INTERGOVERNMENTAL AGREEMENT FOR THE LEARNING BY DOING COOPERATIVE EFFORT

This Intergovernmental Agreement (Agreement) is entered into between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (Board); GRAND COUNTY BOARD OF COUNTY COMMISSIONERS (Grand County) MIDDLE PARK WATER CONSERVANCY DISTRICT (Middle Park) and COLORADO RIVER WATER CONSERVATION DISTRICT (River District), collectively, the "parties."

WHEREAS, the Board, Grand County, Middle Park, and the River District desire to engage in a cooperative, iterative and on-going process (Cooperative Effort) to maintain, and when reasonably possible, restore or enhance the aquatic environment in the Fraser and Williams Fork River Basins and in the mainstem of the Colorado River from the outflow of Windy Gap Reservoir to its confluence with the Blue River (the Cooperative Effort Area); and

WHEREAS, in addition to other data and information, this Cooperative Effort will rely on the information contained in the draft Grand County Stream Management Plan (SMP). The current draft SMP is dated August 2010, but the parties anticipate that the SMP will evolve over time with the addition of real time information and data; and

WHEREAS, this Cooperative Effort is intended to address impacts that may be associated with existing operations by the Board, Grand County and other water users in the Cooperative Effort Area. Any new impacts to the aquatic environment projected to be caused by the Board's proposed Moffat Project will be addressed by mitigation plans to be developed by regulatory agencies as part of the permitting process for the Moffat Project; and

WHEREAS, the parties to this Cooperative Effort will develop a process to monitor the stream conditions to identify and respond to potential changes in or desired improvements to the aquatic environment, based upon the concepts embodied in this Agreement; and

WHEREAS, the Cooperative Effort will allow the participants to identify and react to changes in the aquatic environment in a manner that maximizes the benefits to be realized from the defined resources available to the entities, and that minimizes adverse changes to the aquatic environment whenever possible; and

WHEREAS, the parties are authorized to enter into this Agreement by, *inter alia,* Section 29-1-201, *et seq*., C.R.S.; Section 29-10-101, *et seq*., C.R.S.; and Article XIV, Section 18(2) of the Colorado Constitution.

NOW THEREFORE, the parties agree to implement this Cooperative Effort in accordance with the following provisions:

I. Guiding Principles

The overarching goal for the Cooperative Effort is to maintain and, where reasonably possible, restore or enhance the condition of the aquatic environment in Grand County. The Upper

Colorado River system and the Fraser and Williams Fork rivers serve as a critical municipal, agricultural, recreational and industrial water supply source for the state as a whole and provide important aquatic habitat. The participants in the Cooperative Effort have a mutual interest in protecting the aquatic environment and commit to work together in a cooperative and comprehensive manner to address issues related to maintaining and, when reasonably possible, enhancing the condition of the aquatic environment in Grand County. To that end, the parties agree to the following principles to build and promote a stable, permanent, relationship that respects the interests and legal responsibilities of the parties, while achieving the goals of the Cooperative Effort.

A. The Cooperative Effort will not seek a culprit for changes in the condition of the stream, but will provide a mechanism to identify issues of concern and focus available resources to address those issues.

B. The parties to this Agreement have been involved since 2007, along with numerous other West Slope entities, in negotiating the Colorado River Cooperative Agreement (CRCA) to resolve longstanding issues. The Board has committed to Grand County a substantial, but defined amount of resources described in Article III.E of the CRCA for the purpose of maintaining, restoring or enhancing the Upper Colorado, Fraser and Williams Fork watersheds. Grand County commits to using the resources provided under Article III.E of the CRCA for the sole purpose of implementing the Cooperative Effort. In addition, Grand County, Middle Park and the River District agree to contribute resources to the Cooperative Effort on an ongoing basis, as available and appropriate. Because resources available to the Parties are limited, the use of those resources will be prioritized as part of the Cooperative Effort. Grand County agrees, consistent with the provisions of Article III.E.9 of the CRCA, that amounts in excess of $2 million in the WG Pumping Fund will be dedicated to the Cooperative Effort.

C. The Cooperative Effort does not constitute mitigation for the Moffat Project. The Board agrees to undertake all mitigation measures related to Grand County (Mitigation Measures) required in the permit for the Moffat Project to be issued by the Corps of Engineers (COE). The parties to the Cooperative Effort agree not to pursue a challenge to the Mitigation Measures described in the COE permit for the Moffat Project. All the parties to the Cooperative Effort will work in good faith to implement the Cooperative Effort in a way that complements the Mitigation Measures.

