Final Low Effect Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) for the Monument Creek Interceptor Tie-in along Jackson Creek, El Paso County, Colorado

Prepared for

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This Environmental Analysis was prepared by SWCA Environmental Consultants with the guidance, participation, and independent evaluation of the United States Fish and Wildlife Service (USFWS). The USFWS, in accordance with Title 40 Code of the Federal Regulations, Part 1506 (a) and (b), is in agreement with the findings of the analysis and approves and takes responsibility for the scope and content of the document.

April 4, 2005

COVER SHEET

Title for Proposed Action: Issuance of an Endangered Species Act section 10(a)(1)(B) permit allowing for the potential incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (PMJM) on the Forest Lakes property, El Paso County, Colorado.

Unit of the U.S. Fish and Wildlife Service Proposing the Action: Regional Office, Region 6, Ecological Services, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

Legal Mandate for Proposed Action: Endangered Species Act of 1973, as amended, section 10(a)(1)(B), as implemented by 50 CFR 17.32 for threatened species.

Permit Duration: 20 years.

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1.0 INTRODUCTION

This Low Effect Habitat Conservation Plan (HCP) has been prepared to accompany an application for an Endangered Species Act (ESA) section 10(a)(1)(B) permit for the potential incidental take of the threatened Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (PMJM) for the Monument Creek Interceptor Tie-in along Jackson Creek, El Paso County, Colorado. The potential take is associated with the otherwise lawful construction of a sanitary sewer line extension connecting to an existing sanitary sewer line, a non-potable water reuse line, a second sanitary sewer line, and the construction of a new road access into the wastewater treatment facility.

1.1 PROJECT LOCATION

The proposed project is located south-southeast of the Town of Monument, El Paso County, Colorado (Figure 1). Specifically, the project lies within Township 11 South, Range 67 West, Section 35, Southwest ¼, Southwest ¼, immediately northeast of an existing railroad (Union Pacific) and southwest of Interstate 25 (Figure 2).

1.2 APPLICANTS

The proposed permit will authorize the incidental take of PMJM along Jackson Creek within the area described above by Triview Metropolitan District (Triview) and Forest Lakes Metropolitan District (Forest Lakes) (Applicants). The permit will cover the activities associated with the proposed infrastructure installation and connection along Jackson Creek by all officers, members, employees, agents, contractors, and licensees of the Applicants.

The Applicants accept and agree to the responsibility for adhering to the requirements and conditions of the proposed permit and for implementing and managing the mitigation plan contained in this HCP.

1.3 TERM

The duration of the proposed permit will be long enough to allow full implementation of the preferred action and conservation measures. It will allow incidental take of PMJM through the disturbance of actual or potential PMJM habitat during the determined time frame and within the geographical boundaries identified in this HCP. After expiration of the permit, any potential take within the said geographical boundaries not specifically covered by this application will require authorization by the United States Fish and Wildlife Service (USFWS), possibly through a subsequent permit application under the ESA. However, the terms and conditions contained in the HCP shall not expire and shall be subject to the enforcement authority of section 11(b) of the ESA.

The duration of the section 10(a)(1)(B) permit is 20 years from the date of issuance.

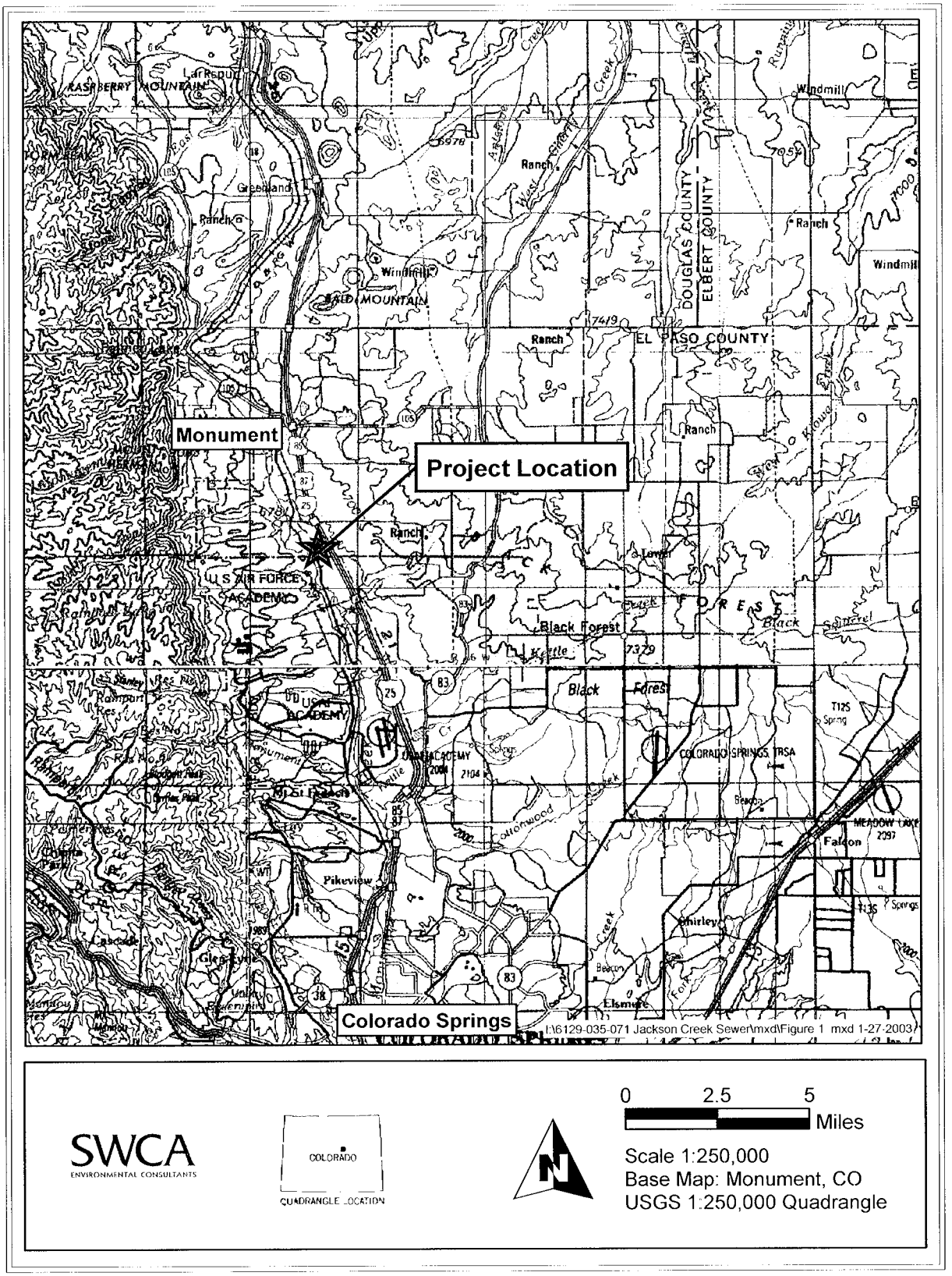

Figure 1.
General Project Location of the Monument Creek Interceptor Tie-in, El Paso County, Colorado.

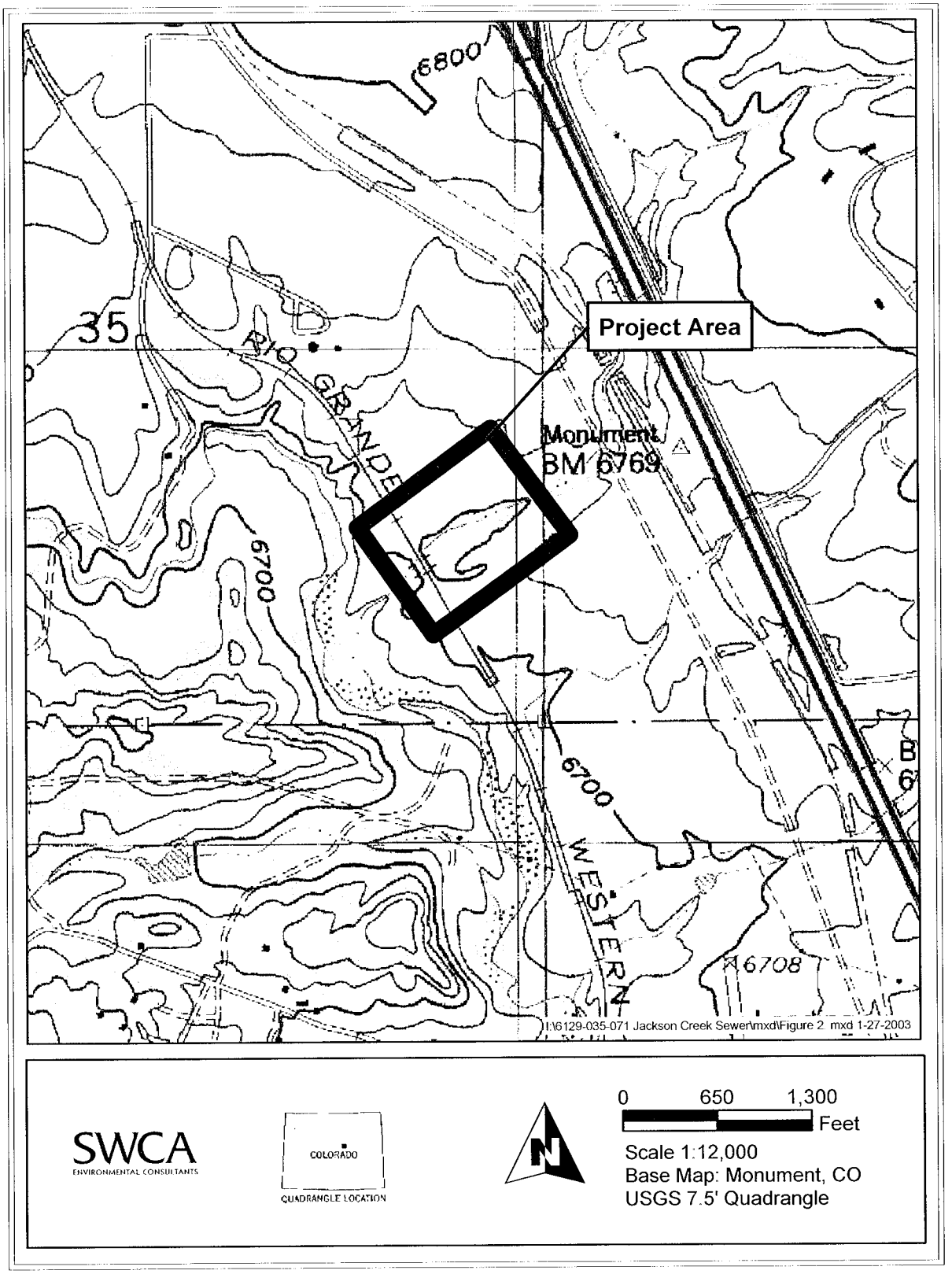

Figure 2.
Specific Location of the Monument Creek Interceptor Tie-in, El Paso County, Colorado.

1.4 OTHER FEDERAL, STATE, AND LOCAL LAWS AND STATUTES

The following environmental and permitting issues will be addressed prior to the start of construction. Since no wetlands will be impacted by the proposed action, a permit from the U.S. Army Corps of Engineers (Corps) will not be required for this proposed action.

1.4.1 Wetland Permitting

The Corps enforces Section 404 of the Clean Water Act (CWA), which regulates the discharge of dredged or fill material into all waters of the U.S., including wetlands. Such waters are known as "Jurisdictional Waters of the U.S." and have been defined to include not only obvious water bodies such as rivers, lakes, harbors, and bays, but also less obvious bodies of water such as intermittent streams, wetlands, and even stock ponds when they occur in-line on streams and drainages.

Wetlands are defined by the Corps as "those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." To qualify as a wetland, three criteria must be generally met: wetland hydrology, hydric soils, and the dominant presence of wetland indicator plant species.

A wetland determination for the project area has not been conducted because of the proposed underground directional drilling of the Jackson Creek crossing. Drilling pits and drilling equipment used for the creek crossing will be confined to areas outside of the 100-year floodplain as identified by the Federal Emergency Management Agency. According to correspondence with the Corps, permit acquisition is not required for this project due to the proposed directional drilling and complete avoidance of wetland areas within the project area (personal communication, Van Truan, Corps, June 21, 2004).

1.4.2 Stormwater Permitting

Under the CWA, each state was delegated the authority to assume "primacy" to administer provisions of the CWA that regulate the discharge of stormwater. Thus, the Water Quality Control Division (WQCD) of the Colorado Department of Public Health and Environment issues stormwater permits for all projects with construction disturbances greater than 1.0 acre, under the authority of Section 402 of the CWA and the Colorado Water Quality Control Act. Since the proposed project will not disturb more than the mandated 1.0-acre threshold at one time, a stormwater construction permit will not be required. However, during the proposed construction events, best management practices (BMPs) such as silt fence and straw bales will be employed to reduce the amount of stormwater runoff allowed to leave the project area.

