

**APPENDIX A –
ESTIMATED IMPACT CALCULATIONS**

**Appendix A - San Luis Valley Regional Habitat Conservation Plan
Estimated Impact Calculations**

Summary of Estimated Impacts

Routine Agriculture		Acres/Year	Percent of Total Habitat
	<i>Low</i>	32.8	0.2%
	<i>Median</i>	135.0	0.9%
	<i>High</i>	237.1	1.6%
	<i>Contingency</i>	10.0	0.1%
Community Infrastructure		Acres/Year	Percent of Total Habitat
	<i>Low</i>	4.1	0.0%
	<i>Median</i>	9.5	0.1%
	<i>High</i>	14.9	0.1%
	<i>Contingency</i>	6.0	0.0%
Conservation and Restoration		Acres/Year	Percent of Total Habitat
	<i>Low</i>	negligible	
	<i>Median</i>	negligible	
	<i>High</i>	negligible	
	<i>Contingency</i>	2.0	0.0%
Total Estimated Impacts		Acres/Year	Percent of Total Habitat
	<i>Low</i>	36.9	0.2%
	<i>Median</i>	144.5	1.0%
	<i>High</i>	270.1	1.8%

Total Riparian Habitat in Plan Area = 15,128 acres

Estimated Impacts of Covered Activities

Livestock Grazing		Value	Unit
Riparian habitat within pasture areas		1,978.0	acres
Riparian habitat within pasture areas w/in NWR		21.9	acres
Potential impact area		1,956.1	acres
Low range of impacts		0.0	% expansion
High range of impacts		3.0	% expansion
	Low Impact Area	0.0	acres/year
	Median Impact Area	29.3	acres/year
	High Impact Area	58.7	acres/year
Fence Construction and Maintenance		Value	Unit
<i>Length of existing or future fences is not known. Frequency and area of temporary impacts are small.</i>			
Contingency mitigation (for all negligible agricultural impacts)		6	acres/year
	Impact Area	<i>negligible</i>	
Ditch Clearing and Maintenance		Value	Unit
Length of ditches within habitat/floodplain		1,767,487.0	feet
		334.8	miles
Low frequency clearing (every 10 yrs)		176,748.7	feet/year
High frequency clearing (every 5 yrs)		353,497.4	feet/year
Low clearing width (8 foot buffer)		1,413,989.6	square feet/year
High clearing width (20 foot buffer)		7,069,948.0	square feet/year
	Low Impact Area	32.5	acres/year
	Median Impact Area	97.4	acres/year
	High Impact Area	162.3	acres/year

Water Facility Maintenance and Operations	Value	Unit
Water wells within habitat/floodplain	676	number
Stream gages within habitat/floodplain	28	number
Diversions within habitat/floodplain	457	number
Minor Monitoring and Maintenance		
Water wells	<i>negligible</i>	
Stream gages	<i>negligible</i>	
Diversions	<i>negligible</i>	
Major Maintenance		
Water wells (every 15-20 years)	45.1	sites per year
Stream gages (every 20-25 years)	1.4	sites per year
Diversions (every 20-25 years)	22.9	sites per year
Combined frequency of major maintenance	69.32	sites per year
Low impact area (200 sq/ft)	13,863.3	square feet/year
High impact area (10,000 sq/ft)	693,166.7	square feet/year
	Low Impact Area	0.3 acres/year
	Median Impacts	8.1 acres/year
	High Impact Area	15.9 acres/year
New Water Facility Construction	Value	Unit
Number of construction sites within habitat	40	number
Average number of projects per year (over 30 years)	1.3	number/year
Low impact area (500 sq/ft)	666.7	square feet/year
High impact area (8,000 sq/ft)	10,666.7	square feet/year
Small impoundment impacts	<i>negligible</i>	
Contingency mitigation (for all negligible agricultural impacts)	6	acres/year
	Low Impact Area	0.02 acres/year
	Median Impacts	0.13 acres/year
	High Impact Area	0.24 acres/year
Water Diversions, Reservoir Operations, and Flow Management	Value	Unit
<i>Fluctuating impacts and benefits over time, with negligible effects.</i>		
Contingency mitigation (for all negligible agricultural impacts)	6	acres/year
	Impact Area	<i>negligible</i>
Vegetation Removal from Floodway	Value	Unit
Total Alamosa floodway area	253.0	acres
Total willow habitat within floodway	46.0	acres
Length of existing levee	3.5	miles
HCP coverage threshold (per mile of floodway)	4.0	acres
	Low Impact Area	4 acres/year
	Median Impact Area	9 acres/year
	High Impact Area	14 acres/year
Levee Improvement and Maintenance	Value	Unit
Length of existing and proposed levees	53,797.0	feet
Length of existing and proposed levee that intersects riparian habitat	13,197.6	feet
Proportion of levee that intersects habitat	25%	percent
Minor repairs (200 sq/ft) every year	200	square feet/year
Major repairs (10,000 sq/ft) every 3 years	3,333.3	square feet/year
Low impacts per year	49.1	square feet/year
High impacts per year	817.7	square feet/year
	Low Impact Area	0.00 acres/year
	Median Impact Area	0.01 acres/year
	High Impact Area	0.02 acres/year

Sediment Removal and Spoils Disposal	Value	Unit
<i>Infrequent activity with minor impacts.</i>		
Contingency mitigation (for all negligible infrastructure impacts)	6	acres/year
Impact Area	<i>negligible</i>	
Infrastructure Construction		
Value		
Unit		
Number of locations per year	4	sites
Low impact area (1,000 sq/ft)	4,000.0	square feet/year
High impact area (10,000 sq/ft)	40,000.0	square feet/year
Low Impact Area	0.1	acres/year
Median Impact Area	0.5	acres/year
High Impact Area	0.9	acres/year
Infrastructure Maintenance		
Value		
Unit		
<i>Infrequent activities with minor impacts.</i>		
Contingency mitigation (for all negligible infrastructure impacts)	6	acres/year
Impact Area	<i>negligible</i>	
Riparian Conservation and Restoration Activities		
Value		
Unit		
<i>Activities with minimal short-term impacts and likely long-term benefits.</i>		
Habitat Creation, Restoration, and Protection	<i>negligible</i>	
Weed Management	<i>negligible</i>	
Wetland Creation and Management	<i>negligible</i>	
Wildlife Surveys	<i>negligible</i>	
Contingency mitigation (for all negligible conservation impacts)	2	acres/year
Impact Area	<i>negligible</i>	
Impact Contingencies		
Agricultural activities with negligible impacts	10.0	acres/year
Infrastructure activities with negligible impacts	6.0	acres/year
Conservation activities with negligible impacts	2.0	acres/year
Total Contingency Impacts	<i>18.0</i>	acres/year

**APPENDIX B –
SAMPLE LANDOWNER COOPERATIVE AGREEMENT**

SAN LUIS VALLEY REGIONAL HABITAT CONSERVATION PLAN

DRAFT

LANDOWNER COOPERATIVE AGREEMENT

Introduction and Background

In cooperation with the U.S. Fish and Wildlife Service (“Service”), the Rio Grande Water Conservation District (“District”) has developed and is administering the San Luis Valley Regional Habitat Conservation Plan (HCP) in partnership with the State of Colorado Department of Natural Resources and Alamosa, Conejos, Costilla, Mineral, Rio Grande and Saguache Counties and the municipalities of Alamosa, Monte Vista, Del Norte, and South Fork (“HCP Permittees”). The purpose of the HCP is to provide regulatory coverage for landowners and local government entities in the San Luis Valley as they conduct routine agricultural, infrastructure, and conservation activities (“covered activities”) that could result in the incidental take of riparian bird species that are listed under the Endangered Species Act (ESA) or are otherwise federally protected. These species are the southwestern willow flycatcher and yellow-billed cuckoo (“covered species”).

Pursuant to Section 10(a)(2)(B) of the ESA, the District, the State, and local governments received an Incidental Take Permit that relieves landowners and local governments of potential ESA liability when they conduct the covered activities. The HCP Permittees received an Incidental Take Permit for the covered activities, subject to the provisions in the HCP that ensure that the impacts of the covered activities on riparian habitat are mitigated and monitored.

As part of the HCP mitigation commitments, the District has agreed to secure and monitor mitigation sites on private lands that contain riparian habitat of suitable quality. Mitigation credits at each site are quantified in acres, and are tracked by the District to be counted towards the total HCP mitigation requirement. Under the terms of the HCP, the sum total of mitigation credits for all sites must be greater than the habitat impacts of the covered activities.

The District will develop and maintain the mitigation credits by working with landowners to secure voluntary, cooperative agreements that formalize their participation and allow access for habitat monitoring and Service oversight. To be eligible for inclusion in the mitigation program, subject properties must:

- 1) contain riparian habitat that is capable of supporting one or more of the covered species, and
- 2) be protected by a conservation easement, management agreement, or similar mechanism that ensures the conservation of riparian habitat.

This Cooperative Agreement allows a subject property to be enrolled in the HCP mitigation program.

Involved Parties

This Cooperative Agreement is between the Rio Grande Water Conservation District (District) and _____ (“Cooperator”).

Other interested parties include the [land trust] and the U.S. Fish and Wildlife Service. These other entities are not parties to this agreement, but will be provided with copies of this agreement.

Purpose

The purpose of this Agreement is to enroll the subject property into the District’s mitigation program under the San Luis Valley Regional HCP. The District recognizes that the Cooperator has previously managed the property in a manner that protects and sustains important riparian habitat, and has taken additional steps to protect or enhance riparian habitat in the future. Furthermore, the subject property contains habitat of sufficient quality to potentially support the southwestern willow flycatcher and/or yellow-billed cuckoo, the species that are addressed in the HCP (“covered species”).

As part of the HCP mitigation program, the District will ensure that the subject property is monitored to document that the quality and structure of riparian habitat is suitable for the covered species and, the monitoring commitments outlined in the HCP are implemented. Habitat monitoring will be conducted every three (3) years, using the habitat assessment standards described in Attachment A.

If monitoring results determine that the quantity or quality of the habitat is no longer sufficient, the District will work with the Cooperator to enhance or restore habitat or terminate this agreement.

