

River Protection Workgroup



Involving the public in protecting the natural values of selected streams while allowing water development to continue

River Protection Workgroup INITIAL RIVER PROTECTION TOOLS/MECHANISMS

The following variety of federal, state and local tools, both public and private, are among those available to protect natural stream values and other values.

I. State Protection Mechanisms

- A. Colorado Instream Flow and Natural Lake Level Program
- B. Colorado Law and Intergovernmental Agreements
- C. Gold Medal Waters
- D. Outstanding Waters
- E. Recreational In-Channel Diversions ("RICD")

II. Federal Protection Mechanisms

- A. U.S. Bureau of Land Management ("BLM") and U.S. Forest Service ("USFS") Land Management Plans ("LMPs")
- B. Wild and Scenic Rivers Act of 1968 ("WSRA")
- C. Wilderness Designation: Wilderness Act of 1964 ("Wilderness Act")
- D. National Conservation Areas ("NCAs")
- E. Other Federal Legislation (special) (Rio Grande and North St. Vrain Creek)
- F. South Platte Protection Plan (WSR suitability determination held in abeyance).

- G. Rio Chama Management Plan

III. Other

- A. Conservation Easements
- B. County Land Use Codes
- C. Contractual Arrangements

I. State Protection Mechanisms

A. Colorado Instream Flow and Natural Lake Level Program ("ISF Program"): Colorado's ISF Program, a tool for permanently protecting stream flows and preserving the natural environment of Colorado's streams, was established by the Colorado General Assembly in 1973. The legislature recognized the need to "correlate the activities of mankind with some reasonable preservation of the natural environment," and vested the Colorado Water Conservation Board ("CWCB") with exclusive authority to protect streamflows through a reach of stream. The CWCB may appropriate new ISF water rights or acquire existing water rights and change them to ISF use under the ISF Program as follows:

An ISF water right is:

- An in-channel appropriation of water (non-consumptive) for an identified flow rate between specific points on a stream.
- Appropriated exclusively by the CWCB for minimum ISFs to preserve the natural environment to a reasonable degree.

Process to appropriate a new ISF water right:

- CWCB requests recommendations for streams to be considered for ISF appropriations to preserve the natural environment. An ISF workshop is held each February to discuss proposed recommendations.
- Any person or governmental entity may submit recommendations in writing and with specificity as to the aspect of the natural environment the ISF would preserve and the water available for the proposed ISF.
- Recommendations are prioritized and added to a Candidate Stream List for processing by CWCB staff.
- Data are collected and flow requirements are quantified using R2Cross or another standard methodology, usually, but not limited to, a cold-water fishery standard, that a natural environment exists; water is available for ISF appropriation; and there will be no material injury to water rights.

- Recommendations are submitted to CWCB for determinations and appropriation. The CWCB provides notice and an opportunity for public input on every recommendation.
- The CWCB then files an application with the water court to adjudicate the ISF water right.

How an ISF water right provides permanent stream-flow protection:

- ISF water rights are adjudicated and administered within the state's water-rights priority system, as are any other Colorado water rights.
- While a junior-priority ISF water right cannot affect the operation of senior decreed water rights, it is entitled to stream conditions as they existed at the time of the ISF appropriation. Consequently, ISF water rights have standing in water court to ensure that proposed plans for augmentation and changes to water rights do not alter stream conditions to the detriment of decreed ISF water rights.
- The CWCB's staff monitors, protects and enforces ISF water rights.

Acquisitions of existing water rights for ISF use:

- The CWCB may acquire water; absolute direct flow or storage, but not conditional rights; water rights or interests in water to preserve or improve the natural environment to a reasonable degree, on either a permanent or temporary basis.
- Flexible contracts outline the terms of each acquisition. The CWCB may acquire water (or interests in water) by donation, purchase, lease, or other contractual arrangement.
- The CWCB works with water-right owners on a voluntary basis to protect stream flows in a manner consistent with state law.
- The CWCB evaluates proposed water acquisitions using a public process and established criteria.
- The Colorado Division of Wildlife works with the CWCB to quantify amounts necessary to preserve or improve the natural environment with acquired water.
- The CWCB must apply to water court to obtain a change decree to use an acquired water right for ISF purposes to ensure that no injury will result from the change.
- The CWCB has money available for the purchase or lease of water rights for ISF purposes.

