

Tom Jankovsky
District 1

John Martin, Chair
District 2

Mike Samson, Chair Pro Tem
District 3



August 5, 2024

Scott Fitzwilliams,
Forest Supervisor,
White River National Forest
900 Grand Ave.
Glenwood Springs, CO 81601

RE: Sweetwater Lake Recreation Management and Development Project Notice
of Intent Comments

Supervisor Fitzwilliams,

The Sweetwater Lake Project “encompasses 832 acres, including 488 acres acquired by the FS in 2021.” Notice of Intent to Prepare Environmental Impact Statement (“NOI”), Vol. 89 Fed. Reg. No. 88, p. 37165 (May 6, 2024). Therefore, 344 acres are in the White River National Forest (“WRNF”) adjacent to the Sweetwater Lake Area (“SLA”- the 488-acre purchase in 2021). The summary in the NOI proposes to authorize a long-term special use permit (“SUP”) to Colorado Parks and Wildlife (“CPW”) to manage the area. In addition, the Summary provides: “This project may require an amendment to the White River National Land and Resource Management Plan (forest plan).” Therefore, these comments will address the three proposed actions by the agency official in charge, WRNF Forest Supervisor (“FS”) Scott Fitzwilliams in the following categories: (1) long-term SUP to CPW for management of the area; (2) WRNF Plan Amendment; and (3) Sweetwater Lake Recreation Management and Development Project (“SL Project”). The comments will focus on whether the proposed actions comply with applicable standards and guidelines found in the forest plan; whether the environmental impact statement will have sufficient site-specific environmental analysis to make an informed decision; and whether the proposed actions comply with the federal laws and regulations applicable to the scope of the actions proposed.

Further, these comments will also address the Supplementary Information included in the NOI that describes how the SLA was acquired by the United States Forest Service (“USFS”). The NOI provides: “A successful grassroots effort within the local community, which included donations from Eagle County and the Town of Gypsum, was able to protect the area around Sweetwater Lake from private development with a purchase by the Conservation Fund.”

The purpose of these comments is to identify the Garfield County Board of County Commissioners’ (“County”) key issues and concerns and potential impacts that should be

addressed in the analysis. The County suggests alternatives that include a no action alternative (as required under NEPA) and an alternative that honors the historical buildings that contribute to this site as eligible for placement on the National Historic Register of Places (“NHRP”). The County’s goal is to promote transparency in the USFS decision-making process and to ensure the views and preferences of the community are considered.

The County has entered into a Cooperating Agency Agreement with the WRNF for the SL Project as of September 19, 2022. The County participated in the Sweetwater Community Working Group Meetings held from October 2022 to May 2023. The County participated in every pre-NEPA cooperating agency meeting held from July 2023 – March 2024; this included seven in person meetings and one field tour of the area in September 2023. The WRNF’s decision to go through a full Environmental Impact Statement (“EIS”) was at the insistence of the County and we therefore agree it is the correct level of NEPA analysis given the connected actions involved in the SL Project.

Forest Service Acquisition of SLA

On June 27, 2020, the Conservation Fund (“TCF”) purchased the SLA for \$7.1MM, which included purchase monies from a non-recourse loan from Great Outdoors Colorado (\$6.25MM), a \$500,000 donation from Eagle County and \$350,000 in donations from private individuals (through Eagle Valley Land Trust (“EVLTL”) and the “Save the Lake” campaign).¹ On August 27, 2021 the USFS purchased the SLA and a portion of the water rights TCF had acquired for \$8.5MM. See Exhibit 1 – Water Rights Specialist Report and Exhibit 2 – General Warranty Deed. The purchase monies USFS used was the entire allocation it was granted through the Great America Outdoors Act (“GAOA”) during the federal appropriations process in the fall of 2020 from the Land & Water Conservation Fund (“LWCF”).² The FS has referred to this as a bargain sale, presumably pursuant to Forest Service Manual 5409.13, Chapter 10, 11.23.

An appraisal of the SLA was not completed by the USFS until March 29, 2021, and the valuation was \$9,045,000 (\$8.8MM as land, \$250K for improvements). The USFS Regional Appraiser confirmed the underlying appraisal valuation on May 14, 2021. The Water Rights Specialist’s Report dated December 18, 2020, was included in the valuation. This report recommended acquisition of certain water rights for a total summer (105-day) season of 104,475 visitors. See Exhibit 1 Table 4.

In September 2021 TCF granted EVLT \$1.2MM from TCF’s “Sweetwater Stewardship & Equity Fund.” See Exhibit 3 TCF 2021 Form 990 Schedule I. TCF statements provide that this money was from mostly private and Eagle County donations. However, according to EVLT’s 2022 Annual Report that contribution was only \$1.1MM. See Exhibit 4, numbered page 8 and Summarized Income Statement (for 2021 Stewardship Fund shows \$1,179,787). Somehow, according to EVLT the “Save the Lake” donations were used for the acquisition of the property by TCF in order to lower the asking price from \$9,045,00 to \$8.5MM and also returned to EVLT by

¹ <https://www.conservationfund.org/impact/press-releases/the-conservation-fund-purchases-sweetwater-lake>

² <https://coloradosun.com/2020/11/16/sweetwater-lake-land-water-conservation-fund-forest-service-interior-bernhardt/>

TCF for their Stewardship Equity Fund. The County has made multiple requests to EVLT to discuss the “use” of these funds. TCF made \$1.4MM on the sale of this property in 14 months.

Generally applicable land acquisition policy is set forth in the Forest Service Manual (FSM) 5400 at Chapter 5420 and requires the USFS to base purchases on approved land and resource management and composite plans and to purchase lands on a willing seller basis at a price established as just compensation that shall not be less than the approved appraisal of fair market value. Lands may be purchased for less if the landowner requests a lower price. FSM 5420.3. Part of the criteria for placement on the USFS priority acquisition list requires the project meet certain criteria including: (1) the property is adjacent to the boundaries of an existing national forest; (2) the property presents no known health/safety/liability problems (...unsafe structures...) that the USFS is not willing to correct; (3) there is no current indication of opposition from current owner to federal acquisition; and (4) there is no current indication of community opposition. FSM 5421.34a. If those criteria are not met a narrative justification must be provided.

USFS Region 2 policy requires the USFS to prepare a Landownership Adjustment Analysis (“LAA”) for incorporation as an amendment to the relevant forest plan. This is necessary to identify the strategic objectives of the purchase and that these objectives align with the forest plan. The LAA also requires public and stakeholder involvement.

Finally, the USFS is required to practice responsible land management and stewardship. This, at a minimum, requires having the initial funds for acquisition of the property, funds to manage and maintain the property after acquisition (including routine maintenance, resource management, infrastructure development, and conservation efforts), funding for operational costs such as staffing, resource monitoring, enforcement of USFS regulations, and public services, funding for restoration and improvement, such as ecological restoration, improvements to infrastructure, and other enhancements, and funding for long term sustainability that ensures there are funds or funding mechanisms in place to maintain the quality of the acquisition over time. This requires the USFS to have conducted a thorough financial analysis as part of the land acquisition process to confirm they can meet these financial obligations.

The County notes the above information in its comments to the NOI because we believe the acquisition has been flawed from the beginning and the USFS has not followed its own regulations and is not practicing responsible land management and stewardship. There has been no documentation that the WRNF complied with its own land acquisition policy or the requirement to prepare an LAA. Further, the USFS should have undertaken a Categorical Exclusion (“CE”) level of analysis (that includes public scoping) under NEPA prior to its execution of the option contract with TCF. The USFS should have also undertaken a forest plan amendment prior to moving forward with the acquisition. This is particularly relevant because the USFS knew that it was going to transfer management to CPW prior to purchasing the property and hid that fact from the public. Further the WRNF knew CPW planned to tout this property as a state park making the entire concept an outcome that was pre-decisional and predetermined.

SUP to CPW

Sweetwater Lake is already listed in the CPW “Your Guide to Colorado’s State Parks” as “Colorado’s next state park.” Exhibit 5, numbered page 55. There is a considerable lack of support for a state park in the Sweetwater Community.³

The County has been portrayed by CPW as being supportive of a state park, which is false. See Exhibit 6, CPW Request to Colorado Legislature Joint Budget Committee March 2022. This document provides that there has already been \$10MM allocated for capital construction projects at the “park” that come from the State General Fund. This allocation would have had to occur in the *spring of 2021* as the state fiscal year runs from July 1 to June 30. CPW also asked for, and received, an additional \$388,432 in cash funds and 3 FTEs for the “park.” They made the request based on staffing at similar sized lake-based state parks, such as Sylvan Lake State Park. Finally, the CPW request concludes with the false statement: “now the park exists.”

As outlined above, the FS planned to grant CPW a SUP permit even prior to its purchase of SLA. See Exhibit 7. This document in fact cites to unappropriated funds by Governor Polis as “verbally committed in the range of \$10MM to develop the site...” This document also tells us that the WRNF was working with CPW prior to the acquisition. Further, the FS attempted to put the SUP in the CE decision box. See Exhibit 8, slide from the CPW presentation. However, that effort has failed since the NOI specifies an EIS will be completed.

It is unclear from the NOI whether the WRNF has complied with its special use regulations found at 26 CFR 251.50-.65. In order for the County to provide detailed and useful comments to the FS the County will first need to review the proposal that was submitted by CPW to the WRNF. Further, the County will need to review the comprehensive terms of the proposed Granger-Thye (G-T) Permit to the State of Colorado. The G-T Permit has extensive requirements including those for risk of loss and liability. The County cannot provide comments until all the terms have been reviewed for compliance with federal, state, and local laws and regulations. Jurisdictional issues between CPW and USFS have not been addressed including, but not limited to, whether CPW has the legal authority to enforce USFS regulations.

The Declaration of SLA as a state park did not comply with Governor Polis’ own Executive Order No. B-2019-010 nor the Parks Criteria outlined by the CPW and the Colorado Parks and Wildlife Commission. Specifically, the CPW did not work with the local government nor the community when it determined that SL Project was going to be a state park.

The County will need to review the environmental and cultural resources analysis that the WRNF is relying on with respect to its decision to issue a SUP to CPW. Further, the County has its own process under the Garfield County Land Use and Development Code, Article 14 to evaluate the provision of a SUP to CPW.

³ <https://sopriissun.com/sweetwater-lake-proposed-management-plan-invites-feedback/>

Forest Plan Amendment Required

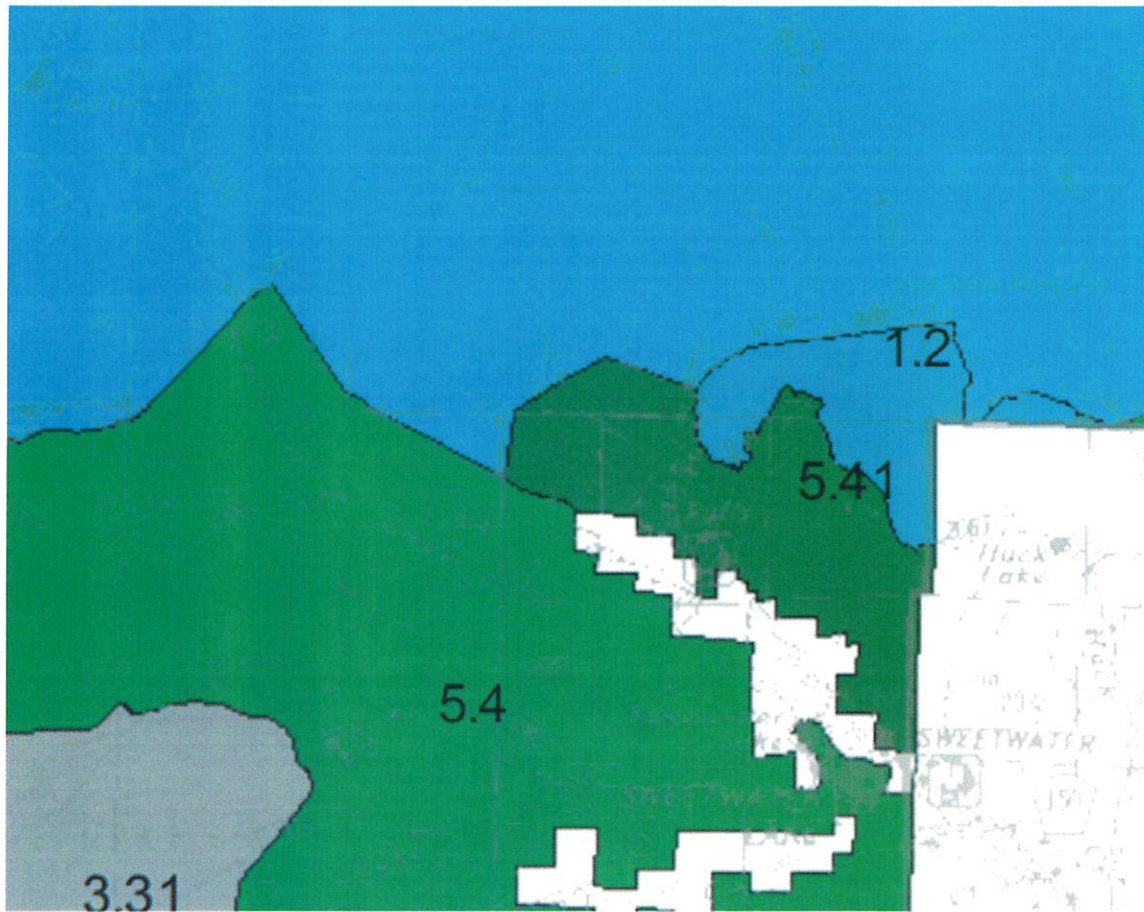
The USFS must follow its own White River Forest Plan (“WRFP”), the National Forest Management Act (“NFMA”), applicable Colorado law, and the Garfield County Federal Lands Natural Resources Coordination Plan and Policies (“Federal Lands Natural Resources Plan”).⁴ A forest plan amendment will be required for the proposed recreational area. The Current Schedule of Proposed Action (“SOPA”) provides:

600.3B or Boom Boom Pit Road.					
Sweetwater Lake Recreation Management and Development Project (SLDP) EIS *UPDATED*	- Land management planning - Recreation management - Special area management - Grazing management - Minerals and Geology - Land ownership management - Special use management - Facility management - Road management	In Progress: NOI in Federal Register 05/06/2024 Est. DEIS NOA in Federal Register 12/2024	Expected:03/2026	04/2026	Jamie Werner 970-471-0259 Jamie.Werner@usda.gov
	Description: Forest Plan Amendment to create Special Interest Management Area for newly acquired properties and surrounding National Forest Lands surrounding Sweetwater Lake, allowing for the appropriate, consistent, sustainable, and holistic management.				
	Web Link: http://www.fs.usda.gov/project/?project=64047				
	Location: UNIT - East Zone/Eagle Ranger District. STATE - Colorado. COUNTY - Garfield. LEGAL - Not Applicable. Project is located approximately 12 miles north, northwest of Dotsero, Colorado in portions of Sections 5, 8, 9, 15 and 16 of T3S, R87W, 6th Principle Meridian; Garfield County, Colorado.				

The SOPA outlines a “special area management” which means that the area will not be compatible with the current designations of the WRFP. Forest planning is required by the NFMA of 1976. Plans guide management of USFS lands so they are “ecologically sustainable and contribute to social and economic sustainability; consist of ecosystems and watersheds with ecological integrity and diverse plant and animal communities; and have the capacity to provide people and communities with ecosystem services and multiple uses that provide a range of social, economic, and ecological benefits for the present and into the future.” 36 CFR § 219.1(c). Plans must comply with all applicable laws and regulations including the NFMA, the Multiple-Use Sustained-Yield Act (MUSYA) of 1960, the Clean Air Act, the Clean Water Act, the Wilderness Act, and the Endangered Species Act. 36 CFR § 219.1(f).

Projects and activities must be consistent with the plan. 36 CFR § 219.2(b)(2). As outlined in the NOI, this proposed action is subject to the 2012 Planning Rule that has requirements including, but not limited to: the plan revised under the regulations must provide for ecological, social and economic sustainability; a species-specific approach to maintaining the diversity of plant and animal communities and the persistence of native species in the plan area to uphold ecosystem integrity and diversity; and include species of conservation concern within the plan elements. 36 CFR § 219.8-9.

