



## Grant Packet Table of Contents

The following is an outline of documents written about the Fish and Wildlife Resources Fund Grant.

Sections 1 and 2 are informative pieces for anyone interested in the grant program. Section 3 is the actual application and Section 4 contains the contract forms used by the State.

**Section 1 Grant Program Overview**

*This one-page overview provides basic information about the grant program and eligibility.*

**Section 2 Grant Program Guidance**

*This document provides detailed information about the grant program and how to apply for funding.*

**Section 3 Application**

*The application is presented in six sections and is a combination of forms (3.1, 3.4, 3.5) and guidelines on written narrative and evaluation criteria (3.2, 3.3). A checklist is included to help applicants ensure completeness (3.6).*

- 3.1 Applicant Information
- 3.2 Project Summary Form
- 3.3 Technical Narrative Description
- 3.4 Evaluation Criteria
- 3.5 Budget Form
- 3.6 Application Checklist

**Section 4 Contracts**

*These are the contract and special provisions used by the State. Signed copies should accompany the application to expedite contracting if a grant is awarded.*

- 4.1 Contract Section Cover Sheet
- 4.2 Contract Form
- 4.3 Special Provisions for Non-Governmental Agencies
- 4.4 Special Provisions for Governmental Agencies
- 4.5 Signature Page

## FISH AND WILDLIFE RESOURCES FUND GRANT

### COLORADO WATER CONSERVATION BOARD



## Section 1: Grant Program Overview

### *General Information*

The State of Colorado recognizes the importance of fish and wildlife resources in and around waters affected by water diversion, delivery or storage facilities. Given the statewide importance of fish and wildlife resources, the legislature has made funds available to mitigate impacts on them in a manner that maintains a balance between development of the state's resources and the protection of the state's fish and wildlife resources. The Colorado Water Conservation Board (CWCB) has been vested with the authority to grant moneys for mitigation projects for existing facilities pursuant to CRS 37-60-122.2.

The CWCB Board adopted **Policy 15** as the governing document for the Fish and Wildlife Resource Fund. The policy can be viewed at:

<http://cwcb.state.co.us/Finance/RelatedInformation/LawsRules/Policies.htm>. Information contained in this policy supersedes these guidance documents.

### *Project Eligibility*

Grants from the Fish and Wildlife Fund can be accepted for:

1. The **appropriation of water rights** to preserve, or the **acquisition of water rights** to preserve or improve the natural environment to a reasonable degree to mitigate the impact of an existing water facility. All acquisitions or appropriations must be in compliance with Instream Flow Rules and state water laws.
2. **River restoration** feasibility studies and construction projects designed to directly mitigate or significantly improve the environmental impacts of existing water facilities.
3. An appropriate **combination** of river restoration and water right acquisition or appropriation.

### *Applicant Eligibility*

Eligible applicants include operators of existing water diversion, delivery or existing storage facility projects and the Colorado Water Conservation Board (CWCB). Entities that do not operate such facilities, such as certain municipalities, watershed groups, and others, are encouraged to contact CWCB staff to explore the opportunities for joint application with the CWCB. The "Eligibility" section of the Grant Program Guidance document provides more details and examples for interested applicants.

### *Funding*

Applicants are strongly encouraged to contact staff to discuss funding amounts and limitations.

### *Timeline*

Grants will be accepted throughout the year and reviewed on the following basis. From the date of application, CWCB staff review and evaluation will normally take 120 days. At a subsequent regular or special CWCB Board meeting, the Board will take action on a final funding determination. Contracting normally takes four to six weeks. While exceptions to this schedule will be considered on a case-by-case basis, applicants are encouraged to allow sufficient time for review and contracting.

### *Contact Information*

Interested parties are strongly encouraged to call the CWCB to discuss potential applications.

For more information, please contact:

Chris Sturm

[chris.sturm@state.co.us](mailto:chris.sturm@state.co.us)

Colorado Water Conservation Board

1313 Sherman Street, Suite 721

Denver, CO 80203

Phone: 303-866-3441 ext. 3236

Fax: 303-866-4474



## Section 2: Grant Program Guidance

### 2.1 General Information

The State of Colorado recognizes the responsibility it holds for the protection of fish and wildlife resources in and around waters affected by water diversion, delivery or storage facilities. Given the statewide importance of fish and wildlife resources, the legislature has made funds available to mitigate impacts on them in a manner that maintains a balance between development of the state's resources and the protection of the state's fish and wildlife resources as specified in Colorado Revised Statutes (CRS) 37-60-122.2.

