

**Written/Fax/E-mail Comments, Public Hearings on
11/7/07 Revised Proposed Rule for the Preble's Meadow
Jumping Mouse**

Updated 2/14/08

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January 22, 2008

Susan Linner
Colorado Field Office,
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Denver, CO 80225

Via Telefax: (303) 236-4005

Subject: Endangered and Threatened Wildlife and Plants; Revised Proposed Rule To Amend the Listing for the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) To Specify Over What Portion of Its Range the Subspecies Is Threatened (50 CFR Part 17)

Dear Ms. Linner:

These comments are submitted on behalf of Commissioners who are the elected local representatives from Albany, Converse, Goshen, Laramie and Platte Counties in the southeast Wyoming.

This area has a combined population of 146,628 and encompasses a geographic landmass of over 9,930,000 acres, which includes 100% of the critical habitat for the Preble's meadow jumping mouse (Mouse) that originally was designated in our State.

The Counties have actively participated throughout the U.S. Fish and Wildlife Service's (USFWS) decision-making on the Mouse and we appreciate the opportunity to provide these more detailed written comments that expand on the oral testimony we presented at the December hearing.

We commend the USFWS on a well-written Revised Proposed Rule that comprehensively details the standards the Service used to evaluate the populations of the Mouse and then applies the scientific data against those standards. We believe that it meets the requirements of the law and exceeds the goals of Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998.

Representatives of the Counties have reviewed the information submitted as part of the administrative record and it is clear the potential threats that were identified for the Mouse are far less severe in Wyoming than they are in the southern portion of the identified range.

Your Agency's November 7, 2007 Revised Proposed Rule specifically solicited "data, analysis and other comments" on seven specific questions.

In several instances, the counties have not conducted any data collection, so we are relying on the U.S. Fish and Wildlife's administrative record and other commonly accessed repositories of information for the basis of our responses.

1. What is the current range of the Preble's meadow jumping mouse? In the absence of confirmation of presence of Preble's meadow jumping mouse by trapping, what information is sufficient for the Service to determine that, based on the best data available, an area or is part of the current range of the subspecies?

The Service has done a good job of compiling and analyzing the data that was available at the time that the petition for listing was filed and the additional data that has been collected since the species was listed.

Therefore, we submit that the Service has met the requirements of the Endangered Species Act in making its determinations.

However, the process for the Mouse vividly demonstrates one of the key weaknesses in the Endangered Species Act. Once the petition to list the species was filed, the Service was forced to base its decision "solely on the basis of the best scientific and commercial data available", which subsequently proved to be inadequate.

This was confirmed by the Revised Proposed Rule which indicated that:

"At the time of listing, data confirming the presence of the Preble's meadow jumping mouse was available for only a few sites in Wyoming. Since listing, additional distributional data has verified that the subspecies is widespread in the North Platte River basin with distribution across at least four drainages".

And once the Preble's was listed, the problem was compounded by the necessity to designate critical habitat. This then prevented many of the private landowners in our counties from utilizing their own property — planned construction projects were postponed, and in some cases even cancelled; historic conservation practices were suspended; and management plans had to be rewritten.

Sadly, this scenario is not unique to the Mouse. Studies have shown that, nationally, 90% of critical habitat is found on non-federal lands and this is just one more example in a long line of costs that are misplaced. It is regrettable that those who are least able to bear these—the landowners—are forced to do so.

2. On how fine or course a scale should we define the portion of the range that we may specify as both significant and threatened?

We agree the intermediate scale that the Service uses is the best standard for determining both significant and threatened.

If the Service uses too precise a definition, it precludes their personnel from exercising the flexibility that is necessary to best manage the species but, at the same time, it still

provides the public, including the affected landowners, adequate notice of any habitat that should be protected.

If a course scale is used that includes the entire region in Colorado, it could trigger unnecessary costs and diminish the impact of ESA protections by creating a "cry wolf" dynamic that could desensitize the public to the impact of the ESA so that they might ignore the need to take the steps that are necessary to preserve the species. This could lessen the public's willingness to cooperate if there are any future ESA designations.

3. How should boundaries of the portion of the range at issue be defined?

In the majority of informal conversations that we have had with landowners who currently have designated habitat or who have land that could potentially be designated as "critical" at some future date, they generally agree that county/state boundaries would be the most readily recognized and easiest to work with.

As was discussed in question #2, a more precise scale could be utilized, but that may be counterproductive for the reasons previously stated.

4. Is it appropriate to use the Colorado/Wyoming border to divide the range of the subspecies?

Yes. See previous answers. The Service's projections are uniform in their conclusions that, in Wyoming, the potential threats will not increase in their severity to the degree that they will reach a significant level of concern.

The Revised Proposed Rule is consistent with our own indicator that we routinely rely upon which is that "a low projected human population growth rate is predicted for the four Wyoming counties [Albany, Converse, Goshen, Laramie and Platte] occupied by the Preble's meadow jumping mouse".

Thus, the two different management approaches, one for Wyoming and a different one for Colorado, that the Service proposes are well justified.

This is borne out by the fact that no formal section 7 consultations or HCPs were requested for either residential or commercial development in Wyoming.

The Proposed Rule concludes that development is a key factor in the decline of the Mouse and since the requirements that govern development are set by the individual counties and states, then it follows logically that the use of state and county political boundaries are the best way to define the species' range since zoning and other development-related requirements differ from one jurisdiction to another.

Moreover, every day federal, state and county jurisdictional boundaries are utilized for other purposes by the landowners in the identified range. Therefore, since landowners are accustomed to making decisions based on them, it makes good sense to continue these traditional patterns.

Any potential downside is counterbalanced by voluntary protections that landowners have already taken and will continue to ensure that the Mouse and its habitat are effectively protected in the State of Wyoming.

5. If we use a relatively coarse scale to define the current range of the subspecies, how should we address an area within that range if we have information suggesting that the subspecies does not currently occupy—or has never actually occupied—that particular area within its overall range?

Under the Proposed Rule, this seems to apply to Colorado more so than Wyoming. Therefore, we defer to the responses from the State of Colorado and to any Colorado counties who comment.

6 (a). If we determine to define the portion of the range specified as threatened as excluding areas (at the appropriate scale) that the best data available suggests are not currently occupied by the Preble's meadow jumping mouse, how should we do that?

See previous responses.

6 (b). Should such areas (for example, parts of the Denver metropolitan area) be mapped, or excluded by narrative text?

Since this seems to apply to Colorado more so than Wyoming, we defer to the responses from the State of Colorado and to any of its counties who comment.

6 (c). What sort of boundaries would be available for defining such areas as not part of the range specified as threatened?

See previous responses.

6 (d). What purposes would be served by adding to the complexity of the listing rule? What purposes would be served by reducing the complexity of the listing rule?

Since a key goal of identifying additional areas is to notify the public and specifically landowners, then every effort should be made to ensure the listing rule is as clear as possible. If necessary, you should error on the side of simplicity, unless there is direct evidence that that doing so will adversely affect the species.

7. Is it appropriate to aggregate all of the current range of the Preble's meadow jumping mouse in Colorado into one portion for the purpose of this analysis?

No. Because the ESA has no mechanism for reimbursement of costs related to the ESA, private landowners are forced to absorb them on their own, regardless of the ultimate decisions under the Act. These costs will continue to mount until the Preble's is delisted. Already, in some cases, the financial burden has been staggering.

Since the ESA is a federal law and recovering an individual species is a matter of general interest, then it should be a matter of public policy to spread the attendant costs to society as a whole. Therefore, in order to accomplish this goal, federal- and state-managed lands should be utilized for Mouse recovery, wherever possible.

We are pleased with the new discussion on the effects of grazing since we vigorously disagreed with the previous conclusions because they were based upon speculation stacked upon a foundation of assumptions – not on scientific facts.

The Proposed Revised Proposed Rule states that:

"As suggested by Bakeman (1997, p.79) and Pague and Grunau (2000, p. 1– 17), and as supported by the examples above, grazing is compatible with Preble's meadow jumping mouse when timing and intensity are appropriately managed. We now believe that agricultural operations have maintained habitat supportive of Preble's meadow jumping mouse populations are consistent with conservation and recovery of the subspecies".

We commend the Service for coming to the recognition that there is a positive interrelationship between grazing and providing habitat for the Mouse.

If they were not, then it is logical to conclude the Mouse would have not survived in Wyoming for the past 150 years during which livestock raising was such a key component of this State.

In Wyoming, even though the agriculture sector's traditional practices have been vindicated in the Revised Proposed Rule which states: "We now believe that agricultural operations that have maintained habitat supportive of Preble's meadow jumping mouse populations are consistent with conservation and recovery of the subspecies" -- the bell cannot be unrung on costs.

