

**UMBRELLA
CANDIDATE CONSERVATION AGREEMENT
WITH ASSURANCES**

BETWEEN

**MONTANA DEPARTMENT OF FISH, WILDLIFE &
PARKS**

AND

U.S. FISH AND WILDLIFE SERVICE

FOR

**WESTSLOPE CUTTHROAT TROUT
INTRODUCTIONS/REINTRODUCTIONS**

IN

MONTANA

This Candidate Conservation Agreement with Assurances (CCAA), effective and binding on the date of the last signature below, is between Montana Fish, Wildlife and Parks (FWP) and the U.S. Fish and Wildlife Service (Service). Participating property owners may also be included under the CCAA by signing a Certificate of Inclusion (Appendix A). Administrators of this Agreement are:

FWP: FWP designates the following individual as the Agreement Administrator:

Special Projects Bureau Chief
Fisheries Division
Montana Fish, Wildlife and Parks
P.O. Box 200701
Helena, Montana 59620

Service: The Service designates the following individual as the Agreement Administrator:

Field Supervisor
Ecological Services Field Office
100 North Park Street, Suite 320
Helena, Montana 59604

Authority

The signatory Parties hereto enter into this CCAA under Federal and State law, as applicable, including, but not limited to section 2(c)(2) of the Endangered Species Act (ESA), which states "the policy of Congress is that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species."

Service - Sections 2, 7, and 10 of the ESA of 1973, as amended, allow the Service to enter into this CCAA. Section 2 of the ESA states that encouraging interested Parties, through Federal financial assistance and a system of incentives to develop and maintain conservation programs, is a key to safeguarding the Nation's heritage in fish, wildlife, and plants. Section 7 of the ESA requires the Service to review programs that they administer and to utilize such programs in furtherance of the purposes of the ESA. By entering into this CCAA, the Service is utilizing its Candidate Conservation Programs to further the conservation of the Nation's fish and wildlife. Lastly, section 10(a)(1)(A) of the Act authorizes the issuance of permits to "enhance the survival" of a listed species.

FWP - FWP enters this agreement under the authority of Title 87-1-210, Montana Code Annotated, and Title 87-5-101, Montana Code Annotated, et seq. The mission of FWP is to provide for the stewardship of the fish, wildlife, parks, and recreational resources of Montana while contributing to the quality of life for present and future generations. The mission of the Fisheries Division is to preserve and enhance aquatic species and their ecosystems to meet the public's demand for recreational opportunities while ensuring stewardship of aquatic wildlife.

Purpose

The FWP has committed to the conservation and protection of westslope cutthroat trout (*Oncorhynchus clarki lewisi*), as documented in the Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat Trout in Montana (Montana Fish, Wildlife and Parks 1999). To conserve unique, at-risk populations of westslope cutthroat trout (WCT), it is sometimes necessary to replicate those populations by introducing representatives (gametes, juveniles, or adults) of them into waters that do not currently contain WCT. Similarly, to enhance the distribution of WCT, genetically pure WCT may be introduced into waters that contain no WCT. However, the introduction of WCT into waters not currently occupied by WCT is a concern to private landowners in drainages where those introductions occur because of the potential for the imposition of restrictions on farm or ranch operations should the WCT be listed as threatened or endangered under the ESA in the future. This fear decreases the inclination of landowners to allow the establishment of WCT conservation populations within their lands and increases the likelihood that neighboring landowners will not support these activities. To help alleviate this concern, as well as generate support from private landowners, FWP is seeking a CCAA, for introductions of WCT onto or adjacent to private lands within the historical range of WCT. Under this Umbrella Agreement, FWP could issue Certificates of Inclusion to private landowners who allow the establishment of WCT conservation populations on their lands or to private landowners who could be affected by WCT introductions on adjacent lands.

The purpose of this CCAA is to provide a mechanism of assuring private landowners, through Certificates of Inclusion, that their land management activities will not be forced to be changed if FWP proceeds with introductions of WCT onto or adjacent to private lands within the historical range of WCT, if WCT become listed as threatened or endangered. Such an agreement will help alleviate private property concerns, as well as generate support from private landowners.

Background

Westslope cutthroat trout are recognized as one of 14 interior subspecies of cutthroat trout (Behnke 1992), and are the most widely distributed native trout in the inland Pacific northwest, occurring in Montana, Idaho, and Canada, as well as in disjunct populations in Oregon and Washington. In Montana, native WCT occur in the Columbia River and upper Missouri River basins.

Although still widespread, WCT distribution and numbers have declined significantly in the past 100 years due to a variety of causes, including loss of habitat, competition and predation with nonnative fish species, hybridization, and poor water quality (Thurow et al. 1997). Because of this, WCT have been listed since 1972 as a State Species of Special Concern by the FWP and the Montana Chapter of the American Fisheries Society (AFS). This designation indicates limited numbers and/or limited habitats both in Montana and elsewhere in North America; elimination from Montana would be a significant loss to the gene pool of the species or subspecies.

Westslope cutthroat trout were considered a Category 2 Candidate species by the Service until the deletion of that category in February 1996. They were petitioned for listing as threatened under the ESA in June 1997. Following an extensive status review, the Service determined in

April 2000 that WCT were not warranted for Federal listing (Service 2000). That finding was challenged in Federal court, and the court remanded the not warranted finding back to the Service for additional review. A new finding issued August 2003 found that it did not warrant listing (Service 2003).

Because of the sensitive status of WCT, and some potential for its listing under the ESA, FWP desires to enter into this CCAA for WCT. The Service will provide assurances (as described below) to FWP, and will enable FWP to issue Certificates of Inclusion to private property owners that either allow the establishment of WCT conservation populations in waters within their private property where none currently exist, or accept the establishment of WCT conservation populations in waters adjacent to their private property where none currently exist, and agree to the stipulations agreed to by FWP described in this agreement. These assurances will apply only to the participants of this Agreement, and their subpermittees, for approved actions described in this document.

