Grounds

The application states, at pgs 23 and 56, the only critical habitat affected is in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and are not discussed in the application.

The Watchable Wildlife Area associated with Windy Gap is the only wildlife habitat in Grand County that would be affected by the 2012 WGFP, and then only if the bypass/through is constructed.

Critical wildlife habitat affected is the Threatened and Endangered Fish in the 15 mile reach in the Grand Valley. The EIS has applied mitigation in the form of monetary compensation to address the Subdistrict's responsibility.

The 10825 water designated for the Threatened and Endangered Fish will be released from Granby Reservoir in the future, and be shepherded through Grand County and the Colorado River to the fish. This water will do double duty in Grand County by helping address temperature and flow issues and protecting aquatic habitat on its way to its main purpose.

The Northern District has provided guarantees, in the form of an agreement (closing document), that if the water for the endangered fish is not required in the future, that the 5412.5 AF will be perpetual to Grand County and will be used to protect and enhance the aquatic environment in Grand County. Northern has offered to provide Grand County with written verification of their ability to provide this water if not needed for the endangered fish.

There are no big game migratory routes or calving grounds impacted by the 2012 WGFP in Grand County.

RECOMMENDATION: This criterion pertaining to Critical Wildlife Habitat, Big Game Migratory Routes, Calving Grounds appears to be satisfied if the following conditions is met:

1. The Northern Agreement (closing document) that provides the 10825 water must be executed and Northern must provide Grand County written verification that it is able to provide the water in perpetuity if no longer required for the endangered fish.

Migratory Ponds, Nesting Areas

The application states, at pgs 23 and 56, that the only migratory ponds and nesting areas affected are in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and not are discussed in the application.

As previously discussed, if the bypass/through becomes a reality in the future, the function of the Windy Gap Reservoir as a migratory pond and nesting area could be diminished for a certain part of the year. This is not addressed in the EIS as it was not considered as mitigation for the proposed project. If it were to be instituted, it would be considered an enhancement.

When Windy Gap was reviewed, the Subdistrict agreed to allow public access above the reservoir if it did not interfere with the operation of the facility. This has never occurred, but the Subdistrict did allow the construction of the Watchable Wildlife Area at the reservoir. This project was funded by Colorado Department of Transportation funds through a grant written by Grand County. It is a popular area and enjoyed by the public in viewing many varieties of waterfowl. The type of variety of waterfowl could change with a bypass/through and that could be an issue with some people, however, there might also be different types of wildlife to view when the reservoir is drawn down to accommodate the bypass/through.

Changes in variety of number of water fowl associated with re-establish a channel through the reservoir shall not be deemed a violation of the County's 1041 regulations.

The lost of any nesting areas and the function of Windy Gap as a migratory pond would be minimal due to the proximity of the Three Lakes area, Williams Fork Reservoir, Wolford Mountain Reservoir and the migratory bird pond established on the Division of Wildlife Kemp/Breeze Units below Parshall.

RECOMMENDATION: This criterion pertaining to migratory ponds and nesting areas appears to be satisfied.

Habitats for Rare and Endangered Species

The application states, at pg 57, that the only habitats for rare and endangered species affected are in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and are not discussed in the application.

The endangered fish in the 15 mile reach of the Colorado River above Grand Junction are addressed in the EIS. Mitigation has been established in the form of a monetary contribution.

This mitigation meets the requirements of the Programmatic Biological Opinion for the fish. The delivery of water from Granby Reservoir also meets the requirements of this opinion.

RECOMMENDATION: This criterion pertaining to rare and endangered species appears to be satisfied.

Public Outdoor Recreational Areas

Please see section (b) and (d) of this certificate.

Areas of Geologic, Historic or Archaeological Importance

The application states, at pgs 30 and 56, those impacts are considered minimal or non-existent and are not discussed in the application.

There is no deterioration of unique areas of geologic, or archaeological importance associated with the 2012 WGFP in Grand County. Any such impacts could be associated with the construction of Chimney Hollow Reservoir.

However, historic irrigation could be affected by the 2012 WGFP. The importance of irrigation to the County is documented in a report prepared for Grand County by Coley Forrest documenting the impacts of water diversions on the County. Water levels are predicted to decrease 4 inches to 1 foot due to the 2012 WGFP. The Subdistrict is providing additional funds to compensate the irrigators for pump repairs and replacement, but this does not address the access to water from a drop in flow.

RECOMMENDATION: This criterion pertaining to areas of historic importance -would be satisfied if the following condition is met:

1. Plan for Access to Headgates. Prior to execution of the WGFP IGA, the Subdistrict shall submit to Grand County for approval a plan for regular maintenance of the rock structures above each pump site for the irrigators above Kremmling (defined in the WGFP IGA) that allows higher water to be captured and held so the pumps can reach the irrigation water more effectively.

STAFF RECOMMENDATION:

Grand County's regulations for Areas and Activities Designated as Matters of State Interest provide for approval of a Municipal and Industrial Water Project if the proposed development complies with the criteria of 5-306. The Permit Authority is charged with deciding if all of criterion has been met, and its decision will be based on staff's review as well as public testimony and information provided during the public hearing.

Staff 's review finds that the criterion stated under Section 5-306 would be met for the 2012 WGFP if the following conditions are applied to any permit issued by Grand County (there will be various timeframes recommended for certain conditions):

GENERAL CONDITIONS

1. The County Attorney will consider and respond to the relationship between the two permits and advise the Permit Authority. The Permit Authority will make a determination on the validity of one vs. two permits.
2. The permit for the 2012 WGFP will be in effect for the life of the project and considered a vested right as long as it meets the conditions applied to the permit.
3. The permit for the 2012 WGFP is not transferrable to any other entity unless the County approves such transfer by Resolution.
4. Any permit issued by Grand County would recognize the construction of a 90,000 AF Chimney Hollow Reservoir or any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the Final Environmental Impact Statement (Alternative Reservoir) provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet as long as the environmental footprint in Grand County is not affected.
5. Any permit issued by Grand County is subject to the volumetric limits stated in the IGA and their application to both the Windy Gap and 2012 WGFP participant's use of water is in compliance with the Windy Gap decrees and Colorado law.
6. The permit for the 2012 WGFP is contingent upon the approval and execution of WGFP IGA and all closing documents. This list is provided in section Proposed Windy Gap Firing Project Intergovernmental Agreement on page 10 of this certificate.
7. The construction of the 2012 WGFP shall not be commence until the water court approves the decree and attached WGFP IGA and Grand County has been provided copies of same.

Criterion (a) appears to be satisfied.

Conditions to satisfy Criterion (b):

8. The permit for the 2012 WGFP shall not be effective until issuance of necessary State and federal permits and approvals for the 2012 WGFP. If there is a conflict between a term and/or condition in the 1041 Permit and a state or federal permit or approval, the condition that is the more protective of the environment shall control. The Grand County 1041 permit is contingent upon compliance with all terms and conditions of all State and Federal Permits and approvals. All State and Federal permits and approvals will become part of any permit issued by Grand

County and incorporated therein. It is the responsibility of the Subdistrict to provide Grand County with copies of all approved Federal and State permits and approvals issued for the project. Following is a list of anticipated State and Federal permits and approvals (this may not be a complete list):

- Clean Water Act 404 permit
- CDPHE 401 certification
- Fish and Wildlife Mitigation Plan, C. R. S. § 37-6-122.2
- Water Conservancy Act, C.R.S. § 37-45-101 et seq.
- Clean Water Act 208 Plan (NWCOG 208 Plan)
- Compliance with Senate Document 80
- Amendatory Contract
- Record of Decision issued by Reclamation
- Record of Decision issued for Corps

9. The 2012 WGFP will terminate and be in no force and effect if construction of Chimney Hollow Reservoir, or other alternate reservoir(s), have not begun within 10 years of issuance of the Record of Decision for the WGFP by Reclamation and the Corps.
10. The 2012 WGFP is contingent upon the Subdistrict's continuing compliance with the WGFP IGA and closing documents. A breach of the WGFP IGA or any closing documents shall constitute a violation of the 1041 Permit.
11. Diversions and pumping for Grand County associated with the 2012 WGFP must cease if the water provided by the Subdistrict to Grand County is not released and available for use by Grand County in accordance with the WGFP IGA and closing documents.
12. To show compliance with the Master Plan, the Subdistrict must provide a plan for how public access will be compensated if the public access provided in the WGFP IGA was to be revoked due to the sale of the property by Northern.
13. If the U. S. Forest Service requires additional mitigation, these measures will be included in any permit issued by Grand County.
14. The Clarity MOU (closing document) as well as C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study must be executed and compliance with these documents met.

Conditions to satisfy Criterion (c):

15. Subdistrict shall provide the County with documentation of conservation plans for all municipal project participants prior to delivery of water through the 2012 WGFP, and that participants are complying with the Water Conservation Act with regard to updating the conservation plans every seven years.

16. Subdistrict shall provide written notice to the County when shares of the 2012 WGFP are sold or leased and verification that the new owner or lessee has complied with conservation requirements.
17. Within 30 days of acceptance of an approved 1041 permit, the Subdistrict shall provide the County with written documentation of how use of water for fracking satisfies this criterion, if at all.
18. Any permit issued by Grand County is subject to the volumetric limits of the WGFP IGA and the requirements of the 1980 Agreement or 1985 Supplement that may remain in effect if not changed by the WGFP IGA.

Criterion to satisfy Criterion (d):

19. The 1041 permit, if issued, will not be effective until the Clarity Project MOU and the C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study are executed.
20. Prior to the beginning of construction for Chimney Hollow Reservoir, Grand County must be provided with a copy of an executed agreement between the Subdistrict and the wastewater treatment provider(s) who will be contracted with to remove some of the nutrient loading. This agreement must include the cost of improvements required plus whatever operation and maintenance costs the provider(s) require for the future.
21. The Subdistrict shall submit the Nutrient Reduction Plan to Grand County for review and approval at the same time it is submitted to Reclamation and the Corps but no later than the execution of the WGFP IGA and closing documents.
22. The Subdistrict must submit a robust monitoring plan for nutrient reduction to assure that nutrient loading from the 2012 WGFP for total nitrogen and total phosphorus are adequately reduced to meet the 1:1 level; that manganese, mercury, and chlorophyll a do not increase; that DO does not decrease; and that Secchi disk depth does not decrease in Grand Lake. The monitoring plan shall include a schedule for monitoring and reporting. Grand County must be included in all reporting. The project must be operated in compliance with the Nutrient Reduction Plan and nutrient monitoring plan.

Criterion (e) appears to be satisfied.

Condition to satisfy Criterion (f)

23. This installation of the real time gauges required by the Fish and Wildlife Mitigation Plan will also be a condition to any permit issued by Grand County, but in addition, the Subdistrict must verify every spring, before the beginning of pumping, that these gauges are in good working

order, that they remain so during each annual pumping season, and that they are replaced or repaired when necessary and timely to their need in reporting temperature.

24. In addition to the proposed temperature mitigation in the Fish and Wildlife Mitigation Plan and other terms and conditions to address temperature that may be imposed as part of the 401 Certification or federal approvals for the WGFP, the Subdistrict shall reduce or curtail pumping at the Windy Gap Diversion if the MWAT Threshold is exceeded after July 15th of any year as long as WGFP is pumping during that time period. If the MWAT is exceeded, the Subdistrict shall immediately notify the County, and the County and the Subdistrict will determine whether WGFP is pumping. Temperature mitigation may be suspended when there is no material causal relationship between Windy Gap Project or Windy Gap Firming Project operations. The determination of a causal relationship shall be based upon a model approved by the Division of Wildlife, Grand County, and the Water Quality Control Division.
25. The bypass study should begin immediately and that if proven beneficial, the alteration within the Windy Gap Reservoir should commence as soon as possible after acceptance of any permit issued by Grand County so as to address ongoing conditions below Windy Gap.

Conditions to satisfy Criterion (g)

Aquatic

26. The Subdistrict shall prepare and submit to Grand County a fish and aquatic invertebrates monitoring plan to determine if the enhancements for habitat restoration and additional water provided in the WGFP IGA would prevent the predicted loss of aquatic habitat. This information will assist the Learning by Doing effort in making decisions for the future of the aquatic habitat. The monitoring will continue as long as the Learning by Doing effort requires this information. If the bypass/through is constructed, this monitoring plan can be adapted as necessary to analyze the benefits of the bypass/through.
27. The original Windy Gap 1041 permit does not allow the creation of mud flats at Windy Gap Reservoir. If the bypass/through were to be implemented, mud flats are likely to be created at the time the channel would be operating. The Subdistrict shall prepare and submit to the County an aquatic vegetation/revegetation plan to minimize mudflats protect against blowing dust.
28. If, during a five (5) year period, natural conditions meet or exceed flows of 600 c.f.s. as recommended by the SMP so that the Subdistrict is not required to make releases to achieve recommended stream conditions, then in the sixth year, Subdistrict shall provide a 1145 c.f.s. flow for 72 hours to move large cobble and dearmour the stream. This condition is not tied to reservoir levels as in the Fish and Wildlife Mitigation Plan.

Marshlands and Wetlands:

29. Subdistrict shall prepare and submit to the County for approval a monitoring plan for vegetation along the Colorado River and Willow Creek within thirty days of issuance of the ROD by the Corps of Engineers. Monitoring will continue until the Learning By Doing management team has determined that riparian and wetland vegetation has not been adversely affected by the 2012 WGFP, or has recovered due to mitigation or other efforts. At a minimum this monitoring must continue at least ten (10) years after commencing of pumping for the 2012 WGFP.

Groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands:

Appear to be satisfied.

Critical wildlife habitat, big game migratory routes, calving grounds migratory ponds, nesting areas and habitats of rare and endangered species:

30. The 10825 water for the endangered fish must be approved and delivered from Granby Reservoir and Northern must provide Grand County written verification that it is able to provide the water in perpetuity if no longer required for the endangered fish.

Public Outdoor Recreation Areas:

Satisfied by conditions applied under (b) and (d) above.

Unique areas of geologic, historic and archeological importance:

31. Prior to execution of the WGFP IGA, the Subdistrict shall submit to Grand County for approval a plan for regular maintenance of the rock structures above each pump site for the irrigators above Kremmling (defined in the WGFP IGA) that allows higher water to be captured and held so the pumps can reach the irrigation water more effectively.

DOCUMENTS RELIED UPON FOR 1041 REVIEW

Board of Commissioner Resolution 1980-6-1
Board of Commissioner Resolution 1985-3-5
1980 Agreement
1985 Supplemental Agreement
Final EIS Windy Gap Project
Final EIS WGFP
Fish and Wildlife Enhancement Plan
Fish and Wildlife Mitigation Plan
FONSI – 10825 endangered fish water
Draft Windy Gap Firming Project IGA and closing documents
Grand County Stream Management Plan
Clean Water Act - 404 and 401 (b)
Grand County Master Plan
Senate Document 80
Arapaho National Recreation Public Law 95-450
Communication to Reclamation with regard to decreased water clarity 1952 forward
Comments on Preliminary, Draft, and Final EIS for WGFP
Report - *2010 Water Quality Report Flowing Sites*
Report - *Factors Controlling Transparency in Grand Lake, Colorado*
Report - *Operational and Water Quality Summary Report for Grand Lake and Shadow Mountain Reservoir: 2010*
Nehring Report - *Colorado River Aquatic Resources Investigation Federal Aid Project F-237R-18*

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GRAND COUNTY PLANNING COMMISSION
July 11, 2012

MEMBERS PRESENT: Sally Blea Ingrid Karlstrom
Steven DiSciullo Lisa Palmer
Sue Volk Karl Smith
Gary Salberg George Edwards

MEMBERS ABSENT Mike Ritschard

STAFF PRESENT: Lurline Curran Kristen Manguso
Jack DiCola Robert Franek
Lisa Webb Ed Moyer

The July 11, 2012, Grand County Planning Commission meeting was called to order by Chairman Gary Salberg at 6:13 p.m.

The Planning Commission meeting minutes from the June 13, 2012 meeting were presented. Lisa Palmer made motion to approve the minutes. Ingrid Karlstrom seconded. All members voted "aye". Motion was approved.

1041 Permit – 2012 Windy Gap FIRMING Project

Lurline Underbrink Curran, Grand County Manager, presented the staff review of the request. The Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict) is the owner of the Windy Gap project. The Subdistrict, acting by and through the Windy Gap FIRMING Project Water Activity Enterprise, has proposed the Windy Gap FIRMING Project (2012 WGFP) which would firm up the yield contemplated in the Windy Gap Project. The Subdistrict has submitted an application for a permit under Grand County Areas and Activities Designated as Matters of State Interest (1041 permit) for the 2012 WGFP. The Subdistrict has applied for the Grand County 1041 permit under protest. Applying under protest means that the Subdistrict is reserving all of its legal arguments as to why they do not need a new permit.

The Subdistrict bases its protest on the County's issuance of the original Windy Gap Permit which it feels covers the depletions contemplated as well as mitigates the impacts to Grand County. Further, the 2012 WGFP does not require any construction or alteration of the current Windy Gap Project in Grand County.

Listed below are some of the new issues that were not considered in the Original Windy Gap Project permit:

1. The 2012 WGFP proposes a different operational regime for the Windy Gap water rights known as prepositioning. Prepositioning was never contemplated or permitted with the original Windy Gap Project and it changes the timing and magnitude of diversions from those originally taken into account by Grand County. Prepositioning is a method whereby Colorado Big Thompson Project (C-BT) water will be delivered through the system to the preferred alternative Chimney Hollow Reservoir, a non-federal facility thereby making additional room in Granby Reservoir. When Windy Gap or 2012 WGFP water is delivered into Granby Reservoir, the C-BT water in Chimney Hollow would be exchanged for a like amount of Windy Gap water (both 2012 WGFP and Windy Gap) in Granby Reservoir. Prepositioning requires an amendment to the existing Amendatory Contract (Carriage Contract). The Carriage Contract is a contract issued by Bureau of Reclamation (Reclamation) to allow Windy Gap water to be transported through the C-BT project. Prepositioning would allow not only the 2012 WGFP water to be transported but also allows C-BT water to be stored in a non-federal facility until the substitution is made. The 2012 WGFP will change the impacts to the Colorado River over those being caused by the Windy Gap Project.

2. The amendments to the Carriage Contract are a Major Federal Action under NEPA that required the Bureau of Reclamation to prepare and Environmental Impact Statement to disclose the new impacts associated with the 2012 WGFP. In addition, Reclamation must make a determination that Windy Gap Firming Project is in compliance with Senate Document 80. The original Windy Gap Agreement, also known as the Azure Agreement and the Windy Gap Supplement (1980 and 1985 Agreements) are incorporated into the Windy Gap water rights decrees. The draft Windy Gap Firming Project Intergovernmental Agreement (WGFP IGA) which is an attachment to the application amends the 1980 and 1985 Agreements and will be incorporated into the Windy Gap decrees.

3. The 1980 Grand County 1041 Permit was issued to the Subdistrict for the cities of Estes Park, Boulder, Longmont, Greeley, and Loveland as well as the Platte River Power Authority and their projected needs by the year 2000. The 2012 WGFP participants are City and County of Broomfield, Central Weld County Water District, Town of Erie, City of Evans, City of Fort Lupton, City of Greeley, City of Lafayette, Little Thompson Water District, City of Longmont, City of Louisville, City of Loveland, Platte River Power Authority and Town of Superior. The Subdistrict explains this difference by the fact that participants can sell or lease their respective shares and that the original Windy Gap Project was never intended to limit the original participants to the project forever. The additional participants change the demand from the demand projected in 2000. Grand County's 1980 Permit was based on the Purpose and Need as stated in the Environmental Impact Statement which did not discuss the possibility of sale or lease.

4. There is additional impact to the aquatic habitat and terrestrial life that were not considered in the original EIS or permit issued by Grand County. Even though the application submitted for the 2012 WGFP acknowledges there will be a loss of habitat, it states that it will not be substantial because it is less than 15%, Grand County does not use a 15% threshold to determine whether will be significant deterioration or degradation.

HISTORY OF EXISTING WINDY GAP PROJECT

In order provide a complete review of the 2012 WGFP it is useful to understand the history of the original Windy Gap Project which is a diversion at the Windy Gap Reservoir that is pumped through a pipeline into and via the C-BT project to the front range to an identified group of participants.

1. **The 1980 Azure Agreement and 1985 Supplement.** West slope objections to the Windy Gap water rights led to the 1980 Azure Reservoir and Power Project Agreement (1980 Agreement). The 1980 Agreement was Attachment 1.A. of the Final Environmental Impact Statement (Final EIS) for the existing Windy Gap Project, as well as an attachment to the 1041 permit, and the Windy Gap water right decrees.

The 1980 Agreement was executed by the Subdistrict, Colorado River Water Conservation District, (River District), Grand County Board of County Commissioners, Northwest Colorado Council of Governments, Three Lakes Water and Sanitation District, Winter Park Water and Sanitation District, Middle Park Water Conservancy District, Town of Hot Sulphur Springs, Town of Granby, Ritschard Cattle Company, Inc. Colorado River Land Corporation, Jacques Ranch I, Jacques Ranch II, David Mayhoffer, Lloyd A. Palmer, Edna L. Palmer, Leo Marte, Eunice Marte, Jessie Joyce Thompson, David Howard Thompson, Joseph McElroy, Isabel McElroy, John H. McElroy, Mary K. McElroy, John Sheriff, Ida L. Sheriff, H. Grady Culbreath, Richard P. Doucette, Christine O. Doucette, Gene Ritschard, William Henry Thompson, Anita Lewis Thompson, Stanley Broome.

West slope objections centered on the Subdistrict's failure to prepare a compensation plan as required by the Water Conservancy District Act. Whenever facilities are constructed by a conservancy district that diverts water from the Colorado River a compensation plan is required. Key elements of the 1980 Agreement are:

- Commitment by the Subdistrict to fund the construction of the Azure or a replacement Reservoir and Power Plant, or if infeasible, fund an alternative project or a cash payment to the CRWCD.

- Payment of \$25,000 to Grand County for salinity studies of the Colorado River.
- Payment of \$150,000 to the Town of Hot Sulphur Springs for assistance in improving its water treatment facility and \$270,000 for improving its wastewater treatment facility.
- Payment of \$500,000 to plan, construct, and design facilities needed for ranchers to maintain their diversion structures on the Colorado River.
- An agreement by the Subdistrict to subordinate its Windy Gap decrees to all present and future in-basin irrigation, domestic, and municipal uses, excluding industrial uses, on the Colorado and Fraser rivers and their tributaries above the Windy Gap Reservoir site.
- An agreement by the Subdistrict to volumetric limits on diversions, which included a maximum single-year diversion of 90,000 AF/year and a maximum of 65,000 AF during any consecutive 10-year period. Per the 1985 Supplement to the 1980 Azure Settlement Agreement, these diversion limitations apply to deliveries through the Adams Tunnel, as opposed to diversions at Windy Gap Reservoir.
- An agreement by the Subdistrict to bypass flows necessary to meet senior downstream water rights.
- An agreement by the NCWCD to allow Grand County's use of a rock and Gravel quarry on their property.
- An agreement by the Subdistrict to cooperate with CDOW and others to allow public use for recreation at Windy Gap Reservoir.

The parties to the 1980 Agreement also agreed that:

3. "Implementation of the provisions of this Agreement will constitute compliance with all objections to the Draft Environmental Impact Statement for the Windy Gap project by any Party hereto; furnishes satisfactory mitigation measures for the development of the Windy Gap Project and following a hearing and decision of the Grand County Commissioners under paragraph 36 (assuming the decision is favorable) will constitute compliance with all valid permitting requirements imposed by any of the Parties". 1980 Agreement Part IV, paragraph 3.

All parties to the 1980 Agreement, paragraph #35, agreed that "All environmental concerns among the Parties have been resolved by this Agreement regardless of whether none, all or only one facility is constructed and operated" The parties further recognized the Windy Gap project and the Azure Reservoir and Power Plant Project were separate and that if the Azure Project could not be built for any reason, that an alternative project could be selected. Both Windy Gap and the alternate to the Azure Project, Wolford Mountain, were constructed. **(Paragraph #35 was deleted and superseded by the 1985 Supplement).**

In 1985, under Resolution 1985-3-5, the 1980 Agreement was supplemented to amend and/or deleted parts of the 1980 agreement (1985 Supplement). The Rock Creek Reservoir was originally considered as the replacement source for the Azure Power Project. The 1985 Supplement resulted in the construction of the Wolford Mountain Project instead. The 1985 Supplement had two purposes 1) It provided western Colorado with financial assistance (\$10,000,000) to enable the Colorado River Water Conservation District to construct a water storage facility in Water Division No. 5 (the Wolford Mountain Project was permitted by Grand County in 1990 with both a 1041 Permit and Special Use Permit); 2) It remove the Subdistrict from any obligation under the April 30, 1980 Agreement to construct the Azure Reservoir and Power Project or alternate facility and removed the restriction on Windy Gap diversions stated in paragraph 15 of the 1980 Agreement which restricted Windy Gap from diverting any water from the west slope of Colorado through Windy Gap prior to the initiation of construction of Azure Reservoir and Power Project or an alternate reservoir agreed to by the River District. The 1985 Supplement designated the measuring point for diversion as the Adams Tunnel (previously it was measured at Windy Gap).

2. Volumetric Limitations on Windy Gap Water Rights.

The 1980 Agreement, paragraph #34, states that the *"Subdistrict may divert under its decrees an amount of water not in excess of 90,000 acre feet in any one year, and not to exceed an average of 65,000 acre feet per year in any consecutive ten year period. It is anticipated by the parties that the long term annual yield of water to the Subdistrict will be approximately 54,000 acre feet"*.

The Final EIS for the Windy Gap project also states under Purpose and Need that *"current and prospective West Slope water rights and users of Colorado River water would be compensated for loss of an annual average depletion of 54,000 acre-feet of water"*. The average annual firm yield expected of the Windy Gap project was 48,000 AF delivered to the east slope, 3000 AF to Middle Park Water Conservancy District (Middle Park), and "shrink" charges of 10%. Shrink is attributable to evaporation and system losses during storage and delivery.

The Record of Decision (ROD) issued by the Reclamation and a Record of Decision Permit Application No. 6520 issued by the U. S. Army Corp of Engineers (Corps) for the Windy Gap Project also refers to volumetric limitation.

The ROD (Paragraph II. A. 2.) states that

"the Windy Gap Project would divert a long term annual average of about 56,000 acre-feet from the Upper Colorado River Basin near Granby, Colorado. The diverted water would be pumped from the West Slope through Colorado-Big Thompson Project facilities to the East Slope cities of Estes Park, Boulder, Longmont, Greeley, Loveland, and Platte River Power Authority."

The 1980 Agreement documented the amount that could be diverted at Windy Gap Reservoir as a means of limiting the Windy Gap Project. The Subdistrict states that it can pump whatever water is in priority from the Colorado River, subject to storage capacity in Granby, as long as the amount of water transported through the Adams Tunnel is within the decreed limits. As previously stated, the 1985 Supplement designated the measuring point for diversion as the Adams Tunnel (previously measured at the Windy Gap Reservoir).

3. Mitigation for Original Windy Gap Project.

The 1980 Agreement contained some mitigation for the impacts of the Windy Gap Project. The ROD for the original Windy Gap Project incorporates the 1980 Agreement and refers to additional mitigation.

Section V of the ROD provides in pertinent part:

"The following mitigation measures have been agreed to by the sub district: (1) about 11,000 acre-feet of the average annual project yield of 56,000 acre-feet will be committed to maintain minimum "instream flows; (2) existing and some future water rights will be protected; (3) disturbed soil and vegetation will be reclaimed; (4) various commitments by the sub district to West Slope interests will protect prospective West Slope uses of Colorado River water; and (5) threatened and endangered fish will be protected by resolution of the sub district to provide certain conservation measures".

The Record of Decision Permit No. 6520 states under paragraph 2. *"... and current and prospective West Slope water rights and users of Colorado River water would be compensated for loss of an annual average depletion of 54,000 acre-feet of water"*. The permit goes on to apply mitigation.

"All practicable means to avoid or minimize environmental harm from the project have been adopted. As identified in the EIS, the following mitigation measures will be incorporated to substantially reduce impacts associated with the project:

A minimum flow agreement between Northern Colorado Water Conservancy District and the Division of Wildlife was signed 23

June 1980. The terms of the agreement will lessen the adverse impacts of the project on aquatic life.

The pipeline route will be revegetated and vegetation will be planted around the reservoir to minimize impacts on vegetation.

A plan to mitigate wetlands inundated by the reservoir will be prepared and coordinated with the Environmental Protection Agency.

Reservoir operations and architectural controls on structures are being utilized to lessen the impacts of aesthetics.

Impacts on cultural resources are being mitigated through controlled surveys and data gathering.

Roads will be permanently and temporarily relocated to reduce interference with normal traffic flow.

Conservation measures to aid recovery of endangered fishes in the Colorado River will be accomplished.

Mitigation associated with salinity increases and reduced flows downstream is being handled by the Colorado River Salinity Control Project.

Monitoring of pre- and post-project water temperatures will occur to direct and possibly correct and post-project temperature changes."

The instream flows were implemented through a Memorandum of Understanding between the Subdistrict, Northern and Division of Wildlife, Colorado Department of Natural Resources, Relating to Minimum Stream Flow in Association with the Windy Gap Diversion Project; it was agreed to the following fixed rates of flows:

- From Windy Gap Diversion Point to the mouth of the Williams Fork River: 90 cfs.
- From the mouth of Williams Fork River to the mouth of Troublesome Creek: 135 cfs.
- From the mouth of Troublesome Creek to the mouth of the Blue River: 150 cfs.
- In addition, once in every three years, if equivalent flushing flows do not otherwise occur pas the Windy Gap Diversion Point, sub district shall release on call by the Colorado Water conservation Board, on the recommendation of the Division of Wildlife, a total of 450 cfs of water for fifty hours, or its equivalent, during the period of April 1 through June 30, for flushing flow purposes.

Colorado Water Conservation Board (CWCB) decrees for instream flows in these amounts were issued under 80CW446, 80CW447 and 80CW448 dated September 24, 1982.

4. The Windy Gap Project 1041 Permit.

The Windy Gap Project was permitted in 1980 by the Grand County Board of County Commissioners acting as the 1041 Permit Authority by Resolution 1980-6-1. The permit was reviewed and issued under Chapter 5 of the Grand County 1041 Regulations for Municipal and Industrial Water Projects. Grand County also issued a Special Use Permit for the Windy Gap Project under Board of Commissioner Resolution 1980-6-4. Grand County's Zoning Regulations required a Special Use Permit for reservoirs impounding 100 acre feet or more of water. The 1041 Permit that was issued by Grand County relied upon the Draft EIS and the 1980 Agreement. The Purpose and Need stated in the Final EIS was "to supply the municipal and industrial water needs of the cities of Estes Park, Boulder, Loveland, Longmont, and Greeley; and Platte River Power Authority. The Project would supply all of the additional municipal and

industrial water needs of the service area projected for the year 2000". It further relied on the outcome of a Final EIS in substantial accord with the Draft EIS as well as the ROD issued by Reclamation and Record of Decision Permit issued by the Corps.

Grand County's 1041 permit allowed the design, construction and operation of the Windy Gap Project, Reservoir and Pipeline, as proposed and described in the Environmental Impact Statement. The permit also requires the Subdistrict to comply with all terms and provisions of Senate Document 80.

The 1041 Permit was amended in 1985 to recognize the 1985 Supplement.

5. Special Use Permit.

The County also issued a Special Use Permit for the project. Recent case law clarifies that the County does not have jurisdiction to require that the Subdistrict obtain a Special Use Permit for the 2012 WGFP. See *Board of County Commissioners of the County of Boulder vs. Hygiene Fire Protection District* dated December, 2009. This decision says that no County zoning or land use regulations (other than 1041) apply to special districts or governmental entities. When a project is proposed to a county by a governmental entity, the C.R.S. § 30-28-110(1)(c) "location and extent" controls.

6. Other Agreements

In 1988, Grand County entered into a Water Allotment Contract with Middle Park. This allotment was based on Grand County's desire to obtain a portion of Middle Parks' water designated to be stored in Granby Reservoir. The allotment contract was specifically subject to and described in the Windy Gap Agreement and Supplemental Agreement. Grand County was responsible for obtaining whatever Court proceedings were necessary to transfer the rights to the location and use necessary for the County. Middle Park agreed to convey to Grand County 15 acre feet per year of water free of charge which was transferred to the County in the form of a Quit Claim Deed.

PROPOSED WINDY GAP FIRING PROJECT INTERGOVERNMENTAL AGREEMENT

The Subdistrict first approached Grand County prior to the Preliminary EIS for the 2012 WGFP to discuss possible enhancements to the existing conditions in the Colorado River. The existing Windy Gap Project has had impacts to the aquatic environment of the Colorado River that were not predicted in the original EIS or ROD. Over the past several years, County staff, Middle Park, and the River District have been negotiating a draft Intergovernmental Agreement (WGFP IGA) with the Subdistrict and Northern that would address some of these exiting impacts.