1.5 PURPOSE AND NEED FOR ACTION

The Applicants propose to construct an extension of an existing sanitary sewer line and a non-potable water line connecting with the Upper Monument Creek Wastewater Treatment Facility located east of the confluence of Jackson Creek and Monument Creek. In addition to the above-mentioned pipelines, the project also will include the construction of a new

entrance to the treatment facility, crossing over the existing railroad tracks. The purpose of the project is to expand the existing sanitary sewer line to accommodate the increasing residential and commercial development in the region. From a health and safety standpoint, this expansion is necessary to provide the citizens and residents of the area with a wastewater system that allows for an adequate treatment system necessary to treat wastewater before releasing the generated wastewater into the local environment. The current access into the existing treatment facility is limiting due to the low clearance level of the existing railroad crossing. Currently, large commercial vehicles cannot access the treatment facility due to the low clearance capability of the existing access road. During regular operation and maintenance of the facility, including emergency situations, the need may arise for access by large commercial vehicles into the treatment facility, hence requiring an access road that accommodates these larger commercial vehicles. The proposed access road will consist of a dirt and gravel surface leading into the treatment facility. The purpose of the proposed action is to expand the wastewater infrastructure of the region while assuring the continued progress toward recovery of the PMJM. Construction would impact 0.57 acre of upland habitat that is currently designated as habitat for the PMJM. No riparian habitat impacts are expected to occur as a result of the proposed action, due to the proposed directional drilling under wetland and riparian PMJM habitat. To mitigate for the impacts to PMJM habitat associated with the proposed action while seeking to further enhance recovery efforts for the PMJM, the Applicants propose to restore all temporary impacts totaling 0.50 acre and enhance an additional 1.09 acres of upland habitat within the project area. Mitigation parameters are discussed in more detail in Section 4.0 of this HCP.

The wastewater treatment facility at which the new utility lines will terminate is owned and operated by Donala, Triview, and Forest Lakes, though the additional utility lines will be owned and operated for the sole use of Forest Lakes and Triview only; thus, Donala has no part, and no physical or financial interest, in this project. Forest Lakes, LLC, the current funding source for Forest Lakes Metropolitan District, owns, in whole, the 238.6-acre parcel of land where the project will be constructed.

Potential direct and indirect impacts to the federally protected PMJM and/or its habitat are possible as a result of the proposed project (see Section 3.0). The USFWS listed the PMJM as threatened under the ESA in May 1998. The area within 300 feet of the 100-year floodplain of Jackson Creek was designated as PMJM habitat per current USFWS guidelines. The proposed project will encroach within portions of this designated habitat.

Species listed as endangered or threatened by the USFWS are protected by the ESA, which prohibits "take." Take is defined in the ESA as "harass, harm, pursue, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct." Harm has been defined by the USFWS in the Code of Federal Regulations (50 CFR Section 17.3) as "...an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and/or sheltering." For the PMJM, habitat destruction alone may be considered take by the USFWS. Therefore, the proposed construction requires a section 10(a)(1)(B) permit to satisfy requirements under the ESA and to authorize the otherwise lawful construction of the utility lines and associated infrastructure.

The affected environment of the project is described in the following sections. Section 1.6 describes various alternatives considered during planning. Low effect HCPs are defined as those that have minor or negligible effects on threatened and endangered species and candidate species for listed, and that have minor or negligible effects on other environmental values or resources. This HCP meets those criteria.

1.6 CONSIDERED ALTERNATIVES

This section presents brief descriptions of and the reasonably practicable alternatives that were considered during the planning process. During planning, the proposed project was determined to have minor or negligible effects on threatened and endangered species and on other environmental values or resources; therefore, the environmental consequences of other considered alternatives were not evaluated.

1.6.1 Alternative 1 – No Action

The No Action alternative would involve abandonment of the proposed project. No impacts from construction would occur to the Forest Lakes property, and the condition of the natural environment on the property would remain relatively unchanged, with present weed populations continuing to increase without proper treatment and control. The Applicants and/or their financial partners would lose all monies invested in the project. Accepting this alternative requires the assumption that the demand for wastewater treatment services in the area will not continue to increase in the foreseeable future. This assumption is not valid because both current and predicted growth rates in El Paso County indicate the necessity for increased services. Under this alternative, the future generation of wastewater, including the lack of proper infrastructure to transport the wastewater, in the region may present a potential health and safety hazard to residents of the area and would not present a benefit to the PMJM.

1.6.2 Alternative 2 – Proposed Action

This alternative consists of the issuance of a permit under section 10(a)(1)(B) of the ESA to authorize the potential incidental take of PMJM. The permit issuance would allow for the immediate construction of the proposed project.

The proposed project will include the construction of a sanitary sewer line tying in with an existing sanitary sewer line, northeast of the creek in an upland area approximately 75 feet from the edge of the riparian corridor. To install this pipe, a 40-foot wide ROW along with an 80-foot by 90-foot temporary use area (TUA) will be established and the pipe put into a ditch within the ROW. Disturbance within the ROW and TUA from construction will be short-term (approximately 4 weeks for construction) and create a temporary impact of 0.29 acre of PMJM habitat. Once the construction is completed, the ROW and TUA will be graded back to original contours and revegetated with native grass species (refer to Section 4.0).

Construction of a non-potable water line will include the pipe installation within the same ROW as mentioned above for the sanitary sewer tie-in. From the TUA where the sanitary sewer connects with the existing sanitary line, the water line will be constructed by directionally drilling underneath Jackson Creek for approximately 425 feet, then emerging on

the other side of the creek within the existing dirt road on the southwestern side of the creek. By using this process to cross the creek, no wetland or riparian vegetation will be impacted and upland impacts will be minimized. From the existing dirt road, the pipeline construction, again requiring a construction ROW of 40 feet, will continue northwest, under the existing railroad tracks, into the wastewater treatment facility. Installation of the water line will require an additional temporary impact of 0.06 acre of PMJM habitat. Areas of temporary impacts will be graded back to original contours and revegetated with native grass species (refer to Section 4.0).

No impacts to PMJM habitat will occur within the Union Pacific Railroad ROW or within the fenced area of the wastewater treatment facility due to the lack of suitable habitat.

Between the existing access road and the recreational trail, a sanitary sewer effluent reuse line and metering stations will be constructed. This portion of the project will temporarily impact 0.15 acre and permanently impact 0.01 acre adjacent to the temporarily disturbed ROW mentioned above for the non-potable water line. The temporarily impacted area will be revegetated in the same manner as described for the ROW.

Finally, to improve access to the wastewater treatment facility and reduce vehicular traffic in and near the riparian corridor of the existing PMJM habitat, a dirt road will be constructed over the railroad track into the facility within the area disturbed from the construction of the non-potable water line. Construction of the road and its ramp to meet the railroad grade will permanently impact 0.06 acre of PMJM habitat. Approval for the construction and maintenance of the road has been granted to the Applicants by Union Pacific Railroad Company in a permit dated 22 April 2002 (Folder No. 02085-91) (Appendix B). Because the Union Pacific Railroad owns the property within their ROW, including the existing crossing under the tracks, the permit that allows for the Applicants to construct a new access over the tracks does not allow for the reclamation of the existing road. The purpose for the new road is to allow for easier access of large equipment in to the wastewater treatment facility. However, should the new access be inaccessible due to trains parked along the tracks, the old access would be available for emergency situations.

Table 1. Impact Summary Table

	Temporary Impacts (acres)	Permanent Impacts (acres)	TOTAL ACRES
Sanitary Sewer Line	0.29	0.00	**0.29**
Non-potable Water Line	0.06	0.00	**0.06**
Sanitary Sewer Reuse Line and Metering Station	0.15	0.01	**0.16**
Access Road	0.00	0.06	**0.06**
TOTAL	**0.50**	**0.07**	**0.57**

Mitigation for all impacts will commence following the completion of construction, which is anticipated to take approximately 4 weeks. Therefore, mitigation, as described in Section 4.0, would take place approximately 4 to 5 weeks after construction begins.

1.6.3 Alternative 3

This alternative would include the above-described construction and impacts to PMJM habitat. The exceptions would be that the non-potable water line would be open ditched across Jackson Creek, thus increasing the temporary impact in the riparian area by approximately 0.16 acre, and increasing the ROW width to 50 feet. The increase in ROW width would create an additional 0.38-acre of temporary impact in the remaining upland and riparian areas. As with Alternative 2, the ROW would be restored immediately following construction.

1.6.4 Alternative 4

El Paso County is currently developing a Regional HCP (RHCP) intended to be adopted by each governmental entity within the affected portions of the County, including the City of Colorado Springs, the Town of Monument, and other area utilities. This RHCP will incorporate the needs of local permittees but will allow each permittee to receive a separate permit for their individual jurisdiction. According to best estimates from USFWS, the submittal of a draft RHCP to USFWS is expected by the end of 2005. In addition to review of this draft, associated National Environmental Policy Act (NEPA) processes and analyses will be required. Therefore, it is anticipated that final acceptance of the El Paso County RHCP by USFWS will not occur until 2005. This alternative assumes the Applicants would participate in the El Paso County RHCP. Construction of the proposed project eventually would be subject to the conservation strategy set forth by the RHCP.

This alternative would delay construction until the RHCP is approved and implemented, thus the Applicants would not take the extra precautions, such as directional drilling, to reduce the impacts to PMJM habitat. The Applicants could suffer financial loss due to this postponement of the project. In addition, delaying of the project also poses the threat of not meeting the public needs and demands, thus creating a potential public health issue regarding water quality and sanitary sewer treatment. However, without a draft document to cite, it is unknown at this time whether the RHCP will address this specific issue.

2.0 AFFECTED ENVIRONMENT

2.1 TOPOGRAPHY

The Forest Lakes property is located on the eastern edge of the Front Range of the Rocky Mountains, and is characterized by gently sloping land down to the Jackson Creek drainage (Photograph 1). Soils on the property are classified as well-drained sandy loams to loamy sands with slopes ranging from 0 to 15 percent (%) (Soil Conservation Service 1981).

2.2 VEGETATION

The majority of vegetation in the upland portions of Jackson Creek consists of tall grass species such as crested wheatgrass (*Agropyron cristatum*), slender wheatgrass (*A. trachycaulum*), blue grama (*Bouteloua gracilis*), and common sagewort (*Artemisia campestris*). Woody species found throughout the uplands, although few in number, include ponderosa pine (*Pinus ponderosa*) and Gambel's oak (*Quercus gambelii*). Other species such as bindweed (*Convolvulus arvensis*), wild licorice (*Glycyrrhiza lepidota*), diffuse knapweed (*Centaurea diffusa*), common mullein (*Verbascum thapsus*), and Canada goldenrod (*Solidago canadensis*) are also found throughout the general project area. Woody species in the riparian zone include narrow-leaf cottonwood (*Populus angustifolia*), western snowberry (*Symphoricarpos albus*), coyote willow (*Salix exigua*), peachleaf willow (*S. amygdaloides*), and chokecherry (*Prunus virginiana*). Vegetation in the narrow wetland areas along the Jackson Creek drainage includes coyote willow, sedges (*Carex* spp.), Baltic rush (*Juncus balticus*), Canada thistle (*Cirsium arvense*), and cattails (*Typha* spp.).

2.3 WILDLIFE

Wildlife presence is expected to be typical of the area. Common bird and mammal species that could occur on the property include, but are not limited to: mule deer (*Odocoileus hemionus*), coyote (*Canis latrans*), deer mouse (*Peromyscus maniculatus*), raccoon (*Procyon lotor*), red-winged blackbird (*Agelaius phoeniceus*), western meadowlark (*Sturnella neglecta*), red-tailed hawk (*Buteo jamaicensis*), American robin (*Turdus migratorius*), and yellow warbler (*Dendroica petechia*). Gunnison's prairie dogs (*Cynomys gunnisoni*) have been identified immediately north of the project area. Herptiles potentially present include plains spadefoot (*Spea bombifrons*), Woodhouse's toad (*Bufo woodhousii*), western chorus frog (*Pseudacris triseriata*), lesser earless lizard (*Holbrookia maculata*), prairie lizard (*Sceloporus undulatus*), and plains garter snake (*Thamnophis radix*).

2.4 THREATENED AND ENDANGERED SPECIES

The USFWS lists seven species of animals and plants currently or formerly residing in El Paso County as federally threatened or endangered. These include two species of birds - bald eagle (*Haliaeetus leucocephalus*) and Mexican spotted owl (*Strix occidentalis lucida*); two species of mammals - black-footed ferret (*Mustela nigripes*) and PMJM; one fish - greenback cutthroat trout (*Onchorynchus clarki stomias*); and two plants - Colorado butterfly plant (*Gaura neomexicana coloradensis*) and Ute ladies'-tresses (*Spiranthes diluvialis*). In addition to those species that are provided federal protection against the taking of habitat, the USFWS

lists one animal species and one plant species that reside in El Paso County as candidates for listing: Arkansas darter (*Etheostoma cragini*) and slender moonwort (*Botrychium lineare*). Although not offered protection on private lands under the ESA per se, conservation of suitable habitat for candidate species may preclude their future listing as endangered or threatened.

According to the USFWS, as of the date of this report, no threatened, endangered, or candidate species other than the PMJM are known to use or occupy the Forest Lakes property.

2.4.1 Status of PMJM on the Forest Lakes Property

The PMJM is believed to be a subspecies of the widespread meadow jumping mouse (*Zapus hudsonius hudsonius*) and exists along heavily vegetated riparian areas within eight counties along the Front Range of Colorado and five counties in southern Wyoming. In May 1998, the USFWS listed the PMJM as threatened under the ESA (CFR 63:26517-26530). The listing was based on evidence of declining populations when PMJM could not be found in areas where it was historically documented, and on potential threats from human-induced activities such as development, livestock grazing, and wetland/riparian destruction.