To conserve unique, at-risk populations of WCT, it is sometimes necessary to replicate those populations by introducing representatives of those populations into waters that do not currently contain WCT. Similarly, to enhance the distribution of WCT, genetically pure WCT may be introduced into currently troutless waters. However, the introduction of WCT into waters not currently occupied by WCT is a concern to private property owners in drainages where those introductions occur because of the potential for WCT to be listed as threatened or endangered under the ESA. To help alleviate those concerns, as well as generate support from private property owners, FWP is seeking a CCAA, under which FWP could issue Certificates of Inclusion to private property owners, for introductions WCT onto or adjacent to private lands within the historical range of WCT.

The issuance of this CCAA will ultimately lead to conservation of genetically unique WCT populations, as well as to an increase in the habitat occupied by genetically pure conservation populations of WCT. This CCAA also will help achieve the goal and objectives listed in the Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat Trout in Montana (Montana Fish, Wildlife and Parks 1999) for restoration of WCT. Threats that warrant consideration of westslope cutthroat trout as threatened or endangered should be reduced or eliminated through implementation of these and similar restoration efforts. Specifically, the restoration efforts identified in this CCAA will establish new WCT populations in stream reaches where potential sources of hybridization, competition, and predation by nonnative fish species have been removed or have not been historically present. Assurances provided through the CCAA will demonstrate to property owners that they can contribute toward conservation of native WCT without uncertainty about future impacts on land management operations should the subspecies become listed.

The State of Montana has developed a Conservation Agreement for WCT (Montana Fish, Wildlife and Parks 1999) that outlines a strategy to collaboratively conserve WCT. Objectives in that agreement include:

- Objective 1.** Protect all genetically pure WCT populations
- Objective 2.** Protect introgressed (less than 10 percent introgressed) populations
- Objective 3.** Ensure the long-term persistence of the WCT within their native range

- Objective 4.** Provide technical information, administrative assistance, and financial resources to ensure compliance with the listed objectives and encourage conservation of WCT
- Objective 5.** Design and implement an effective monitoring program by the year 2002 to document persistence and demonstrate progress toward goal

Under Objective 4, the Agreement goes on to explain:

“Numerous heretofore unsurveyed populations of WCT may occur on private lands. Private landowners on whose lands these unknown populations exist, as well as those on whose lands WCT are known to exist, might be hesitant to allow survey, inventory, or followup monitoring due to fears about potential ESA listing and subsequent regulation. Similarly, because of unknown regulatory restrictions associated with potential ESA listing, landowners whose lands will be included as part of the expansion of existing populations, particularly those within the 50-mile connected populations, could be hesitant to support such efforts. To help offset/alleviate these concerns and garner voluntary support of private landowners, it is important that administrative assistance be available to private landowners wherever possible to provide regulatory relief.” Such relief includes approval of negotiated, mutually acceptable CCAA if the species remains unlisted, and Safe Harbor Agreements (SHA) or Habitat Conservation Plans (HCP) if the species becomes listed. Most property owners lack the financial resources or technical expertise to write such agreements. To ensure voluntary cooperation of private property owners, these types of agreements will be completed with property owners, if requested, as part of the planning and environmental review (Montana Environmental Policy Act/National Environmental Policy Act) process associated with expansion of existing populations. The Service and FWP will jointly assist with the development of such agreements for private property owners. Provisions included in the CCAA/HCP/SHA will be negotiated with property owners, will meet the biological needs of WCT, and will provide property owners with assurances that they will not face further requirements beyond what is required by the Agreements.

Covered Lands

The lands potentially covered by this Agreement are all drainages in the Hydrologic Units where WCT occur or may be introduced including the Belly River; St. Mary River; Red Rock River; Beaverhead River; Ruby River; Big Hole River; Jefferson River; Boulder River; Madison River; Gallatin River; Missouri River; Dearborn River; Smith River; Sun River; Belt Creek; Two Medicine River; Teton River; Arrow Creek; Judith River; Flatwillow Creek; Box Elder Creek; Kooetenai River; Fisher River; Yaak River; Moyie River; Clark Fork River; Flint Creek; Rock Creek; Blackfoot River; Bitterroot River; the North, Middle and South forks and mainstem Flathead River; Stillwater River; and Swan River drainages (Figure 1). Whether the upper Musselshell River falls within the historic range of the WCT is speculative at this time. During a recently completed status assessment for WCT, the upper Musselshell basin was excluded from the historic range of the WCT based on early reports that trout were not present and the current distribution of WCT (Shepard et al. 2003). Should additional information prove that the upper Musselshell basin is within the historic range of the WCT, the lands covered under this CCAA will be extended through a minor amendment to include this basin.

The individual or combined land use practices on these lands are extremely variable and can include every permutation of typical land use on private land including farming, ranching, grazing, timber harvest, mineral extraction, construction, and irrigation. These practices are not expected to significantly impact the populations of introduced WCT when performed in accordance with local, State, and Federal laws. Specific stream reaches selected for introductions of WCT are chosen both for their suitable trout habitat and the expectation that the adjacent land management practices will not compromise the success of the introductions. Typically, introduction sites within private landholdings are selected because of the current land stewardship practices and personal interest of the property owner. Although property owners adjacent to proposed reintroduction sites may object to establishing new WCT populations if they perceive they will be negatively impacted, these property owners can be encouraged to accept these introductions by providing them with regulatory relief.

It is important to recognize that any take that might occur would occur on populations that, without the cooperation of enrolled property owners, would not exist. The conservation of the WCT requires the establishment of new populations in streams currently unoccupied by the species. Many sites suitable for restoration stocking occur on private land. Property owners are more likely to provide opportunities for establishing new WCT populations within their lands, or accept the establishment of new populations within the lands of neighboring property owners, if their lawful activities are protected from ESA restrictions. It is, therefore, reasonable to accept potential take on these new populations if, by permitting this take, new WCT populations can be established in streams where they otherwise could not be established.