Benefits of water acquisitions:

- Acquisitions can: protect ISFs where water may not be available for a new junior ISF right; restore, rehabilitate or improve the natural environment in degraded stream systems; and extend the amount of time water is legally available to existing junior ISF water rights.
- Acquired rights, changed by decree of the water court, are administered in priority.
- The CWCB and water-rights owners can develop creative approaches to ISF protection in the acquisition process.

For more detailed information on the ISF Program, go to <http://cwcb.state.co.us/StreamAndLake> .

B. Colorado Law and Intergovernmental Agreements: A broad range of potential enactments and intergovernmental agreements by the State of Colorado could provide habitat protection should either the General Assembly or Colorado executive departments believe laws or agreements are necessary. Colorado law could include the creation of state parks; Colorado executive departments could execute endangered-species recovery implementation programs, in addition to those already existing for the Upper Colorado River, the San Juan River Basin and the Platte River. The purposes of the implementation programs are to allow for the recovery of endangered fish, or other water-dependent species while water development continues. In addition, multi-state agreements could be entered into, such as the Five State Agreement regarding native fish and the multi-state agreement regarding Colorado River Cutthroat Trout.

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Voluntary Flow Agreements (“VFAs”) can provide protection for non-consumptive uses within a stream segment. One example is the Arkansas River VFA. The advantages of VFAs are that they can maintain or enhance environmental or recreational attributes, but still allow water providers to have some certainty and flexibility in the way they manage their water systems. Under the Arkansas River VFA, the parties act voluntarily, but BLM has the ability to consider designation of this river as a Wild and Scenic River should the VFA not be operated. (See also the South Platte Protection Plan, described below).

C. Gold Medal Waters: The Colorado Division of Wildlife Gold Medal Waters designation recognizes the highest-quality cold-water fishery habitats and the public’s interest in maintaining and managing these habitats:

A Gold Medal Water is a lake or stream that supports a trout standing stock of at least 60 pounds per acre, and contains an average of at least 12 quality trout per acre.

The designation results in management actions intended to preserve and protect the habitat values of these waters. The trout in a Gold Medal stream reach may continue to be a stocked fishery.

D. Outstanding Waters: This is the most protective classification of water standards under the Colorado Water Quality Control Act. C.R.S. § 25-8-101 *et seq.* Outstanding waters must have low enough levels of pollution from 12 chemical and biological constituents to meet this standard. Outstanding waters are not allowed any new, permanent sources of degradation from manmade sources of pollution such as sewerage or mine waste. This standard is applied to streams in wilderness areas and is also in place in the Hermosa Creek drainage, with the exception of the East Fork.

E. Recreational In-Channel Diversions (“RICD”): In 2001, the Colorado legislature enacted the RICD law, modified by the General Assembly in 2006. An RICD is the minimum amount of stream flow, as controlled and placed to beneficial use between specific stream points, defined by control structures, pursuant to an application

filed in water court by certain public entities for a reasonable recreation experience in and on the water from April 1 to Labor Day of each year, unless the applicant can demonstrate that there will be demand for the reasonable recreation experience on additional days. An RICD requires a man-made diversion within a stream channel. An RICD is limited to one specified flow rate for each time period shorter than 14 days, unless the applicant can demonstrate a need for a shorter time period. There is a presumption that there will not be material injury to an RICD water right from subsequent appropriations or changes of water rights if the effect on the RICD caused by such appropriations or changes does not exceed one-tenth of one percent of the lowest decreed rate of flow for the RICD as measured at the RICD and the cumulative effects on the RICD caused by such appropriations or changes do not exceed two percent of the lowest decreed rate of flow for the RICD measured at the RICD. The owner of a water right for an RICD may not call for water that has been lawfully stored by another appropriator. An RICD can protect higher flows than the flows typically appropriated by the CWCB ISF program. It is an important tool where recreational boating is the non-consumptive use that an entity is seeking to protect.