For its survival, the Mouse needs the support of landowners because there is no one more qualified to recommend management options, and even make the on-the-ground decisions, since they know the flora and fauna best because they live on their land every hour of every day.

We commend the Service on the exhaustive process that it used throughout the decision-making, including the Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, which utilized selected peer reviewers for their expertise in genetics, systematics (the science of dealing with the diversity of organisms), and small mammals.. It is another example of thoroughness that the Service used to carry out the mandates of the law.

The Counties have worked hard to provide information that will assist the Service in its decision making. Once the species was listed, the Counties began working with the University of Wyoming to identify and quantify both the direct and indirect costs of the critical habitat designation.

Moreover, the discussions that we had as we worked with the University of Wyoming researchers who gathered data for the study on the true costs of the critical habitat designation parallel the findings in the Proposed Rule which indicated that "[I]n Wyoming, given the small projected increases in the human population, we expect rural development will continue to have only small and localized impacts".

Evidence of this can be gleaned from the steadily increasing conservation easements which have been finalized in the State and in this region. These will ensure that specific parcels of land, and indeed entire ranches, will remain in their current state "in perpetuity" according to the laws and regulations that govern them. Attached please find the statistics from the Wyoming Stock Growers Association Land Trust (WSGALT), which are consistent with those of similar organizations.

In our five counties, the WSGLT alone has put more than 53,000 acres under conservation easements and its executive director, Glenn Pauley, indicated that he expects that figure to continue to increase.

The Counties will continue to educate and work with our departments and the private landowners within our borders to design projects that reflect both good conservation practices and sound economics.

We can't turn back the clock on this chapter of our history, but we urge Congress to use the lessons learned from the Mouse process to enact much needed and long overdue changes to the Endangered Species Act. Changes that effectively protect the truly imperiled species of this country but, at the same time, spread the costs of this burden in a more equitable manner.

Thank you.

Sincerely,

Joe Reichardt, Chairman

Platte County Commissioners

WSGALT Conservation Easements				
December 31, 2007				
Ranch Name, Landowner and Location	Acres	County Total	Number	Date Recorded
Albany County				
	1,120		1	12/29/2004
	2,278		1	12/22/2005
	9,579.65		1	10/25/2006
	1,280.00		1	12/31/2007
	640		1	11/27/2007
	185		1	12/28/2007
		15,083		
Carbon County				
	1,380		1	8/27/2002
	434		1	5/6/2003
	201.4		1	6/6/2006
	160		1	7/17/2002
	3,440		1	9/24/2002
	1,025		1	12/31/2007
	640		1	11/11/2007
	400		1	12/26/2001
		7,680		
Converse County				
	2,200		1	12/17/2002
	2,560		1	11/29/2005
		4,760		
Crook County				
	919		1	11/23/2007
	1,800			12/17/2007
		2,719		
Hot Springs County				
	640	640	1	7/29/2005
Washakie County				
	944		1	8/23/2007
	1200		1	8/23/2007
	1920		1	8/23/2007
		4,064		
Laramie County				
	640			12/31/2007
	33,383.06		1	12/23/2006
		34,023		
Lincoln County				
	67		1	10/25/2004
	179		1	6/29/1905
		246		
Natrona County				
	1580		1	10/3/2006
		1,580		

JAN 28 2008



Douglas County
Division of Open Space & Natural Resources

VIA FAX & US MAIL

January 22, 2008

Ms. Susan Linner
Field Supervisor
Colorado Field Office
134 Union Boulevard, Suite 670
Lakewood, Colorado 80228

Re: Douglas County's Comments on the U.S. Fish and Wildlife Service's Revised Proposed Rule to Amend the Listing for the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) To Specify Over What Portion of Its Range the Subspecies Is Threatened.

Dear Ms. Linner:

The Douglas County Division of Open Space and Natural Resources is pleased to submit the following in response to the U.S. Fish and Wildlife Service's (Service) request for comments on its proposed rule to amend the listing for the Preble's meadow jumping mouse (Preble's) to specify over what portion of its range the subspecies is threatened. (72 Fed. Reg. 62991, November 7, 2007). The comments provided below address the following topics: 1) Current and foreseeable land management practices and conservation efforts that support the long-term viability of Preble's and its habitat; 2) scale used to define significance and threats; 3) continuation of the amended special rules; and 4) the Service's approach to current and future block clearances.

1) Current and foreseeable land management practices and conservation efforts within Douglas County

The Service states, "In Colorado, the extent and pattern of conservation efforts in relation to PMJM distribution and the appropriate management of PMJM habitat would largely dictate the long-term viability of PMJM populations." (73 Fed. Reg. 63015) In Douglas County, ongoing local land conservation efforts by the County, Towns and other conservation organizations will continue to contribute to the long-term viability of Preble's through the foreseeable future. These conservation efforts have established and will build upon a significant network of preserved riparian corridors that assist in meeting the recovery goals outlined in the Service's 2003 Preliminary Draft Recovery Plan for Preble's. Examples of the riparian conservation efforts that contribute to the long-term viability of Preble's are described below.

a. Douglas County Habitat Conservation Plan

In 2006, the Service gave final approval to the Douglas County Habitat Conservation Plan (DCHCP). The DCHCP was the culmination of a lengthy effort undertaken by

100 Third Street, Castle Rock, Colorado 80104 303-660-7495 Fax 303-663-2064

Douglas County and the towns of Castle Rock and Parker to gain compliance under the Endangered Species Act (ESA or the Act) to conduct specified activities such as road widening, bridge replacement, trails maintenance and construction, and habitat improvement. The Service has found that implementation of the DCHCP and its associated minimization and mitigation measures will result in a net conservation benefit to Preble's in Douglas County. (USFWS Findings of Fact supporting approval of DCHCP).

The DCHCP established a threshold of habitat that may be permanently (308 acres) and temporarily (122 acres) impacted by the activities permitted under the DCHCP, and established a mitigation plan to compensate for the disturbance to potential Preble's habitat. As part of the DCHCP's habitat mitigation plan, Douglas County and the Towns of Castle Rock and Parker proactively preserved approximately 1,132 acres (defined in the DCHCP as the riparian conservation zone (RCZ)) or approximately 16 stream miles of Preble's habitat. As of this writing, very few of the anticipated impacts associated with the DCHCP have occurred while all of the 1,132 mitigation acres needed to offset the impacts associated with the DCHCP have been preserved. In addition, Douglas County has completed management plans that will benefit Preble's and its habitat for all of its mitigation properties, and by March 2008 Castle Rock and Parker will have completed management plans for all of their mitigation properties.

Information developed as part of the DCHCP has been beneficial in focusing conservation as well as avoidance of Preble's habitat. For example, while DCHCP does not cover activities conducted by those other than Douglas County and the Towns of Castle Rock and Parker, the information developed as a result of the DCHCP, particularly RCZ mapping, provides the public and project proponents with knowledge regarding the potential location and extent of Preble's habitat. This information is used to avoid impacts to and protect Preble's habitat through the development of appropriate land use plans. Maps of the RCZ are available for the public to use to help plan projects and ESA compliance. In addition, as discussed in more detail below, the Chatfield Basin Conservation Network used the RCZ as one element in identifying water and wildlife habitat resource protection zones within the Chatfield Basin.

b. Land Conservation

The County continues to work with landowners, conservation organizations and others to protect wildlife habitat throughout the County. As illustrated in Table 1 (attached), land conservation efforts in Douglas County have netted significant conservation benefit for Preble's and its habitat. RCZ already protected within the County provides substantial progress toward meeting recovery goals outlined in the Service's Preliminary Draft Recovery Plan. The Draft Plan calls for the protection of one large (encompassing at least a 50-mile connected network of streams that provide Preble's habitat) and one medium population (at least 10-miles of connected habitat). Currently in the Plum Creek watershed (the likely location of a large population), nearly 48 stream miles of Preble's habitat are protected. Of those, 30.35 stream miles are located in the southern part of the County and most contiguous. Similarly, protection efforts in the Cherry Creek watershed are well on the way to protecting a medium population with approximately 15.5 stream miles of Preble's habitat already protected.

