

MEMORANDUM OF UNDERSTANDING
BETWEEN
BOARD OF COMMISSIONERS OF MESA COUNTY, COLORADO,
AND
US FISH AND WILDLIFE SERVICE

A. Introduction

The Fish and Wildlife Service and the Mesa County Board of Commissioners ("County") have responsibilities for developing and implementing land use management plans and authorizing land use actions under their respective jurisdictions.

The Fish and Wildlife Service has regulations, and procedures for implementing the Endangered Species Act of 1973, Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, and the Clean Water Act.

Mesa County has a Master Plan and land use control regulations to guide development of private lands in Mesa County.

The parties recognize that policy, land use, or development decisions by one party affect similar decisions by the other. The parties further recognize the need to involve the property owners and residents of an area in land use planning processes.

Although the Fish and Wildlife Service and the State of Colorado already coordinate planning and management of resources within the state, these discussions do not detail the consideration of consultation with county and municipal governments. It is therefore in the best interest of the Fish and Wildlife Service and the County to work together to establish an effective mechanism for meaningful involvement in the land use planning and management process.

B. Purpose

The purpose of this Memorandum of Understanding is to:

1. Establish a mechanism for coordination in land use actions;
2. To determine appropriate involvement by each party in the development, implementation, and revision of respective management plans and conservation of fish and wildlife resources;
3. To coordinate the management of habitat for federally listed species and unlisted species of concern within Mesa County, Colorado.

C. Objectives

In recognition of the preceding conditions, the parties agree to:

1. Coordinate their respective planning and decision-making activities in a manner consistent with the responsibilities and authorities assigned to each;
2. Work together to achieve maximum benefits from available resources, to reduce duplication of effort, to attain better overall coordination of land and ecosystem management throughout Mesa County; and
3. Explore the Habitat Conservation Plan and Candidate Conservation Agreements with Assurances processes for applicability in Mesa County.

D. Authority

The Fish and Wildlife Service has the authority to enter into this memorandum by the following provisions:

1. Endangered Species Act of 1973, (16 U.S.C. 1361 et seq. as amended by Public Law 100-478);
2. Fish and Wildlife Coordination Act of 1958, 16U.S.C.661-666; Fish and Wildlife Act of 1956, as amended, 16 U.S.C. 670(a)-670(o)
3. Partnerships For Wildlife Act, Title VII, Section 7105(g), Public Law 102-587; 106 Stat. 5098; 16 U.S.C. 3741

Mesa County has the authority to enter into this memorandum by the following provisions:

1. Article XIV, Section 18 of the Colorado State Constitution and legislation pursuant thereto: C.R.S. 29-1-201, et. seq.;
2. The Local Government Land Use Enabling Act, C.R.S. 29-20-105, et. seq.;
3. County Powers and Functions, C.R.S. 30-11-101 (1) (d); together with amendments and supplements thereto;
4. C.R.S. 30-28-100.

E. Responsibility

Now, therefore, it is agreed that;

1. Both parties will:
 - a) Cooperate in land use decision-making, including coordination in land use decisions and in preparation of land use plans, including any amendment to or revision of such plans.

b) Inform each other as far in advance as possible of proposed plans and actions that might affect either party. In no case shall such information be provided less than 30 working days prior to the adoption of such plans or the taking place of such activities. Furthermore, each party will confer to the extent appropriate under applicable statutes and regulations with the other before issuing any announcements on proposed changes in land use policies or plans. Non-response by either party after 30 working days from receipt of notification regarding a particular issue shall indicate lack of desire to comment on that issue.

c) Cooperate in the development and implementation of any planning efforts (listed in attached appendices and exhibits), including, but not limited to: Habitat Conservation Plans (HCP) and Candidate Conservation Agreements with Assurances (CCAA).

d) Establish semi-annual meetings whereby project coordination can take place. A project list will be put together by each agency annually and reviewed at meetings in May and November.

e) Maintain a current inventory / list of existing contracts and agreements between both parties as Appendix A to this memorandum, attached hereto and incorporated herein.

f) Maintain a current list of future projects of mutual interest and concern to both parties as Appendix B to this memorandum, attached hereto and incorporated herein.