The actual lands covered by this CCAA and section 10(a)(1)(A) permit will be those lands enrolled through the completion of a signed Certificate of Inclusion. The actual number of potential property owners cannot be calculated, however, it is expected that approximately 10 property owners (2 on whose property introductions would occur and 8 neighboring property owners potentially affected by the introductions) could be enrolled into the program each year.

Description of Existing Conditions

A very thorough rangewide assessment of WCT in the United States was recently completed (Shepard et al. 2003). Based on that assessment, WCT currently occupy 33,500 miles of the nearly 56,500 miles of historically occupied habitat (59 percent). In Montana, they occur in almost 13,000 miles (39 percent of historically occupied habitat). A total of 563 populations of WCT occupying about 24,450 miles of habitat (72 percent of occupied habitat) were identified as conservation populations. In Montana, 333 conservation populations of WCT were identified, occupying approximately 8,422 stream miles within their historical range (based on 1:100,000 scale hydrography) in the Columbia and upper Missouri River basins. Genetically pure WCT are known to occur in more than 2,630 stream miles in Montana; 90-99.9 percent WCT occur in an additional 819 miles; and known untested populations occur in reaches totaling at least 8,452 stream miles (Montana Fish, Wildlife and Parks 1999).

A recent assessment of WCT status in north-central Montana shows that genetically pure WCT are present in approximately 200 miles of the 4,200 miles of habitat. WCT are considered secure in only 2-3 percent of that historical habitat (Tews et al. 2000). A secure population was defined

as one where there is a long-term, viable population of more than 2,500 fish. The conservation measures included in this CCAA will create new, genetically pure westslope cutthroat trout populations where none currently exist. These new populations will expand the current range and number of populations of the species, provide relatively secure populations with fewer of the threats that impact other westslope cutthroat trout populations, preserve threatened components of the westslope cutthroat trout genome by replicating or incorporating these populations into new populations in more secure habitats, and will, ultimately, increase the long-term viability of the species.

Conservation Measures

Montana Fish, Wildlife and Parks

The conservation measures that FWP will perform under this agreement include the establishment of new WCT conservation populations in waters within the historic range of the species where the species is not currently present and monitoring these introduced populations to assess the success of the introductions and evaluate conservation stocking methods.

Establish new conservation populations

Selection of sites for establishing new conservation populations will be based on the presence of sufficient suitable habitat that provides a reasonable expectation that the introduction will be successful and an expectation that the adjacent land management practices will not compromise the success of the introductions. In waters that currently contain fish, suitable habitat for WCT is typically identified by the presence of salmonid species. In waters that are currently fishless, suitable habitat can be identified by comparing the available habitat with known WCT habitats. As part of the commitments in the Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat Trout in Montana, FWP has committed to protecting all genetically pure populations of WCT. The Conservation Agreement goes on to say that “protection includes expansion of small, isolated populations where possible” and “in some instances, protection could also include genetically replicating and establishing a population that cannot otherwise be maintained in its present location.” Expansion or replication of populations will occur by several different methods:

- Westslope cutthroat trout from the source stream are moved to the receiving stream;
- Gametes from adult WCT in the source stream are collected, and the fertilized eggs are placed in remote site incubators in the receiving stream;
- Gametes from adult WCT in the source stream are collected, taken to a hatchery facility for hatching and rearing, and the fry/fingerlings are stocked in the receiving stream;
- Gametes from adult WCT in the source stream are collected, taken to a hatchery facility and hatched, and those offspring are used as a brood source for future stocking;
- Sperm from males from the receiving stream are crossed with eggs from a genetically pure WCT broodstock, and the progeny of that cross are stocked in the receiving stream;
- Fish from two or more source streams are combined and used in any of the above scenarios.

In some areas, FWP is striving to expand the overall distribution of WCT using genetically pure “nearest neighbors”, combinations of nearest neighbors, or hatchery fish derived from Montana’s

genetically diverse M012 broodstock. The M012 broodstock are maintained at FWP's Washoe Park Fish Hatchery. They are from a pure brood source founded in 1983 and 1984 (Leary et al. 1991). Prior to collection, it was confirmed that tributaries from which the fish were collected were genetically pure and disease-free. Fish were collected from a number of streams to incorporate genetic diversity from many populations, thereby increasing genetic diversity of the brood stock. Genetic variation is maintained by spawning fish at random so that there is an equal chance of a female mating with any other male. Selection for time of spawning is avoided by randomly choosing a fixed percentage of the eyed eggs from each spawning period for future brood stock. The efficacy at which this procedure maintains genetic variation is monitored by obtaining electrophoretic data from 70 loci and the counts of 5 bilateral meristic characters from 50 randomly sampled individuals from each year class of future brood stock when they are about 1 year old. Every 10 years wild fish from aboriginal populations will have a 5 to 10 percent genetic contribution to the brood stock for 3 successive years (Leary et al. 1991). Gametes from at least six aboriginal populations are scheduled to be infused into the broodstock in 2003. A second genetically pure, captive WCT broodstock is currently under development for use specifically within the upper Missouri basin. Other localized broodstocks may be developed where and when they are appropriate and needed.

In some drainages, there may be introductions of both "nearest neighbor" and hatchery stock. An evaluation of the two different donor sources (wild vs. hatchery) will be conducted by identifying genetic markers unique to these two sources, and then later determining relative success of each stock. The rationale behind using the "nearest neighbor" source is that local adaptation may give this stock a selective advantage in a nearby geographic location, and that this existing, genetically unique population will be replicated in the wild. However, the risk of this strategy is that the donor source may be very narrowly adapted to the source environment, and might not survive well in another environment. The rationale for using a hatchery donor source with a broad, genetic makeup is that while many individuals originating from this source may perish, there will be a component that is highly suitable for any particular environment (Bramblett 1998).