The Colorado Water Conservation Board (CWCB) has been vested with the authority to grant moneys for mitigation projects for existing facilities through the Fish and Wildlife Resources Fund Grant Program pursuant to CRS 37-60-122.2(5). This guidance document provides detailed information on the issuance and administration of grants from the Fish and Wildlife Resources Fund for mitigation of existing water diversion, delivery or storage facilities.

The Board's administration of the Fish and Wildlife Resources Fund is governed by the above statute and **Board Policy 15**

(available at <http://cwcb.state.co.us/Finance/RelatedInformation/LawsRules/Policies.htm>).

Information contained in the statute and policy supersedes these guidance documents.

### 2.2 Project Eligibility

Grants from the Fish and Wildlife Resources Fund can be accepted for the following types of projects:

1. The **appropriation of water rights** to preserve, or the **acquisition of water rights** to preserve or improve the natural environment to a reasonable degree to mitigate the impact of an existing water facility. All acquisitions or appropriations must be in compliance with Instream Flow Rules and state water laws.
2. **River restoration**, feasibility studies and construction projects designed to directly mitigate or significantly improve the environmental impacts of existing water facilities.
3. An appropriate **combination** of river restoration and water right acquisition or appropriation.

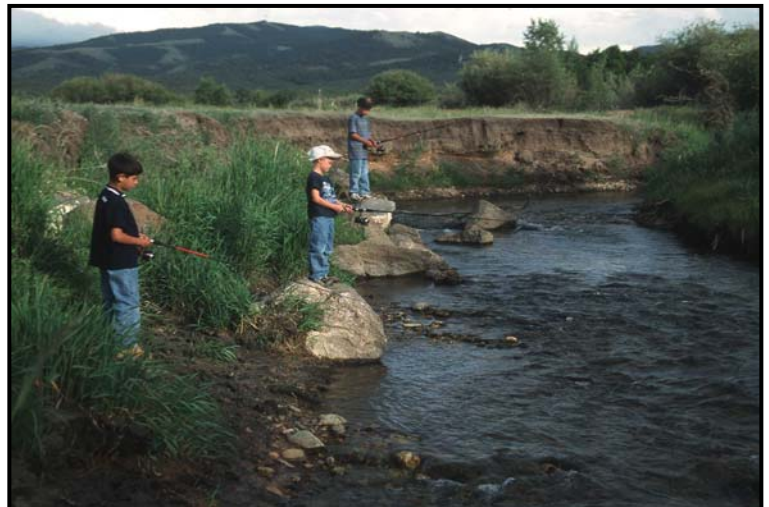


Photo of Trinchera Creek by Gary Kramer, USDA NRCS

### 2.3 Applicant Eligibility

Eligible applicants include operators of existing water diversion, delivery or existing storage facility projects and the Colorado Water Conservation Board (CWCB). Entities that do not operate such facilities, such as certain

## FISH AND WILDLIFE RESOURCES FUND GRANT

### COLORADO WATER CONSERVATION BOARD



municipalities, watershed groups, and others, are encouraged to contact CWCB staff to explore the opportunities for joint application with the CWCB. Please see the “Eligibility” section in this document for more details and examples for interested applicants.

#### ***2.4 Submittal Procedure and Requirements***

Grants will be accepted throughout the year and reviewed on the following basis. From the date of application, CWCB staff review and evaluation will normally take 120 days. At a subsequent regular or special CWCB Board meeting, the Board will take action on a final funding determination. Contracting normally takes four to six weeks. While exceptions to this schedule will be considered on a case-by-case basis, applicants are encouraged to allow sufficient time for review and contracting.

Three copies of the complete application should be submitted in hard copy, single or double-sided and unbound. The application should be formatted with no less than 11-point font and no less than one-inch margins. An electronic version must also be submitted on a CD, floppy disk or via email (appendices do not need to be submitted electronically). A checklist is provided with the application packet to help applicants ensure that all materials are included.

