

Appendices



Appendix A. Signed copy of General Agreement between The Nature Conservancy, the National Park Service, the U.S. Fish and Wildlife Service and the Forest Service

GENERAL AGREEMENT

between

The Nature Conservancy

and

the United States of America
(through its U.S. National Park Service
U.S. Fish and Wildlife Service
U.S. Forest Service agencies)

I. Definitions

- a. **Agreement** - this General Agreement between the TNC and U.S.
- b. **Amended Offer** - Agreement titled "United States Department of the Interior Amended Offer to Purchase Real Property", dated January 31, 2002.
- c. **FWS** - the U.S. Fish and Wildlife Service
- d. **NPS** - the U.S. National Park Service
- e. **Owners** - the joint undivided interest owners of the Remainder, namely The Nature Conservancy, and the United States of America.
- f. **Remainder** - the jointly owned portion of the Baca Ranch, excluding those lands lying southeast of Sand Creek, that property known as the "Sand Creek Annex" as described in Item 2(c), Attachment A, and that 10 acres conveyed to the Baca Grande Water and Sanitation district, consisting of 93,210 acres more or less.
- g. **TNC** - The Nature Conservancy represented herein by its Colorado field office.
- h. **U.S.** - the United States of America as represented by the FWS, consisting of the federal agencies which are designated within the Great Sand Dunes Park and Preserve Act of 2000, to be allocated lands within the Baca Ranch following its purchase by the federal government, namely the USFS, FWS, and the NPS.
- i. **USFS** - the U.S. Forest Service

II. Purpose

The purpose of this Agreement is to provide a framework for management of the Remainder while under joint undivided interest ownership on the part of the entities which are party to this Agreement. This Agreement is pursuant to and in fulfillment of section 8., Attachment A of the Amended Offer. The interim management goals of the Owners are to develop sustainable range management, explore cross boundary collaborative wildlife, fire and weed management, and review the water rights' uses and appropriations, in order to conserve the ecological resources of the Great Sand Dunes area through sound stewardship.

III. Application

This Agreement applies to the lands described as the Remainder in the Amended Offer, consisting of approximately 93,210 acres (see attached map). TNC will manage the Remainder and any Colorado State Land Board (SLB) lands leased for agriculture by Vaca Partners prior to sale of the Baca Ranch and assigned at closing, as a single unit.

IV. Management Structure

- a. TNC will serve as the manager of the Remainder, as long as it is held in undivided interest ownership by the Owners. Upon approval of this Agreement and transfer of land ownership to the Owners, TNC is authorized to implement management actions. TNC will schedule meetings of the Owners at least semiannually, to discuss management issues and to address any concerns.

TNC will also conduct additional meetings within 14 days of any such request, when called for by TNC or the U.S.

b. The FWS, NPS and USFS will be invited to attend and participate in semiannual and specially called meetings. However, for the purposes of business that must be conducted by telephone, email, and other means outside of such meetings, and in the case where consensus cannot be reached among the agencies and TNC, the FWS will serve as the official representative for the U.S.

V. Rules of Order

Management decisions that vary from or are not addressed in the Agreement, proposals by the U.S. or TNC for management actions, and resolution of conflicts that may arise, will be reviewed at ownership meetings. Approval for such actions will be by consensus. If consensus cannot be reached, the parties agree to submit such decision or conflict for mediation by a mutually-acceptable trained neutral third-party mediator in a good faith effort to reach consensus on such decision or conflict. If such mediation fails, resolution by the U.S. shall control.

VI. Uses

a. Leases – General

i. As Manager, TNC may issue leases for agricultural use, and for recreational uses that may include hunting, fishing, and/or hiking. Other additional uses may be approved by the Owners. TNC will also administer the existing contract for supply of domestic water with the Baca Grande Water and Sanitation District.

ii. TNC will provide the Owners with a proposed draft process for selection of a lessee(s). Following approval and implementation of this process, TNC will provide the Owners with a short list of prospective lessees for each lease. This list will be developed by TNC in consultation with the Owners prior to TNC granting final approval of a lessee(s).

iii. TNC will develop a draft lease containing all requirements, limits, restrictions, and provisions of operation. This draft lease will be reviewed and approved by the Owners prior to implementation.

iv. All leases will contain language providing for the termination of such lease, to occur no later than December 31 of the calendar year in which the Agreement expires (as defined in section IX below) or 120 days following the expiration of this Agreement (as defined in section IX below), whichever comes later.

v. Any proposed revocation, reassignment, subletting, or transfer of a lease must first be approved by the Owners.