FWP follows, and will continue to follow, rigorous guidelines to ensure introductions do not adversely affect extant populations of WCT. They include:

- No WCT will be stocked on top of existing, extant populations of pure WCT, unless it is determined that such supplementation is necessary to prevent total extirpation of that population. Introductions will be in waters currently unoccupied by WCT; either above a barrier if competing/hybridizing species are present, in fishless waters, or in waters where nonnative trout have been eradicated/removed.
- Introduced fish will generally be >99 percent WCT.
- No WCT will be stocked on top of existing conservation populations of WCT (90-99 percent pure) unless done in accordance with subbasin plans developed for that subbasin.
- Representative fish from the source population will be screened by FWP's fish pathologist to ensure no significant pathogens are moved between drainages.
- Amphibian and invertebrate surveys will be completed before introducing WCT into streams that have not formerly been occupied by trout to ensure no significant adverse effects occur to those taxa as a result of the WCT introductions.

- At least 50 fish from the source population will be genetically tested to ensure only pure fish are used to establish broods, or new pure populations.
- A 50-fish sample provides 99 percent probability of detecting 1 percent hybridization. Prior to an introduction, all potentially hybridizing nonnative species (e.g., rainbow trout, Yellowstone cutthroat trout) will be either physically or chemically removed.
- In general, all nonnative competitor fish species (e.g., brook trout) will be removed prior to introducing WCT.
- To meet the requirements of the Montana Environmental Policy Act (MEPA), an Environmental Assessment, following established MEPA guidelines, will be completed prior to the introduction of WCT into waters where WCT do not currently exist.

Monitoring

FWP will be responsible for periodically monitoring the introduced populations after they are established. Details of the monitoring program are thoroughly described in the Monitoring Provisions section of this document.

Property Owners

Certificates of Inclusion can be issued to property owners who allow introductions of WCT into waters on their properties (participating property owners) and to neighboring property owners that perceive they will be impacted by introductions of WCT into waters on adjacent properties (participating neighboring property owners).

Participating property owners will agree to:

- Allow the establishment of WCT in waters on their properties as identified in the Certificate of Inclusion.
- Permit access for the purpose of monitoring the introduced WCT populations.
- Optionally, provide other conservation actions as described in the Certificate of Inclusion.

Participating neighboring property owners will agree to:

- Accept the establishment of WCT in waters on neighboring properties and the resulting potential for WCT to occur in waters within their properties.
- Optionally, provide other conservation actions as described in the Certificate of Inclusion.

U.S. Fish and Wildlife Service

The purpose of a CCAA is to encourage participating property owners or State or local land management agencies to remove threats to species covered by the agreement. In exchange for proactive conservation management activities benefiting the candidate species, the Service will provide regulatory certainty and assurances to the participating property owner(s), and designees included through Certificates of Inclusion, in case the covered species is subsequently listed. The assurance(s) provided would be that no additional land management actions would be

required of the property owners beyond those agreed to in the CCAA should the species be listed in the future. In addition, the Service would authorize actions that may result in incidental take consistent with those levels agreed to in the CCAA through a section 10(a)(1)(A) permit. The Permit will be issued at the time of entering into the CCAA, but would have a delayed effective date tied to the date of any future listing. For the Service to provide such assurances, the provisions to be carried out under the agreement must be expected to contribute to removing the need to list if such actions were undertaken by similarly situated property owners and State management agencies within the range of the covered species.

The Service agrees to:

- Provide technical assistance in CCAA and permit application development.
- Issue a permit to FWP, under section 10(a)(1)(A) of the ESA, in accordance with 50 CFR 17.32 (d), with a term of 50 years from the date of issuance that provides FWP with authorization for incidental take of WCT and provide regulatory assurances should the species be listed under the ESA during the time this Agreement is in effect. The permit will authorize incidental take of WCT through brood rearing and population reestablishment activities. Examples of incidental take that could occur are the accidental death of one or more trout during transport to a stream for reestablishment, or loss of WCT in streams where they have been introduced on private lands where ongoing land management activities could adversely affect them.
- Monitor FWP compliance with the terms and conditions of this Agreement.

These conservation measures may be changed, if mutually agreed, as part of an adaptive management strategy to achieve conservation goals. FWP and the Service agree that adaptive management provisions are necessary to ensure that they can take advantage of changing conditions or new information affecting the establishment of new WCT populations and, ultimately, the success of this Agreement. Adaptive management provisions are especially necessary when, as here, a species is being established in currently unoccupied waters.

FWP will annually evaluate the effectiveness of the Conservation Actions in a report to the Service as described in Monitoring Provisions/Reporting and recommend any necessary changes. FWP and the Service may initiate requests to modify the Conservation Actions as provided for in the Duration section of this Agreement. Requests to modify this Agreement will be initiated through written notification to all signatories and will remain within the scope of this Agreement. Specific areas where adaptive management may occur include adjustments to stocking sources, monitoring frequency, monitoring techniques, and monitoring period. Potential examples of circumstances where adaptive management may be appropriate include indications that a particular source of fish ("nearest neighbor," captive broodstock, etc.) is either inappropriate or has better than expected results and more detailed monitoring is required to evaluate differential success between various reintroductions.

Participating property owners who are included in the CCAA by issuance of a Certificate of Inclusion will be encouraged to allow WCT to relocate and persist in waters within their property

boundaries and will also be encouraged to at least maintain the current conditions of riparian, stream, and pond habitats of these waters.

Expected Benefits

The expected conservation benefits resulting from these management actions are:

- Establishment of viable populations of genetically pure WCT in streams where they do not presently occur.
- Replication of “at-risk” populations of genetically pure WCT to conserve unique genetic characteristics.
- Expansion of overall WCT distribution within their historical range.
- Preservation of important conservation populations of westslope cutthroat trout to preserve unique genetic attributes that would otherwise be lost.

Completion of these types of introductions will demonstrate to other property owners that WCT conservation and responsible land management can be mutually beneficial. Acceptance of the CCAA will help alleviate concerns by private property owners about potential impacts associated with ESA listing, making them more likely to support similar conservation efforts.

If the successful reintroductions of WCT expected under this Agreement were accomplished throughout the range of the species, the FWS believes that the need to list the species would likely be precluded or removed.