II. Federal Protection Mechanisms

A. BLM and USFS Land Management Plans ("LMPs"): USFS and BLM land-use planning establishes broad guidance for the project and activity decision-making needed to manage the public lands. All projects and activities authorized by the BLM and the USFS must be consistent with the relevant USFS LMPs or BLM Resource Management Programs, practices, uses, and protection measures. (16 USC 1604 (i), 43 CFR 1601.5-3) A project or activity is considered consistent with an LMP if it is consistent with plan decisions, as described below. If a project or activity is inconsistent with an LMP, the responsible official may: (1) modify the proposal so the project or activity is consistent; (2) reject the proposal; or (3) amend the LMP contemporaneously with the approval of the project or activity so that the project or activity is consistent with the LMP, as amended. The amendment may be limited to apply only to a specific project or activity.

Rivers and their related values may be affected by a number of decisions that might be incorporated into a LMP. The key decisions typically made in LMPs include:

- Establishment of (a) desired outcomes, including multiple-use goals and objectives; (b) management requirements, including measures or criteria to be applied to guide day-to-day activities; (c) monitoring and evaluation requirements; and (d) community and evaluation requirements and management area direction, including identifying allowable uses, and/or allocations, restrictions, and prohibitions, often done by allocating lands to general management areas that reflect different levels of development and suitable uses.

- Designation of (a) Research Natural Areas (“RNAs”) for USFS lands and Areas of Critical Environmental Concern (“ACECs”) for BLM-administered lands; and (b) suitable timber land and the establishment of allowable sale quantities for USFS lands.
- Recommendation of lands for inclusion in the National Wilderness Preservation System (“NWPS”). (USFS only; BLM recommendations are considered through separate, legislative Environmental Impact Statements.)
- Identification of river segments as eligible or suitable for inclusion in the National Wild and Scenic Rivers System (“WSRS”).
- Allocation of livestock forage (“AUMs”) and areas available for livestock grazing on BLM-administered lands.

The management of rivers and their associated values is subject to the overall desired outcomes described in an LMP. For instance, desired condition statements about maintaining or enhancing water quality could frame the future management of rivers and their watersheds. The establishment of criteria, such as plan standards or guidelines, could further define management actions to be taken or the decision-space available during consideration of specific activities that may affect river values.

General management area allocations pull together desired outcomes and management criteria and may establish the overall management approach for a given area. The management of streams located within these management areas could be affected by the levels of development or management activity associated with each management area.

Specific designations or land allocations made in LMPs may also directly affect the management of rivers. The designation of an RNA or ACEC provides more specific guidance on management of the particular area. For instance, an ACEC intended to protect a rare aquatic plant community could require additional scientific study, management actions to enhance wetland vegetation or desired flow regimes, or design criteria for adjacent land uses to prevent degradation of the community.

Recommendations for inclusion in the NWPS or findings of suitability for inclusion in the WSRS require the agencies to manage the identified lands or stream segments and adjacent corridors to preserve Congress' option to consider legislation either to establish a new Wilderness Area or a WSR. Such recommendations or findings may be accompanied by other LMP components, such as desired outcomes or management criteria to protect identified values pending action by Congress. In the case of a finding of suitability for inclusion as a WSR, the San Juan Public Lands Center (“SJPLC”) is required to manage the stream corridor to protect the ORVs identified in the LMP. If, for

instance, the ORV were a native fishery, actions could be required to maintain or enhance fish habitat, including water quality. Managing for habitat could include specific enhancement projects or the modification or mitigation of activities that may affect the fishery. These measures would be applied at the appropriate decision point and would be subject to valid existing rights.