vi. TNC will require a sufficient bond and/or insurance from all lessees, to provide reasonable funding for mitigation of any damage and/or default on the part of a lessee.

vii. TNC will develop and implement a monitoring plan to ensure that long-term ecological goals are met.

b. Agricultural lease(s)

i. It is the intention of TNC to assess the current ecological condition and develop a long-term grazing management program that best supports both the ecological features of the property and its agricultural uses.

ii. Following issuance of any lease, TNC will work with the lessee and the Natural Resource Conservation Service (or other agricultural planning entity), in consultation with the Owners, to develop a site specific agricultural management (including grazing) plan for the Remainder based on the management goals stated in section II above, and will provide sufficient resources and on-site coordination to assure compliance with the provisions of the plan.

- iii. The agricultural lessee(s) will be required to provide adequate fencing to prevent livestock trespass onto adjoining federal and private lands.
- c. Recreational lease(s)
- i. All permitted hunters will be accompanied by a representative of the lessee.
 - ii. Any limited access bull elk hunting leases permitted by TNC must provide at no charge, at least 10% of the available permits and/or opportunities, to the general public through a lottery system.
- d. Dispersal (cow) elk hunts
- i. A "Hunt Coordinated" program may be used, conducted by the Colorado Division of Wildlife, to control the elk population through harvest of cow elk. Such hunts will be reviewed and approved by the owners and coordinated with the recreational lessee.

VII. Oil, Gas, and Mineral Activities

- a. TNC will within 5 business days of receipt, notify and forward copies to the Owners, of any notifications, requests, and/or proposals received from private owners of oil, gas, or mineral interests underlying the Remainder, to explore, develop, or otherwise take any action related to such interests.
- b. During the pendency of this Agreement, nothing herein is intended to preclude the application of the respective regulations of the NPS, FWS or USFS to those lands to be administered by such agency in accordance with P.L-106-530, except to the extent that the application of such regulations is otherwise inconsistent with the terms of this Agreement. For example, the Parties hereto confirm their intention that the regulations set forth at 36 C.F.R. Part 9B shall apply to non-federal oil and gas operations taking place within the portion of those lands for which the United States holds an undivided interest and which are designated by Congress to be administered as a part of either Great Sand Dunes National Park or Preserve.

VIII. Access

a. Owners

Owners and their employees, invitees, and assigns, will be permitted reasonable access to the property for purposes of, research, monitoring, inventory, administrative use, and other legitimate, non-public purposes. With the exception of law enforcement and life/health/safety emergencies, the U.S. will coordinate its access to the Remainder with TNC at least 1 day in advance, providing information regarding the purpose, location, and intended duration of such visit. TNC may specify certain locations for certain periods of time, when no access will be allowed to prevent undue interference with lessee's activities (i.e. during and prior to elk hunting seasons). In addition to providing such 1-day advance notice regarding entry, the U.S. agrees that the U.S. use of any road on the Remainder that has been constructed by surface lessee Challenger Gold or Lexam (or their successors in interest) shall be restricted to administrative use only and only used when alternative access is impractical. For the purposes of this provision, administrative use shall include research, monitoring, inventory and other legitimate, non-public purposes.

b. Inholders

TNC will provide reasonable access to inholders who have no other reasonable alternative access, provided in no event shall use of any road on the Remainder that has been constructed by surface lessee Challenger Gold or Lexam (or their successors in interest) be required.

IX. Commencement/Expiration

- a. This Agreement shall commence upon the acquisition of the Remainder by the Owners.
- b. This Agreement shall expire upon the earlier to occur of:
 - i. the final real estate closing wherein the U.S. completes payment of the total property value as specified in the Amended Offer, or
 - ii. completion of a partitioning process as outlined in the Amended Offer, or
 - iii. mutual agreement of the Owners.

X. Key Officials

a. Local/Coordinating

i. For the NPS:

Steve W. Chaney
Superintendent,
Great Sand Dunes National Monument and Preserve

ii. For the USFS:

Tom Goodwin
District Ranger
Saguache District, Rio Grande National Forest

iii. For the FWS:

Mike Blenden
Manager
Baca National Wildlife Refuge

iv. For TNC

Brian McPeck
Southeast Colorado Program Manager

XI. Standard Clauses

a. Civil Rights

During the performance of this Agreement, the participants will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

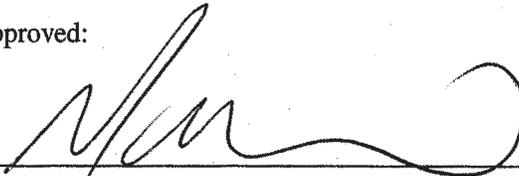
b. Anti-Deficiency Act - 31 U.S.C. §1341

Nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.

c. Officials Not to Benefit

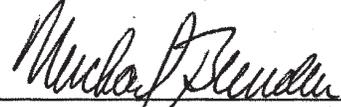
No member of, or delegate to Congress or Resident Commissioner shall be admitted to any share of any benefit that may arise from this Agreement.