To apply for funding from the Fish and Wildlife Resources Fund, an applicant must complete an application that contains the following sections:

- Applicant Information (1 page)
- Project Summary Form (1 page)
- Technical Narrative Description\* (5 pages maximum)
- Budget Form (1 page)
- Appendices (varies)

\* A detailed description of the technical narrative is included in the application package. In summary, the narrative should include:

- Project Need/Definition of the Problem
- Project Goals and Objectives
- Technical Feasibility of the Proposed Project
- Project Implementation Plan
- Project Time Schedule
- Monitoring Plan
- Qualifications of the Applicant (as an organization and individuals)
- Coordination Plan and Public Involvement
- Appendices, including maps, legal documents, letters of support, other materials

#### ***2.5 Pre-Applications***

Prospective applicants are encouraged to submit a pre-application to the CWCB at any time. A pre-application provides applicants the opportunity to obtain a non-binding opinion from the CWCB staff on whether a particular conceptual proposal may be an appropriate project for funding from the Fish and Wildlife Resources Fund before engaging in the time-consuming process of preparing a comprehensive proposal. Interested parties should submit a proposal

## FISH AND WILDLIFE RESOURCES FUND GRANT

### COLORADO WATER CONSERVATION BOARD



abstract of no more than three paragraphs describing the proposed project and map or conceptual design of the project area. Please contact Tom Browning to discuss your project or for additional information. Their contact information can be found on the last page of this document.

#### ***2.6 Application Evaluation Criteria***

The following criteria will be used to evaluate applications to the Fish and Wildlife Resources Fund. These will be deduced from your technical narrative, so please be sure that the following issues are addressed. More detailed information is available in the application packet.

<b>Criteria</b>	<b>Points</b>
Urgency/Need <i>A measure of the urgency for the project work and the need for funding from the CWCB.</i>	15
Project Benefits <i>A measure of the state-wide and local project benefits</i>	15
Technical Merit/Soundness of Proposal <i>Is the project well designed and will it have a significant impact on the health of the stream system?</i>	30
Organizational Capacity <i>Does the applicant organization and others working on the project have the skill, capacity and history of achievements for this project to be successful?</i>	20
Coordination/Public Involvement <i>Has the applicant identified and established all necessary partnerships, permits and permissions?</i>	20

A special note on water rights appropriations and acquisitions: The Board will consider and CWCB staff will evaluate and recommend to the Board grant applications for appropriation or acquisition of water rights to be held by the Board on the following project types:

- Instream flow water rights that assist in the administration of compact-entitled waters, or address problems relating to compact-entitled waters
- Instream flow water rights that facilitate the resolution of federal water rights issues
- Instream flow water rights that assist in the recovery of threatened or endangered wildlife species or the conservation of existing wildlife species within riparian ecosystems.

Please remember to demonstrate how your project will help the CWCB to further its mission to “Conserve, develop, protect and manage Colorado’s water for present and future generations.”

To achieve this mission, the CWCB must develop and implement programs to:

- Conserve the waters of the State for wise and efficient beneficial uses
- Develop waters of the State to:
  - Preserve the natural environment to a reasonable degree
  - Fully utilize state compact entitlements
- Protect the waters of the State for maximum beneficial use without waste
- Manage the waters of the State in situations of extreme weather conditions – both for floods and droughts



### ***2.7 Funding***

The grant program is managed on an annual cycle that begins July 1, consistent with the state fiscal year. Awards in a given fiscal year cannot exceed the amount available for grants in the Fish and Wildlife Resources Fund for that year.

Applicants are encouraged to compile an appropriate mix of cash and in-kind funding sources. The following information provides some guidance on what is considered in-kind and what is considered a cash match.

Please be aware that projects should be completed within three years of receiving funding. Any extensions must be negotiated in advance with the CWCB project manager. If a grant cannot be completed any unexpended funds will revert to the Fish and Wildlife Resources account.

#### ***Matching Funds***

Only project costs incurred six months prior to the application deadline, costs incurred during the project performance period specified in the contract, and costs identified in the grant application budget are eligible to qualify as matching funds. All matching funds, cash and in-kind, must be eligible.

#### ***Cash Match***

Actual expenditures paid directly with cash funds from the grantee to a vendor. Examples are supplies, services, studies and equipment.