Enrolled Property

The subject property is located in _____ County, Colorado.

Landowner Information

Mailing Address: _____ _____ _____	Contact Person: _____ _____ _____
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Type of Habitat Mitigation

- Conservation easement
- Restoration/enhancement project
- Other: _____

Conservation Easement Information (if applicable)

The subject property is protected in perpetuity through a Deed of Conservation Easement that was conveyed to [land trust name] on [Date of easement] .

Easement Recording Number: _____, _____ County, Colorado.

Relevant information documenting the suitability criteria for an easement is included in Attachment C.

Riparian Habitat

Total Acres: _____ Riparian Habitat Acres: _____

Details on habitat composition, surrounding vegetation and land use context will be documented in the habitat quality monitoring forms.

Access to Enrolled Property

The Cooperator agrees to allow the District or their representatives reasonable access to his or her property for the purposes of habitat monitoring. The District or their representatives will coordinate with the Cooperator to schedule visits to the property at times that avoid inconvenience to the Cooperator or disruption of the Cooperator’s use of the property. The District shall give the Cooperator at least 14 days advance notice of its desire to enter the property for monitoring, and the Cooperator shall not unreasonably withhold permission for such entry.

The Cooperator agrees to allow Service access to their property. Because the HCP requires no minimization and mitigation measures by landowners other than the Permittees, the Service does not need access to landowners’ lands for HCP compliance monitoring. However, the Service may monitor those lands belonging to landowners who have volunteered to sign a Landowner Cooperative Agreement or Habitat Management Agreement to help the District fulfill the HCP’s mitigation obligations. The purpose of such monitoring is to assess the effectiveness of the mitigation effort on that property. To follow-up on the effectiveness of the mitigation efforts on a particular property, the Service will make arrangements with the voluntary landowner for property access at least 14 days in advance. During monitoring, the Service may be accompanied by the District or the District’s designated representatives. The Permittees shall allow the Service, or other properly permitted and qualified persons designated by the Service, to enter the Permittees’ lands covered by the HCP at reasonable hours and times in accordance with 50 CFR §§13.21 (e)(2) and 13.47. Nothing in this section precludes the Service from carrying out its duties as required and authorized by law.

Terms and Conditions

This Cooperative Agreement is subject to the following terms and conditions:

Voluntary Participation

The Cooperator has entered into this agreement on a voluntarily basis, and will not be required to conduct or allow any measures besides those described above.

Termination of Agreement

The Cooperator may terminate this Cooperative Agreement at any time, upon written notification to the District. Such termination shall not affect the Cooperator's incidental take coverage under the HCP. The District may terminate this Cooperative Agreement at any time, upon written notification to the Cooperator.

Resource Management

The District recognizes that the Cooperator's past management practices have facilitated the existence of high-quality riparian habitat. The District further recognizes that additional commitments have been made to protect or enhance such habitat. Under this agreement, the Cooperator shall not be required to cease any existing resource management practices or initiate any additional management practices. (A separate Deed of Conservation Easement, if applicable, may require or preclude certain management practices).

Considering the above, the District may encourage the Cooperator to participate in additional efforts to further maintain or enhance riparian habitat on the enrolled property. Such efforts may be coordinated and/or funded through the District, the Colorado Division of Wildlife, the Natural Resources Conservation Service, or other entities. The Cooperator's participation in any additional habitat management, enhancement, or restoration efforts shall remain voluntary.

Covered Species Surveys

This Cooperative Agreement will allow the District or their representatives reasonable access to the subject property for the monitoring of riparian habitat structure and composition. This agreement does not allow or imply access for the purposes of conducting formal breeding territory or population surveys for the covered species. However, the Cooperator recognizes that the recording or documentation of informal, opportunistic observations of the covered species during habitat monitoring visits may occur. Any access for the purposes of formal species surveys may be arranged separately and is entirely at the discretion of the Cooperator. Though surveys are voluntary, knowledge of covered species occurrence will be useful for long-term HCP administration and status reviews.

Access for Other Parties

This agreement does not allow or otherwise permit access by any other parties, including but not limited to representatives of federal, state, or local agencies (besides the Service access described above), representatives from private organizations, or the general public. Any access to other parties to the subject property is entirely at the discretion of the Cooperator.

Transfer of Property

The Cooperator will notify the District no less than 60 days prior to selling or transferring the enrolled property to another entity, in order to provide the District the opportunity to secure a similar Cooperative Agreement with the successor.

Liability

The Cooperator assumes no liability for injury to any employee or representative of the District in the course of any visit to the property, except insofar as such injury is the result of the Cooperator’s negligence. The District or their representatives shall not be liable for any damage to the property arising from any visit to the property, unless such damage is the result of negligence on the part of the District or their representatives.

AGREED TO BY:

(Cooperator)

Rio Grande Water Conservation District

Date

Date

- Attachment A: Habitat Quality Index Monitoring Approach [Appendix G in the HCP]
- Attachment B: Map of Subject Property
- Attachment C: Easement Suitability Documentation

**APPENDIX C –
SAMPLE HABITAT MANAGEMENT AGREEMENT**

SAN LUIS VALLEY REGIONAL HABITAT CONSERVATION PLAN

DRAFT

HABITAT MANAGEMENT AGREEMENT

Introduction and Background

In cooperation with the U.S. Fish and Wildlife Service (“Service”), the Rio Grande Water Conservation District (“District”) has developed and is administering the San Luis Valley Regional Habitat Conservation Plan (HCP) in partnership with the State of Colorado Department of Natural Resources and Alamosa, Conejos, Costilla, Mineral, Rio Grande and Saguache Counties and the municipalities of Alamosa, Monte Vista, Del Norte, and South Fork (“HCP Permittees”). The purpose of the HCP is to provide regulatory coverage for landowners and local government entities in the San Luis Valley as they conduct routine agricultural, infrastructure, and conservation activities (“covered activities”) that could result in the incidental take of riparian bird species that are listed under the Endangered Species Act (ESA) or are otherwise federally protected. These species are the southwestern willow flycatcher and yellow-billed cuckoo (“covered species”).

Pursuant to Section 10(a)(2)(B) of the ESA, the District, the State, and local governments received an Incidental Take Permit that relieves landowners and local governments of potential ESA liability when they conduct the covered activities. The HCP Permittees received an Incidental Take Permit for the covered activities, subject to the provisions in the HCP that ensure that the impacts of the covered activities on riparian habitat are mitigated and monitored.

As part of the HCP mitigation commitments, the District has agreed to secure and monitor mitigation sites on private lands that contain riparian habitat of suitable quality. Mitigation credits at each site are quantified in acres, and are tracked by the District to be counted towards the total HCP mitigation requirement. Under the terms of the HCP, the sum total of mitigation credits for all sites must be greater than the habitat impacts of the covered activities.

Private landowners may participate in the HCP mitigation program through the development and implementation of a voluntary habitat management agreement. To be eligible for inclusion in the HCP mitigation program, habitat management agreements must:

- 1) contain riparian habitat that is capable of supporting one or more of the covered species,
- 2) identify specific conservation and management measures to protect or improve riparian habitat,
- 3) document existing habitat conditions and allow ongoing habitat monitoring, and
- 4) be signed and approved by the landowner and the District.

This Habitat Management Agreement allows a subject property to be enrolled in the HCP mitigation program.

Involved Parties

This Habitat Management Agreement is between the Rio Grande Water Conservation District (District) and _____ (“Landowner”).

The U.S. Fish and Wildlife Service is not a party to this agreement, but will be provided with copies of this agreement.

Purpose

The purpose of this agreement is to enroll the subject property into the District’s mitigation program under the San Luis Valley Regional HCP. As part of the mitigation program, the subject property will be monitored to ensure that the quality and structure of riparian habitat is suitable for the covered species and the monitoring commitments outlined in the HCP.

Property Information

Property Location

Attach a map clearly showing the boundary of the proposed habitat management/ mitigation site and the general property boundary.

Landowner Information

Mailing Address: _____ _____	Contact Person: _____ _____
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Description of Existing Riparian Habitat

Describe the existing riparian habitat on the property, including any current or historic management.

- Attach a description of existing habitat and management, including photos and a map (if applicable).

Riparian Habitat

Total Acres: _____ Riparian Habitat Acres: _____

Habitat Management Plan

Proposed Habitat Management and Conservation Measures

Indicate the specific management measures the Landowner will implement to benefit riparian habitat on the property, and the conservation benefits expected from those measures. (Examples include fence installation to manage livestock, changes to water or livestock management to benefit habitat, vegetation planting, etc.).

- Attach a description of the proposed habitat management and conservation measures.

Monitoring and Mitigation Credits

The property or site subject to this agreement will be eligible for inclusion in the HCP mitigation plan upon the completion of this agreement. Mitigation credits will be limited to the area of habitat that currently meets habitat quality standards.

Habitat monitoring will be conducted under the direction of the District every three (3) years, using the habitat assessment standards described in the HCP. If monitoring indicates improved or expanded riparian habitat due to the implementation of the habitat management and conservation measures, mitigation credits will be expanded accordingly.

If monitoring results determine that the quantity or quality of the habitat is no longer sufficient to support the covered species, the District will work with the Landowner to enhance or restore habitat, or terminate this agreement.

Access to Enrolled Property

The Landowner agrees to allow the District or their representatives reasonable access to his or her property for the purposes of habitat monitoring. The District or their representatives will coordinate with the Landowner to schedule visits to the property at times that avoid inconvenience to the Landowner or disruption of the Cooperator's use of the property. The District shall give the Landowner at least 14 days advance notice of its desire to enter the property for monitoring, and the Landowner shall not unreasonably withhold permission for such entry.

The Landowner agrees to allow Service access to their property. Because the HCP requires no minimization and mitigation measures by landowners other than the Permittees, the Service does not need access to landowners' lands for HCP compliance monitoring. However, the Service may monitor those lands belonging to landowners who have volunteered to sign a Landowner Cooperative Agreement or Habitat Management Agreement to help the District fulfill the HCP's mitigation obligations. The purpose of such monitoring is to assess the effectiveness of the mitigation effort on that property. To follow-up on the effectiveness of the mitigation efforts on a particular property, the Service will make arrangements with the voluntary landowner for property access at least 14 days in advance. During monitoring, the Service may be accompanied by the District or the District's designated representatives. The Permittees shall allow the Service, or other properly permitted and qualified persons designated by the Service, to enter the Permittees' lands covered by the HCP at reasonable hours and times in accordance with 50 CFR §§13.21 (e)(2) and 13.47. Nothing in this section precludes the Service from carrying out its duties as required and authorized by law.