⁴ The Federal Lands Natural Resources Plan can be found at: <https://www.garfield-county.com/board-commissioners/>



It is unclear exactly what land surrounding the SLA is considered in the additional 344-acre area outlined in the NOI as the SL Project for a plan amendment. The above image is the area directly surrounding the SLA and includes designated classifications 5.4 for Flora and Fauna Habitats just south of the SLA and 5.41 for Deer and Elk Winter Range just north of the SLA. It is critical to know where the other 344 acres lie because if it is northwest, they may move into the classifications for 1.12 for Primitive Wilderness (light blue area) or 1.2 for Recommended for Wilderness.⁵

The standards and guidelines for management in the WRNP indicates several potential inconsistencies relative to the planned utilization and adjacent forest planning classifications.⁶ In area designated 5.41 the guideline is to “restrict recreation activities that would disturb deer and elk during winter and spring periods” and “discourage special uses that require access during winter and spring periods.” p. 3-58. The stated desired condition is for road systems and trails to remain relatively undeveloped. There is a high likelihood that population herd objectives may be negatively impacted by increased and intense daily use in this area.

The designated classifications are not compatible with the proposed action of a high daily use state park. In the area designated 5.4 the guideline for wildlife is “protect, enhance, and restores habitat for native fishes” and for infrastructure are that “new roads and trails needed to implement

⁵https://www.fs.usda.gov/Internet/FSE_MEDIA/stelprdb5190287.pdf

⁶ https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_000999.pdf

management in the area should be low-standard, single-purpose roads...and summer motorized travel will not exceed an average travelway density of two miles per square mile.” p. 3-56. In the area designated 1.2 the recreation guidelines include limiting the number of individuals present and significantly limiting the density of campsites. In addition, the desired condition is for primitive recreation with moderate to high degrees of solitude available. p. 3-10. This is the Flat Tops Wilderness area.

In the area designated 1.12 the desired condition is for the number of camp sites to accommodate moderate use with no new sites forming over time and the theme is to manage the area to protect natural conditions and offer a moderately high degree of solitude. p. 3-6.

The WNFP specifies that one of its goals is to ensure viability of species of concern. The EIS will need to identify whether these species exist on the site and adhere to the strategies in the WNFP to protect these species. The USFS is changing the forest plan to fit the pre-determined state park concept instead of having the state park meet the needs and uses of the forest plan in this area.

The WNFP includes a special planning classification for lakes, campgrounds, boat launches, and marinas called 8.21 Developed Recreational Complexes. This is likely the only classification that could be legitimately used to support the contemplated intensity of uses of the SLA. p. 3-78-79. The contemplated management of the SLA by CPW is not consistent with the current WRFP and a forest plan amendment is required.

The USFS has a legal obligation to coordinate with Garfield County under the NFMA and this obligation is particularly relevant to the required forest plan amendment. 16 USC § 1604(a). The Garfield County Federal Lands Natural Resources Plan applies to the SL Project as it is in Garfield County. The USFS needs to honor its obligation to meaningfully coordinate with Garfield County. The following four key policies apply to the USFS from the Federal Lands Natural Resources Plan:

- 1) Acquisition of private lands by federal agencies in Garfield County should only occur with a dedicated source of funds for ongoing management to ensure these lands will be properly maintained and not contribute to the significant maintenance and management backlog of existing federal lands.
- 2) All federal land acquisitions and disposals should be reviewed to ensure the proposed change of ownership does not result in a net loss of private property or a net gain of federal lands. Because of the limited private property within the County, which provides necessary funding for County services, there shall be an equal or greater exchange in acres or value in favor of the County, for federal land exchanges, acquisitions or disposals. This is necessary to retain at a minimum a net- neutral land ownership pattern in Garfield County. If the federal government cannot honor Garfield County's "no net gain" policy, it shall provide, in writing, the reasoning for continuing the land acquisition contrary to this policy.
- 3) The Federal agencies shall coordinate with Garfield County when public lands are offered for sale in the County. The Secretary shall notify Garfield County to afford the opportunity to zone or otherwise regulate or change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance.

- 4) No public land conveyance shall be made until the Secretary has notified Garfield County as to the consistency of such conveyance with applicable County land use plans, programs and policies.

The USFS must do a forest plan amendment that incorporates all the above information and complies with federal statutes, rules and regulations, USFS guiding policies, Colorado state law and CPWs regulations, and the County's code and policies.

Development Plan for SL Project

Generally, the County disagrees with the purpose and need for action. The primary issues are managing the amount of people the site can adequately carry without causing adverse impacts to the wildlife that may include endangered species and threatened species of flora and fauna. The County is also concerned about the health, safety, and welfare of visitors and residents if the size and scope of this project is not scaled down significantly. Further, the County believes there needs to be a focus on preserving the historic nature of this mountain resort instead of "enhancing" and "updating" as outlined in the NOI. If the site is proposed to be open to the public year-round additional studies should be done to determine the potential impacts on deer and elk winter range.

Wildlife and Habitat Impacts

There has been no information regarding the resource studies that have informed this NOI by the WRNF. Therefore, Garfield County cannot provide detailed or thorough comments on the nature of the proposal without having analyzed the underlying data that the WRNF is using to inform this NOI.

The USFS is required to comply with the Endangered Species Act. Specifically, Section 7 requires the USFS to ensure their actions will not jeopardize the continued existence of listed threatened and endangered species or result in the destruction or adverse modification of such species critical habitat. 16 USC § 1536(a)(2). This consultation should take place with the United States Fish and Wildlife Service ("USFWS") to identify the relevant species within the project area, evaluate potential effects, and identify measures to mitigate such effects. Formal consultation under Section 7 should require the production of a Biological Assessment to determine if the proposed action is likely to adversely affect a listed species and may trigger the USFWS to prepare a Biological Opinion. This would require specific, binding, and enforceable conservation measures to avoid jeopardizing the species' critical habitat.

The County is aware that there are Townsend's big-eared bats on the SL Project area. They are on the Colorado Threatened and Endangered Species List and considered a Sensitive Species by the USFS Region 2. The Hoary bat is also located on the SL Project area and considered a Sensitive Species by the USFS Region 2. Further, the big game and other mammals in the area may require winter closures to ensure the viability of their critical habitat in compliance with Governor Polis Executive Order No. D-2019-011. The Harrington's Penstemon is also located on the SL Project area and is considered a vulnerable species by the Colorado Natural Heritage Program.

The USFS is required to comply with the Bald and Golden Eagle Protection Act. 16 USC § 668. Bald Eagles are located in the SL Project area. Therefore, an avian protection plan or eagle

conservation plan should be developed to minimize any impacts. Buffer zones will need to be created for the Peregrine Falcon and Bald Eagles.

The USFS is required to comply with the Migratory Bird Treaty Act. 16 USC § 703. The USFS should engage with the USFWS to identify the species, including Bald Eagles, that are present at the SL Project site. Any agreement with the USFWS and the USFS should minimize or avoid impacts to migratory birds and provide habitat preservation.

The USFS must evaluate the project's potential contribution to climate change, including greenhouse gas emissions, and propose strategies to minimize its carbon footprint. It must further incorporate sustainable practices and materials in the project design and construction to promote long-term environmental health and resilience.

The USFS is required to comply with the NEPA regulations promulgated by the Council on Environmental Quality (CEQ). The CEQ Phase 1 Final Rule was published on April 20, 2022, and revised the definition of "effects" and "cumulative impacts." The CEQ Phase 2 Final Rule was published on May 1, 2024. Notably these new regulations require the agency to ensure that environmental reviews are guided by science and are consistent with NEPA's text and purpose; enable full and fair public participation and a process that informs the public about the potential environmental effects of agency actions; and ultimately promote better informed federal decisions that protect and enhance the quality of the human environment, including by ensuring climate change, environmental justice, and other environmental issues are fully accounted for in agencies' decision-making processes. 40 CFR Parts 1500 -1508.

Ultimately the County wants to ensure that the project prioritizes the protection and conservation of Sweetwater Lake's natural habitats. Special attention should be given to preserving the water quality, aquatic ecosystems, and surrounding wildlife habitats.

Water Quality

The USFS must implement measures to prevent pollution and contamination of Sweetwater Lake. This includes managing runoff from construction activities, ensuring proper waste disposal, and monitoring for any potential sources of contamination.

The USFS must develop a comprehensive water quality monitoring plan to regularly assess the health of the lake before, during, and after the project implementation.

Invasive aquatic species can be transported via hand launched watercraft such as paddleboards, canoes, and small fishing boats. The USFS needs to include a plan to ensure that invasive aquatic species are not transported into Sweetwater Lake.

Recreational Use

As outlined above, the recreational use contemplated in the NOI is more than the current WFRP permits under its current classifications adjacent to this area. Therefore, this intensive use is not compatible with the forest plan.

Impacts to existing trails should be considered in detail including those trails located on the adjacent Bureau of Land Management (BLM) Hack Lake Special Recreation Area. Consistent with the current planning designations no new trails should be developed. Likewise, there should not be motorized vehicles on the trails.

Infrastructure on the Site

The carrying capacity of this site is a significant concern. As stated above, the initial USFS projections of 104,750 visitors over 105-day summer season equates to 1,000 visitors per day. That is 750 more per day than what the FS has recently stated in a presentation to the Sweetwater community on April 8, 2024. The numbers they were quoting were approximately 250 visitors per day with space for seventy-five parking spots.⁷ See Exhibit 9, schematic provided at April 8, 2024 presentation. While no specific numbers are included in the NOI, using the same methodology as the USFS used for its water acquisition and the number of individuals at the proposed campsites, cabins, equestrian facilities and day use the total is 29,505.⁸ This number divided by the length of the season (105 days) is 281 per day.

The site cannot accommodate daily visitors of either capacity because of the low grade of county road that currently runs to the site through Eagle County and the primitive nature of Garfield County Road 150 ("CR 150") that runs through the site. CR 150 presents numerous planning constraints. First, the capacity for volume is low and increased capacity without significant upgrading of the road will cause safety issues for visitors. The road is narrow and not designed for large volume, large vehicle traffic. The current USFS proposal located in Exhibit 9 requires a redesign, realignment or relocation of a portion of CR 150 at the entrance due to the topography of the site. Second, maintenance of CR 150 will increase proportionate to the increased use of the road. Third, the County's Land Use and Development Code requires permits to access any county road. The WRNF must take into consideration these requirements in its planning process. Fourth, there are concerns about access to the trailheads located at the end of CR 150 for recreation and hunting access if the carrying capacity is improperly managed such that people park on CR 150. Finally, the County has stated it is not intending to modify or improve CR 150.

Safety – Emergency Services

The County is concerned the size and scope of the project will leave citizens in a dangerous condition. Given the remote location of this area and the fact that Sweetwater Lake is in a box canyon with only one road out, if a wildfire starts people will need to be evacuated immediately. The NOI makes no mention of an evacuation plan. It will be impossible to get fire trucks and other emergency vehicles up this low-grade county road while hundreds of others attempt to evacuate. The USFS will need to develop a comprehensive plan for all emergency contingencies that includes an agreement with Garfield County.

⁷ https://townofgypsum.granicus.com/player/clip/672?view_id=3&redirect=true

⁸ 20 campsites with 4 individuals and 105 days = 8,400. 12 Cabins with 6 individuals and 105 days = 7,560. 7 equestrian camping sites x 4 individuals and 105 days = 2,940. Equestrian Stable 1 times 65 individuals and 105 days = 6,825. Day use/ picnic area 9 with 4 individuals and 105 days = 3,780. Total is 29,505 / 105 days = 281 per day.

In 2018 the Turret fire burned several acres of forest on the Flat Tops four miles northwest of Sweetwater Lake.⁹ During this fire, it took emergency crews over an hour and half to respond. There will be nowhere for the helicopters to land and the fire crews to set up if the entire area is developed. Further, in August of 2020 the Sweetwater community was evacuated during the Grizzly Creek Fire that was located ten miles away.

There is no cellular service at this location offering limited opportunities for emergency communication. This presents a health, safety, and welfare issue to the visitors and residents of the SLA. Access to the site by emergency first responders is an issue. The USFS needs to address these issues in its EIS.

Camping – Campgrounds, Cabins, Equestrian Facilities and Day Use

The current proposal to develop a new campground area to provide 20 new campsites, 12 new cabins, seven new equestrian sites, and a new lodge is premature. The County will need to review the data underlying the WRNF's decision to include the 15-20 new campsites in the lower pasture.

The County is concerned about the location of the new campground on the outside of CR150. If it is necessary and conducive to environmental standards it should be located at the lakeside where the new cabins are slated to go.

Historic Value and Protecting Cultural Resources

Garfield County has repeatedly requested the FS comply with Section 106 of the National Historic Preservation Act ("NHPA"). As stated in the NOI there is a cave within the project area. The County objects to the FS unilaterally entering into a cave management plan with the Native American tribes without consulting the myriad of other stakeholders necessary to thoughtfully inform their decision-making process. The cave management plan should be comprehensive and consider various perspectives and interests from the local government, public, other federal and state agencies, any archeological interested parties, in addition to the interested tribes. To date we have not been invited to participate in any meaningful consultation on this issue with the FS, SHPO, and/or any tribal representatives. See Exhibit 10.

Exhibit 10 addresses the concerns the County has regarding structures, features, and other cultural resources, including the pre-historic cave, on the property that makes the site eligible for inclusion on the NRHP. It details the very specific issues of this property and outlines how we do not believe the WRNF has complied with the NHPA. The County believes the FS has already decided to remove some structures on the site based on public statements the FS has made in community meetings and information provided in a Freedom of Information Act ("FOIA") request by the County to the USFS.

The County is concerned that the WRNF has not identified, in consultation with the County and State Historic Preservation Officer (SHPO), what structures contribute to the site's eligibility for inclusion on the NRHP.

⁹ <https://www.vaildaily.com/news/turret-fire-burning-on-6-acres-in-flat-tops-wilderness-near-sweetwater-lake/>

It will also be necessary to review the Class III cultural resource surveys, reports and information regarding these eligible features. The County's goal is to identify and protect the cultural and historical sites in the vicinity of Sweetwater Lake and engage with the Native American tribes and SHPO to ensure that significant sites are respected and preserved.

Finally, the Appraisal Report by the USFS Regional Appraiser did not consider whether the buildings were free of lead-based paint and asbestos. Environmental assessment work will need to be completed and estimates provided to determine the costs of repairing these historical structures.

Community Engagement

The WRNF has held two scoping meetings on June 5, 2024, in Glenwood Spring and June 6, 2024 at the Gypsum Recreation Center. They held one community engagement meeting pre-NOI on April 8, 2024. The WRNF and CPW representatives spoke for an hour and forty minutes and only left fifteen minutes for questions from the community.¹⁰ The WRNF should provide more engagement with the community throughout the development of the EIS.

As stated above many in the local area are against the state park. The County, like the local residents, feels like this effort was a bait and switch. The County supported the purchase by the USFS in January 2021. This letter was likely used in the application to the LWCF and provided as community support. No disclosure was made to the County or others that CPW would be managing or providing all the funding to develop this property. Then in October 2021 Governor Jared Polis stood at Sweetwater Lake and announced it was going to be the 43rd state park. There is very little trust of both the WRNF and CPW. Therefore, timely, accurate, and sincere engagement with the community is critical as this process continues. The County asks that the WRNF consider the input and concerns of local residents, businesses, and organizations, and incorporate their feedback into the project planning and implementation phases.

Conclusion

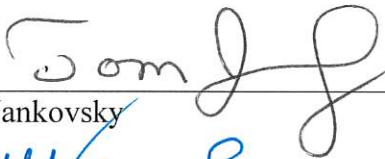
There are alternatives to the WRNF current proposed plan. The first is a no action alternative. The second alternative is to restore the buildings that contribute to the historical eligibility of the site for the NRHP including the current Lodge. This alternative would substantially leave the site "as is" with a seasonal concessionaire and is the County's preferred alternative based on the currently available information. The WRNF will need to consider innovative and less impactful alternatives that could achieve their project objectives and historically preserve the site and minimize environmental harm.


The WRNF will need to provide clear justification for selecting the preferred alternative based on environmental, social and cultural needs. The FS has repeatedly stated "we don't have a dime and our budget is getting way worse." However, information provided in the FOIA shows they suggested a total of \$20M in funding across four years. The FS should know that if the USFS did not have the capital to invest in the management of the acquisition, it should not have been purchased in the first place under the applicable federal statutes, rules, regulations, and USFS's own guiding documents.