#### ***In-Kind Match***

- Services and labor provided by the paid staff of the grantee to perform all or part of the approved project scope of work. This can include direct and indirect personnel fringe benefit costs such as employee insurance, retirement benefit costs, vacation time, holiday time and sick leave time.
- Services provided at no cost to the grantee by firms or individuals to perform part of the approved scope of work that requires specialized or expert skill and knowledge. This is paid labor and can be included as an in-kind match.
- In addition, general organizational operating costs such as utilities, general operating supplies and services, amortized costs or rental costs for buildings and equipment used for the general operation of the organization, and general property and liability insurance costs may be included in the hourly rate.
- Any grant received from the CWCB cannot be used as a match to another grant from the CWCB.



Medano Creek Geneva Bailey The Nature



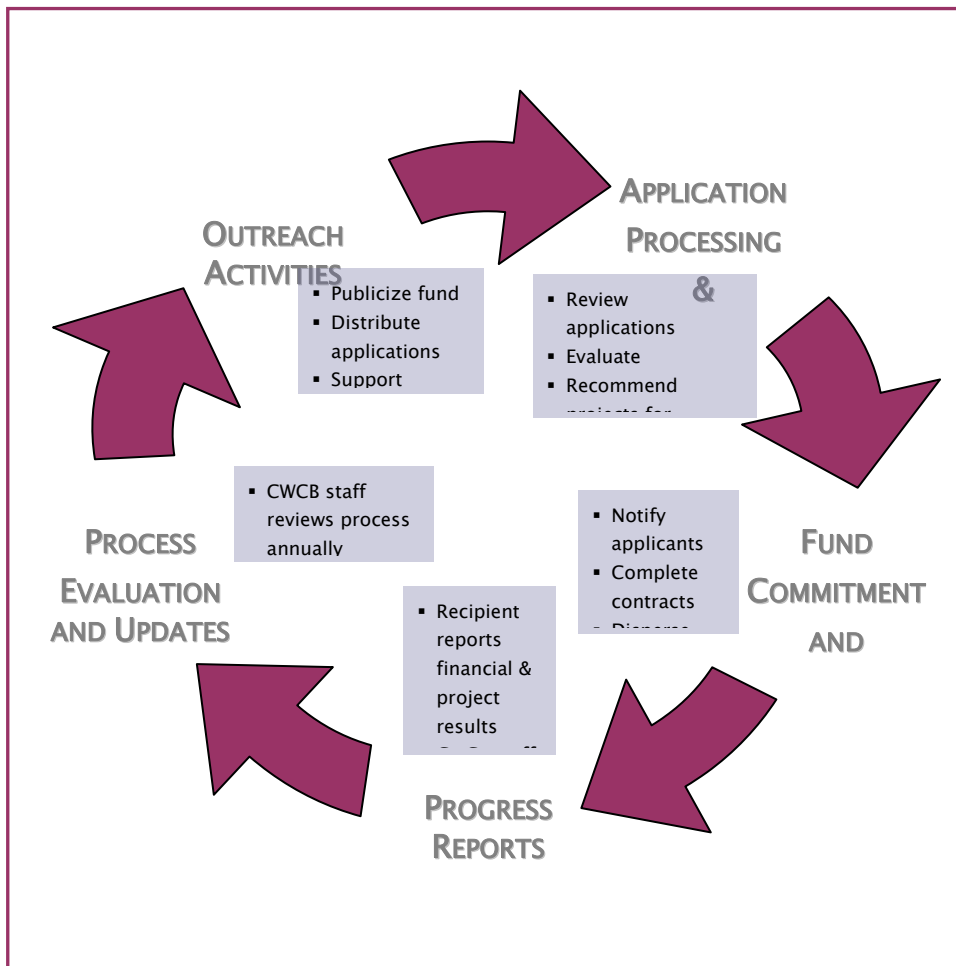
*Payments*

If an application is accepted for funding, please note that payments will be made only after work is completed, no up-front payments can be made. The CWCB will pay by invoice on completed tasks.

**2.8 Timeline**

Grants will be accepted throughout the year and reviewed on the following basis. From the date of application, CWCB staff review and evaluation will normally take 120 days. At a subsequent regular or special CWCB Board meeting, the Board will take action on a final funding determination. Contracting normally takes four to six weeks after the final funding determination. While exceptions to this schedule will be considered on a case-by-case basis, applicants are encouraged to allow sufficient time for review and contracting. Please contact Chris Sturm (contact information at the end of this document) to discuss exceptions.