Other decision points of the LMP, such as required monitoring, or program-specific decisions, such as those for timber or livestock grazing, could also be affected by river or watershed-related desired outcomes and management criteria.

In summary, projects and authorizations of the SJPLC are required to be consistent with a LMP. Plan direction can affect the management of rivers in several ways. Desired outcomes and management criteria may directly or indirectly address river concerns. General management area allocations may further describe combinations of management approaches and levels of management intensity that could affect streams. Specific classifications or recommendations for subsequent Congressional action could increase the level of focus on management and, in the case of wilderness recommendations and WSR suitability determinations, could obligate the agencies to ensure adequate protection of identified values pending final action by Congress. Finally, the management and protection of river values may be accomplished, in part, by LMP decisions pertaining to other resource management programs and land uses and the continued monitoring of the results of these and other decisions implementing the Plan.

B. Wild and Scenic Rivers Act of 1968 ("WSRA"): The WSRA established a system for the protection of rivers with outstandingly remarkable scenic, geologic, historical, cultural, ecological, recreational, fish and wildlife, and other values ("ORVs"), through the establishment of management parameters for streams designated as WSRs. An ORV is a stream-related rare, uncommon, or extraordinary value; a superior example of a widespread value; or a value outstanding in a statewide, regional, or national context. The determination of ORVs is based on the expertise of professionals, knowledgeable about the value.

The designation process under the WSRA involves four steps:

- Eligibility: To be eligible, a stream must: (a) generally be free-flowing with no major impoundments in the segment (can be below dams and have altered hydrology); and (b) have at least one ORV.
- Tentative classification: Tentative classifications are based on the type and degree of human development associated with the stream and adjacent lands, as they exist at the time of the evaluation.

- Suitability: Stream segments determined to be *eligible* are next evaluated for *suitability*, a determination of whether a stream is worthy of addition to the WSR system, based on multiple factors, including: land and mineral estate ownership; use tradeoffs and conflicts; compatibility with local/state interests, plans and programs; availability of other methods for protecting ORVs; valid and prior existing rights, such as water rights; water quality; streamside development; and contribution to river system integrity. Suitability analyses are conducted using input from federal agency partners to help identify management conflicts, other issues, alternatives for protecting ORVs to determine whether WSR designation by Congress is the most viable management scenario. Stream segments identified as "Suitable" are managed to protect the ORVs and free flowing condition ("Protective Management"). Protective Management remains in place until Congress either rejects or approves the stream segment for inclusion in the WSR system, or until a federal agency modifies its land use plan.
- Tentative classification: Eligible streams and related adjacent lands that possess one or more ORVs are tentatively classified as wild, scenic or recreational:
 - (a) *Wild river areas* are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted.
 - (b) *Scenic river areas* are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.
 - (c) *Recreational river areas* are readily accessible by road or railroad, may have some development along their shorelines, and may have undergone some impoundment or diversion in the past.

An agency may actively recommend that Congress/the President decline to designate a WSR. Only Congress or the Secretary of the Interior ("Secretary") may designate a WSR. The managing agencies, with public input, develop a Protective Management Plan to protect and enhance the ORVs. Congressional designation has historically included a federal reserved water right, but an agency determination of suitability does not include a water right.

An initial river study, designating legislation, and the subsequent Protective Management Plan process consider how best to protect ORVs while recognizing private property rights. While the WSRA carries no authority to control the use of privately owned land, the question arises, if a water user requires an easement or special use permit to use National Forest land within the WSR area, what restrictions might apply. On federally owned land, future development along a WSR is allowed as long as it is consistent with the river's classification and does not harm the river's ORVs.

Alterations to existing irrigation or water withdrawal facilities within the WSR area may be approved as long as there is no direct, adverse effect to the river's ORVs. A WSR may or may not have a federal reserved water right, depending on the method used to designate the river. In the one designated WSR in Colorado, the water language was negotiated.