Terms and Conditions

This Habitat Management Agreement is subject to the following terms and conditions:

Voluntary Participation

The Landowner has entered into this agreement on a voluntarily basis, and will not be required to conduct or allow any measures besides those described above.

Termination of Agreement

The Landowner may terminate this Habitat Management Agreement at any time, upon written notification to the District. Such termination shall not affect the Landowner's incidental take coverage under the HCP. The District may terminate this Habitat Management Agreement at any time, upon written notification to the Landowner.

Resource Management

This agreement includes specific commitments by the Landowner to manage to improve or protect riparian habitat. Under this agreement, the Cooperator shall not be required to cease any existing resource management practices or initiate any additional management practices that are not directly related to this Habitat Management Agreement.

Technical Assistance

Considering the above, the District may encourage the Landowner to coordinate with outside entities to develop or implement habitat management and conservation measures. Such efforts may be coordinated and/or funded through the District, the Colorado Division of Wildlife, the Natural Resources Conservation Service, or other entities. The Landowner's participation in any habitat management, enhancement, or restoration efforts or programs shall remain voluntary.

Covered Species Surveys

This Habitat Management Agreement will allow the District or their representatives reasonable access to the subject property for the monitoring of riparian habitat structure and composition. This agreement does not allow or imply access for the purposes of conducting formal breeding territory or population surveys for the covered species. However, the Landowner recognizes that the recording or documentation of informal, opportunistic observations of the covered species during habitat monitoring visits may occur. Any access for the purposes of formal species surveys may be arranged separately and is entirely at the discretion of the Landowner. Though surveys are voluntary, knowledge of covered species occurrence will be useful for long-term HCP administration and status reviews.

Access for Other Parties

This agreement does not allow or otherwise permit access by any other parties, including but not limited to representatives of federal, state, or local agencies (except for the Service access described above), representatives from private organizations, or the general public. Any access to other parties to the subject property is entirely at the discretion of the Landowner.

Transfer of Property

The Landowner will notify the District no less than 60 days prior to selling or transferring the enrolled property to another entity, in order to provide the District the opportunity to secure a similar Habitat Management Agreement with the successor.

Liability

The Landowner assumes no liability for injury to any employee or representative of the District in the course of any visit to the property, except insofar as such injury is the result of the Landowner's negligence. The District or their representatives shall not be liable for any damage to the property arising from any visit to the property, unless such damage is the result of negligence on the part of the District or their representatives.

AGREED TO BY:

(Landowner)

Rio Grande Water Conservation District

Date

Date

**APPENDIX D –
EDUCATION AND OUTREACH FRAMEWORK**

SAN LUIS VALLEY REGIONAL HABITAT CONSERVATION PLAN

OUTREACH AND EDUCATION FRAMEWORK

The success of the San Luis Valley Regional HCP will be driven by voluntary efforts to conserve or enhance riparian habitat on private lands. While mitigation needs will likely be met through the commitment of a few landowners, individual actions by hundreds of landowners will make a difference in protecting habitat for the covered species, maintaining a pool of potential mitigation lands, and providing other community and ecosystem benefits.

Outreach and education activities will play an important role in HCP implementation by giving landowners and the community the information and tools to make informed decisions about land management and riparian habitat protection. A provision of the HCP requires the District to coordinate or complete at least six outreach contacts each year.¹ This framework provides the District and the Steering Committee with general guidance on what types of outreach and education efforts can be used, and strategies that will help ensure their success.

Goals of the Education and Outreach Process

- Help landowners and the community understand the HCP
- Help landowners and the community understand the value of riparian habitat
- Identify and maintain potential mitigation lands
- Encourage voluntary conservation of riparian habitat

Potential Outreach and Education Activities

The following activities are described to give the District and the Steering Committee examples of outreach and education activities that are envisioned in the HCP. These examples are intended to provide general guidance – as implementation of the HCP continues, the outreach and education activities should be updated and refined to reflect new information and outreach approaches.

Outreach Materials

Depending on their intended use and audience, outreach materials may include the following:

- HCP fact sheets
- “Frequently Asked Questions” pamphlets
- Brochures
- Technical handbook for landowners
- Presentation boards
- Educational materials
- HCP website

¹ An outreach “contact” is defined as a formal or informal presentation to outside organizations or the public, reaching more than 10 people in a single event.

Outreach materials should be reviewed and updated every few years to reflect new information, new resources, or changes in HCP implementation.

Presentations

Informative presentations are a useful way to reach various organizations including industry groups, community groups, environmental or conservation groups, or local government boards. A typical presentation could include:

- Background on the HCP
- Status of HCP implementation
- Why riparian habitat conservation is important
- How organization members can protect riparian habitat
- Resources that are available to assist in habitat conservation

Presentations should be tailored to the audience and should emphasize their particular interests, concerns, and opportunities. Feedback from these presentations and subsequent discussion should be used to further refine the outreach process and general HCP implementation.

Informal Meetings with Landowners

In most communities, the most effective outreach takes place at the individual level. Steering Committee members will play an important role in identifying and initiating contacts with key individuals based on their existing social and professional relationships. These informal discussions are valuable in providing information and resources to landowners and other stakeholders who may be more comfortable discussing HCP-related issues with a person they already know and trust.

These informal meetings should take place on a continual basis, concurrent with other, more formal, outreach and education efforts.

Field Trips

Field trips are one of the best ways to demonstrate the importance of riparian habitat conservation. Field trips can show stakeholders, decision-makers, and the general public:

- Habitat for the covered species
- The importance of riparian habitat for other wildlife species
- Riparian habitat management issues, successes, or shortcomings
- Conservation successes and partnership opportunities

Field trips are useful in several ways – they provide an on-the-ground understanding of riparian conservation issues; provide a networking opportunity for implementation partners and stakeholders; and provide an opportunity to celebrate successes. HCP-specific field trips can be organized for a specific target audience, or HCP implementation can be discussed as a component of other, related field trips. Field trips can and should be planned in collaboration with partners such as the U.S. Fish and Wildlife Service, Bureau of Land Management (BLM), Natural Resources Conservation Service (NRCS), Colorado Division of Wildlife, and others.

Staff Trainings or Presentations

At the federal, state, and local levels, public agency staff will be responsible for implementing the HCP and ensuring compliance with HCP commitments. Technical trainings, presentations, or discussions with these and other groups can improve HCP implementation among those who

are in the position to implement it (or are directly affected by it) on a daily basis. State and federal resource agencies are useful sources of expertise for these events.

Landowner Recognition

Identify opportunities to publicly recognize landowners who have contributed to riparian habitat conservation and the implementation of the HCP. This type of recognition can be HCP-specific, or it can be given in collaboration with other organizations that have similar habitat conservation goals. Opportunities range from informal recognition during meetings, presentations, or field trips, to formal recognition or awards during public events. These efforts will show community gratitude for voluntary efforts of individuals, and will help contribute to HCP implementation by fostering a conservation ethic in the community.

Educational Programs

While it is not necessary or effective to develop a specific educational curricula around the HCP, the District and the Steering Committee should seek opportunities to develop partnerships that will incorporate the HCP into various levels of educational programs. Opportunities may include the following types of programs:

- K-12 education
- Adams State College programs and events
- Colorado State University Cooperative Extension programs and outreach
- Field education and interpretive programs (Refuges, BLM, NRCS, etc.)

These programs can be coordinated with a variety of existing partners and programs in the Valley, and should be tailored to the specific audience.

**APPENDIX E –
MODEL COUNTY HCP ENABLING ORDINANCE**

SAN LUIS VALLEY REGIONAL HABITAT CONSERVATION PLAN

DRAFT COUNTY HCP ENABLING ORDINANCE

June 2012

Note: This draft land use ordinance language is submitted for discussion purposes only.

Purpose and Intent

- To provide legal protection to typical and routine agricultural, infrastructure, and conservation activities in _____ County through the implementation of the San Luis Valley Regional Habitat Conservation Plan (HCP).
- To provide a mechanism for HCP implementation by defining county land use authority over typical and routine activities within riparian habitat areas.
- To protect riparian habitat areas that support the southwestern willow flycatcher, yellow-billed cuckoo, and other wildlife species that depend on riparian habitat.
- To establish a process for resolving the impacts of land management activities whose impacts are outside the scope of HCP coverage and may be in violation of the federal Endangered Species Act.

Authority

This ordinance is authorized pursuant to the following laws and regulations:

- Local Government Land Use Control Enabling Act (C.R.S. 29-20-104) which grants counties and municipalities broad authority to plan for and regulate the use of land, which includes “protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species.”
- C.R.S. 24-65.1-101 which encourages local governments to designate areas and activities of state interest and, after such designation, to administer such areas and activities of state interest and promulgate guidelines for the administration thereof (1041 powers).
- Endangered Species Act (16 U.S.C. § 1531 et seq.) which prohibits the unauthorized “take” of a federally-listed threatened or endangered species or its habitat, including the endangered southwestern willow flycatcher. Section 10(a)(1)(B) (16 U.S.C. § 1539(a)(1)(B)) of the ESA allows the Service to permit the incidental take of a listed species with the approval of a Habitat Conservation Plan.

Definitions

“Covered activities” – typical and routine agricultural, infrastructure, and conservation activities that occur within riparian habitat areas, have the potential to impact the covered species, and whose impacts are specifically covered by the San Luis Valley Regional Habitat Conservation Plan (HCP). The covered activities, described in detail in the HCP, are:

- a. livestock grazing

- b. fence construction and maintenance
- c. ditch clearing and maintenance
- d. water facility construction and maintenance
- e. water management and administration
- f. floodway and levee construction and maintenance
- g. utility infrastructure maintenance
- h. road and bridge maintenance
- i. stream channel shaping and stabilization for restoration
- j. habitat creation and restoration
- k. weed management
- l. wetland creation and management

Activities related to land development, large-scale water projects or impoundments, sanitation or industrial water impoundments, highway construction, and federal activities are not covered by the HCP.