**2.9 Administration**



Grant Program Administration

The diagram at left outlines the key steps in the grant process for the Fish and Wildlife Resources Fund as administered by the staff of the CWCB.

Note that on an annual basis the CWCB staff will:

- Publicize the program
- Collect and review applications
- Make funding recommendations to the CWCB Board
- Work with successful applicants to complete contracts to begin project work
- Review progress and help address project issues that may arise
- Disperse funds upon successful completion of their project
- Review and update the grant process as appropriate.



**2.10 Checklist for Completeness of Application**

A checklist is included with the application to help applicants ensure that they have all necessary materials completed and included with their final application.

**2.11 Successful Applicants**

Once an application is selected for funding, the applicant will be required to submit a W-9 form for payment purposes.

Typically, a contract will take four to six weeks to be processed through the state system, though additional time may be necessary. The CWCB project manager will be in communication with the grant recipient during this time if any significant delays arise. A successful applicant will need to prepare a detailed scope of work before the contract can be executed. The CWCB staff will provide an example scope of work.

Successful applicants will need to submit progress reports to the CWCB staff. A progress report needs to be submitted at 50% completion of the project. A final report is due upon completion. Payment of 15% will be retained until full completion of the project, including the preparation and approval of a final report and site inspection if deemed necessary by the CWCB staff.

**2.12 Contact Information**

Interested parties are strongly encouraged to call the CWCB to discuss potential applications and this grant fund.

For more information, please contact CWCB Project Manager:

Chris Sturm, Stream Restoration Coordinator

[chris.sturm@state.co.us](mailto:chris.sturm@state.co.us)

Colorado Water Conservation Board

1313 Sherman Street, Suite 721

Denver, CO 80203

Phone: 303-866-3441 ext. 3236

Fax: 303-866-4474





### **Section 3.1: Applicant Information**

Date of Submittal: \_\_\_\_\_

Name of Project: \_\_\_\_\_

#### **Applicant Information**

Name and Address of Applicant Responsible for Project:

\_\_\_\_\_  
\_\_\_\_\_

Phone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Name and Type of Organization: \_\_\_\_\_

Applicant Federal Employer ID Number (FEIN): \_\_\_\_\_

#### **Contact Information, if Different from Sponsor**

Name and Address of Applicant Responsible for Project:

\_\_\_\_\_  
\_\_\_\_\_

Phone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Submitted by Name \_\_\_\_\_  
Date \_\_\_\_\_

Received by Name \_\_\_\_\_  
Date \_\_\_\_\_



**Section 3.2: Project Summary Form**

**Project Location Information**

Nearest Town or City	
County	
Township/Range/Section	
Latitude/Longitude	
State Senate District	
State Representative District	
Stream Name and Watershed	
Water Division	
Water District	

**Land Ownership**

*On a map of scale  $\geq 1"=2000'$ , indicate all property affected by this project and evidence of ownership or easements for project work. This information should also be shown on an ownership map in the appendices. If the project area has over three property owners, please attach a separate sheet with names and permission status for each.*

Name of Landowner(s) \_\_\_\_\_

Evidence of ownership or easements for river restoration work:

- Enclosed       Will forward if requested       Not yet available (explain timeline)

**Grant Request** (round figures to the nearest \$100)

Total Project Cost	
Grant Request	
List Funding Sources	

**Brief Description of Project Request (Please limit to no more than 100 words; this will be used to inform reviewers and the public about your proposal):**



### Section 3.3: Technical Narrative Description

The project description, referred to as the technical narrative, should be written in no smaller than 11-point font with at least one-inch margins, and should not exceed five pages (excluding appendices). Applicants should use this outline as a guide to describe their project and how it meets the evaluation criteria. The technical narrative should address the following sections:

#### **Project Need/Definition of the Problem**

- Succinctly describe the problem that this project will address and its urgency
- Describe the circumstances that precipitated the need for this project and any past, ongoing, or proposed efforts to address the need

#### **Project Goals and Objectives**

- Include a discussion of current conditions and their causes and desired future conditions
- Describe resource and programmatic goals for the project
- Describe the anticipated benefits of the project

#### **Technical Feasibility of the Proposed Project**

- Describe how the project will be designed and implemented
- Identify any needed permits or approvals and how those will be obtained
- Identify any water rights concerns or necessary legal documents
- Describe how potential adverse impacts of the project on the 100-year floodplain will be addressed
- Describe how the project will withstand the impacts of a 100-year flood