The benefits that would be provided as a result of the WGFP IGA are referred to as "enhancements" and are not intended to mitigate the new impacts caused by the 2012 WGFP. The Subdistrict has included a copy of the draft WGFP IGA in the application packet. This WGFP IGA is still in draft form as the Board of County Commissioners has not approved the WGFP IGA. If approved, some of the contents may have to be modified depending on the outcome of the 1041 permit review and hearings, as well as State of Colorado's finding on the legality of implementation strategies for some of the offerings.

The WGFP IGA provides enhancements to Grand County and Middle Park as well as certain assurances to the River District in its mission to protect the Colorado River.

A summary of the negotiated enhancements for the Colorado River in Grand County include:

- An opportunity for Grand County to pump and store water in Granby Reservoir for release to the environment as directed through the effort termed Learning by Doing. This effort assesses the stresses on the river systems in Grand County and utilizes the resources provided by Denver Water in the Colorado Cooperative Agreement as well as those offered in the WGFP IGA, if executed, to address and minimize existing impacts. Most of the current stresses to the river occur in the late summer and early fall, typically when Windy Gap or the proposed 2012 WGFP would not be pumping. The proposed WGFP IGA provides water for Grand County under three scenarios.
 - a. Transfer Water. Middle Park calls for water for its contractees at the beginning of the pumping season. Any water not released for Middle Park at the end of the season reverts back to the Subdistrict and is transported to the east slope. Under the WGFP IGA, the water that Middle Park does not use at the end of the season is transferred to Grand

County to be released to the environment or stored for the next season in space provided in Granby Reservoir. Grand County is provided with 4500 AF of storage space and Middle Park 3000 AF for a total of 7500 AF, which can be shared between the two entities. If the Subdistrict is issued all of the necessary permits for construction of Chimney Hollow Reservoir and accepts the permits, the transfer water will be available to Grand County on a shared basis until Chimney Hollow is constructed.

b. Variable Water. Grand County would have an opportunity to pump water on completion of WGFP. Grand County would receive 3.8% of the 2012 WGFP pumping after the project pumps 15,000 AF up to a net credited storage of 1500 AF. If the 2012 WGFP participants stop pumping prior to the time Grand County has received 1500 AF and the rights are still in priority, Grand County can elect to continue pumping to attain the 1500 AF if there is storage available.

c. Year End Pumping. After the 2012 WGFP ceases to pump, Grand County can elect to continue pumping Windy Gap water constrained only by the carryover storage available.

- The WGFP IGA firms water for Middle Park Water Conservancy District and describes how that firm water will be delivered to Middle Park.
- Public access and protection of open space. Jasper Water rights will be abandoned. There will be a pump fund established for the Meadow Pumpers above Kremmling to assist with repair and replacement of pumps. A flow measuring fund will be established, however if not used in ten years, will be split between the Subdistrict and Learning by Doing.
- Future water acquisition, appropriation and development of projects in Grand County are curtailed unless approved by Grand County and the River District. Shoshone outage protocol is included for the Subdistrict, participation in Learning by Doing and study of a bypass though Windy Gap Reservoir is provided. A complete draft of the WGFP IGA is included in the application packet and is made an exhibit to this permit application review.

List of Agreements to be Executed together with WGFP IGA (closing documents)

- Agreement with Northern Water
- Grand Lake Clarity Agreement
- Appraisal Study now know as Alternates Development Report
- Processed Materials Agreement
- Windy Gap Decree
- Grand County RICD Stipulation
- Learning by Doing Cooperative Effort
- Green Mountain Reservoir Administration
- Contracts for Delivery of Water to Grand Valley
- Guidelines for Meadow Pumpers Fund
- Guidelines for Measuring Devices Fund
- Form of Easement for Access for Telemetry
- Agreement Among Middle Park, Grand County and River District on Operating and Administering Water Apportionments and Carryover Balances
- Amendatory Contract (Carriage Contract)
- Side letter from Subdistrict to River District re: no opposition to use of WG water for uses incidental to irrigation such as fish screen, fish ladder, etc.

DESCRIPTION OF THE PROPOSED 2012 WINDY GAP FIRING PROJECT APPLICATION

The Subdistrict has requested that the original Windy Gap 1041 Permit remain in effect with no changes as a vested right regardless of the outcome of the 2012 WGFP 1041 permit, however it

also states that if the 2012 WGFP Permit conflicts with 1980 Windy Gap Permit, the 2012 WGFP provisions will control. This request raises legal issues that will be evaluated during the course of permit hearings. The County Attorney will consider and respond to the relationship between the two permits and advise the Permit Authority.

The Subdistrict acting by and through the Windy Gap FIRMING Project Water Activity Enterprise, has applied for a permit utilizing Grand County's regulations of Areas and Activities Designated as Matters of State Interest (1041) for the 2012 WGFP. The 2012 WGFP proposes to firm 30,000 AF with the construction of a 90,000 AF Chimney Hollow Reservoir, which is the preferred alternative identified in the Final EIS for the project. The Final EIS for the 2012 WGFP identifies the relationship with the original Windy Gap EIS and the 2012 WGFP EIS in section 1.4.2.2 on page 1-7. This section states:

The proposed FIRMING Project would not exceed the average annual diversion of 56,000 AF evaluated in the 1981 EIS and ROD or any other diversion-related limitations or water rights.

The Windy Gap Project has not met the firm yield expectation of the Subdistrict nor the original participants. Because Windy Gap must rely on space in Granby Reservoir and delivery capability of the C-BT Project through the Adams Tunnel, there has been many times when delivery and space available for Windy Gap water was not possible, especially in wet years. The original Windy Gap Project was estimated to deliver about 48,000 AF of firm yield following conveyance and evaporation losses (shrink) and allocations to Middle Park Water Conservancy District (3000 AF). Each Windy Gap participant was entitled to 1/480th share (units) of the annual yield which was expected to provide 100 AF per year. According to the Final EIS for the Windy Gap FIRMING Project (WGFP Final EIS) between 1985 and 2004, Windy Gap was only able to deliver an average of less than 10,000 AF per year or 20 AF per unit. (See Section 1.5.2, WGFP EIS).

Table ES-2 of the WGFP Final EIS shows that, on average, the project has delivered 36,532 AF and would anticipate delivering on average 46,084 if the project is permitted, therefore only increasing diversions by 9500 AF. The 9500 AF projected increase is somewhat misleading; actual deliveries for a 19 year period averaged 10,000 AF with the largest deliveries occurring in the last seven years of 14,700 AF on average.

To address the Windy Gap Project's problems, the 2012 WGFP contemplates constructing Chimney Hollow Reservoir in Larimer County and "prepositioning" which was not part of the original project.

The WGFP IGA, if approved, "allows for the construction of a 90,000 AF Chimney Hollow Reservoir or any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the Final Environmental Impact Statement (Alternative Reservoir) provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet as long as the environmental footprint in Grand County is not affected.

The WGFP Final EIS proposes mitigation for impacts of the 2012 WGFP that were identified in the EIS process. Comments submitted to the Corps and the Reclamation on the 2012 WGFP DEIS and Final EIS question whether the proposed mitigation is adequate to address the new impacts to the Colorado River, Grand Lake, and Willow Creek. The County received copies of those concerns. They are part of the record of this proceeding and will be introduced at the public hearing.

The Subdistrict submitted a Wildlife Mitigation and Enhancement Plan to the Colorado Wildlife Commission that proposed substantially the same mitigation that was proposed in the WGFP Final EIS. The Commission approved this mitigation plan as submitted by the Subdistrict. The 2012 WGFP application to Grand County does not propose any additional mitigation to satisfy Grand County 1041 criteria.

The Subdistrict also submitted an enhancement plan to the Wildlife Commission which includes money from the Subdistrict and Denver Water to address stream restoration in the Colorado River. No specific restoration projects have been proposed at this time. The Subdistrict may demonstrate at the hearing that the proposed WGFP IGA and/or the Enhancement Plan will benefit the aquatic environment in a way that addresses some of the County 1041 criteria.

DISCUSSION OF COMPLIANCE OF GRAND COUNTY'S REGULATIONS FOR AREAS AND ACTIVITIES DEEMED AS MATTERS OF STATE INTEREST

According to Grand County's Regulations for Areas and Activities Deemed as Matters of State Interest, Chapter 5, Municipal and Industrial Water Projects, section 5-103 Definitions:

"Municipal and industrial water project" means a system and all integrated components thereof through which a municipality or industry derives its water supply from either surface or subsurface sources. This includes a system and all integrated components thereof through which a municipality or industry derives water exchanged or traded for water it uses for its own needs".

The source development area for the project means, "that geographic area or region wholly or partially within this County which will be developed or altered in connection with the development of a municipal or industrial water project as these terms are defined in §5-102(3).

§5-102(3) is in the Purpose and Intent for the project, and reads as follows:

"Insure that municipal and industrial water projects are developed in such a manner so as not to pollute rivers, streams, lakes, reservoirs, ponds and aquifer recharge areas within the source development area".

Section 1-305 Approval or Denial of Permit Application

- (1) *If the Permit Authority finds that there is not sufficient information concerning any material feature of a proposed development or activity, the Permit Authority may deny the application or it may continue the hearing until the additional information has been received. However, no such continuance may exceed sixty (60) days unless agreed to by the applicant.*
- (2) *The Permit Authority shall approve an application for a permit to engage in development in an area of state interest or development for the conduct of an activity of state interest if the proposed development or activity complies with the provisions of the regulations governing such area or activity. If the proposed development does not comply with such regulations, the permit shall be denied.*
- (3) *The Permit Authority conducting a hearing pursuant to this section shall state, in writing, reasons for its decision and its findings and conclusions.*
- (4) *The Permit Authority shall reach a decision on a permit application within one hundred twenty (120) days after the completion of the permit hearing, or the permit shall be deemed approved.*

Review of the EIS for the 2012 WGFP, associated information, studies and permits included in the application packet and other pertinent information, along with public testimony will determine if the source development area will be adequately protected given the additional diversions and method of storage and transfer contemplated.

5-306 Approval of Permit Application. A permit application for development of a municipal or industrial water project shall be approved if the proposed development complies with the following criteria (County criteria is in **bold type**):

- (a) **The need for the proposed water project can be substantiated.**

The application substantiates the need for the project at pages 8-14, and 53 of the application. A new need that is not defined in the Purpose and Need but is disclosed on page 19 of the application causes concern.

New industrial uses such as "fracking" for water on the front range can expand without limitation thereby increasing the likelihood of future diversions from Grand County. The draft WGFP IGA (IV. J. 2.) attempts to address this concern by stating that Grand County "will not

allow Subdistrict or the WGFP Enterprise, without prior express written consent of Grand County and the Colorado River Water Conservation District to acquire any existing water rights in Grand County, construct additional water supply facilities in Grand County, appropriate new water rights in Grand County, or appropriate any new water rights in Water Division No. 5 that will result in depletions of water from Grand County”.

RECOMMENDATION: This criterion 5-306(a) appears to be satisfied.

(b) Assurances of compatibility of the proposed water project with federal, state, regional and county planning policies regarding land use and water resources.

1. Identified Plans. The application lists the applicable plans, permits, and approvals at page 53 of the application:

- Clean Water Act 404 permit
- CDPHE 401 certification
- Fish and Wildlife Mitigation Plan, C. R. S. § 37-6-122.2
- Water Conservancy Act, C.R.S. § 37-45-101 et seq.
- Clean Water Act 208 Plan (NWCCOG 208 Plan)
- Grand County 1041 Permit
- Grand County Stream Management Plan.

The proposed WGFP IGA is intended to satisfy section 37-45-118(1)(b)(II) of the Water Conservancy Act. See WGFP IGA Section VI F.

The Fish and Wildlife Mitigation Plan has been approved by the Colorado Wildlife Commission. As a matter of federal law, the 2012 WGFP cannot be constructed until the 404 permit has been issued by the Corps of Engineers and Colorado Water Quality Control Commission has issued the 401 Certification.

The Stream Management Plan will guide the Learning By Doing process in which the Subdistrict will participate.

2. Other Plans Not Included in Application. The following applicable plans, permits and approvals are not identified in the application:

Grand County Master Plan. Grand County Master Plan was last updated in 2011. This plan had broad community input and support. The Plan contains seven elements which are considered the core of the plan. Those elements include Natural Resources; Land Use – Growth and Development, Development: the Build Environment; Community and Public Facilities; Transportation; Economic Base; and Administration & Process. Each section contains a number of subsections. Grand County’s 1041 process incorporates these Master Plan provisions into the permit process through reference to plans in 5-306b. Sections of the Master Plan relevant to this application are Natural Resources, Land Use-Growth and Development, Community and Public Facilities, and Economic Base.

Natural Resources

Natural Resources include several subsections, but those under which this application will be reviewed are wildlife, wetlands, and water resources, and visual resources:

Wildlife: The quality, integrity and interconnected nature of critical wildlife habitat in Grand County should be preserved and protected. In order to accomplish this goal, there has to be recognition of the economic, recreational, environmental and cultural importance of hunting, fishing, and wildlife watching in Grand County, and the minimization of impacts to critical wildlife habitat and/or corridors.

The 2012 WGFP application, and the WGFP IGA and closing documents, contain elements that would address these requirements are the stream restoration and temperature requirement in the Fish and Wildlife Mitigation Plan. Participation in the Learning by Doing sustain this effort for the future.

Wetlands: Provide for the long-term protection of wetland functions and values.

The 2012 WGFP application addresses wetlands, but does not address long term protection as could be associated with the stream depletions. There will be conditions recommended to address this goal under criterion (f).

Water Resources: The long term protection of water resources and water quality in Grand County is the goal.

This section includes working with entities and other parties to maximize water levels in the Colorado River and, other water bodies while exploring the feasibility of in-stream flows for environmental and recreational purposes, maintaining optimum flows in streams and rivers, working to retain and protect existing water rights for use in Grand County, and supporting projects that restore stream channels and natural conditions, and improve fish and wildlife habitat.

These goals could be met by the additional water to Grand County provided in the proposed WGFP IGA and through the endangered fish releases from Granby Reservoir. Also, protection of water rights in Grand County from future transbasin diversion by the Subdistrict and Northern, and restoration of stream channels through the approved State Fish and Wildlife Enhancement Plan, could help to achieve this goal. Participation in Learning by Doing would support this goal.

Visual Resources: Visual resources play a major role in the county's character, quality of life and economy. Recognition of the importance of visual resources by maintaining those resources to promote overall rural character, quality of life and the tourist and recreation based economy.

The 2012 WGFP could meet this goal with the WGFP IGA and associated documents which would work to improve the water clarity in Grand Lake, maintain lake levels for recreation, provide additional public access around Willow Creek and specify development of Subdistrict land to the Grand County Rural Land Use Process.

Land Use, Growth and Development

Land Use, Growth and Development include several subsections, but those under which this application will be reviewed are Pattern of Development, Rural and Open Land Pattern:

Generally under all of the subsections mentioned, Grand County's goal is to direct development so as to preserve economic success by striking a balance between quality of life, preservation of the environment and the County's rural character.

The 2012 WGFP application and WGFP IGA with associated documents will require that future development of lands held by the Subdistrict would proceed under the Rural Land Use Process. The WGFP IGA provides water for the environment, restoration opportunities through the Fish and Wildlife Mitigation Plan, and lake level preservation. Through Learning by Doing, the Subdistrict and Northern participate in ongoing efforts to maintain the environment.

Community and Public Facilities

Community and Public Facilities include several subsections, but the one associated with this application is Recreation Facilities:

Recreation Facilities: Develop recreational resources within the county to meet the needs of all age and interest groups.

The WGFP IGA and associated documents requires the Subdistrict and Northern to remove their objections to the Recreational Instream Channel Diversion that Grand

County is pursuing. Additional water released for the endangered fish as well as Grand County environmental water will help preserve existing recreational resources.

Economic Base

Economic Base includes numerous subsections, but those appropriate to this review are Recreation & Tourism Based Industry and Natural Resource Based Industry.

Recreation and Tourism Based Industry: Encouragement and support of year-round recreation while making effort to retain Grand County's unique rural, western and scenic character that is so appealing to tourists.

The 2012 WGFP IGA and closing documents will help support the year-round recreation by providing water resources, a process for improving clarity in Grand Lake and protection of the rural, western and scenic character by committing to development of it properties under the Rural Land Use Plan.

The WGFP IGA also provides that the Subdistrict will arrange with Northern to allow for public access along Willow Creek, and the designated area is to be managed by the Colorado Parks and Wildlife or other agency approved by Northern. However, the public access could be revoked if Northern were to sell its property. If this provision is to be considered to help address the requirements of the Master Plan, then the Subdistrict must provide a plan for how it would replace the value of the public access that would be lost if Northern sells its property and revokes the public access.

Natural and Resource Based Industry: Encouragement and support of natural resource based industry and renewal energy such that it compliments and/or enhances the County's rural character and natural setting and sustains quality of life for County residents.

The 2012 WGFP IGA and associated documents provide funding for irrigators above Kremmling to repair and replace pumps necessary to access agricultural water. The agricultural base of Grand County is essential to sustaining the quality of life for County residents.

Compliance with the Grand County Master Plan could be satisfied with the following conditions:

1. The WGFP IGA and closing documents are executed and made a part of any permit issued by the County.
2. The Subdistrict provide a plan for how public access will be compensated if the public access provided in the WGFP IGA were to be revoked due to the sale of the property by Northern.

Senate Document 80. The 2012 WGFP must comply with Senate Document 80. This is also a requirement of the WGFP IGA. The requirement to comply with Senate Document 80 also applies to the on-going operations of the C-BT.

Grand Lake is Colorado's largest natural lake and was conscripted into the C-BT Project as a conduit for water. Senate Document 80 provided assurances from the C-BT Project to both the East and West Slope. There are five primary purposes stated in Senate Document 80 under which the project must be operated. Those five purposes are:

To preserve the vested and future rights in irrigation.

To preserve the fishing and recreational facilities and the scenic attractions of Grand Lake, the Colorado River, and Rocky Mountain National Park.

To preserve the present surface elevations of the water in Grand Lake and to prevent a variation in these elevations greater than their normal fluctuation.

To so conserve and make use of these waters for irrigation, power, industrial development, and other purposes, as to create the greatest benefit.

To maintain conditions of river flow for the benefit of domestic and sanitary uses of this water.

2012 WGFP compliance with Senate Document 80 is covered in detail in Section 5-306(d), below.

Bureau of Land Management Resource Management Plan. The 2012 WGFP was considered to be included in the Wild and Scenic portion of the BLM Resource Management Plan and has been agreed to by all parties participating. Northern will make a contribution to this effort as described in the WGFP IGA.

Arapahoe National Recreation Area Policies (ANRA) – The ANRA was created in 1978:

“...so as to protect the area’s enduring scenic and historic wilderness character and its unique wildlife and to preserve the areas’ scientific, educational, recreational, and inspirational resources and challenges; and

So as to preserve and protect the natural scenic, historic, pastoral, and wildlife resources of the area and to enhance recreational opportunities.

Administration of the ANRA provides that

the Secretary shall administer the area in accordance with laws and regulations applicable to the national forests so as to protect recreation and enjoyment, conservation and development of the scenic, natural, historic and pastoral values; utilize and dispose of natural resources that will not impair the purposes for the recreation area; and manage for water quality.

The Secretary shall develop an overall management plan for the ANRA.

Compliance with the ANRA policies could be met with the provisions provided WGFP IGA and closing documents. If the U. S. Forest Service requires additional mitigation, these measures will be included in any permit issued by Grand County.

Amendatory Contract with the Bureau of Reclamation. The 2012 WGFP will require an amendment or new contract for the operation contemplated.

Additional Reviews:

There are several review agencies that are allowed to comment on this project. They include Northwest Colorado Council of Governments (NWCCOG) with regard to the 208 Water Quality Plan, Colorado Department of Public Health and Environment, and Colorado Parks and Wildlife. The comments by these agencies are due July 12, 2012, so will not be included in the Planning Commission Review of the 2012 WGFP, but will be made part of the review before the Permitting Authority.

RECOMMENDATION: *This criterion would be satisfied if the following conditions are met:*

1. The 2012 WGFP project requires federal and state approvals and cannot go forward without them. Consequently if the County issues a 1041 permit for the project, all the terms and conditions on those permits and approvals will become County conditions, and any permit issued by the County will not become effective until all those permits are issued and Grand County is provided copies of same.
2. The County recognizes that Grand Lake water quality is already a problem, however evidence on the record indicates that additional pumping by the 2012 WGFP is likely to exacerbate the issue. This condition is likely to be satisfied if the proposed WGFP IGA and all other documents and agreements associated with the WGFP IGA are executed, and the 2012 WGFP project is operated in compliance with that WGFP IGA and related documents, permits, and approvals at all times.
3. The WGFP IGA and closing documents are executed and made a part of any permit issued by the County.
4. The Subdistrict provide a plan for how public access will be compensated if the public access provided in the WGFP IGA were to be revoked due to the sale of the property by Northern.
5. If the U. S. Forest Service requires additional mitigation or information to comply with the policies of the ANRA, that mitigation and/or information will become part of any permit issued by Grand County.

(c) Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of storm water and sanitation systems shall be accompanied in a manner that will prevent the pollution of aquifer recharge areas.

The application describes efficient use of the water, recycling and reuse of water at pages 17-20 of the application. The Subdistrict also indicates that some of the water will be used for fracking in the oil and gas industry.

Fracking water is typically injected into the ground and not reused or recycled.

Efficient use of water also is discussed in the Final EIS as well as specific mitigation required to guarantee efficient use is detailed in Table 3-164 (1b) of the Final EIS. One of the mitigation measures stated is the need for all project participants to have conservation plans prior to the delivery of water.

According to the 1041 application (at pg 18)

“ nine of the participants, Broomfield (City and County), Erie, Greeley, Evans, Fort Lupton, Central Weld, Lafayette, Little Thompson Water District, and Longmont have approved Colorado Water Conservation Board (CWCB) conservation plans since the passage of the Water Conservation Act of 2004 (Colorado House Bill 04-1365). Louisville anticipates completing its plan in 2012. Platte River is an industrial water user not covered by HB 04-1365, but implements measures for efficient use and reuses its water supply to extinction. As a component of the Water Conservation Act, project participants would update their conservation plans approximately every seven years”.

The application states, at pg 18, that the Subdistrict is a raw water provider and cannot enforce water conservation through its allotment contracts, but the mitigation in the EIS does not recognize that distinction. In order to meet the mitigation required, the Subdistrict will be need to verify that not only does every participant comply with the conservation plan requirement of the

EIS as well as the Water Conservation Act, as currently in effect or which may be amended in the future, but also that each project participant updates their plans approximately every seven years. The Subdistrict may have to amend its allotment contracts to comply with law and mitigation requirements.

The Subdistrict has stated that according to its policies, the project participants are allowed to sell or lease their shares (units). Because of the mitigation requirement for conservation as well as compliance with the Water Conservation Act, no sale or lease of participant shares to other municipalities will be allowed unless the new owner or lessee has a valid conservation plan in place and updates every seven (7) years as required.

The current participants own 440 of the 480 shares (units). The remainder is owned by some of the original Windy Gap Participants or other entities that have since purchased them. The City of Boulder and the Town of Estes Park collectively own 40 Windy Gap shares (units). These two Windy Gap participants currently have other sources of water supply and/or storage for Windy Gap water.

According to the EIS, (pg 1-3) delivery of 40 shares of water will be similar to current operation and may increase over time as demand grows. The EIS states *"the amount of water delivered to these entities will not be expanded or diminished by WGFP"*.

The WGFP IGA reaffirms the 1980 and 1985 Agreements as they relate to volumetric limits and state that those limits apply to both the Windy Gap Project and the 2012 WGFP. To be clear, those limits, 90,000 AF of diversion in any one year, and not to exceed an average of 65,000 in any ten year running average, apply cumulatively to both projects and NOT to each one individually. The WGFP IGA also does not allow the expansion of the C-BT project storage with the combination of water stored in Chimney Hollow and Granby Reservoir. As previously discussed, the Subdistrict states that it can pump whatever water is in priority from the Colorado River, subject to storage capacity in Granby, as long as the amount of water transported through the Adams Tunnel is within the decreed limits.

Any permit issued by Grand County should be clear that volumetric limits and their application to both the Windy Gap and 2012 WGFP participant's use of water is in compliance with the Windy Gap decrees and Colorado law.

There is no construction within Grand County so there will be no effect on storm water and sanitation systems or pollution of aquifer recharge systems.

RECOMMENDATION: This criterion would be satisfied if the following conditions are met:

1. Subdistrict shall provide the County with documentation of conservation plans for all municipal project participants prior to delivery of water through the 2012 WGFP, and that participants are complying with the Water Conservation Act with regard to updating the conservation plans every seven years.
2. Subdistrict shall provide written notice to the County when shares of the 2012 WGFP are sold or leased and verification that the new owner or lessee has complied with conservation requirements.
3. Within 30 days of acceptance of an approved 1041 permit, the Subdistrict shall provide the County with written documentation of how use of water for fracking satisfies this criterion.
4. Any permit issued by Grand County is subject to the volumetric limits of the WGFP IGA and the requirements of the 1980 Agreement or 1985 Supplement that may remain in effect if not changed by the WGFP IGA.

(d) Provisions to insure the proposed water project will not contaminate surface water resources.

The application, at p. 55, states that the 2012 WGFP water will not contaminate surface water resources as it will be transported through existing facilities. The County disagrees with this statement because the transport of water through the C-BT system will exacerbate the water quality in the Three Lakes (Granby Reservoir, Shadow Mountain Reservoir and Grand Lake) by increasing introductions of lower quality water from Windy Gap into Granby Reservoir, and increased diversions of particulate-laden water through Shadow Mountain Reservoir and Grand Lake. Although the Subdistrict has proposed mitigation of nutrient loading, no mitigation is proposed for the non-algal particulates.

The clarity in Grand Lake has been an issue since the C-BT Project began pumping. The first documented concern was in 1952 from the City of Loveland to the Bureau of Reclamation complaining about algae in its water supply after the Farr Pumping Plant began to transport water into the C-BT. Reporting on water quality from both east and west slopes continued intermittently until the late 1990's when a group of citizens around Grand Lake worked to heighten awareness and sought Grand County's support to rectify the loss of Grand Lake's scenic attraction as protected in Senate Document 80. For the last decade, there has been a concerted effort to bring the clarity in Grand Lake back to its pre-C-BT project clarity of 9 meters.

In 2006, Northern Water, Grand County, and several other entities began participation in the Nutrient Study for the Three Lakes System (Grand Lake, Shadow Mountain and Granby Reservoirs). A spin off from this study group is the Three Lakes Technical Committee which focuses primarily on west slope water quality. In 2006, it was thought that nutrient loading was the root cause of most of the water quality issues in the Three Lakes, including Grand Lake clarity, but years of additional study, monitoring and reporting have proven that nutrients are not the only cause of reduced clarity.

In 2008, the Colorado Water Quality Control Commission adopted two standards for clarity in Grand Lake: a narrative standard supporting "the highest level of clarity attainable, consistent with the exercise of established water rights and the protection of aquatic life", along with a numerical standard of 4 meter Secchi disk depth with 85% compliance in any given year for the months of July, August and September. The numerical standard becomes effective January 1, 2015.

Pumping from Granby Reservoir to Shadow Mountain Reservoir, and subsequent water transfer to the east slope via the Adams Tunnel, causes decreased clarity in Grand Lake, as evidenced by stop-pump trials, water quality monitoring, and photographic records. Two two-week stop pump trials (2008 and 2009), as well as a seven-week stop pump in 2011 made possible by extremely high runoff and full storage all resulted in improved clarity: the 2011 "gift of nature" resulted in the best clarity in Grand Lake since the C-BT became operational.

Recent studies have identified non-algal particulate matter as being considerably more important to clarity as nutrient loading. The source of the non-algal organic particulates is currently under investigation.

The Subdistrict is proposing that reductions in nutrient loading will come from a combination of wastewater treatment improvements to reduce point source nutrient loading above Windy Gap as well as land use changes that would reduce non-point source nutrient loading. Wastewater treatment plants above Windy Gap were evaluated to determine which, if any, treatment plants, would be capable of achieving the level of nutrient loading reduction required to meet the 1:1 (nutrient neutral) standard applied in the Final EIS. The Fraser Valley Consolidated Plant is the only one capable of meeting a portion of the reduction necessary. By financing improvements to the Fraser Valley Consolidated Plant, it is expected that 822 kg/year of Nitrogen and 774 kg/year of Phosphorus will be removed. The cost of the plant improvements is estimated to be \$3.3M with increased annual operating costs ranging from \$120,000 to \$230,000/year.

Part of the non-point source reduction proposed by the Subdistrict will come from two ranches in the Willow Creek drainage above Windy Gap. The 265 acre E-Diamond H Ranch is currently irrigated and periodically fertilized. To reduce nutrient discharges from run-off, the ranch will no

longer be irrigated or fertilized. It is estimated that this will reduce total nitrogen loading by 685 kg/year and total phosphorus by 117 kg/year. C Lazy U Ranch would implement best management practices on 300 acres by a reduction in chemical fertilizer application, use of vegetated buffer strips adjacent to Willow Creek and stream bank restoration to reduce erosion. This action is estimated to produce a reduction of total nitrogen loading of 1,836 kg/year and 237 kg/year of total phosphorus loading.

Even with these actions, the Subdistrict notes that the total nitrogen loading must be reduced by another 2,785 kg/year to be nutrient-neutral. The Subdistrict is proposing that the additional reduction in total nitrogen loading will be met prior to construction of the 2012 WGFP in cooperation with Reclamation and Corps of Engineers. Grand County must be provided with documentation of how the Subdistrict intends to meet the additional reductions in nitrogen.

According to the Final EIS (Table ES-6, p. ES16), and the application (p. 24 and 25) manganese and chlorophyll- α are predicted to increase, and dissolved oxygen (DO) would decrease in the entire Three Lakes System. The lower DO levels would contribute to continued exceedance of manganese standard in the Three Lakes. Secchi disk depth would decrease in Grand Lake.

In addition to increasing nutrients, a report titled *2010 Water Quality Report Flowing Sites* prepared by Northern identifies higher conductivity and total organic carbon in flows pumped from Windy Gap, meaning that dissolved constituents in additional pumped flows are likely to increase under the 2012 WGFP. A report titled *Factors Controlling Transparency in Grand Lake: Colorado* prepared for Three-Lakes Technical Committee documents that non-algal particulates are also a contributing factor to reduced water quality in Grand Lake. While this information was not available in time for publication of the Final EIS, it is also not mentioned or provided in the application. It is relevant to the impact of the 2012 WGFP.

The application states that the 2012 WGFP impact on particulate transfer is not currently known but that the flow increase through the C-BT project is relatively small when compared to the C-BT diversions. To date, the amount of Windy Gap water that has been pumped through the C-BT system is relatively small, but if the 2012 WGFP is approved, this will no longer be insignificant when compared to the C-BT overall volume.

The application further states that it is possible that the particulates are substantially moved during the "first flush" of pumping and/or natural runoff into the lakes, in which case 2012 WGFP would have no additional effect (at pg 30 of the application). These statements are not supported by the conclusions in *Operational and Water Quality Summary Report for Grand Lake and Shadow Mountain Reservoir: 2010* prepared for Northern, Reclamation, and Grand County, which shows that turbidity is highest in Grand Lake at high rates of reverse flow through Shadow Mountain Connecting Channel, and that many of the native inflows to the Three Lakes are pristine even in high flow conditions.

The Subdistrict has identified other ongoing processes related to Grand Lake water clarity on page 29 of the application:

Reclamation, Grand County, and Northern Water have entered into a separate MOU to finance and begin an Appraisal Study, the first step in Reclamation's Planning Process (Reclamation has since determined that the Planning Process is not the appropriate avenue in which to contemplate corrections to the C-BT Project, and this report has been retitled the Preliminary Alternatives Formulation Report);

Grand County, Reclamation, and Northern Water are continuing to move ahead with Reclamation's process by participating in a Contributed Funds Act Agreement for executing a C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study; and

Grand County and Northern Water have agreed to enter into the Memorandum of Understanding, known as the Grand Lake Clarity project.

The C-BT Project is a Reclamation Project and it is imperative to solicit its cooperation in addressing the Grand Lake clarity issue. The Memorandum of Understanding known as the Grand Lake Clarity project must also gain the approval of the Reclamation, and the draft agreed to by Grand County and Northern has been sent to Reclamation, hopefully for approval and execution.

The application, at pg 55, states that "Although not specifically related to the WGFP, Northern Water and Grand County have agreed to enter into an agreement with Reclamation (Grand Lake Clarity MOU) to identify causes and potential solutions to Grand Lake clarity issues". Grand County does not agree that clarity is not related to the 2012 WGFP because the FINAL EIS discloses that Secchi disk depth will be reduced.