The Service states in the Proposed Rule that occurrence within many of these stream reaches “has not been extensively documented” (72 Fed. Reg. 63014). However, the Colorado Natural Heritage Program estimated in 1995 that about “75 percent of the potentially suitable Preble’s habitat in Douglas County is occupied.”¹

c. Habitat Restoration

The County agrees with the Service that several efforts to restore degraded riparian habitats within Douglas County have occurred and have been successful. As stated by the Service, a half mile segment of habitat along East Plum Creek within the Town of Castle Rock appears to have increased vegetation cover and Preble's numbers (72 Fed. Reg. 63009). Similarly, recent projects on Cherry Creek have attempted to restore groundwater levels and downcut channels in or near Preble's by employing rock or sheet pile drop structures. The County has participated in a number of restoration efforts that benefit Preble’s and its habitat such as restoring flood damage on the Prairie Canyon Ranch and the Grange Property, and has enhanced habitat on the Greenland Ranch. In addition, Douglas County worked with the Colorado Department of Transportation near Deckers to restore flood damage on West and Horse creeks. The County seeks to continue to identify such opportunities to work with landowners to restore and enhance habitat.

d. Chatfield Basin Conservation Network Green Infrastructure Plan (2006)

The Chatfield Basin Conservation Network (CBCN) refers to both the collaborative efforts of a group of interested people and organizations, *and* a system of conservation and recreation areas, natural resources and important places within the Chatfield Basin. CBCN was established more than ten years ago and has grown in size with representatives of over 75 public and private agencies, organizations, and companies. Douglas County Division of Open Space and the Department of Community Development actively participate in and contribute financially to CBCN.

In 2006, the CBCN, with significant in-kind and cash contributions from Douglas County, completed its “Green Infrastructure Project: Conserving Connections for Nature and People.”² This report further honed CBCN’s prior efforts by prioritizing critical conservation and planning efforts within the Basin and identified opportunities and constraints to ensuring the protection of a functioning system of interconnected green infrastructure for the future.

Of particular interest to preserving habitat for Preble’s, CBCN used the DCHCP RCZ mapping to establish water resource protection and wildlife habitat conservation areas. The Division of Open Space and the CBCN are working vigorously with the Douglas County Department of Community Development to adopt the protection of these zones as part of the County’s overall Comprehensive Master Plan which is currently being revised. CBCN’s effort will continue regardless of the regulatory status of Preble’s because of the high priority and natural resource significance of riparian areas to water quality and wildlife within the Chatfield Basin.

¹ Pague, C.A. et. al. 1995. Natural heritage resources of Douglas County and their conservation: A report to the Douglas County Department of Planning and Community Development. Colorado Natural Heritage Program, Colorado State University, Fort Collins, CO.

² Chatfield Basin Conservation Network. CBCN Green Infrastructure System: Creating Connections for Nature and People. 2006.

e. Potential Impact Mitigation

Several water users within and outside of Douglas County are undergoing a process requesting the Army Corps of Engineers to reallocate a portion of the storage space within the Chatfield Reservoir. If approved by the Corps, water from the reallocation will likely inundate Preble's habitat within Chatfield State Park. It is anticipated that the effects of this action will be addressed through the ESA Section 7 consultation process. Although inundation of habitat will likely occur, opportunities may exist through the mitigation of these impacts to secure significant and currently unprotected Preble's habitat within the Chatfield Basin.

* * *

The locally based conservation efforts described above have had and will continue to have a significant positive impact on the conservation and long-term sustainability of Preble's and its habitat in Douglas County. These efforts are likely to continue in the future with wide spread support from Douglas County and its citizens. This support is reflected in public comments received by the County on issues as broad ranging as preserving more open space, comprehensive master planning, trails projects and other public works projects, as well as the importance of maintaining wildlife throughout the County.

2) The scale used to define the significance or protection status of Preble's

In the proposed rule, the Service states that it would be more difficult and provide minimal conservation benefit to split the subspecies into significant portions of the range based on river basins. Rather, the Service opted to split significant portions of the range based on the jurisdictional boundary between Colorado and Wyoming. Douglas County agrees that this approach is a viable option worth considering and urges the Service apply this reasoning to the portion of the Preble's range south of Denver either in its final rule or in the future as recovery goals are met. The County submits that with or without federal protection under the ESA, Preble's and its habitat will be protected through the ongoing conservation efforts described above, and such conservation efforts will provide for the long-term sustainability of Preble's within its range south of Denver.

3) Amended special rules related to Preble's in Colorado

On May 20, 2004 (69 Fed. Reg. 29101), the Service permanently extended the amended special regulations for Preble's related to rodent control, ongoing agricultural activities, landscape maintenance, existing uses of water, noxious weed control, and ongoing ditch maintenance activities. Douglas County supports the continued permanent application of these amended special regulations if the Service determines that Preble's will remain listed as a threatened species within Colorado.

4) Block Clearances

The Service's analysis and approach to the block clearances is reasonable and flexible. We support the Service's ability to maintain flexibility to "consider modifications of the current block-clearance zones, or the addition of new zones, when the available data demonstrate such an action is appropriate" (72 Fed. Reg. 63022).

In closing, we appreciate this opportunity to provide comments to the Service on its proposed rule and look forward to working with the Service on this and other issues.

Please feel free to contact me if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Matthews".

Cheryl Matthews
Director

Attachment (Table 1)

Table 1. Protected Properties by Watershed in Douglas County that Contain the Riparian Conservation Zones (RCZ) mapped by Douglas County.

East Plum Creek			
Property	Total Area (Acres)		
		RCZ Acres	Stream Miles
East Plum Creek			
Allis Property	148.0	17.4	0.0
Barber Property	156.3	23.0	.05
Christensen Property	313.0	149.5	3.4
Columbine Open Space	321.0	118.4	1.7
Douglas Heights	1075.0	0.01	0.0
Douglas Valley Estates	5.4	5.5	0.0
Greenland Ranch	17556.0	1333.7	14.5
Greenland Ranch Fee	3444.0	304.8	3.7
Greenland Townsite	18.0	3.5	0.0
J A Cattle Ranch	6200.0	389.7	4.5
Snortland Property	105.0	87.9	1.3
Spruce Mountain Easement	965.0	57.9	.7
Town of Castle Rock Open Space	827.0	15.1	.5
True Mountain	577	1.9	0
Totals	33022	2508.31	30.35
West Plum Creek/ Plum Creek Mainstem			
Property	Total Area (Acres)		
		RCZ Acres	Stream Miles
Allis Ranch Preserve	860.2	193.7	2.4
Belfield	113	17	.25
Brooks Ranch	1311.3	67.7	2.0
DOW Woodhouse	844.6	18.0	.3
Duncan Ranch	475.0	70.0	.7
Dupont Property	364.0	16.1	.3
Dupont Property Fee	506.0	277.3	1.8
Lambert Ranch	506.0	67.4	1.7
Nelson Ranch Fee	565.0	17.7	0.7
North Willow Creek Ranch	698.0	8.9	0.4
Perry Park Gateway	68.0	37.3	0.3
Pine Cliff	3559.6	231.0	3.9
Red Mesa Ranch	105.0	18.9	.3
Red Mesa Ranch Fee	245.0	19.6	0.5
Roxborough State Park	3309.9	93.8	1.8
Totals	13530.6	1154.4	17.35

Cherry Creek			
Property	Total Area (Acres)		
		RCZ Acres	Stream Miles
Castlewood Canyon State Park	1647.5	142.2	4.2
Cherry Creek Trail/Pfeifer Property	7.0	6.6	0.1
Gondolier Farms	289.0	101.3	1.5
Grange Property	652.5	47.8	0.8
Gryde Wetlands Easement	40.6	40.2	.6
Hope Springs	70.0	9.6	.2
Hungry Horse	160.0	12.7	0.0
Jones Ranch			0.2
Kmieciak	35		.125
Lake Gulch Open Space	790.0	182.6	1.4
Lake Gulch Open Space Fee	210.0	13.4	0.1
Lana	40	5.0	.125
Norton Property	75.0	17.4	.3
Spencer Property	364.0	159.6	1.2
State Land Board	2744.8	102.5	1.5
Town of Parker Open Space	1697.5	268.0	3.2
Totals	5881.3	748.5	15.55

JAN 22 2008

EL PASO COUNTY



COMMISSIONERS:
DENNIS HISEY (CHAIR)
JIM BENSBERG (VICE CHAIR)

SALLIE CLARK
WAYNE WILLIAMS
DOUGLAS BRUCE

BOARD OF COUNTY COMMISSIONERS

January 14th, 2008

Ms. Susan Linner, Field Supervisor
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P.O. Box 25486
Denver Federal Center

Re: Revised Proposed Rule to amend listing for Preble's meadow jumping mouse

Dear Ms. Linner:

Please consider this letter and the attached Resolution as El Paso County's official comment in response to the November 7th, 2007 Revised Proposed Rule to amend the listing for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Federal Register Volume 72, Number 215) to specify over what portion of its range the subspecies is threatened.