#### **Project Implementation Plan**

- Describe chronological order of tasks or activities to accomplish work for each objective

#### **Project Time Schedule**

- Identify major milestones and projected dates for their implementation

#### **Monitoring Plan**

- Describe how information will be collected and analyzed to determine project results

#### **Qualifications of the Applicant**

- Briefly summarize the skills and qualifications of the project team
- Briefly summarize the previous experience of the project team in accomplishing projects such as this (include specific information on past projects/history)

#### **Coordination Plan and Public Involvement**

- Identify lead project sponsor, partners, and methods of cooperation among partners
- Describe local support for the project
- Describe the process for ensuring public involvement in the project and known support or opposition

#### **Appendices**

- Please include any maps, legal documents, letters of support, other materials that will help clarify the grant request



## Section 3.4: Evaluation Criteria

The following criteria will be used to evaluate applications to the Fish and Wildlife Resources Fund. How well an application meets these criteria will be deduced from the technical narrative, so ensure that the following issues are addressed within the narrative.

### **Urgency/Need** **15 points**

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- Urgency or timeliness of the project to protect fish & wildlife resources.
- Need for funding and CWCB support.
- *Especially reflected in Narrative Sections 1.0 and 2.0*

### **Project Benefits** **15 points**

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- What are the statewide benefits of the project?
- What are the physical and biological benefits of the project to natural resources at the local level?
- What are the social benefits of the project to the local community, including factors such
  - Use of volunteers where appropriate,
  - Educational opportunities.
- *Especially reflected in Narrative Section 2.0*

### **Technical Merit/Soundness of Proposal** **30 points**

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- If the proposed project or planning effort is implemented, will it have a significant impact on improving the health of the river system or the target fish and wildlife?
- Is the proposal well thought out and will the proposal implementation steps really accomplish the stated goals of the proposal?
- Once designed and constructed, will the project mitigate the potential adverse impacts on the adjacent 100-year floodplain? Explain.
- Once constructed, will the project be able to withstand the impacts of a 100-year flood? Explain how.
- Will the applicant(s) have the financial resources to repair any damages sustained by the project during a flood greater than a 100-year flood?
- *Especially reflected in Narrative Sections 3.0, 4.0, 5.0 and 6.0*

### **Organizational Capacity** **20 points**

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- Applicant organization's history of accomplishments in similar projects.
- Capacity of available staff to accomplish the proposed project.
- *Especially reflected in Narrative Section 7.0*

### **Coordination/Public Involvement** **20 points**

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- Applicant's history of working cooperatively with community organizations and local, state and federal agencies.
- List of partners and how they will contribute to the project (letters of support and commitment).
- Are all necessary permits and permission secured or identified?
- *Especially reflected in Narrative Section 8.0*



**Section 3.5: Grant Application Budget Form**

Sources of Funds	Date	Grant Request	Cash Match	In-Kind Match	Totals
		\$	\$	\$	\$
Uses of Funds	Date	Grant Request	Cash Match	In-Kind Match	Totals
		\$	\$	\$	\$
Totals		\$	\$	\$	\$

**Total Project Cost: \$**

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_



## Section 3.6: Application Checklist

This checklist is intended to help ensure that the final grant application is full and complete.

### Grant Package

- Are there three correctly formatted hard copies of the complete application?
- Is it compiled in the order shown below?
- Is there an electronic version of the application?

### Applicant Information

- Are all sections completed on this form?

### Project Summary Form

- Are all sections completed on this form?

### Technical Narrative

- Is the narrative complete, with all eight sections addressed?
- Is it in 11-point font or larger, one-inch margins or larger, no more than five pages?
- Are project selection criteria addressed adequately in your technical narrative?

### Budget

- Is a complete budget included, showing sources and uses of funds?

### Appendices

#### Maps

- Is a project vicinity map included?
- Is a project map with land ownership included?
- Are other maps included?

#### Legal Documents

- Are important legal documents included?

#### Analysis of Flood Impacts

- Is a floodplain map showing the pre-project and post-project 100-year floodplain boundaries included?
- Is an engineering analysis of the project's ability to withstand a 100-year flood included?