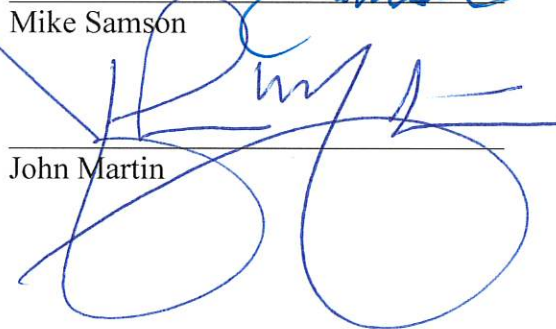
¹⁰ https://townofgypsum.granicus.com/player/clip/672?view_id=3&redirect=true

The County has provided these comments because it wants the USFS to increase its transparency and include public participation to ensure the views and preferences of the community are considered in this planning process. The County wants the best outcome for the community and to hold the USFS accountable for following all of the federal, state, and local laws that apply to this SL Project.

Sincerely,


Tom Jankovsky


Mike Samson


John Martin

Enclosures: Exhibits 1-10

Water Right Specialist Report

Non-Federal Land

December 18, 2020

Case Name: Sweetwater Lake Ranch
Party Name: The Conservation Fund
State: Colorado
Forest: White River
Case Designation: Purchase

Prepared by: ANDREA ROGERS
Digitally signed by ANDREA ROGERS
Date: 2021.06.01 14:15:41 -06'00'

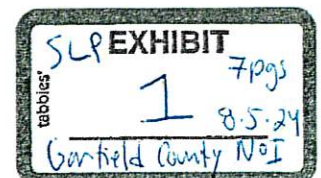
This report addresses water rights associated with the Sweetwater Lake Ranch property, water rights of others that currently exist on, or are conveyed through the property, projected consumptive water uses at the property, the water rights to be acquired by the United States in this transaction, and the water rights that will not be acquired.

Water Rights on the Non-Federal Parcel

The Conservation Fund acquired all existing water rights associated with the Sweetwater Lake Ranch property in its purchase transaction. The water rights now held by The Conservation Fund offered for sale to the United States in this transaction are listed in Table 1. A volumetric summary of this information is presented in Table 2.

Water Rights Currently owned by The Conservation Fund – Table 1

Water Right Name	Case Nos.	Decreed Uses	Decreed Amount	Appropriation Date	Adjudication Date
Keep Ditch – Original Construction (Ditch No. 267) ¹	CA1123	Irrigation	1 cfs, absolute	01/11/1915	02/07/1956
		Domestic	1 cfs, absolute		
Keep Ditch No. 267 – First Enlargement and Extension ¹	CA1123	Irrigation	13 cfs, absolute	08/15/1952	02/07/1956
		Domestic	1 cfs, absolute, 1 cfs, conditional		
Keep Ditch – Enlargement	04CW246, 16CW3025	Multiple Uses ² , Piscatorial	5.0 cfs, conditional	12/21/2004	12/31/2004
King Spring and Ditch – Original Construction (Ditch No. 276)	CA1123, 06CW76,	Irrigation	1.5 cfs (0.16 cfs, absolute, 1.34 cfs, cancelled)	08/30/1952	02/07/1956
		Domestic	1.5 cfs, absolute	07/10/1921	



Water Right Name	Case Nos.	Decreed Uses	Decreed Amount	Appropriation Date	Adjudication Date
King Spring and Ditch Enlargement	04CW246, 16CW3025	Multiple Uses ²	0.5 cfs, conditional	12/21/2004	12/31/2004
Sweetwater Lake Spring – Original Construction (Ditch No. 338) ³	CA1277, 06CW76, 10CW308, 15CW3046	Irrigation	1.5 cfs (0.5 cfs, absolute, 1.0 cfs, conditional)	06/15/1956	10/19/1962
Sweetwater Lake Spring – First Enlargement ³	CA1277, 06CW76, 10CW308, 15CW3046	Domestic	2.0 cfs, conditional	09/11/1961	10/19/1962
Sweetwater Lake	04CW246, 16CW3025	Multiple Uses ² , Augmentation, Domestic, Piscatorial	200 af, conditional	12/21/2004	12/31/2004
Sweetwater Pump and Pipeline	04CW246, 10CW308, 16CW3025	Multiple Uses ² , Augmentation, Domestic Piscatorial	5.0 cfs, conditional	12/21/2004	12/31/2004
Sweetwater Well No. 1	04CW246, 10CW308, 16CW3025	Multiple Uses ²	2.5 cfs, conditional combined for all wells	12/21/2004	12/31/2004
Sweetwater Well No. 2	04CW246, 10CW308, 16CW3025	Multiple Uses ²	2.5 cfs, conditional combined for all wells	12/21/2004	12/31/2004
Sweetwater Well No. 3	04CW246, 10CW308, 16CW3025	Multiple Uses ²	2.5 cfs, conditional combined for all wells	12/21/2004	12/31/2004
Sweetwater Well No. 4	04CW246, 10CW308, 16CW3025	Multiple Uses ²	2.5 cfs, conditional combined for all wells	12/21/2004	12/31/2004
Sweetwater Well No. 5	04CW246, 10CW308, 16CW3025	Multiple Uses ²	2.5 cfs, conditional combined for all wells	12/21/2004	12/31/2004
Sweetwater Well No. 6	04CW246, 10CW308, 16CW3025	Multiple Uses ²	2.5 cfs, conditional combined for all wells	12/21/2004	12/31/2004
Sweetwater Exchange	04CW246, 16CW3025	Augmentation	5.0 cfs, conditional	12/21/2004	12/31/2004

Water Right Name	Case Nos.	Decreed Uses	Decreed Amount	Appropriation Date	Adjudication Date
			(limited to 200 af annually)		
Sweetwater Ruedl Exchange	04CW246, 16CW3025	Augmentation	5.0 cfs, conditional (limited to 200 af annually)	12/21/2004	12/31/2004
Central Lake	04CW246, 10CW308	Multiple Uses ² , Augmentation	5.0 cfs, conditional	12/10/2010	12/31/2010
Colorado River Water Conservation District Contract ⁴	CW05020	Augmentation	74 af, from Wolford and/or Ruedl Reservoir		

Notes:

¹Pre-compact rights augmented from Green Mountain Reservoir Historic Use Pool.

²Multiple uses include commercial, fire protection, irrigation, municipal, recreation, and stock watering.

³Sweetwater Lake Spring is also known as Vaspen Spring.

⁴Colorado River Water Conservation District service contract no. CW05020 for a 40-year term.

Summary of water rights currently held by The Conservation Fund – Table 2

Absolute Rights	
Amount	Use
14.66 cfs	Irrigation
3.5 cfs	Domestic
Conditional Rights	
Amount	Use
1 cfs	Irrigation
2 cfs	Domestic
12.5 cfs	Multiple Uses
200 acre feet	Multiple Uses
Augmentation	
Amount	Source
5.0 cfs, conditional, not to exceed 200 acre feet annually	Sweetwater Exchange
5.0 cfs, conditional, not to exceed 200 acre feet annually	Sweetwater Ruedl Exchange
5.0 cfs, conditional	Central Lake
74 acre feet	Colorado River Water Conservation District Contract

One valid water right is conveyed across this property by a third party. Details of the right are presented here in Table 3.

Third-party owned water rights on the Non-Federal Parcel - Table 3

Water Right Name	Case Nos.	Decreed Uses	Decreed Volume	Appropriation Date	Adjudication Date
H M S Relocated Ditch	CA1138, CA1145	Irrigation	11.3 cfs, absolute	09/17/1902	12/09/1907
	CA1123	Irrigation	3.0 cfs, absolute	5/22/1946	02/07/1956
	CA1123	Irrigation	6.0 cfs, absolute	06/13/1953	02/07/1956
	07CW258	Irrigation, Recreation, Fire, Other, Wildlife	2.67 cfs, conditional	04/20/2013	12/31/2007

Projected Consumptive Water Use Needs

The White River National Forest developed projected use of the Sweetwater Lake Ranch property should the purchase of the parcel be completed. Consumptive water needs were estimated based on the proposed land use. Generally accepted guidelines for water demand, in gallons per day, for various water use scenarios were used in these calculations. Food service establishments with toilet and kitchen wastes are estimated to require 10 gallons per patron per day. Overnight lodging accommodation need 50 gallons per customer per day. The on-site proprietor at an overnight lodging establishment (the on-site owner of a bed and breakfast, for example) is estimated to need 80 gallons per person per day.

The consumptive use of water is generally estimated at 15% of diversions. The season of use for this property was estimated to be from May 15th – October 15th annually, or 150 days. Based on the typical calling scenarios for this drainage, which is tributary to the Colorado River, out-of-priority depletions for water use at this property can be expected to occur from July 1st through October 15th, or 105 days of out-of-priority depletions every year.

The acreage at the property proposed for Irrigation was estimated at 75 acres. The duty of water for irrigation in this area is 1 cfs per 40 acres of land. Irrigation for 75 acres will require 1.875 cfs of water.

The diversion and consumptive use water needs for the proposed uses of the Sweetwater Lake Ranch are summarized below in Table 4.

Sweetwater Lake Diversion & Consumptive (Con.) Use – Table 4

Use Type	Units	# Persons	Days	Total Visitors	Water Use (per person/per day) gallons	Total Diversions (Gallons)	Total Diversion (Acre-Feet)	Total Diversion (Cubic Feet Per Second)	% Con. Use	Total Con. Use Acre-Feet	Con. Use Per Day (Acre-Feet)	Con. Use Gallons per Day	Total Con. Use (CFS)
Campsites	25	4	105	10500	20	210000	0.64	0.32	15	0.097	0.000921	300	0.0005
RV Sites	75	4	105	31500	30	945000	2.90	1.46	15	0.435	0.004143	1350	0.0021
Cabins (Full Service)	30	6	105	18900	50	945000	2.90	1.46	15	0.435	0.004143	1350	0.0021
Restaurant (100 Seat)	1	200	105	21000	10	210000	0.64	0.32	15	0.097	0.000921	300	0.0005
Horse Stable (50/20)	1	65	105	6825	20	136500	0.42	0.21	15	0.063	0.000598	195	0.0003
Lodge (15 room)	1	60	105	6300	80	504000	1.55	0.78	15	0.232	0.002210	720	0.0011
Housing	1	10	105	1050	50	52500	0.16	0.08	15	0.024	0.000230	75	0.0001
Day Use/Picnic Area	20	4	105	8400	5	42000	0.13	0.06	15	0.019	0.000184	60	0.0001
Totals				104475		3045000	9.35	4.71		1.402	0.013350	4350	0.0067

Livestock Use	# Animals	Days	Animal Units	Water Use (per animal/per day) gallons	Diversions (Gallons)	Diversion (Acre-Feet)	Total Diversion (CFS)	% Con. Use	Con. Use Acre-Feet	Con. Use Per Day (Acre-Feet)	Con. Use Gallons per Day	Total Con. Use (CFS)
Horses on site	75	105	7875	15	118125	0.36	0.18	15	0.054	0.000518	169	0.0003

Irrigated Acres	75	Acres	2 cfs
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Water Rights Acquisition Recommendation

Comparison of the water rights associated with the Sweetwater Lake Ranch property currently offered for purchase and the projected diversion and consumptive water needs should the proposed land purchase occur yielded a need for a total of 4.71 cfs for domestic use, 0.18 cfs for livestock use and 2 cfs for irrigation use.

An additional 1 cfs of absolute irrigation water should be acquired to accommodate the difference between the available absolute domestic water and projected need for water for this purpose. This will require that the United States file a change case in Colorado Water Division 5 water court to change the use of the water from irrigation to domestic. It is not recommended to acquire conditional domestic use rights to meet this need because of the required due diligence filings every 6 years in water court to keep conditional water rights in good standing. A diligence application for the Sweetwater Lake Spring First Enlargement to continue the conditional right for 2 cfs of water for domestic use, for example, is due in May of 2023. This filing would require a significant investment of time and attention on behalf of the Forest. Once the water is put to domestic use another water court filing to perfect the water right will be required. In contrast, an absolute irrigation water right is in good standing and does not require diligence filings every 6 years. Rather a single change case filing with an analysis of historic consumptive use will yield the required amount of water for domestic purposes.

Recommended water rights for acquisition

Water Right Name	Case Nos.	Decreed Uses	Decreed Volume	Appropriation Date	Adjudication Date
Keep Ditch – Original Construction (Ditch No. 267)*	CA1123	Irrigation	1 cfs, absolute	01/11/1915	02/07/1956
		Domestic	1 cfs, absolute		
Keep Ditch No. 267 – First Enlargement and Extension*	CA1123	Irrigation	2 cfs of 13 cfs, absolute	08/15/1952	02/07/1956
		Domestic	1 cfs, absolute		
King Spring and Ditch – Original Construction (Ditch No. 276)	CA1123, 06CW76	Irrigation	0.16 cfs, absolute	08/30/1952	02/07/1956
		Domestic	1.5 cfs, absolute	07/10/1921	
Sweetwater Lake Spring – Original Construction (Ditch No. 338)*	CA1277, 06CW76	Irrigation	0.5 cfs, absolute	06/15/1956	10/19/1962

*Pre-compact rights augment from Green Mountain Reservoir Historic Use Pool

Total Absolute Amounts for Acquisition	
Irrigation	Domestic
3.66 cfs	3.5 cfs

The United States holds existing decreed absolute water rights on adjacent Forest Service land that are available for domestic and stock watering purposes. These rights, along with the additional recommended 1 cfs of irrigation water will provide sufficient water to meet all identified needs at the Sweetwater Lake Ranch property.

The remaining conditional water rights and all rights associated with the augmentation plan for the Sweetwater Lake Ranch property should not be acquired by the United States.

Return recorded document to:
Patricia Hesch
US Forest Service
P.O. Box 10
Granby, CO 80446

Approved as to Land Description,
Considerations & Conditions

_____ Date _____

HTC

GENERAL WARRANTY DEED

THIS INDENTURE, made this 27th day of August, 2021, between The Conservation Fund, a Maryland non-profit corporation, of 1655 N. Fort Myer Drive, Suite 1300, Arlington, VA 22209, hereinafter called "GRANTOR", and the United States of America and its assigns, whose Post Office address is Washington, D.C. 20013, hereinafter called "GRANTEE".

WITNESSETH, that the said Grantor, under the provisions of the Act of August 3, 1956 (70 Stat. 1032; 7 U.S.C. 2268a, 2228, 2233; 16 U.S.C. 579b), and the Consolidated Appropriations Act of 2021 (P.L. 116-260), for and in consideration of EIGHT MILLION FIVE HUNDRED THOUSAND and NO/100 DOLLARS (\$8,500,000.00) does hereby GRANT, BARGAIN, SELL, and CONVEY to the said GRANTEE and its assigns forever, all the following described real estate in the County of Garfield, State of Colorado, to wit:

Parcel 1

Township 3 South, Range 87 West, 6th P.M.

Section 5: S1/2SE1/4SE1/4SE1/4, S1/2NW1/4SE1/4SE1/4, SW1/4SE1/4SE1/4, NW1/4SE1/4SE1/4SE1/4;

Section 8: NE1/4NE1/4;

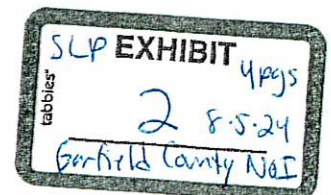
The above described property is otherwise described as Tract 38 in Section 5 and 8, Township 3 South, Range 87 West, 6th P.M.

Section 9: Lots 1 and 2, S1/2NW1/4NW1/4, N1/2SW1/4, SW1/4SE1/4, NW1/4NW1/4NW1/4, SW1/4NE1/4NW1/4, SE1/4NW1/4, W1/2NW1/4SW1/4NE1/4, SE1/4NW1/4SW1/4NE1/4, SW1/4SW1/4NE1/4.

Parcel 2

Township 3 South, Range 87 West, 6th P.M.

Section 16: Lots 1 and 2, excepting the Rights of Way deeded to the Board of County Commissioners of Garfield County, Colorado, by Quitclaim Deed recorded in the Garfield County, Colorado records as Document No. 207671, and by Deed recorded as Document No. 92177.



Also excepting all that part of Lot 1 in Section 16, Township 3 South, Range 87 West of the 6th P.M., lying South of the Center line of Sweetwater Creek and East of the County Road described in deed recorded as Document No. 92177.

The above described Parcels 1 and 2 include all subdivided lots in Sweetwater Lake Subdivision as the same is laid out and platted and shown on plat recorded in the office of the Clerk and Recorder of Garfield County, Colorado as document No. 209803, together with other property.