D. If the Management Committee desires additional resources beyond the Grand County Article III.E resources, and resources contributed by Middle Park, Grand County and the River District, to implement the Cooperative Effort, the parties will work with other stakeholders and granting agencies, and identify other sources of funding to provide additional resources. If mutually defined additional resources are still desired, the parties may agree to consider contributing more of their own resources on a case-by-case basis and within the context of the other principles listed herein. Each party retains its sole discretion whether to provide any additional resources without future judgment or prejudice by the other parties.

E. The parties to this Agreement agree that active participation in the Cooperative Effort by the Board will commence after Issuance and Acceptance by the Board of Permits Necessary for the Moffat Project, as defined in the CRCA. Prior to the issuance and acceptance of permits, the parties agree that they will continue to work together on completing and improving the draft SMP.

F. The parties acknowledge that actions not the subject of other contractual obligations that would impair a party's ability to meet its water supply commitments will not be undertaken as part of the Cooperative Effort, unless agreed to voluntarily by the owner of the water supply.

G. For a period of five years from the date of the first diversions into the constructed Moffat Project, no party will unilaterally request, or cause others to request, that the COE or other applicable regulatory agencies reopen a permit or license for the Moffat Project for any reason. Each party reserves the right to oppose any such efforts to reopen the permits or licenses for the Moffat Project.

II. The Cooperative Effort

A. **Organization.**

1. **Management Committee**. The parties will form a Management Committee within six months after this Agreement becomes effective.

2. **Representation.** The initial Management Committee will comprise five members, one representative each from Grand County, the Board, the River District, Middle Park, and Trout Unlimited. If Grand County and Northern Colorado Water Conservancy District (Northern Water), and the Municipal Subdistrict of the Northern Colorado Water Conservancy District (Subdistrict) enter into an agreement similar to this agreement, the Management Committee will be expanded by one to accommodate a representative from Northern Water or the Subdistrict. The Management Committee may decide to invite others to be members, such as representatives from agricultural, environmental, recreational, industrial, and governmental interests. It is anticipated that the Colorado Division of Parks and Wildlife will be invited to be a member of the Management Committee and the United States Forest Service will be invited to play an advisory role in the Management Committee. Any decision to add other members to the Management Committee will be by consensus, with consideration being given to the resources and contributions other potential members may provide to the Cooperative Effort.

3. **Decision-making.** The Management Committee will operate by consensus. The Management Committee will make a good faith effort to resolve any issues. If the good faith effort does not result in consensus, the Management Committee will implement the Conflict Resolution process.

4. **Organizational Structure**. The Management Committee may establish a not-for-profit organization to implement the Cooperative Effort if it determines that such a vehicle is the most effective means for accomplishing its objectives.

B. **Tasks and Responsibilities**. The following are expected under the Cooperative Effort:

1. **Continue to Improve the Grand County Stream Management Plan.** Phase 1, 2, and 3 of the draft SMP have been completed. The parties will continue to adapt and improve the draft SMP cooperatively as additional information is developed, the understanding of desired stream conditions is better defined, and the management goals for each stream reach are agreed upon.

2. **Management Goals and Priorities.** The Management Committee will define the management goals for each stream reach of interest. By way of example, one reach may be managed to increase the fishing experience for rainbow trout, while another reach may be managed for a specific stream characteristic such as macro-invertebrate diversity. Which management goals are practicable for a specific reach could be influenced by the resources available for use in that reach. It is expected that the Management Committee might also define secondary management goals for specific reaches. Once the management goals for the stream reaches are agreed upon, the Management Committee will prioritize the reaches based upon the agreed upon management goals, the desired stream conditions for each reach, and the available resources.

3. **Coordinate with the COE.** If applicable, the Management Committee may work with the COE to coordinate, to the extent practicable, Mitigation Measures for the Moffat Project with the management goals, priorities and projects undertaken as part of the Cooperative Effort. The Management Committee will work to ensure that the Board is not required to engage in duplicative or conflicting actions, nor implement measures that do not accomplish their stated benefits.

4. **Water Quality Standards.** CDPHE has listed several stream reaches in the Cooperative Effort Area on the 2010 303d list of impaired waters. The Cooperative Effort will participate in developing the appropriate management actions for these segments.

5. **Monitoring Plan.** The ability to fully identify cause and effect relationships in a complex aquatic environment is difficult. Therefore, the parties agree to implement a monitoring plan to identify undesirable changes in, and agree upon desired modifications to, the aquatic environment, and to measure the effectiveness of actions taken to protect or improve the aquatic environment.