PMJM are known to hibernate between October and May and inhabit mostly low undergrowth consisting of grasses and/or forbs in open wet meadows and riparian corridors, or where tall shrubs and low trees provide adequate cover (Bakeman 1997). Proximity to water is also an important factor influencing habitat selection and utilization by PMJM. In El Paso County, typical habitat consists of complex riparian communities composed of multi-strata woodland and herbaceous species such as coyote willow, snowberry, chokecherry, and wetland forbs and grasses; cattail stands generally are not thought of as prime PMJM habitat. Recent studies have indicated that PMJM regularly use (hibernate and forage in) adjacent slope areas that consist of various grasses, snowberry, Gambel's oak, ponderosa pine, and chokecherry (Shenk 2000). For purposes of this document, PMJM habitat is considered to be those areas that consist of riparian communities and surrounding areas up to 300 feet outside of the 100-year floodplain. This definition has also been used by USFWS when analyzing impacts to PMJM and its habitat.

In 1997, in preparation for construction of what is now the existing sanitary sewer line, Triview contracted Dr. Robert Stoecker to survey for the presence of PMJM along Jackson Creek adjacent to both sides of Interstate 25. That survey positively identified PMJM on both sides of the interstate, approximately 0.50 mile upstream of the proposed project area. Construction of the sanitary sewer line was completed in 1998 with the approval of the USFWS and Corps (Stoecker 1999).

Additional surveys along Jackson Creek in 2001 identified PMJM immediately upstream of the proposed project site and downstream of the site near the confluence with Monument Creek (Ensight Technical Services 2002).

Based upon these findings, it is probable that the proposed project area may be a possible movement corridor for PMJM, thus the Applicants have proceeded with the proposed project

under the auspice that PMJM inhabit the current proposed project area, in turn, requiring no new surveys within the project area.

Two exceptions to PMJM habitat within the 300-foot boundary are found within the proposed project area. The first lies within the entire Union Pacific Railroad rights-of-way (ROW) where those areas inside the PMJM habitat boundary have been previously disturbed and the requisite vegetation for PMJM habitat no longer exists due to the creation of the elevated grade needed for the railroad to cross Jackson Creek, thus providing no potential PMJM habitat. The second area is located within the fenced area of the wastewater treatment facility where the ground has been graded and disturbed numerous times, removing much of the vegetation, thus providing no PMJM habitat.

2.4.2 Status of Other Federally Listed Species On or Adjacent to the Forest Lakes Property

2.4.2.1 Bald Eagles

Bald eagles typically inhabit large open water bodies throughout the breeding season in order to fish or scavenge. There are no bodies of water large enough to support bald eagles close to the project area. Therefore, the regular occurrence of bald eagles on or immediately adjacent to the project site during the breeding season (in Colorado: February to July) is considered extremely unlikely. Currently, there are no known bald eagle nests in El Paso County. During migration and winter, eagles will utilize areas away from water, especially to scavenge upon dead animals. However, migration and winter use by eagles within the project area is considered to be minimal to nonexistent due to the high degree of human impact in the area. This lack of proper nesting and foraging habitat suggests that the regular occurrence of bald eagles on or immediately adjacent to the project site is highly unlikely. Correspondence with the Colorado Division of Wildlife indicated the closest known bald eagle nest is near the Pueblo Reservoir, approximately 60 miles south of the project area.

2.4.2.2 Mexican Spotted Owl

The Mexican spotted owl is known to occur in Mexico, west Texas, New Mexico, Arizona, Utah, and Colorado. In the northern portion of its range, the spotted owl uses slickrock canyons. However, towards the south, the species' habitat affinities gradate more towards forested mountains and canyons. Although the species is listed as occurring in El Paso County, only a few records of the species exist (Andrews and Righter 1992). Potential spotted owl habitat in El Paso County is restricted to the mountainous and canyonland areas on the western edge of the county and away from the project area; the nearest potential spotted owl habitat to the project site is approximately 1.0 mile to the west.

2.4.2.3 Black-footed Ferret

Black-footed ferrets historically ranged across the entire Great Plains; however, isolation of, and reduction in the number of, prairie dog (*Cynomys* spp.) colonies, its primary food source, has eliminated the black-footed ferret from the vast majority of its former range. Although a small colony of Gunnison's prairie dogs is located adjacent to the property, the ferret is

currently known to occur only in areas of reintroduction efforts in Wyoming, South Dakota, Arizona, Montana, northwestern Colorado, and eastern Utah.

2.4.2.4 Greenback Cutthroat Trout

Once thought to be extinct and only found in Colorado, the greenback cutthroat trout is endemic to the mountain drainages of the Arkansas and South Platte rivers. It is extremely unlikely that this fish would be found in Jackson Creek since all known naturally occurring populations in the state are found in streams located in the foothills and mountains while Jackson Creek originates to the east.

2.4.2.5 Colorado Butterfly Plant

The Colorado butterfly plant is known to occur within sub-irrigated, alluvial soils of drainage bottoms surrounded by mixed-grass prairie from Castle Rock, Colorado to Cheyenne, Wyoming (Colorado Native Plant Society 1997). Habitat similar to that of the butterfly plant may be found in the drainage bottom of Jackson Creek. However, Jackson Creek is located south of the southernmost known location and, therefore, is outside of the habitat range of the Colorado butterfly plant.

2.4.2.6 Ute Ladies'-tresses

In Colorado, the Ute ladies'-tresses is an orchid found "near major streams or along abandoned meanders where ample subsurface water percolates through the stream gravels underlying lush meadows" (Colorado Native Plant Society 1997). While this type of habitat may be found in the general vicinity of the Jackson Creek drainage, an SWCA biologist knowledgeable in the habitat requirements and identification of this species observed no occurrences of this species within the proposed project area during site visits in August and October 2002. Observations during the site visits concluded that the lack of surface and subsurface water in the riparian corridor is not conducive to the habitat requirements of the Ute ladies'-tresses. In addition, no specimens of this species have been identified throughout the El Paso County area since 1896 when a population was identified near Camp Harding (Federal Register, Vol. 57, No. 12, pg. 2048). Therefore, it is unlikely that this orchid species exists within the project's boundaries.

2.4.3 Status of Candidate Species On or Adjacent to the Forest Lakes Property

2.4.3.1 Arkansas Darter

The Arkansas darter, a small minnow-like fish, is only found in tributaries of the Arkansas River in Colorado, Kansas, Missouri, and Oklahoma. In Colorado, isolated populations have been found in several spring areas adjacent to Fountain Creek south of Colorado Springs and other small tributaries in the eastern portion of the state (Woodling 1985). Due to the southern range of this species within El Paso County, it is very unlikely that the Arkansas darter inhabits Jackson Creek.

2.5 WETLANDS

A small fringe wetland, approximately 2 feet wide, is located along the length of both banks of the Jackson Creek drainage in the immediate area of the proposed project from the recreational trail upstream approximately 300 yards (Environmental Laboratory 1987). An additional wetland area, approximately 15 feet wide, is located on the west side of the recreational trail crossing along Jackson Creek (Photograph 2) (Environmental Laboratory 1987). To date, no wetland delineations have been conducted within the immediate area. No impacts to wetlands or other jurisdictional waters are anticipated from the proposed project due to the proposed directional drilling under all wetland areas. Drilling and staging of directional drilling equipment will be done outside of the identified 100-year floodplain.

2.6 GEOLOGY AND SOILS

Within the proposed project area, two soil types are present within the Jackson Creek drainage: (1) Peyton–Pring Complex, 3 to 8% slopes; and (2) Tomah–Crowfoot loamy sands, 8 to 15% slopes (Soil Conservation Service 1981). Both soil types are characterized as deep and well drained. These soils do not appear on the list of Hydric Soils of the United States (Soil Conservation Service 1991).

2.7 LAND USE

Historically, the entire project area has been used for agricultural activities such as cattle grazing and has been mowed annually for hay production. Currently, the subject property has a recreational trail, existing underground sanitary sewer line, and the Union Pacific Railroad track running through the northwestern portion of the property. A wastewater treatment facility is located in the southwestern corner of the property. Land within the ROW of the railroad have been heavily disturbed and, in many cases, will never become revegetated with the exception of a few noxious weeds, thus providing no PMJM habitat. On the west side of the railroad, property within the fenced boundary of the wastewater treatment facility has been previously disturbed by the construction and maintenance of the facility and currently does not provide habitat for the PMJM.

2.8 AIR QUALITY

Air quality in the project area is influenced by the air quality of the City of Colorado Springs, the Town of Monument, and Interstate 25. Wind direction in the area is commonly from the north; however, changing pressure systems affect wind direction and speed. The Colorado Springs area is currently an attainment/maintenance area for carbon monoxide pollutants, but has no identified problem with ozone or PM10 levels, based upon ambient air quality standards as per the Colorado Air Quality Control Commission.

2.9 WATER RESOURCES AND WATER QUALITY

The quality and condition of surface water, when present, of Jackson Creek is currently estimated to be good, based on observations of creek morphology, vegetative coverage, and depositional patterns. At the time of site visits by SWCA in August and October 2002, the

Jackson Creek channel within the general project area was dry due to drought and seasonal dry weather patterns. Minimal channel scouring, erosion, and sediment deposition was observed within the immediate project area. Riparian vegetative coverage along the shallow channel appears to control erosion and surface water quality. Currently within the immediate area, the Jackson Creek drainage is relatively undeveloped, except for minor impacts from the previous construction of the recreational trail crossing, underground sanitary sewer line, and the railroad bridge crossing Jackson Creek.

2.10 CULTURAL RESOURCES

On 28 January 2003, a Class III cultural resource inventory was conducted at the proposed project location. Results of the site visit/survey and the file search at the Colorado State Historic Preservation Office (SHPO) indicated that no sites of significant historic and/or prehistoric value exist within the proposed project area. In a letter dated 5 September 2003, SHPO concurred with the survey's findings, while a 15 September 2003 email from USFWS stated that due to the SHPO's findings, USFWS had "no cultural resource concerns" (Appendix A).

2.11 SOCIOECONOMICS

El Paso County is rapidly experiencing population growth in the Colorado Springs area. From 1990 to 2000, El Paso County's population increased by 24%. Current population numbers for the county are estimated at 533,100, with a projected increase to 718,800 by 2025 (Pikes Peak Area Council of Governments 2002). The rapid population growth rate in El Paso County has produced an increased demand for infrastructure (services) such as upgrades to transportation facilities, and increased wastewater transport capacities such as the proposed sewer line upgrade and its connection to the existing treatment facility.

2.12 TRANSPORTATION

Currently, there are several transportation corridors within the project area. These include a Union Pacific railroad, recreational trail, and existing dirt road. The railroad is traveled heavily by freight trains that move goods and raw materials along the Front Range. The recreational trail is a narrow dirt trail that allows for recreational opportunities such as running, cycling, and leisure walking. The recreational trail bisects the project area running generally from the north to the south. The existing dirt road is used to access the undeveloped land adjacent to the project area and as an access road into the existing wastewater treatment facility.

3.0 ENVIRONMENTAL CONSEQUENCES OF THE PROPOSED ACTION

3.1 ON-SITE IMPACTS

Impacts that will result from the proposed action are described below and are illustrated in Figure 3. Implementation of the proposed HCP (Section 4.0) will mitigate for these impacts. Compliance with the HCP will ensure that the riparian and surrounding zones of the property will be enhanced and restored to a condition that will positively benefit PMJM and other riparian-dependent wildlife.

3.1.1 Vegetation

Clearing of vegetation will occur within the 40-foot wide ROW and outside of the designated PMJM habitat adjacent to Jackson Creek (floodplain plus 300 feet) as a result of the proposed project. However, 87% of all impacts to vegetation are anticipated to be temporary, and those areas disturbed will be reseeded and replanted with native vegetation following the completion of construction.

3.1.2 Wildlife

Wildlife within the project area will be temporarily displaced to adjacent areas during the construction process. Following construction, landscape vegetation proposed as mitigation will provide improved wildlife habitat from what is currently available. The creek bottom and the adjacent riparian habitat that support vegetation with the greatest wildlife value will remain undisturbed and upland areas will be improved and continue to provide habitat for the wildlife species that currently utilize the area.

3.1.3 Endangered Species

One listed endangered species, the PMJM, is known to occur along Jackson Creek. The USFWS has determined that habitat for PMJM includes riparian communities and surrounding areas up to 300 feet outside of the 100-year floodplain. Surveys for PMJM were conducted on Jackson Creek near the project site in 1997 by Dr. Robert Stoecker and by Ensight Technical Services in 2001 (Stoecker 1997; Ensight Technical Services 2002). Both surveys identified PMJM surviving approximately 0.25 mile upstream of the proposed disturbance. Therefore, the project area is considered to support suitable habitat, including foraging, breeding, cover, and nesting areas, as well as hibernacula for PMJM.

Construction of the proposed project is expected to directly impact 0.57 acre of PMJM habitat in the project area. Impacts to habitat would occur through removal of upland grasses and forbs that may provide cover and forage for PMJM. While these impacts would be direct, it is anticipated that a majority of the impacts would be temporary (87% = 0.50 acre) and short-term. The remaining 0.07 acre (13%) of impact would be permanent and long-term.