As stated in the attached Resolution, the Board of County Commissioners of El Paso County (hereinafter "BOCC") has taken numerous voluntary actions to preserve potential Preble's meadow jumping mouse (hereinafter "PMJM") habitat within our region. Many of the 342 parcels that El Paso County owns have been acquired for PMJM and/or wetlands habitat and mitigation purposes. Additionally, due to the nature of the El Paso County Mission and commitment to open space, it is unlikely that significant development will occur in the future on the remaining parcels that have not been specifically designated for PMJM or wetlands protection. Of these 342 parcels, 145 are within 300 feet of the 100-year flood plain, totaling 2,430 acres. A map identifying these parcels is attached as Exhibit A. The BOCC also has an active conservation easement program that has preserved 27 parcels totaling 2,203 acres for purposes including PMJM habitat and mitigation. Of these 27 parcels, 11 are within 300 feet of the 100-year flood plain, totaling 917 acres, thus protecting these upland and riparian areas from future development. A map identifying these parcels is attached as Exhibit B.

27 E. VERMILIO AVENUE
OFFICE: (719) 520-6414
WWW.ELPASOCO.COM



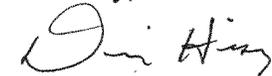
COLORADO SPRINGS, CO 80903
FAX: (719) 520-6397
DENNISHISEY@ELPASOCO.COM

These volunteer conservation measures instituted by El Paso County have been and will continue to be quite extensive. El Paso County is just one example of voluntary conservation efforts that have taken place along the Front Range in Colorado. We also know that Douglas County and Boulder County have instituted conservation measures to preserve PMJM habitat.

Moreover, if the Fish and Wildlife Service believes that the "lack of development in Wyoming" constitutes the basis for delisting the PMJM in Wyoming, we believe that same rationale must be applied to the delisting decision in Colorado, and our conservation measures taking place along the Front Range of Colorado must be considered to support delisting the PMJM in Colorado.

The BOCC of El Paso County strongly recommends that the PMJM be delisted in Colorado for the reasons stated in the attached resolution.

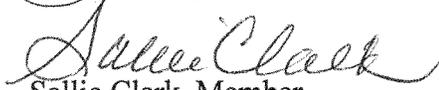
Sincerely,



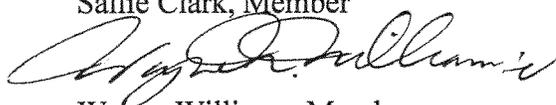
Dennis Hisey, Chair



Jim Bensberg, Vice Chair



Sallie Clark, Member



Wayne Williams, Member

* Douglas Bruce by Dennis Hisey

Douglas Bruce, Member

Board of County Commissioners of El Paso County

*Per authorization granted January 10, 2008

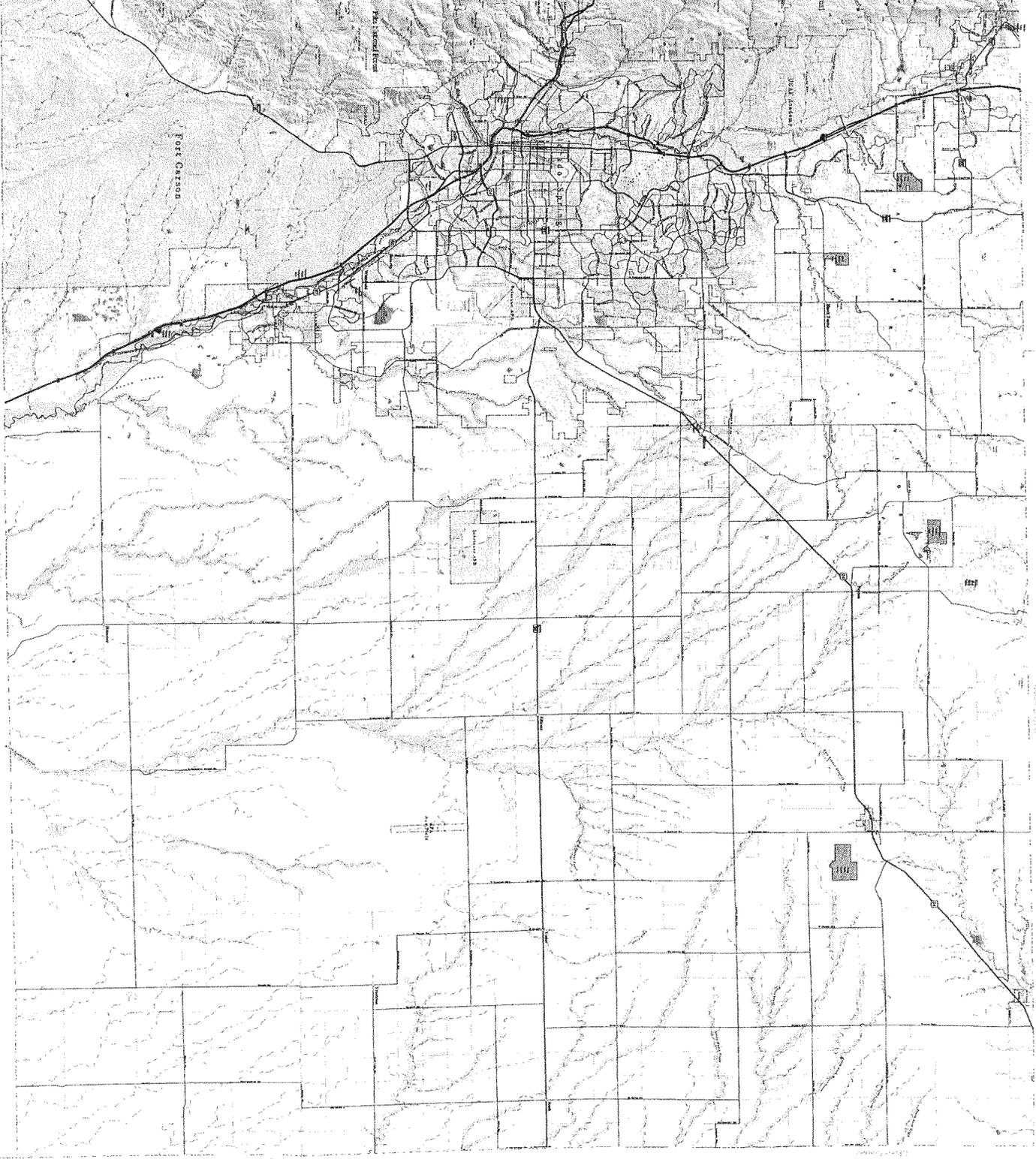
C: M. Cole Emmons, Assistant County Attorney