RECOMMENDATION: This criterion 5-306(d) would be satisfied if the following conditions are met:

1. The 1041 permit, if issued, will not be effective until the Clarity Project MOU and the C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study are executed.
2. Prior to the beginning of construction for Chimney Hollow Reservoir, Grand County must be provided with a copy of an executed agreement between the Subdistrict and the wastewater treatment provider(s) who will be contracted with to remove some of the nutrient loading. This agreement must include the cost of improvements required plus whatever operation and maintenance costs the provider(s) require for the future.
3. The Subdistrict shall submit the Nutrient Reduction Plan to Grand County for review and approval at the same time it is submitted to Reclamation and the Corps but no later than the execution of the WGFP IGA and related documents and agreements.
4. The Subdistrict must submit a robust monitoring plan to assure that nutrient loading from the 2012 WGFP for total nitrogen and total phosphorus are adequately reduced to meet the 1:1 level; that manganese, mercury, and chlorophyll a do not increase; that DO does not decrease; and that Secchi disk depth does not decrease in Grand Lake. The monitoring plan shall include a schedule for monitoring and reporting. Grand County must be included in all reporting. The project must be operated in compliance with the Nutrient Reduction Plan and monitoring plan.

(e) The proposed water project is capable of providing water pursuant to standards of the Colorado Department of Health.

The application, at pg 55, states that the 2012 WGFP provides raw water to a number of municipal users. The water will be treated by those end users as required by Colorado law.

RECOMMENDATION: This criterion appears to be satisfied.

(f) The proposed diversion of water from the source development area will not decrease the quality of peripheral or downstream surface and subsurface water resources in the source development area below that designated by the Colorado Water Quality Control Division on January 15, 1974 and effective June 19, 1974 or below stricter standards subsequently adopted.

Granby Reservoir is currently on the State of Colorado's 303(d) list for impaired waters due mercury. This likely occurs from atmospheric Mr. Wilkinson deposition from coal fired power plants. The application, at pg 55, states that the 2012 WGFP does not affect this impairment. As

with manganese (p. 25 app.), lower dissolved oxygen (DO) levels would contribute to continued exceedance of the mercury standard in Granby Reservoir.

Sections of the Colorado River are also on the Colorado Water Quality Control Commission 303(d) list for existing temperature exceedances. In Grand County this includes the mainstem from Granby Reservoir to the where the Colorado River leaves Grand County (this exceedance extends to the Roaring Fork River). Exceedances are especially critical in the reach from Windy Gap to the Williams Fork where chronic and acute temperature standards are being exceeded especially during the summer months.

The 2012 WGFP is predicted to exacerbate these exceedances of temperature standards. The federal Clean Water Act prohibits a permitted project from causing or contributing to the violation of a water quality standard. Mitigation for the impacts of the WGFP on temperature has been proposed in the Fish and Wildlife Mitigation Plan approved by the Colorado Wildlife Commission. The Army Corps of Engineers may add additional requirements or adopt the mitigation proposed in the State plan.

According to the State Fish and Wildlife Mitigation Plan, the Subdistrict, working with Denver Water, will install, operate and maintain two continuous real time monitoring stations on the Colorado River, one at Windy Gap gage and one upstream of the confluence of the Williams Fork River. The Fish and Wildlife Mitigation Plan provides that the Subdistrict will implement the following mitigation for temperature:

Temperature Thresholds: The threshold temperatures will be the following, as measured at the temperature monitoring stations identified above:

MWAT Chronic Threshold: 18.2°C (64.8° F), based on the Water Quality Control Commission current Maximum Weekly Average Temperature (MWAT) Chronic Standard

DM Acute Threshold: 23.8°C (74.8° F), based on current Water Quality Control Commission Daily Maximum (DM) Acute Standard.

Mitigation for MWAT Chronic Threshold Exceedances – The Fish and Wildlife Mitigation Plan proposes that for the period after July 15th of each year:

At such times as the Weekly Average Temperature (WAT) exceeds the MWAT Chronic Threshold, the Subdistrict will reduce or curtail WGFP pumping at the Windy Gap diversion to the extent necessary to maintain temperatures within the MWAT Threshold. Reduced pumping may not be sufficient to maintain temperatures below the threshold.

The Fish and Wildlife Mitigation Plan defines “WGFP pumping” as “pumping that occurs at such times as the Northern Colorado Water Conservancy District determines, based on its most probable forecasts of inflows to Lake Granby, that a spill of water from Lake Granby is reasonably foreseeable.” All other pumping will be considered to be for the original Windy Gap Project.

Nonetheless, no project can cause or contribute to a violation of a water quality standard.

What this limitation means is that the Subdistrict will not reduce or curtail exceedances of the MWAT unless 2012 WGFP is pumping, and whether WGFP is pumping will be based on whether Northern forecasts that a spill is probable from Lake Granby. However, as stated above, **no project can cause or contribute to a violation of water quality standards.** Therefore, any violation of this standard, whether 2012 WGFP or original Windy Gap project is operating, pumping must be curtailed to not exceed the temperature standards.

Mitigation for DM Acute Threshold Exceedances - The Fish and Wildlife Mitigation Plan proposes that:

“At such times as the Daily Maximum temperature is within 1°C of the DM Acute Threshold, the Subdistrict will reduce or curtail pumping for the original Windy Gap

Project or the WGFP at the Windy Gap diversion to the extent necessary to maintain temperatures within the DM Threshold. "Reduced pumping may not be sufficient to maintain temperatures below the threshold. In the future, the 1 degree buffer may be altered, based on experience, to maintain compliance with the DM Threshold."

According to the Fish and Wildlife Mitigation Plan, the temperature mitigation measures will be suspended when there is "no material causal relationship between Windy Gap Project or Windy Gap Firming Project operations and any exceedance of the MWAT Chronic threshold or DM Acute threshold at the monitoring stations identified above."

The Plan defines a "material causal relationship" as "*either an actual measureable impact on temperature using readily available monitoring technology or a modeled impact on temperature that is not de minimus and is based on a computer model or studies accepted "by the Colorado Division of Wildlife."*

This limitation is problematic because it leaves it up to the Division of Wildlife (now Parks and Wildlife) to make a judgment on impacts to water temperature. The proper entity for approving of such a model should be the Water Quality Control Commission. The Management Committee to the Stream Management Plan also should be consulted.

Other than the proposed mitigation, other actions could have a positive effect on temperature in the Colorado River below Windy Gap. The first is the 5412.5 AF of water for the Endangered Fish (10825 FONSIS in application) that will be released from Granby Reservoir. According to the Programmatic Biological Opinion (Opinion) for the Endangered Fish, 5412.5 AF of water will be released for each of the east slope and west slope diversions. For the first ten years of the Opinion, Denver Water released for the east slope diverters and the River District for the west. The Opinion calls for a permanent source of water as Denver and the River District would not commit to releasing water after their committed period. The permanent source of 5412.5 AF of water for the east slope is from Granby Reservoir provided by Red Top Valley Ditch water owned by Northern. The west slope contribution will come from Ruedi Reservoir. If for some reason the endangered fish water is no longer required in the future, Northern, by separate agreement, has guaranteed this water for release to the Grand County environment for perpetuity.

As early as 2013, this 5412.5 AF of water could be released during the later part of the summer and early fall. If the U. S. Fish and Wildlife Service do not call for the water for the endangered fish, Grand County, through Learning by Doing, could call for the water for environmental purposes. When the water arrives at the confluence of the Blue River, it would be booked back into Green Mountain Reservoir for release at such time as the U. S. Fish and Wildlife Service call for the water.

Secondly, Grand County, through the proposed WGFP IGA, could have up to 4500 AF of water stored in Granby Reservoir to be used for the environment. This amount of stored water could be increased by sharing the 3000 AF of storage space with Middle Park. Again, through Learning by Doing, this water could be released to offset temperature exceedances.

RECOMMENDATION: This criterion would be satisfied if the following conditions are met:

1. Installation and maintenance of real time temperature gauges. The Fish and Wildlife Mitigation Plan requires the installation of real time temperature gauges below Windy Gap Reservoir and above the confluence of the Colorado and Williams Fork. This installation will also be a condition to any permit issued by Grand County, but in addition, the Subdistrict must verify every spring, before the beginning of pumping, that these gauges are in good working order, that they remain so during each annual pumping season, and that they are replaced or repaired when necessary and timely to their need in reporting temperature.
2. Grand County feels the bypass study should begin immediately and that if proven beneficial, the alteration within the Windy Gap Reservoir should commence upon acceptance by the Subdistrict of the 1041 permit so as to address ongoing conditions below Windy Gap.

3. Curtailment of Pumping in the Event of Threshold Exceedances. In addition to the proposed temperature mitigation in the Fish and Wildlife Mitigation Plan and other terms and conditions to address temperature that may be imposed as part of the 401 Certification or federal approvals for the WGFP, the Subdistrict shall reduce or curtail pumping at the Windy Gap Diversion if the MWAT Threshold is exceeded after July 15th of any year as long as WGFP is pumping during that time period. If the MWAT is exceeded, the Subdistrict shall immediately notify the County, and the County and the Subdistrict will determine whether WGFP is pumping. Temperature mitigation may be suspended when there is no material causal relationship between Windy Gap Project or Windy Gap Firming Project operations. The determination of a causal relationship shall be based upon a model approved by the Colorado Parks and Wildlife, Grand County, and the Water Quality Control Division.
4. The delivery of 10825 endangered fish water from Granby Reservoir must be approved.

(g) The proposed development and the potential diversions of water from the source development area will not significantly deteriorate aquatic habitats, marshlands and wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitat, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreational areas, and unique areas of geologic, historic or archaeological importance.

Aquatic Habitat

The application states, at pgs 8, 37, 42-43 and 57, the greatest decrease in fish habitat would occur from Windy Gap to Williams Fork with the greatest decrease in July and August. In this section there could be a decrease of 34% in the adult Rainbow population and 8% in the Brown Adult in August. Diversions, according to the modeling, would increase in August from 6 times in 47 years to 15 times in 47 years. Decreased habitat of up to 15% is predicted below Williams Fork for juveniles of both Rainbow and Brown Trout. No adverse impacts are expected for spawning.

The impacts predicted by diversions in August are stated to be infrequent in the application and offset by considerations in the Fish and Wildlife enhancement plan which includes habitat improvement below Windy Gap, additional water committed to Grand County for the environment and to be used through Learning by Doing as well as the 10825 endangered fish water. However there is no way to know if these enhancements and improvements will actually address the loss of aquatic habitat and no mitigation has been proposed.

The Nehring Report, *Colorado River Aquatic Resources Investigation Federal Aid Project F-237R-18* identifies a relationship between hydrologic modifications and macro invertebrates and concludes that the 2012 WGFP and Denver's Moffat Firming Project combined are likely to exacerbate these problems.

The additional water from the WGFP IGA along with the 10825 endangered fish water could help maintain the riparian habitat when coupled with the downstream restoration proposed by the Fish and Wildlife Mitigation Plan.

The Fish and Wildlife Mitigation Plan requires an increase in flushing flows from 450 c.f.s. for 50 hours, 1 out of 3 years, to 600 c.f.s., if at any time in the previous two years the flows have not exceeded 600 c.f.s for 50 hours. However it carries the caveat that storage in the Subdistrict's Chimney Hollow and Granby Reservoirs must exceed 60,000 AF. on April 1st and then the Subdistrict will cease pumping for 50 consecutive hours to enhance peak flows below Windy Gap.

Previous to the Windy Gap project, the median flushing flows May through June were 1145 and 1795 c.f.s. respectively according to Grand County's Stream Management Plan (SMP) (p. CR4-7). The SMP recommends a **minimum** flow of 600 c.f.s. every other year, and this flow would

only move spawning gravel and not larger cobble needed to maintain stream health. Channel maintenance flows are unknown and there is conflicting data around this issue.

Grand County has requested Reclamation, in the decision for the Carriage Contract for the 2012 WGFP, to apply a shrink lesser than 10% to water stored on the western slope in the C-BT Project and not transported through the system to the east slope. The Subdistrict has requested the same. If this is granted, the Subdistrict will gain water to the project.

If the Subdistrict were to "bank" this additional water for a five year period, and in the 6th year provide a flushing flow of 1145 c.f.s. for 72 hours, it would not lose yield anticipated with this project. For example, 5% instead of 10% of 56,000 AF annual yield results in 2800 AF average annual or 1400 c.f.s. In five years, depending on conditions, this could more than provide the 1145 c.f.s. for 72 hours plus not interfere with the County's possible year-end pumping. This would not be tied to reservoir levels as the release could be planned for in a five year period.

In the proposed WGFP IGA, the Subdistrict has offered \$250,000 to study a bypass/through of Windy Gap Reservoir when not pumping. The intent of this study is to determine if re-establishing a natural channel through the reservoir when not pumping could benefit the aquatic environment. The Subdistrict is currently negotiating an agreement with the Department of Natural Resources, Trout Unlimited and certain landowners to address implementation of the study if a bypass is proved beneficial to the aquatic environment.

RECOMMENDATION: This criterion pertaining to aquatic habitat would be satisfied if the following conditions are met:

1. The Subdistrict shall prepare and submit to Grand County a fish and aquatic invertebrates monitoring plan to determine if the enhancements for habitat restoration and additional water provided in the WGFP IGA would prevent the predicted loss of aquatic habitat. This information will assist the Learning by Doing effort in making decisions for the future of the aquatic habitat. The monitoring will continue as long as the Learning by Doing effort requires this information. If the bypass/through is constructed, this monitoring plan can be adapted as necessary to analyze the benefits of the bypass/through.
2. The original Windy Gap 1041 permit does not allow the creation of mud flats at Windy Gap Reservoir. If the bypass/through were to be implemented, mud flats are likely to be created at the time the channel would be operating. The Subdistrict shall prepare and submit to the County an aquatic vegetation/revegetation plan to minimize mudflats protect against blowing dust.
3. If, during a five (5) year period, natural conditions meet or exceed flows of 600 c.f.s. as recommended by the SMP so that the Subdistrict is not required to make releases to achieve recommended stream conditions, then in the sixth year, Subdistrict shall provide a 1145 c.f.s. flow for 72 hours to move large cobble and dearmour the stream. This condition is not tied to reservoir levels as is the Fish and Wildlife Mitigation Plan.

Marshlands and Wetlands

The application states, on pgs 22 and 23, that changes in stream stage is unlikely to adversely affect riparian and wetland vegetation along Colorado River and Willow Creek. However there are reductions in stream flow and bank full conditions that could affect riparian vegetation.

RECOMMENDATION: This criterion pertaining to marshlands and wetlands would be satisfied if the following condition is met:

1. Vegetation Monitoring Plan for Colorado River and Willow Creek. Subdistrict shall prepare and submit to the County for approval a monitoring plan for vegetation along the Colorado River and Willow Creek within thirty days of issuance of the ROD by the Corps of Engineers. Monitoring will continue until the LBD management team has determined that riparian and wetland vegetation has not been adversely affected, or has recovered due to

mitigation or other efforts. At a minimum this monitoring must continue at least ten (10) years after commencing of pumping for the 2012 WGFP.

Groundwater Recharge Areas

The application states, at pgs 23 and 56, that there will be no effects on groundwater levels and groundwater quality.

RECOMMENDATION: This criterion pertaining to groundwater recharge areas appears to be satisfied.

Steeply Sloping and Unstable Terrain

The application states, at pg 23 and 56, impacts are considered minimal or non-existent and are not discussed. Most of this impact will be associated with the Chimney Hollow construction.

RECOMMENDATION: This criterion pertaining to slopes and terrain appears to be satisfied.

Forest and Woodlands

The application states, at pgs 23 and 56, impacts are considered minimal or non-existent and not discussed. Most of this impact will be associated with Chimney Hollow construction.

RECOMMENDATION: This criterion pertaining to forest and woodlands appears to be satisfied.

Critical Wildlife Habitat, Big Game Migratory Routes, Calving Grounds

The application states, at pgs 23 and 56, the only critical habitat affected is in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and are not discussed in the application.

The Watchable Wildlife Area associated with Windy Gap is the only wildlife habitat in Grand County that would be affected by the 2012 WGFP, and then only if the bypass/through is constructed.

Critical wildlife habitat affected is the Threatened and Endangered Fish in the 15 mile reach in the Grand Valley. The EIS has applied mitigation in the form of monetary compensation to address the Subdistrict's responsibility.

The 10825 water designated for the Threatened and Endangered Fish will be released from Granby Reservoir in the future, and be shepherded through Grand County and the Colorado River to the fish. This water will do double duty in Grand County by helping address temperature and flow issues and protecting aquatic habitat on its way to its main purpose.

The Northern District has provided guarantees, in the form of an agreement (closing document), that if the water for the endangered fish is not required in the future, that the 5412.5 AF will be perpetual to Grand County and will be used to protect and enhance the aquatic environment in Grand County. Northern has offered to provide Grand County with written verification of their ability to provide this water if not needed for the endangered fish.

There are no big game migratory routes or calving grounds impacted by the 2012 WGFP in Grand County.

RECOMMENDATION: This criterion pertaining to Critical Wildlife Habitat, Big Game Migratory Routes, Calving Grounds appears to be satisfied if the following conditions is met:

1. The Northern Agreement (closing document) that provides the 10825 water must be executed and Northern must provide Grand County written verification that it is able to provide the water in perpetuity if no longer required for the endangered fish.

Migratory Ponds, Nesting Areas

The application states, at pgs 23 and 56, that the only migratory ponds and nesting areas affected are in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and not are discussed in the application.

As previously discussed, if the bypass/through becomes a reality in the future, the function of the Windy Gap Reservoir as a migratory pond and nesting area could be diminished for a certain part of the year. This is not addressed in the EIS as it was not considered as mitigation for the proposed project. If it were to be instituted, it would be considered an enhancement.

When Windy Gap was reviewed, the Subdistrict agreed to allow public access above the reservoir if it did not interfere with the operation of the facility. This has never occurred, but the Subdistrict did allow the construction of the Watchable Wildlife Area at the reservoir. This project was funded by Colorado Department of Transportation funds through a grant written by Grand County. It is a popular area and enjoyed by the public in viewing many varieties of waterfowl. The type of variety of waterfowl could change with a bypass/through and that could be an issue with some people, however, there might also be different types of wildlife to view when the reservoir is drawn down to accommodate the bypass/through.

Changes in variety of number of water fowl associated with re-establish a channel through the reservoir shall not be deemed a violation of the County's 1041 regulations

The lost of any nesting areas and the function of Windy Gap as a migratory pond would be minimal due to the proximity of the Three Lakes area: Williams Fork Reservoir, Wolford Mountain Reservoir and the migratory bird pond established on the Division of Wildlife Kemp/Breeze Units below Parshall

RECOMMENDATION: This criterion pertaining to migratory ponds and nesting areas appears to be satisfied.

Habitats for Rare and Endangered Species

The application states, at pg.57, that the only habitats for rare and endangered species affected are in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and are not discussed in the application.

The endangered fish in the 15 mile reach of the Colorado River above Grand Junction are addressed in the EIS. Mitigation has been established in the form of a monetary contribution. This mitigation meets the requirements of the Programmatic Biological Opinion for the fish. The delivery of water from Granby Reservoir also meets the requirements of this opinion.

RECOMMENDATION: This criterion pertaining to rare and endangered species appears to be satisfied.

Public Outdoor Recreational Areas

Please see section (b) and (d) of this certificate.

Areas of Geologic, Historic or Archaeological Importance

The application states, at pgs 30 and 56, those impacts are considered minimal or non-existent and are not discussed in the application.

There is no deterioration of unique areas of geologic, or archaeological importance associated with the 2012 WGFP in Grand County. Any such impacts could be associated with the construction of Chimney Hollow Reservoir.

However, historic irrigation could be affected by the 2012 WGFP. The importance of irrigation to the County is documented in a report prepared for Grand County by Coley Forrest documenting the impacts of water diversions on the County. Water levels are predicted to decrease 4 inches to 1 foot due to the 2012 WGFP. The Subdistrict is providing additional funds to compensate the irrigators for pump repairs and replacement, but this does not address the access to water from a drop in flow.

RECOMMENDATION: This criterion pertaining to areas of historic importance -would be satisfied if the following condition is met:

1. Plan for Access to Headgates. Prior to execution of the WGFP IGA, the Subdistrict shall submit to Grand County for approval a plan for regular maintenance of the rock structures above each pump site for the irrigators above Kremmling (defined in the WGFP IGA) that allows higher water to be captured and held so the pumps can reach the irrigation water more effectively.

STAFF RECOMMENDATION:

Grand County's regulations for Areas and Activities Designated as Matters of State Interest provide for approval of a Municipal and Industrial Water Project if the proposed development complies with the criteria of 5-306. The Permit Authority is charged with deciding if all of criterion has been met, and its decision will be based on staff's review as well as public testimony and information provided during the public hearing.

Staff's review finds that the criterion stated under Section 5-306 would be met for the 2012 WGFP if the following conditions are applied to any permit issued by Grand County (there will be various timeframes recommended for certain conditions):

GENERAL CONDITIONS

1. The County Attorney will consider and respond to the relationship between the two permits and advise the Permit Authority. The Permit Authority will make a determination on the validity of one vs. two permits.
2. The permit for the 2012 WGFP will be in effect for the life of the project and considered a vested right as long as it meets the conditions applied to the permit.
3. The permit for the 2012 WGFP is not transferrable to any other entity unless the County approves such transfer by Resolution.
4. Any permit issued by Grand County would recognize the construction of a 90,000 AF Chimney Hollow Reservoir or any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the Final Environmental Impact Statement (Alternative Reservoir) provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet as long as the environmental footprint in Grand County is not affected.
5. Any permit issued by Grand County is subject to the volumetric limits stated in the IGA and their application to both the Windy Gap and 2012 WGFP participant's use of water is in compliance with the Windy Gap decrees and Colorado law.
6. The permit for the 2012 WGFP is contingent upon the approval and execution of WGFP IGA and all closing documents. This list is provided in section Proposed Windy Gap Firing Project Intergovernmental Agreement on page 10 of this certificate.
7. The construction of the 2012 WGFP shall not be commence until the water court approves the decree and attached WGFP IGA and Grand County has been provided copies of same.

Criterion (a) appears to be satisfied.

Conditions to satisfy Criterion (b):

8. The permit for the 2012 WGFP shall not be effective until issuance of necessary State and federal permits and approvals for the 2012 WGFP. If there is a conflict between a term and/or condition in the 1041 Permit and a state or federal permit or approval, the condition that is the more protective of the environment shall control. The Grand County 1041 permit is contingent upon compliance with all terms and conditions of all State and Federal Permits and approvals. All State and Federal permits and approvals will become part of any permit issued by Grand County and incorporated therein. It is the responsibility of the Subdistrict to provide Grand County with copies of all approved Federal and State permits and approvals issued for the project. Following is a list of anticipated State and Federal permits and approvals (this may not be a complete list):
- Clean Water Act 404 permit
 - CDPHE 401 certification
 - Fish and Wildlife Mitigation Plan, C. R. S. § 37-6-122.2
 - Water Conservancy Act, C.R.S. § 37-45-101 et seq.
 - Clean Water Act 208 Plan (NWCOG 208 Plan)
 - Compliance with Senate Document 80
 - Amendatory Contract
 - Record of Decision issued by Reclamation
 - Record of Decision issued for Corps
9. The 2012 WGFP will terminate and be in no force and effect if construction of Chimney Hollow Reservoir, or other alternate reservoir(s), have not begun within 10 years of issuance of the Record of Decision for the WGFP by Reclamation and the Corps.
10. The 2012 WGFP is contingent upon the Subdistrict's continuing compliance with the WGFP IGA and closing documents. A breach of the WGFP IGA or any closing documents shall constitute a violation of the 1041 Permit.
11. Diversions and pumping for Grand County associated with the 2012 WGFP must cease if the water provided by the Subdistrict to Grand County is not released and available for use by Grand County in accordance with the WGFP IGA and closing documents.
12. To show compliance with the Master Plan, the Subdistrict must provide a plan for how public access will be compensated if the public access provided in the WGFP IGA was to be revoked due to the sale of the property by Northern.
13. If the U. S. Forest Service requires additional mitigation, these measures will be included in any permit issued by Grand County.
14. The Clarity MOU (closing document) as well as C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study must be executed and compliance with these documents met.
- Conditions to satisfy Criterion (c):**
15. Subdistrict shall provide the County with documentation of conservation plans for all municipal project participants prior to delivery of water through the 2012 WGFP, and that participants are complying with the Water Conservation Act with regard to updating the conservation plans every seven years.
16. Subdistrict shall provide written notice to the County when shares of the 2012 WGFP are sold or leased and verification that the new owner or lessee has complied with conservation requirements.
17. Within 30 days of acceptance of an approved 1041 permit, the Subdistrict shall provide the County with written documentation of how use of water for fracking satisfies this criterion, if at all.

18. Any permit issued by Grand County is subject to the volumetric limits of the WGFP IGA and the requirements of the 1980 Agreement or 1985 Supplement that may remain in effect if not changed by the WGFP IGA.

Criterion to satisfy Criterion (d):

19. The 1041 permit, if issued, will not be effective until the Clarity Project MOU and the C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study are executed.
20. Prior to the beginning of construction for Chimney Hollow Reservoir, Grand County must be provided with a copy of an executed agreement between the Subdistrict and the wastewater treatment provider(s) who will be contracted with to remove some of the nutrient loading. This agreement must include the cost of improvements required plus whatever operation and maintenance costs the provider(s) require for the future.
21. The Subdistrict shall submit the Nutrient Reduction Plan to Grand County for review and approval at the same time it is submitted to Reclamation and the Corps but no later than the execution of the WGFP IGA and closing documents.
22. The Subdistrict must submit a robust monitoring plan for nutrient reduction to assure that nutrient loading from the 2012 WGFP for total nitrogen and total phosphorus are adequately reduced to meet the 1:1 level; that manganese, mercury, and chlorophyll a do not increase; that DO does not decrease; and that Secchi disk depth does not decrease in Grand Lake. The monitoring plan shall include a schedule for monitoring and reporting. Grand County must be included in all reporting. The project must be operated in compliance with the Nutrient Reduction Plan and nutrient monitoring plan.

Criterion (e) appears to be satisfied.

Condition to satisfy Criterion (f)

23. This installation of the real time gauges required by the Fish and Wildlife Mitigation Plan will also be a condition to any permit issued by Grand County, but in addition, the Subdistrict must verify every spring, before the beginning of pumping, that these gauges are in good working order, that they remain so during each annual pumping season, and that they are replaced or repaired when necessary and timely to their need in reporting temperature.
24. In addition to the proposed temperature mitigation in the Fish and Wildlife Mitigation Plan and other terms and conditions to address temperature that may be imposed as part of the 401 Certification or federal approvals for the WGFP, the Subdistrict shall reduce or curtail pumping at the Windy Gap Diversion if the MWAT Threshold is exceeded after July 15th of any year as long as WGFP is pumping during that time period. If the MWAT is exceeded, the Subdistrict shall immediately notify the County, and the County and the Subdistrict will determine whether WGFP is pumping. Temperature mitigation may be suspended when there is no material causal relationship between Windy Gap Project or Windy Gap FIRMING Project operations. The determination of a causal relationship shall be based upon a model approved by the Division of Wildlife, Grand County, and the Water Quality Control Division.
25. The bypass study should begin immediately and that if proven beneficial, the alteration within the Windy Gap Reservoir should commence as soon as possible after acceptance of any permit issued by Grand County so as to address ongoing conditions below Windy Gap.

Conditions to satisfy Criterion (g)

Aquatic

26. The Subdistrict shall prepare and submit to Grand County a fish and aquatic invertebrates monitoring plan to determine if the enhancements for habitat restoration and additional water provided in the WGFP IGA would prevent the predicted loss of aquatic habitat. This

information will assist the Learning by Doing effort in making decisions for the future of the aquatic habitat. The monitoring will continue as long as the Learning by Doing effort requires this information. If the bypass/through is constructed, this monitoring plan can be adapted as necessary to analyze the benefits of the bypass/through.

27. The original Windy Gap 1041 permit does not allow the creation of mud flats at Windy Gap Reservoir. If the bypass/through were to be implemented, mud flats are likely to be created at the time the channel would be operating. The Subdistrict shall prepare and submit to the County an aquatic vegetation/revegetation plan to minimize mudflats protect against blowing dust.
28. If, during a five (5) year period, natural conditions meet or exceed flows of 600 c.f.s. as recommended by the SMP so that the Subdistrict is not required to make releases to achieve recommended stream conditions, then in the sixth year, Subdistrict shall provide a 1145 c.f.s. flow for 72 hours to move large cobble and dearmour the stream.

Marshlands and Wetlands:

29. Subdistrict shall prepare and submit to the County for approval a monitoring plan for vegetation along the Colorado River and Willow Creek within thirty days of issuance of the ROD by the Corps of Engineers. Monitoring will continue until the Learning By Doing management team has determined that riparian and wetland vegetation has not been adversely affected by the 2012 WGFP, or has recovered due to mitigation or other efforts. At a minimum this monitoring must continue at least ten (10) years after commencing of pumping for the 2012 WGFP.

Groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands:

Appear to be satisfied.

Critical wildlife habitat, big game migratory routes, calving grounds, migratory ponds, nesting areas and habitats of rare and endangered species:

30. The 10825 water for the endangered fish must be approved and delivered from Granby Reservoir and Northern must provide Grand County written verification that it is able to provide the water in perpetuity if no longer required for the endangered fish.

Public Outdoor Recreation Areas:

Satisfied by conditions applied under (b) and (d) above.

Unique areas of geologic, historic and archeological importance:

31. Prior to execution of the WGFP IGA, the Subdistrict shall submit to Grand County for approval a plan for regular maintenance of the rock structures above each pump site for the irrigators above Kremmling (defined in the WGFP IGA) that allows higher water to be captured and held so the pumps can reach the irrigation water more effectively.

APPLICANTS PRESENTATION

Gary Salberg clarified that the Planning Commission is a recommending body only. Their function is to review applications for compliance with County, State and Federal regulations. It is the Board of County Commissioners who grants approval of an application.

County Attorney Jack DiCola pointed out that this is a courtesy presentation tonight.

The Applicants introduced themselves; Mr. Eric Wilkinson, General Manager of the Municipal Subdistrict of the Northern Colorado Water Conservation District ("the Subdistrict"). Peggy Montano, legal counsel to the Subdistrict and Jeff Drager, Project Manager and Deputy Manager of the Engineering Division of the Subdistrict. The Applicants thanked the Planning Commission for the opportunity to discuss the project. The Windy Gap Firming Project (WGFP) is needed to improve the operability and reliability of the existing Windy Gap Project (WG), which is depended upon by over 400,000 households. The EIS shows that by the year 2030 that number is projected to increase to approximately 750,000.

The original project has resulted in a need for additional water storage. In support of this, individual participants have come together to do this as a Cooperative project rather than individual storage contracts.

Mr. Wilkinson stated they understand there will be impacts caused by the WGFP and also existing conditions on the river, which they hope can be addressed through mitigation and a number of enhancements. They are proposing a suite of enhancements to make river conditions better with this firming project than they are currently.

Mr. Drager discussed the purpose and need for the firming project. He stated the Subdistrict's goal is to improve reliability of the existing Windy Gap project. As of today, they have not been able to develop the yields originally expected for a couple of reasons; The Subdistrict has not diverted as much water due to demand not growing as quickly as expected, and they have storage constraints. Mr. Drager then explained that with the "no action" alternative, they currently divert 22,410 acre feet per year, and if approved, the WGFP would increase that amount by only 8,635 acre feet per year, resulting in a total of 31,045 acre feet per year, on average. What is important to the participants is what is called Firm Deliveries, or Reliable Deliveries. The WGFP would allow an increased yield with the construction of Chimney Hollow Reservoir, a 90,000 acre foot storage reservoir in Larimer County. Mr. Drager discussed the fact that the Subdistrict's firm yield right now is approximately 1229 acre feet per year, and there are some years when there is no water available. With this storage, the Subdistrict will be able to increase that firm yield to 26,545 acre feet per year, on average, and allows for the ability to take more water in some years, depending upon availability and storage. Cities need a reliable Firm Yield to base their water supply predictions for future planning.

Peggy Montano stated their application is based on the outline within the Grand County 1041 regulations. They made sure that the application included all pertinent documentation, including information from the EIS. She does have concerns about some of the conditions. The first concern is the requirement to incorporate all the closing documents in the 1041 permit. The Northern Colorado Water Conservancy District is a separate entity and they are not the Applicant, the Subdistrict is. The second concern is the requirement to incorporate all the State and Federal regulations into a County Permit.

Another concern is regarding requirements that are not clearly tied to impacts of this project. She gave the example of allowing public access for fishing on the Northern Colorado Water Conservancy District's Ranch. The idea that this would be tied into a permit is something we need to discuss.

Jeff Drager went over the handout of Windy Gap Firming Project Overview:

Mitigation for Direct Impacts of WGFP:

Colorado River Streamflow and Aquatic Habitat:

- Stream temperatures – Reduce or curtail river diversions when stream temperature standards are exceeded (with some limitations), with installation of real-time temperature monitoring devices.
- Flushing flows – Required flushing flows increased from 450 cfs to 600 cfs, and increased even more when project water supply exceeds 2/3 capacity

Water Quality in Three Lakes:

- Provide estimated \$4.3 million to reduce nutrient inflow to Three Lakes to "neutralize" effects of WGFP on Three Lakes water quality and Grand Lake clarity (included improvements to wastewater treatment facilities and non-point source reduction)
*USBR REQUIRES DEMONSTRATED 1:1 REDUCTIONS

Other Required Mitigation:

- Colorado River Endangered Species - \$405,000 funding for Upper Colorado River Recovery Program
- \$105,000 for Wetland Mitigation Bank plus re-vegetation and enhancement of disturbed areas
- Participants required to maintain Conservation Plans per State Law.