Level of Take

If the conservation actions described above are completed by the cooperating Parties, no additional management actions would be required of FWP, nor from subpermittees to whom are issued Certificates of Inclusion by FWP, by the Service for the actions listed below, should the species become listed under the ESA. However, because there is potential for take, even as a result of positive conservation actions, a section 10(a)(1)(A) permit for the covered actions is desired, with an effective date tied to the date of any future listing for covered species.

The land and fisheries management actions for which the Parties to this agreement desire assurances and a section 10(a)(1)(A) permit are described below.

Montana Fish, Wildlife and Parks

- Collection of WCT from donor streams for the purpose of collecting fish and gametes to be used to stock genetically pure WCT in the project area streams.
- Collection and marking of fish established in project areas. Sampling methods include, but are not limited to, electrofishing, snorkeling, and trapping. Electrofishing will be done in accordance with FWP’s electrofishing guidelines. Care will be taken to minimize mortalities from any sampling. Marking techniques may include tagging, fin clipping, implant of radio transmitters, and other accepted and customary methods.

- Future collection of fish from project areas for introduction into other potentially suitable habitat.
- Collection of gametes/fish for infusing wild genetics into the captive broodstocks maintained by FWP.

Private Property Owners

Property owners will not be required to modify their land management practices as a result of the introduction of WCT on or adjacent to their lands. FWP seeks the ability to provide assurances to eligible private property owners, through issuance of Certificates of Inclusion, for any incidental take associated with any of the following land management activities that are performed in accordance with applicable local, State, and Federal laws: grazing, farming, fishing, development of water resources, construction and maintenance of structures and utilities, timber management, gravel and rock removal, and oil and gas development.

- Grazing – Grazing includes any agricultural or ranching activity, including to pasture, graze, feed, breed, raise, and manage livestock such as horses, goats, sheep, cattle, and bison.
- Farming – Farming includes the planting, raising, and harvesting of agricultural crops of every nature and description, consistent with the maintenance and enhancement of the soil composition, soil structure, soil productivity, range condition, and vegetative community composition.
- Fishing – Fishing that is consistent with current State of Montana fishing regulations is permitted. Current regulations for WCT in streams east of the Continental Divide allow only catch and release fishing.
- Water Resources – Property owners may develop and maintain those water resources on the property necessary for grazing, agriculture, wildlife, and domestic and private recreational pursuits conducted thereon, including, but not limited to, the right to locate, construct, install, and maintain pumps and irrigation systems (including sprinkler irrigation systems and flood irrigation systems), to irrigate pastures situated on the property, and to develop new water resources and facilities, including stock watering facilities and ponds, and to improve the quantity and quality of water available for such purposes.
- Structures – Property owners may maintain, repair, and replace fences, roads, corrals, barns, tack sheds, shops, garages, irrigation structures, pipelines and water diversion systems, woodsheds, residences, bunkhouses, and other improvements on the property.

New structures may be constructed.

Additional buildings, roads, travelways, and other improvements as may be necessary may be placed upon the property, and standing trees and brush may be cleared to effect such additions.

- Utilities – Property owners may construct utility systems for residential, ranching, agricultural, and commercial uses.
- Timber Management – The removal of timber is permitted as long as it is done so in compliance with the Streamside Management Zone Law (77-5-301 through 307, Montana Conservation Act). Property owners may remove timber where there is an imminent demonstrable threat of disease or infestation; cut firewood for personal use by ranch employees or for use on the property; and cut and utilize posts and poles on the property for agricultural purposes. Current forest management practices include thinning for stand improvement and fire threat reduction.
- Gravel and Rock Removal – Property owners may remove gravel and rock from existing sites for use on the property and from additional sites as needed for use on the property.
- Oil and Gas Development – Property owners reserve the ability to develop oil and gas resources they have rights for as long as it is done in compliance with State Oil and Gas Commission regulations pertaining to proximity to streams, riparian development, and water quality.

While the actual level of take for each of these activities is unknown, the actual take is expected to be low relative to the benefits to the conservation, expansion, and viability of the species. The language of this permit in no way restricts the use of agricultural chemicals when they are applied according to label instructions for labeled uses.

Sites for the establishment of WCT conservation populations are selected because FWP has determined that the habitat is of sufficient quality to provide an expectation that the introduction will not only be successful, but will persist and that the property owner on whose property the introduction will occur wants the introduction to succeed and persist. Existing State environmental and fishing statutes are sufficient to ensure the introduced populations persist even with the listed land uses. Any take that does occur will be on fish populations that would otherwise not be available to take if their introduction had not been encouraged through the implementation of this CCAA. The Service has determined that the level of take is consistent with the overall goal of precluding the need to list the species.

Assurances Provided

Through this CCAA, the Service provides FWP, and its designees, assurances that no additional conservation measures nor additional land, water, or resource use restrictions, beyond those voluntarily agreed to and described in the "Conservation Measures" section of this CCAA, will be required should the WCT become listed in the future. These assurances will be authorized with the issuance of a permit under section 10(a)(1)(A) of the ESA.

The Service recognizes that this level of take is consistent with the overall goal of precluding the need to list the species, if it is assumed that conservation measures were also to be implemented on other necessary properties.

The assurances listed below apply to the participating property owners (Appendices A and B) and participating neighboring property owners (Appendices A and C) with a permit associated with this CCAA where the CCAA is being properly implemented. The assurances apply only with respect to species covered by the CCAA.

(1) *Changed circumstances*

Changed circumstances are those factors that negatively affect WCT and that can be reasonably anticipated and planned for under this Agreement. Changed circumstances can include drought, wildfire, and illegal introductions of exotic fish species. Due to the variation in possible affects to WCT and conservation measures, it is not possible to identify specific conservation measures to address changed circumstances at this time. During the term of this Agreement and permit, should a changed circumstance occur at a WCT introduction site, the subpermittee, FWP and the Service will work in good faith to develop and implement conservation measures to minimize the impacts of the changed circumstance on the introduced WCT.

(2) *Unforeseen circumstances*

(A) In negotiating unforeseen circumstances, the Service will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the CCAA without the consent of the Permittee.