“Covered species” – Two bird species; the federally endangered southwestern willow flycatcher and yellow-billed cuckoo, a federal candidate species.

“Riparian habitat” – The mosaic of woody trees and shrubs, wetlands, meadows, and open water associated with river corridors. Includes lands within woody riparian habitat identified and mapped in the HCP and/or the defined 100-year floodplain.

“Typical and routine” – Practices that are usual, customary, and necessary for the continuation of agricultural operations, the maintenance and improvement of existing infrastructure, and the conservation and management of riparian habitat. These practices are conducted in a manner and a scope that is consistent with historical management and/or are consistent with management methods that are commonly accepted within the San Luis Valley and the surrounding region.

Allowance of Typical and Routine Land Management

Typical and routine land management activities in support of and related to agricultural, infrastructure, and conservation uses, as described in the HCP, will be permitted to continue with no restrictions to individual landowners under the federal Endangered Species Act related to the covered species, as long as the HCP is properly implemented. Incidental take of these two covered species by person who engage in these activities are authorized by an Incidental Take Permit (Permit) held by the County, which is supported by the HCP and its related Implementing Agreement. The HCP will be administered by the Rio Grande Water Conservation District (District), in partnership with _____ County and the State of Colorado. The County will rely on the District to ensure that all provisions and requirements of the HCP, including monitoring and mitigation, will be properly implemented.

Other Land Management Activities

The Permit does not provide incidental take coverage for persons engaged in land management activities that are beyond the scope of “typical and routine” agricultural,

infrastructure, and conservation uses as identified in the HCP. Land management activities that are not covered by the Permit, that are beyond the scope of “typical and routine,” or that result in egregious and unnecessary habitat impacts, and that result in take of a listed species, are not protected by the Permit and may be in violation of the federal Endangered Species Act.

Procedures and Remedies for Impacts beyond the Scope of the HCP

Upon receipt of information or a complaint related to riparian habitat impacts that are not covered by the HCP and the Incidental Take Permit, the Land Use Administrator, in coordination with Rio Grande Water Conservation District staff, shall investigate said complaint. If the Land Use Administrator determines that land management activities are beyond the scope of “typical and routine” land management and may result in habitat impacts, the Land Use Administrator will notify the landowner in writing that the land management activities in question are:

- A) In violation of this ordinance;
- B) Are not covered, mitigated, or in any way protected by the HCP and associated Permit; and
- C) May be in violation of the federal Endangered Species Act, if take of a listed species has occurred.

Based on the recommendations of the Land Use Administrator and the District, one of the following remedies may be pursued:

1. In cases where the habitat impacts are minimal and are not believed by the District to result in take of the covered species, the landowner would be notified that the subject habitat impacts are not covered by the HCP and may be subject to Endangered Species Act compliance or enforcement actions (with no County referral to the U.S. Fish and Wildlife Service.
2. The landowner and subject habitat impacts would be referred to the U.S. Fish and Wildlife Service for individual Endangered Species Act compliance or enforcement actions. The costs of ESA compliance or penalties would be the responsibility of the landowner.
3. The habitat impacts would be mitigated through the HCP. The landowner would be required to compensate the District for the additional costs of mitigation, on a cost-per-acre basis.
4. Additional or alternative remedies, as appropriate.

Erroneous complaints of impacts resulting from non-covered activities may be recorded and dismissed by the Land Use Administrator, in consultation with the District.

On an annual basis, the County will report complaints, inquiries, and enforcement actions related to this ordinance to the District for tracking purposes.

**APPENDIX F –
DRAFT STEERING COMMITTEE CHARTER**

DRAFT CHARTER

SAN LUIS VALLEY REGIONAL HABITAT CONSERVATION PLAN

STEERING COMMITTEE

Background and Purpose

The Rio Grande Water Conservation District (District) developed the San Luis Valley Regional Habitat Conservation Plan (HCP) on behalf of the six counties that comprise the San Luis Valley floor (Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache) and the principal municipalities along the Rio Grande (Alamosa, Monte Vista, Del Norte and South Fork) in cooperation with the State of Colorado Department of Natural Resources (State) (HCP Permittees). The HCP was completed pursuant to Section 10(a)(1)(B) of the Endangered Species Act, and is intended to provide regulatory coverage to certain agriculture, infrastructure, and conservation activities (covered activities). One of the primary goals of the HCP and its implementation is to provide for the long-term conservation of the southwestern willow flycatcher and yellow-billed cuckoo (covered species) and the riparian habitat that they require for survival.

The HCP identifies several implementation measures that are intended to reduce impacts of the covered activities on riparian habitat while improving the capacity of the Valley to sustain the complementary goals of sustainable agricultural production and riparian habitat conservation. The HCP Steering Committee is one of these measures.

Steering Committee Purpose and Goals

The Steering Committee is integral to the function and success of the HCP. The primary purpose of the Steering Committee is to provide a forum that includes resource experts, stakeholder interests, community leaders, and decision makers where habitat management information can be shared, habitat issues can be addressed, and partnerships can be built. The Steering Committee will advise the District and the HCP Permittees as they implement the HCP, and will not have direct implementation responsibility.

Steering Committee Membership

The membership of the Steering Committee is intended to represent a cross-section of the government entities who are charged with implementing the HCP and the community stakeholders who are affected by the HCP. The following list includes the types of agencies and organizations that should be represented, and current examples of specific organizations that could be included.

Representatives of the following:

1. Rio Grande Water Conservation District
2. State of Colorado – Department of Natural Resources
3. Alamosa County
4. Conejos County

5. Costilla County
6. Mineral County
7. Rio Grande County
8. Saguache County
9. City of Alamosa
10. City of Monte Vista
11. Town of Del Norte
12. Town of South Fork
13. U.S. Fish and Wildlife Service – Refuges and Ecological Services
14. Bureau of Land Management
15. Natural Resources Conservation Service
16. Agricultural industry
17. Conservation organizations
18. Water user associations
19. General public

Parameters and Assumptions

- The Steering Committee will play an advisory role, and will provide recommendations to the HCP Permittees on matters pertaining to HCP implementation
- Responsibility for the implementation or enforcement of HCP commitments ultimately lies with the HCP Permittees

Operating Principles

- The Steering Committee will meet two times per year, and may schedule additional meetings or field trips on an as-needed basis
- Steering Committee members will be nominated by the HCP Administrator (District staff), and new members will be approved by a vote of the other Steering Committee members
- Meetings will be open to the general public, and will include opportunities for public comment
- Members commit to active participation and will strive to attend all meetings
- Members will use their existing professional and social networks to promote and improve the successful implementation of the HCP

Steering Committee Responsibilities

HCP Administration

- Assist the District with the preparation of an annual report on the progress and status of the HCP. This report will be submitted to the Service
- Pursue grant funding or partnerships to assist in the administration of the HCP or to assist conservation efforts that are consistent with the purposes of the HCP

Monitoring

- Provide recommendations to the District regarding habitat monitoring methods and protocols, and adapt those methods as improved technology or scientific information becomes available

- Review habitat monitoring results and provide recommendations on habitat suitability indicators, trends, and adaptive management responses
- Seek opportunities to improve the accuracy and effectiveness and reduce the cost of habitat monitoring methods.

Outreach and Education

- Provide recommendations to the District on outreach and education efforts
- Initiate individual outreach discussions with landowners or others to facilitate on-the-ground implementation of the HCP

Federal Land Management Recommendations

- On behalf of the Permittees, provide recommendations to federal land management agencies on measures to improve riparian habitat on federal lands
- Works with federal land management agencies to establish and maintain reference sites for habitat monitoring

Conservation Coordination

- Seek opportunities to promote voluntary land conservation in riparian habitat areas that would benefit HCP implementation
- Seek opportunities to coordinate the needs of landowners with private land trusts, NRCS programs, or other resources to facilitate mutually beneficial conservation and restoration projects
- Provide community support to conservation efforts that are consistent with HCP implementation goals

**APPENDIX G –
HABITAT QUALITY INDEX MONITORING APPROACH**

APPENDIX G

SAN LUIS VALLEY REGIONAL HABITAT CONSERVATION PLAN

HABITAT QUALITY INDEX MONITORING APPROACH

Introduction

Monitoring the effectiveness of the conservation measures, and ensuring compliance with the implementation commitments are mandatory elements of a HCP. The purpose of the Habitat Quality Index approach (HQI) is to establish standard metrics and protocol for evaluating the quality of available habitat for the two covered species; southwestern willow flycatcher (flycatcher) and western yellow-billed cuckoo (cuckoo). The HQI will be used to evaluate habitat quality on both mitigation lands and reference areas on federal and state lands. The HQI is a two-step process involving 1) a qualitative habitat characterization of the entire assessment area, and 2) a more quantitative HQI model that establishes measurable metrics of the covered species habitat to be monitored over time.

The Step 1 habitat characterization is adapted from the Riparian Proper Function Condition (PFC) approach (DOI 2003) for providing a coarse-scale overview of assessment area. This qualitative habitat characterization may be used as a screening tool for potential mitigation lands and may be able to identify subtle changes in habitat not detected in the more quantitative HQI model. Step 1 also involves vegetation mapping and establishing permanent photo points for comparison over time.

Step 2, the HQI model, identifies specific parcel characteristics, such as general habitat shape, vegetation alliance, food resources and vegetation composition, and then quantifies and scores specific habitat affinities of the covered species. The focus of the HQI is on the life requisites that contribute the most to covered species habitat. Life requisites evaluated in the HQI are based on the best available scientific information, including listing decisions published in the Federal Register, the recovery plan for the flycatcher (Service 2002a), published scientific literature and agency reports (see *References* section). The life requisites evaluated are:

- nesting and brood-rearing cover,
- water/hydrology,
- habitat structure and function, and
- absence of human disturbance

The HQI will evaluate habitat separately for flycatchers and cuckoos because although these species occupy similar riparian habitat, they use the habitat in very different ways and at very different scales. Compared to flycatchers, yellow-billed cuckoos have very large breeding territories and distinct habitat affinities are poorly defined. Thus, some of the HQI factors evaluated for the cuckoo are semi-qualitative.