Voluntary Enhancements to Address the Current Conditions:

WGFP IGA with West Slope:

Water Supply for West Slope:

- Firm annual water supply for Middle Park WCD – 2,300 ac-ft/year
- Additional pumping for MPWCD providing annual supply of 700 AF
- 3,000 ac-ft of carry-over capacity

Water for streamflow enhancement:

- Grand County ability to use unused Middle Park WCD supplies – up to 3,000 ac-ft per year
- Grand County share of Windy Gap pumping – 500 ac-ft per year on average
- Grand County ability to pump additional Windy Gap water when available – up to 3,000 ac-ft per year
- 4,500 ac-ft of carry-over capability

Other IGA provisions

- Participation in Learning-by-Doing Cooperative Effort with Denver Water and West Slope entities which provide a formal, long-term mechanism to monitor stream conditions and coordinate mitigation, streamflow enhancements and stream restoration work
- No acquisition of new or existing water rights or construction of new water facilities in Grand County without West Slope consent
- Provide \$500,000 to Grand County for irrigation pump maintenance fund and funding of water measurement devices on Colorado River diversions
- Windy Gap Project will participate in Shoshone Outage Protocol
- Provisions to protect open space

Fish and Wildlife Enhancement Plan authorized by Colorado Wildlife Commission:

Aquatic habitat enhancement:

- \$4 million to restore aquatic habitat in Colorado River from Windy Gap to Kemp-Breeze State Wildlife Area (with up to \$3 million more provided by Denver Water)
- Funding for study of bypass around Windy Gap Reservoir – \$250,000

Voluntary Water Quality Enhancements:

- Provide funding and active participation in U.S. Bureau of Reclamation's Appraisal Study for improvement in the Three Lakes water quality
- Commitment of Northern Water to work with Reclamation and Grand County on Grand Lake clarity issues
- Northern Water's Water Quality Program, including over \$1 million in water quality monitoring and studies to better understand water quality issues in the C-BT and Windy Gap projects

The Applicants concluded their presentation stating that they believe the Windy Gap Firming Project is an efficient use of water to provide a firm, reliable water supply. The combined effect of additional water in the Colorado River in Grand County and habitat improvements provided by the enhancement measures and other related actions will improve conditions in the Colorado River over current levels. Coupled with the mitigation measures provided to address the direct impacts of the WGFP, the conditions in the river with the WGFP in operation will be better than current conditions.

AUDIENCE COMMENTS

Kirk Klanke introduced himself as the president of the Colorado River Headwaters Chapter of Trout Unlimited. He stated that he is in favor of the project and agrees with staff's recommendations. His main concern is regarding the aquatic section, as he is unsure that the flushing flows, as proposed, will adequately address the sediment transport issues. Mr. Klanke also believes the monitoring will be great, but worries if there will be enough financial provisions for it.

Steve Boshong introduced himself as the Attorney for the Upper Colorado River Alliance (UCRA), which represents the landowners along the Colorado River below Windy Gap Reservoir. The focus of this group is mainly protecting the health of the river. Their concerns start with the loss of 38% of the Macro-Invertebrate Species (large mayflies and stoneflies) down stream since Windy Gap was built. The numbers of Rainbow and Brown Trout are decreasing,

along with their size. The main cause of this has been identified as the chronic siltation and sedimentation which occurs primarily right below Windy Gap. This is attributable to the lack of flushing flows. The third contributing factor is the violation of temperature standards. Studies by the Division of Parks & Wildlife show that the Windy Gap Firming Project will exacerbate the problems.

There are solutions that can be considered under the 1041 Permit, which may include the long term protection of water resources. He spoke of the importance of ensuring the project will not significantly deteriorate the downstream aquatic environment. UCRA agrees with the IGA, believing it is a great step forward, particularly during low flow conditions. He stated that although the staff certificate does address the temperature problems, more is needed. In terms of flushing flows, UCRA does not believe that 600 cfs is enough. The river has seen flows of approximately 1200 cfs in the past 10 years and still has sedimentation problems. The key to the success, and critical to any mitigation plan, is the bypass or by-through. This will remove the negative effects from the river.

Mely Whiting, Legal Counsel for Trout Unlimited, wants to recognize the amount of work and money the County has put into understanding the science behind what goes on in the river. The problems with the river are clear; there are temperature issues, insufficient flushing flows and the reservoir contributing a tremendous amount of silt. Staff has proposed an aquatic life monitoring plan, which Trout Unlimited thinks is essential. This needs to be studied more and then implemented.

Steve Paul, President of Greater Grand Lake Shoreline Association, spoke stating they are still opposed to the WGFP for several reasons. First, the final EIS report states that the clarity in Grand Lake will decrease except with alternative number 5, while alternative number 2 is shown as the preferred alternative, and will worsen conditions. Things will get worse before they get better. Secondly, the final EIS report did not take into consideration silt in Grand Lake.

David Hook, Grand Lake Town Manager thanked the Grand County staff and let them know the efforts the County has made in dealing with the complicated issues of this project and the interests of Grand Lake are truly appreciated. He asked Ms. Underbrink Curran about the current status of the Memorandum of Understanding regarding the Grand Lake clarity project. Ms. Underbrink Curran confirmed that Grand County and Northern have agreed on the language, and the document has been sent to the Bureau of Reclamation for review as they are a signatory. It is currently in the solicitor's office.

Mr. Hook echoed the comments made by Steve Paul of the Shoreline Association. The community is very concerned about the short and long term impacts of the water quality in Grand Lake. Of particular concern to the town is the second operational criteria of Senate Document 80 which reads "to preserve the fishing and recreational activities and scenic attractions of Grand Lake, the Colorado River and the Rocky Mountain National Park". The Town is of the opinion that full compliance with the Senate document 80 is essential.

Rob Firth, Project Coordinator for Colorado Trout Unlimited, wanted the Planning Commission to know that the stretch of the Colorado River starting at the Windy Gap Reservoir to the Troublesome Creek is a Gold Medal stretch of river which is considered "high quality trout fishing" in Grand County. Due to the lack of bugs and stoneflies, the condition of trout has declined since he started working for the Colorado Division of Wildlife back in 1983. He stated that any mitigation needs to be all the way down to the Troublesome Creek. He also expressed concern about the funds available.

PLANNING COMMISSION DISCUSSION

Planning Commissioner Steve DiSciullo asked for an idea of when pumping from Windy Gap is done. Jeff Drager told him that the bulk of the pumping is in May and June. Jeff does not remember ever pumping in July or August, but as demand rises, the possibility is there.

Planning Commissioner DiSciullo stated that during the periods when water temperatures are most critical, there is no pumping occurring, so there is nothing additional that can be done to control the temperature. Mr. Drager said that they have studied modeling showing the effects of pumping in July & August. He stated the Subdistrict is hopeful that with the enhancements offered, and cooler waters in the stream, that they would be required to stop pumping less frequently than the modeling shows, if they indeed had to pump in those months.

Planning Commissioner DiSciullo asked if the District knows the average temperature at the outlet of Windy Gap Reservoir in August, and how that compares to the temperature of the water entering Windy Gap Reservoir. He also questioned whether or not the reservoir releases from the bottom. Mr. Wilkinson stated that they have only been monitoring the water temperatures at the inflow and outflow of the reservoir for the past couple of years, so they do not have sufficient data. As for the releases, the water is released from the bottom of the reservoir the majority of the time. Planning Commissioner DiSciullo suggested that the accuracy of records are better now than they were in the past. Using old data will give drastically different pictures than using data from recent years. He thinks that the by-pass is the only way to take care of the temperature issues. If this is not dealt with, the fishery could disappear in the next ten years.

Planning Commissioner George Edwards stated that staff addressed public recreational areas. He was curious as to what the level of the lakes would look like in the "middle years" of this 10 year period. He questioned if there would be years that the water is low and the shoreline becomes unusable. Mr. Drager responded that lake levels are discussed in the EIS. In prolonged periods of dry weather, the water levels may be lower in Granby. But with proposed mitigation, C-BT water stored in Chimney Hollow can be used and modify when water levels are higher.

Planning Commissioner Sally Blea questioned as to whether or not they could use the firmed water for "fracking". Ms. Underbrink Curran responded that the IGA does not address this issue. The EIS allows water to be used for Industrial Uses, and fracking is considered to be an industrial use. Ms. Underbrink Curran suggested that using recycled water for fracking is fine, but she is not sure about fresh water. Planning Commissioner Blea stated she wants to know if any participants are going to use this water in the future for this specific industrial use, and if so, she would like to see additional information. Her main concern is the clarity of Grand Lake, and she thinks the by-pass is very important before moving forward.

Planning Commissioner Ingrid Karlstrom asked about the prognoses of the return of fishery if the proposed enhancements are in place. Mr. Drager said that is hard to predict, with mother nature and hydrologic variability. There is so much uncertainty shown in Global Climate models, and with these climate changes, it appears the common denominator is greater variability. The extremes become more extreme, dryer years are dryer, wetter years will be wetter. To help deal with these issues, it is necessary to re-enforce the reliability of the systems, which is what is proposed by the WGFP.

Planning Commissioner Karlstrom discussed the critical daily temperature, which is within 1 degree of fish dying, wondering if that is standard practice. Mr. Drager stated that if it is determined not to be the correct buffer, the Subdistrict will stop pumping sooner. They are currently studying the matter, but the figures are numbers agreed upon by the Division of Fish and Wildlife, and not set in stone.

Planning Commissioner Lisa Palmer asked for clarification on whether or not the water court has to approve the decree. She also questioned whether or not this was a conditional or absolute water right. Ms. Underbrink Curran said there is an absolute decree for the water rights and the 1985 agreement is attached to the decree. If this request is approved, it will also be attached to the decree.

Planning Commissioner Palmer wondered what Denver is asking for. Ms. Underbrink Curran said they are firming 18,000 acre feet, additional average annual, which translates to approximately 13,000 acre feet diverted out of Grand County. Planning Commissioner Palmer said that means we will be losing 45,000 acre feet out of the river every year. She questioned how the river could possibly be better off if we divert that much water. She does not think there is enough money to make it better. The money proposed for restoration comes out to be approximately \$350,000 per mile, which is not very much money. Mr. Drager responded that that money is combined with about one half million dollars from Denver, which allows for mitigation from Windy Gap Reservoir down to the Kemp-Breeze area. Planning Commissioner Palmer pointed out that does not cover all the Gold Metal water. Mr. Drager said that the area they are proposing mitigation on is the critical area as determined by the Division of Wildlife.

Planning Commissioner Palmer questioned the \$500,000 to be put in a fund for irrigators. If this is for the life of the project, (as long as this project is operational), this dollar figure will not be enough. This needs to be revisited. She also talked about the aquatic habitat restoration funds,

wondering if this was an admission that there is a problem. We need to look at data prior to 1980, when Windy Gap was built, to determine the true impacts of the Windy Gap project to the river, and what restoration needs to happen. She believes that restoration of the existing impacts needs to happen first, and then mitigate the additional impacts that would occur if this project is approved. She wants to know how can so much be taken from the river, and can it be restored back to the way it was.

Planning Commissioner Karl Smith suggested that the entire interconnected system needs to be studied, not just the river from Windy Gap to the Williams Fork Reservoir. He would like to see additional options investigated for storage, and of retired storage rights, along with consideration of the by-pass. He also would like to see that all the temperature data is available to the public.

Planning Commissioner Sue Volk asked if there is an agreement between participants that they can only sell or sub-lease to other members. Mr. Drager commented that the first use of the water must occur within the Subdistrict. Any transactions of units must be approved by the Subdistricts Board of Directors, and the entities must be within the boundaries of the Subdistrict. The re-use of Windy Gap water can be outside the district. Planning Commissioner Volk asked if the water used for fracking can be used for anything else. Mr. Drager said that they will re-use the flowback from the wells for more fracking, which they can get anywhere from 30% to 80% return flow, and the rest is un-recoverable. The water will not be used to refill aquifers.

Planning Commissioner Ingrid Karlstrom moved to send forth a recommendation of denial for the 2012 Windy Gap Firing Project 1041 Permit. Planning Commissioner Steve DiSciullo seconded the motion.

County Attorney DiCola requested a roll call vote:

Planning Commission Chairman Gary Salberg did not vote.

Steve DiSciullo – Aye,
George Edwards – Aye,
Sally Blea – Nay
Ingrid Karlstrom – Aye,
Lisa Palmer – Aye
Karl Smith – Nay
Sue Volk – Aye

Motion carried by a 5-2 vote. Planning Commission Resolution No. 2012-7-1

Meeting adjourned at 10:10 p.m.

GRAND COUNTY PLANNING COMMISSION

RESOLUTION NO. 2012-7-1

A RESOLUTION RECOMMENDING DENIAL OF THE 2012 WINDY GAP FIRMING PROJECT (1041 PERMIT)

WHEREAS, the Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict) is the owner of the Windy Gap project; and

WHEREAS, the Subdistrict, acting by and through the Windy Gap Firming Project Water Activity Enterprise, has proposed the 2012 Windy Gap Firming Project which would firm up the yield contemplated in the Windy Gap Project; and

WHEREAS, the Subdistrict has submitted a complete application for a permit under Grand County's Regulations for Areas and Activities Designated as Matters of State Interest (1041 Permit) for the 2012 Windy Gap Firming Project; and

WHEREAS, the Subdistrict has applied for the 1041 Permit under protest; and

WHEREAS, at their regular meeting of July 11, 2012, the Grand County Planning Commission reviewed the 1041 Permit for the 2012 Windy Gap Firming Project; and

WHEREAS, pursuant to Grand County's Regulations for Areas and Activities Designated as Matters of State Interest, Chapter 5 "Municipal and Industrial Water Projects", Section 5-306, a permit application for development of a municipal or industrial water project shall be approved if the proposed development complies with the required criteria; and

WHEREAS, following review, public comment and information provided at the meeting, the Grand County Planning Commission recommended denial of the 1041 Permit but did not specify which criterion within Section 5-306 had not been met.

NOW THEREFORE BE IT RESOLVED that the Grand County Planning Commission recommended denial of the 2012 Windy Gap Firming Project (1041 Permit).

BE IT FUTHER RESOLVED that Chairman, Gary Salberg did not cast a vote and the Planning Commission Members voted 5-2 to deny the 1041 Permit as follows:

Sue Volk-	Aye	Sally Blea-	Nay
Lisa Palmer-	Aye	Karl Smith-	Nay
Ingrid Karlstrom-	Aye		
George Edwards-	Aye		
Steve DiSciullo-	Aye		

APPROVED AND ADOPTED THIS 11th DAY OF JULY, 2012.

GRAND COUNTY PLANNING COMMISSION

Chairman

ATTEST:

Secretary

The application, at p. 55, states that the 2012 WGFP water will not contaminate surface water resources as it will be transported through existing facilities. The County disagrees with this statement because the transport of water through the C-BT system will exacerbate the water quality in the Three Lakes (Granby Reservoir, Shadow Mountain Reservoir and Grand Lake) by increasing introductions of lower quality water from Windy Gap into Granby Reservoir, and increased diversions of particulate-laden water through Shadow Mountain Reservoir and Grand Lake. Although the Subdistrict has proposed mitigation of nutrient loading, no mitigation is proposed for the non-algal particulates.

The clarity in Grand Lake has been an issue since the C-BT Project began pumping. The first documented concern was in 1952 from the City of Loveland to the Bureau of Reclamation complaining about algae in its water supply after the Farr Pumping Plant began to transport water into the C-BT. Reporting on water quality from both east and west slopes continued intermittently until the late 1990's when a group of citizens around Grand Lake worked to heighten awareness and sought Grand County's support to rectify the loss of Grand Lake's scenic attraction as protected in Senate Document 80. For the last decade, there has been a concerted effort to bring the clarity in Grand Lake back to its pre-C-BT project clarity of 9 meters.

In 2006, Northern Water, Grand County, and several other entities began participation in the Nutrient Study for the Three Lakes System (Grand Lake, Shadow Mountain and Granby Reservoirs). A spin off from this study group is the Three Lakes Technical Committee which focuses primarily on west slope water quality. In 2006, it was thought that nutrient loading was the root cause of most of the water quality issues in the Three Lakes, including Grand Lake clarity, but years of additional study, monitoring and reporting have proven that nutrients are not the only cause of reduced clarity.

In 2008, the Colorado Water Quality Control Commission adopted two standards for clarity in Grand Lake: a narrative standard supporting "the highest level of clarity attainable, consistent with the exercise of established water rights and the protection of aquatic life", along with a numerical standard of 4 meter Secchi disk depth with 85% compliance in any given year for the months of July, August and September. The numerical standard becomes effective January 1, 2015.

Pumping from Granby Reservoir to Shadow Mountain Reservoir, and subsequent water transfer to the east slope via the Adams Tunnel, causes decreased clarity in Grand Lake, as evidenced by stop-pump trials, water quality monitoring, and photographic records. Two two-week stop pump trials (2008 and 2009), as well as a seven-week stop pump in 2011 made possible by extremely high runoff and full storage all resulted in improved clarity: the 2011 "gift of nature" resulted in the best clarity in Grand Lake since the C-BT became operational.

Recent studies have identified non-algal particulate matter as being considerably more important to clarity as nutrient loading. The source of the non-algal organic particulates is currently under investigation.

The Subdistrict is proposing that reductions in nutrient loading will come from a combination of wastewater treatment improvements to reduce point source nutrient loading above Windy Gap as well as land use changes that would reduce non-point source nutrient loading. Wastewater treatment plants above Windy Gap were evaluated to determine which, if any, treatment plants, would be capable of achieving the level of nutrient loading reduction required to meet the 1:1 (nutrient neutral) standard applied in the Final EIS. The Fraser Valley Consolidated Plant is the only one capable of meeting a portion of the reduction necessary. By financing improvements to the Fraser Valley Consolidated Plant, it is expected that 822 kg/year of Nitrogen and 774 kg/year of Phosphorus will be removed. The cost of the plant improvements is estimated to be \$3.3M with increased annual operating costs ranging from \$120,000 to \$230,000/year.

Part of the non-point source reduction proposed by the Subdistrict will come from two ranches in the Willow Creek drainage above Windy Gap. The 265 acre E-Diamond H Ranch is currently irrigated and periodically fertilized. To reduce nutrient discharges from run-off, the ranch will no



GRAND COUNTY MANAGER'S OFFICE

308 Byers Ave • P.O. Box 264 • Hot Sulphur Springs • Colorado • 80451
970-725-3347

CERTIFICATE OF RECOMMENDATION

TO: GRAND COUNTY PERMIT AUTHORITY

FROM: Grand County Manager's Office

DATE: August 1 and 2, 2012

RE: 1041 Permit – 2012 Windy Gap Firing Project

APPLICANT: Municipal Subdistrict of the Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firing Project Water Activity Enterprise.

LOCATION: As described in the Final Environmental Impact Statement for locations within Grand County, Colorado

ZONING: Forestry and Open Zone District (F)

APPLICABLE SECTION OF CODE: Grand County Administrative Regulations for Areas and Activities Designated as Matters of State Interest and Grand County Master Plan.

STAFF CONTACT: Lurline Underbrink Curran

EXHIBITS: Letter of Application and 1041 Application Packet, Planning Commission Draft Minutes and Draft Resolution

REQUEST: Applicant is requesting approval of a 1041 Permit for the 2012 Windy Gap Firing Project in order to firm up the yield originally contemplated by the Windy Gap Project.

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DISCUSSION:

The Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict) is the owner of the Windy Gap project. The Subdistrict, acting by and through the Windy Gap Firming Project Water Activity Enterprise, has proposed the Windy Gap Firming Project (2012 WGFP) which would firm up the yield contemplated in the Windy Gap Project. The Subdistrict has submitted an application for a permit under Grand County Areas and Activities Designated as Matters of State Interest (1041 permit) for the 2012 WGFP. The Subdistrict has applied for the Grand County 1041 permit under protest. Applying under protest means that the Subdistrict is reserving all of its legal arguments as to why they do not need a new permit.

The Subdistrict bases its protest on the County's issuance of the original Windy Gap Permit which it feels covered the depletions contemplated as well as mitigated the impacts to Grand County. Further, the 2012 WGFP does not require any construction or alteration of the current Windy Gap Project in Grand County.

Listed below are some of the new issues that were not considered in the Original Windy Gap Project permit:

1. The 2012 WGFP proposes repositioning, which is a different operational regime for the Windy Gap water rights. Repositioning was never contemplated or permitted with the original Windy Gap Project and it changes the timing and magnitude of diversions from those originally taken into account by Grand County. Repositioning is a method whereby Colorado Big Thompson Project (C-BT) water will be delivered through the system to the preferred alternative Chimney Hollow Reservoir, a non-federal facility thereby making additional room in Granby Reservoir. When Windy Gap or 2012 WGFP water is delivered into Granby Reservoir, the C-BT water in Chimney Hollow would be exchanged for a like amount of Windy Gap water (both 2012 WGFP and Windy Gap) in Granby Reservoir. Repositioning requires an amendment to the existing Amendatory Contract (Carriage Contract).
2. The Carriage Contract is a contract issued by Bureau of Reclamation (Reclamation) to allow Windy Gap water to be transported through the C-BT project. Repositioning would allow not only the 2012 WGFP water to be transported but also allows C-BT water to be stored in a non-federal facility until the exchange is made. The 2012 WGFP will change the impacts to the Colorado River over those being caused by the Windy Gap Project.
3. The amendment to the Carriage Contract is a Major Federal Action under NEPA that required the Bureau of Reclamation to prepare and Environmental Impact Statement to disclose the new impacts associated with the 2012 WGFP. In addition, Reclamation must make a determination that Windy Gap Firming Project is in compliance with Senate Document 80.

4. The original Windy Gap Agreement, also known as the Azure Agreement and the Windy Gap Supplement (1980 and 1985 Agreements) are incorporated into the Windy Gap water rights decrees. The draft Windy Gap Firming Project Intergovernmental Agreement (WGFP IGA) which is an attachment to the application amends the 1980 and 1985 Agreements and will be incorporated into the Windy Gap decrees.
5. The 1980 Grand County 1041 Permit was issued to the Subdistrict for the cities of Estes Park, Boulder, Longmont, Greeley, and Loveland as well as the Platte River Power Authority and their projected needs by the year 2000. The 2012 WGFP participants are City and County of Broomfield, Central Weld County Water District, Town of Erie, City of Evans, City of Fort Lupton, City of Greeley, City of Lafayette, Little Thompson Water District, City of Longmont, City of Louisville, City of Loveland, Platte River Power Authority and Town of Superior. The Subdistrict explains this difference by the fact that participants can sell or lease their respective shares and that the original Windy Gap Project was never intended to limit the original participants to the project forever. The additional participants change the demand from the demand projected in 2000. Grand County's 1980 Permit was based on the Purpose and Need as stated in the Environmental Impact Statement which did not discuss the possibility of sale or lease.
6. There is additional impact to the aquatic habitat and terrestrial life that were not considered in the original EIS or permit issued by Grand County. Even though the application submitted for the 2012 WGFP acknowledges there will be a loss of habitat, it states that it will not be substantial because it is less than 15%, Grand County does not use a 15% threshold to determine whether there will be significant deterioration or degradation.

HISTORY OF EXISTING WINDY GAP PROJECT

In order provide a complete review of the 2012 WGFP it is useful to understand the history of the original Windy Gap Project which is a diversion at the Windy Gap Reservoir that is pumped through a pipeline into and via the C-BT project to the front range to an identified group of participants.

1. **The 1980 Azure Agreement and 1985 Supplement.** West slope objections to the Windy Gap water rights led to the 1980 Azure Reservoir and Power Project Agreement (1980 Agreement). The 1980 Agreement was Attachment 1.A. of the Final Environmental Impact Statement (Final EIS) for the Windy Gap Project, as well as an attachment to the Grand County's 1041 permit, and the Windy Gap water right decrees.

West slope objections centered on the Subdistrict's failure to prepare a compensation plan as required by the Water Conservancy District Act. Whenever facilities are constructed by a conservancy district that diverts water from the Colorado River a compensation plan is required. Key elements of the 1980 Agreement are:

- Commitment by the Subdistrict to fund the construction of the Azure or a replacement Reservoir and Power Plant, or if infeasible, fund an alternative project or a cash payment to the CRWCD.

- Payment of \$25,000 to Grand County for salinity studies of the Colorado River.
- Payment of \$150,000 to the Town of Hot Sulphur Springs for assistance in improving its water treatment facility and \$270,000 for improving its wastewater treatment facility.
- Payment of \$500,000 to plan, construct, and design facilities needed for ranchers to maintain their diversion structures on the Colorado River.
- An agreement by the Subdistrict to subordinate its Windy Gap decrees to all present and future in-basin irrigation, domestic, and municipal uses, excluding industrial uses, on the Colorado and Fraser rivers and their tributaries above the Windy Gap Reservoir site.
- An agreement by the Subdistrict to volumetric limits on diversions, which included a maximum single-year diversion of 90,000 AF/year and a maximum of 65,000 AF during any consecutive 10-year period. Per the 1985 Supplement to the 1980 Azure Settlement Agreement, these diversion limitations apply to deliveries through the Adams Tunnel, as opposed to diversions at Windy Gap Reservoir.
- An agreement by the Subdistrict to bypass flows necessary to meet senior downstream water rights.
- An agreement by the Subdistrict to cooperate with CDOW and others to allow public use for recreation at Windy Gap Reservoir.

The 1980 Agreement was executed by the Subdistrict, Colorado River Water Conservation District, (River District), Grand County Board of County Commissioners, Northwest Colorado Council of Governments, Three Lakes Water and Sanitation District, Winter Park Water and Sanitation District, Middle Park Water Conservancy District, Town of Hot Sulphur Springs, Town of Granby, Ritschard Cattle Company, Inc. Colorado River Land Corporation, Jacques Ranch I, Jacques Ranch II, David Mayhoffer, Lloyd A. Palmer, Edna L. Palmer, Leo Marte, Eunice Marte, Jessie Joyce Thompson, David Howard Thompson, Joseph McElroy, Isabel McElroy, John H. McElroy, Mary K. McElroy, John Sheriff, Ida L. Sheriff, H. Grady Culbreath, Richard P. Doucette, Christine O. Doucette, Gene Ritschard, William Henry Thompson, Anita Lewis Thompson, Stanley Broome.

The parties to the 1980 Agreement also agreed that:

3. "Implementation of the provisions of this Agreement will constitute compliance with all objections to the Draft Environmental Impact Statement for the Windy Gap project by any Party hereto, furnishes satisfactory mitigation measures for the development of the Windy Gap Project and following a hearing and decision of the Grand County Commissioners under paragraph 36 (assuming the decision is favorable) will constitute compliance with all valid permitting requirements imposed by any of the Parties". 1980 Agreement Part IV, paragraph 3.

All parties to the 1980 Agreement, paragraph #35, agreed that "All environmental concerns among the Parties have been resolved by this Agreement regardless of whether none, all or only

one facility is constructed and operated" The parties further recognized the Windy Gap project and the Azure Reservoir and Power Plant Project were separate projects and that if the Azure Project could not be built for any reason, that an alternative project could be selected. Both Windy Gap and the alternate to the Azure Project, Wolford Mountain, were constructed. **(Paragraph #35 was deleted and superseded by the 1985 Supplement).**

In 1985, under Resolution 1985-3-5, the 1980 Agreement was supplemented to amend and/or deleted parts of the 1980 agreement (1985 Supplement). The Rock Creek Reservoir, originally considered as the replacement source for the Azure Power Project, was changed to the Wolford Mountain Project which was constructed.

The 1985 Supplement had several purposes including 1) It provided western Colorado with financial assistance (\$10,000,000) to enable the River District to construct a water storage facility in Water Division No. 5 (the Wolford Mountain Project was permitted by Grand County in 1990 with both a 1041 Permit and Special Use Permit); 2) It remove the Subdistrict from any obligation under the April 30, 1980 Agreement to construct the Azure Reservoir and Power Project or alternate facility and removed the restriction on Windy Gap diversions stated in paragraph 15 of the 1980 Agreement which restricted Windy Gap from diverting any water from the west slope of Colorado through Windy Gap prior to the initiation of construction of Azure Reservoir and Power Project or an alternate reservoir agreed to by the River District; 3) The 1985 Supplement designated the measuring point for diversion as the Adams Tunnel (previously it was measured at Windy Gap).

2. Volumetric Limitations on Windy Gap Water Rights.

The 1980 Agreement, paragraph #34, states that the *"Subdistrict may divert under its decrees an amount of water not in excess of 90,000 acre feet in any one year, and not to exceed an average of 65,000 acre feet per year in any consecutive ten year period. It is anticipated by the parties that the long term annual yield of water to the Subdistrict will be approximately 54,000 acre feet"*.

The Final EIS for the Windy Gap project also states under Purpose and Need that *"current and prospective West Slope water rights and users of Colorado River water would be compensated for loss of an annual average depletion of 54,000 acre-feet of water"*. The average annual firm yield expected of the Windy Gap project was 48,000 AF delivered to the east slope, 3000 AF to Middle Park Water Conservancy District (Middle Park), and "shrink" charges of 10%. Shrink is attributable to evaporation and system losses during storage and delivery.

The Record of Decision (ROD) issued by the Reclamation and a Record of Decision Permit Application No. 6520 issued by the U. S. Army Corp of Engineers (Corps) for the Windy Gap Project also refers to volumetric limitations.

The ROD (Paragraph II. A. 2.) states that

"the Windy Gap Project would divert a long term annual average of about 56,000 acre-feet from the Upper Colorado River Basin near Granby, Colorado. The diverted water would be pumped from the West Slope through Colorado-Big Thompson Project facilities

*to the East Slope cities of Estes Park, Boulder, Longmont, Greeley,
Loveland, and Platte River Power Authority."*

The 1980 Agreement documented the amount that could be diverted at Windy Gap Reservoir as a means of limiting the Windy Gap Project. The Subdistrict states that it can pump whatever water is in priority from the Colorado River, subject to storage capacity in Granby, as long as the amount of water transported through the Adams Tunnel is within the volumetric limits. As previously stated, the 1985 Supplement designated the measuring point for diversion as the Adams Tunnel (previously measured at the Windy Gap Reservoir).

Following is a summary of the Windy Gap decrees:

1. **Windy Gap Pump, Pipeline and Canal.** 600 c.f.s. absolute direct flow right from the Colorado River (no amount remain conditional). This started out as 300 c.f.s. (conditional) with an appropriation date of 6-22-1967 in CA 1768 decreed 2-24-1978, with the amount confirmed on remand in an Interlocutory Decree dated 10-27-1980. In Case No. W-4001, the **1st Enlargement** was decreed 10-27-1980, for an additional 100 c.f.s.(conditional) with an appropriation date of 7-9-1976. In Case No. 80CW108 the **2nd Enlargement** was decreed 10-27-1980, for an additional 200 c.f.s. (conditional) with an appropriation date of 4-30-1980, thus bringing the total to 600 c.f.s. in 1980. After the system was built in 1985, the district began to make the right absolute. In Case No. 88CW169 decreed 2-6-1989, 190 c.f.s. of the original 300 cfs was made absolute, leaving 110 c.f.s. conditional. Finally in Case No. 89CW298 decreed 7-19-1990, the remaining 110 c.f.s. of the original right was made absolute ($110 + 190 = 300$), plus the 100 cfs of the 1st Enlargement and the 200 c.f.s. of the 2nd Enlargement were made absolute, thus making the entire 600 c.f.s. for the direct flow right absolute as of 1990.

2. **Windy Gap Reservoir.** Out of the total amount of 1,546.14 AF, 445 AF is absolute and 1,101.14 is conditional for a storage right from the Colorado River. This started out as 1,546.14 AF (conditional) with an appropriation date of 6-22-1967 in CA 1768 decreed 2-24-1978, with the amount confirmed on remand in an Interlocutory Decree dated 10-27-1980. In Case No. 88CW169 decreed 2-6-1989, 445 AF of the original 1546.14 AF was made absolute, leaving 1,101.14 AF conditional. In Case No. 08CW92 decreed 4-12-12 (which is the latest diligence decree) the 1,101.14 AF was continued as conditional until April 2018.

3. **Jasper Pump and Pipeline.** All 300 c.f.s. remains conditional for this direct flow right from Willow Creek. This right has an appropriation date of 6-22-1967 in CA 1768, decreed 2-24-1978, with the amount confirmed on remand in an Interlocutory Decree dated 10-27-1980. In Case No. 08CW92 decreed 4-12-12 (which is the latest diligence decree) the 300 cfs was continued as conditional until April 2018.

4. **Jasper Reservoir.** All 11,292.58 AF remains conditional for this storage right from the Colorado River and Willow Creek. This right has an appropriation date of 6-22-1967 in CA 1768, decreed 2-24-1978, with the amount confirmed on remand in an Interlocutory Decree dated 10-27-1980. In Case No. 08CW92 decreed 4-12-12 (which is the latest diligence decree) the 11,292.58 AF was continued as conditional until April 2018.