This approach will allow the available resources to be focused on avoiding problems, responding to changing conditions, and achieving agreed-upon goals. The Cooperative Effort will rely on existing data and new data gathering under existing programs to provide the primary source of information for designing the management goals and for prioritizing those goals and reaches where the goals will be applied. The Management Committee can initiate additional monitoring, data gathering and analysis, and may choose to focus on specific measurable indicators, as circumstances warrant, to guide in applying the resources and to monitor the effectiveness of the resources in meeting a management goal. The principles of the potential monitoring plan are described in Attachment A.

6. **Implementation.** The Management Committee will review the results of monitoring to evaluate the effectiveness of the Cooperative Effort and of the allocation of available resources in meeting the management goals and priorities. The results of the monitoring program also may be used to identify measures that might be desirable to maintain or improve the stream environment.

7. **Independent Experts.** The Management Committee may retain independent experts and consultants if deemed necessary to perform the Committee's work. The cost of such independent experts and consultants shall be allocated among the parties as agreed to by the Management Committee.

8. **Operations Plan**. The Management Committee will develop an annual operations plan to maximize the stream environmental benefits of the available resources (including water commitments, system flexibility and funding). The plan will explore opportunities for coordinated operations of diversion structures and reservoir releases among all water users in Grand County, including Northern Water; the Subdistrict; the Bureau of Reclamation, the Board; Middle Park; River District; and in-county diversions for agricultural, municipal, industrial, and others uses. The purpose of coordinated operations is to allow the water users to meet the supply requirements of their systems, while maximizing the effectiveness of the Cooperative Effort. Subject to any contractual commitments regarding system operations, all water users retain sole discretion over their water supply system demands and opportunities and available system flexibility. The decisions and actions by the Management Committee in developing and implementing the operations plan shall take into account water rights priorities, draft SMP flow ranges as they change over time, naturally occurring hydrologic conditions, recreational flow needs, CWCB instream flows, and the results of monitoring.

9. **Incorporate New Knowledge into Management Actions.** As the results of testing various operational changes, monitoring the effectiveness of measures, and collecting and analyzing additional data, the Management Committee will

have new information to inform its decision-making. The Management Committee will address data management and access issues in a timely fashion.

10. **Obtain and Manage Funding.** The Management Committee will explore whether the most effective use of funds made available for the benefit of the stream environment is to set up an endowment fund dedicated to the goals of the Cooperative Effort. For example, the interest from such a fund could be used as matching funds for grants. The Management Committee also will research available sources of funding for planning, monitoring and implementing measures identified during the Cooperative Effort, including, but not limited to grants, contributions, assessments, or fees on water or sewer services.

11. **Weekly Coordination.** The Management Committee will conduct weekly coordination meetings or calls from May through September or at such other times as mutually agreed by the Management Committee. The purpose of these meetings/calls is to highlight upcoming operational issues, discuss potential options to reduce possible negative impacts to the aquatic environment, and to coordinate implementation of actions under the Cooperative Effort. The Management Committee can agree to include other entities in the meetings or calls, as a general practice or as warranted. However, the other entities participating in these calls would act as advisors only unless they were providing water, usable resources, or system flexibility to a particular solution or action of the Management Committee.

12. **Annual Review and Stream Management Plan Adaptations.** The Management Committee will conduct an annual review in January or February before the next spring and summer field season to assess whether management goals are being met, evaluate the monitoring data gathered, assess the use of available resources, identify additional data and analysis needs, determine if refinements are needed to the Grand County draft SMP or the operations plan, and provide an annual summary to each of the parties.

III. Conflict Resolution

The parties agree that, if the Management Committee cannot adequately address an issue to the satisfaction of one of the parties, the parties will confer in good faith and endeavor to resolve the concern.

Where the Management Committee cannot make a decision by consensus, and any single entity believes that the issue warrants mediation, the Management Committee 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 all parties, to review and make

a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, then the Management Committee would agree to disagree, and move forward with the other elements of the Cooperative Effort where they had reached agreement.

In the specific case of water resources committed to Grand County by Denver Water in Article III.E of the Colorado River Cooperative Agreement, if the Management Committee cannot reach consensus on the use of that water, then Grand County shall manage and control the in-stream use of the water to accomplish the purposes of the CRCA.

If the conflict cannot be resolved by the efforts of the mediator and the Management Committee is prevented from moving forward with the other aspects of the Cooperative Effort, then the parties can pursue any available legal or administrative recourse.

IV. Effective Date

This Agreement shall become effective upon the Issuance and Acceptance by the Board of Permits Necessary for the Moffat Project, as defined in the CRCA.