The WSRA prohibits the Federal Energy Regulatory Commission from licensing construction of a dam, water conduit, reservoir, powerhouse, transmission line or other project works under the Federal Power Act on or directly affecting a river designated as an actual or potential WSR system component.

Section (§) 2 (a) (ii) Designation of a WSR:

The process set forth in §§ 2(a)(ii) and 4(c) of the WSRA, subject to certain conditions, authorizes the Secretary to include a river, already protected by a state's river protection program, enacted by the state's legislature or a vote of the people, in the WSR system upon the request of the state's governor. The same eligibility and classification provisions that apply to congressionally designated rivers also apply to § 2(a)(ii) rivers. The river must also be administered by an agency or political subdivision of the state, except for lands already administered by the federal government, and there must be effective mechanisms and regulations in place — local, state or federal — to provide for the long-term protection of the river's ORVs, based on an assessment by a National Park Service study team of state and local laws and regulations and how effectively they are being applied.

While rivers designated as WSR under § 2(a)(ii) are generally protected as are rivers designated by Congress, there are differences, especially with regard to their management.¹ First, the river is managed by state or local agencies, except for federal lands.² While several recent congressional WSR designations mandate that a river be managed cooperatively with local governments, Section 2(a)(ii) specifically precludes federal management of the river. Other than for the management of federally owned lands, the federal land-managing agency will still continue to manage its lands, preferably in cooperation with the state and/or local river manager. Second, a river

¹ One difference specifically outlined by the WSRA regarding § 2(a)(ii) rivers, concerns rivers that are under a congressionally mandated study for WSR designation under § 7(b) of the WSRA, no U.S. department may assist by loan, grant, license, or otherwise, in the construction of any water resources project that would have a direct and adverse effect on the ORVs for which such river might be designated, during such additional period thereafter as . . . is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary § 2(a)(ii), is necessary for the Secretary's consideration thereof, which additional period, shall not exceed three years in the first case and one year in the second.

² An early Interior opinion stated that the presence of substantial federal lands along a proposed § 2(a)(ii) river would be "contrary to the . . . administration of the rivers . . . at no expense to the Federal Government." Congress amended the WSRA to remove this obstacle in 1978 to provide that § 2(a)(ii) rivers designated are to be administered by the state without expense to the federal government "other than for administration and management of federally owned lands."

added to the National WSR System through § 2(a)(ii), must be administered without cost to the federal government. Therefore there can be no condemnation or other acquisition of lands or water rights by the federal government. Third, the Secretary may establish criteria to be met by § 2(a)(ii) river management supplementary to criteria in the WSRA.

The advantages of WSR designation through Section 2(a)(ii) include: (1) potentially faster administrative designation than congressional action, (2) a demonstration by state and/or local jurisdictions of a commitment to river protection, (3) where there is local concern over federal regulation, the river can still be designated, and (4) Section 2(a)(ii) rivers can receive most of the protections of the WSRA without federal involvement, with the exception of federal review of federally sponsored or permitted water-resource projects.

If, and only if, a river has been authorized by Congress for study through § 5(a) of the WSRA, and the governor of a state subsequently applies for designation through § 2(a)(ii), the river is protected from water-resource projects for one year following the application for designation to the Secretary.

Under § 2(a)(ii), all gubernatorial nominations are submitted to the Secretary, with notification to the Federal Energy Regulatory Commission, and notice published in the Federal Register. The National Park Service then analyzes the nomination, the physical environment of the river (eligibility) and the ability of the state applying for designation to manage the river, and makes recommendations on designation to the Secretary.

Under § 4(c), the Secretary submits the proposal to the Secretaries of Agriculture and the Army, the Chairman of the Federal Power Commission, and the head of any other affected federal department or agency and evaluates and gives due weight to any recommendations or comments which these officials furnish him within 90 days of the date on which it is submitted to them. If the Secretary approves the proposed inclusion, notice is published in the Federal Register.