In summary:

All 600 c.f.s. is absolute for the Windy Gap direct flow diversion

445 AF is absolute for the Windy Gap Reservoir storage right with 1,101.14 AF remaining conditional

All 300 c.f.s. of the Jasper direct flow right remains conditional

All 11,292.58 AF of the Jasper Reservoir storage right remains conditional

3. **Mitigation for Original Windy Gap Project.**

The 1980 Agreement contained some mitigation for the impacts of the Windy Gap Project. The ROD for the original Windy Gap Project incorporates the 1980 Agreement and refers to additional mitigation.

Section V of the ROD provides in pertinent part:

“The following mitigation measures have been agreed to by the sub district: (1) about 11,000 acre-feet of the average annual project yield of 56,000 acre-feet will be committed to maintain minimum “instream flows; (2) existing and some future water rights will be protected; (3) disturbed soil and vegetation will be reclaimed; (4) various commitments by the sub district to West Slope interests will protect prospective West Slope uses of Colorado River water; and (5) threatened and endangered fish will be protected by resolution of the sub district to provide certain conservation measures”.

The Record of Decision Permit No. 6520 states under paragraph 2. *“... and current and prospective West Slope water rights and users of Colorado River water would be compensated for loss of an annual average depletion of 54,000 acre-feet of water”.* The permit goes on to apply mitigation.

“All practicable means to avoid or minimize environmental harm from the project have been adopted. As identified in the EIS, the following mitigation measures will be incorporated to substantially reduce impacts associated with the project:

A minimum flow agreement between Northern Colorado Water Conservancy District and the Division of Wildlife was signed 23 June 1980. The terms of the agreement will lessen the adverse impacts of the project on aquatic life.

The pipeline route will be revegetated and vegetation will be planted around the reservoir to minimize impacts on vegetation.

A plan to mitigate wetlands inundated by the reservoir will be prepared and coordinated with the Environmental Protection Agency.

Reservoir operations and architectural controls on structures are being utilized to lessen the impacts of aesthetics.

Impacts on cultural resources are being mitigated through controlled surveys and data gathering.

Roads will be permanently and temporarily relocated to reduce interference with normal traffic flow.

Conservation measures to aid recovery of endangered fishes in the Colorado River will be accomplished.

Mitigation associated with salinity increases and reduced flows downstream are being handled by the Colorado River Salinity Control Project.

Monitoring of pre- and post-project water temperatures will occur to direct and possibly correct and post-project temperature changes."

The instream flows were implemented through a Memorandum of Understanding between the Subdistrict, Northern and Division of Wildlife, Colorado Department of Natural Resources, Relating to Minimum Stream Flow in Association with the Windy Gap Diversion Project, it was agreed to the following fixed rates of flows:

- From Windy Gap Diversion Point to the mouth of the Williams Fork River: 90 cfs.
- From the mouth of Williams Fork River to the mouth of Troublesome Creek: 135 cfs.
- From the mouth of Troublesome Creek to the mouth of the Blue River: 150 cfs.
- In addition, once in every three years, if equivalent flushing flows do not otherwise occur pas the Windy Gap Diversion Point, Subdistrict shall release on call by the Colorado Water conservation Board, on the recommendation of the Division of Wildlife, a total of

450 c.f.s. of water for fifty hours, or its equivalent, during the period of April 1 through June 30, for flushing flow purposes.

These CWCB minimum instream flow rates are required only when Windy Gap is diverting. Otherwise, the inflow is required to be the outflow.

Colorado Water Conservation Board (CWCB) decrees for instream flows in these amounts and stream segments described above were issued under 80CW446, 80CW447 and 80CW448 dated September 24, 1982.

4. The Windy Gap Project 1041 Permit.

The Windy Gap Project was permitted in 1980 by the Grand County Board of County Commissioners acting as the 1041 Permit Authority by Resolution 1980-6-1. The permit was reviewed and issued under Chapter 5 of the Grand County 1041 Regulations for Municipal and Industrial Water Projects. Grand County also issued a Special Use Permit for the Windy Gap Project under Board of Commissioner Resolution 1980-6-4. Grand County's Zoning Regulations required a Special Use Permit for reservoirs impounding 100 acre feet or more of water.

The 1041 Permit that was issued by Grand County relied upon the Draft EIS and the 1980 Agreement. The Purpose and Need stated in the Final EIS was "*to supply the municipal and industrial water needs of the cities of Estes Park, Boulder, Loveland, Longmont, and Greeley; and Platte River Power Authority. The Project would supply all of the additional municipal and industrial water needs of the service area projected for the year 2000*". It further relied on the outcome of a Final EIS in substantial accord with the Draft EIS as well as the ROD issued by Reclamation and Record of Decision Permit issued by the Corps.

Grand County's 1041 permit allowed the design, construction and operation of the Windy Gap Project, Reservoir and Pipeline, as proposed and described in the Environmental Impact Statement. The permit also required the Subdistrict to comply with all terms and provisions of Senate Document 80.

The 1041 Permit was amended in 1985 to recognize the 1985 Supplement.

5. Special Use Permit.

The County issued a Special Use Permit for the Windy Gap Project. Recent case law clarifies that the County does not have jurisdiction to require that the Subdistrict obtain a Special Use Permit for the 2012 WGFP. See *Board of County Commissioners of the County of Boulder vs. Hygiene Fire Protection District* dated December, 2009. This decision says that no County zoning or land use regulations (other than 1041) apply to special districts or governmental entities. When a project is proposed to a county by a governmental entity, the C.R.S. § 30-28-110(1)(c) "location and extent" controls.

6. Other Agreements

In 1988, Grand County entered into a Water Allotment Contract with Middle Park. This allotment was based on Grand County's desire to obtain a portion of Middle Parks' water

designated to be stored in Granby Reservoir. The allotment contract was specifically subject to and described in the Windy Gap Agreement and Supplemental Agreement. Grand County was responsible for obtaining whatever Court proceedings were necessary to transfer the rights to the location and use necessary for the County. Middle Park agreed to convey to Grand County 15 acre feet per year of water free of charge which was transferred to the County in the form of a Quit Claim Deed.

MITIGATION

There has been much confusion regarding the mitigation that will be required and applied to the incremental impacts for the 2012 WGFP and the subsequent impacts of the Windy Gap Project that were not identified or considered properly in the permitting of that project. The unforeseen impacts of the Windy Gap Project are not direct impacts of the 2012 WGFP. As previously documented in the history of the Windy Gap Project, implementation of the provisions of the 1980 Agreement constituted compliance, and furnished satisfactory mitigation measures for the development of the Windy Gap Project.

The direct impacts of the 2012 WGFP will have to be mitigated and mitigation has been proposed in the Final EIS. The ROD has not been issued nor has the permit required from the Corps of Engineers. These two documents may require additional mitigation beyond what has been suggested in the Final EIS. The State of Colorado through the Wildlife Commission, has issued a Wildlife Mitigation Plan for both the 2012 WGFP and Denver's Moffat Firming Project.

All mitigation applied, by any agency having permitting authority, will be permit conditions of the 2012 WGFP, if approved. Grand County is a cooperating agency on the 2012 WGFP. As such, it has continued to advocate for appropriate mitigation and to provide all information requested by the Lead Agency (Reclamation) as well as the Corps.

ENHANCEMENTS

There has been a great deal of confusion regarding mitigation vs. enhancements. The Subdistrict has proposed certain enhancements through a draft document called the Windy Gap Firming Project Intergovernmental Agreement (WGFP IGA). The enhancements are intended to address, in part, existing conditions in the Colorado River below Windy Gap particularly during the low flow periods when Windy Gap is not pumping. The enhancements are NOT mitigation and the WGFP IGA is specific that the enhancements are not to be used as mitigation.

Temperature exceedances and low flow stresses the aquatic environment during the low flow periods. Low flow also makes it difficult for the irrigators to access their water rights. Currently there are no resources available to address these existing concerns.

The enhancements are defined in the WGFP IGA and address a number of concerns expressed by Grand County, Middle Park, and the River District. If the 2012 WGFP is not approved, the enhancement offerings will be withdrawn.

Since Grand County is a permitting agency for the 2012 WGFP, the Board of County Commissioners was not involved in the negotiations for the enhancements and has not approved the proposed WGFP IGA.

There are some instances where the proposed enhancements could be considered to provide additional offset to impacts of the 2012 WGFP.

PROPOSED WINDY GAP FIRING PROJECT INTERGOVERNMENTAL AGREEMENT

The Subdistrict first approached Grand County prior to the Preliminary EIS for the 2012 WGFP to discuss possible enhancements to help improve existing conditions in the Colorado River. The existing Windy Gap Project has had impacts to the aquatic environment of the Colorado River that were not predicted in the original EIS or ROD. The enhancements offered in the WGFP IGA would be aimed at the current conditions. Over the past several years, County staff, Middle Park, and the River District have been negotiating a draft WGFP IGA with the Subdistrict and Northern that could address some of these exiting impacts.

The Subdistrict has included a copy of the draft WGFP IGA in the application packet. This WGFP IGA is still in draft form as the Board of County Commissioners has not reviewed or approved the WGFP IGA. If approved, this WGFP IGA may have to be modified depending on the outcome of the 1041 permit review and hearings, as well as State of Colorado's finding on the legality of implementation strategies for some of the offerings, and any permits issued by federal agencies which could conflict or change sections of the WGFP IGA.

The WGFP IGA allows for the construction of a 90,000 AF Chimney Hollow Reservoir or any combination of reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the preferred alternative (Chimney Hollow) identified in the Final Environmental Impact Statement (Alternative Reservoir) provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet AND as long as the environmental footprint in Grand County is not affected.

The WGFP IGA provides enhancements to Grand County and Middle Park as well as certain assurances to the River District in its mission to protect the Colorado River.

A summary of the negotiated enhancements for the Colorado River in Grand County include:

- An opportunity for Grand County to pump and store water in Granby Reservoir for release to the environment as directed through the effort termed Learning by Doing. Most of the current stresses to the river occur in the late summer and early fall, typically when Windy Gap or the proposed 2012 WGFP would not be pumping. The proposed WGFP IGA provides water for Grand County under three scenarios.
 - a. Transfer Water. Middle Park calls for water for its contractees at the beginning of the pumping season currently. Any water not released for Middle Park at the end of the season reverts back to the Subdistrict and is transported to the east slope. Under the draft WGFP IGA, the water that Middle Park does not use at the end of the season is transferred to Grand County to be released to the environment or stored for the next season in space provided in Granby Reservoir. If the Subdistrict is issued all of the necessary permits for construction of Chimney Hollow Reservoir and accepts the permits, the transfer water will be available to Grand County on a shared basis until Chimney Hollow is constructed.

b. Variable Water. Grand County would have an opportunity to pump water on completion of WGFP. Grand County would receive 3.8% of the 2012 WGFP pumping after the project pumps 15,000 AF up to a net credited storage of 1500 AF. If the 2012 WGFP participants stop pumping prior to the time Grand County has received 1500 AF and the rights are still in priority, Grand County can elect to continue pumping to attain the 1500 AF if there is storage available. On average, this variable water provides 500 AF.

c. Year End Pumping. After the 2012 WGFP ceases to pump, Grand County can elect to continue pumping Windy Gap water constrained only by the carryover storage available. Grand County will be required to pay for the pumping costs. *In the Colorado River Cooperative Agreement, Denver Water will provide \$1M to offset the pumping costs to Grand County. It can be used annually to pay for 50% of the pumping costs.*

d. Grand County is provided with 4500 AF of storage space and Middle Park 3000 AF for a total of 7500 AF, which can be shared between the two entities. Grand County is allowed the total 7500 AF of storage upon approval of the WGFP IGA. Upon completion of the Chimney Hollow, the storage for Grand County reduces to 6000 AF. Upon an 85% fill of the active storage capacity of Chimney Hollow Reservoir, Grand County's storage space is reduced to 4500 AF but can then be shared with Middle Park's 3000 AF of storage.

e. Learning by Doing is akin to adaptive management in that conditions of the resources, as they unfold in the future, will be analyzed and the enhancements offered will be applied to address those conditions. It keeps the determination as to what may be a benefit from being static and instead being active as to condition presented. There is a set membership on the management team with advisory team members anticipated. All members are committed to the process for perpetuity and cannot disengage. This allows for a partnership in making appropriate decisions, with no finger pointing. Denver and Northern are both on the management committee. A consensus as to how the water and money resources is the method of decision, but if a consensus cannot be reach in any given year, Grand County will determine how the water resource will be applied that year.

The WGFP Final EIS proposes mitigation for impacts of the 2012 WGFP that were identified in the EIS process. Comments submitted to the Corps and the Reclamation on the 2012 WGFP DEIS and Final EIS question whether the proposed mitigation is adequate to address the new impacts to the Colorado River, Grand Lake, and Willow Creek. The County received copies of those concerns. They are part of the record of this proceeding and will be introduced at the public hearing.

- The WGFP IGA provides a firm yield to Middle Park and describes how that firm water will be delivered. Middle Park's current yield of 3000 AF is not firm and is subject to the same non-reliance as the original Windy Gap Project.
- Public access and protection of open space.

- There will be a pump fund established for the Meadow Pumpers above Kremmling to assist with repair and replacement of pumps.
- A flow measuring fund will be established, however if not used in ten years, will be split between the Subdistrict and Learning by Doing.
- The Subdistrict's Jasper Water rights will be abandoned.
- Future water acquisition, appropriation and development of projects in Grand County are curtailed unless approved by Grand County and the River District.
- Shoshone outage protocol is included for the Subdistrict.
- Participation in Learning by Doing.
- Study of a bypass though Windy Gap Reservoir is provided.

List of Agreements to be executed together with WGFP IGA (closing documents)

- Agreement with Northern Water
- Grand Lake Clarity Agreement (known as Umbrella agreement)
- Appraisal Study now know as Alternates Development Report
- Processed Materials Agreement
- Windy Gap Decree
- Grand County RICD Stipulation
- Learning by Doing Cooperative Effort
- Green Mountain Reservoir Administration
- Contracts for Delivery of Water to Grand Valley
- Guidelines for Meadow Pumpers Fund
- Guidelines for Measuring Devices Fund
- Form of Easement for Access for Telemetry
- Agreement Among Middle Park, Grand County and River District on Operating and Administering Water Apportionments and Carryover Balances
- Amendatory Contract (Carriage Contract)
- Side letter from Subdistrict to River District re: no opposition to use of WG water for uses incidental to irrigation such as fish screen, fish ladder, etc.

DESCRIPTION OF THE PROPOSED 2012 WINDY GAP FIRING PROJECT WITH COMPARISONS TO “NO ACTION”

The Subdistrict has requested that the original Windy Gap 1041 Permit remain in effect with no changes as a vested right regardless of the outcome of the 2012 WGFP 1041 permit, however it also states that if the 2012 WGFP Permit conflicts with 1980 Windy Gap Permit, the 2012 WGFP provisions will control. This request raises legal issues that will be evaluated during the course of permit hearings. The County Attorney will consider and respond to the relationship between the two permits and advise the Permit Authority.

PREFERRED ALTERNATIVE (CHIMNEY HOLLOW)

The Subdistrict acting by and through the Windy Gap Firing Project Water Activity Enterprise, has applied for a permit utilizing Grand County's regulations of Areas and Activities Designated as Matters of State Interest (1041) for the 2012 WGFP. The Final EIS for the 2012 WGFP identifies the relationship with the original Windy Gap EIS and the 2012 WGFP EIS in section 1.4.2.2 on page 1-7. This section states:

The proposed Firing Project would not exceed the average annual diversion of 56,000 AF evaluated in the 1981 EIS and ROD or any other diversion-related limitations or water rights.

The Windy Gap Project has not met the firm yield expectation (56,000 AF average annual yield) of the Subdistrict nor the original participants. On average, the project has had a shortfall of 30,000 AF on an average annual basis. The 2012 WGFP proposes to firm 30,000 AF with the construction of a 90,000 AF. Chimney Hollow Reservoir, which is the **preferred alternative** identified in the Final EIS for the project. In order to provide for an additional annual firm yield of 30,000 AF, a storage reservoir of three times that capacity must be constructed.

Because Windy Gap must rely on space in Granby Reservoir and delivery capability of the C-BT Project through the Adams Tunnel, there has been many times when delivery and space available for Windy Gap water was not possible, especially in wet years. The original Windy Gap Project was estimated to delivery about 48,000 AF of firm yield following conveyance and evaporation losses (shrink) and allocations to Middle Park Water Conservancy District (3000 AF). Each Windy Gap participant was entitled to 1/480th share (units) of the annual yield which was expected to provide 100 AF per year per unit. According to the Final EIS for the Windy Gap Firing Project (WGFP Final EIS) between 1985 and 2004, Windy Gap was only able to deliver an average of less than 10,000 AF per year or 20 AF per unit. (See Section 1.5.2, WGFP EIS).

NO ACTION ALTERNATIVE

The Final EIS for the 2012 WGFP contains five alternatives. The preferred alternative is Chimney Hollow Reservoir. The National Environmental Policy Act (NEPA) requires that a project proponent also analyze a “no action” alternative. Under the “no action” alternative, Reclamation would not approve the connection of the WGFP facilities (Chimney Hollow or alternate reservoirs) to C-BT facilities.

The Subdistrict would maximize the delivery of Windy Gap water to participants under existing agreements between Reclamation and the Subdistrict (Carriage Contract). Participants would seek to maximize their delivery of Windy Gap water using existing facilities, but would be limited by the Carriage Contract. Continued operation and delivery of the Windy Gap water would not require NEPA compliance or a permit from the Corps, but if the City of Longmont decided to enlarge Ralph Price Reservoir to firm its Windy Gap water, it is likely to result in a discharge to a regulated water of the U. S., which is subject to Corps permitting requirements and other NEPA compliance (EIS. P.2-15 and 2-17).

Table ES-2 (p.ES11) provides the average annual changes in the Colorado River flow and diversions by alternative. Of particular interest are the existing conditions, Alt. 1 which is the “no action” alternative and Alt 2 which is the preferred alternative.

On average, the project has diverted 36,532 AF since it became operational. It would anticipate delivering on average 46,084 AF if permitted for the preferred alternative. The “no action” alternative would produce 43,573 AF of average annual diversions. This equates to an 8% (12,000 AF) decrease in flow below Windy Gap for the “no action” alternative and 14% (21,000 AF) decrease for the preferred alternative. Another way of looking at this is that an increase of 7000 AF of diversions would occur for the “no action” and 9500 AF for the preferred alternative.

Table ES-2. Average annual changes in Colorado River flow and diversions by alternative.

Alternative	Colorado River below Granby Reservoir		Windy Gap Diversions		Colorado River below Windy Gap		Colorado River below Kremming	
	AF	%	AF	%	AF	%	AF	%
Existing Conditions	59,385	—	36,532	—	151,358	—	701,801	—
Alt 1 – No Action	55,345	-7	43,573	+19	138,914	-8	689,357	-2
Alt 2 – Proposed Action	50,220	-15	46,084	+26	130,075	-14	680,512	-3
Alt 3	52,071	-12	48,052	+32	130,370	-14	680,807	-3
Alt 4	52,091	-12	47,997	+31	130,453	-14	680,890	-3
Alt 5	51,903	-13	48,483	+33	129,681	-14	680,118	-3

The projected increases for the two alternatives are more fully understood if compared to Table 3-2 (p. 3-11 and 3-12). Actual deliveries from 1985 – 2008 were 14,865 AF average annual diversions. For the period from 2001 – 2008, average annual diversions were 27,447 AF. The largest annual diversion was 64,200 AF in 2003 and the smallest being zero. The majority of the diversions to date have occurred in May and June with five years showing small diversions in April. There is only one diversion in the time period that occurred in July and that was 2276 AF in 1985.

Table 3-2. Historical monthly Windy Gap diversions (AF) at Windy Gap Reservoir.

Year	April	May	June	July	Total
1985	0	488	0	2,276	2,764
1986	0	0	0	0	0
1987	0	3,730	0	0	3,730
1988	0	0	19,966	0	19,966
1989	0	0	4,036	0	4,036
1990	0	4,980	9,612	0	14,592
1991	0	0	19,303	0	19,303
1992	0	11,213	10,683	0	21,896
1993	254	11,372	10,116	0	21,742
1994	0	8,336	2,448	0	10,784
1995	0	13,620	441	0	14,061
1996	0	0	0	0	0
1997	0	0	0	0	0
1998	0	0	0	0	0
1999	0	0	0	0	0
2000	0	0	0	0	0
2001	58	10,300	3,892	0	14,250
2002	0	0	0	0	0
2003	6,166	27,592	30,442	0	64,200
2004	0	327	0	0	327
2005	3,697	18,103	19,520	0	41,320
2006		14,858	10,163		25,022
2007	7,079	21,140	12,714		40,933
2008	3,128	19,315	11,080		35,523
Minimum	0	0	0	0	0
Maximum	7,079	27,592	19,520	2,276	64,200
Average 1985-2008	886	6,891	6,851	108	14,685
Average 2001-2008					27,447

CUMULATIVE EFFECTS (with and without reasonably foreseeable actions)

There has been concern raised with regard to the cumulative effects of the 2012 WGFP when coupled with reasonably foreseeable future actions. One such future action that is of concern is the Moffat Firming Project which will increase diversions from the Fraser River of 14,000 AF on an average annual basis. Table 3-20 (p.64 EIS) provides a summary of the average monthly depletions and flows in the Colorado River at Windy Gap for cumulative effects for the model period. Line #3 is for depletions for “no action” including reasonable foreseeable actions and Line #4 is for the preferred action including reasonable foreseeable actions. The reasonably foreseeable actions include Grand County growth and the Moffat Project.

Table 3-20. Summary of average monthly depletions and flows in the Colorado River at Windy Gap for cumulative effects for the WGFP model study period from 1950 through 1996 (AF).

Line #	Description	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	5yr	Annual
	Native Flow at Windy Gap	13,194	9,371	8,184	7,784	6,836	8,657	28,180	113,006	172,575	73,454	26,816	14,848	1,229,260
2	Flows at Windy Gap with Existing Conditions Diversions	5,772	5,456	4,750	4,308	4,205	6,076	11,869	23,671	91,472	25,860	8,644	4,917	157,401
3	Depletions for No Action (Alt 1) Including Reasonable Foreseeable Actions	111	209	262	242	183	154	-19	1,963	8,786	7,611	1,896	389	21,787
4	Depletions for Proposed Action (Alt 2) Including Reasonable Foreseeable Actions	135	185	262	242	183	154	-28	3,630	15,545	6,989	1,963	614	29,870
5	Depletions for Alternative 3 Including Reasonable Foreseeable Actions	175	197	262	242	183	154	-28	3,773	13,894	8,762	2,161	483	30,138
6	Percent of Native Flow Remaining Under Alternative 1	43%	56%	55%	55%	59%	68%	43%	19%	25%	25%	25%	31%	28%
7	Percent of Native Flow Remaining Under Alternative 2	43%	56%	55%	55%	59%	68%	43%	18%	21%	26%	25%	29%	26%
8	Percent of Native Flow Remaining Under Alternative 3	42%	56%	55%	55%	59%	68%	43%	18%	22%	23%	24%	30%	26%

“Model results indicate that the percentage of native flows remaining after the various depletions ranges from less than 20% in May to about 60% in March under all alternatives.” (EIS p. 3-63).

Tables 3-21, 3-22 and 3-23 in the EIS (p. 3-65, 3-66, 3-67) detail the diversion amounts at key location during average, dry and wet years under the “no action”, preferred and Dry Creek/Rock Creek scenarios. For example, at the confluence of the Fraser and Colorado Rivers this is what would be expected for cumulative effects:

Average Year

Existing conditions	No Action	Preferred
91,025 AF	79,729 AF (-12%)	79,714 AF (-12%)

Dry Year

35,432 AF (-13%)	30,787 AF (-13%)	30,787 AF (-13%)
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Wet Year

178,477 AF	156,645 AF (-12%)	156,715 AF (-12%)
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There has been concern about the cumulative effects of the 2012 WGFP when coupled with the proposed Moffat Project. This question was one posed in the Planning Commission review of the 2012 WGFP. The information from the modeling work is directly out of the EIS in order to provide a more complete picture of what could occur if the future follows the past.

DISCUSSION OF COMPLIANCE OF GRAND COUNTY'S REGULATIONS FOR AREAS AND ACTIVITIES DEEMED AS MATTERS OF STATE INTEREST

According to Grand County's Regulations for Areas and Activities Deemed as Matters of State Interest, Chapter 5, Municipal and Industrial Water Projects, section 5-103 Definitions:

"Municipal and industrial water project" means a system and all integrated components thereof through which a municipality or industry derives its water supply from either surface or subsurface sources. This includes a system and all integrated components thereof through which a municipality or industry derives water exchanged or traded for water it uses for its own needs".

The source development area for the project means, "that geographic area or region wholly or partially within this County which will be developed or altered in connection with the development of a municipal or industrial water project as these terms are defined in §5-102(3).

*§5-102(3) is in the Purpose and Intent for the project, and reads as follows:
"Insure that municipal and industrial water projects are developed in such a manner so as not to pollute rivers, streams, lakes, reservoirs, ponds and aquifer recharge areas within the source development area".*

Section 1-305 Approval or Denial of Permit Application

- (1) If the Permit Authority finds that there is not sufficient information concerning any material feature of a proposed development or activity, the Permit Authority may deny the application or it may continue the hearing until the additional information has been received. However, no such continuance may exceed sixty (60) days unless agreed to by the applicant.*
- (2) The Permit Authority shall approve an application for a permit to engage in development in an area of state interest or development for the conduct of an activity of state interest if the proposed development or activity complies with the provisions of the regulations governing such area or activity. If the proposed development does not comply with such regulations, the permit shall be denied.*
- (3) The Permit Authority conducting a hearing pursuant to this section shall state, in writing, reasons for its decision and its findings and conclusions.*
- (4) The Permit Authority shall reach a decision on a permit application within one hundred twenty (120) days after the completion of the permit hearing, or the permit shall be deemed approved.*

Review of the EIS for the 2012 WGFP, associated information, studies and permits included in the application packet and other pertinent information, along with public testimony will determine if the source development area will be adequately protected given the additional diversions and method of storage and transfer contemplated.

5-306 Approval of Permit Application. A permit application for development of a municipal or industrial water project shall be approved if the proposed development complies with the following criteria (County criteria is in **bold** type):

(a) The need for the proposed water project can be substantiated.

The application substantiates the need for the project at pages 8-14, and 53 of the application. A need that is not defined in the Purpose and Need but is disclosed on page 19 of the application causes concern.

New industrial uses such as “fracking” on the front range can expand the need for water without limitation thereby increasing the likelihood of future diversions from Grand County. The draft WGFP IGA (IV. J. 2.) attempts to address this concern by stating that Grand County “*will not allow Subdistrict or the WGFP Enterprise, without prior express written consent of Grand County and the Colorado River Water Conservation District to acquire any existing water rights in Grand County, construct additional water supply facilities in Grand County, appropriate new water rights in Grand County, or appropriate any new water rights in Water Division No. 5 that will result in depletions of water from Grand County*”.

RECOMMENDATION: This criterion 5-306(a) appears to be satisfied.

(b) Assurances of compatibility of the proposed water project with federal, state, regional and county planning policies regarding land use and water resources.

1. Identified Plans. The application lists the applicable plans, permits, and approvals at page 53 of the application:

- Clean Water Act 404 permit
- CDPHE 401 certification
- Fish and Wildlife Mitigation Plan, C. R. S. § 37-6-122.2
- Water Conservancy Act, C.R.S. § 37-45-101 et seq.
- Clean Water Act 208 Plan (NWCCOG 208 Plan)
- Grand County 1041 Permit
- Grand County Stream Management Plan.

The proposed WGFP IGA is intended to satisfy section 37-45-118(1)(b)(II) of the Water Conservancy Act. *See* WGFP IGA Section VI F. In order to make that determination, the WGFP IGA must be enforceable and the Subdistrict must be able to comply with all components of the WGFP IGA.

The Fish and Wildlife Mitigation Plan has been approved by the Colorado Wildlife Commission along with The Fish and Wildlife Enhancement Plan. These plans cover both the 2012 WGFP and the Moffat Project.

As a matter of federal law, the 2012 WGFP cannot be constructed until the 404 permit has been issued by the Corps of Engineers and Colorado Water Quality Control Commission has issued the 401 Certification.

The Stream Management Plan will guide the Learning by Doing process in which the Subdistrict will participate as required by the WGFP IGA.

2. Other Plans Not Included in Application. The following applicable plans, permits and approvals are not identified in the application:

Grand County Master Plan. Grand County Master Plan was last updated in 2011. This plan had broad community input and support. The Plan contains seven elements which are considered the core of the plan. Those elements include Natural Resources; Land Use – Growth and Development, Development: the Build Environment; Community and Public Facilities; Transportation; Economic Base; and Administration & Process. Each section contains a number of subsections. Grand County's 1041 process incorporates these Master Plan provisions into the permit process through reference to plans in 5-306b. Sections of the Master Plan relevant to this application are Natural Resources, Land Use-Growth and Development, Community and Public Facilities, and Economic Base.

Natural Resources

Natural Resources include several subsections, but those under which this application will be reviewed are wildlife, wetlands, and water resources, and visual resources:

Wildlife: The quality, integrity and interconnected nature of critical wildlife habitat in Grand County should be preserved and protected. In order to accomplish this goal, there has to be recognition of the economic, recreational, environmental and cultural importance of hunting, fishing, and wildlife watching in Grand County, and the minimization of impacts to critical wildlife habitat and/or corridors.

The 2012 WGFP application, and the WGFP IGA and closing documents, contains elements that would address these requirements along with the stream restoration and temperature requirement in the Fish and Wildlife Mitigation Plan. Participation in the Learning by Doing sustain these efforts for the future.

Wetlands: Provide for the long-term protection of wetland functions and values.

The 2012 WGFP application addresses wetlands, but does not address long term protection as could be associated with the stream depletions. There will be conditions recommended to address this goal under criterion (f).

Water Resources: The long term protection of water resources and water quality in Grand County is the goal.

This section includes working with entities and other parties to maximize water levels in the Colorado River and, other water bodies while exploring the feasibility of in-stream flows for environmental and recreational purposes, maintaining optimum flows in streams and rivers, working to retain and protect existing water rights for use in Grand County, and supporting projects that restore stream channels and natural conditions, and improve fish and wildlife habitat.

These goals could be met by the additional water for Grand County's use provided in the proposed WGFP IGA and through the endangered fish releases from Granby Reservoir. Also, protection of water rights in Grand County from future transbasin diversion by the Subdistrict and Northern, and restoration of stream channels through the approved State Fish and Wildlife Mitigation and Enhancement Plans, could help to achieve this goal. Participation in Learning by Doing would support this goal.

Visual Resources: Visual resources play a major role in the county's character, quality of life and economy. Recognition of the importance of visual resources by maintaining those resources to promote overall rural character, quality of life and the tourist and recreation based economy.

The 2012 WGFP could meet this goal with the WGFP IGA and closing documents which would continuation of work to improve the water clarity in Grand Lake, maintain lake levels for recreation, provide additional public access around Willow Creek and specify development of Subdistrict land through Grand County Rural Land Use Process.

Land Use, Growth and Development

Land Use, Growth and Development include several subsections, but those under which this application will be reviewed are Pattern of Development, Rural and Open Land Pattern:

Generally under all of the subsections mentioned, Grand County's goal is to direct development so as to preserve economic success by striking a balance between quality of life, preservation of the environment and the County's rural character.

The 2012 WGFP application and WGFP IGA with closing documents will require that future development of lands held by the Subdistrict would proceed under the Rural Land Use Process. The WGFP IGA provides water for the environment, restoration opportunities through the Fish and Wildlife Mitigation Plan, and lake level preservation. Through Learning by Doing, the Subdistrict and Northern participate in ongoing efforts to maintain the environment.

Community and Public Facilities

Community and Public Facilities include several subsections, but the one associated with this application is Recreation Facilities:

Recreation Facilities: Develop recreational resources within the county to meet the needs of all age and interest groups.

The WGFP IGA and associated documents requires the Subdistrict and Northern to remove their objections to the Recreational Instream Channel Diversion (RICD) that Grand County is pursuing. Additional water released for the endangered fish as well as Grand County environmental water will help preserve existing recreational resources.

Economic Base

Economic Base includes numerous subsections, but those appropriate to this review are Recreation & Tourism Based Industry and Natural Resource Based Industry.

Recreation and Tourism Based Industry: Encouragement and support of year-round recreation while making effort to retain Grand County's unique rural, western and scenic character that is so appealing to tourists.

The 2012 WGFP IGA and closing documents will help support the year-round recreation by providing water resources, a process for improving clarity in Grand Lake, maintaining lake levels, and protection of the rural, western and scenic character by committing to development of its properties under the Rural Land Use Plan.