Parcel 3

Township 3 South, Range 87 West, 6th P.M.

Section 9: SW1/4NW1/4, excepting the rights of way deeded to the Board of County Commissioners of Garfield County, Colorado, by Quitclaim Deed recorded in the Garfield County records in Book 133 at Page 431 at Reception No. 94284.

Together with the riparian rights in the bed of Sweetwater Lake lying below the ordinary high water mark of Sweetwater Lake, which riparian rights are defined as fee title to that portion of the bed of Sweetwater Lake as apportioned to the insured pursuant to the survey procedures set forth in Chapter VII, Section 7-51 of the Manual of Instructions for the Survey of the Public Lands of the United States 1973.

Containing 488.65 acres, more or less.

The acquiring agency is the United States Department of Agriculture, Forest Service.

SUBJECT TO the rights of the United States and third parties recited in the patent from the United States.

Also subject to:

1. Terms, conditions and provisions of Easement and Right of Way recorded August 9, 1954 in Book 277 at Page 558.
2. Easements, Rights of Way, Roads and Drives and all other matters as set forth on the plat of Sweetwater Lake Subdivision recorded June 15, 1960 at Reception No. 209803.
3. Any tax, lien, fee, or assessment by reason of inclusion of the Land in the Gypsum Fire Protection District, as evidenced by instrument(s) recorded May 20, 2005 at Reception No. 674591.
4. Right of way for the uninterrupted flow of Sweetwater Creek.
5. Any questions, dispute or adverse claims as to any loss or gain of land as a result of any change in the river bed location by natural or other than natural causes, or alteration through any cause, natural or unnatural, of the center thread, bank, channel or flow of waters in the Sweetwater Creek lying within subject land; and any question as to the location of such center thread, bed, bank or channel as a legal description monument or marker for purposes of describing or locating subject lands.
6. Water and water rights, ditches and ditch rights.
7. Rights of the public to navigate and the incidents of navigation such as boating, fishing, swimming and other recreational uses in, under, and over, the waters of Sweetwater Lake.

8. Any loss or damage occasioned by an ambiguity in the definition of the location of the centerline of Sweetwater Creek.
9. The following items, which are not the subject of recorded easements, as shown on the ALTA/ACSM Land title survey and Land Survey Plat prepared by Johnson, Kunkel & Associates, Inc., job No. EA04271, dated November 22, 2004: Overhead utility lines, utility poles, guy wires, roads, Ute Trail, Ute Cave and Keep Ditch.

TOGETHER WITH all and singular the tenements, hereditaments, improvements and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, possession, claim and demand whatsoever, as well in law as in equity, of said Grantor, of in or to the said premises, and every part and parcel hereof, with appurtenances thereto belonging.

GRANTOR covenants and warrants that it is lawfully seized and possessed of the real property described above and has the full right, power, and authority to execute this conveyance, and that said property is free and clear of all liens, claims, or encumbrances, except for those items listed above, and that it will defend the title to the real property conveyed herein and quiet enjoyment thereof against the lawful claims and demands of all persons.

SIGNATURE PAGE FOLLOWS

Signed and delivered this 27th day of August, 2021, by the duly authorized representative of the Grantor.

GRANTOR:

THE CONSERVATION FUND,
a Maryland non-profit corporation

BY: Dean Hannon

Printed Name: Dean Hannon

ITS: Executive Vice President

EXEMPT FROM TRANSFER FEES
PURSUANT TO CRS 39-13-104(1)(a)

ACKNOWLEDGEMENT

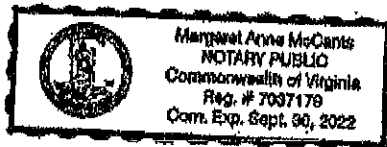
COMMONWEALTH OF VIRGINIA)

) SS:

COUNTY OF ARLINGTON)

On this 27th day of August, 2021, before me the undersigned, a Notary Public in and for the jurisdiction aforesaid, personally appeared DEAN HOLLINGSWORTH CANNON as EXECUTIVE VICE PRESIDENT of The Conservation Fund, a Maryland non-profit corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was his/her act and deed for the purposes therein express.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



MARGARET A. MCCANTS
Notary Public

Name MARGARET A. MCCANTS

Notary Registration Number 7037179

My commission expires: SEPT 30, 2022

Form **990**

Return of Organization Exempt From Income Tax

OMB No. 1545-0047

2021

Department of the Treasury
Internal Revenue Service

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)
 Do not enter social security numbers on this form as it may be made public.
 Go to www.irs.gov/Form990 for instructions and the latest information.

Open to Public Inspection

A For the 2021 calendar year, or tax year beginning

and ending

B Check if applicable: Address change Name change Initial return Final return/terminated Amended return Application pending	C Name of organization THE CONSERVATION FUND, A NONPROFIT CORPORATION		D Employer identification number 52-1388917
	Doing business as		
	Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	E Telephone number 703-525-6300
	1655 N FORT MYER DRIVE, SUITE 1300		
	City or town, state or province, country, and ZIP or foreign postal code ARLINGTON, VA 22209-3199		G Gross receipts \$ 296,980,868.
F Name and address of principal officer: LAWRENCE A. SELZER SAME AS C ABOVE		H(a) Is this a group return for subordinates? Yes <input checked="" type="checkbox"/> No	
		H(b) Are all subordinates included? Yes No	
		If "No," attach a list. See instructions	
		H(c) Group exemption number	
I Tax-exempt status: <input checked="" type="checkbox"/> 501(c)(3) 501(c) () (insert no.) 4947(a)(1) or 527			
J Website: WWW.CONSERVATIONFUND.ORG			
K Form of organization: <input checked="" type="checkbox"/> Corporation Trust Association Other		L Year of formation: 1985	M State of legal domicile: MD

Part I Summary

Activities & Governance	1 Briefly describe the organization's mission or most significant activities: SEE SCHEDULE O		
	2 Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.		
	3 Number of voting members of the governing body (Part VI, line 1a)	3	20
	4 Number of independent voting members of the governing body (Part VI, line 1b)	4	20
	5 Total number of individuals employed in calendar year 2021 (Part V, line 2a)	5	230
	6 Total number of volunteers (estimate if necessary)	6	23
	7a Total unrelated business revenue from Part VIII, column (C), line 12	7a	0.
7b Net unrelated business taxable income from Form 990-T, Part I, line 11	7b	0.	
Revenue	8 Contributions and grants (Part VIII, line 1h)	Prior Year 80,995,756.	Current Year 87,587,936.
	9 Program service revenue (Part VIII, line 2g)	179,378,713.	170,893,153.
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	2,115,551.	1,888,146.
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	49,222.	4,021,658.
	12 Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12)	262,539,242.	264,390,893.
Expenses	13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)	26,520,220.	19,374,503.
	14 Benefits paid to or for members (Part IX, column (A), line 4)	0.	0.
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)	27,850,668.	28,250,208.
	16a Professional fundraising fees (Part IX, column (A), line 11e)	0.	20,000.
	b Total fundraising expenses (Part IX, column (D), line 25)	3,164,109.	
	17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)	209,416,582.	206,195,077.
	18 Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)	263,787,470.	253,839,788.
19 Revenue less expenses. Subtract line 18 from line 12	-1,248,228.	10,551,105.	
Net Assets or Fund Balances	20 Total assets (Part X, line 16)	Beginning of Current Year 898,244,134.	End of Year 888,983,666.
	21 Total liabilities (Part X, line 26)	468,745,816.	448,934,242.
	22 Net assets or fund balances. Subtract line 21 from line 20	429,498,318.	440,049,424.

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here	Signature of officer JOHN GILBERT, EVP & CFO		Date 7/20/22
	Type or print name and title		
Paid Preparer	Print/Type preparer's name YONG ZHANG, CPA	Preparer's signature Yong Zhang	Date 09/19/22
Use Only	Firm's name RSM US LLP	Firm's EIN 42-0714325	Check if self-employed <input type="checkbox"/>
	Firm's address 1861 INTERNATIONAL DRIVE, SUITE 400 MCLEAN, VA 22102	Phone no. 703-336-6400	

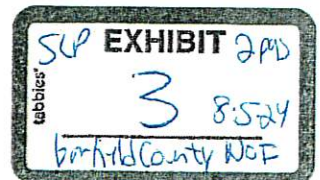
May the IRS discuss this return with the preparer shown above? See instructions

☒ Yes ☐ No

132091 12-09-21

LHA For Paperwork Reduction Act Notice, see the separate instructions.

Form 990 (2021)



THE CONSERVATION FUND, A NONPROFIT

Schedule I (Form 990) 52-1388917 Page 1

Continuation of Grants and Other Assistance to Domestic Organizations and Domestic Governments (Schedule I (Form 990), Part II.)

(a) Name and address of organization or government	(b) EIN	(c) IRC section if applicable	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance
DURHAM COMMUNITY LAND TRUSTEES, INC. - 1208 W. CHAPEL HILL ST. - DURHAM, NC 27701	56-1203878	501C3	260,000.	0.			CONSERVATION OF NATURAL RESOURCES; SUSTAINABLE ECONOMIC & COMMUNITY DEVELOPMENT
EAGLE VALLEY LAND TRUST P.O. BOX 3016 EAGLE, CO 81632	74-2205958	501C3	1,200,000.	0.			CONSERVATION OF NATURAL RESOURCES; SUSTAINABLE ECONOMIC & COMMUNITY DEVELOPMENT
ELLERBE CREEK WATERSHED ASSOCIATION - PO BOX 2679 - DURHAM, NC 27715	56-2123874	501C3	78,835.	0.			CONSERVATION OF NATURAL RESOURCES; SUSTAINABLE ECONOMIC & COMMUNITY DEVELOPMENT
EMMANUEL COMMUNITY FREE WILL BAPTIST CENTER INC - 3501 SPEIGHT SEED FARM ROAD - WINTERVILLE, NC 28590	56-2063607	501C3	18,080.	0.			CONSERVATION OF NATURAL RESOURCES; SUSTAINABLE ECONOMIC & COMMUNITY DEVELOPMENT
ENVIRONMENTAL COMMUNITY ACTION, INC. - 250 GEORGIA AVE., SUITE 309 - ATLANTA, GA 30312	58-1854834	501C3	80,000.	0.			CONSERVATION OF NATURAL RESOURCES; SUSTAINABLE ECONOMIC & COMMUNITY DEVELOPMENT
EPISCOPAL DIOCESE OF EAST CAROLINA 2989 EAST STREET DUNN, NC 28334	56-0552784	501C3	50,000.	0.			CONSERVATION OF NATURAL RESOURCES; SUSTAINABLE ECONOMIC & COMMUNITY DEVELOPMENT
FAYTH TABERNACLE MINISTRY 581 GUY RD., STE. 100 CLAYTON, NC 27520	56-2203669	501C3	10,800.	0.			CONSERVATION OF NATURAL RESOURCES; SUSTAINABLE ECONOMIC & COMMUNITY DEVELOPMENT
FARM CAFE 617 WEST KING STREET BOONE, NC 28607	45-1272884	501C3	12,500.	0.			CONSERVATION OF NATURAL RESOURCES; SUSTAINABLE ECONOMIC & COMMUNITY DEVELOPMENT
FEAST DOWN EAST PO BOX 55 BURGAW, NC 28425	32-0333038	501C3	94,875.	0.			CONSERVATION OF NATURAL RESOURCES; SUSTAINABLE ECONOMIC & COMMUNITY DEVELOPMENT

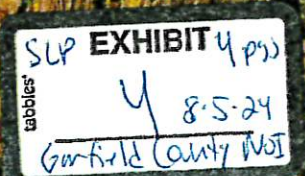
Schedule I (Form 990)



EAGLE VALLEY LAND TRUST

IMPACT REPORT 2022

Photo: TWP / EagleValleyWild.org



SWEETWATER

For decades, Sweetwater Lake has been an asset to our community. The 3rd largest natural lake in Colorado, Sweetwater has been a destination and escape for locals and visitors alike. It has provided unique recreation opportunities, horse packing access, cultural resources, important wildlife habitat, and more. Our community has very much enjoyed accessing it for decades, though public access was limited and insecure because much of the area was the privately held 488-acre Sweetwater Ranch.

In 2019, the property was listed for sale as the most recent development plan failed to materialize. The Conservation Fund, Eagle Valley Land Trust, White River National Forest, Eagle County, the towns of Gypsum and Eagle, and local advocates acted fast to permanently secure the property. Colorado Parks and Wildlife and other partners quickly joined the effort. This was a unique opportunity - the property could have been purchased by another private developer and locked up from public access forever. The Forest Service purchased the property from the Conservation Fund in 2021.

Using funding from the Land & Water Conservation Fund to improve public access to Sweetwater Lake, enhance the recreation opportunities historically offered in the Sweetwater Lake area, and protect the social and natural characteristics of the area.

That's a big responsibility. Even with the support of EVLT's Stewardship and Equity Fund provided by The Conservation Fund, managing a property this important to our community would require teamwork. A pairing of USFS's vast land management experience with CPW's park management expertise and operational capacity promised to help our community realize Sweetwater's potential - though such a partnership had never been done before.

The first step was agreeing on a vision for the iconic property: "Sweetwater Lake is where current and future generations of Americans can recreate, connect with the natural environment, appreciate the cultural and natural history, and experience the freedom from the developed world like their grandparents may have 50 years ago; connecting with our western heritage. Here partnerships are paramount to deliver public benefits. Sweetwater Lake provides cultural, historic and social value to local communities."

Three overarching goals were developed to work towards the vision:

Improve access, modernize facilities, and provide updated and sustainable recreational services that are appropriate to the environment, desired by the public and keeping within the character of the area.

Retain and protect the natural and social characteristics of the area.

Incorporate public input while honoring the historical legacy of this special place during the planning process.

"Over the last year, the partnership has been working closely to begin creating a long-term management plan for Sweetwater Lake, considering feedback from public meetings in early 2022 and ongoing engagement efforts with the local community," said CPW Park Manager Mark Lehman. "Concurrently, the partnership has undertaken several projects including the purchase and installation of a new boat dock to improve access to the lake, resource inventories of the property to help guide management decisions, as well as the enhancement of amenities for visitors to the Sweetwater property."

While the creation of a long-term plan is still underway, the partnership anticipates having a proposed action ready for the National Environmental Policy Act (NEPA) beginning in early summer 2023. The NEPA process will offer several additional opportunities for public involvement.

Learn more, share your thoughts, and stay up to date by visiting www.evl.org/sweetwater.



SWEETWATER STEWARDSHIP & EQUITY FUND

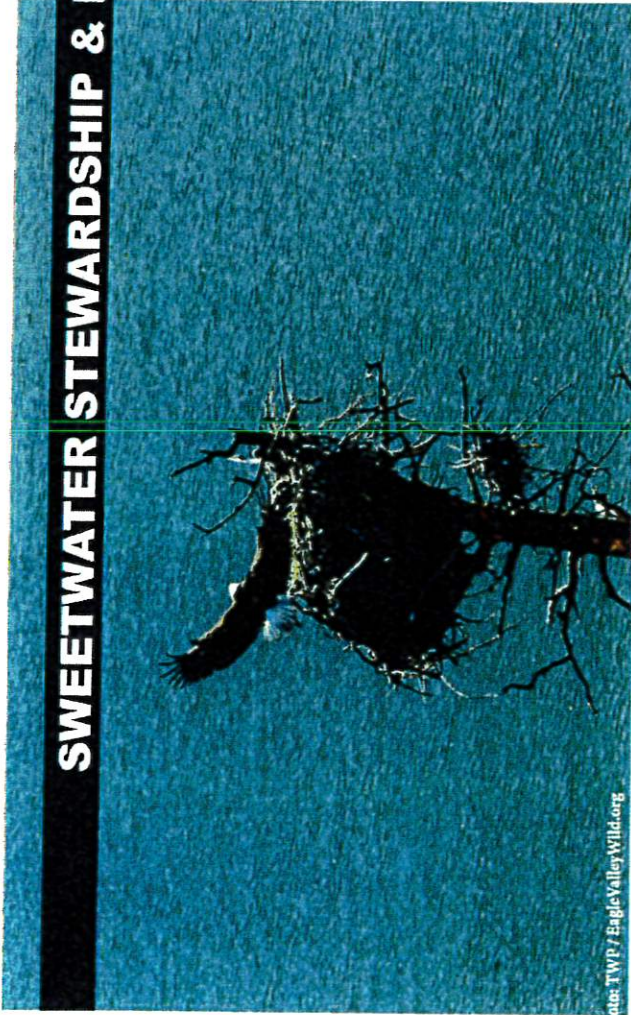


Photo: TWP / EagleValleyWild.org

Upon conveying the Sweetwater Lake property to the United States Forest Service, The Conservation Fund created the \$1.1M Sweetwater Lake Stewardship & Equity Fund to be managed long-term by the Eagle Valley Land Trust. The Fund's goals are to help implement priorities identified by CPW and USFS, understand and address barriers to access, and support the partners, stakeholders, and community through the ownership and management transitions.