C. Wilderness Designation: Wilderness Act of 1964 ("Wilderness Act"):

The Wilderness Act established and determined the management parameters for the National Wilderness Preservation System, a system of major protection for federal lands — National Parks, Forests, Wildlife Refuges, and BLM lands — which may be designated as wilderness by Congress. The intent of the Wilderness Act is: . . . *to assure that an increasing population, . . . does not occupy and modify all areas within the United States . . . , leaving no lands designated for preservation and protection in their natural condition, it is . . . the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.*

Activities permitted in wilderness: Most activities that pre-existed the wilderness designation are permitted in wilderness areas. Non-motorized recreation, such as hiking, camping, hunting, horseback riding, fishing, boating, and commercial outfitting are permitted, as are pre-existing activities, such as livestock grazing in the same manner as it occurred at the time of designation (including motorized access when necessary), development of valid mineral claims and leases, and access to existing water-resource facilities for maintenance. Emergency activities, such as rescue and firefighting, including motorized access, may occur in wilderness areas. Certain administrative uses such as scientific research, data-gathering devices like rain gauges, and fire prevention activities are also allowed. Private property rights within wilderness are respected. Access to private land parcels within the wilderness, generally consistent with historic access, is permitted.

Activities prohibited in wilderness: No road construction or permanent structures are allowed in wilderness areas, nor are activities such as logging, mining exploration, and vehicular traffic, although new construction for livestock grazing, such as fences and spring developments, is allowed where needed to protect resources. Motorized and mechanized access in wilderness, including off-road vehicles and mountain bikes is prohibited, except for emergency use (firefighting, rescue, etc.); and for grazing management, and some administrative uses (such as maintenance of water facilities), where non-motorized alternatives aren't practical.

Benefits of wilderness: Leaving areas of land – and established traditional activities — as they were at the time the wilderness is designated; protecting watersheds that provide drinking water to cities and rural communities; helping meet the nation's increasing demand for outdoor non-motorized recreation (hiking, hunting, fishing, bird watching, canoeing, camping, and many other activities); providing habitat for wildlife and natural laboratories for scientific research; and serving as a haven from the pressures of our fast-paced, industrialized society.

How wilderness designation affects water rights: Wilderness water rights are non-consumptive, in-stream flow rights. The water flows through and nourishes wilderness and the wildlife and habitat associated with it, then flows out, available for other uses. Wilderness designation does not affect existing water rights, and fully respects other water rights on the stream. Wilderness water rights cannot disrupt existing rights, facilities or project operations. Protection of water flows in wilderness may take a variety of forms, but none impinge on existing rights. Any wilderness water right would have a priority date of the actual reservation, would be junior to all existing water rights, and, therefore would not supplant other, more senior rights. In addition, wilderness water rights apply only to unappropriated water. Because they are junior rights and not "super" rights, wilderness water rights are subject to availability of unappropriated water. A wilderness water right ensures only that when water is available, does wilderness get its decreed portion to help protect natural values.

D. National Conservation Areas ("NCAs"): Because no “organic act” establishes parameters for the designation of NCAs (both wilderness and Wild and Scenic Rivers are defined by organic acts), NCA legislation can be crafted to meet the needs of specific areas. While NCA designations are flexible and usually refer to BLM lands, their enacting legislation often includes provisions such as the following:

1. The purpose of a NCA is to conserve and protect the range of natural and other values in the area, such as cultural, archaeological, natural, wilderness, scientific, geological, historical, biological, wildlife, educational, and scenic resources of the NCA;
2. Motorized-vehicle use may be limited to designated routes. (Most public lands, including the BLM’s San Juan Resource Area and the San Juan National Forest, have already transitioned to a designated route system.);
3. The NCA is subject to valid existing rights (i.e., pre-existing mineral leases and valid mining claims), but the NCA legislation may withdraw all public land within an NCA from future mining, leasing, and disposal activities;
4. The managing agency must establish a management plan, including a comprehensive travel-management plan.

Aside from these components, the legislation can be tailored to a specific community. Nothing prohibits or changes livestock grazing within an NCA; important historic structures can be protected; and valid existing rights are protected. Wilderness areas can be designated inside an NCA.