Jerry W. Haile, P.G. Director, Environmental Services Department

**Exhibit A -
El Paso County-Owned Parcels
Within The Potential
PMJM Habitat Zones
El Paso County, Colorado**

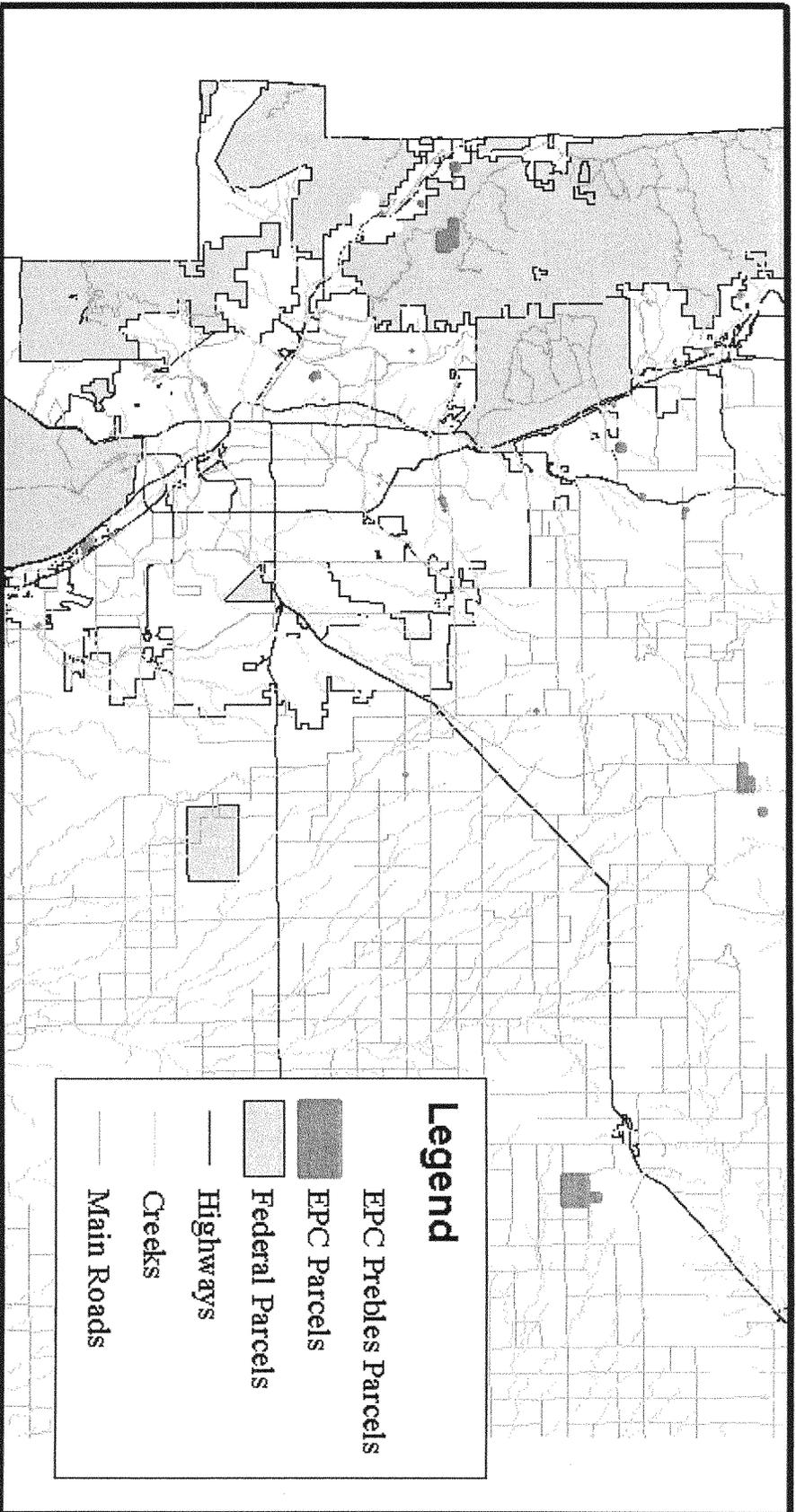
Legend

-  El Paso County Parcel Parcels
-  El Paso County Parcels
-  Colorado Parcels
-  Federal Parcels
-  300-Ft Buffer of 100-Yr Floodplain
-  US Interstate Highways
-  US Highways
-  Colorado State Highways
-  Major Roadways
-  Streets & Roads
-  Creeks - Perennial
-  Creeks - Intermittent
-  Lakes & Reservoirs
-  Unincorporated Towns
-  Incorporated Cities
-  Military Areas
-  Park Lands
-  Nat'l Forest Boundary
-  County Boundary



All El Paso County Owned Parcels: 267 Parcels - 4559 Acres
 El Paso County Owned Parks: 148 Parcels - 2420 Acres
 Colorado State Owned Parcels: 134 Parcels - 121,000 Acres
 Federally Owned Parcels: 134 Parcels - 121,000 Acres

Exhibit B



Legend

- EPC Prebles Parcels
- EPC Parcels
- Federal Parcels
- Highways
- Creeks
- Main Roads

El Paso County Monitored Easements



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RESOLUTION NO. 08-18

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO**

**RESOLUTION TO RECOMMEND THE DELISTING OF THE PREBLES MEADOW
JUMPING MOUSE IN COLORADO AND WYOMING AND DIRECTS THIS
RESOLUTION BE FILED WITH THE UNITED STATES FISH & WILDLIFE
SERVICE**

WHEREAS, the Board of County Commissioners of the County of El Paso ("Board") has the authority granted to it under the provisions of Section 30-11-107(1)(e), C.R.S., to represent the County and have the care of the management of the business and concerns of the County in all cases where no other provisions are made by law; and

WHEREAS, on May 13, 1998, the United States Fish & Wildlife Service ("Service") listed the Preble's Meadow Jumping Mouse ("PMJM") as a threatened species under the Endangered Species Act; and

WHEREAS, since 1998, El Paso County, along with the City of Colorado Springs, Colorado Springs Utilities, the Town of Palmer Lake, and the Town of Monument have worked diligently to develop a Regional Habitat Conservation Plan (RHCP); and

WHEREAS, listing of the PMJM has required local government agencies and private owners to incur a great deal of expense including, but not limited to, staff and consultant time, precious tax dollars, education, conservation efforts, trapping and data collecting in order to comply with the Service's requirements under the Endangered Species Act; and

WHEREAS, genetic analysis is only one determinative factor, and morphology and behavioral characteristics can also inform the question of taxonomy. We urge the Service to carefully consider the analysis and conclusions presented in both Dr. Rob Roy Ramey's and Dr. Tim King's genetics reports, and the resulting scientific peer reviews, as well as morphological and behavioral characteristics when deciding whether to delist the PMJM. Based on this information, the Board continues to support a decision to delist the PMJM; and

WHEREAS, on February 17, 2006, the Service published in the *Federal Register* (Vol. 71 FR 33, pg. 8556) a notice extending for six months its decision on the proposed delisting of the PMJM in Colorado and Wyoming and reopening the public comment period; and

WHEREAS, on November 7, 2007, the Service published in the *Federal Register* (Vol. 72 FR 215, pg. 62992) a proposal to remove PMJM populations in Wyoming from the list of species protected under the Endangered Species Act. The Service also proposed to amend the listing for the PMJM to indicate that the subspecies remain threatened in the Colorado portion of its range; and

WHEREAS, there being no evidence to the contrary, we believe there is a sufficient number of PMJM to sustain a viable population in Colorado; and

WHEREAS, the Service's proposal affirmed that the PMJM is a distinct genetic subspecies. Additionally, the Service concluded that PMJM populations in Wyoming were unlikely to become endangered in the foreseeable future while the loss of PMJM populations in Colorado as a result of habitat loss and modification would meaningfully decrease the ability to conserve the subspecies; and

WHEREAS, El Paso County has voluntarily implemented significant preservation measures along the Front Range. El Paso County, as well as several land trusts, has active conservation easement programs that have preserved numerous acres of riparian habitat within the county in perpetuity. El Paso County has also acquired and will continue to seek opportunities to preserve riparian habitat for open space and wetlands enhancement; and

WHEREAS, based upon the Service's revised proposed rule, it appears that El Paso County's active preservation measures have not been duly recognized and apparently received merit-less consideration than the "lack of development" situation which exists in Wyoming; and

WHEREAS, El Paso County, through its various departments, as well as private landowners in the county and others doing business in the county may and will have future and ongoing projects that would be hampered by the continued listing of PMJM; and

WHEREAS, the Board supports the proposed delisting of PMJM in Wyoming and has concerns that the Service is not applying consistent rationale to preservation measures that have been undertaken along the Front Range; and

WHEREAS, the Board urges the Service to consider the significant preservation measures that have taken place in El Paso County as well as the Front Range and continue to move to delist the PMJM across the entire range of Wyoming, as well as in Colorado.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of El Paso County, Colorado hereby formally recommends delisting of the PMJM in both Colorado and Wyoming, and directs that this Resolution be filed with the Service.

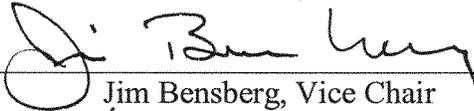
BE IT FURTHER RESOLVED that each member of the five duly elected and qualified members of the Board of County Commissioners hereby execute this Resolution with unanimous endorsement to emphasize that the PMJM is not endangered and should not be listed as endangered.

DONE THIS 10th day of January 2008, at Colorado Springs, Colorado

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**



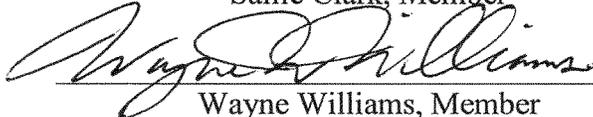
Dennis Hisey, Chair



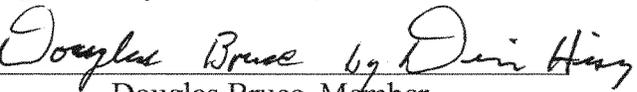
Jim Bensberg, Vice Chair



Sallie Clark, Member



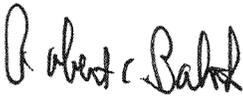
Wayne Williams, Member

* 

Douglas Bruce, Member

* Per authorization granted January 10, 2008

ATTEST:

By: 
County Clerk & Recorder





City of Boulder Open Space & Mountain Parks

P.O. Box 791, Boulder, CO 80306; 303-441-3440

www.ci.boulder.co.us/openspace/

December 14, 2007

Susan Linner, Field Supervisor
U.S. Fish and Wildlife Service
Colorado Field Office, Ecological Services
P.O. Box 25486, MS-65412
Denver Federal Center
Denver, CO 80225.