CONSERVATION LEADERSHIP GRADUATE STUDENT CAPSTONE PROJECT

Beginning in 2022, two graduate students in Colorado State University's Conservation Leadership master's degree program joined the Eagle Valley Land Trust for their capstone project as part of EVLT's Future Conservationists program, which serves students at all stages of conservation-related career paths.

EVLT's prompt to the graduate student researchers was, "What barriers do members of our community face in accessing Sweetwater Lake and other public lands, and how can we effectively utilize the Sweetwater Stewardship and Equity Fund to address them?" While some data exists in regards to barriers to access in Colorado, Rachael Brard

and Gillian Watson conducted research in our community to understand how those barriers impact local communities with a focus on Sweetwater Lake. S&E Fund Expenditure: \$6,000.

EAGLE VALLEY OUTDOOR MOVEMENT PROGRAMS AT SWEETWATER LAKE

Over the course of the summer, the Eagle Valley Outdoor Movement (EVOM) in partnership with the Eagle Valley Land Trust, hosted four community events at Sweetwater Lake. EVOM is a group dedicated to expanding outdoor recreation access for families in Eagle County, with a specific focus on the LatinX community. The events, which were made free for all participants thanks to the Sweetwater Stewardship and Equity Fund, included hiking, bird watching, and horseback riding with AJ Brink Outfitters around the Lake. Many of the programs provided lunch from a local provider and all events provided free transportation to and from Sweetwater Lake.

Engaging over 80 participants at Sweetwater Lake, the various programs offered an opportunity for families and individuals to visit and experience the stunning Sweetwater Lake property for the first time. During the bird-watching program, representatives from the U.S.

Forest Service joined the group to explain the history of the property and provide spotting scopes for bird viewing. For the horseback riding events, EVLT was excited to support A.J. Brink Outfitters, the longstanding outfitting operation at Sweetwater Lake. During each program, participants had the opportunity to ask questions about the future of Sweetwater Lake and become more familiar with how they might continue to benefit from the planned State Park, such as by planning camping trips or returning to the Lake with canoes or Stand Up Paddle Boards. Overwhelmingly, participants were amazed to discover the natural wonder of Sweetwater Lake, which, for many, is a mere half-hour from home. Beyond providing an enjoyable day trip, each program clearly inspired the participants to return to Sweetwater Lake and continue engaging in all the property has to offer. The series quickly became one of EVOM's most in-demand. The waitlist for future Sweetwater programs is extensive, and EVLT and EVOM are planning for expanded programming in 2023. S&E Fund Expenditure: \$6,000.

SUMMER SEASONAL STAFFING FOR SWEETWATER LAKE

During the "Save The Lake" campaign, many in our community voiced concerns about stewardship capacity given budget constraints. During Sweetwater planning

team meetings, the partnership put together a plan for short-term stewardship of the property while CPW and USFS drafted a management agreement. EVLT and USFS entered into an agreement to fund two seasonal USFS staff members at Sweetwater Lake for the summer, managed by both USFS and CPW. These staff members were able to steward the property, complete maintenance, interact with guests, and collect feedback, among other tasks. S&E Fund Expenditure: \$50,000.

DOCK PURCHASE AND INSTALLATION

Thanks to the Sweetwater Stewardship & Equity Fund, CPW, USFS, and EVLT were able to purchase and install a much-needed new dock at Sweetwater Lake in the spring of 2022, which has been used and enjoyed extensively by the public. S&E Fund Expenditure: \$21,679.

OPEN HOUSE SERIES

After Governor Polis's announcement of Sweetwater Lake as Colorado's newest State Park, CPW, EVLT, and USFS hosted three Open Houses in Sweetwater, Gypsum, and Glenwood Springs where community members could speak with decision makers from all three organizations about their thoughts and concerns regarding the future of Sweetwater Lake. The open house sessions led to the creation of the newly formed Sweetwater Community Working Group to help inform long term planning efforts. S&E Fund Expenditure: \$402.

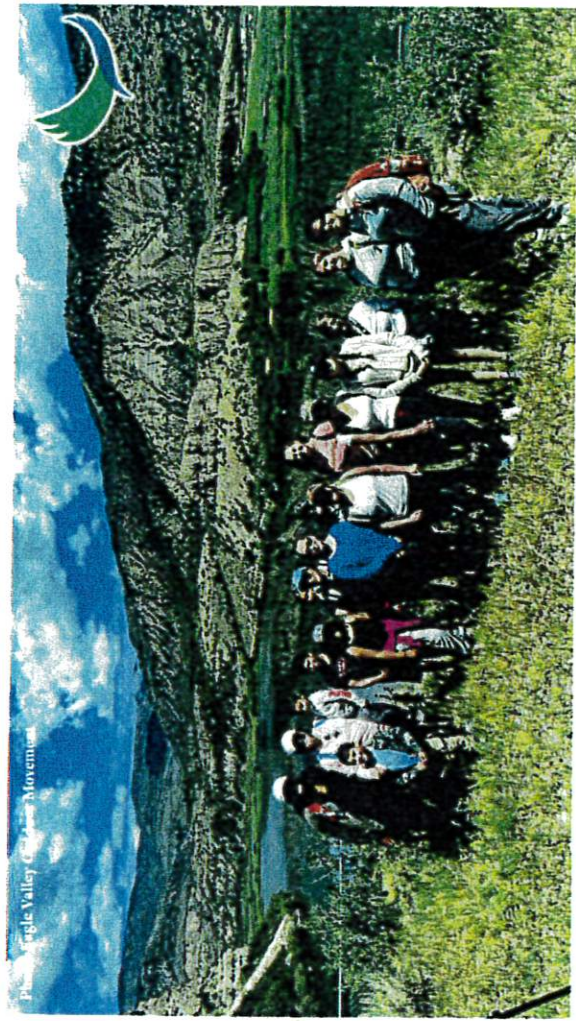


Photo: Eagle Valley Outdoor Movement

2022 FINANCIAL SUMMARY

Building assets to propel our mission



PROGRAMMATIC EFFICIENCY

70.2% Programs
15.8% Fundraising
14% Admin

Boone, TN / Eagle Valley Wildlife

SUMMARIZED INCOME STATEMENT

SOURCE REVENUE	2020	2021	2022*
Contributions	\$426,178	\$595,531	\$422,873
Land & Rivers Fund Net	\$53,051	\$22,207	\$2,512 **
Grants	\$52,682	\$37,563	\$40,250
Special Events	\$114,835	\$234,841	\$297,581
Other Revenue	\$211	\$124	\$169
Program Revenue, Project Reimbursement	\$78,317	\$146,119	\$41,752
Total Revenue	\$725,274	\$1,014,178	\$805,138
EXPENSES			
Admin and Office	\$114,281	\$95,029	\$109,512
Personnel	\$345,588	\$344,952	\$446,392
Special Event Expense	\$47,674	\$68,734	\$125,204
Legal Fees Project Related	\$6,469	\$11,606	\$25,383
Total Expense	\$514,013	\$520,322	\$706,492
Net Operating Revenue	\$211,261	\$493,855	\$98,645

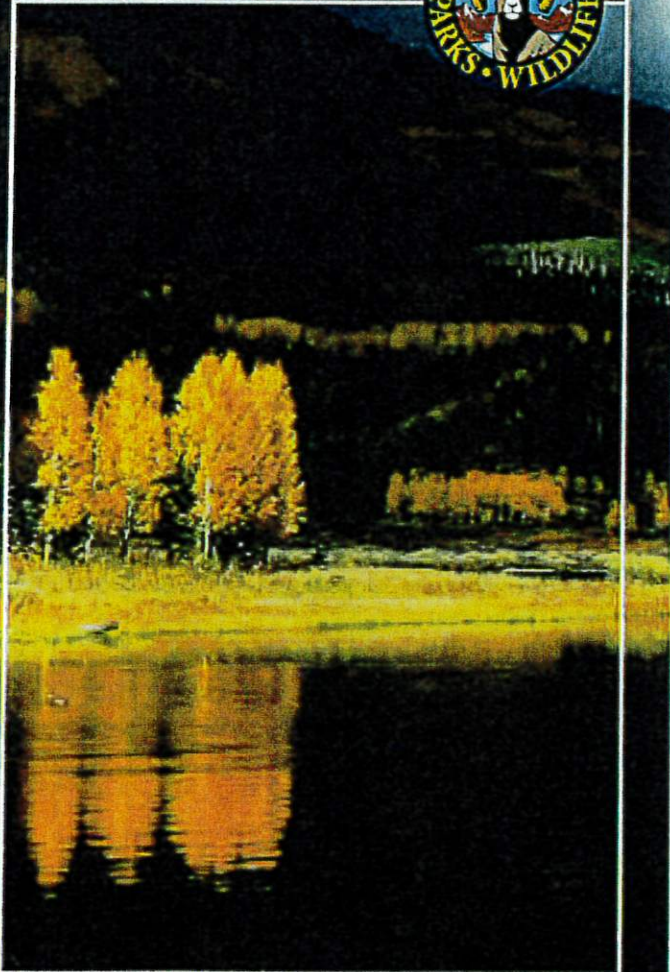
ASSETS SUMMARIZED

FUND	2020	2021	2022
General Fund	\$1,102,429	\$1,665,477	\$518,392
Endowment Fund	\$1,179,783	\$1,690,460	\$1,605,188
Stewardship Fund	\$1,029,651	\$1,179,787	\$994,102
Legal Defense Fund	\$259,373	\$285,587	\$240,639
Special Projects	\$423,052	\$227,093	\$1,111,195
Land Protection Fund	\$55,526	\$61,654	\$51,950
Sweetwater Stewardship & Equity Fund	\$0	\$1,094,729	\$868,536
Fixed Assets	\$0	\$0	\$3,107,585
Other Assets	\$0	\$0	\$1,084
Total Assets	\$4,049,814	\$6,204,787	\$8,498,670

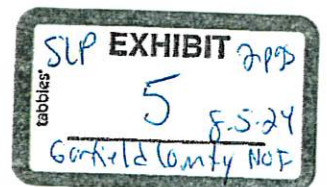
*Preliminary Pre-Audit Data
**L&R Fund moved to cash basis in 2022. Actual 2022 disbursements to JPLT were \$33

COLORADO PARKS & WILDLIFE

Your Guide to Colorado's State Parks



cpw.state.co.us



43. Yampa River Access Sites

6185 US Highway 40 • Hayden, CO 81639
970-276-2061 • yampa.river@state.co.us

Thirteen river access sites lie along the river between Hayden and Dinosaur National Monument. Facilities, access and rules for use vary by site, so boaters should visit the park's website, the information center or obtain the park brochure before traveling. Respecting private land along the river corridor, as well as the landscape and natural communities, is very important. Visitors can also swim, boat, fish, camp, hike and bike at Elkhead Reservoir.



FACILITIES: basic campsites, boat ramps, picnic sites
RECREATION: boating, fishing, hiking, hunting, wildlife/bird viewing, winter camping
DIRECTIONS: The river site accessing the Yampa River are also found along Hwy. 40, or stop by the visitor center for more information.

LM. Lone Mesa

1321 Railroad Ave, PO Box 1047 • Dolores, CO, 81323
970-882-2213 • lone.mesa.park@state.co.us

This nearly 12,000-acre property in the southwest corner of the state encompasses wonderful scenery and terrain ranging from 7,200 feet to just over 9,000 feet in elevation. Management of this park currently includes inventorying and stewardship of its unique and rare natural resources along with providing a high-quality public hunting opportunity. Four of the rarest Colorado native plant species are known to exist here, including one that was discovered on—and named after—the park. The outstanding elk, deer and bear habitat of Lone Mesa along with low hunter densities help provide the high quality of the park's public hunting. The hunt requires a special-use permit, limited in number, and obtained through an annual drawing process. Volunteer projects, scheduled education and research activities, and big-game hunting are currently the only public access opportunities to this property. However, CPW continues to plan for additional public recreation and associated infrastructure here. Additional park information, area public lands information, along with OHV, snowmobile and boat registration and wildlife licensing services are provided at the Lone Mesa office in the town of Dolores.



NOTE: While the park is currently closed pending development planning, high-quality big-game hunting is provided by a special-use permit program during big-game seasons. Call for information.
DIRECTIONS: From Dolores, take USFS roads 526 N then 514 W to park.

SL. Sweetwater Lake

While still in the planning stages, and not yet fully open to the public, Colorado's next state park, located at Sweetwater Lake, is a first-of-its-kind partnership among the U.S. Forest Service, Colorado Parks and Wildlife, and the Eagle Valley Land Trust. The State Park at Sweetwater Lake will provide an idyllic setting for outstanding recreational opportunities, wildlife viewing, and breathtaking vistas.

The partners are currently working to create a recreation and facilities plan for the long-term management of the property, taking into account the pristine setting, historical use, and conservation of the incredible natural and historical resources that Sweetwater has to offer.

As of publication, the Sweetwater Lake property features very little infrastructure to facilitate public recreation. The partners are currently working on strategies to provide limited public recreational opportunities at Sweetwater. The objective is to complete the planning phase in 2022, with construction to begin as early as 2023. Improved amenities, including a new boat dock and potable water treatment facility are among the first planned offerings to enhance the public's enjoyment at Sweetwater Lake. Additional opportunities will be offered as the recreation plan is developed, with forums for public input.

Please visit www.evlt.org/sweetwater for the latest information on current recreational opportunities and site management and planning updates. Improved amenities, including a new boat dock and potable water treatment facility are among the first planned offerings to enhance the public's enjoyment at Sweetwater Lake. Additional opportunities will be offered as the recreation plan is developed, with forums for public input.

Please visit www.evlt.org/sweetwater for the latest information on current recreational opportunities and site management and planning updates.

FACILITIES: This property is currently open to limited public use under management of the U.S. Forest Service. Special regulations are in place to protect the area during the planning and development processes.

In order to protect the abundant natural and historical resources at Sweetwater Lake, the partners ask that visitors respect any temporary closures/orders during the development of park amenities.

State park pass does not grant access to the property at this time, and will not grant public access until further notice.



JBC STAFF RECOMMENDATION

It is not known whether or how often these regional coalitions will resolve conflicts between outdoor recreation and wildlife interests, and it will be difficult to assess the cost-benefit of the program because it does not portend to produce specific and measurable outcomes related to outdoor recreation and wildlife management. However, staff concludes that the approach envisioned by the program could be useful and could lead to specific instances of conflict resolution. Each regional coalition will aim to develop local solutions to local problems, with the Department acting as a manager, funder, aggregator, and synthesizer. There is clearly demand for additional funding and the funding sources are able to support increased spending for this purpose.

→ BA3 SUPPORT FOR STATE PARK AT SWEETWATER LAKE

Request: The request includes an increase of \$426,921 cash funds from the Parks and Outdoor Recreation Cash Fund and 3.0 in starting in FY 2022-23. The request annualizes to \$535,218 cash funds and no additional FTE in FY 2023-24. In addition to the FTE, the request includes funding for temporary staffing, property maintenance and supplies, utilities, vehicles, and general operating costs. The Department indicates that funding is for a theory-informed program as defined in S.B. 21-284 (Evidence-based evaluation for budget).

RECOMMENDATION: Staff recommends an increase of \$388,432 cash funds and 3.0 FTE in FY 2022-23, annualizing to \$535,218 in FY 2023-24.

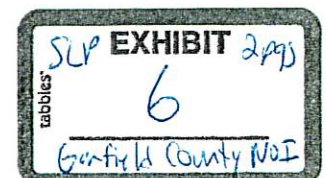
S.B. 21-284: Staff classifies this budget request as **not applicable** as defined in S.B. 21-284.

ANALYSIS:

On October 21, 2021, the Governor announced a partnership between Colorado Parks and Wildlife, the U.S. Forest Service, and Eagle Valley Land Trust (based in Edwards, CO) to create the 43rd state park at Sweetwater Lake in northeastern Garfield County. The Department submitted and the Committee approved an FY 2021-22 supplemental request for 0.3 FTE to support initial public access to the park (yet-to-be-named) by the end of the FY 2021-22 fiscal year.