The WGFP IGA also provides that the Subdistrict will arrange with Northern to allow for public access along Willow Creek, and the designated area is to be managed by the Colorado Parks and Wildlife or other agency approved by Northern. However, the public access could be revoked if Northern were to sell its property. If this provision is to be considered to address this requirement of the Master Plan, then the Subdistrict must provide a plan for how it would replace the value of the public access that would be lost if Northern sells its property and revokes the public access.

Natural and Resource Based Industry: Encouragement and support of natural resource based industry and renewal energy such that it compliments and/or enhances the County's rural character and natural setting and sustains quality of life for County residents.

The 2012 WGFP IGA and closing documents provide funding for irrigators above Kremmling to repair and replace pumps necessary to access agricultural water. The agricultural base of Grand County is essential to sustaining the quality of life for County residents.

Compliance with the Grand County Master Plan could be satisfied with the following conditions:

1. The WGFP IGA and closing documents are executed either in conjunction with any permit executed by the Permit Authority, or any permit issued by Grand County is

contingent upon execution of the of the WGFP IGA and closing documents and compliance with the WGFP IGA and closing documents.

2. The Subdistrict provide a plan for how public access will be compensated if the public access provided in the WGFP IGA were to be revoked due to the sale of the property by Northern.

Senate Document 80. The 2012 WGFP must comply with Senate Document 80. This is also a requirement of the WGFP IGA. The requirement to comply with Senate Document 80 also applies to the on-going operations of the C-BT.

Grand Lake is Colorado's largest natural lake and was conscripted into the C-BT Project as a conduit for water. Senate Document 80 provided assurances from the C-BT Project to both the East and West Slope. There are five primary purposes stated in Senate Document 80 under which the project must be operated. Those five purposes are:

To preserve the vested and future rights in irrigation.

To preserve the fishing and recreational facilities and the scenic attractions of Grand Lake, the Colorado River, and Rocky Mountain National Park.

To preserve the present surface elevations of the water in Grand Lake and to prevent a variation in these elevations greater than their normal fluctuation.

To so conserve and make use of these waters for irrigation, power, industrial development, and other purposes, as to create the greatest benefit.

To maintain conditions of river flow for the benefit of domestic and sanitary uses of this water.

2012 WGFP compliance with Senate Document 80 is covered in detail in Section 5-306(d), below.

Bureau of Land Management Resource Management Plan. The 2012 WGFP was considered to be included in the Wild and Scenic portion of the BLM Resource Management Plan and has been agreed to by all parties participating. Subdistrict will make a contribution to this effort as described in the WGFP IGA.

Arapahoe National Recreation Area Policies (ANRA) – The ANRA was created in 1978:

“...so as to Protect the area’s enduring scenic and historic wilderness character and its unique wildlife and to preserve the areas’ scientific, educational, recreational, and inspirational resources and challenges; and

So as to preserve and protect the natural scenic, historic, pastoral, and wildlife resources of the area and to enhance recreational opportunities.

Administration of the ANRA provides that

the Secretary shall administer the area in accordance with laws and regulations applicable to the national forests so as to protect recreation and enjoyment, conservation and development of the scenic, natural, historic and pastoral values; utilize and dispose of natural resources that will not impair the purposes for the recreation area; and manage for water quality.

The Secretary shall develop an overall management plan for the ANRA.

Compliance with the ANRA policies could be met with the provisions provided WGFP IGA and closing documents. If the U. S. Forest Service requires additional mitigation, these measures will be included in any permit issued by Grand County.

Amendatory Contract with the Bureau of Reclamation. The 2012 WGFP will require an amendment or new contract for the operation contemplated.

Northwest Colorado Council of Governments (NWCCOG). NWCCOG is the designated management agency for the State for the Areawide Water Quality Management Plan (208 Plan). NWCCOG’s review letter will be submitted into the record. In summary, the following is required for the 2012 WGFP to comply with the 208 Plan:

Policy 1 – Protect and Enhance Water Quality

Grand County must review and approve the monitoring plan used to verify compliance with the nutrient removal goal including the proposed agricultural nonpoint source nutrient control projects. The County should review and approve future mitigation measures intended to remove the remaining 2,785 kg/yr of total nitrogen, including the monitoring plan necessary to verify permanent removal of this additional load.

The applicant must commit to participating in the implementation of the proportional share of any measure to reduce clarity impacts identified through the Grand Lake Clarity MOU in order to offset the impact to Grand Lake clarity associated with WGFP pumping.

The proposed mitigation of temperature should not be limited either by the July 15 date or by the definition of WGFP pumping proposed in paragraph 2 under "MWAT chronic Threshold Exceedances – Reduction or Curtail of WGFP Pumping" on page 41 of the 1041 permit application.

Policy 2 – Water Use and Development

Temperature and Three Lakes water quality issues discussed under Policy 1 above apply under Policy 2 as well. Those project impacts must be mitigated to comply with Policy 2.

NWCCOG recommends that the Subdistrict provide and implement a monitoring plan for fish and aquatic invertebrates. The purpose of the plan would be to assess the benefits of the proposed habitat enhancements, additional flows provided in the WGFP IGA, the effect of increased flushing flows, and aquatic life trends associated with the MMI.

Policy 3 – Land Use and Disturbance

NWCCOG recommends the Subdistrict implement a monitoring plan to document potential degradation of riparian areas. The plan should include species inventory and photo documentation.

Policy 4 – Domestic, Municipal, and Industrial Water and Wastewater Treatment Facilities

WGFP would be in compliance with 208 Plan Policy 4.

Policy 5 – Chemical Management

This policy does not appear to apply to the aspects of the proposed WGFP project in Region 12.

Policy 6 – Management System

The proposed project is a nonpoint source pollution issue associated with hydrologic modifications. Grand Count is the 208 Management Agency with appropriate jurisdiction over the proposed project under the 208 Plan through its 1041 permitting

authority. The existing Windy Gap Project was permitted by Grand County. The proposed WGFP is a change in operations and facilities for that project and will therefore require a new or amended 1041 Permit. This approach complies with the 208 Plan Policy 6.

Colorado Parks and Wildlife. CPW's letter will be entered into the public record. In summary the letter supports the mitigation required by the Fish and Wildlife Mitigation Plan, CPW's securing of \$250,000 to study potential modifications to the Windy Gap Reservoir, support of the 10825 Endangered Fish Water which could address temperature, Learning by Doing effort, and the WGFP IGA and urge the participants to work to execute this agreement.

Additional Reviews:

No additional comments were received by the Colorado Department of Health and Environment.

RECOMMENDATION: *This criterion would be satisfied if the following conditions are met:*

1. The 2012 WGFP project requires federal and state approvals and cannot go forward without them. Consequently if the County issues a 1041 permit for the project, those permits and approvals will become attachments to Grand County permit, and any permit issued by the County will not become effective until all those permits are issued and Grand County is provided copies of same. Grand County will not enforce the State and Federal, but any violation of those permits will be considered a violation of any Grand County permit.
2. The Subdistrict must comply with the requirements of the 208 Plan as outlined in NWCCOG's letter dated July 6, 2012.
3. The County recognizes that Grand Lake water quality has been a problem for many years and additional pumping by the 2012 WGFP is likely to exacerbate the issue. One of the closing documents is a proposed agreement between Grand County, Reclamation, and Northern which requires all three entities to stay engaged in processes that would see Grand Lake meeting the State Water Quality Standard, which is currently set at 4 meters. Besides this agreement, there is also work proceeding between the three entities to move to the next step in the process for providing increased clarity in Grand Lake and Northern executing a supplemental repayment contract with Reclamation to finance this next step. Because Northern is not the applicant for this permit, it is imperative that the Subdistrict provide a method by which clarity issue addressed in the closing document (Grand Lake Clarity Agreement) is bound to any permit issued by Grand County. This condition is likely to be satisfied if any permit issued by Grand County is contingent on the execution of the Grand Lake Clarity Agreement. The WGFP IGA and closing documents are executed and made a part of any permit issued by the County.

4. The Subdistrict shall provide a plan for how public access will be compensated if the public access provided in the WGFP IGA were to be revoked due to the sale of the property by Northern.
5. If the U. S. Forest Service requires additional mitigation or information to comply with the policies of the ANRA, that mitigation and/or information will become part of any permit issued by Grand County.

(c) Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of storm water and sanitation systems shall be accompanied in a manner that will prevent the pollution of aquifer recharge areas.

The application describes efficient use of the water, recycling and reuse of water at pages 17-20 of the application. The Subdistrict also indicates that some of the water will be used for fracking in the oil and gas industry. Fracking water is typically injected into the ground and not reused or recycled.

Efficient use of water also is discussed in the Final EIS as well as specific mitigation required to guarantee efficient use is detailed in Table 3-164 (1b) of the Final EIS. One of the mitigation measures stated is the need for all project participants to have conservation plans prior to the delivery of water.

According to the 1041 application (at pg 18)

“ nine of the participants, Broomfield (City and County), Erie, Greeley, Evans, Fort Lupton, Central Weld, Lafayette, Little Thompson Water District, and Longmont have approved Colorado Water Conservation Board (CWCB) conservation plans since the passage of the Water Conservation Act of 2004 (Colorado House Bill 04-1365). Louisville anticipates completing its plan in 2012. Platte River is an industrial water user not covered by HB 04-1365, but implements measures for efficient use and reuses its water supply to extinction. As a component of the Water Conservation Act, project participants would update their conservation plans approximately every seven years”.

The application states, at pg 18, that the Subdistrict is a raw water provider and cannot enforce water conservation through its allotment contracts, but the mitigation in the EIS does not recognize that distinction. In order to meet the mitigation required, the Subdistrict will be need to verify that not only does every participant comply with the conservation plan requirement of the EIS as well as the Water Conservation Act, as currently in effect or which may be amended in the future, but also that each project participant updates their plans approximately every seven

years. The Subdistrict may have to amend its allotment contracts to comply with law and mitigation requirements.

The Subdistrict has stated that according to its policies, the project participants are allowed to sell or lease their shares (units). Because of the mitigation requirement for conservation as well as compliance with the Water Conservation Act, no sale or lease of participant shares to other municipalities will be allowed unless the new owner or lessee has a valid conservation plan in place and updates every seven (7) years as required.

The current participants own 440 of the 480 shares (units). The remainder is owned by some of the original Windy Gap Participants or other entities that have since purchased them. The City of Boulder and the Town of Estes Park collectively own 40 Windy Gap shares (units). These two Windy Gap participants are not part of the 2012 WGFP.

According to the EIS, (pg 1-3) delivery of 40 shares of water will be similar to current operation and may increase over time as demand grows. The EIS states "*the amount of water delivered to these entities will not be expanded or diminished by WGFP*".

The WGFP IGA reaffirms the 1980 and 1985 Agreements as they relate to volumetric limits and state that those limits apply to both the Windy Gap Project and the 2012 WGFP. To be clear, those limits, 90,000 AF of diversion in any one year, and not to exceed an average of 65,000 in any ten year running average, apply cumulatively to both projects and NOT to each one individually. The WGFP IGA also does not allow the expansion of the C-BT project storage with the combination of water stored in Chimney Hollow and Granby Reservoir. As previously discussed, the Subdistrict states that it can pump whatever water is in priority from the Colorado River, subject to storage capacity in Granby, as long as the amount of water transported through the Adams Tunnel is within the volumetric limits.

Any permit issued by Grand County should be clear that volumetric limits and their application to both the Windy Gap and 2012 WGFP participant's use of water is in compliance with the Windy Gap decrees and Colorado law.

There is no construction within Grand County so there will be no effect on storm water and sanitation systems or pollution of aquifer recharge systems.

RECOMMENDATION: This criterion would be satisfied if the following conditions are met:

1. Subdistrict shall provide the County with documentation of conservation plans for all municipal project participants prior to delivery of water through the 2012 WGFP, and that participants are complying with the Water Conservation Act with regard to updating the conservation plans every seven years.
2. Subdistrict shall provide written notice to the County when shares of the 2012 WGFP are sold or leased and verification that the new owner or lessee has complied with conservation requirements.

3. Within 30 days of acceptance of an approved 1041 permit, the Subdistrict shall provide the County with written documentation of how use of water for fracking satisfies this criterion.

4. Any permit issued by Grand County is subject to the volumetric limits of the WGFP IGA and the requirements of the 1980 Agreement or 1985 Supplement that may remain in effect if not changed by the WGFP IGA.

(d) Provisions to insure the proposed water project will not contaminate surface water resources.

The application, at p. 55, states that the 2012 WGFP water will not contaminate surface water resources as it will be transported through existing facilities. The County disagrees with this statement because the additional transport of water through the C-BT system will exacerbate the water quality in the Three Lakes (Granby Reservoir, Shadow Mountain Reservoir and Grand Lake) by increasing introductions of lower quality water from Windy Gap into Granby Reservoir, and increased diversions of particulate-laden water through Shadow Mountain Reservoir and Grand Lake. Although the Subdistrict has proposed mitigation of nutrient loading, no mitigation is proposed for the non-algal particulates.

The clarity in Grand Lake has been an issue since the C-BT Project began pumping. The first documented concern was in 1952 from the City of Loveland to the Bureau of Reclamation complaining about algae in its water supply after the Farr Pumping Plant began to transport water into the C-BT. Reporting on water quality from both east and west slopes continued intermittently until the late 1990's when a group of citizens around Grand Lake worked to heighten awareness and sought Grand County's support to rectify the loss of Grand Lake's scenic attraction as protected in Senate Document 80. For the last decade, there has been a concerted effort to bring the clarity in Grand Lake back to its pre-C-BT project clarity of 9 meters.

In 2006, Northern, Grand County, and several other entities began participation in the Nutrient Study for the Three Lakes System (Grand Lake, Shadow Mountain and Granby Reservoirs). A spin off from this study group is the Three Lakes Technical Committee which focuses primarily on west slope water quality. In 2006, it was thought that nutrient loading was the root cause of most of the water quality issues in the Three Lakes, including Grand Lake clarity, but years of additional study, monitoring and reporting have proven that nutrients are not the only cause of reduced clarity.

In 2008, the Colorado Water Quality Control Commission adopted two standards for clarity in Grand Lake: a narrative standard supporting "the highest level of clarity attainable, consistent with the exercise of established water rights and the protection of aquatic life", along with a numeric standard of 4 meter Secchi disk depth with 85% compliance in any given year for the months of July, August and September. The numeric standard becomes effective January 1, 2015.

Pumping from Granby Reservoir to Shadow Mountain Reservoir, and subsequent water transfer to the east slope via the Adams Tunnel, causes decreased clarity in Grand Lake, as evidenced by stop-pump trials, water quality monitoring, and photographic records. Two two-week stop pump trials (2008 and 2009), as well as a seven-week stop pump in 2011 made possible by extremely high runoff and full storage all resulted in improved clarity: the 2011 "gift of nature" resulted in the best clarity in Grand Lake since the C-BT became operational.

Recent studies have identified non-algal particulate matter as being considerably more important to clarity than as nutrient loading. The source of the non-algal organic particulates is currently under investigation.

The Subdistrict is proposing that reductions in nutrient loading will come from a combination of wastewater treatment improvements to reduce point source nutrient loading above Windy Gap as well as land use changes that would reduce non-point source nutrient loading. Wastewater treatment plants above Windy Gap were evaluated to determine which, if any, treatment plants, would be capable of achieving the level of nutrient loading reduction required to meet the 1:1 (nutrient neutral) standard applied in the Final EIS. The Fraser Valley Consolidated Plant is the only one capable of meeting a portion of the reduction necessary. By financing improvements to the Fraser Valley Consolidated Plant, it is expected that 822 kg/year of Nitrogen and 774 kg/year of Phosphorus will be removed. The cost of the plant improvements is estimated to be \$3.3M with increased annual operating costs ranging from \$120,000 to \$230,000/year.

Part of the non-point source reduction proposed by the Subdistrict will come from two ranches in the Willow Creek drainage above Windy Gap. The 265 acre E-Diamond H Ranch is currently irrigated and periodically fertilized. To reduce nutrient discharges from run-off, the ranch will no longer be irrigated or fertilized. It is estimated that this will reduce total nitrogen loading by 685 kg/year and total phosphorus by 117 kg/year. C Lazy U Ranch would implement best management practices on 300 acres by a reduction in chemical fertilizer application, use of vegetated buffer strips adjacent to Willow Creek and stream bank restoration to reduce erosion. This action is estimated to produce a reduction of total nitrogen loading of 1,836 kg/year and 237 kg/year of total phosphorus loading.

Even with these actions, the Subdistrict notes that the total nitrogen loading must be reduced by another 2,785 kg/year to be nutrient-neutral. The Subdistrict is proposing that the additional reduction in total nitrogen loading will be met prior to construction of the 2012 WGFP in cooperation with Reclamation and Corps of Engineers. Grand County must be provided with documentation of how the Subdistrict intends to meet the additional reductions in nitrogen.

According to the Final EIS (Table ES-6, p. ES16), and the application (p. 24 and 25) manganese and chlorophyll- α are predicted to increase, and dissolved oxygen (DO) would decrease in the entire Three Lakes System. The lower DO levels would contribute to continued exceedance of manganese standard in the Three Lakes. Secchi disk depth would decrease in Grand Lake.

In addition to increasing nutrients, a report titled *2010 Water Quality Report Flowing Sites* prepared by Northern identifies higher conductivity and total organic carbon in flows pumped from Windy Gap, meaning that dissolved constituents in additional pumped flows are likely to increase under the 2012 WGFP. A report titled *Factors Controlling Transparency in Grand Lake, Colorado* prepared for Three Lakes Technical Committee documents that non-algal particulates are also a contributing factor to reduced water quality in Grand Lake. While this information was not available in time for publication of the Final EIS, it is also not mentioned or provided in the application. It is relevant to the impact of the 2012 WGFP.

The application states that the 2012 WGFP impact on particulate transfer is not currently known but that the flow increase through the C-BT project is relatively small when compared to the C-BT diversions. To date, the amount of Windy Gap water than has been pumped through the C-BT system is relatively small, but if the 2012 WGFP is approved, this will no longer be insignificant when compared to the C-BT overall volume.

The application further states that it is possible that the particulates are substantially moved during the "first flush" of pumping and/or natural runoff into the lakes, in which case 2012 WGFP would have no additional effect (at pg. 30 of the application). These statements are not supported by the conclusions in *Operational and Water Quality Summary Report for Grand Lake and Shadow Mountain Reservoir: 2010* prepared for Northern, Reclamation, and Grand County, which shows that turbidity is highest in Grand Lake at high rates of reverse flow through Shadow Mountain Connecting Channel, and that many of the native inflows to the Three Lakes are pristine even in high flow conditions.

The Subdistrict has identified other ongoing processes related to Grand Lake water clarity on page 29 of the application:

Reclamation, Grand County, and Northern Water have entered into a separate MOU to finance and begin an Appraisal Study, the first step in Reclamation's Planning Process (Reclamation has since determined that the Planning Process is not the appropriate avenue in which to contemplate corrections to the C-BT Project, and this report has been retitled the Preliminary Alternatives Formulation Report);

Grand County, Reclamation, and Northern Water are continuing to move ahead with Reclamation's process by participating in a Contributed Funds Act Agreement for executing a C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study; and

Grand County and Northern Water have agreed to enter into the Memorandum of Understanding, known as the Grand Lake Clarity project.

The C-BT Project is a Reclamation Project and it is imperative to solicit its cooperation in addressing the Grand Lake clarity issue. The Memorandum of Understanding known as the Grand Lake Clarity project must also gain the approval of the Reclamation, and the draft agreed to by Grand County and Northern has been sent to Reclamation, hopefully for approval and execution. Reclamation has stated it is reviewing the document. It is also working on submitting a Supplemental Repayment Contract to Northern for partial funding of the next step.

The application, at pg 55, states that "Although not specifically related to the WGFP, Northern Water and Grand County have agreed to enter into an agreement with Reclamation (Grand Lake Clarity MOU) to identify causes and potential solutions to Grand Lake clarity issues". Grand County does not agree that clarity is not related to the 2012 WGFP because the FINAL EIS discloses that Secchi disk depth will be reduced.

RECOMMENDATION: This criterion 5-306(d) would be satisfied if the following conditions are met:

1. The 1041 permit should be contingent upon the execution of and compliance with the Clarity Project MOU and the C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study are executed along with the supplemental repayment contract.
2. Prior to the beginning of construction for Chimney Hollow Reservoir, Grand County must be provided with a copy of an executed agreement between the Subdistrict and the wastewater treatment provider(s) who will be contracted with to remove some of the nutrient loading. This agreement must include the cost of improvements required plus whatever operation and maintenance costs the provider(s) require for the future.
3. The Subdistrict shall submit the Nutrient Reduction Plan to Grand County for review at the same time it is submitted to Reclamation and the Corps but no later than the execution of the WGFP IGA and related documents and agreements.
4. The Subdistrict's monitoring plan must be robust enough to assure that nutrient loading from the 2012 WGFP for total nitrogen and total phosphorus are adequately reduced to meet the 1:1 level; that manganese, mercury, and chlorophyll a do not increase; that DO does not decrease; and that Secchi disk depth does not decrease in Grand Lake due to the operation of the 2012 WGFP. The monitoring plan shall include a schedule for monitoring and reporting. Grand County must be included in all reporting. The project must be operated in compliance with the Nutrient Reduction Plan and monitoring plan.

(e) The proposed water project is capable of providing water pursuant to standards of the Colorado Department of Health.

The application, at pg 55, states that the 2012 WGFP provides raw water to a number of municipal users. The water will be treated by those end users as required by Colorado law.

RECOMMENDATION: This criterion appears to be satisfied.

(f) The proposed diversion of water from the source development area will not decrease the quality of peripheral or downstream surface and subsurface water resources in the source development area below that designated by the Colorado Water Quality Control Division on January 15, 1974 and effective June 19, 1974 or below stricter standards subsequently adopted.

Granby Reservoir is currently on the State of Colorado's 303(d) list for impaired waters due to mercury. This likely occurs from atmospheric deposition from coal fired power plants. The application, at pg 55, states that the 2012 WGFP does not affect this impairment. As with manganese (p. 25 app.), lower dissolved oxygen (DO) levels would contribute to continued exceedance of the mercury standard in Granby Reservoir.

Sections of the Colorado River are also on the Colorado Water Quality Control Commission 303(d) list for existing temperature exceedances. In Grand County this includes the mainstem from Granby Reservoir to the where the Colorado River leaves Grand County (this exceedance extends to the Roaring Fork River). Exceedances are especially critical in the reach from Windy Gap to the Williams Fork where chronic and acute temperature standards are being exceeded especially during the summer months.

The 2012 WGFP is predicted to exacerbate these exceedances of temperature standards. The federal Clean Water Act prohibits a permitted project from causing or contributing to the violation of a water quality standard. Mitigation for the impacts of the WGFP on temperature has been proposed in the Fish and Wildlife Mitigation Plan approved by the Colorado Wildlife Commission. The Army Corps of Engineers may add additional requirements or adopt the mitigation proposed in the State plan.

According to the State Fish and Wildlife Mitigation Plan, the Subdistrict, working with Denver Water, will install, operate and maintain two continuous real time monitoring stations on the Colorado River, one at Windy Gap gage and one upstream of the confluence of the Williams Fork River. The Fish and Wildlife Mitigation Plan provides that the Subdistrict will implement the following mitigation for temperature:

Temperature Thresholds: The threshold temperatures will be the following, as measured at the temperature monitoring stations identified above:

MWAT Chronic Threshold: 18.2°C (64.8° F), based on the Water Quality Control Commission

current Maximum Weekly Average Temperature (MWAT) Chronic Standard

DM Acute Threshold: 23.8°C (74.8° F), based on current Water Quality Control Commission Daily Maximum (DM) Acute Standard.

Mitigation for MWAT Chronic Threshold Exceedances – The Fish and Wildlife Mitigation Plan proposes that for the period after July 15th of each year:

At such times as the Weekly Average Temperature (WAT) exceeds the MWAT Chronic Threshold, the Subdistrict will reduce or curtail WGFP pumping at the Windy Gap diversion to the extent necessary to maintain temperatures within the MWAT Threshold. Reduced pumping may not be sufficient to maintain temperatures below the threshold.

The Fish and Wildlife Mitigation Plan defines “WGFP pumping” as “pumping that occurs at such times as the Northern Colorado Water Conservancy District determines, based on its most probable forecasts of inflows to Lake Granby, that a spill of water from Lake Granby is reasonably foreseeable.” All other pumping will be considered to be for the original Windy Gap Project.

Nonetheless, no project can cause or contribute to a violation of a water quality standard.

What this limitation means is that the Subdistrict will not reduce or curtail exceedances of the MWAT unless 2012 WGFP is pumping, and whether WGFP is pumping will be based on whether Northern forecasts that a spill is probable from Lake Granby. However, as stated above, **no project can cause or contribute to a violation of water quality standards.** Therefore, any violation of this standard, whether 2012 WGFP or original Windy Gap project is operating, pumping must be curtailed to not exceed the temperature standards.

Mitigation for DM Acute Threshold Exceedances - The Fish and Wildlife Mitigation Plan proposes that:

“At such times as the Daily Maximum temperature is within 1°C of the DM Acute Threshold, the Subdistrict will reduce or curtail pumping for the original Windy Gap Project or the WGFP at the Windy Gap diversion to the extent necessary to maintain temperatures within the DM Threshold. “Reduced pumping may not be sufficient to maintain temperatures below the threshold. In the future, the 1 degree buffer may be altered, based on experience, to maintain compliance with the DM Threshold.”

According to the Fish and Wildlife Mitigation Plan, the temperature mitigation measures will be suspended when there is “no material causal relationship between Windy Gap Project or Windy Gap Firing Project operations and any exceedance of the MWAT Chronic threshold or DM Acute threshold at the monitoring stations identified above.”

The Plan defines a “material causal relationship” as “either an actual measureable impact on temperature using readily available monitoring technology or a modeled impact on temperature

that is not de minimus and is based on a computer model or studies accepted "by the Colorado Division of Wildlife."

This limitation is problematic because it leaves it up to the Division of Wildlife (now Parks and Wildlife) to make a judgment on impacts to water temperature. The proper entity for approving of such a model should be the Water Quality Control Commission. The Management Committee to the Stream Management Plan also should be consulted.

Other than the proposed mitigation, other actions could have a positive effect in the Colorado River below Windy Gap to reduce stream temperatures. The first is the 5412.5 AF of water for the Endangered Fish (10825 FONSI in application) that will be released from Granby Reservoir. According to the Programmatic Biological Opinion (Opinion) for the Endangered Fish, 5412.5 AF of water will be released for each of the east slope and west slope diversions. For the first ten years of the Opinion, Denver Water released for the east slope diverters and the River District for the west. The Opinion calls for a permanent source of water as Denver Water and the River District would not commit to releasing water after their committed period. The permanent source of 5412.5 AF of water for the east slope is from Granby Reservoir provided by Red Top Valley Ditch water owned by Northern. The west slope contribution will come from Ruedi Reservoir. If for some reason the endangered fish water is no longer required in the future, Northern, by separate agreement, has guaranteed this water for release to the Grand County environment for perpetuity.

As early as 2013, this 5412.5 AF of water could be released during the later part of the summer and early fall. If the U. S. Fish and Wildlife Service does not call for the water for the endangered fish, Grand County, through Learning by Doing, could call for the water for environmental purposes. When the water arrives at the confluence of the Blue River, it would be booked back into Green Mountain Reservoir for release at such time as the U. S. Fish and Wildlife Service call for the water.

Secondly, Grand County, through the proposed WGFP IGA, could have additional water as described in the WGFP IGA stored in Granby Reservoir to be used for the environment. This amount of stored water could be increased by sharing the 3000 AF of storage space with Middle Park. Again, through Learning by Doing, this water could be released to cool the water to help avoid temperature exceedances.

RECOMMENDATION: This criterion would be satisfied if the following conditions are met:

1. Installation and maintenance of real time temperature gauges. The Fish and Wildlife Mitigation Plan requires the installation of real time temperature gauges below Windy Gap Reservoir and above the confluence of the Colorado and Williams Fork Rivers. This installation will also be a condition to any permit issued by Grand County, but in addition, the Subdistrict must verify every spring, before the beginning of pumping, that these gauges are in good working order, that they remain so during the time of the year when the temperature standard is in place, and that they are replaced or repaired when necessary and timely to their need in reporting temperature.

2. Curtailment of Pumping in the Event of Threshold Exceedances. In addition to the proposed temperature mitigation in the Fish and Wildlife Mitigation Plan and other terms and conditions to address temperature that may be imposed as part of the 401 Certification or federal approvals for the WGFP, the Subdistrict shall not cause or contribute to temperature exceedances in the Colorado River below Windy Gap, at the points of measurement set forth in the Fish and Wildlife Mitigation Plan, when either the 2012 WGFP or the Windy Gap Project are pumping. **No project is allowed to cause or contribute to water quality violations.**
3. If the MWAT is exceeded, the Subdistrict shall immediately notify the County. Temperature mitigation may be suspended when there is no material causal relationship between 2012 WGFP or Windy Gap Firming Project operations. The determination of a causal relationship shall be based upon a model approved by the Colorado Parks and Wildlife, Grand County, and the Water Quality Control Division.
4. The delivery of 10825 endangered fish water from Granby Reservoir is an essential consideration in temperature reductions. The Subdistrict must participate in securing approval of the 10825 agreement and must arrange with Northern to do the same.

(g) The proposed development and the potential diversions of water from the source development area will not significantly deteriorate aquatic habitats, marshlands and wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitat, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreational areas, and unique areas of geologic, historic or archaeological importance.

Aquatic Habitat

The application states, at pgs 8, 37, 42-43 and 57, the greatest decrease in fish habitat in the Colorado River would occur from Windy Gap to Williams Fork River confluence with the greatest decrease in July and August. In this section there could be a decrease of 34% in the adult Rainbow population and 8% in the Brown Adult in August. Diversions, according to the modeling, would increase in August from 6 times in 47 years to 15 times in 47 years. Decreased habitat of up to 15% is predicted below Williams Fork for juveniles of both Rainbow and Brown Trout. No adverse impacts are expected for spawning.

The impacts predicted by diversions in August are stated to be infrequent in the application and offset by considerations in the Fish and Wildlife enhancement plan which includes habitat improvement below Windy Gap, additional water committed to Grand County for the environment and to be used through Learning by Doing as well as the 10825 endangered fish

water. However there is no way to know if these enhancements and improvements will actually address the loss of aquatic habitat and no mitigation has been proposed.

The Nehring Report, *Colorado River Aquatic Resources Investigation Federal Aid Project F-237R-18* identifies a relationship between hydrologic modifications and macro invertebrates. The report is based on current conditions and decades of transbasin diversion impacts to the Colorado River. The report ranks six significant issues that should be taken into account, according to Nehring, when considering the health of the Colorado River downstream of Windy Gap. They are 1. restoration of channel connectivity; 2. channel reconfiguration, stream power and flushing flows; 3. Sediment deposition and transport; 4. water temperature; 5. encroachment of rooted aquatic vegetation; and 6. whirling disease. Nehring concludes that the "two things that must be done if there is truly any hope of enhancement of aquatic ecosystem in the upper Colorado River in the future are a bypass channel and a major investment in stream channel reconfiguration for the Colorado River below Windy Gap Dam. Either one without the other will have virtually no chance of succeeding".

This report was not made public until after the Wildlife Commission hearing on the Mitigation Plan, but the State of Colorado Department of Natural Resources states it was considered by the Commission's staff when making its recommendation to the Wildlife Commission.

The Fish and Wildlife Mitigation Plan requires maintaining of lake levels (maintaining Granby Reservoir at 8250 elevation when prepositioning is in play), improved flushing flows from 450 c.f.s. for 50 hours to 600 c.f.s. for 50 hours, temperature mitigation, and nutrient reduction plan for Grand Lake water quality.

The Fish and Wildlife Enhancement Plan provides stream restoration from Windy Gap diversion to the lower terminus of the Kemp-Breeze Wildlife Area (segment). There are two sources of funding proposed for this restoration work. Denver Water (\$1.5M), Subdistrict (\$3M) and CDOW (\$0.5M) with a potential funding from Learning by Doing (\$1M – this is the swing money offered by Denver Water) for a total of \$6 million. Future funding sources include \$0.5 M from Denver Water, \$1M from Subdistrict for an overall total of \$7.5 M. A plan has yet to be developed for which sections of the segment will be included in the restoration.

In addition, the Subdistrict will provide \$250,000 to study methods for bypass of flows, sediment, and/or fish around Windy Gap Reservoir. This same offering is included in the WGFP IGA under Grand County's section.

While funds have been offered for a study of a possible bypass/bythrough, there continues to be concern. Many feel that it is already documented as to the effect of Windy Gap Reservoir, and that instead of a study to determine the effect, there should be a study as to how to rectify. To that end, there has been extensive discussion and negotiation occurring between State of Colorado Department of Natural Resources, Colorado Parks and Wildlife, Subdistrict, Grand County, River District, Middle Park, Trout Unlimited, and a group of landowners on the Colorado River below Windy Gap known as the Upper Colorado River Alliance (UCRA). This group is close to agreeing on a Scope of Work to proceed on a study of how to enact a

bypass/bythrough, and how, if combined with downstream restoration, the aquatic environment could be improved. This Scope of Work must also contain protection for the immediate downstream owners from Windy Gap, the Schmuck Family Trust. There is a possibility that this Scope of Work could be provided for Permit Authority consideration during the public hearing, but if not completed by the time of the hearing, staff feels it would be to the Permit Authority's benefit to have this document to consider during any future deliberations. Therefore, staff would ask that this be allowed.