As part of the preferred action, an HCP has been proposed to minimize the potential adverse modification of habitat described above and assure that this action does not reduce the

potential for survival and recovery of PMJM in the wild, as mandated by requirements of 50 CFR Part 17.22(b)(1)(iii). The HCP is detailed in Section 4.0.

No take is anticipated for any other federally listed, candidate, or proposed species.

3.1.4 Wetlands

The proposed construction process of directional drilling underneath Jackson Creek and the adjacent riparian areas will result in no impacts to wetlands or other jurisdictional waters. Thus, no permit from the Corps will be required. During construction in the uplands, BMPs will be employed to prevent stormwater runoff from creating a secondary impact to these areas.

3.1.5 Geology and Soils

Grading for new construction will comply with all state and El Paso County construction codes for erosion and sedimentation control during the construction process. Even though construction activities that create a surface disturbance area greater than 1.0 acre require the acquisition of a state-administered stormwater permit, this project will not be required to obtain such a permit since total impacts will be under the 1.0-acre threshold. However, BMPs such as silt fence and straw bales will be used to prevent stormwater runoff from moving soils away from the ROW.

3.1.6 Land Use

The preferred action is fully comparable and compatible with current land use in the area. The Town of Monument lies nearby to the north, the City of Colorado Springs lies nearby to the south, Interstate 25 parallels the project boundary to the northeast, and the Union Pacific Railroad parallels the project boundary to the northwest.

3.1.7 Air Quality

A temporary and short-term increase in dust levels is expected during the construction process from grading and other construction activities. Such impacts are not expected to have a material effect on local or regional air quality.

3.1.8 Water Resources and Water Quality

Because surface water quality mitigation would be designed in accordance with applicable federal, state, and/or local regulations, no significant impacts to local water quality are expected to occur.

3.1.9 Cultural Resources

Based on the results of the 28 January 2003 Class III cultural resource inventory of the property, no significant impacts to cultural and/or historic resources are expected to occur as a result of implementation of the preferred action. If a historic or archaeological site is

discovered during construction, all impacting activities will be halted until the site is evaluated in terms of the National Register criteria, 36 CFR 60.4.

3.1.10 Socioeconomics

No established communities will be displaced or disadvantaged by this project, and no potential environmental justice issues will occur as a result of this project.

3.1.11 Transportation

No impacts to the recreational trail and existing dirt road will occur as a result of the proposed action. The realignment of the access road into the wastewater treatment facility, including the crossing of the Union Pacific Railroad, will not alter the ability to move commercial goods along this corridor. The Applicants have initiated a private road crossing agreement and applicable permits with the Union Pacific Railroad Company for this project (see Appendix B).

3.2 OFF-SITE IMPACTS

3.2.1 Vegetation

There will be no off-site impacts to vegetation as a result of the construction of the project.

3.2.2 Wildlife

Displacement of certain wildlife species would be expected to occur from the project area into adjacent greenbelts, as well as adjacent properties. This will be a temporary relocation that should occur only during construction. However, as previously stated, expected wildlife density in the project area is low due to the existence of Interstate 25 to the northeast and the 24-hour per day operation of the wastewater treatment facility to the west.

3.2.3 Endangered Species

The preferred action involves no off-property construction activities, and thus will cause no direct adverse impacts to PMJM off site. The PMJM is known to occur within the boundaries of the Air Force Academy to the south; however, impacts to Jackson Creek will not be significant enough to affect populations downstream. Positive off-site impacts to PMJM are expected as a result of improvement of the PMJM habitat in the project area under the mitigation plan.

3.2.4 Wetlands

No impact to off-site wetlands is expected as a result of the construction project.

3.2.5 Geology and Soils

No off-site impact to geology or soils is expected.

3.2.6 Land Use

The proposed project would have no immediate impact on land use in surrounding areas.

3.2.7 Air Quality

As previously discussed in the on-site impacts section, a temporary increase in dust levels is expected during the construction process from grading and other construction-related activities. This local increase will also have minor temporary effect on the regional air quality conditions. None of these impacts are considered to have a material effect on local or regional air quality.

3.2.8 Water Resources and Water Quality

As previously stated, surface water quality mitigation will be designed in accordance with applicable state and/or local regulations; therefore, no significant off-site impacts to water quality are expected.

3.2.9 Cultural Resources

Based on the results of the Class III cultural resource inventory, no significant cultural resources are known to occur within or immediately adjacent to the property. As such, no off-site impacts to cultural resources are expected.

3.2.10 Socioeconomics

No impacts to the socioeconomics of nearby communities are expected to occur as a result of the proposed project.

3.2.11 Transportation

There will be no off-site impacts to transportation corridors as a result of the proposed action.

3.2.12 Cumulative Impacts

By implementing the mitigation proposed by the Applicants, existing PMJM habitat on the property will be improved from the current status. The entire area between the two railroad grades within the PMJM habitat boundary along this portion of Jackson Creek will be left undeveloped once mitigation is complete. Overall, the preferred action, including its mitigation plan, will ultimately improve portions of habitat along Jackson Creek through habitat enhancement and restoration, thereby creating better quality and availability of habitat for PMJM.

The proposed project is determined to have minor or negligible effects on threatened, endangered, and candidate species, and on other environmental resources.

4.0 HABITAT CONSERVATION PLAN

This Low Effect HCP has been proposed to minimize the potential take of PMJM within the project boundary by enhancing and restoring habitat along Jackson Creek. The intent of this Low Effect HCP is to assure that the proposed project does not reduce the potential for survival and recovery of the PMJM in the wild, as mandated by requirements of 50 CFR Part 17.22(b)(1)(iii). The mitigation plan includes the subjects discussed in the following subsections.

4.1 DESCRIPTION OF PLAN AREA

The proposed Monument Creek Interceptor tie-in and water line project is situated on the eastern edge of the Front Range of the Rocky Mountains, and is characterized by upland areas with limited vegetation coverage and gentle slopes leading down to Jackson Creek. Soils on the property are classified as well-drained sandy loams to loamy sands, with slopes ranging from 0 to 15% (Soil Conservation Service 1981).

The general project site is bordered by open rangeland to the north, the Union Pacific Railroad ROW to the northwest, an existing dirt road to the south and southwest, and Interstate 25 to the northeast.

The Jackson Creek drainage, located in the project area, originates to the east-northeast in an area known as the Black Forest (Figure 1). The creek flows into Monument Creek approximately 0.10 mile southwest of the project area. Within the project area, the Jackson Creek drainage consists of a broad, open valley floor where the creek channel is narrow with upland vegetation extending virtually to the creek bank.

4.2 DETERMINATION OF PREFERRED ACTION

Incidental take of PMJM will occur from site preparation activities in upland areas, such as removal or disturbance of existing vegetation during installation of the sewer, water, and reuse lines, and potentially from mitigation activities such as seeding and weed spraying.

4.3 DETERMINATION OF INCIDENTAL TAKE

Areas of the property within 300 feet of the 100-year floodplain of Jackson Creek constitute potential habitat for PMJM. Portions of the proposed construction will extend into this area, potentially impacting PMJM.

Impacts to PMJM through habitat modification or destruction are expected to occur (refer to Table 1). These impacts include 0.50 acre of temporary upland habitat impacts as a result directional drilling pits and 0.07 acre of permanent impacts resulting from the realignment of the access road and proposed metering station. No riparian or wetland habitat impacts are anticipated due to the proposed underground directional drilling of riparian habitat. Construction activities will primarily take place during the day, when PMJM are less active and less likely to venture into upland habitat. Any take of PMJM that does occur would be incidental to otherwise lawful activities and, therefore, would be covered by an incidental take

permit applicable to activities located on the site only for the duration of the proposed construction plan.

4.4 MITIGATION PLAN

The mitigation plan will avoid, minimize, and mitigate to the maximum extent possible any incidental take associated with the proposed construction. The Applicants will avoid additional impacts to PMJM habitat by the use of directional drilling techniques for installation of the pipe under Jackson Creek, and by utilizing areas of previous disturbance for construction areas. Efforts to minimize impacts to PMJM habitat will include reduction of the width of the proposed ROW, reclamation of temporarily disturbed areas following construction, and a quick construction period (approximately 4 weeks), thus allowing mitigation to commence thereafter. Efforts to mitigate for those impacts not avoidable are described in Section 4.4.4.

4.4.1 Impacts

Construction of the proposed project will temporarily impact 0.50 acre and permanently impact 0.07 acre of habitat (Table 1). In order to mitigate potential impacts to PMJM, a total of 1.59 acres of habitat will be restored or enhanced, creating a mitigation ratio of 2.79:1. Location of the mitigation is presented in Figure 4. This mitigation will include the restoration of the 0.50-acre temporarily disturbed by the construction process while an additional 1.09 acres of proposed mitigation will involve enhancing existing habitat immediately adjacent to the construction area and adjacent to the creek.

4.4.2 PMJM Habitat Requirements

The PMJM has been determined by USFWS to be subject to potential threats from human-induced activity. This species is found at the interface between the Rocky Mountains and the Great Plains at elevations below 7,600 feet in Colorado. The ideal habitat for the PMJM, as supported by USFWS, is areas of open wet meadows and riparian corridors consisting of grasses, forbs, and shrubs. It is believed that PMJM require habitat that is within close proximity of open water. In El Paso County, this typical habitat consists of complex riparian communities composed of multi-strata woodland and herbaceous species such as coyote willow, western snowberry, chokecherry, and wetland grasses. Cattail stands generally are not considered to be prime PMJM habitat.

Further studies have shown that PMJM may occasionally hibernate and forage in adjacent upland areas that support grasses, western snowberry, Gambel's oak, and chokecherry.

4.4.3 Goals and Objectives

The goals and objectives of this HCP include efforts to avoid and minimize impacts to PMJM habitat (i.e., mitigate for those impacts that can not be avoided and minimize impacts through habitat restoration and enhancement) and to ensure success of the habitat restoration and enhancement as a way of sustaining the viability of the existing PMJM population. With the proposed 2.79:1 mitigation ratio, the Applicants are not only replacing the permanently

impacted areas, but are attempting to improve and increase the biological value of the habitat for PMJM after the project is completed. Standards for ensuring success are described below.

4.4.4 Mitigation Activities

By implementing the preferred action, the Applicants have avoided undue impacts to PMJM habitat by directional drilling under Jackson Creek for the proposed non-potable water line, an avoidance of 0.40 acre of temporary impacts. To minimize further impacts, the Applicants have proposed reducing the ROW width from 50 feet to 40 feet and constructing and installing some of the proposed pipes under the proposed road, thereby reducing the impacts by approximately 0.06 acre (Table 2). Finally, to offset those necessary impacts, the Applicants have proposed two forms of mitigation that will ultimately improve the existing PMJM habitat found in the immediate area: restoration and enhancement, at a ratio of 2.79:1.

4.4.4.1 Habitat Restoration

All properties temporarily impacted (0.50 acre of uplands) by construction of the proposed project will be reclaimed and restored immediately following the installation of the pipe and backfilling of the ditch (Figure 4).

Restoration of temporary impacts to upland areas will begin with the initial trench construction. During excavation, the top 18 inches of topsoil will be removed and placed in a pile within the ROW. The remaining under-burden will then be removed and stockpiled separately from the topsoil within the ROW. When the pipe is finally in place, the trench will be backfilled, first using the stockpiled under-burden material, and then covered with the stockpiled topsoil. Once the trench is backfilled, grading of the ROW to its original contour will occur. Following grading, all areas of restoration will be seeded with a native grass seed mix of those species identified in Table 3. Seeding of the impacted areas will occur by drill seeding. Should drill seeding not be a feasible option, broadcast seeding will occur but at a rate twice that mentioned in the table. In addition to the seeding, based upon the naturally occurring vegetation found in the area, the Applicants are proposing to plant a limited amount of upland shrub species within the 0.50 acre temporarily disturbed construction area. No shrub species will be impacted by the proposed construction, but the addition of shrubs in the restoration area will better improve habitat conditions for the PMJM. In an effort to restore PMJM habitat, the shrub species proposed would be snowberry; limited amounts of this species are naturally found throughout the immediate area. Thus, five 5-gallon pots of snowberry will be planted in the temporarily disturbed area along the transition zone between riparian and upland vegetation.

4.4.4.2 Habitat Enhancement

In addition to the restoration of the 0.50-acre of temporarily disturbed areas, which include seeding and shrub planting, the Applicants propose to enhance an additional 1.09 acres of upland PMJM habitat adjacent to Jackson Creek and the temporary impact areas (Figure 4). The installation of a two-strand (not barbed) wire fence is proposed along the western edge of the habitat enhancement area and the current recreational trail interface. This fence will deter recreational trail users from entering the habitat enhancement area causing human pressure on the site. In addition to this fence, approximately three to five cautionary signs will be installed along the fence line indicating the area is a habitat conservation area closed to all public use, and that the area is designated for the purpose of wildlife habitat protection.

Due to past construction projects such as the existing sanitary sewer line constructed on the northeastern side of the creek prior to the listing of the PMJM, small amounts of weedy species and large amounts of bare ground have been identified in the old ROW. The Applicants propose to control the weeds while over-seeding the areas with native grass species (Table 3) along portions of the old ROW where it crosses Jackson Creek. In addition, the Applicants propose planting five 5-gallon containers of snowberry within the 1.09-acre enhancement area, in addition to those proposed in the restoration area, even though no shrubs will be impacted by the proposed project. The shrubs will be planted near the transition zone between riparian and upland vegetation.

