

RESOLUTION NO. R-019-~~103~~

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

A RESOLUTION APPROVING THE SUPPLEMENTAL WATERSHED PLAN NO. 1 &
ENVIRONMENTAL ASSESSMENT FOR FRANKTOWN-PARKER (BALDWIN GULCH)
WATERSHED DAM FP-B1 OF THE CHERRY CREEK WATERSHED DOUGLAS
COUNTY, COLORADO NUMBER CI 2004-033

WHEREAS, the National Resource Conservation Service, (hereinafter "NRCS") and the Board of County Commissioners of the County of Douglas, State of Colorado, ("Douglas County"), entered into a Cooperative Agreement regarding the Watershed Rehabilitation Program for the Baldwin Gulch Dam FP-B1, (Agreement No. 60-8B05-A-14-02) for Douglas County Project Number CI 2004-033; and

WHEREAS, Douglas County completed the Final Supplemental Watershed Plan No. 1 & Environmental Assessment for Franktown-Parker (Baldwin Gulch) Watershed Dam FP-B1; and

WHEREAS, Douglas County is willing to enter into the Franktown-Parker (Baldwin Gulch) Watershed Dam FP-B1 Supplemental Watershed Plan Agreement No. 1 (the "Agreement") and NRCS and Douglas County hereby agree on this watershed project plan and that the works of improvement for this project will be installed, operated, and maintained in accordance with the terms, conditions, and stipulations provided in the plan and terms of the agreement; and

WHEREAS, the NRCS and Douglas County are governmental entities authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and Section 29-1-203, C.R.S.; now, therefore,

BE IT RESOLVED, by the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO that the Agreement between the NRCS and Douglas County, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Chair of the Board is authorized to execute the agreement on behalf of Douglas County.

PASSED AND ADOPTED this 24th day of September, 2019, in Castle Rock, Douglas County, Colorado.

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

BY: _____

ROGER A. PARTRIDGE, CHAIR

ATTEST: _____

KRISTIN RANDLETT, DEPUTY CLERK



**Franktown-Parker (Baldwin Gulch) Watershed Dam FP-B1
Supplemental Watershed Plan Agreement No. 1**

Between the

**Douglas County Board of Commissioners
(Referred to herein as Sponsor)**

And the

**UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
Formerly the Soil Conservation Service (SCS)
(Referred to herein as NRCS)**

Whereas, the original Watershed Plan Agreement for the Franktown-Parker (Baldwin Gulch) Watershed Dam FP-B1, State of Colorado, executed by the Sponsor named therein and NRCS, became effective in April 1960; and

Whereas, the responsibility for administration of the Watershed Protection and Flood Prevention Act, has been assigned by the Secretary of Agriculture to NRCS; and

Whereas, application has heretofore been made to the Secretary of Agriculture by the Sponsor for assistance in preparing a plan for works of improvement for Franktown-Parker (Baldwin Gulch) Watershed Dam FP-B1 in the Cherry Creek Watershed, State of Colorado, under the authority of the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. Sections 1001 to 1008, 1010, and 1012); and

Whereas, there has been developed through the cooperative efforts of the Sponsor and NRCS a Supplemental Watershed Work Plan No. 1 Environmental Assessment for works of improvement for the rehabilitation of Franktown-Parker (Baldwin Gulch) Watershed Dam FP-B1, State of Colorado, hereinafter referred to as the Plan-EA or plan, which plan is annexed to and made a part of this agreement;

Now, therefore, in view of the foregoing considerations, the Secretary of Agriculture, through NRCS, and the Sponsor hereby agree on this watershed project plan and that the works of improvement for this project will be installed, operated, and maintained in accordance with the terms, conditions, and stipulations provided for in this plan and including the following:

- 1) **Term.** The term of this agreement is for the installation period and evaluated life of the project (100 years) and does not commit NRCS to assistance of any kind beyond the end of the evaluated life.
- 2) **Costs.** The costs shown in this plan are preliminary estimates. Final costs to be borne by the parties hereto will be the actual costs incurred in the installation of works of improvement.
- 3) **Real Property.** The sponsor will acquire such real property or access to such real property as will be needed in connection with the works of improvement. The amounts and percentages of the real property acquisition costs to be borne by the Sponsor and NRCS are as shown in the Cost-share table in item 5 hereof. The sponsor agrees that all land acquired for measures, other than land treatment practices, with financial or credit assistance under this agreement will not be sold or otherwise disposed of for the evaluated life of the project except to a public agency which will continue to maintain and operate the development in accordance with the Operation and Maintenance Agreement.

- 4) **Uniform Relocation Assistance and Real Property Acquisition Policies Act.** The sponsor hereby agrees to comply with all the policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. Section 4601 et seq. as further implemented through regulations in 49 CFR Part 24 and 7 CFR Part 21) when acquiring real property interests for this federally assisted project. If the sponsor is legally unable to comply with the real property acquisition requirements, it agrees that, before any Federal financial assistance is furnished, it will provide a statement to that effect, supported by an opinion of the chief legal officer of the state containing a full discussion of the facts and law involved. This statement may be accepted as constituting compliance.
- 5) **Cost-share for Watershed Work Plan.** The following table shows cost-share percentages and amounts for Watershed Work Plan implementation.