This request follows the FY 2021-22 supplemental request with a requested increase of \$426,921 cash funds and 3.0 FTE for FY 2022-23. One of those FTE (a Park Manager V) represents the full-year annualization of the supplemental request. The other two FTE would be a Park Manager III serving as a senior ranger and a Technician IV serving as a park resource technician. Per the request, even when a new park opens with limited recreational opportunities, at least two park managers are needed to ensure full coverage throughout the week; a single park manager would have to work considerable amounts of overtime. The technician manages park infrastructure by cleaning, repairing, and replacing equipment and facilities.

The request also includes \$125,448 for the park's operating budget, which would double to \$250,895 in FY 2023-24 as the park moves to full operations. The Department based its request on similarly-sized lake-based state parks, such as Sylvan Lake State Park. Staff notes that these operating costs are *in addition to* \$10.0 million in capital construction projects at the park. These funds come from the \$14.0 million General Fund to the Parks Fund for parks infrastructure via H.B. 21-1326 (General Fund Support DNR Programs).



ADDRESSING CONCERNS RAISED DURING THE SUPPLEMENTAL PRESENTATION

During the presentation of the supplemental request, a concern was raised regarding the inclusion of local counties in the planning and development process for the new park. The Department provided the following response:

Garfield County Commissioners reached out to the U.S. Forest Service, DNR, and CPW in December 2021 to express their interest in fully engaging in the planning and development process for a future state park at Sweetwater Lake, which is located on U.S. Forest Service lands in Garfield County. Since that time, DNR leadership, CPW staff, and representatives from the U.S. Forest Service have met with the Commissioners on multiple occasions to provide updates on the planning process and more fully engage Garfield County in efforts to improve sustainable public access to the property while retaining the important social and natural characteristics of the area. Specifically, CPW and the U.S. Forest Service have committed to coordinating with Garfield County regarding the future uses and planning for Sweetwater Lake by including a representative of the County in planning and design meetings organized by CPW, U.S. Forest Service, and Eagle Valley Land Trust (EVLTL). This opportunity will also be offered to Eagle County, which maintains a significant portion of the access road to the property along Sweetwater Creek. In addition, the U.S. Forest Service plans to offer Cooperating Agency status to local governments in the likely event that a National Environmental Policy Act (NEPA) process is required for future development activities.

JBC STAFF RECOMMENDATION

Staff concludes that the Department's request is reasonable and the Parks Cash Fund has ample revenue to support it. Now that the park exists, CPW will need funding and staff to develop and operate it in a manner consistent with the operations of similar state parks.

→ R4 WATER ACCOUNTING SUPPORT

REQUEST: The Department requests an increase of \$332,579 General Fund and 3.0 FTE starting in FY 2022-23. These FTE would be water accounting coordinators in the South Platte River, Arkansas River, and Rio Grande River basins. The Department indicates that funding is for a theory-informed program as defined in S.B. 21-284 (Evidence-based evaluation for budget).

RECOMMENDATION: Staff recommends an increase of \$245,826 General Fund and 2.8 FTE for FY 2022-23, annualizing to \$311,579 General Fund and 3.0 FTE in FY 2023-24. The difference from the request stems from different assumptions used to calculate the totals (e.g. accounting for the pay-date shift) and leaving out centrally appropriated costs pursuant to the JBC's common policy.

S.B. 21-284: Staff classifies this budget request as **not applicable** as defined in S.B. 21-284. The request is not a program or a practice designed to achieve specific and measureable objectives.

ANALYSIS:

Water accounting coordinators track and review legal mechanisms that allow water users to divert water in one location and replace it in another. These legal mechanisms include substitute water supply plans (SWSP) and augmentation plans. These plans are most common in basins where water is "overappropriated," which means that water supplies are insufficient to satisfy all the decreed water

From: Rosenmerkel, Gregory -FS
Sent: Thu, 1 Jul 2021 18:01:07 +0000
To: Poirier, Roger -FS; Pierce, Jared -FS; Doak, Richard -FS; Fitzwilliams, Scott -FS; Stoeffler, Lisa -FS
Subject: GAOA - Sweetwater

Team,

After a line by line walkthrough with the RO staff yesterday, I hit 'submit' on most of our FY23 GAOA requests.

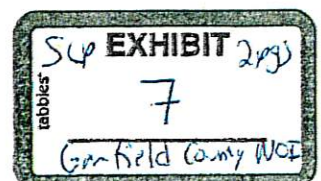
We talked through the Sweetwater project specifically and they understand it in general, but also that there are some big unknowns in terms of timing and funding from the State. Since the planning phase was funded in FY22 for \$372K, there is some commitment to fund construction, but that estimate obviously won't be known until after design which would start in FY22 or 23. As with all our requests, concerns about Forest capacity in rec, PPS and engineering should be considered.

Below is what I edited in the NAMP database, same numbers as last year but added a gap year after design and dropped the second phase of \$8M plus.

I put this verbiage in the 'risk' box, but can edit to say whatever we wish, I'd appreciate your inputs: "The USFS does not yet own the assets. We are working with Colorado Parks and Wildlife and a donor group to plan. The Governor has verbally committed in the range of \$10M to develop the site and access but timeline is unknown."

It's 'submitted' but I still have edit rights until it's locked on 11 July. I need some help on this one, should we have a call and I can edit as we go?

Thanks,
Greg



PROJECT DETAILS

Will this project be completed in multiple phases?

Yes

Over how many years?

4

Is external funding verified and available?

Yes

Who is providing the external funding?

Conservation Fund and E...

External funding expiration date

Conservation Fund: FY22,...

	Year 1	Year 2	Year 3	Year 4
Phase	Design	Design	Construction	Construction
Trails Assets	\$0	\$0	\$0	\$0
Transportation Assets	\$0	\$0	\$0	\$0
Non-Transportation Assets (Filled from below)	\$2,390,000	\$0	\$7,780,000	\$0
Capital Improvement Project (CIP)	\$0	\$0	\$0	\$0
Recreation Public Facing Maintenance	\$2,390,000		\$7,780,000	\$0
Dams Maintenance	\$0	\$0	\$0	\$0
Fire, Administrative, Other (FAO) Workforce Support Maintenance	\$0	\$0	\$0	\$0
Total Funding Requested	\$2,390,000	\$0	\$7,780,000	\$0
External Funding	\$0	\$0	\$0	\$0
Other*	\$0	\$0	\$0	\$0

Total Project Cost

\$10,170,000.00

*If "Other" Forest Service

RISK AND READINESS CRITERIA

Project Maturity

Have the project attributes been verified by the project lead and the design been approved by the proper authorities?

Yes

What is the earliest this project can be started?

FY2023

Provide a summary of the readiness of this project and any associated risks that would prevent the project from starting when indicated:

Permit Update

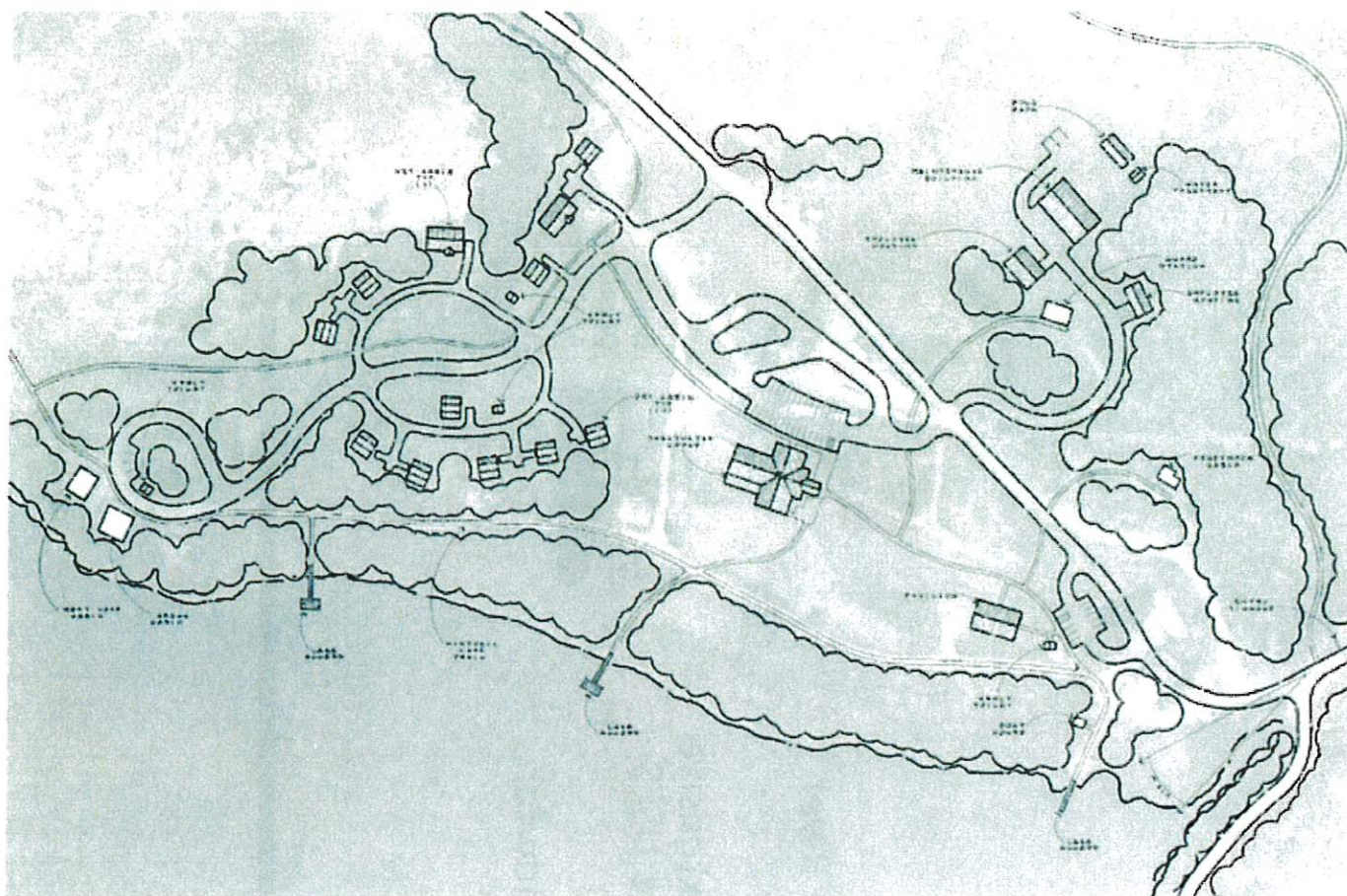
- Special Use Permit with the White River National Forest (25 year permit)
- Drafting the permit has been an extensive process between the COAG and the USFS Office of General Council
- Anticipate final version will be ready for signature this month



United States
Department of
Agriculture



CORE SITE PLAN



SWEETWATER

1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 26

SUP EXHIBIT

9 8.5.24

Gentle County War

Heather Beattie

From: Heather Beattie
Sent: Thursday, July 18, 2024 5:32 PM
To: jloichinger@achp.gov; achp@achp.gov
Cc: holly.norton@state.co.us; Eidman - HC, Patrick; DiPrince - HC, Dawn; Scott Fitzwilliams; Noel, Heather - FS, CO; jamie.werner@usda.gov; Fred Jarman; John Martin
Subject: Garfield County Colorado Request for ACHP Section 106 Involvement in USFS Sweetwater Lake Development
Attachments: 2024.07.18 Garfield County Request for ACHP Involvement SLR.pdf; 2024.07.16 Exhibit A1 and A2.pdf; 2024.07.16 Exhibit B1 - B5.pdf; 2024.07.16 Exhibit C.pdf; 2024.07.16 Exhibit D.pdf

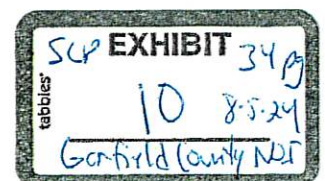
Dear Director Loichinger,

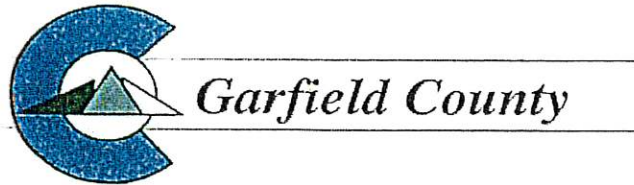
See attached correspondence on behalf of Garfield County and please confirm receipt.

Thank you,

Heather K. Beattie
Garfield County Attorney
108 8th Street, Suite 219
Glenwood Springs, Colorado 81601
Phone: 970-945-9150, ext. 1715
Fax: 970-384-5005
Email: hbeattie@garfield-county.com

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COUNTY ATTORNEY'S OFFICE

108 8th Street, Suite 219
Glenwood Springs, CO 81601
(970) 945-9150

July 18, 2024

Jaime Loichinger – Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation

Via email to: jloichinger@achp.gov and copy to achp@achp.gov

Re: Sweetwater Lake Resort, White River National Forest, Garfield County, Colorado, History Colorado No. 80981 (King Springs Complex) and History Colorado No. 79289 (Sweetwater Lake Resort)

Dear Director Loichinger,

Garfield County is writing to request your involvement in the federal action being undertaken by the U.S. Forest Service in the White River National Forest (WFNF) at Sweetwater Lake in Garfield County, Colorado. The Forest Supervisor (FS), Mr. Scott Fitzwilliams, has been failing to engage in consultation since the State Historic Preservation Officer (SHPO), also known as History Colorado, made recommendations regarding the eligibility of the buildings and other features at Sweetwater Lake Resort for inclusion on the National Register of Historic Places (NRHP). See Exhibit A1 and A2 (History Colorado March 3, 2023 Letters to FS). The FS disagreed with SHPO's determinations and has not engaged in any National Historic Preservation Act (NHPA) steps since March of 2023. See Exhibit B1 Email, B2 Letter from Acting FS Noel (highlighted), B3 Section 106 Flowchart, B4 ACHP Section 106 and EIS, and B5 2024.03.07 GarCo Letter to SHPO and FS). In addition to these specific regionally historically significant features and buildings there is also the Sweetwater Rock Art Cave, which has pre-historic archeological significance and may hold religious or cultural significance to Native American tribes.

Federal Requirements

Section 106^a requires federal agencies to "take into account the effect of the undertaking" on any property listed or eligible for listing in the NRHP. 54 U.S.C. § 306108. NHPA defines an "undertaking" to be a project or activity funded by a federal agency or authorized by a federal permit or license. 54 U.S.C. § 300320. The ACHP is charged with adopting regulations to govern the Section 106 review process and oversee the implementation of those regulations. 36 C.F.R. Part 800. That process includes the identification of historic properties, the assessment of

^a References to Section throughout this document is to the NHPA of 1966, 16 U.S.C. §§ 470a *et seq.*

effects on those properties and consultation to evaluate measures to resolve adverse effects. Specifically,

The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation *among* the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the *early stages* of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties. 36 C.F.R. 800.1(a) (emphasis added).

First, the lead agency is required to determine whether the federal action is an undertaking and if so, whether Section 106 applies by identifying and evaluating whether historic buildings and structures, archaeological sites, other cultural landscapes and features qualify as eligible for registration on the NRHP. Sec. 110(a)(2)(a). To our knowledge the proposed action has been determined to be an undertaking by the FS as they plan to issue a federal special use permit to Colorado Parks and Wildlife (CPW) and the FS intends to spend allocated federal funds on the site. However, to our knowledge the FS has not formally determined whether historic buildings or structures that contribute to the historical importance of this site and other cultural landscapes and features mandates its compliance with Section 106. Although the March 3, 2023 Letters (Exhibits A1 and A2) from SHPO implicates that the FS has been engaging in an "evaluation" of the property. Further, the FS specifically asked SHPO to reevaluate their determination that certain buildings and features were eligible for inclusion in the NRHP. The Part 800 regulations require the FS to identify the consulting parties *prior* to identification of historic properties. 36 C.F.R. 800.3. It appears to us the FS was attempting to get the SHPO to agree to the FS interpretation that the area is not of historical significance prior to engaging with consulting parties.