Table 2 Recommended Native Grass Species to be used for Mitigation

Common Name	Scientific Name	Growth Season	Minimum Seeding Rate (PLS lbs/acre)
Switchgrass	*Panicum virgatum*	Warm	3
Yellow indiangrass	*Sorghastrum nutans*	Warm	5
Big bluestem	*Andropogon gerardi*	Warm	6
Prairie sandreed	*Calamovilfa longifolia*	Warm	4
Sideoats grama	*Bouteloua curtipendula (Vaughn)*	Warm	5
Sand dropseed	*Sporobolus cryptandrus*	Warm	1
Indian ricegrass	*Achnatherum hymenoides*	Cool	6
Canada wildrye	*Elymus canadensis*	Cool	11
Western wheatgrass	*Pascopyrum smithii*	Cool	8

PLS = pure live seed

At least 4 weeks prior to any seeding of native grasses in the uplands, noxious weed control will be conducted in the upland areas of enhancement. During previous site visits, noxious weeds such as mullein and diffuse knapweed were identified throughout the area, with

knapweed being the dominant weed species. The objective of the weed control plan will be to prevent any further spread of these and any other noxious weed species identified. A second objective will be to reduce the density of weeds or maintain the existing vegetation with the final goal of noxious weed species totaling 5% or less of the total vegetation composition.

Method of Weed Control

While there are numerous ways to control noxious weeds, for the purposes of this project, chemical application appears to be the most effective and efficient way of reaching the desired goal of weed density reduction. Thus, the Applicants propose to hire a licensed weed control company to apply the herbicides Plateau, Tordon, or Roundup, as needed to target specific noxious weed species. When applied at the correct and recommended mixture and during the recommend time of the year, these herbicides can target certain weeds and other non-desirable plants, leaving existing grasses intact. In fact, Plateau has been approved by the Natural Resource Conservation Service as an herbicide that can be used when reestablishing native range and grasslands. This chemical was one of the herbicides chosen because of its success of controlling the identified weeds, as well as its acute low toxicity to small mammals such as PMJM. In addition, there is no history of human intoxication and studies have shown no reproductive toxicity in small mammals. One problem that has arisen from use of this herbicide is that once applied, the active chemical has been shown to travel through the soil for distances up to 24 inches, thus potentially affecting non-target shrubs.

The other two herbicides have been chosen as an alternative to Plateau. Both have low toxicities to small mammals and neither of these herbicides has been shown to have the ability to travel in the soil once applied. However, Roundup will kill everything that it comes in contact with and, therefore, will be used only if the recommended prescription is to eradicate all vegetation from a site.

Method of Application

A qualified biologist or a certified herbicide technician will identify specific locations and species of noxious weeds in the habitat enhancement area. For maximum results in controlling and reducing the noxious weeds, the infested habitat enhancement area will be treated prior to the initiation of construction during the first year (depending upon the time of season and the anticipated start of construction). If construction is to proceed during the winter months between late October to early April, weed control will begin during the first growing season following construction. Approximately 4 weeks after the initial weed control effort, regardless of noxious weed density, native grass seeding and shrub planting will be conducted. The additional pressure to reduce the weed density will come from the establishment of native grass species after the initial spraying has been completed.

The herbicide will be applied to areas identified as infested with noxious weeds, using a tractor or a four-wheel drive all-terrain vehicle with an attached tank. Smaller areas will be treated using hand-held and/or backpack sprayers. No matter which herbicide application method is employed, emphasis will be placed on keeping the herbicide off of and away from existing trees and shrubs as well as the existing riparian vegetation along Jackson Creek.

Herbicide re-application during the following growing seasons will be conducted on an as-needed basis, as determined by a qualified biologist or certified herbicide technician, in an effort to achieve a noxious weed density of 5% or less of the total plant composition. Should areas of noxious weeds be identified during the following two growing seasons, the areas will be treated with the same herbicide and applied from hand-held and/or backpack sprayers. Again, all efforts will be made to keep the herbicide away from open water, riparian vegetation, and existing upland trees and shrubs. Should weed control efforts create excessive bare areas devoid of vegetation in the habitat enhancement area, reseeding will be conducted to a level commensurate with the identified standards of success.

4.4.4.3 Timing of Mitigation

Construction is proposed to begin immediately following the issuance of the section 10(a)(1)(B) incidental take permit. Prior to construction, the initial weed control effort will be conducted in the 1.09-acre habitat enhancement area to minimize the spread of noxious weeds during construction. This initial weed control event is dependent on the winter timeframe specified in Section 4.4.4.2. Should construction begin in the winter months, the initial weed control effort will be conducted in late April to early May following construction. Additional mitigation efforts (seeding and shrub planting) will not occur concurrently with construction since all mitigation is either located within the construction zone or immediately adjacent to the construction zone. Due to the small area of impact and the small area of mitigation, coupled with the short proposed construction time (approximately 4 weeks), the Applicants propose that mitigation will be most efficient if initiated immediately after all construction activities are complete. Therefore, the seeding and shrub planting of the 0.50-acre restoration area will commence immediately following construction and will be completed within 4 weeks following the completion of the construction process. Should construction commence in the winter months, seeding and shrub planting in the 0.50-acre restoration area will be conducted in early May following construction. Seeding and shrub planting in the 1.09-acre habitat enhancement area will be conducted approximately 4 weeks following the initial weed control effort. This delay between the initial weed control effort and seeding will ensure that the weed application will not be detrimental to seeding efforts.

4.4.4.4 Mitigation Monitoring and Standards of Success

A plan has been established to assure the success of the outlined mitigation plan. The Applicants will carryout all mitigation activities pursuant to proposals specified within this HCP and conditions outlined within the anticipated section 10(a)(1)(B) permit.

Monitoring of those activities will be the responsibility of the Applicants, through an USFWS-approved contractor, and a summary of all monitoring efforts will be provided to USFWS by December 31 of each calendar year until success is achieved. The first year's report will also include a summary of all construction activities during the first year of the permit.

Vegetation surveys, including percent aerial cover and species composition, will be conducted during the months June or July following the completion of mitigation. Vegetation on each enhanced and restored site will be monitored annually by the Applicants or a contracted party

until success is achieved and approved by the USFWS, and the permit terminated. Vegetative sampling of the mitigation area will be conducted to assess mitigation progress and maintenance. Six permanent transect lines will be placed perpendicular to Jackson Creek throughout the project mitigation sites (Figure 5). A 1-square-meter quadrat will be placed every 5 meters along the downstream side of each transect with the total number of quadrats sampled totaling 42 for the entire area. Within each quadrat, a list of identified plant species and percent cover of each will be documented for use in determining species composition. Initially, a baseline vegetation survey will be conducted in the areas where enhancement is proposed. This baseline data will be used to determine the target reduction in noxious weeds and increase in desirable species. No baseline surveys are proposed for those areas that will be temporarily disturbed due to the fact that all vegetation within these areas will be completely removed during the construction process.

The established photo points illustrated in Figure 5 will be surveyed and permanently marked for future reference once the section 10(a)(1)(B) permit is issued and prior to the commencement of construction. Photographs taken from permanently established photo points will be recorded each year. The photographs will be documented in the annual monitoring report submitted to the USFWS, with the first submission scheduled after the first year of habitat enhancement/restoration.

Standards for success of herbaceous vegetation in restored areas will be equal to or greater than 75% aerial cover while noxious weeds will comprise 5% or less of the total aerial cover. Within areas of enhancement, the standard for success also will be based upon an aerial cover of 75% or greater and a weed density of 5% or less. If portions of the mitigation area already meet these success standards, or reach these standards before other areas achieve the goal, weed control efforts will continually maintain the high quality of vegetation while additional efforts, such as reseeding or additional shrub planting, may be required to bring the other areas up to the same standard. For the ten 5-gallon containers of snowberry proposed for planting (five in restoration areas and five in enhancement areas), success will be measured by a full shrub inventory conducted concurrently with the vegetation surveys. Success of the planted shrubs will be based on a survivorship of 80% without supplemental watering for two consecutive years. Monitoring of the mitigation sites will continue until success is achieved and approved by the USFWS. All mitigation areas will be deemed successful when the standards of success are met, with no supplemental watering for a period of two growing seasons as per approval, and with final approval and concurrence from USFWS. At that time, the Applicants will request a termination of the permit.

Interim remediation during the monitoring period will consist of reseeding and/or replacing shrubs as required to meet the success standards. The USFWS will be notified of any necessary remediation activities in the annual monitoring report. The Applicants will be responsible for improving the site (including planting, seeding, and weed control) until it meets the criteria for mitigation compliance. All remediation activities will follow the restoration/enhancement procedures provided in Sections 4.4.4.1 and 4.4.4.2.

4.4.5 Funding

For the mitigation effort to be successful, sufficient funding must be available to implement this HCP. The Applicants are dedicated to providing the necessary funding for mitigation and will provide funding adequate to manage the mitigated area in the form of a Letter of Credit for $15,000.00 (see Table 4). The funding is based on the cost of implementing weed control, seeding, shrub planting, and monitoring for a period of 3 years with a contingency for additional weed control, seeding, and supplemental watering if required to meet the success criteria. The 3-year period is the estimated time required before the site will demonstrate the standards of success criteria identified in this HCP. Funding for this HCP implementation is based on prior projects within the region of the proposed project area.

Table 3 Estimated Costs for HCP Implementation

Activity	Cost
Weed control for 3 years	$4,200
Seeding	$1,500
Shrub planting (10 units)	$300
Monitoring with report submittal	$2,500/year for 3 years
Contingency	$1,500
Total for 3 years	**$15,000**

The Letter of Credit will be renewable annually and sufficient to cover the initial cost of mitigation and any possible remediation measures required to achieve the identified success criteria. A copy of the draft Letter of Credit is provided in Appendix C.

4.4.6 Long-Term Ownership

Within 90 days of permit issuance, Forest Lakes, LLC will place a deed restriction on the mitigated areas ensuring that ownership and responsibility of monitoring and maintenance of the mitigated areas will be maintained by Forest Lakes Metropolitan District or a group approved by USFWS for the purposes of perpetual conservation management for the benefit of PMJM. See Appendix D for draft deed restriction. This deed restriction will be recorded at the county within 90 days of permit issuance. Should recovery efforts remove the PMJM from listing under the ESA, management of the mitigation areas for the benefit of the PMJM will continue for perpetuity.

4.4.7 Foreseeable Events

The success of the mitigation plan is not likely to be jeopardized by foreseeable events such as fire, drought, wildlife browsing, or 100- to 500-year floods. The proposed plantings should survive a large flood event; however, if a flood, fire, or extreme drought situation occurs within the period of time before the identified restoration and enhancement measures are

deemed successful by USFWS, the Applicants will replant and reseed, with the same species, as needed to restore the mitigation areas to success criteria standards. In addition, a foreseeable event such as a pipe rupture may occur that would impact conservation and mitigation measures. At this time, such an event and the resulting impacts to PMJM are difficult to quantify. However, should this scenario arise, the impacted areas will be evaluated and the USFWS will be consulted to determine the most appropriate form of action to resolve this foreseeable event. See Table 5. Due to the short timeframe of construction and limited habitat impacts, the listing of new species under ESA and substantial changes in the PMJM population of the region are not anticipated as a result of project implementation.

Once established, the plants should be able to withstand browsing by wildlife such as deer or beaver. However, if substantial damage occurs that leads to mortality of plantings, the Applicants will carry out necessary measures including, replacing dead shrubs with live potted stock, to ensure mitigation success. All remediation activities will follow the restoration/enhancement procedures provided in Sections 4.4.4.1 and 4.4.4.2.

Table 4 Anticipated Changed Circumstances

Event	Location	Occurrence	Impacts	Response	Estimated Cost
Fire	Mitigation area	Unknown	Habitat degradation and temporary habitat loss	Evaluate area for potential corrective measures. Replant as necessary.	$3,000 includes weed control and shrub/grass replanting
Flood and Drought	Mitigation area	Possibly at 5- to 10-year intervals	Erosion along stream and changes in PMJM abundance and distribution	No action for drought conditions. Address erosion problems, replant as necessary.	$5,000 for erosion repair and revegetation efforts
Listing of New Species	Mitigation area or adjacent properties	Unknown potential	Impacts resulting from project implementation	Not applicable. Project duration app. 4-5 weeks.	NA
Pipeline Rupture	Within pipeline ROW	Unknown	Impacts resulting from pipe maintenance	Evaluate impacted area. Consult w/USFWS to determine appropriate action.	Unknown

If a foreseeable event occurs, consultation with USFWS will be conducted to determine the level of activities that would be required to restore the habitat to those conditions found prior to the event.

4.5 CHANGED CIRCUMSTANCES

Changed circumstances are defined as changes in governing factors affecting a species or geographic area covered by a conservation plan that can be reasonably anticipated by plan developers and the USFWS and that can be planned for, such as fire and drought. If additional conservation and mitigation measures are deemed necessary to respond to these changed circumstances and provided for in the HCP, then the Permittee will implement these measures as outlined in the HCP. However, if additional conservation and mitigation measures are deemed necessary to address the changed circumstances, and these measures were not identified in the HCP, the USFWS will not require these additional measures without the consent of the Permittee, provided that the HCP including all the commitments and provisions are being properly implemented.