2. The Fish and Wildlife Service will:

a) Provide for meaningful involvement of County officials in the development and implementation of Habitat Conservation Plan and Candidate Conservation Agreements with Assurances and consider those views in the decision process.

b) Provide an opportunity to (1) review and comment during appropriate comment periods on applications submitted to the Fish and Wildlife Service that would affect land use or development in Mesa County, and (2) to participate in the review and/or development of the requisite environmental analysis for such applications. Those types of applications the County may be asked to review include but are not limited to those examples in Exhibit A, attached hereto and incorporated herein.

c) Stipulate in land use authorizations by reference compliance with any applicable provisions of all Federal, State, County and municipal laws, ordinances or regulations that are relevant to the area.

d) Make available to the County, upon request, information where not prohibited by applicable Federal statutes, rules and regulations. The County agrees not to disclose pursuant to the Colorado Public Records Act, C.R.S. 24-72-204 (3) (a), any documents provided upon request that are deemed confidential pursuant to C.R.S. 24-72-204.

e) Make available to the County, upon request, digital spatial data. All data provided must include supporting documentation (metadata) with the following information: data source, data steward, description of the data, source vintage, source scale, reliability, and attributing scheme. Under the terms of this memorandum only non-sensitive, non-confidential verified automated resource data will be shared. It will be the responsibility of the County to request updates to the data. "No Warranty is made by the Fish and Wildlife Service for use of the data for purposes not intended by the Fish and Wildlife Service."

f) Make personnel reasonably available to assist the County in mutually beneficial data gathering and planning when determined by the USFWS to be practical, recognizing financial and personnel constraints.

g) At least 100 days prior to conveyance or exchange of lands managed by the U.S. Fish and Wildlife located within the county, notify the Board of County Commissioners of such conveyance.

h) Provide the County, at least annually, an updated list and map of federally listed species as published in 50 Code of Federal Regulations, Part 17 and species of concern which are those species listed as Colorado State Endangered, State Threatened, State Sensitive, or State Candidate, as well as species proposed for listing or candidates for listing by the U.S. Fish and Wildlife Service (as published in the Federal Register), or considered Bureau of Land Management or US Forest Service Sensitive species.

3. The County will:

a) Provide for meaningful involvement for Fish and Wildlife Service officials in developing comprehensive plans (Master Plans), zoning, and revisions thereto, for lands in Mesa County. The focus of that involvement will be in those actions that may affect USFWS managed lands or habitat containing federally listed species or species identified by the Service to be of special concern as defined in paragraph E.2.h of this agreement. The Fish and Wildlife Service involvement will include review and comment on planning and zoning proposals as listed in Exhibit B (attached hereto and included herein).

b) To the extent possible and consistent with the laws governing the administration of the private land within Mesa County, coordinate the land use inventory, planning, and implementation activities of such lands with the land use planning and implementation programs of the Fish and Wildlife Service. The County will assure that consideration is given to HCPs and CCAAs that are germane in the development of land use plans for private lands within Mesa County.

c) Provide the Fish and Wildlife Service an opportunity to (1) review and comment on applications submitted to the County that would effect federal listed species or species proposed for listing or candidates for listing by the U.S. Fish and Wildlife Service (as published in the Federal Register), and (2) participate in the review and/or development of environmental analyses (or as

provided in any HCP or CCAA for such applications). Those types of applications the Fish and Wildlife Service may be asked to review include but are not limited to those examples in Exhibit B, attached hereto and incorporated herein. Those types of applications may be limited to geographical areas identified on maps provided to the County by the Fish and Wildlife Service pursuant to paragraph E.2.h of this agreement.

d) Make available to the Fish and Wildlife Service, upon request, social, economic, land and resource information in the County's possession and otherwise publicly available pursuant to the Colorado Public Records Act, Section 24-72-201, et seq. and/or other statutory authorization.

e) Make County expertise or personnel reasonably available for data gathering, environmental studies, and land use planning which would be mutually beneficial when determined by the County to be practical, recognizing financial and personnel constraints.

f) Unless agreed to the contrary, the County shall not consider rezoning any land described in item 2.g. above, which is subject to actual, good faith, negotiations during the period between notification and actual conveyance.

g) Make available to the Fish and Wildlife Service, upon request, digital spatial data. All data provided must include supporting documentation (metadata) with the following information: data source, data steward, description of the data, source vintage, source scale, reliability, and attributing scheme. Under the terms of this memorandum only non-sensitive, non-confidential verified automated resource data will be shared. It will be the responsibility of the Fish and Wildlife Service to request updates to the data.

G. Administration

1. The following representatives have the authority to speak for their respective agencies for the purposes of this memorandum of understanding and regarding actions taken under this Memorandum of Understanding:

Western Colorado Field Supervisor
764 Horizon Drive, Bldg. B
Grand Junction, CO 81506

Mesa County Board of Commissioners
750 Main Street
Grand Junction, CO 81501

2. In general, the representatives, their designees, or appropriate staff will contact one another, as necessary, subject to this memorandum and any supplemental memorandums on at least an annual basis to update this M.O.U.