(B) If additional conservation measures are deemed necessary to respond to unforeseen circumstances, the Service may require additional measures of the Permittee where the CCAA is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the CCAAs operating conservation program for the affected species, and maintain the original terms of the CCAA to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the CCAA without the consent of the Permittee.

(C) The Service will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Service will consider, but not be limited to, the following factors:

- (1) Size of the current range of the affected species;
- (2) Percentage of range adversely affected by the CCAA;
- (3) Percentage of range conserved by the CCAA;
- (4) Ecological significance of that portion of the range affected by the CCAA;
- (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the CCAA; and
- (6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

Monitoring Provisions

Compliance Monitoring

The Permittee will be responsible for specified monitoring and reporting related to implementation of the CCAA and fulfillment of its provisions, including implementation of agreed-upon conservation measures, and take authorized by the permit. The CCAA will grant the Service, after reasonable prior notice to the Permittee, the right to enter the enrolled lands to ascertain compliance with the CCAA.

Biological Monitoring

Montana Fish, Wildlife and Parks will periodically monitor streams into which WCT have been introduced to assess the effectiveness of nonnative fish eradication efforts, and to determine the relative success of introduced WCT populations. Monitoring will be done by electrofishing selected stream reaches throughout project streams, following established FWP electrofishing methods and safety policies. Other generally-accepted monitoring methods may be used. Monitoring efforts will be increased in intensity and frequency if necessary. Factors that may necessitate increased monitoring include observable degradation of habitat or water quality, reappearance of nonnatives within a stream reach, or a large change in the population of WCT. As it takes at least 2 years for a population to become established, annual monitoring will be initiated within 2 to 3 years after an introduction and continue for a minimum of 3 years. Additional monitoring may be necessary to determine the success of an introduction. Monitoring will occur less frequently once it has been established that the introduction has been successful (population has sufficient numbers and age structure).

Reporting

An annual report will be prepared by FWP summarizing administration of the CCAA and WCT introduction efforts. The report will contain a listing of all property owners issued a Certificate of Inclusion, the location of their lands that are covered under this agreement, and statistics detailing introductions/reintroductions that occurred during the calendar year. The report will be distributed to the Service by April 30 each year. Reports of future, anticipated introductions will also be provided at that time. A summary of actions that may result in take and any known take will also be included. Biological monitoring reports will be provided by July 1 of the following year.

The Service will provide review of all Certificates of Inclusion and inform FWP whether it concurs within 10 business days of receipt of a Certificate of Inclusion and Documentation of Participation Form. If the Service does not respond within that time period, concurrence will be assumed.

Notification of Take Requirement

By signature of this CCAA, Montana Fish, Wildlife and Parks agrees to provide the Service with an opportunity to rescue individuals of the covered species before any authorized take occurs that

may significantly impact the viability of a population. Notification that take will occur must be provided to the Service at least 30 days in advance of the action.

Duration of CCAA

The CCAA will be in effect for a duration of 50 years following its approval and signing by the Parties. The section 10(a)(1)(A) permit authorizing take of the species will have a term of 50 years from the effective date of the permit. The permit and CCAA may be extended beyond the specified terms through amendment, upon agreement of the Parties.

The minimum duration of Certificates of Inclusion will be 20 years.

Modifications

After approval of the CCAA, the Service may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a property owner or successor in interest to the property owner, to compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the CCAA except as stipulated in 50 CFR 17.22(c)(5) and 17.32(c)(5).

Modification of the CCAA

Any party may propose modifications or amendments to this CCAA, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, the other Parties. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.

Amendment of the Permit

The permit may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, including but not limited to the ESA, the NEPA, and the Service's permit regulations at 50 CFR 13 and 50 CFR 17. The party proposing the amendment shall provide a statement describing the proposed amendment and the reasons for it.

Termination of the CCAA

As provided for in Part 8 of the Service's CCAA Policy (Service and National Marine Fisheries Service 1999), the Permittee may terminate implementation of the CCAA's voluntary management actions prior to the CCAA's expiration date, for good cause, even if the expected benefits have not been realized. If the Permittee is unable to continue implementation of the plans and stipulations of the CCAA, whether due to catastrophic destruction of the species population numbers or habitat or due to unforeseen hardship, the Permittee would relinquish the permit to the Service. The Permittee may terminate this CCAA for good cause with 60 days prior written notice to the other Parties, and the Service is provided an opportunity to relocate affected species within 45 days of that notice. The Permittee also may terminate the CCAA at

any time for any other reason, but termination for reasons other than uncontrollable circumstances such as those associated with a force majeure event shall extinguish the Permittee's authority to take species (if listed) or occupied habitat under the permit.

Permit Suspension or Revocation

The Service may suspend or revoke the permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the permit if continuation of permitted activities would likely result in jeopardy to covered species (50 CFR 13.28(a)). Prior to revocation, the Service would exercise all possible measures to remedy the situation.

Remedies

Each party shall have all remedies otherwise available to enforce the terms of the CCAA and the permit, except that no party shall be liable in damages for any breach of this CCAA, any performance or failure to perform an obligation under this CCAA, or any other cause of action arising from this CCAA.

Dispute Resolution

The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

Succession and Transfer

This CCAA shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees, (i.e., new owners) in accordance with applicable regulations (50 CFR 13.24 and 13.25). The rights and obligations under this CCAA shall run with the ownership of the enrolled property and are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25. The permit issued to the Permittee also will be extended to the new owner(s). As a party to the original CCAA and permit, the new owner(s) will have the same rights and obligations with respect to the enrolled property as the original owner. The new owner(s) also will have the option of receiving CCAA assurances by signing a new CCAA and receiving a new permit. The Permittee shall notify FWP of any transfer of ownership. FWP, or at the request of FWP, the Service, will contact the new owner, explain the baseline responsibilities applicable to the property, and seek to interest the new owner in signing the existing CCAA or a new one to benefit listed species on the property. FWP will notify the Service of transfers of ownership of enrolled lands and the results of contacts with new property owners. Assignment or transfer of the permit shall be governed by Service regulations in force at the time.