This HQI approach is presented as a draft document for the HCP. It is a detailed concept based on similar approaches used by the NRCS, USGS and others for identifying and monitoring sensitive species habitat. The approach is intended for preliminary implementation, technical review, and revision by the Steering Committee to meet all participants (federal, state, private) expectations and limitations as the process moves forward and new information on the covered species becomes available.

Species Background

This section summarizes habitat affinities for the covered species establishing the baseline for the habitat quality index factors evaluated in the HQI

Southwestern Willow Flycatcher

In general, flycatchers breed in tall dense riparian habitat with low gradient streams, wetlands, or saturated soils usually nearby, at least early in the breeding season (Bent 1940; Stafford and Valentine 1985; Harris et al. 1987; Spencer et al. 1996). The Service (2002a) has reported that “occupied sites always have dense vegetation in the patch interior. These dense patches are often interspersed with small openings, open water, or shorter, sparser vegetation, creating a mosaic that is not uniformly dense (Service 2002a). In most cases, this dense vegetation occurs within the first 10 to 13 feet (3 to 4 meters) above ground. Nest locations are generally in areas where the canopy density ranges from 75 to 90 percent, often in close proximity to slow moving or standing water or saturated soils (Sogge, et al. 1997). Flycatchers are insectivores, feeding on a wide variety of insects including wasps; bees; flies; beetles; butterflies; moths; caterpillars; flying insects; Hymenoptera, Diptera, and Hemiptera (true bugs); and spittlebugs (Beal 1912; McCabe 1991; Drost et al. 1997; Durst et al. 2008).

Locally, the habitat on the Alamosa National Wildlife Refuge is described as monotypic stands of sandbar willow and peachleaf willow with little narrowleaf cottonwood overstory bordering the Rio Grande. These willow stands typically range from 10 to 40 feet (3 to 12 meters) in width (Service 2002b). Within the Conejos River watershed, local agency biologists (Lucero, pers. comm. 2005) have observed habitat patterns that vary from the refuge, including;

- Slow moving or standing water that is close or immediately adjacent to nesting habitat.
- Short, emergent wetlands that are flooded through mid-July.
- Tall grasses and sedges adjacent to nesting habitat provide important foraging habitat.
- Narrow [approximately 25-33 ft (8-10m)] strips of woody vegetation along ditches within the floodplain, if adjacent to a water source, or wet meadows that provide foraging habitat.

This suggests that a diverse riparian structure consisting of a complex of narrow strips of woody vegetation and larger patches of woody vegetation interspersed with wet meadow and tall grass foraging habitat and the surface water infrastructure that supports that structure (such as natural stream channels and irrigation canals/ditches), are important components of flycatcher habitat in the Valley.

Yellow-billed Cuckoo

In general, the cuckoo nests in a variety of habitats including open woodlands, parks, and riparian woodlands (AOU 1998). The western subspecies is restricted to cottonwood and willow woodlands with a dense understory and large blocks of riparian habitat (Carter 1998; Franzreb and Laymon 1993). However, cuckoo nests may not be directly related to proximity to water. Canopy cover at nest sites is typically dense (averaging 96.8% at the nest) and large patch sizes (generally greater than 20 ha [49.4 acres) are typically required (Laymon and Halterman 1989). Along the Sacramento and Feather Rivers, primary factors influencing nest site selection include the presence of cottonwood/willow riparian forest; patch size; and density of understory vegetation (Technology Associates 2009). Laymon and Halterman (1989) found a significant trend toward increased occupancy with increased patch size. Detections of cuckoos along the Conejos River occur in mature cottonwood forests with a tall, dense, willow understory with pools of standing stagnant water (Lucero and Cariveau 2004).

The cuckoo diet consists of mostly caterpillars, cicadas, grasshoppers, and other potential crop-destroying insects. As a result, cuckoos may exhibit irruptive behavior by moving into areas where cicada or caterpillar outbreaks are underway to capitalize on the available food source (Laymon 2001). Onset of breeding is apparently correlated with an abundant food supply, often coinciding with an outbreak of caterpillars or cicadas.

HQI Protocol

- Perform field surveys of the assessment areas once tree and shrub canopies have leafed out.
- Identify the HQI score for each of the nine HQI factors as described in the data sheet.
- Average the factors listed under each of the four life requisites and enter into the data sheet.
- The overall HQI value is the average of the life requisites (cover, water, habitat function, and disturbance) HQI values.
- Habitat quality on Mitigation lands is considered compliant with the HCP criteria if equal or greater than Baseline or the Reference; whichever is lower.
- Habitat quality on Mitigation lands are considered a concern if less than Baseline or Reference during a single survey period and non-compliant with the HCP criteria if less than Baseline or the Reference for three consecutive survey periods

Definitions

Habitat Shape – Course scale habitat category used by WEST LLC for describing the general shape (clump, linear strip, combination) of habitat patches. Shape categories are then linked to an overall vegetation composition based on the NVCS (WEST 2007)

NVCS – The National Vegetation Classification Standard or NVCS is a scheme for classifying the vegetation of the United States (FGDC 2008). The overall objective of the Vegetation Standard is to support the use of a consistent national vegetation

classification system (NVCS) to produce uniform statistics in vegetation resources from vegetation cover data at the national level. The non-profit group [NatureServe](#) maintains the NVCS for the U.S. government.

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**SOUTHWESTERN WILLOW FLYCATCHER (SWFL) and YELLOW-BILLED CUCKOO (YBCU)
HABITAT QUALITY INDEX MODEL (HQI Step 2)
COLORADO**

Property Name: _____
 Location: T/R/S _____
 Surveyor Name: _____

Reference Area _____
 UTM's Zone 13 _____ mE _____ mN
 Date: _____

Parcel Characteristics						
General Habitat Shape ___ Clump ___ Linear ___ Combination						
Overall NVCS Alliance _____						
Remote Imagery (acre)	Willow _____	Cottonwood _____	Open Water _____	Water Channel _____	Ag(crop/pasture) _____	Overall Parcel _____
Food (circle if outbreak)	Wasp/bees _____	Butterflies/moths _____	Beetles _____	Cicadas/grasshoppers _____	Caterpillars _____	

Habitat metrics are collected every three years to establish trends and compared to baseline (1st year's sampling)

Life Requisite	Factor (YBCU in RED)	SWFL Value	SWFL Score	YBCU Value	YBCU Score
COVER	1. Nesting cover/Brood rearing cover (April-July) (parcel scale)				
	a. Dense canopy with dense shrub ¹ understory	NA		1.00	
	b. Dense canopy with sparse shrub understory	NA		0.70	
	c. Dense canopy with no shrub understory	NA		0.50	
	d. Sparse canopy with dense shrub understory	NA		0.70	
	e. Sparse canopy with sparse shrub understory	NA		0.20	
	f. No mature canopy	NA		0.00	
	a. Dense patches/thickets of willow, or other native shrubs predominantly (>60%) 2.5-7 m (8-23 ft) tall and patch width >10 m	1.00		NA	
	b. Dense stand of willows - most 2.5-7 m tall (8-23 feet), 6-10 m (19.5-33 ft) wide and > 0.25 acres total patch size	0.70		NA	
	c. Dense, monotypic stand of willows 1.5-2.5 m (5-8 ft) tall and > 10 m (30 ft) wide	0.50		NA	
	d. Several dense, narrow rows of willows 3-10 m (10-33 ft) wide, 2.5-7 m (8-23 ft) tall that add up to at least 0.25 acres total	0.50		NA	
	e. Dense, narrow patches <10 meter (30 foot) wide of willows > 1.5 m (4.8ft) that add up to less than >0.25 acres	0.20		NA	
	f. A single, narrow, <10 meter (30 foot) wide strip <0.25 acres, or single, obtuse patches <0.25 acres, or sparse (<40% cover) patches or an aggregate of <0.25 acre patches or all patches less than 1.5 m (4.8 ft) tall	0.00		NA	
	2. Nesting cover-size of patches/thickets described in #1a or #1b (nest territory scale)				
	a. Patches > 1 acre in size. Patch width averages > 30 feet (YBCU patches > 100 acres)	1.00		1.00	
	b. Patches between .05 and 1 acre size and > 30 feet wide (YBCU patches 50-99 acres)	0.60		0.60	
c. 0.25 acre - 0.5 acre patches and >30 feet wide (YBCU patches 25-49 acres)	0.40		0.40		
d. 0.25 acre >1 acre patches and 20 -30 feet wide (YBCU patches 10-24 acres)	0.20		0.20		
e. Patches < 0.25 acres or larger patches < 20 feet wide - (YBCU < 10 acres)	0.00		0.00		
3. Percent live canopy cover - all shrubs measured 3-4 feet above ground for SWFL; Trees measured for YBCU (parcel scale)					
a. > 80 percent	1.00		1.00		
b. 60-79 percent	0.60		0.60		
c. 40-59 percent	0.30		0.30		
c. < 40 percent	0.00		0.00		