Approved:



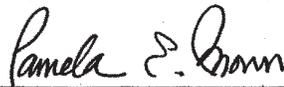
Mark Burget, Director,
The Nature Conservancy of Colorado

5/18/04
Date



Mike Blenden, Manager
Baca National Wildlife Refuge
U.S. Fish and Wildlife Service

6/7/2004
Date

for 

Peter Clark, Supervisor
Rio Grande National Forest
U.S. Forest Service

6/14/04
Date



Steve W. Chaney, Superintendent
Great Sand Dunes National Monument and Preserve
U.S. National Park Service

6/21/04
Date

FIRST AMENDMENT
TO
GENERAL AGREEMENT
between
The Nature Conservancy
and
the United States of America
(through its U.S. National Park Service
U.S. Fish and Wildlife Service
U.S. Forest Service agencies)

I. Definitions

Except as expressly defined herein, all capitalized terms shall have the meanings defined in that certain General Agreement between the TNC and U.S. dated September 10, 2004.

- a. Amendment – This First Amendment to General Agreement.

II. Purpose

The purpose of this Amendment is to amend certain provisions and extend the term of the Agreement for management of the FWS Lands after 100% of the interest therein has been conveyed from TNC to the U.S. This Amendment will survive the Amended Offer. The continuing management goals of the Owners are to develop sustainable range management, explore cross boundary collaborative wildlife, fire and weed management, and review the water rights' uses and appropriations, in order to conserve the ecological resources of the Great Sand Dunes area through sound stewardship. Further, this Amendment is intended to ensure a smooth transition in the management activities on the FWS Lands.

III. Application

This Amendment applies to a portion of the lands described as the Remainder in the Amended Offer defined herein as the FWS Lands and the Colorado State Land Board leases appurtenant thereto. The U.S. will manage the NPS Lands and the USFS Lands, and TNC will manage the FWS Lands, including the Colorado State Land Board leases. Some of the Colorado State Land Board leases are currently held by FWS, and therefore, TNC's management under this Amendment shall include the express authority to manage such lands under the Colorado State Land Board leases. TNC management of Colorado State Land Board leases

will be extended to individual leases as the leases are acquired by FWS for the duration of this agreement.

IV. Management Structure

- a. The U.S. will manage the NPS Lands and the USFS Lands for the term of this Amendment per the terms of the Agreement.
- b. TNC will remain the manager of the FWS Lands for the term of this Amendment per the terms of the Agreement, including the scheduling of meetings with FWS regarding the FWS Lands, as described therein.

V. Rules of Order

Management decisions that vary from or are not addressed in the Agreement or Amendment, proposals by the U.S. (or through NPS, FWS or USFS) or TNC for management actions, and resolution of conflicts that may arise, will be reviewed at ownership meetings. Approval for such actions will be by consensus. If consensus cannot be reached, the parties agree to submit such decision or conflict for mediation by a mutually-acceptable trained neutral third-party mediator in a good faith effort to reach consensus on such decision or conflict. If such mediation fails, resolution by the U.S. shall control; provided, however, that TNC's right to take any and all legal actions necessary to terminate any hold-over occupancy, as described in Section VI(II)a below, shall not be affected.

VI. Uses

- (I) TNC Management of FWS Lands.

TNC management of FWS Lands shall continue per the terms of the Agreement.

- (II) U.S. Management of NPS Lands and USFS Lands.

U.S. management of the NPS Lands and USFS Lands shall continue per the terms of the Agreement.

VII. Access

- a. Owners

Irrespective of the identity of the Manager, Owners and their employees, invitees, and assigns, will be permitted reasonable access to the property for purposes of, research, monitoring, inventory, administrative use, and other legitimate, non-public purposes. With the exception of law enforcement and life/health/safety emergencies, FWS will coordinate

Appendix B. Definitions of National Wetland Inventory Codes

NATIONAL WETLAND INVENTORY WETLAND TYPES AND CODES

PEMJ; Intermittently Flooded

PEMA; Temporarily Flooded

PEMC; Seasonally Flooded

PEMF; Semi-Permanently Flooded

PABF; Lake; Semi-Permanently Flooded

Descriptions for each segment of the Code

[P] Palustrine - The Palustrine System includes all nontidal wetlands dominated by trees, shrubs, emergents, mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean derived salts is below 0.5 ppt. Wetlands lacking such vegetation are also included if they exhibit all of the following characteristics:

1. are less than 8 hectares (20 acres)
2. do not have an active wave-formed or bedrock shoreline feature;
3. have at low water a depth less than 2 meters (6.6 feet) in the deepest part of the basin;
4. have a salinity due to ocean-derived salts of less than 0.5 ppt.