If the Scope of Work and any funding agreement were to be agreed upon by the entities involved, the Subdistrict has offered to provide the \$250,000 to begin the process before any permits are issued or any other agreements are executed.

The bypass/bythrough was of extreme concern to the Planning Commission with all members but one stating that it needed to be done. A more indepth discussion of the Planning Commission review will be provided further in this certificate.

There are additional offerings in the WGFP IGA and closing documents that could also offset some the current conditions of the aquatic resource such as maintaining riparian habitat and temperature issues. The use of these resources would be guided by Learning by Doing.

- The 10825 endangered fish water released as needed by Grand County.
- The variable, transfer and end of year pumping opportunities for Grand County.

The Fish and Wildlife Mitigation Plan requires an increase in flushing flows from 450 c.f.s. for 50 hours, 1 out of 3 years, to 600 c.f.s., if at any time in the previous two years the flows have not exceeded 600 c.f.s for 50 hours. While this increase is an improvement, it is unknown if it will be sufficient.

Previous to the Windy Gap project, the median flushing flows May through June were 1145 and 1795 c.f.s. according to Grand County's Stream Management Plan (SMP) (p. CR4-7). The SMP recommends a **minimum** flow of 600 c.f.s. every other year. This flow is what was required by the Fish and Wildlife Mitigation Plan. However, 600 c.f.s. would only move spawning gravel and not larger cobble needed to maintain stream health. Channel maintenance flows are unknown and there is conflicting data around this issue.

When Windy Gap water is pumped into the C-BT project, Reclamation immediately applies a 10% "shrink" for evaporation and transportation loss. Grand County has always felt that the majority of the transportation loss is after the water exits Adams Tunnel and that evaporation losses on the west slope are much less than on the east slope. Grand County has requested Reclamation, in any decision for the Carriage Contract for the 2012 WGFP, to apply a shrink lesser than 10% to water stored on the western slope in the C-BT Project and not transported through the system to the east slope. The Subdistrict has requested the same consideration for its water stored on the west slope. If this is granted, the Subdistrict could gain water to the project.

If the Subdistrict were to “bank” this additional water for a five year period, and in the 6th year provide a flushing flow of 1145 c.f.s. for 72 hours, it would not lose yield.

For example, a 5% “shrink” instead of 10% of 56,000 AF annual yield results in 2800 AF average annual or 1400 c.f.s. In five years, depending on conditions, this could more than provide the 1145 c.f.s. for 72 hours plus not interfere greatly with the County’s possible year-end pumping.

Flushing flows typically occur during the rising limb of the hydrograph. This is also the time when the 2012 WGFP as well as the Windy Gap Project are pumping so the reservoir is typically full. In 2011, there was one of the largest spring flows in recorded history. It moved spawning gravel below Windy Gap, moved large rocks and cobble, but did not dearmour the stream immediately below Windy Gap. It also did not move the spawning gravel from the inflow of the reservoir through the reservoir and out the outflow end to replace the spawning gravel that had moved there. Looking at Windy Gap today, one can see the piles of spawning sized gravel on the eastern side of Windy Gap that, in a natural scenario, would have moved and been deposited fairly equally throughout the river reach.

While this issue may well be included in the stream restoration efforts of the Colorado Parks and Wildlife Enhancement Plan, it must be recognized and planned to replace the spawning gravel immediately below the dam if future plans do not result in this occurring. Grand County believes this effort should be included in the plan that would be developed by Colorado Parks and Wildlife for stream restoration and feels that the Subdistrict should support this inclusion in that plan. As part of the Stream Team for that effort, the Subdistrict is in a position to do so.

RECOMMENDATION: This criterion pertaining to aquatic habitat would be satisfied if the following conditions are met:

1. The Subdistrict shall prepare and submit to Grand County a fish and aquatic invertebrates monitoring plan to determine if the enhancements for habitat restoration and additional water provided in the WGFP IGA would prevent the predicted loss of aquatic habitat. This information will assist the Learning by Doing effort in making decisions for the future of the aquatic habitat. The monitoring will continue as long as the Learning by Doing effort requires this information. If the bypass/through is constructed, this monitoring plan can be adapted as necessary to analyze the benefits of the bypass/through.
2. The original Windy Gap 1041 permit does not allow the creation of mud flats at Windy Gap Reservoir. If the bypass/through were to be implemented, mud flats are likely to be created at the time the channel would be operating. The Subdistrict shall prepare and submit to the County a plan for minimizing blowing dust. It might consider aquatic vegetation/revegetation to minimize against blowing dust.

3. If the Scope of Work and possible funding methods for the bypass/bythrough are agreed upon by the parties involved, then the study should commence immediately and the Subdistrict should provide the \$250,000 for this work.

4. If, during a five (5) year period, natural conditions meet or exceed flows of 600 c.f.s. as recommended by the SMP so that the Subdistrict is not required to make releases to achieve recommended stream conditions, then in the sixth year, Subdistrict shall provide a 1145 c.f.s. flow for 72 hours to move large cobble.

Marshlands and Wetlands

The application states, on pgs 22 and 23, that changes in stream stage is unlikely to adversely affect riparian and wetland vegetation along Colorado River and Willow Creek. However there are reductions in stream flow and bank full conditions that could affect riparian vegetation.

RECOMMENDATION: This criterion pertaining to marshlands and wetlands would be satisfied if the following condition is met:

1. Vegetation Monitoring Plan for Colorado River and Willow Creek. Subdistrict shall prepare and submit to the County for approval a monitoring plan for vegetation along the Colorado River and Willow Creek within thirty days of issuance of the ROD by the Corps of Engineers. Monitoring will continue until the LBD management team has determined that riparian and wetland vegetation has not been adversely affected, or has recovered due to mitigation or other efforts. At a minimum this monitoring must continue at least ten (10) years after commencing of pumping for the 2012 WGFP.

Groundwater Recharge Areas

The application states, at pgs 23 and 56, that there will be no effects on groundwater levels and groundwater quality.

RECOMMENDATION: This criterion pertaining to groundwater recharge areas appears to be satisfied.

Steeply Sloping and Unstable Terrain

The application states, at pg 23 and 56, impacts are considered minimal or non-existent and are not discussed. Most of this impact will be associated with the Chimney Hollow construction.

RECOMMENDATION: This criterion pertaining to slopes and terrain appears to be satisfied.

Forest and Woodlands

The application states, at pgs 23 and 56, impacts are considered minimal or non-existent and not discussed. Most of this impact will be associated with Chimney Hollow construction.

RECOMMENDATION: This criterion pertaining to forest and woodlands appears to be satisfied.

Critical Wildlife Habitat, Big Game Migratory Routes, Calving Grounds

The application states, at pgs 23 and 56, the only critical habitat affected is in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and are not discussed in the application.

The Watchable Wildlife Area associated with Windy Gap is the only wildlife habitat in Grand County that would be affected by the 2012 WGFP, and then only if the bypass/through is constructed.

Critical wildlife habitat affected is the Threatened and Endangered Fish in the 15 mile reach in the Grand Valley. The EIS has applied mitigation in the form of monetary compensation to address the Subdistrict's responsibility.

The 10825 water designated for the Threatened and Endangered Fish will be released from Granby Reservoir in the future, and be shepherded through Grand County and the Colorado River to the fish. This water will do double duty in Grand County by helping address temperature and flow issues and protecting aquatic habitat on its way to its main purpose.

The Northern District has provided guarantees, in the form of an agreement (closing document), that if the water for the endangered fish is not required in the future, that the 5412.5 AF will be perpetual to Grand County and will be used to protect and enhance the aquatic environment in Grand County. Northern has offered to provide Grand County with written verification of their ability to provide this water if not needed for the endangered fish.

There are no big fame migratory routes or calving grounds impacted by the 2012 WGFP in Grand County.

RECOMMENDATION: This criterion pertaining to Critical Wildlife Habitat, Big Game Migratory Routes, Calving Grounds appears to be satisfied if the following conditions is met:

1. The Northern Agreement (closing document) that provides the 10825 water must be executed and Northern must provide Grand County written verification that it is able to provide the water in perpetuity if no longer required for the endangered fish.

Migratory Ponds, Nesting Areas

The application states, at pgs 23 and 56, that the only migratory ponds and nesting areas affected are in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and not are discussed in the application.

As previously discussed, if the bypass/through becomes a reality in the future, the function of the Windy Gap Reservoir as a migratory pond and nesting area could be diminished for a certain part of the year. This is not addressed in the EIS as it was not considered as mitigation for the proposed project. If it were to be instituted, it would be considered an enhancement.

When Windy Gap was reviewed, the Subdistrict agreed to allow public access above the reservoir if it did not interfere with the operation of the facility. This has never occurred, but the Subdistrict did allow the construction of the Watchable Wildlife Area at the reservoir. This project was funded by Colorado Department of Transportation funds through a grant written by Grand County. It is a popular area and enjoyed by the public in viewing many varieties of waterfowl. The type of variety of waterfowl could change with a bypass/through and that could be an issue with some people, however, there might also be different types of wildlife to view when the reservoir is drawn down to accommodate the bypass/through.

Changes in variety of number of water fowl associated with re-establish a channel through the reservoir shall not be deemed a violation of the County's 1041 regulations.

The loss of any nesting areas and the function of Windy Gap as a migratory pond would be minimal due to the proximity of the Three Lakes area, Williams Fork Reservoir, Wolford Mountain Reservoir and the migratory bird pond established on the Division of Wildlife Kemp/Breeze Units below Parshall.

RECOMMENDATION: This criterion pertaining to migratory ponds and nesting areas appears to be satisfied.

Habitats for Rare and Endangered Species

The application states, at pg 57, that the only habitats for rare and endangered species affected are in the 15-mile reach of the Colorado River near Grand Junction. Impacts in Grand County are considered minimal or non-existent and are not discussed in the application.

The endangered fish in the 15 mile reach of the Colorado River above Grand Junction are addressed in the EIS. Mitigation has been established in the form of a monetary contribution. This mitigation meets the requirements of the Programmatic Biological Opinion for the fish. The delivery of water from Granby Reservoir also meets the requirements of this opinion.

RECOMMENDATION: This criterion pertaining to rare and endangered species appears to be satisfied.

Public Outdoor Recreational Areas

Please see section (b) and (d) of this certificate.

Areas of Geologic, Historic or Archaeological Importance

The application states, at pgs 30 and 56, those impacts are considered minimal or non-existent and are not discussed in the application.

There is no deterioration of unique areas of geologic, or archaeological importance associated with the 2012 WGFP in Grand County. Any such impacts could be associated with the construction of Chimney Hollow Reservoir.

However, historic irrigation could be affected by the 2012 WGFP. The importance of irrigation to the County is documented in a report prepared for Grand County by Coley Forrest documenting the impacts of water diversions on the County. Water levels are predicted to decrease 4 inches to 1 foot due to the 2012 WGFP. Although there have been several past agreements on the repair and maintenance of the pumps, the Subdistrict is providing additional funds to further compensate the irrigators for pump repairs and replacement, but this does not address the access to water from a drop in flow.

RECOMMENDATION: This criterion pertaining to areas of historic importance would be satisfied if the following condition is met:

1. Plan for Access to Headgates. Prior to execution of the WGFP IGA, the Subdistrict shall submit to Grand County for approval a plan for regular maintenance of the rock structures above each pump site for the irrigators above Kremmling (defined in the WGFP IGA) that allows higher water to be captured and held so the pumps can reach the irrigation water more effectively.

GRAND COUNTY PLANNING COMMISSION REVIEW

Under Grand County's 1041 Regulations, the Planning Commission is not included as a recommending body. However, the Permit Authority wanted to have input from this group, which is representative of the citizenry in the county. The Planning Commission was provided with a staff certificate for a courtesy review of the proposed project. The Planning Commission reviewed the proposal on July 11, 2012 and recommended denial of the application.

There were members of the public present who also provided testimony to the Planning Commission. The attorney for Trout Unlimited as well as the attorney for UCRA both testified. While they felt there had been good progress on most issues, the bypass/bythrough at the Windy Gap Reservoir and flushing flow issue remained paramount for these two groups but did acknowledge ongoing negotiations which could diminish their concerns. There were concerns expressed with regard to the clarity in Grand Lake from both the Town of Grand Lake and a

representative of the Greater Grand Lake Shoreline Association, with this representative stating opposition to the project.

Concerns expressed by the Planning Commission included additional pumping, temperature, flushing flows and most importantly the bypass. All but one member stated that the bypass was essential. Other issues were lake levels and the possibility of use of the water for fracking. Cumulative impacts of the Denver project coupled with the 2012 WGFP were raised as a concern. Discussion on restoring what has happened before taking more, irrigator's funds not adequate, and decisions being forever were expressed.

There were eight members present. The vote for denial was five (5) to two (2) with the Chairman not casting a vote. The Planning Commission Resolution and Minutes are included in the list of exhibits for the public hearing. In addition, a CD with the entire planning commission meeting is also included as an exhibit to the hearing.

Grand County's 1041 Regulations requires that a permit be denied if it fails to satisfy all criteria outlined in 5-306. In order to make that finding, the criteria which are not satisfied must be specified. While the Planning Commission recommended denial, there was no specific declaration as to what criterion was not satisfied.

STAFF RECOMMENDATION:

Grand County's regulations for Areas and Activities Designated as Matters of State Interest provide for approval of a Municipal and Industrial Water Project if the proposed development complies with the criteria of 5-306. The Permit Authority is charged with deciding if all of criterion has been met, and its decision will be based on staff's review as well as public testimony and information provided during the public hearing.

If the Permit Authority closes the public hearing to further testimony or taking of information, staff feels that several pieces of information that may become available after the public hearing are essential to allowing the Permit Authority to make a comprehensive decision. One is the final version of the WGFP IGA which may undergo further modifications based on outside factors such as State and Federal approvals, the Grand Lake Clarity Agreement and C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study which are currently under review by Reclamation, the outcome of the Appraisal Study which is due the end of August, and the possible Scope of Work and financing methods for the bypass/bythrough. These items have been discussed in this certificate so are not new subjects. **Staff would recommend that the record remain open for the limited purpose of allowing these materials to be submitted until deliberations are complete.** All parties will be provided copies of these documents if and when available for Permit Authority consideration. All deliberations are conducted in the public forum so all parties will have an opportunity to hear the Permit Authority's consideration of these items. The County Attorney will provide further guidance on staff's request.

Staff 's review finds that the criterion stated under Section 5-306 would be met for the 2012 WGFP if the following conditions are applied to any permit issued by Grand County (there will be various timeframes recommended for certain conditions):

GENERAL CONDITIONS

1. The County Attorney will consider and respond to the relationship between the Windy Gap Project Permit and the 2012 WGFP Permit and advise the Permit Authority. Once the Permit Authority has been advised, it will make a determination on the relationship between the two.
2. The permit for the 2012 WGFP (2012 Permit) will be in effect for the life of the project and considered a vested right as long as the project is in compliance with the terms and conditions of all permits and approvals for the 2012 WGFP.
3. The 2012 WGFP is not transferrable to any other entity unless the County approves such transfer by Resolution.
4. The 2012 Permit allows construction of a 90,000 AF Chimney Hollow Reservoir or any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the Final Environmental Impact Statement (Alternative Reservoir) provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet as long as the environmental footprint in Grand County is not affected.
5. The 2012 WGFP shall not exceed the volumetric limits stated in the WGFP IGA for the Windy Gap and 2012 WGFP, and the 2012 Permit is contingent upon the participant's use of water is in compliance with the Windy Gap decrees and Colorado law.
6. In order to satisfy the Subdistrict's compliance with its obligations under section 37-45-118(1)(b)(IV) of the Water Conservancy District Act, the 2012 Permit shall not take effect until the WGFP IGA has been executed and is conditioned upon the Subdistrict's compliance with its obligations under the WGFP IGA. A breach of the WGFP IGA by the Subdistrict shall constitute a violation of this 2012 Permit.
7. While the Subdistrict is not a party to the Grand Lake Clarity Agreement, the Permit Authority has relied on the Grand Lake Clarity Agreement in determining whether the 2012 WGFP complies with its 1041 Regulations; therefore, the 2012 Permit shall not be effective until the Grand Lake Clarity Agreement and C-BT West Slope Collection System Technical Review of Alternatives Analysis and Plan of Study have been executed.

8. The closing documents listed on page 12 of this certificate support the obligations of the Subdistrict under the WGFP IGA and the Permit Authority has relied upon the Subdistrict's obligations under the WGFP IGA in determining whether the 2012 WGFP complies with its 1041 Regulations; therefore, this 2012 Permit shall not be effective until those documents have been executed.
9. The construction of the 2012 WGFP shall not commence until the water court approves the Windy Gap decree as amended by incorporation of the WGFP IGA. The Subdistrict shall provide Grand County with documentation of this approval. This condition does not preclude further planning and design for the project.

Conditions to satisfy Criterion (b):

10. The 2012 Permit shall not be effective until issuance of necessary state and federal permits and approvals for the 2012 WGFP, the terms and conditions of those permits and approvals are hereby incorporated by reference into this 2012 Permit, and this 2012 Permit is contingent upon the Subdistrict's compliance with those terms and conditions. If there is a conflict between a term and/or condition in the 1041 Permit and a state or federal permit or approval, the condition that is the more protective of the environment shall control. Grand County will not enforce the requirements of any state or federal permit or approval, but any violation of those permits and approvals will be a violation of the 2012 Permit. Subdistrict shall provide Grand County with copies of all approved federal and state permits and approvals issued for the 2012 WGFP. Following is a list of anticipated State and Federal permits and approvals (this may not be a complete list):
 - Clean Water Act 404 permit
 - CDPHE 401 certification
 - Fish and Wildlife Mitigation Plan, C. R. S. § 37-6-122.2
 - Water Conservancy Act, C.R.S. § 37-45-101 et seq.
 - Clean Water Act 208 Plan (NWCOG 208 Plan)
 - Compliance with Senate Document 80
 - Amendatory Contract
 - Record of Decision issued by Reclamation
 - Record of Decision issued for Corps
11. The 2012 Permit shall terminate and be in no force and effect if construction of Chimney Hollow Reservoir, or other alternate reservoir(s), has not begun within 10 years of the latter of the issuance of the Record of Decision for the WGFP by Reclamation or the Corps of Engineers.
12. Diversions and pumping associated with the 2012 WGFP must cease if the water provided by the Subdistrict to Grand County is not released and available for use by Grand County in accordance with the WGFP IGA.

13. To show compliance with the Master Plan, the Subdistrict shall provide the County with a plan for how loss of public access will be mitigated if the public access provided in the WGFP IGA is lost due to the sale of the property by Northern.
14. The Subdistrict shall comply with recommendations for compliance with requirements of the 208 Plan as outlined in NWCCOG's letter dated July 6, 2012 which is incorporated into this 2012 Permit and attached hereto.

Conditions to satisfy Criterion (c):

15. Prior to delivery of water through the 2012 WGFP, Subdistrict shall provide the County with documentation of conservation plans for all municipal project participants and lessees and shall continue to provide documentation that participants are complying with the Water Conservation Act with regard to updating the conservation plans every seven years.
16. Subdistrict shall provide written notice to the County when shares of the 2012 WGFP are sold or leased and verification that the new owner or lessee has complied with conservation requirements.
17. Within 30 days of acceptance of this 2012 Permit, the Subdistrict shall provide the County with written documentation of how use of water for fracking satisfies criterion c of the Grand County 1041 Regulations, if at all.
18. This 2012 Permit is subject to the Subdistrict's compliance with the terms and conditions of the 1980 and 1985 Supplement that remain in effect after execution of the WGFP IGA.

Criterion to satisfy Criterion (d):

19. Condition #7 above is essential to satisfaction of this criterion also.
20. Prior to the beginning of construction for Chimney Hollow Reservoir, the Subdistrict shall provide Grand County with a copy of an executed agreement between the Subdistrict and the wastewater treatment provider(s) to remove some of the nutrient loading entering Grand Lake. This agreement shall include the cost of improvements required plus whatever operation and maintenance costs the provider(s) require for the future.
21. The Subdistrict shall submit the Nutrient Reduction Plan required by Reclamation to Grand County for review at the same time it is submitted to Reclamation and the Corps but no later than the execution of the WGFP IGA and closing documents.
22. Within six months of issuance of the last Record of Decision for the 2012 WGFP, Subdistrict shall submit to the County a robust monitoring plan to assure that nutrient loading from the

2012 WGFP for total nitrogen and total phosphorus is reduced to the 1:1 level; and a mitigation and monitoring plan to ensure that operation 2012 WGFP does not cause an increase in manganese, mercury and chlorophyll a, a decrease in DO, a decrease in Secchi disk depth in Grand Lake. The monitoring plan shall include a schedule for monitoring and reporting and Subdistrict shall provide Grand County with all reports. The 2012 WGFP shall be operated in compliance with the Nutrient Reduction Plan and Nutrient Monitoring Plan.

Condition to satisfy Criterion (f)

23. Installation of the real time water temperature gauges required by the Fish and Wildlife Mitigation Plan shall be a condition of this 2012 Permit and the Subdistrict must verify every spring, before the beginning of pumping, that these gauges are in good working order, that they remain so during the time of the year when the standard is in effect, and that they are replaced or repaired when necessary and timely to their need in reporting temperature.
24. Notwithstanding proposed temperature mitigation in the Fish and Wildlife Mitigation Plan and other terms and conditions to address temperature that may be imposed as part of the 401 Certification or federal approvals for the WGFP, the 2012 WGFP shall not cause or contribute to temperature exceedances in the Colorado River below Windy Gap, at the points of measurement set forth in the Fish and Wildlife Mitigation Plan.
25. If the MWAT is exceeded, the Subdistrict shall immediately notify the County. Temperature mitigation may be suspended when there is no material causal relationship between the 2012 WGFP. The determination of causal relationship shall be based upon a model approved by the Colorado Parks and Wildlife, Grand County, and the Water Quality Control Commission.
26. Because the delivery of the 10825 endangered fish water from Granby Reservoir is an essential consideration in temperature reductions, the Subdistrict must participate in securing approval of the 10825 agreement and must arrange with Northern to do the same.

Conditions to satisfy Criterion (g)

Aquatic

27. The Subdistrict shall prepare and submit to Grand County a fish and aquatic invertebrates monitoring plan to determine if the enhancements for habitat restoration provided in the Fish and Wildlife Mitigation Plan and additional water provided in the WGFP IGA would prevent the loss of aquatic habitat predicted in the WGFP EIS. The monitoring information shall be provided to the Learning by Doing effort and monitoring shall continue as long as the Learning by Doing effort requires this information. If the bypass/through is constructed, this monitoring plan shall be adapted as necessary to analyze the benefits of the bypass/through in consultation with the Management Committee of Learning By Doing.

28. The Subdistrict shall prepare and submit to the County a plan for minimizing blowing dust if the bypass/bythrough is constructed. It might consider aquatic vegetation/revegetation to minimize against blowing dust.

29. If, during a five (5) year period, natural conditions meet or exceed flows of 600 c.f.s. as recommended by the SMP, so that the Subdistrict is not required to make releases to achieve recommended stream conditions, then in the sixth year, Subdistrict shall provide a 1,145 c.f.s. flow for 72 hours to move large cobble and de-armor the stream.

Marshlands and Wetlands:

30. Subdistrict shall prepare and submit to the County for approval a monitoring plan for vegetation along the Colorado River and Willow Creek within thirty days of issuance of the ROD by the Corps of Engineers. Monitoring will continue until the Learning By Doing management team has determined that riparian and wetland vegetation has not been adversely affected by the 2012 WGFP, or has recovered due to mitigation or other efforts. At a minimum this monitoring must continue at least ten (10) years after commencing of pumping for the 2012 WGFP.

31. If the Scope of Work and possible funding methods for the bypass/bythrough are agreed upon by the parties involved, then the Subdistrict shall provide \$250,000 for the study and make best efforts for the parties to the study to commence the study as soon as possible after the agreement is reached.

Groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands:

Appear to be satisfied.

Critical wildlife habitat, big game migratory routes, calving grounds migratory ponds, nesting areas and habitats of rare and endangered species:

32. The 10825 water for the endangered fish must be approved and delivered from Granby Reservoir and Northern must provide Grand County written verification that it is able to provide the water in perpetuity if no longer required for the endangered fish.

Public Outdoor Recreation Areas:

Satisfied by conditions applied under (b) and (d) above.

Unique areas of geologic, historic and archeological importance:

33. Prior to execution of the WGFP IGA, the Subdistrict shall submit to Grand County for approval a plan for regular maintenance of the rock structures above each pump site for the irrigators above Kremmling (defined in the WGFP IGA) that allows higher water to be captured and held so the pumps can reach the irrigation water more effectively.

17

DOCUMENTS RELIED UPON FOR 1041 REVIEW

Board of Commissioner Resolution 1980-6-1
Board of Commissioner Resolution 1985-3-5
1980 Agreement
1985 Supplemental Agreement
Final EIS Windy Gap Project
Final EIS WGFP
Fish and Wildlife Enhancement Plan
Fish and Wildlife Mitigation Plan
FONSI – 10825 endangered fish water
Draft Windy Gap Firming Project IGA and closing documents
Grand County Stream Management Plan
Clean Water Act - 404 and 401 (b)
Grand County Master Plan
Senate Document 80
Arapaho National Recreation Public Law 95-450
Communication to Reclamation with regard to decreased water clarity 1952 forward
Comments on Preliminary, Draft, and Final EIS for WGFP
Report - *2010 Water Quality Report Flowing Sites*
Report - *Factors Controlling Transparency in Grand Lake, Colorado*
Report - *Operational and Water Quality Summary Report for Grand Lake and Shadow Mountain Reservoir: 2010*
Nehring Report - *Colorado River Aquatic Resources Investigation Federal Aid Project F-237R-18, June 2011*
Report- *Three Lakes Water Quality Model Nutrient Sensitivity Analysis* prepared for the Three Lakes Technical Committee.



GRAND COUNTY MANAGER'S OFFICE

308 Byers Ave • P.O. Box 264 • Hot Sulphur Springs • Colorado • 80451
970-725-3347 Ext 296

MEMORANDUM

TO: INTERESTED PARTIES

FROM: GRAND COUNTY MANAGER'S OFFICE

DATE: July 24, 2012

RE: 2012 WINDY GAP FIRING PROJECT - 1041 PERMIT APPLICATION

The above referenced item has been scheduled for Public Hearing before the Grand County Board of County Commissioners on August 1, 2012 and August 2, 2012 and any date to which the public hearing may be continued. The Public Hearing will be held from 8:30 a.m. to 5:00 p.m. each day in the Commissioners Meeting Room, County Administration Building, 308 Byers Avenue, Hot Sulphur Springs, Colorado.

To review the updated Certificate of Recommendation to the Grand County Permit Authority (BOCC), as well as the 1041 Permit Application and associated documents, please visit Grand County's website at: <http://co.grand.co.us/GCHome/1041Permit/>.

Any comments or concerns regarding the proposed 1041 application should be directed to the Grand County Managers Office at lcurran@co.grand.co.us or mail to P.O. Box 264, Hot Sulphur Springs, Co 80451.

Please call 970-725-3347 ext. 296 if you have any questions or need additional information.

Thank you.

Melanie Zwick
P.O. Box 367
Winter Park, CO 80482

Town of Kremmling
P.O. Box 538
Kremmling, CO 80459

Town of Granby
P.O. Box 440
Granby, CO 80446

Town of Grand Lake
Mr. David Hook
P.O. Box 6
Grand Lake, CO 80447

Town of Winter Park
P.O. Box 3327
Winter Park, CO 80482

Town of Hot Sulphur Springs
P.O. Box 116
Hot Sulphur Springs, CO 80451

Town of Fraser
P.O. Box 120
Fraser, CO 80442

Bureau of Land Management
P.O. Box 68
Kremmling, CO 80459

Three Lakes Water & Sanitation
P.O. Box 899
Grand Lake, CO 80447

Sulphur Ranger District
P.O. Box 10
Granby, CO 80446

Winter Park Water & Sanitation
P.O. Box 7
Winter Park, CO 80482

Middle Park Land Trust
P.O. Box 1938
Granby, CO 80446

Pete & Carol Peterson
PO Box 832
Kremmling, Co 80459-0832

Kremmling Chamber of Commerce
P.O. Box 471
Kremmling, CO 80459

Charles Alexander
784 CR 401
Granby, CO 80446

Middle Park Stockgrowers
C/O Bill Thompson Jr.
P.O. Box 826
Kremmling, CO 80459

Granby Chamber of Commerce
P.O. Box 35
Granby, CO 80446

Jerry Eller
P.O. Box 684
Kremmling, CO 80459

Toots Cherrington
408 County Road 42
Granby, CO 80446

Granby Sanitation
P.O. Box 560
Granby, CO 80446

Duane Scholl
P.O. Box 999
Kremmling, CO 80459

Colorado Division of Wildlife
P.O. Box 216
Hot Sulphur Springs, CO 80451

Winter Park West Water & San
P.O. Box 1390
Fraser, CO 80442

Columbine Lake Water & San
P.O. Box 555
Grand Lake, CO 80447

Bureau of Reclamation
11056 West County Rd 18E
Loveland, Co 80537-9711

Carol Sidofsky
P.O. Box 362
Winter Park, CO 80482

Kremmling Sanitation District
P.O. Box 538
Kremmling, CO 80459

Silvercreek Water & Sanitation
PO Box 4014
Silver Creek, Co 80446

Fraser Consolidated Dist
Joe Fuqua
PO Box 89
Fraser, CO 80442

Grand County Water & San
P.O. Box 3077
Winter Park, CO 80482

Reeder Creek Ranch
Art Bruchez
PO Box 1359
Kremmling, Co 80459

Division of Wildlife
Jon Ewert
PO Box 216
Hot Sulphur Springs, Co 80451

Gary Schmuck
13280 Columbine Ct
Thornton, Co 80241

Wes & Lisa Palmer
PO Box 103
Kremmling, Co 80459

Mike Ritschard
PO Box 501
Kremmling, Co 80459

Richard & Christine Doucette
PO Box 206
Hot Sulphur Springs, Co 80451

Stan Cazier
PO Box 500
Granby, Co 80446

Northern Colorado Water
Conservancy Dist.
220 Water Ave
Berthoud, CO 80513

State of Colorado Division of Water
Resources
1313 Sherman St – RM 818
Denver, CO 80203

Chimney Rock Ranch, LLC
C/O Bud Isaacs
Rim Operating Inc
5 Inverness Dr East
Englewood, Co 80112

A & L Land Company, LLC
1431 S Cherryvale Rd
Boulder, Co 80303

Blue Valley Ranch
PO Box 1120
Kremmling, Co 80459

George Stark
1321 Marshall St
Boulder, Co 80302

John & Ida Sheriff
PO Box 96
Hot Sulphur Springs, Co 80451

David Taussig
White & Jankowski, LLP
511-16th St – STE 500 Kittredge
Bldg
Denver, Co 80202

GCWIN
PO Box 1503
Grand Lake, Co 80447

Colorado River Water Conservation
District
PO Box 1120
Glenwood Springs, Co 81602

Denver Water Department
1600 West 12th Avenue
Denver, CO 80204-3412

Army Corps of Engineers
Scott Franklin
Denver Regulatory Office
9307 S Wadsworth Blvd
Littleton, CO 80128-6901

Norm Carpenter
19 Devonwood
San Antonio, TX 78257

BLM
Kremmling Field Office
PO Box 68
Kremmling, Co 80459

C40 ranch, LLC
10055 W 43rd Ave
Wheatridge, Co 80033

Michael & Deborah Thompson
PO Box 301
Hot Sulphur Springs, Co 80451

Dave & Chris Sammons
PO Box 442
Kremmling, Co 80459

Schmuck Children Trust
4417 S Oakwood Hills Pkwy
Eau Claire, WI 54701

Ouray Ranch HOA
PO Box 66
Winter Park, CO 80482

Dave Nowak
White & Steele PC
Dominion Towers – North
600 17th Street
Denver, CO 80202

Northwest Colorado Council of
Governments
Lane Wyatt
PO Box 2308
Silverthorne, Co 80498

Middle Park Water Conservancy
District
PO Box 588
Granby, CO 80446

Edward Moyer

From: Edward Moyer [emoyer@co.grand.co.us]
Sent: Tuesday, July 24, 2012 12:59 PM
Cc: Lurline Curran
Subject: 2012 Windy Gap Firing Project - 1041 Permit
Attachments: 2012 WGFP Staff Certificate of Recommendation to Permit Authority.pdf

The Board of County Commissioners of the County of Grand, sitting as the Permit Authority, will hold a Public Hearing to consider the 2012 Windy Gap Firing Project on **August 1, 2012 and August 2, 2012** and any date to which the public hearing may be continued. The Public Hearing will be held from **8:30 a.m. to 5:00 p.m.** each day in the Commissioners Meeting Room, County Administration Building, 308 Byers Avenue, Hot Sulphur Springs, Colorado.