Works of Improvement	NRCS	Sponsor	Total
<u>Cost-Sharable Items¹</u>			
Rehabilitation of dam (Construction Costs)	\$1,919,800	\$532,500	\$2,452,300
Sponsor's Planning Costs	\$0	\$ -	\$ -
Sponsor's Engineering Costs	\$0	\$451,200	\$451,200
Project Administration ³	\$0	\$50,000	\$50,000
<i>Subtotal: Cost-Share Costs</i>	<i>\$1,919,800</i>	<i>\$1,033,700</i>	<i>\$2,953,500</i>
<i>Cost-Share Percentages</i>	<i>65.0%</i>	<i>35.0%</i>	<i>100.0%</i>
<u>Non-Cost-Sharable Items²</u>			
NRCS Technical Assistance/Engineering ⁴	\$190,000	\$0	\$190,000
Federal, State and Local Permits ⁵	\$0	\$40,000	\$40,000
<i>Subtotal: Non-Cost-Share Costs</i>	<i>\$190,000</i>	<i>\$40,000</i>	<i>\$230,000</i>
Totals	\$2,109,800	\$1,073,700	\$3,183,500

Notes:

- 1) Maximum NRCS cost share is 65% of Cost-Sharable items not to exceed 100% of construction cost
- 2) The sponsor and NRCS will each bear the costs of project administration that each incurs.
- 3) If actual non-cost-sharable item expenditures vary from these figures, the responsible party will bear the change.
- 4) NRCS Technical Assistance/Engineering includes design, engineering, and administration.
- 5) The sponsor will acquire with other than Watershed Protection and Flood Prevention Act funds, such real property as will be needed in connection with the works of improvement. The value of real property is eligible as in-kind contributions toward the sponsor's share of the works of improvement costs. In no case will the amount of an in-kind contribution exceed the sponsor's share of the cost for the works of improvement. The maximum cost eligible for in-kind credit is the same as that for cost sharing.

- 6) **Land Treatment Agreements.** The Sponsor will encourage landowners and operators to continue to operate and maintain needed land treatment conservation measures for the protection and improvement of the watershed upstream of the dam.
- 7) **Floodplain Management.** Before construction of any project for flood prevention, the sponsor must agree to participate in and comply with applicable Federal floodplain management and flood insurance programs.

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- 8) **Water and Mineral Rights.** The sponsor will acquire or provide assurance that landowners or resource users have acquired such water, mineral, or other natural resources rights pursuant to State law as may be needed in the installation and operation of the works of improvement. Any costs incurred must be borne by the sponsor and these costs are not eligible as part of the sponsor's cost-share.
 - 9) **Permits.** The sponsor will obtain and bear the cost for all necessary Federal, State, and local permits required by law, ordinance, or regulation for installation of the works of improvement. These costs are not eligible as part of the sponsor's cost-share.
 - 10) **NRCS Assistance.** This agreement is not a fund-obligating document. Financial and other assistance to be furnished by NRCS in carrying out the plan is contingent upon the fulfillment of applicable laws and regulations and the availability of appropriations for this purpose.
 - 11) **Additional Agreements.** A separate agreement will be entered into between NRCS and the sponsor before either party initiates work involving funds of the other party. Such agreements will set forth in detail the financial and working arrangements and other conditions that are applicable to the specific works of improvement.
 - 12) **Amendments.** This plan may be amended or revised only by mutual agreement of the parties hereto, except that NRCS may deauthorize or terminate funding at any time it determines that the sponsor has failed to comply with the conditions of this agreement or when the program funding or authority expires. In this case, NRCS must promptly notify the sponsor in writing of the determination and the reasons for the deauthorization of project funding, together with the effective date. Payments made to the sponsor or recoveries by NRCS must be in accord with the legal rights and liabilities of the parties when project funding has been deauthorized. An amendment to incorporate changes affecting a specific measure may be made by mutual agreement between NRCS and the sponsor having specific responsibilities for the measure involved.
 - 13) **Prohibitions.** No member of or delegate to Congress, or resident commissioner, may be admitted to any share or part of this plan, or to any benefit that may arise therefrom; but this provision may not be construed to extend to this agreement if made with a corporation for its general benefit.
 - 14) **Operation and Maintenance (O&M).** The sponsor will be responsible for the operation, maintenance, and any needed replacement of the works of improvement by actually performing the work or arranging for such work, in accordance with an O&M Agreement. An O&M agreement will be entered into before Federal funds are obligated and will continue for the project life (100 years). Although the sponsor's responsibility to the Federal Government for O&M ends when the O&M agreement expires upon completion of the evaluated life of measures covered by the agreement, the sponsor acknowledges that continued liabilities and responsibilities associated with works of improvement may exist beyond the evaluated life.
 - 15) **Emergency Action Plan.** Prior to construction, the sponsor must prepare an Emergency Action Plan (EAP) for the dam or similar structure where failure may cause loss of life or as required by state and local regulations. The EAP must meet the minimum content specified in the NRCS Title 180, National Operation and Maintenance Manual (NOMM), Part 500, Subpart F, Section 500.52, and meet applicable State agency dam safety requirements. The NRCS will determine that an EAP is prepared prior to the execution of fund obligating documents for construction of the structure. EAPs must be reviewed and updated by the sponsor annually.