Subject: Comments from the City of Boulder Regarding the Revised Proposed Rule to Amend the Listing for the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) to Specify Over What Portion of Its Range the Subspecies is Threatened.

Please accept the following comments from the City of Boulder (COB) regarding the proposal to partially delist the Preble's Meadow Jumping Mouse (PMJM) from the list of threatened and endangered species.

Partial Delisting

The COB disagrees that a partial delisting of the PMJM will benefit the species or communities affected by its listing. Rather, the COB recommends that the FWS perform a uniform evaluation of the PMJM's conservation status and render a decision based on the animal's range wide status that it either remain on the list or be delisted. COB is not taking a formal position as to whether the species should or should not be delisted. The COB does, however wish to see uniform application of the Endangered Species Act with regards to this subspecies. The COB believes that a partial delisting cannot improve the conservation status of the subspecies. It further believes that a partial delisting will treat different communities inequitably with regards to the level of protections required – and costs associated with them - over different geographic areas. A partial delisting serves neither the subspecies nor communities that must labor with an undiminished regulatory burden in a smaller geographic area. Furthermore, the COB is concerned that a partial delisting has an air of political compromise that is only thinly, if at all, based on scientific analysis.

A partial delisting will shift the future analyses from determining where the best overall sites are for mouse conservation (for both dollar and conservation value) to the heavily populated

Colorado Front Range where conservation sites are fewer and the associated land and water costs are higher. This will undoubtedly delay overall recovery and place arbitrary constraints in front of those people charged with achieving the species recovery goals.

On the aggregate, species, subspecies, and distinct population segments are eligible for listing under the Endangered Species Act. For the PMJM, no distinct population segments that have been described, and given the continuing taxonomic uncertainty of the subspecies, it is imprudent to arbitrarily lift the listing in one area and while retaining it in another. The FWS provided no genetic or biological data to justify a finer conservation subdivision for the PMJM, and should not base a delisting decision on what appear to be arbitrarily chosen political boundaries. Rather, as stated above, the COB encourages the FWS to render a decision that the listing should either stand or fall based on an evaluation of its range wide status.

Boulder County HCP

The FWS wrote that the draft Boulder County HCP appears to be “on hold” (Federal Register, Revised Rule, p. 63014). Perhaps a better phrasing is that the COB and Boulder County are taking a “wait and see” position on completing the HCP while the US FWS works to resolve uncertainty over the petitions to delist based on subspecific status and population numbers. The COB believes that instead of completing an HCP now to gain an uncertain conservation benefit, that its resources are better used to continue purchasing lands for open space that have known riparian conservation values. When the US FWS resolves questions regarding the PMJM status, the COB will determine its next appropriate steps toward the draft Boulder County HCP.

Thank you for the opportunity to comment on this proposed action.

With best regards



Robert Crifasi
Water Resources Administrator
Open Space and Mountain Parks
City of Boulder



RECEIVED

JAN 24 2008

John A. Kolanz
Environmental and Water Resources Counsel

January 22, 2008

Ms. Susan Linner, Field Supervisor
Colorado Field Office, Ecological Services
P.O. Box 25486,
MS-65412
Denver Federal Center
Denver, Colorado 80225

Via Electronic and U.S. Mail

Re: Proposed Rule to Specify Over What Portion of Range the Preble's
Meadow Jumping Mouse Is Threatened

Dear Susan:

This letter presents the City of Greeley, Colorado's comments on the United States Fish and Wildlife Service's ("USFWS" or "Service") proposal to amend the listing for the Preble's meadow jumping mouse ("Preble's" or "mouse") to specify over what portion of its range the subspecies is threatened ("Proposal"). *72 Fed. Reg.* 62992 (November 7, 2007). In general, the Proposal would retain threatened status for the mouse in that portion of its current range in Colorado, while removing threatened status for the Preble's in that portion of its current range in Wyoming. The Proposal would directly affect Greeley operations related to providing drinking water to its citizens.

Greeley's interest in the listing of the Preble's is well known to your office. For over 100 years, Greeley citizens have relied on the Cache la Poudre River for high-quality drinking water. The City must continue such reliance on the Poudre to meet future drinking water needs. Greeley has been concerned that the Service's designation of Preble's critical habitat along the Poudre, and specifically its North Fork, will unnecessarily burden Greeley's efforts to serve its citizens, but result in no additional benefit to the mouse.

This concern prompted Greeley to file suit in August 2003 challenging the Service's critical habitat designation. That suit has been stayed pending resolution of the listing status of the mouse. Under the Proposal, the critical habitat previously designated in Colorado would remain unchanged. Greeley continues to believe strongly that the designation of critical habitat in and along the North Fork, especially within the footprint of the proposed expansion of Milton Seaman Reservoir, was neither legally supported nor scientifically justified.

The Service is proposing to modify the listing for Preble's pursuant to Section 3 of the Endangered Species Act ("ESA"), which defines "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." 16 U.S.C. § 1532(20). USFWS interprets this provision to allow the listing of a species throughout only a portion of its current range. The Draft Recovery Plan for the mouse states the Service's belief that adequate numbers, sizes, and distribution of populations may currently exist to meet recovery criteria for Preble's. Draft Recovery Plan Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) November 5, 2003, ("Draft Recovery Plan") p. iv. *See also, Id.* at 19 and 29. The Proposal reflects the Service's determination that, while perhaps sufficiently abundant in Colorado, Preble's faces threats that could reduce such abundance in the foreseeable future.

The ESA contains significant authority to conserve threatened or endangered species. Along with this authority comes the substantial capacity to create unintended (from the perspective of the Act's purpose) and significant burdens on other legitimate societal pursuits. Broad brush administration of the ESA increases such burdens (but not necessarily the protection of the species), and fuels criticism of the Act. Given this, and the finite resources available for species protection, it is incumbent upon the Service to focus the Act's protections where absolutely needed.

In light of the foregoing, Greeley offers the following comments:

- 1. Even assuming the Service's decision to list Preble's over only a portion of its range is appropriate based on identified threats to the mouse, the Service should more accurately tie the boundaries of the range to the purported threats.**

Defining an area for scientific purposes by drawing lines along political boundaries is inherently suspect since the natural world does not respect such boundaries. Until this Proposal, the Service had focused on hydrological units for Preble's conservation. *See e.g.*, Critical Habitat for Preble's Meadow Jumping Mouse, Final Rule, 68 *Fed. Reg.* 37276, 37315-32 (June 23, 2003); Draft Recovery Plan, p. 20. This is an appropriate approach since Preble's is a riparian-associated subspecies. Draft Recovery Plan at 20. The Service did not adequately support its decision to diverge from this established approach in its proposal to draw the northern boundary for the Preble's listing neatly along the Colorado-Wyoming border.

Drawing distinctions along state boundaries can make sense if state law offers different levels of protection (or poses different threats) to a species. The Service identified such a scenario when it recently proposed to delist the Northern Rocky Mountain gray wolf population over most of its range, with the potential exception of Wyoming, due to lack of a law in Wyoming that assured adequate protection against

human-caused mortality of the delisted wolf populations. *72 Fed. Reg.* 6106 (February 8, 2007). In fact, then-existing Wyoming law classified the wolf as a “predator animal” in many instances, a status that would allow wolves to be taken by anyone, at any time, without limit, and by any means. *Id.* At 6128-9. In such a case, the threat to an individual wolf *does* change when that wolf crosses the state line.

The Service identifies a decline in the extent and quality of Preble's habitat as the primary threat to the subspecies. *72 Fed. Reg.* at 63004. The Service ties such decline in Colorado to development activities. *See id.* at 63017. However, the Service does not cite any Colorado laws that enhance such development threat in Colorado over that which exists in Wyoming. Rather, the Service relies on trends to predict that growth rates in Colorado will outstrip those in Wyoming, and thus concludes that Preble's habitat faces a bigger threat in Colorado than in Wyoming.

While this may accurately describe portions of the Front Range, it overlooks the fact that the ecological condition of Northern Colorado and Southern Wyoming is essentially identical. Indeed, absent street signs or global positioning aids, one traveling north-south between the two states would be hard pressed to say when he crossed the political dividing line. Moreover, extensive areas of public and protected private lands in Northern Colorado, specifically within the Cache la Poudre River Basin, will limit future development.

USFWS recognizes in the Draft Recovery Plan the benefits of utilizing public property for mouse recovery since it reduces conflict between private landowner interests and land management strategies for Preble's conservation, and that such conflict reduction may increase support for recovery efforts. Draft Recovery Plan at 27. The Service in its Proposal recognizes that Federal land management agencies, through their regulations, policies, and management plans, can prioritize conservation for species of concern. *72 Fed. Reg.* at 63013. (Service personnel even acknowledged this in the question and answer session at the December 10, 2007 open house on the Proposal.) However, the Service disregards these facts and lumps the extensive federal lands in Northern Colorado into the same category as Front Range areas in the path of development in terms of threats to Preble's habitat. This is simply not reality.