All water bodies visible on the aerial photography that are less than 8 hectares (20 acres) in size are considered to be in the Palustrine System unless depth information is available, or unless an active wave-formed or bedrock shoreline feature is visible.

Limits. The Palustrine System is bounded by upland or by any of the other four systems.

Description. The Palustrine System was developed to group the vegetated wetlands traditionally called by such names as marsh,swamp, bog, fen, and prairie, which are found throughout the United States. It also includes the small, shallow, permanent or intermittent water bodies often called ponds. Palustrine wetlands may be situated shoreward of lakes, river channels, or estuaries; on river floodplains; in isolated catchments; or on slopes. They may also occur as islands in lakes or rivers.

Class. Class describes the general appearance of the habitat in terms of either the dominant life form of the vegetation or the physiography and composition of the substrate. Life forms (e.g. trees, shrubs, emergents) are used to define classes because they are easily recognizable, do not change distribution rapidly, and have traditionally been used to classify wetlands. Other forms of vegetation such as submerged or floating-leaved vascular plants are more difficult to detect. Substrates reflect regional and local variations in geology and the influence of wind, waves, and currents on erosion and deposition of substrate materials.

[EM] Emergent - Characterized by erect, rooted, herbaceous hydrophytes, excluding mosses and lichens. This vegetation is present for most of the growing season in most years. These wetlands are usually dominated by perennial plants. All water regimes are included except subtidal and irregularly exposed.

Water Regime. Freshwater Non-Tidal areas (L, P, and R systems) Though not influenced by oceanic tides, nontidal water regimes may be affected by wind or seiches in lakes. Water regimes are defined in terms of the growing season, which we equate to the frost free period. The rest of the year is defined as the dormant season, a time when even extended periods of flooding may have little influence on the development of plant communities.

[J] Intermittently Flooded - Substrate is usually exposed, but surface water is present for variable periods without detectable seasonal periodicity. Weeks or months or even years may intervene between periods of inundation. The dominant plant communities under this regime may change as soil moisture conditions change. Some areas exhibiting this regime do not fall within our definition of wetland because they do not have hydric soils or support hydrophytes. In areas mapped as intermittently flooded, refer to regional guidelines for specific applications.

[A] Temporarily Flooded - Surface water is present for brief periods during growing season, but the water table usually lies well below the soil surface. Plants that grow both in uplands and wetlands may be characteristic of this water regime.

[C] Seasonally Flooded - Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing

season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.

[F] Semipermanently Flooded - Surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land's surface.

[AB] Aquatic Bed - Includes wetlands and deepwater habitats dominated by plants that grow principally on or below the surface of the water for most of the growing season in most years. Aquatic beds generally occur in water less than 2 meters (6.6 feet) deep and are placed in the Littoral Subsystem (if in Lacustrine System). Water regimes include the following: subtidal, permanent-tidal, semipermanent-tidal, irregularly exposed, regularly flooded, permanently flooded, intermittently flooded, semipermanently flooded, and seasonally flooded.

From:

Cowardin, L.M., V. Carter, F. Golet, and E. LaRoe. 1979.

Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish and Wildlife Service. 103 pp.

Appendix C. Interim Compatibility Determination, Colorado Division of Wildlife Dispersal Hunt Activities

COMPATIBILITY DETERMINATION

Dispersal Elk Hunt on

Lands Formerly Leased by Colorado Division of
Wildlife for Hunting

Baca National Wildlife Refuge

Use: Elk Hunting

Refuge Name: Baca National Wildlife Refuge

Establishing and Acquisition Authority:
Great Sand Dunes Park and Preserve Act of 2000,
Public Law 106-530.

Purpose for which Established:

The purpose of the Baca National Wildlife Refuge is to restore, enhance, and maintain wetland, upland, riparian and other habitats for native wildlife, plants and fish species in the San Luis Valley. Management of the refuge will emphasize migratory bird conservation and will consider the refuge's role in broader landscape conservation efforts.