The County understands that the FS is prohibited from spending any federal funds on the undertaking prior to taking into account the effect of the undertaking on any historic property and that the FS is required to provide the ACHP an opportunity to comment on the undertaking. 54 U.S.C. § 306108. We further understand that the NHPA is not a mandate to the FS to preserve historic buildings or other resources, but instead requires compliance with the consultation process and federal regulations. However, Executive Order 11593 provides that it is the responsibility of the Federal Government and its agencies to initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored, and maintained for the inspiration and benefit of the people.

County Concerns

Garfield County has not yet been invited to participate as a consulting agency and was unaware that the Section 106 process had been initiated by the FS until receiving a copy of the SHPO letters to the FS. The FS claims that the Section 106 consultation process does not begin until after the Notice of Intent is published and the public comment period has lapsed. See Exhibit B2. However, the Part 800 regulations make clear that the purpose is to initiate the process early

so that a broad range of alternatives are considered in the planning process. 36 C.F.R. 800.1(c). We have written to SHPO and provided our correspondence to them and their response to the County in Exhibit C.

Further, the Part 800 regulations also make clear that the consultation should happen *among* the lead agency and the other consulting parties. However, it appears the FS plans to "directly" consult with each consultative entity individually. See Exhibit B2. Unfortunately, this leaves each of the consultative entities without the benefit of the wisdom of the greater group. The FS appears to be embarking on a process that will not include coordination as a group with the consulting parties.

The County also understands that the FS is the ultimate decision-maker regarding whether to raze historical structures. However, it appears to Garfield County that the FS has violated their own policies in acquiring the land prior to making the required determination that they can adequately manage the land in compliance with all legal requirements. See Exhibit D - p. 3 where the FS and its partners state that if CPW is not granted a SUP permit the Forest Service has no money/funding to manage the land and the structures will be "closed or removed."

Garfield County has continued to ask the Forest Service how it will comply with Section 106 process. See Ex. C, p. 8-9. We have been told by the FS that SHPO is unwilling to participate in meetings with the County or in the NEPA process and prefers a separate process. That "separate process" is unknown to us and has yet to be articulated by the FS. However, the FS states that they will "continue to participate in the Section 106 consultations for the Sweetwater project." Exhibit B2. Yet, the FS remains elusive with what their "consultation process" is and what it looks like so the County can participate accordingly. The information provided by the FS is that once the NEPA process has concluded the proposal will be provided to the SHPO and then the SHPO will make comments. However, Acting FS Heather Noel corrected his statement by letting us know that the Section 106 process must be completed before the NEPA process concludes. See Exhibit B2. To date there has been no attempt to have any consultation among the parties that have an expertise and interest in this area.

We believe the depth and breadth of this project requires compliance with the federal regulations to include group consultation with local agencies, the SHPO, and the Native American tribe that attaches religious and cultural significance to the area. Both SHPO and Garfield County have already asked to be consulting entities. SHPO has specifically requested to be "involved in the consultation process with the local government..." Exhibits A1, A2.

Why ACPH Should be Involved

Garfield County believes that the ACPH's involvement is necessary in this Section 106 process because the Rock Art Cave presents issues of concern to Native American tribes (Ute) and the Sweetwater Lake Resort has important historical significance to this area. We have asked for and not received any of the correspondence or information the FS or his delegates have had with the impacted tribe. We believe, as stated above, that the FS intends to have private conversations with the tribe to the exclusion of the other consulting entities. This would set a precedent that the FS can exclude other consulting entities and silo the process. This is a procedural problem.

There is public controversy related to the historic preservation issues and we anticipate that there will be (and already are) disputes between the consulting parties and the FS. Specifically, SHPO has determined certain features are eligible for inclusion in the NRHP, Garfield County agrees with that analysis, and the FS does not, which is why they have stalled the process since March 2023.

Further, this project and the FS's interpretation of the ACPH's regulations present major issues for future projects. Specifically, as we have previously stated, it is Garfield County's interpretation that the FS has already made the decision to remove structures that are eligible for listing on the NRHP. This is based on statements made by the FS during the Sweetwater Working Group meetings (see Exhibit D) and solidified by the statement in the Notice of Intent that "[e]xisting structures that are in a state of severe deferred maintenance and out of compliance with various laws, regulations, and policies may be removed." NOI, p. 37165. The Purpose and Need outlined in the NOI specifically states that the purpose is to provide "updated facilities." *Id.*

The Section 106 consultation process is critical because it also provides the public with an opportunity to participate in the decision making. Garfield County wants to ensure its citizens are being afforded the right to participate as outlined in the federal regulations. We believe the historical significance of this early 20th century resort deserves to be fully considered by the FS and we need the oversight of your agency to ensure a fair and impartial process.

We are asking the ACHP to become involved in the Section 106 process to ensure the FS takes a hard look at the impact of their particular course of action to ensure fully informed and well-considered decisions. We believe this includes meeting with consulting agencies as a group so discussion and consultation can take place. Please feel free to contact me with any questions you may have.

Sincerely,

Heather K. Beattie

Heather K. Beattie
Garfield County Attorney

CC: Dr. Holly Kathryn Norton

Director, Office of Archaeology & Historic Preservation
State Archaeologist & Deputy State Historic Preservation Officer
History Colorado

Via email to holly.norton@state.co.us (included Patrick Eidman – patrick.eidman@state.co.us and Dawn DiPrince – dawn.diprince@state.co.us)

Scott Fitzwilliams
Forest Supervisor
White River National Forest
U.S. Forest Service

Via email to scott.fitzwilliams@usda.gov (included Heather Noel – heather.noel@usda.gov and Jamie Werner at jamie.werner@usda.gov)

Enclosures: Exhibits A-D (dated 7/16/24)



History Colorado

Mr. Scott G. Fitzwilliams
Forest Supervisor
White River National Forest
900 Grand Ave
Glenwood Springs, Colorado 81601-3602

RE: Sweetwater Lake State Park Recreation and Management
White River National Forest
Garfield County, Colorado
History Colorado No. 80981

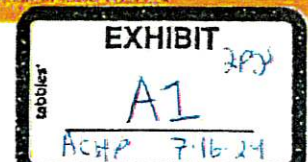
Dear Mr. Fitzwilliams:

Thank you for your correspondence dated February 8, 2023, which our office received on February 9, 2023, regarding consultation of the aforementioned project under Section 106 of the National Historic Preservation Act of 1966, as amended (54 USC § 306108), and its implementing regulations, 36 CFR Part 800.

We have reviewed all documentation for the undertaking. It is our opinion the Sweetwater Lake Resort (5GF.5734) is *eligible* for inclusion in the National Register of Historic Places under Criterion A for reflecting developments and trends in mountain tourism and recreation with a period of significance spanning from c. 1890 to 1973. It is evident based on your submission that the King Spring Complex has been associated with the Resort property and was constructed well within the defined period of significance. It is, therefore, our opinion the King Spring Complex (5GF.5969) *contributes* to the historic Resort property.

It is possible the undertaking may result in an adverse effect to the historic property; however, your submission only mentions "improvements" will be made to the King Spring Complex. To properly assess effects to the Spring, we request you provide our office with additional information regarding the nature, scale, and scope of the undertaking. We specifically need to know what sort of work will constitute said improvements and how that work will be accomplished. We will provide additional comments upon receipt of that documentation.

We request being involved in the consultation process with the local government, which as stipulated in 36 CFR §800.3 is required to be notified of the undertaking, and with other consulting parties. Additional information provided by the local government or





History Colorado

consulting parties might cause our office to re-evaluate our eligibility and potential effect findings. Please note that our compliance letter does not end the 30-day review period provided to other consulting parties.

Thank you for the opportunity to comment. If we may be of further assistance, please contact Mitchell K. Schaefer, Section 106 Compliance Manager, at (303) 866-2673 or mitchell.schaefer@state.co.us.

Sincerely,

Patrick A. Eidman Digitally signed by Patrick A. Eidman
Date: 2023.03.03 16:33:38 -07'00'

Dawn DiPrince

State Historic Preservation Officer



History Colorado

Mr. Scott G. Fitzwilliams
Forest Supervisor
White River National Forest
900 Grand Ave
Glenwood Springs, Colorado 81601-3602

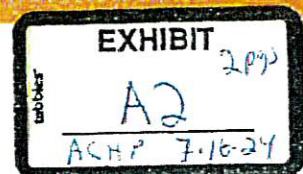
RE: Sweetwater Lake Resort (5GF.5734), Garfield County, Colorado
White River National Forest
History Colorado No. 79289

Dear Mr. Fitzwilliams:

Thank you for your correspondence dated February 21, 2023, which our office received on March 1, 2023, regarding consultation of the aforementioned project under Section 106 of the National Historic Preservation Act of 1966, as amended (54 USC § 306108), and its implementing regulations, 36 CFR Part 800.

We have reviewed all documentation submitted for this project and understand your office seeks a re-evaluation of the Sweetwater Lake Resort (5GF.5734). It is our opinion the property is *eligible* for inclusion in the National Register of Historic Places under Criterion A for reflecting developments and trends in mountain tourism and recreation with a period of significance spanning from c. 1890 to 1973. The Resort may also be *eligible* under Criterion C for reflecting rustic architecture, which is often prominent in mountain tourist destinations. It is our opinion the property is *not eligible* under Criterion B as it is not illustrative of the three prominent owners' important life achievements. It is our opinion that all thirteen (13) individual buildings recorded for this undertaking are *contributing* to the overall Resort. The 1973 date for terminating the period of significance under Criterion A is selected because the property has continued to operate as a tourist and recreation destination through at least 2017, but, in our opinion, the Resort has not achieved exceptional importance in the last fifty (50) years (see 36 CFR § 60.4, Criteria Consideration G). We look forward to further consultation with your office regarding the undertaking in the near future.

We request being involved in the consultation process with the local government, which as stipulated in 36 CFR §800.3 is required to be notified of the undertaking, and with other consulting parties. Additional information provided by the local government or consulting parties might cause our office to re-evaluate our eligibility and potential effect findings. Please note that our compliance letter does not end the 30-day review period provided to other consulting parties.





History Colorado

Determinations of National Register eligibility subject to this letter were made in consultation pursuant to the implementing regulations of Section 106 of the National Historic Preservation Act, 36 CFR Part 800. Please note other Federal programs such as the National Register of Historic Places and the Federal Investment Tax Credit Program may have additional documentation and evaluation standards. Final determinations remain the responsibility of the Keeper of the National Register.

Thank you for the opportunity to comment. If we may be of further assistance, please contact Mitchell K. Schaefer, Section 106 Compliance Manager, at (303) 866-2673 or mitchell.schaefer@state.co.us.

Sincerely,

Patrick A. Eidman Digitally signed by Patrick A. Eidman
Date: 2023.03.03 16:35:12 -07'00'


Dawn DiPrince

State Historic Preservation Officer

Heather Beattie

From: Werner, Jamie - FS, CO <Jamie.Werner@usda.gov>
Sent: Friday, April 5, 2024 12:17 PM
To: John Martin; Tom Jankovsky; Mike Samson
Cc: Noel, Heather - FS, CO; Heather Beattie; dawn.diprince@state.co.us; patrick.eidman@state.co.us
Subject: WRNF Response: GarCo Request for Section 106 Consultation for Sweetwater Lake
Attachments: WRNF Reponse to GarCo Section 106 Consultation 040424.pdf; Exhibit A - FSM_2364.1_NHPA Section 106 Compliance and Review Process Flow Chart.pdf; Exhibit B - ACHP Section 106 and EIS.pdf; 2024.03.07 GarCo Letter to SHPO and FS.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

 You don't often get email from jamie.werner@usda.gov. [Learn why this is important](#)


Dear Commissioners Martin, Sampson, and Jankovsky,

Please see attached letter and associated exhibits from Heather Noel, Acting Forest Supervisor, White River National Forest, in response to the letter dated March 7, 2024 (also attached for reference) from the Garfield County Attorney's Office Re: Sweetwater Lake State Park Recreation and Management, White River National Forest, Garfield County, Colorado, History Colorado No. 80981 (King Springs Complex) and History Colorado No. 79289 (Sweetwater Lake Resort).

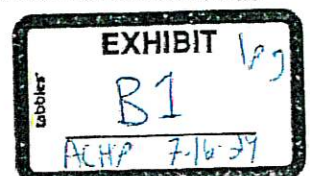
A physical copy of this letter will be mailed to the Garfield County BOCC.

Thank you,
Jamie



Jamie Werner
Program Management Specialist
Forest Service
White River National Forest, Supervisor's Office
c: 970-471-0259
Jamie.Werner@usda.gov
900 Grand Ave
Glenwood Springs, CO 81601
www.fs.usda.gov

Caring for the land and serving people

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Date: April 4, 2024

Board of County Commissioners – Garfield County
108 8th Street, Suite 101
Glenwood Springs, Colorado 81601

Dear Commissioners Martin, Samson and Jankovsky,

I'm writing in response to the 03/07/24 letter from Garfield County Attorney Heather K. Beattie addressed to the State Preservation Officer (with myself cc'd) regarding the Sweetwater Lake Section 106 process, and to the 10/26/2023 letter addressed to me.

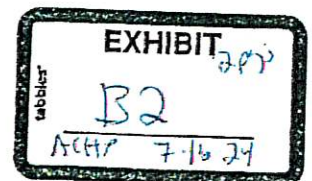
First of all, thank you for your request to be a consulting party in the Section 106 process for this project under 36 CFR 800.2(c)(3). The Forest Service remains committed to ongoing cooperation with Garfield County in this process and would like to clarify that for National Historic Preservation Act (NHPA) Section 106 purposes, "Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process" (36 CFR 800.16 (f)). The information in this letter is intended to answer the questions submitted in the aforementioned letters.

The Forest Service will complete NHPA compliance by following the steps in the Section 106 implementing regulations at 36 CFR 800. The Forest Service's methods for NHPA Section 106 compliance are summarized in Forest Service Manual 2364.11 and 2364.12, and in the attached NHPA Section 106 Compliance and Review Process Flow Chart (Exhibit A, attached).

It is the policy of the Forest Service to notify and consult directly with the SHPO, Indian tribes, representatives of local governments, applicants for Federal assistance, and additional parties with a demonstrated interest in the undertaking, under NHPA Section 106 or alternative procedures, as directed in 36 CFR 800.2(c)(1-5). While contractors may be used for parts of the compliance process, responsibility for NHPA consultation will not be delegated to a non-Federal party.

As noted in your October 26, 2023 letter, NEPA and NHPA compliance steps may be coordinated, including public participation, analysis, and review. The White River National Forest (WRNF) will combine these steps when they can meet the purposes and requirements of both statutes in a timely and efficient manner (36 CFR 800.8(a)(1) and (b)). The Advisory Council on Historic Preservation has provided guidance on how to coordinate these processes (see Exhibit B, "Section 106 and Environmental Impact Statement," attached). We are currently in the initial phases of these concurrent processes. The consideration of effects to historic properties in conjunction with SHPO and other consulting parties will occur concurrently with the development of the draft EIS following the publication of the NOI in the National Register and the subsequent 90-day public scoping period. This means Garfield County's role as a consulting party can expect to begin sometime after the 90-day scoping period of the EIS.

As discussed in the Sweetwater Cooperating Agency meeting on 03/06/24, the formal NEPA process is yet to be initiated. The formal NEPA process begins once the Notice of Intent (NOI) for the Environmental Impact Statement get published in the Federal Register. As a reminder, all Cooperating Agencies were given the opportunity to comment on the draft NOI in advance of its submittal to the Forest Service's Washington Office, where it is now routing for publication.



A few points of clarification:

- In the letter you referenced from Colorado SHPO dated March 3, 2023, SHPO disagreed with the Forest Service's determination of eligibility for some of the buildings within the Sweetwater Lake Resort. This does not mean that all these buildings are eligible for inclusion on the National Register of Historic Places, as your letter states. The Federal Agency is responsible for making the determination of eligibility, in consultation with the SHPO or Tribal Historic Presentation Office and any Indian tribe that attaches religious and cultural significance. SHPO's role in eligibility determinations is to agree or disagree with the federal agency, not to make the determination themselves. Contractors also do not make these determinations. In this case, SHPO has disagreed with the Forest Service's determination, and the Forest Service has not taken any substantial NHPA steps since then, as we consider how to proceed. I welcome your comments as we consider the next steps.
- In the March 7, 2024 letter, Ms. Beattie states that, "The information we have been provided is that once the NEPA process has concluded the proposal will be provided to the SHPO and then the SHPO will make comments". This statement is inaccurate. It is a legal requirement for the WRNF to complete the Section 106 process *before* the NEPA process concludes (specifically, prior to signing a final Record of Decision for the Environmental Impact Statement), unless an alternative process is designated under 36 CFR 800.14, such as a programmatic agreement. If a Memorandum of Agreement (MOA) is required between the SHPO and Forest Service, the MOA will be signed before the NEPA decision is finalized.
- In the letter dated 03/07/24 Ms. Beattie states that "Garfield County believes that the Forest Service may have already made the determination that some of the buildings that are eligible for inclusion in the National Historic Register will have an adverse effect". I assume this is based on the discussion at the 11/17/24 Cooperating Agency meeting around the current state of the existing structures within the project area and the language in the draft NOI that was circulated internally among Cooperating Agencies on 01/26/23. However, this assumption is incorrect. The Forest has not yet reached a finding of effect. We are not far enough along in the concurrent NEPA/EIS and NHPA Section 106 processes yet where such a determination can be made.