3. Nothing in this memorandum will be construed as limiting or affecting in any way the authority or legal responsibility of the County or the Fish and Wildlife Service, or as binding either the County or the Fish and Wildlife Service to perform beyond the respective authority of each, or as requiring either party to assume or expend any sum in excess of appropriations available.
4. Amendments or supplements to this memorandum may be proposed by either party and shall become effective upon written approval of both parties of such amendments or supplements.
5. This memorandum shall become effective when signed by the parties hereto. This Memorandum of Understanding may be formally terminated by either party following 30 days notice in writing to the other party of intention to do so.
6. As each of the signatories are governed by applicable laws and regulations, Each and every provision of this Memorandum of Understanding is subject to the laws of the United States, and the regulations of the Secretary of Interior and the laws of the State of Colorado.

This instrument in no way restricts the Fish and Wildlife Service or the County from participating in similar activities with other public or private agencies, organizations, and individuals.

This instrument is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this instrument will be handled in accordance with applicable laws, regulations and procedures including those from government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authorities. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other memorandum. Any contract or agreement for training or other services must fully comply with all applicable requirements competition.

The term of this Memorandum of Understanding shall be five (5) years from the effective date of execution, unless earlier terminated by either party.

IN WITNESS WHEREOF, the parties herein have caused this document to be executed, the USFWS Designee and the Chair of the Board of County Commissioners of Mesa County, Colorado, as of the date of the latest signature shown below:

Allan R. Pfister

Allan R. Pfister
Western Colorado Supervisor
US Fish and Wildlife Service,
Grand Junction, Colorado

Feb-28, 2003

Date

James R. Baughman

James R. Baughman
Chair, Mesa County, Colorado,
Board of Commissioners

Feb. 24, 2003

Date

Attest:

Janice Leard
Mesa County Clerk



USFWS MOU No.
MCA No. 2003-021

Exhibit A

Mesa County will be afforded a 30 working day opportunity to review and comment during appropriate comment periods on the following types of applications or proposals that may be filed with the Fish and Wildlife Service and which may impact private land within Mesa County, including but not limited to:

1. Sales, exchanges, leases or other conveyances of lands and any changes in designation of parcels for exchange into or out of private ownership owned and/or managed by the USFWS.
2. Environmental assessments and environmental impact statements.
3. Proposed listing of species or critical habitat under the ESA.
4. Cooperative management agreements on land use.

Exhibit B

The Fish and Wildlife Service will be afforded an opportunity to review and comment on the following types of applications that may be filed with Mesa County and projects conducted by the County which may impact federally listed species as published in 50 Code of Federal Regulations, Part 17 and species of concern* and lands or easements managed by the Fish and Wildlife Service as provided in an annually updated list and map pursuant to paragraph E.2.h of this agreement, including but not limited to:

1. Residential subdivisions, mobile home parks and commercial or industrial development.
2. Roads, powerlines, pipelines.
3. Solid waste disposal sites and sewage treatment sites.
4. Sand and gravel Conditional Use Permits.
5. Zoning regulations, amendments and changes.
6. Subdivision regulations, amendments and changes.
7. County reviews regarding areas and activities designated as matters of State interest (1041 regulations).
8. Pesticide spraying and weed control programs.
9. Dust prevention plans.
10. Multi-use trail plans.
11. Transportation plans (Major road circulation plans).
12. Actions affecting existing or potential access to USFWS managed lands.

* **Species of concern definition:** those species listed as Colorado State Endangered, State Threatened, State Sensitive, or State Candidate, as well as species proposed for listing or candidates for listing by the U.S. Fish and Wildlife Service (as published in the Federal Register), or considered Bureau of Land Management or US Forest Service Sensitive species.

USFWS MOU No.
MCA No. _____

Appendix A
Current Inventory of
Existing Contracts/Agreements
Between USFWS and
Mesa County

- A. Easements with Mesa County acquired and administrative jurisdiction transferred to USFWS through the Colorado River Recovery Program, as recorded in Mesa County Land Records

12.9 acres; Parcel No. HRP- (MIT) -C -5B (P); Book 2756 Page 547-552

20.1 acres; Parcel No. HRP- (MIT) -C -5C (P); Book 2756 Page 553-558

USFWS MOU No.
MCA No. _____

**Appendix B
Future / Potential Projects
Of Mutual Interest
Between USFWS and
Mesa County**

- A. Habitat Conservation Plans
- B. Candidate Conservation Agreements with Assurances
- C. 29 Road Bridge
- D. Wetlands Mitigation Banking