Life Requisite	Factor (YBCU in RED)	SWFL Value	SWFL Score	YBCU Value	YBCU Score
WATER (Hydrology)					
	4. Water				
	a. Stagnant or slow flowing surface water underlying or adjacent (w/in 15m) to nesting thicket during breeding ²	1.00		NA	
	b. Flowing surface water underlying or directly adjacent (within 15m) to nesting thicket during breeding	0.70		NA	
	c. Surface water or saturated soil present early in nesting season but significantly dry by mid-summer. (July)	0.50		NA	
	d. Little or no water present or a steep stream gradient characterized by continual riffles, rapids or falls.	0.10		NA	
HABITAT STRUCTURE and FUNCTION					
	5. Number of Vegetative Strata³ present in woody riparian				
	a. Appropriate number of vegetative strata for the site - (Typically 3 in SLV, 2 at high elevation or poor soils.)	1.00		1.00	
	b. One stratum missing	0.50		0.50	
	c. More than one stratum missing	0.10		0.10	
	d. Impervious surface or bare soil surface	0.00		0.00	
	6. Species Composition (Shrubs for SWFL, Overall for YBCU)				
	a. Native - Riparian vegetation is comprised of >90% native broadleaf species	1.00		1.00	
	b. Mixed Native and Exotic - Between 50-90% of riparian vegetation is native species	0.60		0.60	
	c. Mixed Native and Exotic - Between 10-49% of riparian vegetation is native species	0.30		0.30	
	d. Exotic/introduced >90% of riparian vegetation is exotic species	0.10		0.10	
	e. Non-native species (Tamarisk -Russian olive)	0.00		0.00	
	7. Recruitment of native plants* (Trees/shrubs)				
	a. Recruitment of 3 or more native species	1.00		1.00	
	b. Recruitment of 1-2 native species	0.50		0.50	
	c. No recruitment of native species	0.00		0.00	
HUMAN DISTURBANCE					
	8. Distance to heavy human activity (occupied houses, farmsteads, businesses, busy paved roads, etc.)				
	a. >1/4 mile (1320 feet)	1.00		1.00	
	b. 990 -1320 feet	0.70		0.70	
	c. 660 - 990 feet	0.50		0.50	
	d. 330 - 660 feet.	0.20		0.20	
	e. <330 feet.	0.00		0.00	
	9. Recreation/tourism Impacts				
	a. Light to no use April to mid-August	1.00		1.00	
	b. Moderate use April to mid-August	0.50		0.50	
	c. Heavy use April to mid-August	0.20		0.20	

¹ **Shrub Density** - A shrub stand is considered dense when it is so thick a person either cannot or does not want to walk through it. Be aware there may be dense thickets interspersed with openings that are navigable by a person. These complexes also provide good SWFL habitat. When the entire stand is thin with no dense patches, then the 0 rating is appropriate. The smallest usable habitat thickets/patches (non-breeding) are 30' x 10' x 5' tall . Closely associated patches of this minimum size must be aggregated into at least a 0.25 acre area in order to be suitable for SWFL breeding.

² **Breeding** extends from nest building through fledging - generally June - August 15 in Colorado (Kingery 1998)

³ Strata as defined by the National Vegetation Classification System (NVCS): tree, shrub, herb (includes grasses)

***Recruitment indices:**

Germination (by seed and roots) = Seedling/saplings < 5 ft in height all species

Recruitment = Saplings > 5 feet in height - all species,

Scoring

An overall HQI value of 0.5 or greater is required to meet quality criteria for wildlife.

The overall HQI for southwest willow flycatcher and Yellow-billed cuckoo consists of four parts, a cover HQI value, a water HQI value, a habitat structure HQI value and a human disturbance HQI value.

	SWFL Score	YBCU Score
COVER HQI VALUE Average the values for factors 1-3. This factor is the HQI for cover	0.00	0.00
WATER HQI VALUE The value for factors 4 is the HQI for water	0.00	NA
HABITAT FUNCTION HQI VALUE Average the values for factors 5-7. This factor is the HQI for Habitat Function	0.00	0.00
DISTURBANCE HQI VALUE Average the values for factors 8 and 9. This factor is the HQI for disturbance	0.00	0.00
OVERALL HQI VALUE --(average of cover, water, function, and disturbance)	0.25	0.33

The overall HQI value is the average of the cover, water, habitat function, and disturbance HQI values.

Habitat quality on Mitigation lands are considered compliant with the HCP criteria if equal or greater than Baseline or the Reference; whichever is lower

Habitat quality on Mitigation lands are considered a concern if less than Baseline or Reference during a single survey period and non-compliant with the HCP criteria if less than Baseline or the Reference for three consecutive survey periods

**APPENDIX H –
PERMIT TERMS AND CONDITIONS**

Note: The following appendix to the San Luis Valley Regional HCP –

Appendix H – Permit Terms and Conditions

will be completed after the Draft HCP comment period and prior to Final HCP approval and submittal.

**APPENDIX I –
DRAFT IMPLEMENTING AGREEMENT**

DRAFT

IMPLEMENTING AGREEMENT

for the

SAN LUIS VALLEY REGIONAL HABITAT CONSERVATION PLAN

for

THE RIO GRANDE WATER CONSERVATION DISTRICT, U.S. FISH AND WILDLIFE
SERVICE, STATE OF COLORADO DEPARTMENT OF NATURAL RESOURCES AND
SIX COUNTIES AND FOUR MUNICIPALITIES

June 2012

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1.0 PARTIES

The parties to this Implementing Agreement are the Rio Grande Water Conservation District (District); six counties within the San Luis Valley—Alamosa, Conejos, Costilla, Rio Grande, Mineral, and Saguache (collectively the “Counties”); four cities and towns—Alamosa, Monte Vista, Del Norte, and South Fork (collectively “Municipalities”); the U.S. Fish and Wildlife Service (“Service”); and the State of Colorado Department of Natural Resources (“DNR”) (collectively, the Parties). The District, counties, municipalities, and DNR are collectively referred to herein as the “Permittees.”

2.0 RECITALS AND PURPOSES

2.1 Recitals. The parties have entered into this agreement in consideration of the following facts:

(a) The San Luis Valley (Valley) is a large intermountain basin in southern Colorado. The riparian communities along the Rio Grande, Conejos River, and smaller tributaries in the Valley have been determined to provide, or potentially provide, habitat for the federally endangered southwestern willow flycatcher (flycatcher) (*Empidonax traillii extimus*) and the federal candidate yellow-billed cuckoo, western U.S. distinct population segment (cuckoo) (*Coccyzus americanus*); and

(b) The Permittees have developed a series of measures, described in the San Luis Valley Regional Habitat Conservation Plan (HCP), to minimize, and mitigate to the maximum extent practicable the effects of take of flycatchers and cuckoos incidental to the Permittees’ covered activities.

2.2 Purposes. The purposes of this agreement are:

(a) To ensure implementation of each of the terms of the HCP;

(b) To describe remedies and recourse should any party fail to perform its obligations as set forth in this agreement; and

(c) To provide assurances to the Permittees that as long as the terms of the HCP, the incidental take permits, and this agreement are performed, no additional mitigation will be required of the Permittees with respect to covered species, except as provided for in this agreement or required by law.

3.0 DEFINITIONS

Terms used in this agreement and specifically defined in the ESA or in regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations, unless this agreement expressly provides otherwise.

The following terms as used in this agreement will have the meanings set forth below:

“Permittees” mean the holders of the incidental take permit(s) supported by the HCP including the Rio Grande Water Conservation District; Alamosa, Conejos, Costilla, Rio Grande, Mineral, and Saguache counties; the State of Colorado; and the municipalities of Alamosa, Monte Vista, Del Norte, and South Fork. Permittees are collectively referred to as “Applicants” in the HCP.

“Changed circumstances” means changes in circumstances affecting a covered species or the geographic area covered by the HCP that can reasonably be anticipated by the parties to the HCP and that can reasonably be planned for in the HCP (e.g., the listing of a new species, or a fire or other natural catastrophic event in areas prone to such event). Changed circumstances and the planned responses to those circumstances are described in Section 7.4 of the HCP. Changed circumstances are not unforeseen circumstances.

“Covered activities” means certain activities carried out by Permittees, or their members and constituents, on covered lands that may result in incidental take of covered species, including those activities to be conducted by the Permittees within the riparian areas, as identified in Section 3 of the HCP.

“Covered lands” means the areas of delineated potential flycatcher and cuckoo habitat along approximately 250 miles of streams in the Valley, as well as more than 4,000 square miles (2.9 million acres) of land in the Valley. The HCP boundaries establish the geographic limits of flycatcher and cuckoo habitat on public and private lands in the Valley and is the area upon which the incidental take permits authorize incidental take of covered species and the area to which the HCP's conservation and mitigation measures apply. These lands are described in Section 2.2 of the HCP. Activities conducted by the Permittees that impact flycatcher or cuckoo habitat outside of the HCP boundaries will require separate ESA compliance.

“Covered species” means the subspecies of flycatcher (*Empidonax traillii extimus*) and cuckoo (*Coccyzus americanus*—western U.S. distinct population segment), which the HCP addresses in a manner sufficient to meet all of the criteria for issuing an incidental take permit under ESA § 10(a)(1)(B).

“District” means the Rio Grande Water Conservation District.

“**HCP**” means the San Luis Valley Regional Habitat Conservation Plan prepared by the Permittees for certain activities to be conducted on covered lands in the San Luis Valley of Colorado.

“**Listed species**” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

“**Permit**” means the incidental take permit issued by the Service to each Permittee pursuant to Section 10 of the ESA (16 USC §1539) for take incidental to covered activities in the Valley.

“**Riparian habitat**” means the plant communities that are found near streams and other bodies of water. In the Valley, riparian habitat is characterized by clusters of cottonwood and willow trees; and various shrubs surrounded by open water or subirrigated soils, wet meadows, and wetland areas.

“**Take**” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct for any listed species. Harm means an act that actually kills or injures a member of a covered species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a covered species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

“**Unforeseen circumstances**” means changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been anticipated by plan developers or the Service at the time of the HCP’s negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

“**Wildlife Refuges**” means U.S. Fish and Wildlife Service National Wildlife Refuges.

4.0 OBLIGATIONS OF THE PARTIES

4.1 *Obligations of Permittees; methodology to determine compliance.* Permittees will fully and faithfully perform all obligations assigned to them under this agreement, their respective permits, and the HCP. Permittees will be deemed in compliance with their obligations if the commitments in Section 5.0 of the HCP have been or are being implemented in substantial conformity with their terms. During the life of the permits, the Permittees may permanently impact up to a cumulative total of 32.4 acres of the covered lands and temporarily impact up to 270 acres of the covered lands in any given year, with resulting incidental take of flycatchers

and cuckoos, in conjunction with the covered activities. The Permittees and Service shall adhere to the methodology set forth in HCP Sections 3.0 and 4.0 and in Appendix A of the HCP for determining impacts to flycatchers and cuckoos and their habitat, and for quantifying incidental take of flycatchers and cuckoos, associated with the covered activities. The District and Permittees will work with private landowners and federal and state agencies to facilitate riparian habitat conservation and enhancement. The enrollment of private lands for mitigation purposes will occur on an individual, parcel-by-parcel basis. While it will be incumbent on the District and Permittees to find and secure sufficient mitigation on nonfederal public or private lands, all mitigation activities on private lands will occur on an at-will, voluntary basis that is at the discretion of each individual landowner.