Attached, please find the updated Certificate of Recommendation to the Grand County Permit Authority. To review the 1041 Permit Application and associated documents, please visit Grand County's website at: **<http://co.grand.co.us/GCHome/1041Permit/>**.

Any comments or concerns regarding the proposed 1041 Application should be directed to the Grand County Managers Office at **lcurran@co.grand.co.us** or mailed to P.O. Box 264, Hot Sulphur Springs, CO 80451.

Thank you.

Edward T. Moyer
Grand County
PO Box 264
Hot Sulphur Springs, CO 80451
970.725.3347
970.725.3102 (Direct Line)
www.co.grand.co.us

'Barbara Green'; 'mckeyes@earthlink.net'; 'David Taussig'; 'Bailey, Peggy'; 'Jeff Drager'; 'Peggy Montano'; 'Tricia Anderson'; 'Steven Bushong'; 'MWhiting@tu.org'; 'rob.firth@tu.org'; 'Kirk Klancke'; 'Kirk Klancke'; 'Eric Wilkinson'; David Little (david.little@denverwater.org); 'Lane Wyatt'; 'Mark Hermundstad'; 'Eric Kuhn'; 'Peter Fleming'; 'Jason Turner'; 'Jon Ewert (jon.ewert@state.co.us)'; 'cazier_mcgowan@hotmail.com'; 'don@crwcd.org'; 'Dan Birch'; David Hook; Steve Paul (goodski7@qwest.net); (Sally) O'Donnell Canton (gletwo@aol.com); 'mountaingrind@comcast.net'; 'houses4u@aol.com'; 'mdritschard@gmail.com'; Sally Blea; 'ilkarlstrom@gmail.com'; George Edwards; 'karlsss@yahoo.com'; 'cmsconsulting@q.com'; Nancy Stewart; James Newberry; James Newberry; 'Gary Bumgarner'; Robert Franek; 'Teri Mordick'

Edward Moyer

From: Edward Moyer [emoyer@co.grand.co.us]
Sent: Wednesday, July 25, 2012 6:37 PM
Cc: 'Lurline Curran'
Subject: 2012 WGFP Certificate of Recommendation - REVISED 7-25-12
Attachments: WGFP Staff Certificate of Recommendation to Grand County Permit Authority (BOCC) 7 25 12.pdf

Attached, please find the revised 2012 WGFP Certificate of Recommendation dated 7-25-12. Revisions have been made to Condition 3. (Page 39) and Condition 31. (Page 48) as follows:

Criterion G. Aquatic Habitat - Condition 3. (Page 39) has been revised as follows:

~~3. If the Scope of Work and possible funding methods for the bypass/bythrough are agreed upon by the parties involved, then the study should commence immediately and the Subdistrict should provide the \$250,000 for this work.~~

3. The bypass study should begin immediately and if proven beneficial, the bypass/by-through for Windy Gap Reservoir should commence as soon as possible after acceptance of any permit issued by Grand County.

Criterion G. Marshlands and Wetlands - Condition 31. (Page 48) has been deleted, revised and incorporated as Criterion G. Aquatic Habitat - Condition 29 (Page 48) as follows:

~~31. If the Scope of Work and possible funding methods for the bypass/bythrough are agreed upon by the parties involved, then the Subdistrict shall provide \$250,000 for the study and make best efforts for the parties to the study to commence the study as soon as possible after the agreement is reached.~~

29. The bypass study should begin immediately, and if the results of the study demonstrate that the bypass/by-through will benefit the Colorado River, then the bypass/by-through shall commence as soon as possible after acceptance of this 2012 Permit.

In doing so, applicable Conditions have also been renumbered to accommodate said revisions. No other changes have been made. The revised Certificate will be posted to Grand County's website at:

<http://co.grand.co.us/GCHome/1041Permit/> tomorrow.

We apologize for any confusion.

Thank you.

Edward T. Moyer
Grand County
PO Box 264
Hot Sulphur Springs, CO 80451
970.725.3347
970.725.3102 (Direct Line)

cc: *Lucy Ed. Aris file*

RECEIVED
JUL 24 2012

July 22, 2012

Paul Hollrah
Box 1615
Winter Park, CO 80482

BY

Grand County Commissioners
PO Box 264
Hot Sulphur Springs, Co. 80451

RE: 1041 Permit for Windy Gap Firming Project

Dear Commissioners,

I currently reside in Tabernash and have enjoyed both the Fraser and Colorado Rivers here in Grand County since the mid 1990's. I am concerned about the very real drop in the quality of both river systems and am very fearful of the Windy Gap Firming project.

I know that the county has been negotiating enhancements to the river to address current degradation but there will be additional mitigations required for the firming project. I urge you to consider the following as part of the 1041 permit process:

1. Make any enhancement commitments part of the 1041 permit.
2. Windy Gap pumping must stop when temperatures downstream are near the State temperature standards for chronic and acute temperature.
3. Northern is taking the water and should be responsible for monitoring the condition of the river. They should be required to fund a comprehensive stream monitoring program that can accurately track the status of the life in the system. They must be required to react to any changes in the aquatic health that cannot be explained by normal fluctuations.
4. Northern must be required to work with Grand County to maintain flushing flows that support a healthy river.
5. An independent Windy Gap bypass study must be funded by Northern and a commitment to fund a bypass needs to be part of the 1041 permit.

We have a steady stream of visitors to Grand County that come here to enjoy the benefits provided by our river system. For those of us who live here, it is part of our life. Thank you for your continued vigilance for our county.



Paul Hollrah

phollrah@rkymtnhi.com

970-726-2002

RECEIVED
JUL 25 2012

cc: *Luv
Ed
Kris*

July 24, 2012

Grand County Board of Commissioners,
PO Box 264
Hot Sulphur Springs, Co. 80451

Honorable Commissioners,

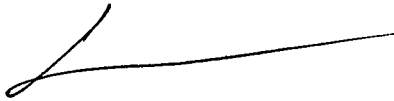
I want to take this opportunity to thank you for giving so much attention to our County's rivers, lakes and streams. The hours and money spent show how invested you are in protecting this valuable Grand County resource. I am equally impressed with the progress that you have made in the negotiation of enhancements for the Fraser River and Upper Colorado River.

The mitigation needed for the 2 new diversion projects will be the final negotiation to assure the future health of our County's rivers and lakes. With the Windy Gap Project 1041 process, you have the power to assure that the mitigations that you were asking the Bureau of Reclamation for will be written into a permit. I feel very strongly that with the enhancements already negotiated and with additional mitigation tied to the 1041 permit for the new project, that you will be the Commissioners who guaranteed the future of Grand County's environment. I see the mitigation needed to address the impacts of the new project as these bullet points.

- The enhancements committed need to be tied to the 1041 permit.
- Windy Gap pumping should be reduced or stopped when stream temperatures below the dam approach the State's chronic or acute standards.
- Northern should not only pay for the bypass study, they should also pay for the bypass. A shallow in stream reservoir was a poor design to begin with and Northern needs to be responsible for fixing their mistake.
- Northern must be responsible for a robust biological stream monitoring program. If a decline in the aquatic habitat is found and can't be explained by a normal function of the river then Northern will work with Grand County to find a way to reverse the trend of this unintended consequence.
- Flushing flows will be the most important mitigation in the 1041 permit. Northern must be required to work with Grand County to establish what those flushing flows need to be to move the rocks and sediment for optimal macro-invertebrate life and algae control. Those flushing flows must be obtained to prevent the type of decline that we are currently seeing in the Colorado River below the Windy Gap Reservoir.

In addition to all that you have already accomplished as a Board, these additional mitigation ideas will complete your goal to assure the future of the headwaters of the Colorado River. The entire State of Colorado will be the beneficiary of your hard work and diligence. Please incorporate these mitigations in the 1041 permit to accomplish your goal and to assure my grandchildren that they will have the quality of life in Grand County that I have had.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kirk Klancke', written over a horizontal line.

Kirk Klancke
Grand County resident

From: Kathy Etler
To: "Edward Moyer";
Subject: FW: Jon Weimer Windy Gap Firming Project Comments
Date: Tuesday, July 24, 2012 3:04:58 PM

From: Kathy Etler [mailto:ketler@co.grand.co.us]
Sent: Tuesday, July 24, 2012 10:42 AM
To: 'lcurran@co.grand.co.us'; 'Edward Moyer'; 'Kris Manguso'
Subject: FW: Windy Gap Firming Project

From: Jon Weimer [mailto:weimerj@earthlink.net]
Sent: Tuesday, July 24, 2012 10:02 AM
To: grndcty1@co.grand.co.us
Subject: Windy Gap Firming Project

Dear Madam/Sir--

I'm from Denver, Colorado, but visit your lovely area, primarily for fishing and, to a certain extent, touring. I have a concern that the Windy Gap Firming Project, as proposed, does not have the proper mitigation safeguards for the Colorado. For example, I feel that the Windy Gap pumping has to stop when stream temperatures rise, and not be allowed after July 15th. Northern should be required not to just study the bypass around Windy Gap reservoir, but pay for its construction as well. And, Northern should be required to work with your County to monitor the flushing flows and provide an adequate flushing flow to keep sediment from collecting in the Colorado and to keep the aquatic habitat healthy. Finally, I believe that Northern should fund a stream monitoring program that can accurately track the health of the aquatic species in the Colorado, and react to any declines that can't be explained by normal fluctuation.

Thank you for your consideration.

Jon Weimer
Denver, Colorado
303-830-1609

From: Kathy Etler
To: "Edward Moyer";
Subject: FW: Jim Ross/Windy Gap FIRMING Project Comments
Date: Tuesday, July 24, 2012 3:04:18 PM
Attachments: Jim_Ross.msg

-----Original Message-----

From: Kathy Etler [<mailto:ketler@co.grand.co.us>]
Sent: Tuesday, July 24, 2012 10:42 AM
To: 'lcurran@co.grand.co.us'; 'Edward Moyer'; 'Kris Manguso'
Subject: FW: Windy Gap FIRMING Project

-----Original Message-----

From: Jim Ross [<mailto:rossignuolo@comcast.net>]
Sent: Tuesday, July 24, 2012 9:53 AM
To: grndcty1@co.grand.co.us
Subject: Windy Gap FIRMING Project

To whom it may concern,

So far, many have expressed their concerns about The Colorado and Fraser Rivers including me. Once again, I would like to emphasize how important it is to the local residents, state and our country to protect this vital resource. There has been plenty of data that shows how these riparian ecosystems have been degraded but would now face destruction with more water being diverted.

In Colorado, more can be done to help conserve water. Sooner or later we are going to have to realize that it's not worth it to destroy a natural resource and treasure to sustain non native plants and grasses for esthetic reasons or pleasure. There are viable alternatives. Please consider our plea to help preserve these resources. We owe it to our future generations.

Sincerely,

Jim Ross
Castle Rock, CO
303-814-9863

Edward Moyer

From: Edward Moyer [emoyer@co.grand.co.us]
Sent: Friday, July 27, 2012 11:18 AM
Cc: Lurline Curran
Subject: 2012 WGFP - Tentative Agenda for August 1 & 2
Attachments: 2012 WGFP 1041 Permit Tentative Agenda as of 072712.pdf

Attached, please find the tentative agenda for the 2012 WGFP – 1041 Permit Public Hearing scheduled for August 1 & 2, 2012.

Thank you.

Edward T. Moyer
Grand County
PO Box 264
Hot Sulphur Springs, CO 80451
970.725.3347
970.725.3102 (Direct Line)
www.co.grand.co.us

Tentative WGFP 1041 Permit Agenda

August 1 & 2, 2012

1. Staff Presentation of Certificate (3 Hours)
 Dave Taussig, Peggy Bailey
2. Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict)
Presents Application/Response to Staff Certificate (2 Hours)
3. Questions of Subdistrict and Staff in following order (Cross Examination)(1 hour):
 Upper Colorado River Alliance
 Trout Unlimited
 Colorado River Water Conservation District
 Town of Grand Lake
 Public
4. Middle Park Water Conservancy District Comments/Evidence
5. Upper Colorado River Alliance Comments/Evidence (1 Hour)
6. Trout Unlimited Comments/Evidence (1 Hour)
7. Colorado River Water Conservation District Comments/Evidence (1/2 Hour)
8. Town of Grand Lake Comments/Evidence (1/2 Hour)
9. Public Comments/Evidence (2 hours)
 Subdistrict may ask questions of any other presenter at the end of that presenter's
 comments
10. Subdistrict presents rebuttal to comments (1 Hour)
11. Permit Authority Questions (2 Hours)
12. Staff Summary (3/4's hour)
13. Decision taken under advisement for up to 120 days.

All times are approximate and maybe modified as necessary by the Permit Authority.

At any point the Permit Authority may ask question of any Party or Speaker.

Although the Colorado Rules of Civil Procedure do not govern the conduct of the hearing, all persons appearing at the hearing, in person or by counsel, shall be afforded the right of cross-examination as well as reasonable opportunity to offer evidence in rebuttal. Any person engaging in cross-examination or offering evidence in rebuttal shall thereby become a party.

GUEST OPINION

Here's your chance to weigh in on Windy Gap Firming

The Windy Gap Firming Project has one more permit process to go through right here in Grand County.

This process is the 1041 permit and it allows our county commissioners to set mitigation requirements for the project. The county is negotiating enhancements to help the degradation that we are already experiencing in the Colorado River below the Windy Gap reservoir but without additional mitigation for the new project, the enhancements will not solve all of the issues facing the river. We need to make sure that our elected officials here in Grand County require all of the mitigation needed to protect the Upper Colorado River below Windy Gap from the new Windy Gap Firming project.

This is our best opportunity as individuals to influence the permit process. This influence can be exercised through letters or emails to the commissioners or by attending the public hearings in the commissioners' board room on Aug. 1 and 2. Trout Unlimited suggests that your letters should include these points:

- Identify yourself and your connection to our County, our County's economy and to the river.
- Ask that enhancements committed be part of the 1041 permit.
- Windy Gap pumping has to stop when stream temperatures near state acute and chronic standards and no pumping should be allowed after July 15.
- Northern should be required to not just study the bypass around the Windy Gap reservoir but pay for it too.

Windy Gap hearing

The Windy Gap Firming Project will be the subject of a two-day public hearing at the Grand County Administration building on Aug. 1 and 2.

The hearing, to be conducted by the county commissioners, is about the 1041 Permit through which the commissioners can set mitigation requirements for the project.

The hearing is scheduled to begin at 8:30 a.m. Wednesday, Aug. 1, and continue at 8:30 a.m. Aug. 2 in the commissioners' meeting room.

- Northern must be required through the 1041 permit to work with Grand County to monitor the flushing flows and provide an adequate flushing flow to keep sediment from collecting in the river and the aquatic habitat healthy.

- Northern must fund a robust stream monitoring program that can accurately track the health of the aquatic species in the river and react to any declines that can't be explained by normal fluctuation.

This is your chance to influence the future of the headwaters of the Colorado River. If you were wondering what you could do to help, this is your best opportunity. Please write your letter and come to the hearing to speak.

Send your letter to:

Grand County Commissioners
PO Box 264

Hot Sulphur Springs, Co. 80451

Send your email to:

gndctyl@co.grand.co.us

Attend the 1041 permit hearing on Aug. 1 and 2 in the commissioners' board room.

KIRK KLANCKE

HEADWATERS CHAPTER

EXHIBIT

25

RECEIVED
JUL 30 2012**Kathy Etlar**

From: Charles W Howe [charles.howe@Colorado.EDU] **BY:**.....
Sent: Sunday, July 29, 2012 4:18 PM
To: grndcty1@co.grand.co.us
Subject: Sufficient compensation for additional diversions caused by Windy Gap Firming.

County Commissioners: Given that Windy Gap was a badly conceptualized and designed project to begin with (some years, no water from WG), it's not surprising that the Firming Project is now in advanced planning . Since Colorado Law requires that compensating storage or other mitigation be provided for any project diverting water out of Colorado's CRB to other parts of Colorado, and given that the Colorado River even within Colorado is in poor shape," full mitigation" should be required as a condition of the County's 401 permit.

Charles W. Howe, Water Resources Economist

Boulder 720-562-8089

07/30/2012

EXHIBIT

26

Kathy Etler

RECEIVED
JUL 30 2012

From: Ken Gillis [kgillis@centennialrealtyadvisors.com]

Sent: Monday, July 30, 2012 8:09 AM

To: grndcty1@co.grand.co.us

Subject: Windy Gap

BY:.....

Attachments: Letter to GC Commissioners 073012.pdf

Unfortunately, I'm unable to attend the Windy Gap Firing Project hearings you have scheduled for August 1 and 2, but as a member of the Board of the Ouray Ranch Homeowners Association, I wanted to give you our thoughts and comments. Attached is a letter with our comments.

Thank you for all you are doing to preserve and protect the upper Colorado River. It is very important and we appreciate your efforts.

Ken Gillis

Kenneth R. Gillis

President

Centennial Realty Advisors

161 Detroit St.

Denver, CO 80206

303-407-8715

303-377-5396 (fax)

720-837-8675 (cell)

kgillis@centennialrealtyadvisors.com



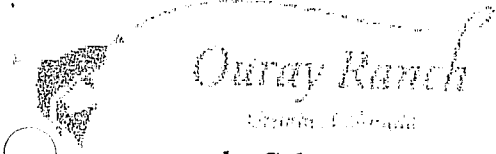
July 30, 2012

Grand County Commissioners
P.O. Box 264
Hot Sulphur Springs, CO 80451

Honorable Grand County Commissioners:

I am a Board Member of the Ouray Ranch Homeowners Association and a landowner in Grand County. The Ouray Ranch, approximately 400 acres bisected by 1.25 miles of the Colorado River, is halfway between Windy Gap and Granby Reservoirs. The Ouray Ranch was originally part of a YMCA camp which was purchased in 1981 and redeveloped into 49 home sites. As part of the redevelopment, extensive improvements were made to the river, adding 30 new pools and accompanying channels and riffles. A couple of years later, Lake Ouray, a 3.5 acre lake, was created to provide an additional high quality habitat for trophy trout. In 1984, we deeded a conservation easement on 234 acres of the ranch to help preserve the pristine beauty of the valley. The owners of the Ouray Ranch have invested and will continue to invest a great deal of time and money in creating and maintaining a beautiful and high quality trout fishing and wildlife habitat. We are obviously very interested in maintaining the value of our property and the world class trout habitat in the Colorado River that runs through our land.

The Grand County Stream Management Plan ranked the Colorado River between Granby Reservoir and Windy Gap as the reach with the 3rd highest priority for restoration efforts and resource allocation of all the sections of the Upper Colorado River and its tributaries. Studies by Barry Nehring of the Colorado Division of Wildlife show that sculpin and stoneflies, which were in abundance at the Ouray Ranch following the stream improvements we made in 1982, are now "essentially gone" from our reach and others that are directly below dams on the Upper Colorado. Sculpins and stoneflies are, however, abundant, according to Nehring, upstream of Granby, Windy Gap, Willow Creek and Williams Fork Reservoirs. Prior to the historic run-off of 2011, the silt build-up in our stretch of the Colorado had choked the river, killing off many of the insects that the fish rely on for food and destroying the trout breeding habitat. These problems are compounded by an increasing level of algae and didymo in the river. Water pumped from Windy Gap to Granby Reservoir has resulted in increased nutrient loading to the reservoir and a reduction in water quality for the Colorado River below the dam. Clearly, the wildlife and fishery habitats in our reach have declined over the past 25 years. Finally, we are concerned that future climate changes could create other unforeseen problems for fish and wildlife in and along the Upper Colorado. According to a study by



Owney Ranch

Windsor, Colorado

the Colorado Water Conservation Board, run-off in the Colorado River is expected to decline by 5 % to 20 % in the 21st Century. Given that approximately 73% of the Upper Colorado will be diverted if the proposed Windy Gap and Moffat firming projects are approved, the proposals have the potential for disastrous results if not monitored and managed properly.

We are concerned that the mitigation plan created by Northern Colorado Water Conservancy District is inadequate to address the impacts of proposed diversions from their Windy Gap firming project. In a recent review of the Windy Gap firming project, the EPA recommended "a more robust monitoring and mitigation plan" to protect the river. To improve the mitigation/enhancement plans and address the issues identified above, we would recommend:

1. Increasing the flows out of Granby Reservoir during the summer and early fall to maintain a healthy cold water fishery. The volume of water provided and the duration of these supplemental flows should be consistent with the best available information and scientific research. The Grand County Stream Management Plan provides a guideline based on their research.
2. Provide supplemental flushing flows out of Granby Reservoir during spring run-off to transport sediment and promote a healthy cold water fishery. In addition to benefiting our reach, both recommendations for increasing flows will benefit all reaches down the Colorado. Again, the Grand County Stream Management Plan provides a guideline for what these flows should be, but the results should be monitored to verify they are truly maintaining a healthy habitat.
3. Require Northern to take steps to improve the water quality in Windy Gap, Granby Reservoir and Grand Lake.
4. Require that any permits issued to Northern must include the adoption of an Adaptive Management Plan, such as that described in the Grand County Stream Management Plan. This plan should monitor the health of the river and adjust the operation to ensure that a healthy, world class, fish and wildlife habitat is maintained. For example, if future changes in the climate cause a reduction in the quantity of water available, then the quantity diverted should be reduced to a level necessary to maintain a healthy cold water fishery. We also believe that the committee created to oversee the Adaptive Management Plan should be diverse and represent the interest of all stakeholders, including the landowners along the Colorado River above Windy Gap.

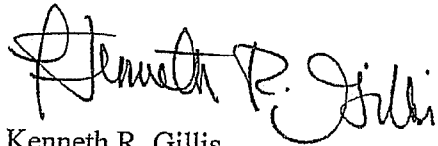
Senate Document 80 requires that the operation of Granby Dam and the diversion of water to the east slope must preserve the fishing, recreation and scenic qualities of the Colorado River and Rocky Mountain National Park. Grand County should demand that the Bureau of Reclamation live up to its obligation and become part of the solution to restore the Upper Colorado River to the world class trout fishery that it was back in the 1980s.

Ouray Ranch

Grand County, Colorado

Finally, we would like to thank Grand County for taking such a strong proactive role in working towards a positive solution for all the stakeholders. Ultimately, the solutions may require that Northern invest a bit more time and money, just as the owners of the Ouray Ranch have, but the result should be something we can all be proud of. Fortunately for Northern, they can recoup their investment through higher rates, which I, as a customer, would be more than happy to pay.

Sincerely,



Kenneth R. Gillis
Ouray Ranch Homeowner's Association

Edward Moyer

From: Barbara & Jeff Metzger [jrmetzger@prodigy.net]
ent: Monday, July 30, 2012 9:29 AM
To: Katherine Morris
Cc: emoyer@co.grand.co.us
Subject: Windy Gap 1041 Public Comment
Attachments: GrandCountyCommissionersAug2012.docx

Attached is my statement, which I'll make in person on 8/1 or 8/2. Best Regards, Jeff Metzger

To: Grand County Board of Commissioners

Date: August 1, 2012

Re: Windy Gap Firing Project 1041 Permit

Good Day Commissioners. My name is Jeff Metzger. I've spent the last 35 years enjoying the natural beauty of Grand County and the headwaters of the Colorado River, formerly known as the Grand River. I'm an avid fisherman on the rivers and lakes of the County, such so that we built a log home 16 years ago on Shadow Mountain Reservoir.

I've been a working member of the Three Lakes Nutrient Study Technical Committee since 2008, hosted by Northern. I've also been a working member of the Grand Lake Clarity Stakeholders Workgroup since 2008, hosted by Grand County, and a Director of the Three Lakes Watershed Association of which you have heard or will hear from our President, Canton (Sally) O'Donnell.

As brilliant as the CBT System was at the time, what we now know is the CBT System was a flawed design. The Upper Colorado, the Grand River, is dying. I have watched it happen. The Three Lakes Water Clarity and Quality are unacceptable. I have watched it happen. The Windy Gap Firing Project will accelerate the death of these water bodies, unless significant mitigation occurs and the CBT design is corrected. What will we watch happen?

Promises to arrest or reverse the demise of the Upper Colorado River have been unfulfilled. The promise of Grand Lake Water Clarity, made in Senate Document 80 in 1937, has been unfulfilled.

For the Upper Colorado River, best efforts to ensure minimum flows, temperature standards and flushing flows have not been sufficient.

For Grand Lake, best efforts to ensure clarity have not been sufficient. Four items always take precedence over Grand Lake Clarity: (1) Power Generation from the CBT project, (2) allowing the Regional Pool of Water for Front Range Users to be sold instead of possibly reducing the next years Water Call, (3) a significant percentage of CBT water users being on flat rate water, and (4) less than best efforts for water conservation.

I am encouraged and heartened by the development of a spirit of cooperation, collaboration and mutual trust amongst the various public and private entities represented on the Three Lake Nutrient Study Technical Committee and the Grand Lake Clarity Stakeholders Workgroup. However, our rate of progress and ability to effect significant change on the Upper Colorado River and the Three Lakes is not sufficient.

Until the Leaders of Northern and the Bureau of Reclamation adopt the same spirit of cooperation, collaboration and mutual trust with "the Other Side", our rate of progress on these issues is unacceptable. A greater Sense of Urgency is required by the Leaders of Northern and particularly the Leaders of Reclamation. Until these things change, the Upper Colorado River will continue to die. Three Lakes Water Clarity and Quality will not be as it could be, as it should be.

I oppose the Windy Gap Firing Project until such time as there exists more meaningful, significant and faster tracking progress on these issues.

Thank you for the opportunity to be here today and think Grand!

Edward Moyer

From: Lurline Curran [lcurran@co.grand.co.us]
Sent: Monday, July 30, 2012 2:21 PM
To: emoyer@co.grand.co.us
Subject: FW: errors in certificate

Please put as exhibit

From: Peggy Montano [mailto:pmontano@troutlaw.com]
Sent: Monday, July 30, 2012 1:27 PM
To: Lurline Curran; Teri Mordick
Cc: Bennett Raley; Jeff Drager; Eric Wilkinson
Subject: errors in certificate

Ms. Curran and Mr. DiCola,

In advance of the hearing on August 1, 2012 I want to correct for the record two significant factual errors in the certificate:

1. Page 1 paragraph 1-ONLY Windy Gap Firming Water and NOT original Windy Gap Project water is involved in pre-positioning. No original Windy Gap Project water will be stored in Chimney Hollow Reservoir.

2. page 3- fifth bullet- the number over 10 years should be 650,000 not 65,000.

Kind Regards,

Peggy E. Montaña

Trout Raley Montaña Witwer & Freeman P.C.

1120 Lincoln Street, suite 1600

Denver Colorado, 80203

303-339-5833 direct

*See
file
ed*

RECEIVED
JUL 31 2012

STERN & NEWTON, P.C.
ATTORNEYS AT LAW
ESTABLISHED 1975
P.O. BOX 50 • GRANBY, COLORADO 80446

RONALD S. STERN
RICHARD E. NEWTON

(970) 887-2163
FAX (970) 887-3986
snlaw@rkytnhi.com

July 30, 2012

Board of County Commissioners
Grand County Administration Building
PO Box 264
Hot Sulphur Springs CO 80451

Re: Windy Gap Firing Project

Dear Commissioners:

I am writing concerning the Windy Gap Firing Project 1041 permit process. I have worked and lived in Grand County for 30 years and fished the Colorado River for nearly 35 years. This river used to be a premier dry fly stream. No longer.

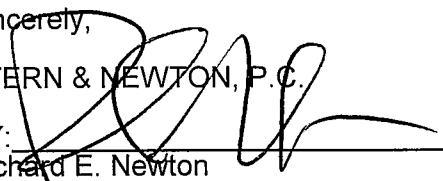
I am requesting that enhancements must be part of the 1041 permit.

Windy Gap pumping must stop when stream temperatures near State acute and chronic standards and no pumping should be allowed after July 15.

The Northern Colorado Water Conservancy District should be required to not just study the bypass around the Windy Gap reservoir but pay for it also.

The Northern must be required, through the 1041 permit, to work with Grand County to monitor the flushing flows and provide an adequate flushing flow to keep sediment from collectin in the river and the aquatic habitat healthy.

The Northern must fund a robust stream monitoring progam that can accurately track the health of the aquatic species in the river and react to any declines that cannot be explained by normal fluctuation.

Sincerely,
STERN & NEWTON, P.C.
BY: 
Richard E. Newton
Attorney at Law

/cc

Kathy Etler

RECEIVED
JUL 31 2012

From: Ron Johnson [rluvs2fish@earthlink.net]
Sent: Tuesday, July 31, 2012 10:12 AM
To: grndcty1@co.grand.co.us
Subject: Windy Gap FIRMING Project

BY:.....

July 31, 2012

Please forward to:
Grand County Commissioners
PO Box 264
Hot Sulphur Springs, CO 80451

Re. Windy Gap FIRMING Project Concerns

Dear Commissioners:

I am a homeowner in Grand County and have been very concerned about the further degradation of the quality of Upper Colorado river that could result from this project. Since owning property starting in 1997, I have both enjoyed the benefits provided by the rivers of Grand County and been dismayed by the deterioration I have seen in just the last 15 years. We have a jewel here that I would hate to see further destroyed by the supposed needs of the eastern slope water interests. I catch and release fish the rivers, take my granddaughters for hikes along them, hoping that they will be able to take their kids to enjoy the rivers in the future. I also know that the rivers and lakes are the lifeblood of Middle Park, providing income from all who live here and those who come to visit, spend money, build homes and businesses. Without these precious rivers, Grand County would further shrink and become less vital and viable as the years go by. To those ends I support the mitigation efforts as outlined by The Trout Unlimited organization and urge the Commissioners to require all the mitigation needed to protect the system.

This includes among other things the following:

Make the enhancements committed be included as part of the 1041 permit.

Require that Windy Gap pumping stops when stream temperatures near the State acute and chronic standards limit, and that all pumping is stopped by no later than July 15 of each year.

Require that the Northern Colorado Water District to approve and pay for the bypass around Windy Gap reservoir.

Require that Northern, through the 1041 permit works with Grand County, monitors the flushing flows and provides adequate flushing flows each year to keep sediment from collecting in the river, allowing the aquatic habitat to be as healthy as possible. This should include specifications on what that means and should provide for penalties if those conditions are not met.

Require that Northern fund an aggressive monitoring system with minimum specifications that can track the health of the rivers and aquatic species in the river and provide remediation funds to ensure that any conditions not meeting those specifications will be remedied promptly.

I trust that the Commissioners will do the right thing for the rivers, Grand County and its people. Thank you for your efforts in this endeavor.

Ronald H. Johnson
Local Address:
PO Box 572
Tabernash, CO 80478
303-918-7300 cell



July 31, 2012

Grand County Commissioners
P.O. Box 264
Hot Sulfur Springs, CO 80451

Transmitted by email and sent by mail

Dear Commissioners:

This letter responds to the important opportunity you have provided for public input to your decision making as to the proposed 1041 permit for the Windy Gap Project. Many of our Colorado Wildlife Federation (CWF) members fish in the Fraser and Upper Colorado Rivers and some of our members also own property in Grand County.

CWF has been actively involved in providing input to the Bureau of Reclamation NEPA and the Corps Section 404 permitting processes. We also participated in the related public meetings sponsored by the Colorado Wildlife Commission in 2010 and 2011. We remain greatly concerned that Northern Colorado Water Conservancy District (Northern) will not fully mitigate the impacts of its proposed project nor mend the impacts of its ongoing project, despite its failure to meet legislated commitments to protect water quality in Grand Lake, etc.

We support the recommendations developed by your staff for the permit. However, in addition we believe that the following points raised by Trout Unlimited must also be fully addressed.

- The commitments that have been made to implement enhancement measures should be included in the 1041 permit.
- Pumping at Windy Gap should stop when stream temperatures near the State acute and chronic standards, and no pumping should be allowed after July 15th each year.
- Northern should be required to pay for a study to assess the value of constructing a bypass channel around Windy Gap reservoir in coordination with Colorado Parks and Wildlife (CPW). If CPW determines the bypass would provide significant benefits to the aquatic ecosystem, Northern should be required to fund all of the engineering and construction. It was Northern's erroneous decision to build this dam in the first place.

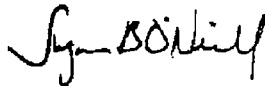
1410 Grant Street, Suite C-313 Denver, CO 80203 Phone (303) 987-0400 Fax (303) 987-0200
www.coloradowildlife.org cwfed@coloradowildlife.org

- Northern should be required in the 1041 permit to work with Grand County to monitor the flushing flows and provide adequate flushing flows to keep sediment from degrading the aquatic habitat.
- Northern must fund a robust stream monitoring program that can accurately track the health of the aquatic species in the Colorado River. They should quickly respond to any declines that cannot be explicitly contributed to normal stream flow fluctuations.

Thank you for considering our recommendations.



Dennis G. Buechler
Director Emeritus, Colorado Wildlife Federation



Suzanne O'Neill
Executive Director, Colorado Wildlife Federation