NCA legislation has not generally included a new federal reserved water right. If the managing agency should determine that water rights are needed for a NCA, they must be applied for according to the laws of the state of the NCA, and are subject to the same process as any other water right.

NCAs can provide landscape protections that help maintain their existing character, while allowing flexibility in defining how they will be managed. NCAs are multiple-use and often include a variety of activities, ranging from livestock grazing and all forms of recreation to wilderness designation and conservation of historic and cultural sites.

Note: Numerous other federal designations exist, such as National Recreation Areas, National Scenic Areas, and Special Management Areas, but they all share many attributes of NCAs, so the description above serves as their template.

E. Federal Legislation (special):

1. Rio Grande Natural Area ("RGNA") in Colorado: S 26, 109th Congress. The purposes of the RGNA are to conserve, restore and protect the native, historic, cultural,

scientific, scenic, wildlife and recreational resources of the RGNA. The Act specifically finds that the Rio Grande shall not be considered for WSR designation. The nine-member RGNA Commission was established to advise the Secretary on the RGNA and prepare an RGNA Management Plan ("Plan"), hold hearings and enter into cooperative agreements. The Commission may not acquire real property. In assisting in the implementation of the Plan, the Commission may assist Colorado in preserving state land and wildlife; increasing public awareness of the RGNA; encouraging Colorado political subdivisions to implement land-use plans consistent with the management of the RGNA and helping private individuals in implementation of the Plan. The Commission, in developing the Plan, is to consider other plans in existence for RGNA lands to prepare a unified conservation effort; develop the Plan under FLPMA, and ensure Plan consistency with BLM plans for adjacent areas. The Secretary is to cooperate with Colorado and the Rio Grande Water Conservation District to determine any needed changes in stream flows. This approach allows a local community the ability to develop an appropriate stream-management plan.

2. North St. Vrain Creek ("Creek"). Pursuant to special federal legislation, 16 USC § 195a, neither the Secretary nor any other federal agency may provide any assistance for the construction of any new water-impoundment facility in any segment of the Creek or its tributaries within Rocky Mountain National Park or on the Creek mainstem in a designated section of the stream below the Park.

F. Programs like the South Platte Protection Plan: The South Platte Protection Plan, a river management plan, (the "Plan") was negotiated under the threat of a WSR suitability finding and possible designation. The USFS held its suitability determination in abeyance while the parties negotiated the Plan, which has county zoning overlays as part of the protection. The Plan also includes a \$1 million endowment that is available for grants for river restoration and other projects that will help protect the ORVs of the Platte River. The USFS still has the authority to find the Platte River suitable, should the Plan fall apart. The Plan provides certainty and flexibility to water providers, while protecting ORVs.

G. Rio Chama Management Plan ("RCMP"). See P.L. 100-633 (1988): Through correspondence, four official public meetings, and many meetings with outfitters, private boaters, and grazing interests, an Interdisciplinary Team was established to develop a Scoping Summary Package for the RCMP. The package was distributed to interested citizens as an update on the planning process and to request additional information. Water managers and owners met to identify their issues and additional opportunities to improve wildlife and recreation benefits through flow management.

The Rio Chama corridor subject to the RCMP encompasses one-quarter mile from each bank of the Rio Chama, and is located on the 30.4-mile segment of the Rio Chama from El Vado Dam to Abiqui Reservoir. The corridor is divided into three

segments to guide the RCMP: (1) a "WSR" segment administered by the Secretaries of the Interior and Agriculture; (2) a "study" section, afforded protection under Section 5(a) of the WSRA until otherwise designated by Congress; and (3) a "joint management" segment that provides for interim management protection.