If a new species that is not covered by this HCP but may be affected by the proposed activities covered under this HCP is listed under the ESA during the duration of the section 10 permit, the section 10 permit will be re-evaluated by the USFWS and the activities covered under the HCP may be modified as necessary to insure that the activities will not likely result in the take of the newly listed species. In addition, if any currently listed species that is not covered under this HCP but is discovered to be at risk of taking by project activities, the section 10 permit will be re-evaluated by the USFWS and the HCP activities may be modified as necessary to insure that the activities are not likely to result in take of any currently listed species. The Permittee shall continue to implement such modifications to the HCP until the Permittee has applied for and the USFWS has approved an amendment of the section 10 permit, in accordance with regulatory requirements, to cover the newly listed species or until the USFWS notifies the Permittee in writing that the modifications to the HCP-covered activities are no longer required to avoid the likelihood of take of the newly listed species.

4.6 UNFORESEEN CIRCUMSTANCES

Unforeseen circumstances are events or changes in governing factors affecting a species or geographical area covered by a HCP that cannot be reasonably anticipated and that result in a substantial and adverse change in the status of the covered species. All reasonably foreseeable changes and events are addressed in Section 4.4.7; all other changes and events are unforeseen circumstances. In the event that unforeseen circumstances occur during the implementation of the HCP, the Permittee shall immediately notify the USFWS. In determining whether the event is an unforeseen circumstance, the USFWS shall consider, but not limited to, the following factors: size of the current range of the species; percentage of range adversely affected by the HCP; percentage of range conserved by the HCP; ecological significance of that portion of range affected by the HCP; level of knowledge about the affected species and degree of specificity of the conservation program under the HCP; and whether failure to adopt additional conservation measures would appreciably reduce the likelihood of recovery of the affected species in the wild. If the USFWS determines that

additional conservation measures are necessary to respond to the unforeseen circumstance where the HCP is being properly implemented, the additional measure required of the Permittee must be as close as possible to the terms of the original HCP and must be limited to modifications within any conserved habitat area or adjustments within lands or waters that are already set-aside in the HCP's operating program. Additional conservation and mitigation measures shall involve the commitment of additional land or financial compensation or restrictions on the use of land or other natural resources otherwise available for development or use under the original terms of the HCP only with the consent of the Permittee.

4.6.1 Amendment Procedure

It is important to have an established procedure for any amendments to the section 10(a)(1)(B) permit that may become necessary. However, it is imperative that any such amendments do not result in a cumulative effect that jeopardizes PMJM in the future. Amendments will be evaluated based on their effect on PMJM habitat and will meet USFWS's procedures of not changing the operational value of this HCP.

4.6.1.1 Amendments to Development Plans

It is acknowledged that upon the written request of the Applicants to the appropriate agency, approval may be granted for amendments to development plans for the subject property, provided the plans do not encroach on PMJM habitat that is not presently contemplated to be taken as a consequence of the project, and do not alter the conditions set forth in this HCP.

4.6.1.2 Minor Amendments to the HCP

Minor amendments involve routine administrative revisions or changes to the operation and management program and do not diminish the level or means of mitigation. Such minor amendments do not alter the terms of the section 10(a)(1)(B) permit.

Upon the written request of the Applicants, the USFWS is authorized to approve minor amendments to this HCP, if the amendment does not conflict with the primary purpose of this HCP as stated in Section 1.0.

4.6.1.3 All Other Amendments

All other amendments will be considered an amendment to the section 10(a)(1)(B) permit, subject to any other procedural requirements of federal law or regulation that may be applicable to amendment of such a permit.

5.0 ADAPTIVE MANAGEMENT

The Applicants acknowledge that the level of information known about PMJM and the management strategies currently maintained by USFWS is ever evolving. If future information regarding possible modifications to management of PMJM develops, the Applicants will adapt appropriate management strategies to the most current practices suggested by USFWS, if those practices are deemed pertinent to Jackson Creek. If it is apparent that proposed management techniques and implementation measures of the monitoring and mitigation program for this project are not adequate with respect to success criteria and habitat quality, the Applicants will consult with USFWS to identify alternate management strategies that better serve the conservation of the PMJM. The Applicants are committed to conserving PMJM habitat within the mitigation areas and prefer flexibility concerning the long-term management of the mitigation areas. For example, human pressures on the site caused by the adjacent recreational trail and other future land uses may require additional fencing and cautionary signage in the future. Another example is pipeline maintenance and emergency situations that potentially can cause health and safety concerns. The Applicants wish to have the ability to address these potential scenarios with respect to health and safety and the conservation of PMJM habitat within the mitigation areas. The Applicant believes it is important for the future conservation of the PMJM that these situations be addressed in a timely manner, hence the request for adaptive management of the mitigation areas for the long-term benefit of the PMJM.

6.0 AGENCY CONSULTATION AND COORDINATION

The following individuals were contacted regarding the impacts from the proposed project:

Ms. Barbara Spagnuolo – U.S. Fish and Wildlife Service, Colorado Field Office

Ms. Rhoda Lewis – U.S. Fish and Wildlife Service, Region 6 Office

Ms. Georgianna Contiguglia – Colorado Historical Society, State Historic Preservation Office

Mr. Ronald Simpson – Triview Metropolitan District, Monument, CO

Mr. John McGinn – JDS-Hydro Consultants, Colorado Springs, CO

Mr. Chuck Ritter – Nolte Associates, Colorado Springs, CO

Ms. Ann Nichols – Forest Lakes Metropolitan District, Colorado Springs, CO

7.0 LITERATURE CITED

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Ensight Technical Services. 2002. Preble's meadow jumping mouse population study at Jackson Creek, El Paso County, Colorado. Unpublished report prepared for URS Corporation, Colorado Springs, Colorado.

Environmental Laboratory. 1987. Corps of Engineers wetland delineation manual. U.S. Army Corps of Engineers, Vicksburg, MS.

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Shenk, T. M. 2000. Temporal and spatial variation in the demography and movement patterns of PMJM. Report prepared for the Colorado Division of Wildlife. January.

Soil Conservation Service (now National Resource Conservation Service). 1981. Soil survey of El Paso County Area, Colorado. United States Department of Agriculture in cooperation with Colorado Agricultural Experiment Station.

Soil Conservation Service (now Natural Resource Conservation Service). 1991. Hydric soil of the United States. United States Department of Agricultural in cooperation with the National Technical Committee for Hydric Soils.

Stoecker, R. 1999. Jackson Creek Preble's meadow jumping mouse trapping study – final report. Unpublished report prepared for Triview Metropolitan District, Monument, Colorado. September.

Woodling, J. 1985. Colorado's little fish – a guide to the minnows and other lesser known fishes in the State of Colorado. Published by the Colorado Division of Wildlife.

APPENDIX A

Cultural Resource Response Letters

COLORADO
HISTORICAL
SOCIETY

The Colorado History Museum 1300 Broadway Denver, Colorado 80203-2137

September 5, 2003

Todd Kohler
SWCA Environmental Consultants
8461 Turnpike Drive, Suite 100
Westminister, CO 80031

Re: Jackson Creek Preble's Meadow Jumping Mouse

Dear Mr. Kohler:

This is to acknowledge receipt of the cultural resource report prepared for the project listed above.

Since no historic properties were located during an adequate cultural resource survey of the area of potential effect, we will concur with the determination that no historic properties will be affected.

Should unidentified archaeological resources be discovered in the course of the project, work must be interrupted until the resources have been evaluated in terms of the National Register of Historic Places eligibility criteria (36 CFR 60.4) in consultation with our office.

Thank you for the opportunity to comment. If we may be of further assistance, please contact Jim Green at 303-866-4674.

Sincerely,

Mark Wolfe

for Georgianna Contiguglia
State Historic Preservation Officer

GC/WJG

Trent Miller

.n: Todd Kohler [tkohler@swca.com]
Sent: Monday, September 15, 2003 9:19 AM
To: tmiller@swca.com
Subject: FW: Jackson Creek, El Paso County Cultural Resource Inventory

-----Original Message-----
From: Rhoda_Lewis@fws.gov [mailto:Rhoda_Lewis@fws.gov]
Sent: Monday, September 15, 2003 8:49 AM
To: tkohler@swca.com; Kathleen_Linder@fws.gov
Subject: Jackson Creek, El Paso County Cultural Resource Inventory

Todd,

This is to confirm our telephone conversation of this morning. Since no sites were located during the inventory, I have no cultural resource concerns. You sent the report to the Colorado SHPO and have received a response from them. Copies of this correspondence will be included in the HCP.

Rhoda Lewis
Regional Archaeologist

APPENDIX B

Union Pacific Railroad Company Permit

UNION PACIFIC RAILROAD COMPANY

Real Estate Department

Uhrich
..ssistant Vice President
J. L. Hawkins
General Director - Real Estate Operations
M. E. Heenan
Director - Real Estate Operations
G. L. Pinker
Director - Contracts
M. B. Stevenson
Assistant Director - Contracts

1800 Farnam Street
Omaha, Nebraska 68102
Fax: (402) 997-3601

D. D. Brown
General Director - Real Estate
G. B. Collins
Director - Real Estate
T. K. Love
General Director - Real Estate
B. P. Morrissey
Director - Real Estate
J. P. Gade
Director - Facility Management

April 22, 2002
Folder No. 02085-91

MR GARY BARBER
FOREST LAKES METROPOLITAN DISTRICT
491 WOODMEN ROAD
COLORADO SPRINGS CO 80919

Dear Mr. Barber:

RE: Proposed construction, maintenance and use of 32.5 foot wide concrete private road crossing at Monument, El Paso County, Colorado.

Attached are duplicate originals of a Private Road Crossing Agreement covering your use of the Railroad Company's right-of-way. To properly document your use of the Railroad Company's property, it is necessary that you execute the attached documents. Please return to me in the enclosed envelope the following:

1. ALL of the executed documents. If a Contractor's Right-of-Entry Agreement is attached hereto, you may submit the executed Contractor's Right-of-Entry documentation upon selection of a contractor.
2. Certificate of Insurance, if required.
3. Resolution for document execution, if required.
4. Check, **with Folder No. 02085-91 written on the front,** made payable to the Union Pacific Railroad Company in the amount of Sixty-One Thousand Four Hundred Seventy-Five Dollars ($61,475.00) which represents:

   an administrative handling fee of $1,000.00,

   a prepaid construction fee of $45,475.00,

   a one-time license fee of $15,000.00.

If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Service's policy regarding Form 1099, I certify that 94-6001323 is the Railroad Company's Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at telephone number (402) 997-3587.

Sincerely yours,

Terry J. Minarik
Manager - Private Road Crossing

Folder Number: 02085-91

PRIVATE ROAD CROSSING AGREEMENT

Mile Post 59.420, Colorado Springs Subdivision/Branch
Location: Monument, El Paso County, Colorado

THIS AGREEMENT is made this _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1800 Farnam Street, Omaha, Nebraska 68102 (hereinafter "Licensor"), and **FOREST LAKES METROPOLITAN DISTRICT**, whose address is 491 Woodmen Road, Colorado Springs, Colorado (hereinafter "Licensee").

RECITALS:

The Licensee desires the construction, maintenance and use of a new private road crossing (hereinafter "Road Crossing"), consisting of 32.5 foot wide concrete private road crossing and all appurtenances thereto, including but not limited to any gates, cattle guards, stop signs or identification signs, drainage facilities, on, over and across the Licensor's right-or-way on the Colorado Springs Subdivision trackage at Mile Post 59.420, at or near Monument, El Paso County, Colorado, in the location shown on the attached print marked Exhibit "A".

The Licensor is willing to grant the Licensee the right to cross its right-of-way and tracks at the location shown on Exhibit "A" subject to the terms set forth below.

NOW, THEREFORE, the parties agree as follows:

Article 1. LICENSOR GRANTS RIGHT.

The Licensor grants the Licensee the right to cross its right-of-way and tracks at the location shown on Exhibit "A" subject to the terms set forth herein and in the attached Exhibit B, together with the right of entry to control and remove from the Licensor's right-of-way, on each side of the Road Crossing, weeds and vegetation which may obstruct the view of motorists approaching the crossing area to any trains that may also be approaching the crossing area.

Article 2. CONSIDERATION.

In consideration of the license and permission granted herein, the Licensee agrees to observe and abide by the terms and conditions of this Agreement and to pay to the Licensor a one-time license fee of **FIFTEEN THOUSAND DOLLARS ($15,000.00).**

Article 3. ADMINISTRATIVE HANDLING CHARGE.

The Licensee agrees to pay to the Licensor an administrative handling charge in the amount of **ONE THOUSAND DOLLARS ($1,000.00)** for clerical, administrative and handling expense in connection with processing this Agreement.

Article 4. CONSTRUCTION OF ROAD CROSSING.

a. The Licensor will furnish the materials for and install the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail and will furnish and install the stop signs and identification signs on each side of the crossing and raise, or cause to be raised, any interfering wireline of Licensor at a cost to the Licensee of **FORTY-FIVE THOUSAND FOUR HUNDRED SEVENTY-FIVE DOLLARS ($45,475.00).**

b. The Licensee, at its own expense, will construct and perform grading and surfacing work for the remaining portion of the Road Crossing and install any and all appurtenant gates, cattle guards, drainage facilities, traffic signs, or traffic devices shown on Exhibit 'A'. The construction work shall be done to the satisfaction of the Licensor.

c. The Licensee agrees to notify the Railroad's representative at least 48 hours in advance of commencing any work in which any person or equipment will be within 25 feet of any track.