- 16) **Nondiscrimination Provisions.** In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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By signing this agreement, the recipient assures the Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

- 17) **Certification Regarding Drug-Free Workplace Requirements (7 CFR Part 3021).** By signing this Watershed Agreement, the sponsor is providing the certification set out below. If it is later determined that the sponsor knowingly rendered a false certification, or otherwise violated the requirements of the Drug-Free Workplace Act, the NRCS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. Section 812) and as further defined by regulation (21 CFR Sections 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) all direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants

who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantees' payroll; or employees of sub-recipients or subcontractors in covered workplaces).

Certification:

- A. The sponsor certifies that they will or will continue to provide a drug-free workplace by—
- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
 - (2) Establishing an ongoing drug-free awareness program to inform employees about—
 - (a) The danger of drug abuse in the workplace;
 - (b) The grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace
 - (3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1).
 - (4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee must—
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
 - (5) Notifying the NRCS in writing, within 10 calendar days after receiving notice under paragraph (4) (b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice must include the identification numbers of each affected grant.
 - (6) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (4) (b), with respect to any employee who is so convicted—
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

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- (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).
- B. The sponsor may provide a list of the sites for the performance of work done in connection with a specific project or other agreement.
- C. Agencies will keep the original of all disclosure reports in the official files of the agency.
- 18) **Certification Regarding Lobbying (7 CFR Part 3018) (for projects > \$100,000)**
- A. The sponsors certify to the best of their knowledge and belief, that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the sponsor, to any person for influencing or attempting to influence an officer or employee of an agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The sponsor must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients must certify and disclose accordingly.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by U.S. Code, Title 31, Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 19) **Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions (7 CFR Part 3017).**
- A. The sponsor certifies to the best of their knowledge and belief, that they and their principals:
- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
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- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A(2) of this certification; and
- (4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

B. Where the primary sponsor is unable to certify to any of the statements in this certification, such prospective participant must attach an explanation to this agreement.

20) Clean Air and Water Certification.

A. The project sponsoring organizations signatory to this agreement certify as follows:

- (1) Any facility to be utilized in the performance of this proposed agreement is not listed on the Environmental Protection Agency List of Violating Facilities.
- (2) To promptly notify the NRCS-State administrative officer prior to the signing of this agreement by NRCS, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that any facility which is proposed for use under this agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.
- (3) To include substantially this certification, including this subparagraph, in every nonexempt sub-agreement.

B. The project sponsoring organizations signatory to this agreement agrees as follows:

- (1) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. Section 7414) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, issued there under before the signing of this agreement by NRCS.
- (2) That no portion of the work required by this agreement will be performed in facilities listed on the Environmental Protection Agency's (EPA) List of Violating Facilities on the date when this agreement was signed by NRCS unless and until the EPA eliminates the name of such facility or facilities from such listing.
- (3) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.
- (4) To insert the substance of the provisions of this clause in any nonexempt subagreement.

C. The terms used in this clause have the following meanings:

- (1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. Section 7401 et seq.).
- (2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.).

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- (3) The term “clean air standards” means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110 of the Air Act (42 U.S.C. Section 7414) or an approved implementation procedure under section 112 of the Air Act (42 U.S.C. Section 7412).
- (4) The term “clean water standards” means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. Section 1342), or by a local government to assure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. Section 1317).
- (5) The term “facility” means any building, plant, installation, structure, mine, vessel, or other floating craft, location or site of operations, owned, leased, or supervised by a sponsor, to be utilized in the performance of an agreement or subagreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location will be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.
- 21) **Assurances and Compliance.** As a condition of the grant or cooperative agreement, the sponsor assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out below which are hereby incorporated in this agreement by reference, and such other statutory provisions as a specifically set forth herein.
- State, Local, and Indian Tribal Governments: OMB Circular Nos. A-87, A-102, A-129, and A-133; and 7 CFR Parts 3015, 3016, 3017, 3018, 3021, and 3052.
- Nonprofit Organizations, Hospitals, Institutions of Higher Learning: OMB Circular Nos. A-110, A-122, A-129, and A-133; and 7 CFR Parts 3015, 3017, 3018, 3019, 3021, and 3052.
- 22) **Examination of Records.** The sponsor must give the NRCS or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement, and retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable OMB Circular.

23) Signatures.

DOUGLAS COUNTY BOARD OF COUNTY COMMISSIONERS

The signing of this plan was authorized by a resolution by the Douglas County governing body and adopted at an official meeting held on September 24, 2019, in Castle Rock, Colorado.

By:



Roger A. Partridge, Chair

Date: 09/24/2019

USDA-NATURAL RESOURCES CONSERVATION SERVICE

Approved By:

Clinton Evans, State Conservationist
Denver Federal Center, PO Box 25426
Building 56, Room 2604
Denver, Colorado 80225-0426

Date: _____