V. Miscellaneous Provisions

A. Regulatory Action or Litigation

In the event any person or entity files a petition to the COE, FERC or other regulatory agency for regulatory action, or commences litigation, which would materially adversely affect the Moffat Project (Adverse Action), the parties to the Cooperative Effort agree to meet and discuss in good faith the potential detrimental effect of such Adverse Action, with the goal of determining whether any action by one or more parties could avoid the Adverse Action or mitigate its impact on the affected party. Each party agrees to evaluate in good faith whether it can implement changes in its operations or undertake other efforts that would achieve this goal, and to implement any such efforts as may be agreed to by the parties. If the Moffat Project is denied an acceptable permit, or if the Board decides not to proceed with its project, then the Board shall provide notice to the parties to this Agreement within ten days of the decision and shall be released from its obligation to participate in the Cooperative Effort. Nothing in this paragraph modifies the Board's independent obligations under Article III.E of the CRCA.

B. No Property Rights or Servitude

Nothing in this Agreement shall be deemed or construed as granting or creating any property right or servitude whatsoever on any party's water rights or facilities. The foregoing sentence shall not impair the rights of any party to specific performance of this Agreement.

C. No Operating Obligation

Except for those Article III.E resources which will require operational changes, nothing in this Agreement shall be deemed or construed as creating any obligation on any party to operate its raw or treated waterworks system in any particular manner, so long as the

party complies with the terms of this Agreement. Each party retains sole and exclusive discretion concerning the operation of its system.

D. **Right of Specific Performance**

If any party shall fail to cure any default or breach of this Agreement within 120 days after receipt of notice from the non-defaulting or non-breaching party, then the non-defaulting or non-breaching party may elect to file suit, without further notice, for specific performance of this Agreement. The parties agree that the terms and conditions of this Agreement are enforceable by specific performance, and the parties hereby waive any defenses to specific performance based on the doctrine of sovereign immunity

E. **Force Majeure**

A party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, provided that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the party not performing.

F. **Severability**

If any provision of this Agreement shall prove to be illegal, invalid, unenforceable or impossible of performance, the remainder of this Agreement shall remain in full force and effect.

G. **Assignment**

Neither this Agreement nor any of a party's rights, obligations, duties or authority hereunder may be assigned in whole or in part without the prior written consent of the other parties.

H. **Colorado Law**

This Agreement shall be construed in accordance with the laws of the state of Colorado.

I. **Termination**

This Agreement will remain in effect unless terminated in writing by all the parties.

J. **Admission of New Parties**

The original parties to this Agreement may, upon unanimous consent, admit new parties upon such terms and conditions as they determine appropriate.

ATTEST:

By: _____
Secretary

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

By: _____
President

Date: 5/15/12

APPROVED:

By: _____
Director of Planning

APPROVED AS TO FORM:

By: _____
Legal Division

BOARD OF COUNTY COMMISSIONERS,
COUNTY OF GRAND

ATTEST:

By: _____
Chairman

By: _____
Grand County Clerk and Recorder

Date: 5/15/12

Deputy Clerk

COLORADO RIVER WATER
CONSERVATION DISTRICT

By: _____
President

Date: 7/15/13

MIDDLE PARK WATER
CONSERVANCY DISTRICT

By: _____
President

Date: 7/17/13

ATTACHMENT A
Monitoring Plan

Some level of effective monitoring of the stream environment is essential to understanding and measuring success of applied prescriptions. The Management Committee will design an Aquatic Resource Monitoring Plan, which will cover the Cooperative Effort Area. The Monitoring Plan will focus on understanding the resource and preparing to measure the success of the applied prescriptions.

The Monitoring Plan will be developed and implemented as part of the Cooperative Effort, and will incorporate the elements of the monitoring plan prepared during Phase 3B of the draft SMP that the Management Committee determines are appropriate. The monitoring data will be used by the Management Committee for its decision-making. For example, monitoring will be used to identify changes in the aquatic environment, identify critical stream reaches, assign priorities for action steps, evaluate the effectiveness of actions taken, and to modify and refine strategies for achieving goals of the Cooperative Effort.

The elements of the plan will be determined as part of the Cooperative Effort. The Plan could include some or all of the following elements:

- Identification of key stream segments and groundwater to monitor.
- Existing hydrologic conditions.
- Specific existing ecological conditions at key locations.
- Permanent stream transects to monitor and evaluate any future changes in ecological conditions (e.g., shifts in riffle/pool ratios, increases in sedimentation, reduction in stream habitat diversity) associated with changes in channel maintenance and applied flushing flows proscribed in the Cooperative Effort.
- Establish key indicators of aquatic life and stream health (e.g., fish biomass) and threshold levels at specific locations that reflect increases or declines in aquatic life and stream health from application of measures defined in the Cooperative Effort.