4.2 Obligations of the Service. Upon execution of this agreement by all parties and satisfaction of all other applicable legal requirements, the Service will issue each Permittee a permit under Section 10(a)(1)(B) of the ESA, authorizing incidental take by Permittee of the covered species resulting from covered activities on covered lands.

4.2.1 Permit coverage. The permits will identify all covered species. The permits will take effect for listed covered species at the time the permits are issued. Subject to compliance with all other terms of this agreement, the permit will take effect for an unlisted covered species upon the listing of such species.

4.2.2 “No surprises” assurances. Provided that Permittees have complied with their obligations under the HCP, this agreement, and the permits (including any provisions for changed circumstances or adaptive management), the Service can require Permittees to provide mitigation beyond that provided for in the HCP only under unforeseen circumstances, and only in accordance with the “no surprises” regulations at 50 CFR §§ 17.22(b)(5) and (6), and 17.32(b)(5) and (6).

4.2.3 Covered activities with a federal nexus. The Section 7 biological opinion (BO) on issuance of the permits will evaluate the impacts associated with covered activities, and will evaluate the HCP conservation measures and any reasonable and prudent measures, if necessary, to address the impacts and authorized take of flycatchers and cuckoos associated with such activities. This BO will contain the Service’s determination whether the covered activities would likely jeopardize the continued existence of flycatchers and cuckoos or result in the destruction or adverse modification of designated or proposed critical habitat for the flycatcher under Section 7(a)(2) of the ESA. Accordingly, from a procedural standpoint, when a Permittee undertakes an individual covered activity that involves a federal action subject to Section 7 of the ESA, the Service and action agency will determine whether the impacts of the proposed federal action associated with the covered activity on flycatchers and cuckoos have already been analyzed by the Service and authorized as part of the HCP.

If the impacts have been previously analyzed, the Service will respond to the request for formal consultation with a letter explaining that no further consultation is necessary as the effects to flycatchers and cuckoos have already been analyzed in the BO on the San Luis Valley HCP, and that the Permittee is in possession of a permit that covers take from the project.

4.3 *Interim obligations upon a finding of unforeseen circumstances.*

If the Service makes a finding of unforeseen circumstances during the period necessary to determine the nature and location of additional or modified mitigation, Permittees will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the covered species.

4.4 *Summary of Implementation Responsibilities.* Implementation of this HCP will be a collaborative effort between the District, Permittees, and other implementation partners. Specific implementation responsibilities for each entity are summarized below.

Service

- Participate in the HCP steering committee
- Provide technical assistance in the implementation, monitoring, adaptive management of the HCP, and participate in revisions and amendments as needed.

District

- Oversee HCP implementation
- Provide staff support for HCP implementation
- Identify and develop mitigation acres
- Negotiate and secure landowner cooperative agreements, management agreements, or HCP-specific easement language
- Track impacts and mitigation credits
- Coordinate habitat quality monitoring on mitigation lands
- Repeat Valley-wide habitat mapping (every 10 years)
- Coordinate habitat enhancement activities as needed on mitigation lands to achieve and maintain mitigation commitments
- Coordinate the HCP steering committee
- Coordinate education and outreach efforts
- Coordinate with county Land Use Administrators to implement procedure and remedies for impacts beyond the scope of the HCP.
- Work with the Permittees, federal agencies, and other partners to coordinate voluntary conservation efforts and to secure necessary funding

DNR

- Survey covered species on State lands at least once every three years as described in the HCP
- Monitor habitat quality on State lands as described in the HCP
- Participate in the HCP steering committee

Counties (Alamosa, Conejos, Costilla, Rio Grande, Mineral, and Saguache)

- Adopt and enforce land use ordinance language
- Compile and mail landowner notification letters (every 10 years)
- Report County-permitted activities with permanent impacts
- Provide HCP information and guidance to landowners
- Participate in the HCP steering committee

Municipalities (Alamosa, Monte Vista, Del Norte, and South Fork)

- Report municipal activities with permanent impacts
- Report floodway clearing in excess of 4 acres/year
- Participation in the HCP steering committee

Federal Land Management Agencies

- Survey covered species surveys on federal lands at least once every three years as described in the HCP
- Monitor habitat quality on federal lands as described in the HCP
- Participate in the HCP steering committee

5.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this agreement and the HCP, the terms of this agreement will control. In all other cases, the terms of this agreement and the terms of the HCP will be interpreted to be supplementary to each other.

6.0 TERM

6.1 Initial term. This agreement and the HCP will become effective on the date the Service issues the permits. This agreement, the HCP, and the permits will remain in effect for a period of 30 years from issuance of the original permits, except as provided below.

6.2 Permit suspension or revocation. The Service may suspend or revoke a permit for reasons cited in 50 CFR §§ 13.27 – 13.28. The Service also may revoke the permit based on a determination that the continuation of the permitted activity would be likely to jeopardize the continued existence of the covered species only if the Service has not been successful in remedying the situation in a timely fashion through other means as provided in the No Surprises rule (50 CFR §§ 17.22(b)(5) and (6), and 17.32(b)(5) and (6)). Prior to proposing any suspension or revocation of a permit, the Service will meet and confer informally with the affected Permittee(s) in an effort to resolve its grounds for concern. If these attempts at informal resolution are unsuccessful, the Service will then follow the provisions of 50 CFR §§ 13.27 – 13.28 prior to making a final decision to suspend or revoke the permit. A suspension shall remain in effect until the Service determines the Permittee(s) have corrected the deficiencies. A permit will only be revoked if the Service and the Permittee(s) have not been successful in remedying the causes for revocation through other means. A partial suspension or revocation may apply to only specified Permittee(s), or to only a portion of the permit coverage area or permitted/covered activities. In the event of a partial suspension or revocation, the portion of a permit not subject to the suspension or revocation shall remain in full force and effect. The permits of the other Permittees implementing the HCP also shall remain in full force and effect and shall be unaffected by those suspension or revocation procedures. In the event of suspension or revocation, the Permittees' obligations under this agreement and the HCP will continue until the Service determines that all take of covered species that occurred under the permit has been fully mitigated in accordance with the HCP.

6.3 Withdrawal of participation. At any time during the term of this HCP and permits, a Permittee may choose to discontinue its participation in this HCP as to: a) one or more of the covered species; (b) a portion of the permit coverage area; and/or c) one or more of the permitted/covered activities. The permit may be surrendered in accordance with 50 CFR § 13.26. The consequences of such withdrawal will be to eliminate all incidental take coverage otherwise available under the HCP and the permit for future activities of that Permittee. Withdrawal of one or more of the counties or local jurisdictions from the HCP will not affect the validity of the HCP as to the other participating entities.

In the event of a withdrawal of participation by a Permittee(s), the permit and No Surprises assurances will be relinquished. No subsequent protection or management of habitat shall be required of the Permittee(s) pursuant to 50 CFR § 17.22(a)(7) unless necessary to mitigate for take of flycatchers and cuckoos that occurred pursuant to the terms of the permits before the withdrawal, as determined by the Service in collaboration with the Permittee(s).

6.4 Renewal of the permit(s). Upon agreement of the parties and compliance with all applicable laws, the permit(s) may be renewed in accordance with 50 CFR 13.22. If a Permittee desires to renew its permit, it will so notify the Service at least one

year before the then-current term is scheduled to expire. The Service will reevaluate the HCP and its modifications to determine that permit issuance criteria are met before agreeing to a renewal.

7.0 FUNDING

Permittees warrant that they have expended, and will expend, consistent with Section 7.1 of the HCP, such funds as may be necessary to fulfill their obligations under the HCP. Permittees will promptly notify the Service of any material change in Permittees' financial ability to fulfill their obligations. In addition to providing any such notice, Permittees will provide the Service with reasonably available financial information that the parties agree will provide adequate evidence of Permittees' ability to fulfill their obligations.

8.0 MONITORING AND REPORTING

8.1 *Planned periodic reports.* Permittees will submit reports annually describing their activities and results of the monitoring program provided for in the HCP as described in Sections 5.6 and 6.0 of the HCP.

8.2 *Other reports.* Within 30 days of being requested by the Service, Permittees will provide any additional information in their possession or control related to implementation of the HCP that is requested by the Service for the purpose of assessing whether the terms and conditions of the permits and the HCP, including the HCP's adaptive management plan, are being fully implemented.

8.3 *Certification of reports.* All reports will include the following certification from a responsible official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

8.4 *Monitoring by the Service.* Because the HCP requires no minimization and mitigation measures by landowners other than the Permittees, the Service does not need access to landowners' lands for HCP compliance monitoring. However, the Service may monitor those lands belonging to landowners who have volunteered to sign a Landowner Cooperative Agreement or Habitat Management Agreement to help the District fulfill the HCP's mitigation obligations. The purpose of such monitoring is to assess the effectiveness of the mitigation effort on that property. To follow-up on the effectiveness of the mitigation efforts on a particular property, the Service will make

arrangements with the voluntary landowner for property access at least 14 days in advance. During monitoring, the Service may be accompanied by the District or the District's designated representatives. The Permittees shall allow the Service, or other properly permitted and qualified persons designated by the Service, to enter the Permittees' lands covered by the HCP at reasonable hours and times in accordance with 50 CFR §§13.21 (e)(2) and 13.47. Nothing in this section precludes the Service from carrying out its duties as required and authorized by law.

9.0 CHANGED CIRCUMSTANCES

9.1 Permittees-initiated response to changed circumstances.

Permittees will give notice to the Service within 7 days after learning that any of the changed circumstances listed in Section 7.4 of the HCP has occurred. As soon as practicable thereafter, the Service and Permittees will convene to discuss a schedule to address the changed circumstances. Permittees will modify their activities in the manner described in Section 7.4 of the HCP to the extent necessary to mitigate the effects of the changed circumstances on covered species, and will report to the Service on their actions. Permittees will make such modifications without awaiting notice from the Service.