In a letter dated June 1, 2004 to USFWS in support of delisting the Preble's, the State of Colorado reviewed comprehensively the conservation measures in the State that would likely remain in place even without threatened status for the mouse under the ESA. June 1, 2004 letter from Russell George, Colorado Department of Natural Resources to Susan Linner, USFWS. The list is extensive, but in the Proposal the Service dismisses these measures without analysis by stating that the conservation value of many of the projects is uncertain since most were developed without specific consideration of the mouse. *72 Fed. Reg.* at 63014. This ignores the fact that if such efforts limit development in mouse habitat, they squarely address the major threat to the mouse that

the Service has identified. USFWS has a responsibility to analyze the beneficial effects of Colorado's conservation measures.

The mouse clearly does not face a homogenous threat across its Colorado range. In particular, conditions affecting the mouse in Northern Colorado closely resemble those in Wyoming. Northern Colorado shares several common drainage basins with Wyoming. In fact, a portion of the Cache la Poudre North Fork basin extends into Wyoming. Attachment 1 contains a map (currently in draft) showing federal and other protected lands within the North Fork Cache la Poudre River Critical Habitat Unit.

USFWS should more precisely identify the portion of the mouse's Colorado range over which it is threatened by reference to specific drainage basins. The Service should exclude from this range the entire Cache la Poudre drainage down to the mouth of the Poudre Canyon. The portion of the Poudre River watershed above the canyon mouth is sparsely developed (similar to Wyoming) and has an extensive network of protected lands. (In fact, it appears that there are more federally protected lands over the mouse's range in Northern Colorado than in Southern Wyoming.) Preble's within this area do not face the same long-term threats the Service has identified throughout other portions of Colorado's Front Range. Downstream of the canyon mouth, through Bellvue, LaPorte, and Fort Collins, threats from current and future development increase.

2. In light of the Proposal and recent developments, the Service should reevaluate its critical habitat designation for Preble's.

The Service issued a final rule designating critical habitat for the mouse in June 2003, which encompassed a significant area in Wyoming. 68 *Fed. Reg.* 37276. The Proposal would remove the listing for the mouse in Wyoming, and thereby also eliminate the designated critical habitat in that State. It does not necessarily follow that the critical habitat USFWS designated in Colorado in its June 2003 rulemaking is still relevant and appropriate under the proposed revised listing. Moreover, the Service has recently announced that its review of the June 2003 rulemaking has found potential irregularities. November 23, 2007 letter from Kenneth Stansell, USFWS, to the Honorable Nick J. Rahall, II (Attachment 2). Information gathered since the original critical habitat designation rule, the proposed new status of the mouse in Wyoming, and recent developments concerning the critical habitat rulemaking itself require the Service to reevaluate its critical habitat designation in Colorado to determine whether areas should be added or removed.

3. USFWS has raised an important new issue about the status of the mouse in Colorado, and should provide more time to adequately evaluate this issue.

After years of focusing on genetics to evaluate the listing status of Preble's, the Proposal shifts the evaluation to threats to the mouse. As noted above, the Proposal

reflects USFWS's determination that, while relatively abundant in Colorado, development in this State threatens the mouse in the foreseeable future.

The Proposal leaves insufficient time for Colorado entities to react to the change in focus for the listing analysis. The comment period falls wholly within Preble's hibernation period so no new studies can be performed. Moreover, the Proposal leaves no time for the State and other interested parties to explore additional means, if necessary, of addressing potential threats to the mouse and avoiding listing entirely.

Given the significant programs and efforts already in place that would benefit the mouse (as delineated in the June 1, 2004 letter from Russell George identified above), the relative abundance of Preble's in Colorado, and the discrete threat to Preble's identified in the Proposal, conserving the mouse outside of the context of the ESA should be relatively easy and cost effective. This would complement recent Service efforts to work with states and other interests to protect species before they are imperiled. It would also allow the Service to focus its scarce resources on other species.

To meet its court-imposed obligations, the Service can issue its decision on the status of the mouse in Wyoming by the June 2008 deadline. To ensure that the status of Preble's in Colorado is adequately analyzed, however, the Service should allow the State and interested parties sufficient time to demonstrate that other means exist to conserve the mouse. Given the considerable time and effort the Service and interested parties have already expended on the status of the mouse, this is the prudent course of action. Preble's seems to be the ideal candidate for protection outside of the context of the Act.

4. The Service incorrectly stated that one option being considered for Greeley's proposed expansion of Milton Seaman Reservoir would inundate about seven miles of Preble's critical habitat.

In the preamble to the Proposal, USFWS mentions the proposed expansion of Halligan and Milton Seaman reservoirs as part of the Halligan-Seaman Water Management Project ("HSWMP"). *72 Fed. Reg.* at 63009-10. In this discussion, the Service states that the currently favored option to expand Milton Seaman Reservoir would inundate about 2.5 miles of Preble's critical habitat and that another option under consideration would inundate about seven miles.

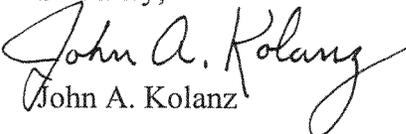
Greeley's preferred alternative to meet its future water needs involves expanding Milton Seaman Reservoir to an extent that would inundate about 2.5 miles of Preble's critical habitat. This proposal is currently under consideration for a permit from the Army Corps of Engineers. Greeley has never proposed, nor is any alternative being currently considered, that would inundate more than about 2.5 miles of Preble's critical

habitat.¹ The Service's statement in the preamble that an "option being considered would inundate about ... [seven miles]" is not accurate. (Presumably this information came from past exploratory studies for reservoir expansion outside of the HSWMP context. Various entities have considered expanding Milton seaman reservoir over the past 45 years.)

Greeley considers HSWMP to be a sound proposal from ecological standpoint as well as a water management perspective. HSWMP proponents have engaged interested parties in a Shared Vision Planning process led by the Corps to explore ways of maximizing the positive ecological aspects of the Project. This Shared Vision Planning has made the permitting process for HSWMP nationally significant.

Greeley is rightfully concerned that the Service's inaccurate statement in the preamble, noted above, will damage Greeley's efforts to reach out to interested parties through the Shared Vision Planning process. The City, therefore, requests the Service to specifically address this inaccuracy in the final rule Preamble, and to clarify this inaccuracy in any response to inquiries from interested parties that it may receive in the meantime.

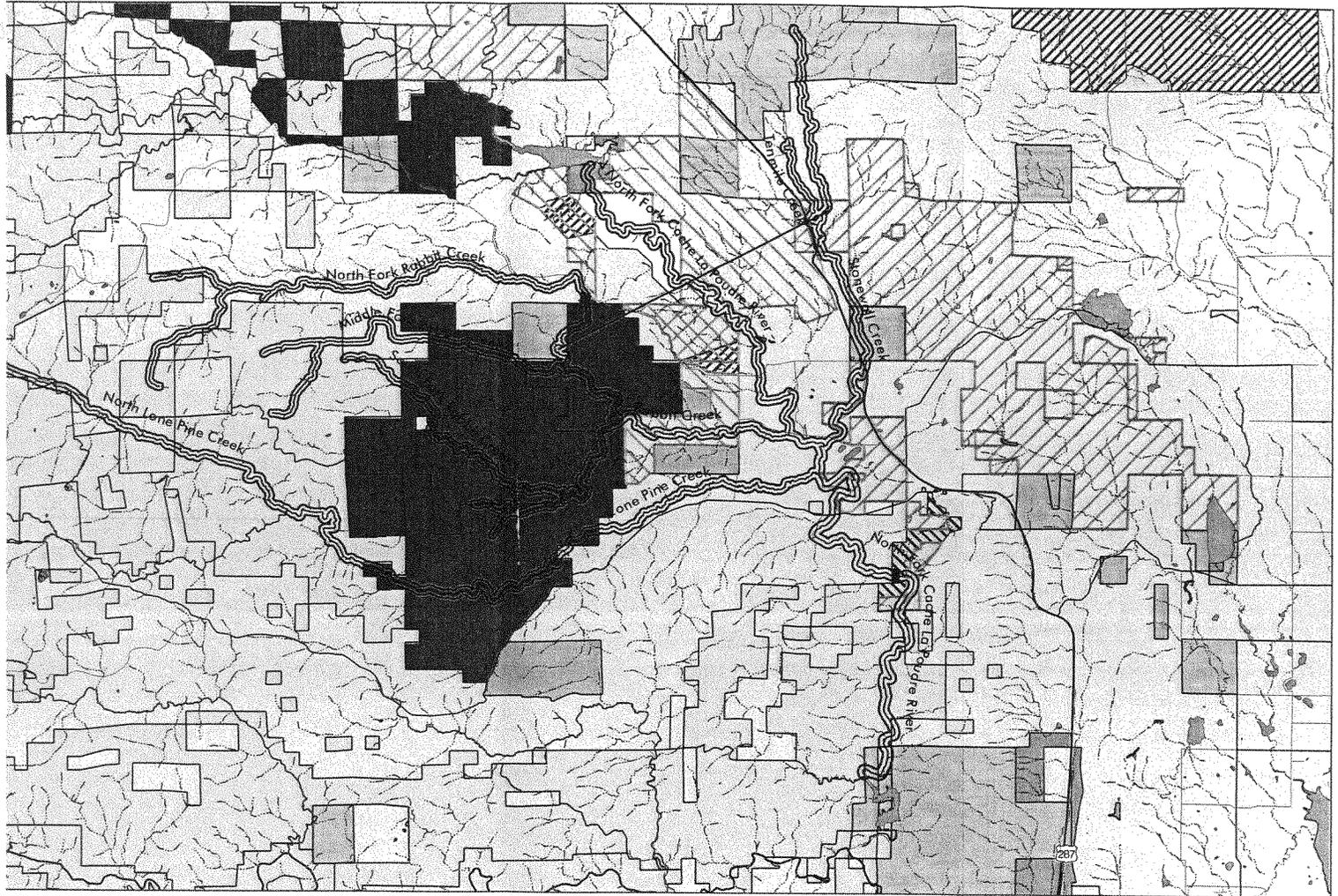
Thank you for this opportunity to comment on the Proposal. Please contact me if you have any questions or require any additional information regarding this matter.