#### Other Documents

- Are all other supporting documents included, with five copies of all?



## Section 4.1: Contract Materials

This section contains the materials necessary for contracting with the CWCB. Applicants/Sponsors are asked to read and familiarize themselves with these forms and to sign and return the signature page with their completed application. In the event an application is selected for funding, this will facilitate processing of the contract. Please note that this contract template contains materials required for contracting with the State of Colorado and cannot be altered.

Contract materials include:

- **Grant Agreement**
  - *This form is the contract an applicant/sponsor would enter into with the CWCB in the event of funding.*
- **Special Provisions for Use Only with Inter-Governmental Agreements**
  - *This form contains special provisions necessary for contracting with the State and is intended for grants given to other governmental agencies.*
- **Special Provisions for use with Non-Inter-Governmental Agreements**
  - *This form contains special provisions necessary for contracting with the State and is intended for grants given to nongovernmental organizations.*
- **Signature Page**
  - *This is the signature page required for contracts. Completing this form with the application will facilitate processing but does not constitute an offer by the State (see notice below).*

**Notice to Grant Applicant/Sponsor: Your submission of this application constitutes an offer, acceptance of which shall result in a binding agreement effective upon acceptance of your application and award of the grant. The terms of the Agreement include the Special Provisions, and any amendments of changes to the grant application/agreement.**

The Applicant/Sponsor hereby submits this application and acknowledges that acceptance of this application and award to the Applicant/Sponsor constitutes a binding agreement.

The determination of an award amount is not a material part of this offer and determination of a specific amount, or upward or downward adjustment of a tentative amount referenced in this application, or otherwise made known to the Applicant/Sponsor, shall not be considered a counter offer requiring the Applicant/Sponsor's acceptance.

The Applicant/Sponsor swears under penalty of perjury that the foregoing certifications, representations, and statements are true, accurate and complete to the best of the Applicant/Sponsor's knowledge and belief.

## Grant Agreement

The agreement is made \_\_\_\_\_ (date) between the Department of Natural Resources, Colorado Water Conservation Board, 1313 Sherman Street, #721, Denver, CO 80203 hereinafter referred to as the "State" and \_\_\_\_\_, hereinafter referred to as the "Sponsor" or "Contractor".

### RECITALS

Authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available, from FUND \_\_\_\_\_, APPR \_\_\_\_\_, ORG \_\_\_\_\_, AGENCY \_\_\_\_\_, OBJ \_\_\_\_\_, GBL \_\_\_\_\_, the sufficient unencumbered balance thereof remains available for payment of a total of \$ \_\_\_\_\_, as Contract Encumbrance No. \_\_\_\_\_.

The agreement is entered into pursuant to the provisions of §37-60-122.2 (5) C.R.S.

The Colorado Water Conservation Board adopted Policy 15, effective September 12, 2002, outlining policies for consideration and approval of Fish and Wildlife Resource Fund Grant Applications.

The required approval, clearance and coordination have been accomplished from and with appropriate agencies.

### Grant Award

Award is hereby made to the Sponsor in the amount of \$ \_\_\_\_\_ (approved grant amount) for performance of the scope of work (Scope of Work), which is attached as Exhibit A.

### Terms and Conditions

#### 1. Scope of Work

The Applicant will undertake the scope of work described in the attached scope of work.

#### 2. Performance Period

The period of performance will be from approval date shown in the controller's signature block until \_\_\_\_\_, unless otherwise amended and agreed upon by both parties.

#### 3. Schedule of Payments

- a. The State share of this project is not to exceed the approved grant amount list in **Grant Award** above, a maximum of \$ \_\_\_\_\_.
- b. Payment will be made upon submission of invoice and approval by the State, for work completed.
- c. The State reserves the right to inspect all projects prior to, during or at the conclusion of the project and/or periodically thereafter. A representative of the Applicant may be required to attend the inspection.

#### 4. State's Limitation

The State's participation in the Project is limited to providing funds. The Sponsor is solely responsible for the development and implementation of the Project.