Article 5. RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES:

a. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit 'A'. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefor. The rate of pay per hour for each man will be the prevailing hourly rate in effect for an eight-hour day for the class of men used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. The current hourly rate of pay for Assistant Track Foreman is $18.25 (January 1994). In addition to the cost of such labor, a composite charge of 120.47% for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement & UC, supplemental pension, Empl. Liability & Property Damage and Administration will be included, computed on actual payroll.

b. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays.

c. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its mployees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

d. Reimbursement to the Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.

e. Arrangements for flagging are to be made at least seventy-two (72) hours in advance of commencing work, with the Railroad Manager of Track Maintenance. His name and phone number are as shown:

Joe Rodriguez at (719) 549-6299

Article 6. IF WORK IS TO BE PERFORMED BY CONTRACTOR

If a contractor is to do any of the work performed on the Road Crossing (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Licensor's form Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of Contractor's Right of Entry Agreement and understands its terms, provisions and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's premises without first executing the Contractor's Right of Entry Agreement.

Article 7. LIABILITY INSURANCE.

a. The Licensee shall provide the Licensor with a certificate, identifying Folder No. 02085-91, issued by the insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this Agreement in a policy which contains the following type endorsement.

> "UNION PACIFIC RAILROAD COMPANY is named as additional insured with respect to all liabilities arising out Insured's (as Licensee) construction, maintenance and use of the road crossing on Licensor's property."

Licensee WARRANTS that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

b. All insurance correspondence shall be directed to:

Union Pacific Railroad Company
1416 Dodge WP001 – Folder: 02085-91
Omaha, NE 68102

Article 8. TERM.

This Agreement shall be effective as of the date first herein written, and shall continue in full force and effect until terminated as provided in Exhibit B.

Article 9. SPECIAL PROVISIONS.

As shown on the Exhibit A print, locked gates must be installed at this road crossing, and said gates must remained locked except when this road crossing is being utilized by the Licensee.

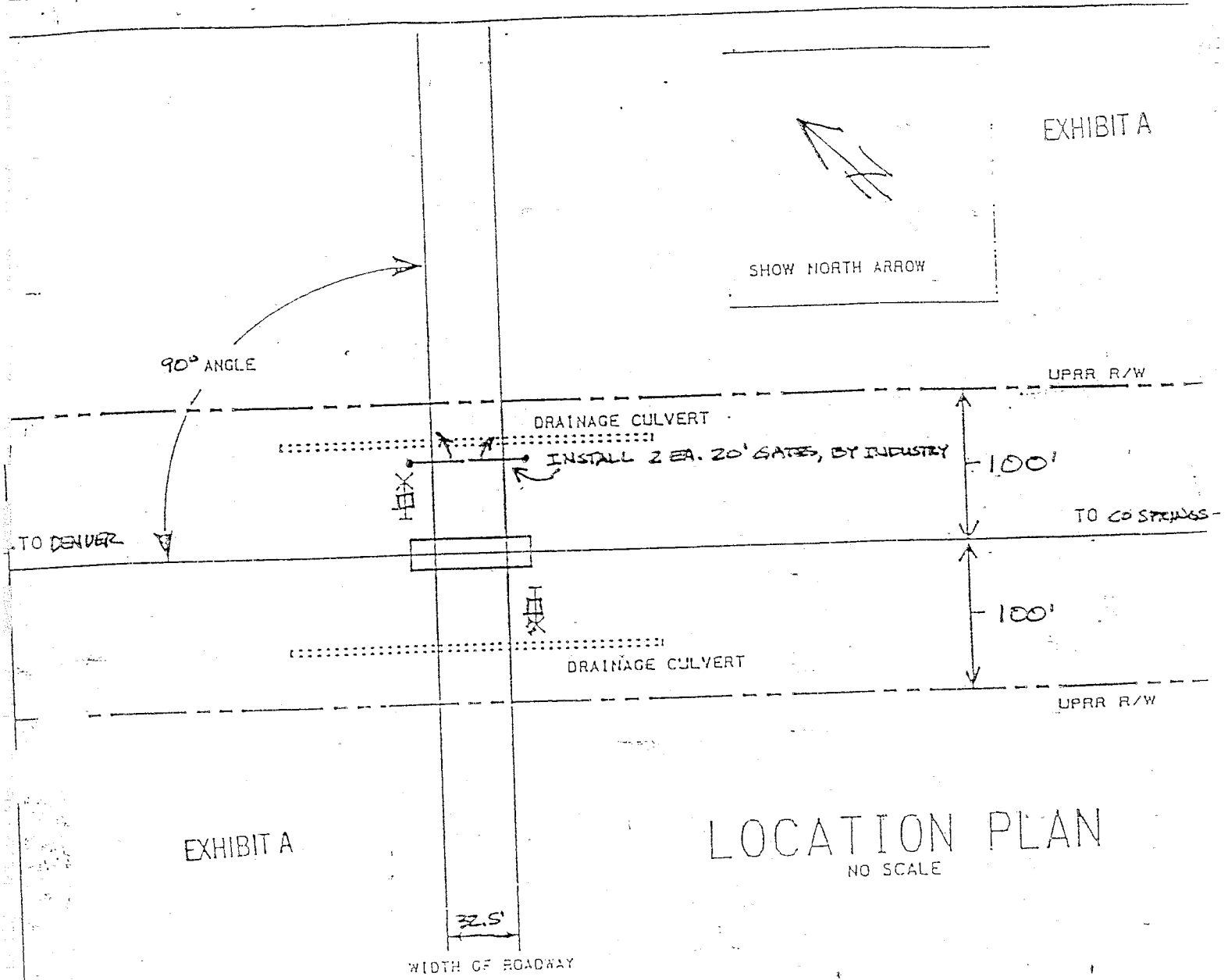
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By_____
Director – Contracts

FOREST LAKES METROPOLITAN DISTRICT

By_____
Title:_____



LOCATION PLAN

NO SCALE

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

MONUMENT, CO

PROPOSED CROSSING FOR

FOREST LAKES METROPOLITAN DISTRICT

RR MP 59.42

NOTES:

1) APPLICANT TO PERFORM ALL GRADING, DRAINAGE, PAVING, & UTILITY ADJUSTMENTS AT APPLICANTS EXPENSE.
2) APPLICANT TO REMOVE ALL VEGETATION FROM UPRR RIGHT OF WAY FOR 500' EACH SIDE OF THE CENTERLINE OF THE CROSSING.
APPLICANT TO PROVIDE LOCKING GATES AT RAILROAD RIGHT OF WAY LINE.

LEGEND

RAILROAD OWNED TRACKAGE
RAILROAD RIGHT OF WAY

FIBER OPTIC CABLE!

CALL BEFORE YOU WORK ON R/W! 1-800-336-9193

EXHIBIT B

SECTION 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The rights granted to the Licensee are subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire railroad right of way, and are also subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics or other wire lines, pipelines and other facilities upon, along or across any or all parts of said right of way, any of which may be freely done at any time by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The Licensee's rights are also subject to all outstanding superior rights (including those in favor of licensees, lessees of said right of way, and others) and the right of the Licensor to renew and extend the same, and are granted without covenant of title or quiet enjoyment.

(c) It is expressly stipulated that the Road Crossing is to be a strictly private one and is not intended for public use. The Licensee, without expense to the Licensor, will take any and all necessary action to preserve the private character of the Road Crossing and prevent its use as a public road.

SECTION 2. MAINTENANCE AND USE.

(a) The Licensor, at the sole expense of the Licensee, shall maintain the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; provided, however, that such maintenance work shall be limited to that required for the safe and efficient operation of its tracks, and such other maintenance as the Licensor has agreed to perform on specific request of the Licensee. The Licensee, at its own expense, shall maintain the remaining portion of the Road Crossing and shall keep the rail flangeways clear of obstructions.

(b) The Licensee shall, at its sole expense, maintain, repair, renew and replace any gates, cattle guards, drainage facilities, traffic signs or devices, identification signs approved by the Licensor or other appurtenances shown on Exhibit "A". The Licensee shall, at its own expense, install and thereafter maintain any such urtenances that may subsequently be required by the Licensor, by law, or by any public authority having diction. The Licensee shall control vegetation along the right of way on each side of the crossing so that the Licensee's line of sight to approaching trains is not impaired or obstructed by vegetation. All work performed by the Licensee on the right of way shall be done to the satisfaction of the Licensor.

(c) The Licensee shall require all vehicles approaching the crossing to stop a safe distance from the tracks before crossing the tracks. The Licensee shall keep any gate affording access to the Road Crossing closed and locked at all times except during the time of actual passage through it onto or from the Road Crossing. The Licensee shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay the maintenance and operation of the Licensor's railroad tracks or appurtenant facilities or the facilities or equipment of others lawfully using the Licensor's property. The Licensee shall adequately supervise and police use of said Road Crossing so that no person, vehicle or livestock stops or stands on the Licensor's tracks or attempts to cross the Licensor's railroad tracks when a railroad train, engine, equipment, or car is approaching or occupying the Road Crossing.

SECTION 3. MODIFICATION OR RELOCATION OF ROAD CROSSING.

(a) Whenever the Licensor deems it necessary or desirable in the furtherance of its railroad operating requirements or for the improvement and use of its property to modify or relocate the Road Crossing:

(1) the Licensor shall, at the sole expense of the Licensee, modify or move the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; and

(2) the Licensee shall, at the Licensee's sole expense, modify or move the remaining portion of the Road Crossing and the appurtenances thereto.

(b) All the terms of this agreement shall govern the continued maintenance and use of the Road Crossing as modified or relocated pursuant to this section.

SECTION 4. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

(a) Fiber optic cable systems may be buried on the Licensor's property. Licensee shall telephone the nsor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the nsor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Licensor's premises.

(b) In addition to the liability terms elsewhere in this Agreement, the Licensee shall indemnify and hold the Licensor harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorneys' fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the Licensee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by the Licensee, and/or its contractor, agents and/or employees, on Licensor's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

SECTION 5. INDEMNITY.

The Licensee assumes the risk of and shall indemnify and hold harmless the Licensor and other railroad companies which use the property of the Licensor, their officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorneys' fees, fines, penalties and expenses of whatsoever nature (hereinafter "Loss") which may result from: (1) injury to or death of persons whomsoever, (including officers, agents and employees of the Licensor and of the Licensee, as well as other persons); (2) loss of or damage to property whatsoever (including damage to property of or in the custody of the Licensee and damage to the roadbed, tracks, equipment or other property of or in the custody of the Licensor and such other railroad companies, as well as other property); or (3) the Licensee's failure to comply with any federal, state or local law, regulation, or enactment; when such Loss is due to or arises in connection with or as a result of:

(a) the construction of the Road Crossing;

(b) any work done by the Licensee on or in connection with the Road Crossing;

(c) the use of said Road Crossing by the Licensee, or the officers, agents, employees, patrons or invitees of the Licensee, or by any other person;

(d) the use of said Road Crossing by the Licensee's successors or assigns or the officers, agents, employees, ons or invitees of the Licensee's successors or assigns until the Licensee either complies with the provisions of on 8 or terminates the agreement as provided in Section 6; or

(e) the breach of any covenant or obligation assumed by or imposed on the Licensee pursuant to this agreement, or the failure of the Licensee to promptly and fully do any act or work for which the Licensee is responsible pursuant to this agreement;

regardless of whether such Loss is caused solely or contributed to in part by the negligence of the Licensor, its officers, agents or employees.

SECTION 6. TERMINATION ON BREACH OR ON NOTICE.

(a) It is agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by the Licensee shall, at the option of the Licensor, forthwith work a termination of this agreement and all rights of the Licensee hereunder. A waiver by the Licensor of a breach by the Licensee of any covenant or condition of this agreement shall not impair the right of the Licensor to avail itself of any subsequent breach thereof.

(b) This agreement may be terminated by either party on thirty (30) days' written notice to the other party.

SECTION 7. REMOVAL OF ROAD CROSSING.

(a) Upon termination of this agreement howsoever, the Licensor shall, at the sole expense of the Licensee, remove said Road Crossing and restore the premises of the Licensor to a condition comparable to that existing immediately prior to the construction of said Road Crossing.

(b) In the event of the removal of the Road Crossing as in this section provided, the Licensor shall not be liable to the Licensee for any damage sustained by the Licensee for or on account of such removal, and such removal shall not prejudice or impair any right of action for damage, or otherwise, which the Licensor may have against the Licensee.

SECTION 8. ASSIGNMENT.

The Licensee shall not assign this agreement, or any interest therein to any purchaser, lessee or other holder e property served by the crossing or to any other person, without the written consent of the Licensor. If the ısee fails to secure the Licensor's consent to any assignment, the Licensee will continue to be responsible for obligations and liabilities assumed herein.