Sincerely,

John A. Kolanz

cc: Jon G. Monson, P.E.
Director, Water and Sewer Department
Kevin T. Traskos, Esq. (U.S. Mail)

¹ It is possible that the Corps could require Greeley to include an "environmental water account" in an enlarged Milton Seaman Reservoir as mitigation for the project, which would inundate more critical habitat than proposed. However, such scenario is purely speculative.

ATTACHMENT 1



- Owner**
- U.S. Forest Service
 - Other State Land
 - Special District
 - Private
 - Land Trust
 - City and County
 - Colorado Division of Wildlife
 - Bureau of Land Management

¹Livemore HCP - 2005
²Colorado Ownership Management and Protection (COMap) - 2006

DRAFT



Map 2
Protected Lands within North
Fork Cache La Poudre River
Critical Habitat Unit

File: 4003 critical_habitat_overview.mxd
 December 10, 2007

ATTACHMENT 2



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



In Reply Refer To:
FWS/AEA/033829

NOV 23 2007

The Honorable Nick J. Rahall, II
Chairman
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your interest in the U.S. Fish and Wildlife Service's (Service) review of certain Endangered Species Act (ESA) decisions overseen by former Deputy Assistant Secretary Julie MacDonald. As you know, on July 20, 2007, the Service announced that it would review eight ESA decisions that may have been inappropriately influenced by the Deputy Assistant Secretary. This review was undertaken after questions were raised about the integrity of scientific information used and whether the decisions made were consistent with the appropriate legal standards.

The Service has completed its review of these eight decisions under the ESA. Based upon our review, the Service has determined that revisions should be made for the following species:

White-tailed prairie dog 90-day finding

After review of the 90-day finding which determined that the petition did not contain substantial information indicating that listing may be warranted, the Service believes that this decision should be reconsidered. Consequently, the Service will complete a 12-month finding in fiscal year 2009, if funding is available.

Canada lynx final critical habitat

Consistent with a declaration filed with the Federal District Court of the District of Columbia, the Service will complete a new proposed rule designating critical habitat for the Canada lynx by August 2008. Beginning on February 1, 2008, the Service is required to provide status reports to the court on our progress.

Preble's meadow jumping mouse proposed delisting

On November 1, the Service announced that it would withdraw its proposed delisting rule for the Preble's meadow jumping mouse. The Service's proposed rule to amend the Preble's meadow jumping mouse listing and to specify over which portion the subspecies is threatened was published on November 7, 2007. The Service anticipates that a final listing rule will publish in June 2008.

**TAKE PRIDE
IN AMERICA** 

The Honorable Nick J. Rahall, II

2

Preble's meadow jumping mouse critical habitat

Once a final listing rule is issued, we anticipate reviewing the final critical habitat designation and, if necessary, proceeding with a revision when funding is available.

Hawaiian picture-wing flies critical habitat

The Service has completed a rule to re-propose critical habitat for 12 species of picture-wing flies. The new proposed rule has been delivered to the Federal Register.

Arroyo toad critical habitat

The Service believes that the final critical habitat designation should be revised. We will proceed with this revision as funding is made available.

California red-legged frog critical habitat

The Service believes that the final critical habitat designation should be revised. We will proceed with this revision as funding is made available.

The Service believes that revising the seven identified decisions is supported by scientific evidence and the proper legal standards. As resources allow, these revisions will be completed as expeditiously as possible.

With respect to the Southwestern willow flycatcher, after coordinating among the Service's offices in Regions 2, 6, and California-Nevada Operations, the Service does not recommend revision of the final critical habitat designation. We believe that the 29 kilometer radius used to measure the range of the flycatcher movements and its site connectivity is scientifically supportable.

We appreciate your continued interest in the administration of the Endangered Species Act. If you have further concerns or questions, please do not hesitate to contact me directly at (202) 208-4545.

Sincerely,



Acting DIRECTOR



SOUTH METRO WATER SUPPLY AUTHORITY

8400 East Prentice Avenue
Suite 1500
Greenwood Village, CO 80111

Phone 303 409 7747
Fax 303 409 7748

January 22, 2008

Ms. Susan Linner
Field Supervisor
Colorado Field Office
Ecological Services
U.S. Fish and Wildlife Service
P.O. Box 25486, MS-65412
Denver Federal Center
Denver, CO 80225

Dear Ms. Linner:

I am writing in regards to the U.S. Fish and Wildlife Service ("USFWS") Revised Proposed Rule to delist the Preble's Meadow Jumping Mouse ("Preble's") in Wyoming only under the Endangered Species Act ("ESA"). Both the South Metro Water Supply Authority ("SMWSA") and many of our members are involved in the reallocation of Chatfield Reservoir. One challenge in this project has been mitigating for Preble's habitat. I am writing to oppose the Revised Proposed Rule to delist the Preble's Meadow Jumping Mouse in Wyoming but not in Colorado. I also request you extend the comment deadline 90-days so that all relevant information can be reviewed and commented on.

As scientific knowledge has developed, so have the misgivings of the data at the time of Preble's listing. Habitat, genetic differences and population size have all been challenged with recent scientific data. The USFWS listed Preble's as threatened in 1998 based on two basic propositions: (1) Preble's was physically distinct from other subspecies of meadow jumping mice; and (2) Preble's populations had declined over a significant portions of its range. Scientific evidence has proven both of these propositions to be false.

At the time of listing, the mouse was documented at only 29 sites. Today, it has been found at no fewer than 132 sites. Additionally, survey work on the mouse has resulted in the discovery of significant additional populations and has greatly expanded the documented distribution of Preble's. A distribution, abundance and data trend on the mouse demonstrates ample populations throughout an expansive range. Even if the mouse was a valid subspecies, the alleged threats to the species do not occur over a significant portion of its range. There no longer remains a valid argument for Preble's to remain listed under the ESA within Wyoming or Colorado.

The Chatfield Reallocation project proposes a change in pool elevation from 5432 ft to a maximum elevation of 5444 ft. Originally constructed for flood control storage, Chatfield Reservoir has developed in importance for recreation, water storage as well as emergency flood control storage needs of Front Range residents. Recognition of additional storage within



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Chatfield by the Corps of Engineers office was the catalyst for the reallocation process. An increased capacity in Chatfield Reservoir for storage by Front Range parties will enhance the water quality in the reservoir while providing additional opportunities for recreational uses. It is apparent through scientific data of habitat and historic population, that Preble's is no longer in danger of extinction. As such, the cost associated with mitigating for habitat is ill spent.

For all the reasons herein, it is urged that the service delist Preble's in both the states of Colorado and Wyoming. Thank you for the opportunity to comment. If you should have any questions, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink that reads 'Rod Kuharich'. The signature is written in a cursive style with a large, looped 'R' and a stylized 'K'.

Rod Kuharich
Executive Director
South Metro Water Supply Authority
Office: 303-409-7747