9.2 Service-initiated response to changed circumstances. If the Service determines that changed circumstances have occurred and that Permittees have not responded in accordance with Section 7.4 of the HCP, the Service will so notify Permittees and will direct Permittees to make the required changes. As soon as practicable thereafter, Permittees will make the required changes and report to the Service on their actions.

9.3 Effect of changed circumstances. Changed circumstances are provided for in the HCP and, therefore, do not constitute unforeseen circumstances or require amendment of the permits or HCP. Changed circumstances do not constitute "new information" under 50 CFR § 402.16 and, therefore, the occurrence of changed circumstances does not require the re-initiation of formal consultation by the Service under Section 7 of the ESA on its action of issuing the permits. As long as Permittees are in compliance with their permits and the requirements of Section 7.4 of the HCP, the Service shall not require any conservation or mitigation measures or funding by the Permittees in response to changed circumstances other than those measures specified in Section 7.4.

9.4 Effect of unforeseen circumstances. If unforeseen circumstances arise during the life of the permits, and additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, adjustments to the HCP may be proposed by the Permittees or the Service to address those circumstances. The Service and Permittees will work together to redirect resources to address

unforeseen circumstances. Provided the Permittees are implementing the HCP in good faith, the Service shall not: (A) require the commitment of any additional land, water, or financial compensation by the Permittees without the consent of the Permittees; or (B) impose additional restrictions on the use of land, water, or natural resources otherwise available for use by the Permittees under the original terms of the HCP, including additional restrictions on the permitted activities. Even if there are unforeseen circumstances, the permits shall remain valid if the Permittees comply with permit requirements, HCP requirements, and any additional measures developed in accordance with this section.

10.0 ADAPTIVE MANAGEMENT

10.1 *Permittees-initiated adaptive management.* Permittees will implement the adaptive management provisions in Section 6.2 of the HCP when changes in management practices are necessary to achieve the HCP's biological objectives, or to respond to monitoring results or new scientific information. Permittees will make such changes without awaiting notice from the Service, and will report to the Service on any actions taken pursuant to this section.

10.2 *Service-initiated adaptive management.* If the Service determines that one or more of the adaptive management provisions in the HCP have been triggered and that Permittees have not changed their management practices in accordance with Section 6.2 of the HCP, the Service will so notify Permittees and will direct Permittees to make the required changes. As soon as practicable thereafter, the Service and Permittees will convene to discuss a schedule to address the changed circumstances. Permittees will make the required changes and report to the Service on their actions. Such changes are provided for in the HCP and, therefore, do not constitute unforeseen circumstances or require amendment of the permits or HCP, except as provided in this section.

10.3 *Reductions in mitigation.* Permittees will not implement adaptive management changes that may result in less mitigation than provided for covered species under the original terms of the HCP, unless the Service first provides written approval. Permittees may propose any such adaptive management changes by notice to the Service, specifying the adaptive management modifications proposed, the basis for the proposed modifications (including supporting data), and the anticipated effects on covered species and other environmental impacts. Within 120 days of receiving such a notice, the Service will approve the proposed adaptive management changes, approve them as modified by the Service, or notify Permittees that the proposed changes constitute permit amendments that must be reviewed under Section 12.2 of this agreement.

11.0 MODIFICATIONS AND AMENDMENTS

11.1 Modifications, generally. Neither this agreement nor the HCP may be modified by any party except in writing in accordance with the terms of this section.

11.2 Minor modifications.

(a) Any party may propose minor modifications to the HCP or this agreement by providing notice to all other parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on covered activities under the HCP and on covered species. The notice shall detail any proposed changes to the avoidance, minimization, mitigation, and monitoring measures to ensure that the affected species will be appropriately protected.

(b) The parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all other parties' written approval and will not necessitate amendment of the permits.

(c) If, for any reason, a receiving party objects to a proposed modification, the modification must be processed as an amendment of the permit in accordance with this section. The Service will not propose or approve minor modifications to the HCP or this agreement if the Service determines that such modifications would result in: (1) activities that are significantly different from those analyzed in connection with the original HCP, (2) adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or (3) additional take not analyzed in connection with the original HCP.

(d) Minor modifications to the HCP processed pursuant to this section are set forth in Section 7.6 of the HCP.

(e) Material changes to the HCP pursuant to Section 7.6 of the HCP will be processed as amendments of the permits in accordance with this section of the agreement.

11.3 Amendment of the permits. The permits may be amended in accordance with all applicable legal requirements including, but not limited to, the ESA, the National Environmental Policy Act, and the Service's permit regulations. The party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including the effects on operations under the HCP and on covered species.

12.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

12.1 In general. Except as set forth below, each party shall have all remedies otherwise available to enforce the terms of this agreement, the permits, and the HCP.

12.2 No monetary damages. Except as provided in 12.3, no party shall be liable in monetary damages to any other party or other person for any breach of this agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this agreement, or any other cause of action arising from this agreement.

12.3 Enforcement authority of the United States. Nothing contained in this agreement is intended to limit the authority of the United States government to seek civil or criminal penalties, or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

12.4 Dispute resolution. The parties recognize that disputes concerning implementation of, compliance with, or termination of this agreement, the HCP, and the permits may arise from time to time. The parties agree to work together in good faith to resolve such disputes using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the parties may later agree. However, if at any time any party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

12.4.1 Informal dispute resolution process. Unless the parties agree upon another dispute resolution process, or unless an aggrieved party has initiated administrative proceedings or suit in federal court as provided in this section, the parties may use the following process to attempt to resolve disputes:

(a) The aggrieved party will notify the other parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies the aggrieved party proposes to correct the alleged violation.

(b) The party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time, the party alleged to be in violation may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to provide any information then available that may be responsive to such inquiries.

(c) Within 30 days after such response was provided or was due, representatives of the parties having authority to resolve the dispute will meet and

negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek such a solution.

(d) If any issues cannot be resolved through such negotiations, the parties will consider nonbinding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

13.0 MISCELLANEOUS PROVISIONS

13.1 No partnership. Neither this agreement nor the HCP shall make or be deemed to make any party to this agreement the agent for, or the partner of, any other party.

13.2 Notices. Any notice permitted or required by this agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other parties in writing. Notices may be delivered by facsimile or other electronic means, provided they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Assistant Regional Director
United States Fish and Wildlife Service
134 Union Blvd.
Lakewood, CO 80228-1807
Telephone: 303-236-7920
Fax: 303-236-8295

AND

Director, Rio Grande Water Conservancy District
On behalf of
San Luis Valley County and local governments
10900 Hwy. 160 East
Alamosa, CO 81101
719-589-6301

AND

Colorado Parks and Wildlife

On behalf of
Colorado Department of Natural Resources
Area 17
0722 South Road 1 East
Monte Vista, CO 81144

13.3 Severability. The terms and conditions of the permits shall be deemed severable, and if any term or condition of the permits or the HCP shall be held invalid, illegal, or unenforceable by a federal court, after exhaustion of available appeals, the remainder of the terms and conditions shall continue to be effective and binding upon the Service and the Permittees. Any lawsuit brought pursuant to the citizen suit provision of the ESA against a Permittee to enforce an individual covered activity's compliance with the ESA shall have no effect on the provisions of the HCP and permits or on other covered activities not subject to such proceeding, which shall remain in full force and effect. Noncompliance of one or more of the parties implementing the HCP will not affect the validity of the HCP as to the other participating entities.

13.4 Entire agreement. This agreement, together with the HCP and the permits, constitutes the entire agreement among the parties. This agreement supersedes any and all other agreements, either oral or in writing, among the parties with respect to the subject matter hereof and contains all of the covenants and agreements among the parties with respect to said matters, and each party acknowledges that no representation, inducement, promise, or agreement (oral or otherwise) has been made by any other party or anyone acting on behalf of any other party that is not embodied herein.

13.5 Elected officials not to benefit. No member of Congress shall be entitled to any share or part of this agreement, or to any benefit that may arise from it.

13.6 Availability of funds. Implementation of this agreement and the HCP by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the Service will not be required under this agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

13.7 Duplicate originals. This agreement may be executed in any number of duplicate originals. A complete original of this agreement shall be maintained in the official records of each of the parties hereto.

13.8 No third-party beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a party to this agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this agreement. The duties, obligations, and responsibilities of the parties to this agreement with respect to third parties shall remain as imposed under existing law.

13.9 Relationship to the ESA and other authorities. The terms of this agreement shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this agreement is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the federal government. Nothing in this agreement will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of Permittees under the HCP and this agreement will be considered in any consultation affecting Permittees' use of the covered lands.

13.10 References to regulations. Any reference in this agreement, the HCP, or the permits to any regulation or rule of the Service shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

13.11 Applicable laws. All activities undertaken pursuant to this agreement, the HCP, and the permits must be in compliance with all applicable federal and state laws and regulations.

13.12 Successors and assigns. This agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Assignment or other transfer of the permits shall be governed by the Service's regulations in force at the time of any such assignment or other transfer.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date that the Service issues the permits.

BY _____ Date _____
Acting Regional Director, Mountain-Prairie Region
United States Fish and Wildlife Service
Lakewood, Colorado

BY _____ Date _____
Director
State of Colorado Department of Natural Resources

BY _____ Date _____
Board President
Rio Grande Water Conservation District
Alamosa, Colorado

BY _____ Date _____
Commissioner
Alamosa County
Alamosa, Colorado

BY _____ Date _____
Commissioner
Conejos County
Conejos, Colorado

BY _____ Date _____
Commissioner
Costilla County
San Luis, Colorado

BY _____ Date _____
Commissioner
Mineral County
Creede, Colorado

BY _____ Date _____
Commissioner
Rio Grande County
Monte Vista, Colorado

BY _____ Date _____
Commissioner
Saguache County
Saguache, Colorado

BY _____ Date _____
City of Alamosa
Alamosa, Colorado

BY _____ Date _____
City of Del Norte
Del Norte, Colorado

BY _____ Date _____
City of Monte Vista
Monte Vista, Colorado

BY _____ Date _____
City of South Fork
South Fork, Colorado