National Wildlife Refuge System Mission: The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

Description of Use:

This Compatibility Determination only applies to lands currently owned by the Colorado State Land Board on the west side of Baca National Wildlife Refuge and will only come in to effect when ownership of these lands are transferred to the United States and managed by the U.S. Fish and Wildlife Service as part of Baca National Wildlife Refuge. See attached map.

This use is an elk hunting program conducted under the guidelines and authorities of the Colorado Division of Wildlife (CDOW). Section #271 "Big Game Animals Causing Damage and Big Game Populations Over Objective" is part of Article XII,

of the Colorado Wildlife Commission Regulations entitled "Special Hunting Seasons for Big Game Ungulates." This regulation authorizes the Director of Colorado Division of Wildlife to establish special hunting seasons for big game ungulates between August 15 and February 28 when necessary to control damage to property. Such a hunting season has been established for elk and is being conducted on state lands within the boundary of the Baca NWR.

The hunting covered by this Compatibility Determination will be designed to primarily contain elk populations east of highway 17 as it passes through Baca National Wildlife Refuge and secondarily to reduce the size of an elk population substantially over its desired objective level.

CDOW estimates the elk population in this game management unit to be 5,000 to 6,000 animals while the population objective is 1500. There is discussion concerning the appropriateness of the current population objective. The CDOW feels the population has grown so dramatically due to the hunting history on several large ranches on the east side of the San Luis Valley and the negligible harvest that has occurred on these ranches over the past 20 years. Baca NWR was established with the acquisition of one of these ranches.

One of the driving concerns of the community and CDOW is the liability associated with these animals if they increase use of an area just west of the Baca NWR that is managed intensively as high value cropland. Specific concerns are the impact and resulting devaluation of certified seed potato crops if spread of disease organisms is linked to elk movement through these fields. Such devaluation can easily approach \$250,000 per field per year.

As it is currently conducted the CDOW maintains a list of potential hunters that apply on a "first come first serve" basis. The agency also employs "hunt coordinators." These individuals are skilled in hunting practices and in supervising people to meet land and wildlife manager's needs. Their job is to coordinate with the landowner, neighboring landowners, the CDOW district wildlife manager, and potential hunters to achieve the distribution and population objectives of the specific hunt in a safe,

legal and orderly manner. When conditions warrant the hunt coordinator requests one or more hunters from the CDOW list to participate in a hunt, usually the next day. The hunt coordinator takes hunters out to the group of animals of concern and directs the hunter in his or her attempt to take one of the elk.

This is not a guiding service. The hunter is not assisted by the hunt coordinator but under his or her direction. The hunter is responsible for retrieval and must comply with the land owner's stipulations.

Anticipated Impacts of the Use:

There are beneficial and negative impacts of this use on the Baca NWR. Beneficial impacts include:

- 1) This is a practical and cost effective tool to strategically manage this elk population.
- 2) Although not a traditional hunt, it is a wildlife dependent public use that refuges are encouraged to facilitate.

Negative impacts include:

- 1) The normal disturbance to other species associated with any hunting activity.
- 2) Use of refuge roads and trails during wet periods will likely result in their deterioration.
- 3) This hunt is another activity that must be considered in day to day work on the refuge for the sake of not disrupting the hunt and to maintain safe operations.

Determination:

Use is compatible with the following stipulations.

Stipulations Necessary to Ensure Compatibility:

- 1) The hunt is coordinated by a CDOW contractor or employee.
- 2) The hunt coordinator is responsible for conducting hunts in a safe, professional manner while communicating to the refuge manager the timing of hunts, location of hunts, result of hunts, daily restrictions and problems encountered.
- 3) Annual (or more frequent as needed) planning takes place between refuge staff and the CDOW that outlines projected needs for the hunt based upon elk distribution and predicted movements.
- 4) Elk hunting will not conflict with ongoing or planned refuge operations.
- 5) It is clearly understood that the refuge manager can stop hunts at any time.

Justification:

Proper management of elk on the eastern side of the San Luis Valley is necessary to maintain sustainable population levels and control to some degree damage caused by elk on private lands. This kind of hunt is the best, viable alternative that can be immediately used to control elk movement while adding some level of mortality to this rapidly expanding population. This use will not materially interfere with or detract from fulfillment of the National Wildlife Refuge System mission and the purpose of the Baca National Wildlife Refuge.

Signature: Refuge Manager: _____
(Signature and Date)

Concurrence: Refuge Supervisor: _____
(Signature and Date)

Regional Chief: _____
(Signature and Date)

Mandatory 10- or 15- year Re-evaluation Date: _____