The development of RCMP was guided by the following statements: (1) Maintain or enhance the natural qualities of the Rio Chama by minimizing impacts and rehabilitating disturbed areas; (2) maintain or enhance high-quality recreation and wilderness experience with minimal restrictions; (3) provide facilities and resource management necessary to support recreation opportunities, including solitude; (4) increase users' environmental awareness in order to protect the environment and increase understanding; (5) protect the designated WSR qualities of the corridor by acquiring private land from willing sellers and/or acquiring scenic easements, as needed; and (6) develop an equitable system for allocation of boat launches between private boaters and commercial outfitters.

The RCMP recommends the pursuit of flows necessary to improve aquatic habitats, recreation opportunities, and the environment within the constraints of state water laws, the Rio Grande Compact and the availability of San Juan-Chama Project water and its physical operating features.

The RCMP provides for an "Early" runoff season and a "Release" irrigation season pursuant to the following flow management priorities: (1) meeting the delivery requirements of Rio Chama water-rights holders and San Juan-Chama Project water-use contractors; (2) assuring aquatic ecosystem maintenance; (3) balancing among the recreational, aquatic, and environmental uses and the downstream irrigation and municipal demands recommendations for minimum flow requirements, number of releases per season for boating, and releases per year; and (4) meeting all these concerns, predicated on the amount of water (either Rio Chama natural flow or San Juan-Chama Project imported flow) available for re-regulation and the flexibility to operate in a manner that does not adversely impact water users.

The currently recommended flows are stable flows of 150 cfs from mid-September to mid-March and a minimum flow of 100 cfs at other times. The RCMP has committed to studying whether additional flows are necessary. The recommended priorities for recreational boating releases from El Vado Dam are: (1) augmentation for up to two weekends during the Early season; (2) one weekend release per month beginning July 15 of flows sufficient for large rafts; (3) one additional release per month of flows sufficient for small rafts, kayaks, and canoes; (4) an increase of flows to accommodate large rafts; and (5) an increase in the duration of the releases to begin at 2 p.m. Friday instead of 8 a.m. Saturday.

III. Other

A. Conservation Easements: A conservation easement keeps land in private ownership while providing benefits to the public and the environment, by allowing for the preservation of traditional land uses and protecting open lands for future generations. A conservation easement, a legally binding agreement, restricts what a landowner may place on property in order to protect its natural, agricultural and/or open space values for the long term and limits certain types of uses and/or prevents development from taking place. In a conservation easement, a landowner voluntarily agrees to donate or sell certain rights associated with property, such as the right to subdivide. A private organization or public agency agrees to hold "in trust" the landowner's promise not to exercise those rights.

In La Plata County over 18,000 acres have been conserved voluntarily by landowners working primarily with the La Plata Open Space Conservancy. In Archuleta County, the principal land conservancy entity is the Southwest Land Alliance. In other places, conservation easements have permanently protected significant reaches of river channel and riverside habitat. A conservation easement may include language that specifically recognizes the importance of all or some of the water rights associated with a property to the maintenance of the "conservation values" which the easement is intended to protect. There are currently several federal and state tax incentives available to landowners who decide to place their property in a conservation easement.

B. County Land Use Code: Counties have enacted a wide range of tools to help protect rivers, wetlands and groundwater through land use codes, crafted and implemented in ways ranging from voluntary, incentive based approaches to regulatory approaches. Some examples include: Low Density (Agricultural) Zoning; Overlay Districts (e.g. Groundwater Recharge Protection, Wetland Protection, Watershed Protection, and River Protection Districts (Douglas County, GA) etc.; identification/designation of special areas (e.g. Critical Resource Protection Areas (Stafford County Virginia), to be addressed in site planning for development; Natural Resource Regulations (e.g. Sarasota County, FL); development standards and/or regulations; ordinances (e.g. Floodplain, Waterbody Setback or Buffer, Wetland, Tree Protection, Steep Slopes, Storm Water Quality Standards, Stormwater Drainage, Erosion and Sedimentation Control); river protection acts (e.g. Seminole County, FL); transfer of development rights programs.

D. Contractual Arrangements: See above discussion of South Platte Protection Plan, Recovery Implementation Programs, Five-State Agreement and VFAs.

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