SECTION 9. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 8 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

PRX 880805
PRE 880806
PRX&E 880807
CRX 940408

FORM C

EXHIBIT B1

UNION PACIFIC RAILROAD

Section 1.01 CONTRACT INSURANCE REQUIREMENTS

Commercial: Industrial; Contractor's Private Grade Crossing and / or Encroachment

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a single limit of at least $5,000,000 each occurrence or claim and an aggregate limit of at least $10,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job Site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Coverage for Railroads employees shall not be excluded
- Waiver of subrogation

B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least $2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job Site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.

C. Workers Compensation and Employers Liability insurance including but not limited to:

- Licensee's statutory liability under the workers' compensation l laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least
  $500,000 each accident, $500,000 disease policy limit
  $500,000 each employee

If Workers Compensation insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.
The policy shall also contain the following endorsement **which shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

D. Umbrella or Excess Policies In the event Licensee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

E. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**

F. Licensee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Licensee's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**

G. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**

H. Prior to commencing the Work, Licensee shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**

I. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

J. Licensee WARRANTS that this Agreement has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement and acknowledges that Licensee's insurance coverage will be primary.

K. If Licensee fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Licensee plus a 25% administration fee.

L. The fact that insurance is obtained by Licensee or Railroad on behalf of Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

DATE: 2002-04-12

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

DESCRIPTION OF WORK:
INSTALL PRIVATE CONCRETE COMMERCIAL CROSSING AT MP 52.42 IN MONUMENT,CO.
ON THE COLORADO SPRINGS SUB'D.
UNLOAD 1 CAR BALLAST AT CROSSING AND SURFACE THROUGH.
SURFACE - TRIVIEW METRO DISTRICT ST.OF COLORADO - 100% RECOLLECTIBLE

PID: 41978 AWO: 05890 MP,SUBDIV: 52.42, COLSPRINGS
SERVICE UNIT: 14 CITY: MONUMENT STATE: CO

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			1000		1000		1000
LABOR ADDITIVE			1380		1380		1380
TOTAL ENGINEERING			2380		2380		2380
SIGNAL WORK							
LABOR ADDITIVE			1206		1206		1206
MATL STORE EXPENSE				3	3		3
SALES TAX				3	3		3
SIGNAL			874	77	951		951
TOTAL SIGNAL			2080	83	2163		2163
TRACK & SURFACE WORK							
BALAST	1.00	CL	2078	584	2662		2662
BILL PREP			900		900		900
COMPANY EQUIP USAGE				1850	1850		1850
EQUIPMENT RENTAL				4000	4000		4000
FIELD WELD			12		12		12
FOREST LAKE METRO DIST				87	87		87
HOME LINE FREIGHT				900	900		900
LABOR ADDITIVE			9306		9306		9306
MATL STORE EXPENSE				231	231		231
OTM			412	476	888		888
RAIL	160.00	LF	558	1808	2366		2366
RDXING	32.00	TF	2434	4363	6797		6797
SALES TAX				458	458		458
TRK-SURF,LIN			2297		2297		2297
WELD			413	265	678		678
XTIE	50.00	EA	3500	4000	7500		7500
TOTAL TRACK & SURFACE			21910	19022	40932		40932
LABOR/MATERIAL EXPENSE			26370	19105			
RECOLLECTIBLE/UPRR EXPENSE					45475	0	45475
ESTIMATED PROJECT COST							
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

(O& SPO P;FONT 7;SCPI 15;SLM .50;EXIT;'

FORM 30-1

WORK ORDER AUTHORIZATION-DETAIL OF ESTIMATED EXPENDITURES

PROJ NO: 41978
A.W.O. NO: 05890
W.O. NO:
B.I. NO: 02EN10
STATE: CO
VAL SEC: 0502V

EST START: 01-01-02
EST COMP: 12-31-02

RAILROAD: UPRR CO.
LOCATION: MONUMENT,CO,PRIVATE COMM RD,CO SPRINGS
DEPARTMENT: ENGINEERING SERVICES SERVICE UNIT: 14

INSTALL PRIVATE CONCRETE COMMERCIAL CROSSING AT MP 52.42 IN MONUMENT,CO.
ON THE COLORADO SPRINGS SUB'D.
UNLOAD 1 CAR BALLAST AT CROSSING AND SURFACE THROUGH.
SURFACE - TRIVIEW METRO DISTRICT ST.OF COLORADO - 100% RECOLLECTIBLE

APPENDIX C
Letter of Credit

Date: April 21, 2004

Irrevocable Letter of Credit #_____

Beneficiary
United States Fish and Wildlife Service
C/O Regional Director, Region 6
134 Union Blvd., Suite 400
Lakewood, CO 80228-1807

Applicant
Forest Lakes, LLC
C/O Schuck Corporation
2 North Cascade Ave., Suite 1280
Colorado Springs, CO 80903

El Paso County, Colorado
C/O

Amount
USD $15,000
Fifteen Thousand & 00/100's US Dollars

Expiration

April 21, 2005

We hereby establish our Irrevocable Letter of Credit #_____ effective immediately, in favor of The United States Fish and Wildlife Service and El Paso County, Colorado ("Beneficiary") at the request and for the account of Forest Lakes, LLC ("Developer"), in the amount of and not to exceed U.S. $15,000 (Fifteen Thousand and no/100 Dollars), available to you by your sight draft or drafts drawn on us.

Each draft drawn under this Letter of Credit must be accompanied by:

A. The original of this Letter of Credit.
B. A notarized statement purportedly executed by the United States Fish and Wildlife Service stating that "The Developer has failed to perform in accordance with the terms of the United States Fish and Wildlife Service approved Mitigation Plan dated _____, according to approved success criteria as described in the Final EA/HCP for the Monument Creek Interceptor Tie-In along Jackson Creek, for certain property within the _____, Colorado, that the United States Fish and Wildlife Service is entitled to draw upon the Letter of Credit, and that the amount required to cure the Developer's failure to perform is $_____ (not to exceed $15,000.)"

Each draft drawn under this Letter of Credit must:

A. Be purportedly signed on behalf of the United States Fish and Wildlife Service or El Paso County, Colorado.
B. Be in the amount required to cure the Developer's failure to perform and the amount shall not exceed the aggregate of U.S. $15,000.
C. Bear on its face the clause "Drawn under Academy Bank Letter of Credit #_____ dated April 21, 2004.
D. Be presented for payment during regular business hours at our office located at Academy Bank, 2835 Briargate Blvd., Colorado Spring, CO 80920, Attn: Tony Bettis, no later than 2:00 P.M. on or before April 21, 2005, as such may be extended as specified below.

It is a condition of this Letter of Credit that it shall automatically be extended for twelve months from the present or any future expiration date unless 60 days prior to the expiration date we shall notify you in writing by certified mail or overnight courier service that we elect not to consider this Letter of Credit renewed for an additional period.

We hereby agree that drafts drawn under and presented in conformity with the terms of this Letter of Credit will be duly honored upon presentation to us.

Except as otherwise expressly stated, this Letter of Credit is subject to the Uniform Customs and Practice for documentary credits (1993 Revision), International Chamber of Commerce Publication 500 (The "Uniform Customs"). As to matters not governed by The Uniform Customs, they shall be governed by and construed in accordance with the laws of the State of Colorado including the Uniform Commercial Code in effect in the State of Colorado.

If you require any assistance or have any questions regarding this transaction, please call 719.472.9786.

Academy Bank

_____
Tony Bettis
Sr. Vice President

Letter of Credit Agreement

THIS AGREEMENT is made and entered into as of the 21st day of April, 2004, by and between Forest Lakes, LLC, C/O Schuck Corporation, 2 North Cascade Avenue, Suite 1280, Colorado Springs, CO 80903 and the United States Fish and Wildlife Service, C/O Regional Director, Region 6, 134 Union Blvd., Suite 400, Lakewood, CO 80228-1807 ('Service").

WHEREAS, Forest Lakes, LLC has posted Letter of Credit # _____("Letter of Credit") issued by Academy Bank ("Bank") for the benefit of the Service and El Paso County, Colorado with regard to the Service-approved Mitigation Plan dated _____ for certain property within _____, El Paso County, Colorado ("Mitigation Plan"): and

WHEREAS, the Letter of Credit has an expiration date of April 21, 2005 but is automatically extended unless the Bank provides written notice at least sixty (60) days prior to the expiration date it will not extend the Letter of Credit; and

WHEREAS, the Service has required, and Forest Lakes, LLC is willing to agree to a commitment on the part of Forest Lakes, LLC to post alternative security for completion of the Mitigation Plan, according to approved success criteria as described in the Final EA/HCP for the Monument Creek Interceptor Tie-In along Jackson Creek , in the event the Bank provides written notice of its intent not to extend the Letter of Credit.

NOW, THEREFORE, in consideration of the above-recited premises and other good and valuable consideration, the receipt and sufficiency of which are herby acknowledged, Forest Lakes, LLC agrees that if the Bank elects not to extend the Letter of Credit until April 21, 2006, Forest Lake, LLC shall provide alternative security for the completion of the Mitigation Plan.

EXECUTED as of the day and year written above.

Forest Lakes, LLC

By:_____
Name:_____
Title:_____

State of _____
County of _____

The foregoing document was executed before me this _____ day of _____, 2004 by _____ as _____ of Forest Lakes, LLC.

My Commission Expires _____

Notary Public: _____

APPENDIX D

Draft Deed Restriction

DRAFT

NOTICE OF RESTRICTION

NOTICE IS HEREBY GIVEN THAT:

FOREST LAKES, LLC, a Colorado limited liability company, is the owner of that certain real property more particularly described in **Exhibit A** (the "Property") attached hereto and incorporated herein. The Property is shown on the map attached as **Exhibit B** and incorporated herein. The Property is subject to a Habitat Enhancement, Restoration, Creation and Preservation of Preble's Meadow Jumping Mouse habitat along Jackson Creek, El Paso County, Colorado as stated in the **Revised Final Draft Environmental Assessment/Habitat Conservation Plan for the Issuance of an Endangered Species Act section 10(a)(1)(B) Permit for the Incidental Take of the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) for the Monument Creek Interceptor Tie-in along Jackson Creek, El Paso County, Colorado dated August 2004 (the "Plan")** prepared on behalf of **Forest Lakes , LLC,** by SWCA, Inc. for the United States Fish and Wildlife Service ("USFWS"). A Federal Fish and Wildlife Permit, No._____, was issued by USFWS on _____. Any purchaser of all or any part of the Property, or any person having interest in or proposing to acquire an interest in all or part of the Property, is hereby notified of certain development restrictions affecting the property, including the following, which are conditions of the Plan:

1. Except as explicitly described in the Plan, no alterations will occur in the area described as PMJM habitat areas (identified on the map attached as Exhibit B) that would adversely impact the PMJM's habitat, including, but not limited to, dumping or placing soil or other material, such as trash, mowing, removal or destruction of vegetation (with the exception of noxious weed control), excavation or removal of soil, and activities detrimental to flood control, water conservation or erosion control.

2. Except as otherwise explicitly described in the Plan, the only activities not prohibited on or within the PMJM's habitat are those associated with the mitigation and/or enhancement of the PMJM's habitat; installation and maintenance of the Monument Creek Interceptor Tie-in along Jackson Creek within the PMJM's habitat; and routine maintenance of the PMJM's habitat, all in accordance with the Plan.

3. Free roaming pets, including, but not limited to, domestic cats and dogs are prohibited on the Property.

4. A continuous fence will be maintained separating the Santa Fe Trail on the Property from the area described as PMJM habitat to provide controlled access. The Permit holder(s) will be responsible for maintaining the fence around the PMJM's habitat until such

time as the PMJM's habitat is transferred to another entity for long-term preservation in accordance with the Plan.

5. This restriction is in perpetuity and may not be removed or terminated as long as the PMJM is protected under the ESA, without the prior approval of the USFWS.

Executed this _____ day of _____, 2004

OWNER:

Forest Lakes, LLC, a Colorado Limited liability company

By: Chillicothe Properties, Inc., a Missouri corporation, a member

By: _____
Paul H. Shepherd, Vice-President

By: Schuck Forest Lakes, LLLP, a Colorado limited liability limited partnership, a member

By: Schuck Colorado, Ltd., General Partner

By: _____
William D. Schuck, President

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was acknowledged before me this _____ day of _____ 2004 by Paul H. Shepherd, as Vice-President of Chillicothe Properties, Inc., a Missouri corporation, as a member of Forest Lakes, LLC.

Witness my hand and official seal.

My commission expires:_____

_____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____ 2004 by William D. Schuck, as President of Schuck Colorado, Ltd., as General Partner of Schuck Forest Lakes, LLLP, a Colorado limited liability limited partnership, as a member of Forest Lakes LLC.

Witness my hand and official seal.

My commission expires:_____

_____
Notary Public

Figure 3. Construction Plan for the Monument Creek Interceptor Tie-in, El Paso County, Colorado.

JDS-HYDRO CONSULTANTS, INC.
545 East Pikes Peak Ave. Suite 300
Colorado Springs, Colorado 80903
(719) 227-0072

FOREST LAKES METROPOLITAN DISTRICT
MONUMENT CREEK INTERCEPTOR
AT JACKSON CREEK

SWCA
295 Interlocken Blvd., Suite 300
Broomfield, Colorado 80021
Phone 303.487.1183 Fax 303.487.1245

Figure 4. Mitigation Map for the Monument Creek Interceptor Tie-in Project, El Paso County, Colorado.

Figure 5. Locations of Mitigation Transects and Photo Points, El Paso County, Colorado.