Availability of Funds

Implementation of this CCAA is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this CCAA will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The

Parties acknowledge that the Service will not be required under this CCAA 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.

Relationship to Other Agreements

This CCAA helps meet the obligation and objectives of the Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat Trout in Montana, of which both the Permittee and the Service are signatories.

No Third-Party Beneficiaries

This CCAA does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this CCAA to maintain a suit for personal injuries or damages pursuant to the provisions of this CCAA. The duties, obligations, and responsibilities of the Parties to this CCAA with respect to third Parties shall remain as imposed under existing law.

Notices and Reports

Any notices and reports, including monitoring and annual reports, required by this CCAA shall be delivered to the persons listed below, as appropriate:

Permittee

Special Projects Bureau Chief
Montana Department of Fish, Wildlife and Parks
P.O. Box 200701
Helena, Montana 59620

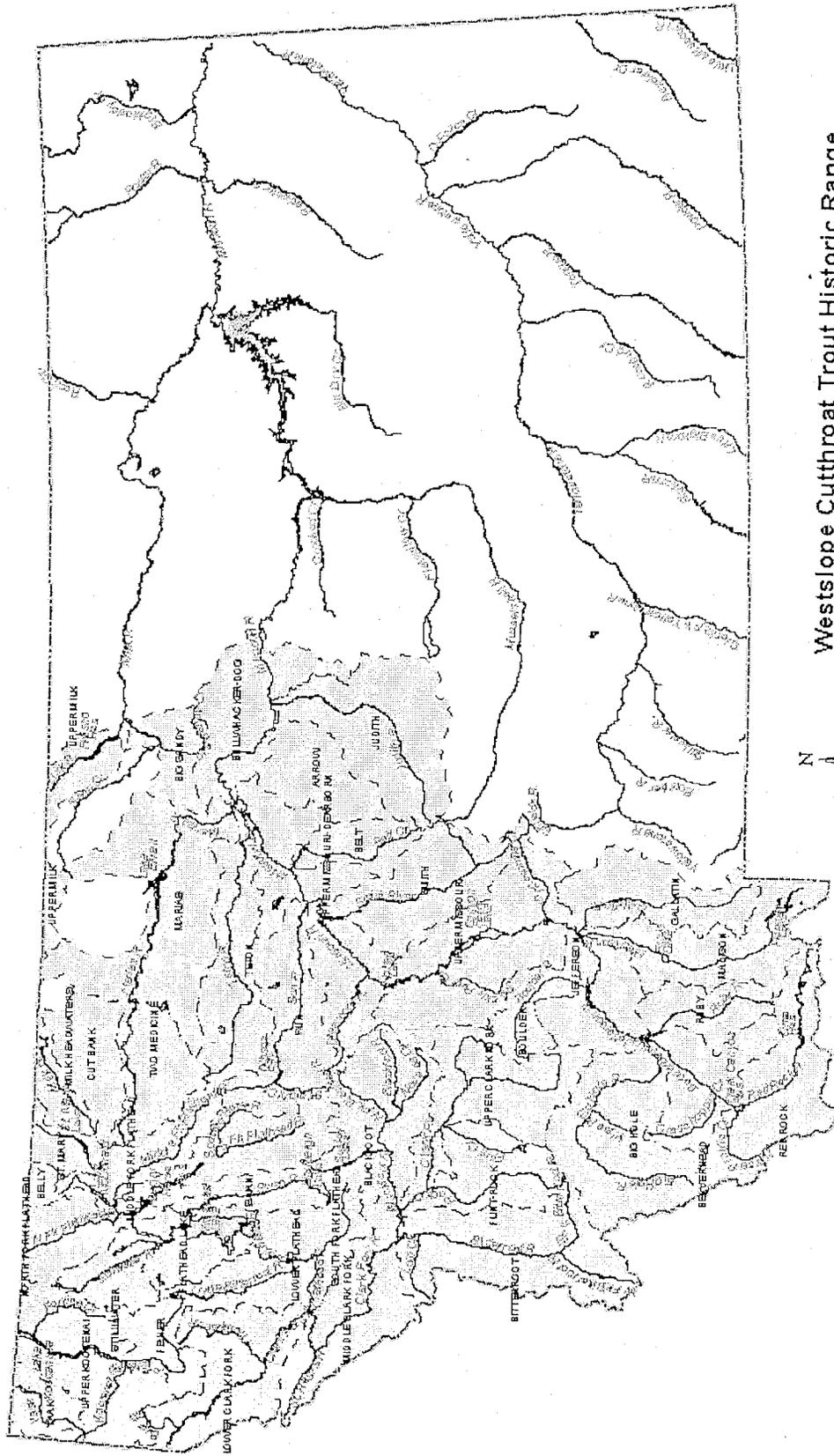
Service

Field Supervisor
U.S. Fish and Wildlife Service
100 North Park
Helena, Montana 59601