5. Financial Responsibility

- a. The Applicant shall maintain a complete record file of all receipts, expenditures and other written records which pertain to the use of the funds in the performance of this Agreement. Such record files shall be made available upon request at such reasonable times and places as agreeable to the parties of this Agreement.
- b. No later than thirty (30) working days after the date of completion of the Project or termination of the Agreement, the Applicant shall submit to the State a complete record of all receipts and expenditures and other written records related to the Project. Following the completion of the Project construction or termination of the Project, the State shall inspect the Project facilities and audit all expenditures made by the Applicant related to the Project as set forth above in "Scope of Work." If the State finds any expenditures were not made in accordance with this Agreement, the State may request, and the Applicant shall immediately refund monies used for those expenditures.

6. Assignment:

The rights and responsibilities of the parties under this contract shall not be assignable without the prior written approval of the State.

7. Successors and Assignments:

- a. All terms of the Agreement shall be binding on and inure to the benefit of the personal representatives, successors, or assigns of the parties.
- b. This Agreement is not assignable without written consent of both parties.

8. Integration of Understandings

This agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written Agreement executed and approved pursuant to the State Fiscal Rules.

9. Severability

To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.

10. Modification

This agreement is subject to such modifications as may be required by changes in Federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of these agreement on the effective dates of such change as if fully set forth herein. Except as provided above, no modification of this agreement shall be effective unless agreed to in writing by both parties in an amendment to this agreement that is properly executed and approved in accordance with applicable law.

11. Termination for Convenience

The State may terminate this contract at any time the State determines that the purposes of the distribution of State moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Sponsor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Sponsor under this contract shall, at the option of the State, be delivered by the

Sponsor to the State and shall become the State's property. The Sponsor shall be entitled to receive just and equitable compensation for any satisfactory services and goods delivered.

If the contract is terminated by the State as provided herein, the Sponsor will be paid an amount which bears the same ratio to the total compensation as the services satisfactorily performed bear to the total services of the Sponsor covered by this contract, less payments of compensation previously made. If this contract is terminated for cause, or due to the fault of the Sponsor, the Termination for Cause or Default provision shall apply.

#### 12. Termination for Default

If, through any cause, the Sponsor shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Sponsor shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Sponsor of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Sponsor under this contract shall, at the option of the State, become its property, and the Sponsor shall be entitled to receive just and equitable compensation for any services and goods delivered and accepted. The Sponsor shall be obligated to return any payment advanced under the provisions of this contract. This provision shall in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

Notwithstanding the above, the Sponsor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Sponsor, and the State may withhold any payment to the Sponsor for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Sponsor is determined.

If after such termination it is determined, for any reason, that the Sponsor was not in default, or that the Sponsor's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

#### 13. Order of Precedence

Any inconsistency or conflict in this agreement shall be resolved by giving precedence in the following order:

- a) Special Provisions of Agreement
- b) Grant Agreement
- c) Exhibit A

# **SPECIAL PROVISIONS**

(Not for Use with Inter-Governmental Contracts)

1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1)

This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. FUND AVAILABILITY. CRS 24-30-202 (5.5)

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. INDEMNIFICATION.

The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

4. INDEPENDENT CONTRACTOR. 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

5. NON-DISCRIMINATION.

The contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

6. CHOICE OF LAW.

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. VENDOR OFFSET. CRS 24-30-202 (1) & CRS 24-30-202.4

Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

8. SOFTWARE PIRACY PROHIBITION Governor's Executive Order D 002 00

No State or other public funds payable under this Contract shall be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

# SPECIAL PROVISIONS

## (For Use Only with Inter-Governmental Contracts)

1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1)

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Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. INDEMNIFICATION.

To the extent authorized by law, the contractor shall indemnify, save, and hold harmless the State against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions for the parties, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq. or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. as applicable, as now or hereafter amended.

4. INDEPENDENT CONTRACTOR. 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

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The contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

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8. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

**SPECIAL PROVISIONS**

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

CONTRACTOR:

STATE OF COLORADO:

BILL OWENS GOVERNOR

By \_\_\_\_\_  
Legal Name of Contracting Entity

By Executive Director \_\_\_\_\_

\_\_\_\_\_  
Social Security Number or FEIN

Department of \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Officer

LEGAL REVIEW:  
Attorney General, Ken Salazar

BY \_\_\_\_\_

\_\_\_\_\_  
Print Name & Title of Authorized Officer

CORPORATIONS:  
(A corporate attestation is required.)

Attest (Seal) By \_\_\_\_\_  
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:

Leslie M. Shenefelt

By \_\_\_\_\_

Date \_\_\_\_\_