References Cited

- Behnke, R.J. 1992. Native trout of Western North America. American Fisheries Society Monograph 6. Bethesda, Maryland.
- Bramblett, R. G. 1998. Environmental Assessment: Madison River drainage westslope cutthroat trout conservation and restoration program: Cherry Creek native fish introduction. Prepared for Montana Department of Fish, Wildlife and Parks, Bozeman. 71 pp.
- Leary, R.F., T. Dotson, D. Genter, B. Hill, G. Holton, J. Huston, K.L. Knudsen, S. Rumsey, and G.K. Sage. 1991. Westslope cutthroat trout restoration program: past and present distribution, brood stock program, and conservation genetics committee report. Unpubl. report, University of Montana Genetics Laboratory, Missoula. 23 pp.
- Montana Fish, Wildlife and Parks. 1999. Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat Trout in Montana. Unpubl. report, Montana Fish, Wildlife and Parks, Helena. 28 pp.
- Shepard, B. B., B. May, and W. Urie. 2003. Status of westslope cutthroat trout (*Oncorhynchus clarki lewisi*) in the United States: 2002. Unpubl. report, Montana Fish, Wildlife and Parks, Helena.
- Tews, A., M. Enk, S. Leathe, W. Hill, S. Dalbey, and G. Liknes. 2000. Westslope cutthroat trout in north-central Montana: Status and Strategies. Unpub. report, Montana Department of Fish, Wildlife and Parks, Great Falls. 70 pp.
- Thurrow, R.F., D.C. Lee, and B.E. Reiman. 1997. Distribution and status of seven native salmonids in the interior Columbia River Basin and portions of the Klamath River and Great Basins. North American Journal of Fisheries Management 17:1094-1110.
- U.S. Fish and Wildlife Service. 2000. 12-month finding for an amended petition to list the westslope cutthroat trout as threatened throughout its range. Federal Register 65(73):20120-20123.
- U.S. Fish and Wildlife Service. 2003. Endangered and threatened wildlife and plants: Reconsidered finding for an amended petition to list the westslope cutthroat trout as threatened throughout its range. Federal Register 68(152):46989-47009.
- U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1999. Announcement of final policy for candidate conservation agreements with assurances. Federal Register 64(116):32726-32736.

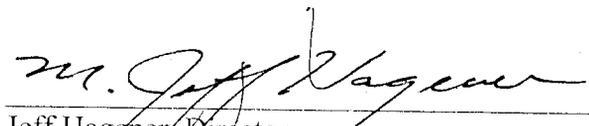
Figure 1



Westslope Cutthroat Trout Historic Range

4th Code Hydrologic Unit

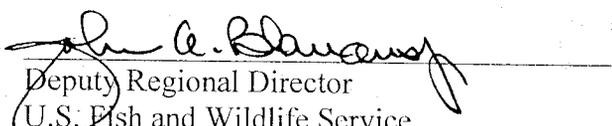
IN WITNESS WHEREOF, THE PARTIES HERETO have, as of the last signature date below, executed this Candidate Conservation Agreement with Assurances to be in effect as of the date that the Service issues the permit.



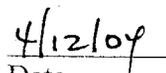
Jeff Hagener, Director
Montana Fish, Wildlife and Parks



Date



Deputy Regional Director
U.S. Fish and Wildlife Service



Date

Appendix A

CERTIFICATION OF INCLUSION

In the

Candidate Conservation Agreement with Assurances for Westslope Cutthroat Trout
(*Onchorhynchus clarki lewisi*) between Montana Fish, Wildlife and Parks and the
U.S. Fish and Wildlife Service

This certifies that the Participating Property Owner of the property described in the Documentation of Participation Form [Attach Completed Form] are included within the scope of Permit No. **(INSERT PERMIT NO.)**, issued on **(INSERT DATE)** to the Montana Fish, Wildlife and Parks (FWP) under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(B). Such permit authorizes incidental take of westslope cutthroat trout and intentional take through catch and release by FWP and Participating Property Owners, as part of a Candidate Conservation Agreement with Assurances (Agreement), to support FWP's efforts to reintroduce westslope cutthroat trout into formerly occupied areas. Pursuant to that permit and this certificate, the Participating Property Owner is authorized to cause incidental take of westslope cutthroat trout as a result of agricultural and other activities identified in section **(INSERT SECTION NO.)** of the Agreement and intentional take through catch and release as identified in section **(INSERT SECTION NO.)** on the enrolled lands identified in the Documentation of Participation Form. Permit authorization is subject to carrying out conservation measures identified in the Documentation of Participation Form, the terms and conditions of the permit, and the terms and conditions of the Agreement, entered into pursuant thereto by the FWP and the U.S. Fish and Wildlife Service. By signing this Certification of Inclusion, the Participating Property Owner agrees to carry out all of the conservation measures described in the attached Documentation of Participation Form.

 FWP Representative

 Date

 Participating Property Owner

 Date

Appendix B

DOCUMENTATION OF PROPERTY OWNER PARTICIPATION FORM

A. Participating Property Owner's Name and Address:

B. Legal Description of Enrolled Lands or Detailed Map with Enrolled Lands Identified:

C. Total Acres of Enrolled Lands (all lands covered by permit): _____

D. Legal Description of Conservation Lands or Detailed Map with Conservation Lands Identified:

E. Duration of Conservation (years): _____

F. Westslope Cutthroat Trout Benefit on Conservation Lands:

I/We agree to:

- Allow the establishment of WCT in waters on their properties as identified in the Certificate of Inclusion.
- Permit access for the purpose of monitoring the introduced WCT populations.
- Optionally, provide other conservation actions as described below.

For each applicable category of conservation lands, indicate the amount of habitat (acres), specific conservation/management actions the Participating Property Owner will take to benefit westslope cutthroat trout conservation (allow reintroductions, grazing modifications, riparian habitat enhancement, etc.), and the expected westslope cutthroat trout conservation benefits expected from these management actions.

Appendix C

**DOCUMENTATION OF NEIGHBORING PROPERTY OWNER PARTICIPATION
FORM**

A. Participating Neighboring Property Owner's Name and Address:

B. Legal Description of Enrolled Lands or Detailed Map with Enrolled Lands Identified:

C. Total Acres of Enrolled Lands (all lands covered by permit): _____

D. Legal Description of Conservation Lands or Detailed Map with Conservation Lands Identified:

E. Duration of Conservation (years): _____

F. Westslope Cutthroat Trout Benefit on Conservation Lands:

I/We agree to:

- Accept the establishment of WCT in waters on neighboring properties and the resulting potential for WCT to occur in waters within their properties.
- Optionally, provide other conservation actions as described in the Certificate of Inclusion.

For each applicable category of conservation lands, indicate the amount of habitat (acres), specific conservation/management actions the Participating Property Owner will take to benefit westslope cutthroat trout conservation (allow reintroductions, grazing modifications, riparian habitat enhancement, etc.), and the expected westslope cutthroat trout conservation benefits expected from these management actions.