The Forest Service remains committed to working with consulting parties at each step outlined in Exhibit A, and I look forward to continued coordination on the NHPA process, in conjunction with the development of the draft EIS.

Thank you for your continued cooperation as the Forest Service follows the required NEPA and Section 106 processes.

Sincerely,



Digitally signed by HEATHER NOEL
Date: 2024.04.04 15:39:26 -06'00'

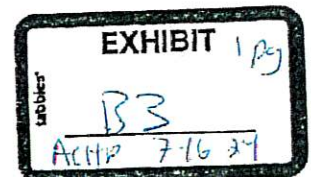
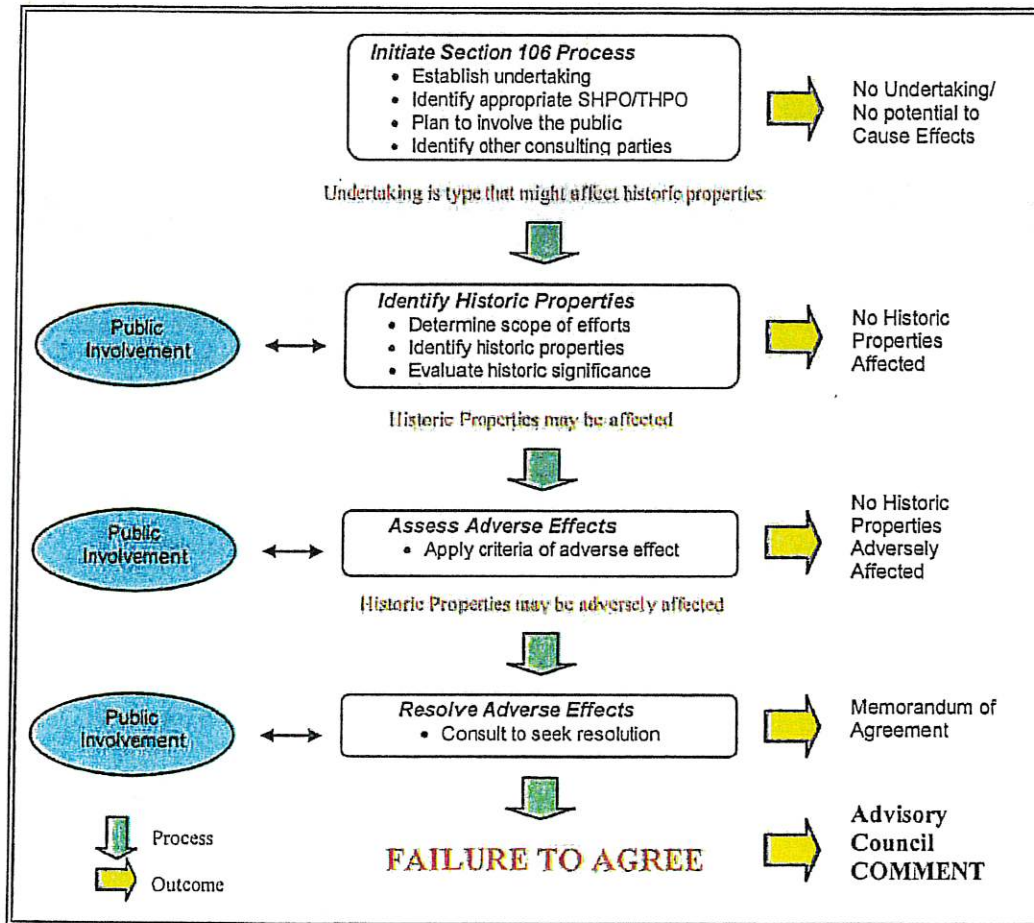
HEATHER M. NOEL
Acting Forest Supervisor

cc: Patrick Eidman, State Historic Preservation Officer, Dawn DiPrince, History Colorado, Heather K. Beattie, Garfield County Attorney's Office

FSM 2300 – RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT
CHAPTER 2360 – HERITAGE PROGRAM MANAGEMENT

2364.1 – Exhibit 01

NHPA Section 106 Compliance and Review Process Flow Chart

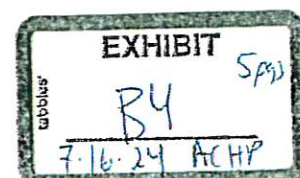
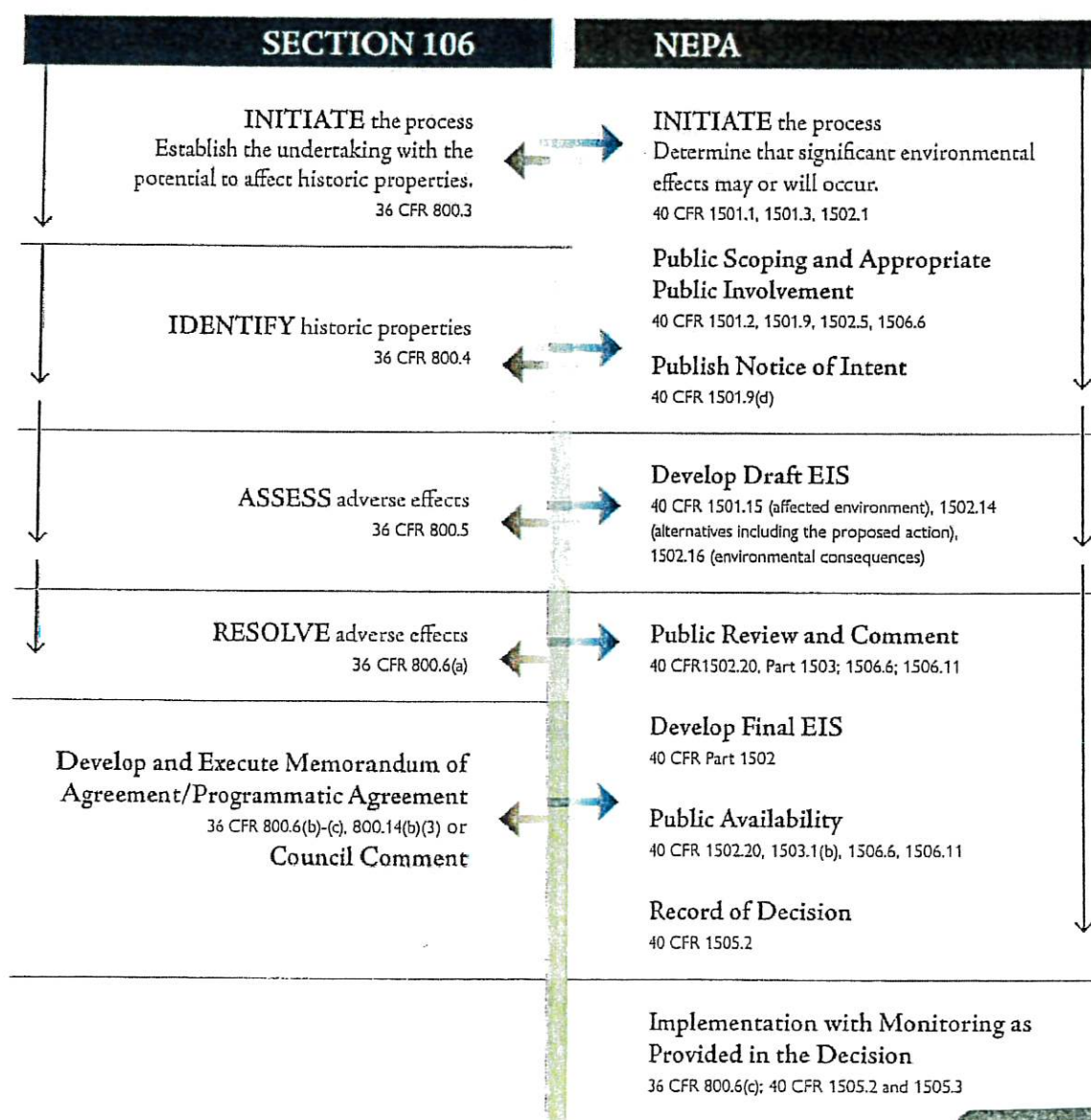




TIMING AND COMMUNICATION

Section 106 and Environmental Impact Statement

The Advisory Council on Historic Preservation (ACHP) is utilizing the opportunity of the Council on Environmental Quality's (CEQ) revised National Environmental Policy Act (NEPA) regulations to review the agencies' joint handbook. In response to immediate questions regarding timing and coordination between Section 106 and NEPA, below is an updated flowchart comparing the two review processes.



DEFINITIONS

The following is an updated list of terms and definitions to assist practitioners in understanding how the two laws line up and where they differ.

SECTION 106	NEPA
<p>Undertaking (36 CFR 800.16(y))</p> <p>A project, activities, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license, or approval.</p>	<p>Major Federal Action (40 CFR 1508.1(q))</p> <p>An activity or decision subject to federal control and responsibility subject to the following: (1) Major federal action does not include the following activities or decisions: (i) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States; (ii) Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority; (iii) Activities or decisions that do not result in final agency action under the Administrative Procedure Act or other statute that also includes a finality requirement; (iv) Judicial or administrative civil or criminal enforcement actions; (v) Funding assistance solely in the form of general revenue sharing funds with no federal agency control over the subsequent use of such funds; (vi) Non-federal projects with minimal federal funding or minimal federal involvement where the agency does not exercise sufficient control and responsibility over the outcome of the project; and (vii) Loans, loan guarantees, or other forms of financial assistance where the federal agency does not exercise sufficient control and responsibility over the effects of such assistance (for example, action does not include farm ownership and operating loan guarantees by the Farm Service Agency pursuant to 7 U.S.C. 1925 and 1941 through 1949 and business loan guarantees by the Small Business Administration pursuant to 15 U.S.C. 636(a), 636(m), and 695 through 697g). (2) Major federal actions may include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§ 1506.8 of this chapter). (3) Major federal actions tend to fall within one of the following categories: (i) Adoption of official policy, such as rules, regulations, and interpretations adopted under the Administrative Procedure Act, 5 U.S.C. 551 et seq. or other statutes; implementation of treaties and international conventions or agreements, including those implemented pursuant to statute or regulation; formal documents establishing an agency's policies which will result in or substantially alter agency programs. (ii) Adoption of formal plans, such as official documents prepared or approved by federal agencies, which prescribe alternative uses of federal resources, upon which future agency actions will be based. (iii) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive. (iv) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.</p>

SECTION 106	NEPA
<p>Area of Potential Effects (36 CFR 800.16(d))</p> <p>The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.</p>	<p>Affected Environment (40 CFR 1502.15)</p> <p>The EIS shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area.</p>
<p>Effect (36 CFR 800.16(f), 800.5(a)(1))</p> <p>An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places.</p>	<p>Effect or Impact (40 CFR 1508.1(g))</p> <p><i>Effects or impacts</i> means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:</p> <ol style="list-style-type: none"> (1) Direct effects, which are caused by the action and occur at the same time and place. (2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. (3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (federal or nonfederal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. (4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.
<p>Consulting Party (36 CFR 800.2)</p> <p>Parties that have consultative roles in the Section 106 process, including State Historic Preservation Officers (SHPOs); Tribal Historic Preservation Officers (THPOs); Indian tribes; Native Hawaiian organizations; representatives of local governments; applicants for federal assistance, permits, licenses, and other approvals; the ACHP; and other individuals and organizations with a demonstrated interest in the undertaking or the affected historic properties.</p>	<p>Cooperating Agency (40 CFR 1501.8(e))</p> <p>Participating Agency (40 CFR 1501.8(w))</p> <p>Cooperating Agency means any federal agency (and a state, tribal, or local agency with agreement of the lead agency) other than a lead agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major federal action that may significantly affect the quality of the human environment.</p> <p>Participating Agency means a federal, state, tribal, or local agency participating in an environmental review or authorization of an action.</p>

SECTION 106	NEPA
<p>Consultation (36 CFR 800.16(f))</p> <p>The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.</p>	<p>Public Involvement (40 CFR Part 1503, 1506.6)</p> <p>Providing other interested stakeholders and the public with information about the proposed action and its potential impacts, providing opportunities to review draft and final documents, and requesting comments.</p>
<p>Historic Property (36 CFR 800.16(l))</p> <p>Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.</p>	<p>Cultural Resource (1508.1(g)(4))</p> <p>Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.</p>
<p>Significance (36 CFR 800.4(c))</p> <p>Used to describe the historic property that has certain character defining features that make it historically significant and therefore eligible for listing in the National Register with the requisite integrity. See National Register of Historic Places eligibility criteria. (40 CFR § 60.4)</p>	<p>Significant Effects (40 CFR 1501.3(b))</p> <p>In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with section 1501.9(e)(1).</p>

SECTION 106	NEPA
<p>Adverse Effect (36 CFR 800.5(a))</p> <p>An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.</p> <p>Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative.</p>	<p>Significant Effects (40 CFR 1501.3(b))</p> <p>In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with section 1501.9(e)(1).</p> <p>Effects (40 CFR 1508.1(g))</p> <p><i>Effects or impacts</i> means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:</p> <ol style="list-style-type: none"> (1) Direct effects, which are caused by the action and occur at the same time and place. (2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. (3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (federal or nonfederal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. (4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.
<p>Mitigation (36 CFR 800.6(a))</p> <p>The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects to historic properties.</p> <p>Mitigation is a measure to resolve specific adverse effects to an identified historic property or properties by offsetting such effects.</p>	<p>Mitigation (40 CFR 1508.1(s), 1505.2 and 1505.3)</p> <p>Mitigation means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes the following: avoiding the impact altogether, minimizing impacts, rectifying the impact, reducing or eliminating the impact, and compensating for the impact.</p>



ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308, Washington, DC 20001 | Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov



COUNTY ATTORNEY'S OFFICE

108 8th Street, Suite 219
Glenwood Springs, CO 81601
(970) 945-9130

March 7, 2024

Patrick Eidman
Dawn DiPrince
State Historic Preservation Officer
History Colorado

Scott Fitzwilliams
Forest Supervisor
White River National Forest
U.S. Forest Service

Via email to: Mitchell.schaefer@state.co.us, Patrick.eidman@state.co.us,
Dawn.diprince@state.co.us, scott.fitzwilliams@usda.gov

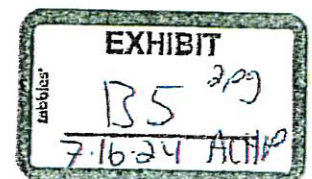
Re: Sweetwater Lake State Park Recreation and Management, White River National Forest,
Garfield County, Colorado, History Colorado No. 80981 (King Springs Complex) and History
Colorado No. 79289 (Sweetwater Lake Resort)

Dear State Historic Preservation Officer,

Garfield County is writing to request a meeting with your office and other consulting agencies regarding the above referenced project. We have received your March 3, 2023 letters to Forest Supervisor Fitzwilliams stating these projects are eligible for inclusion on the National Register of Historic Places under certain criterion. We do not have copies of the previous correspondence referenced in that letter. Like History Colorado, Garfield County has also requested to be a consulting party pursuant to Section 106 as required by 36 CFR 800.2(c)(3). See Exhibit A (attached).

Garfield County had not been invited to participate as a consulting agency and was unaware that the Section 106 process had been initiated by the Forest Service until receiving a copy of your letter in December 2023.

Garfield County is involved as a cooperating agency in the NEPA process for Sweetwater Lake with the Forest Service. We have continued to ask the Forest Service how it will comply with the Section 106 process. We have been told that SHPO is unwilling to participate in meetings with the County or in the NEPA process and prefers a separate process. That "separate process" is unknown to us. However, the Forest Service states that they will "continue to participate in the Section 106 consultations for the Sweetwater project." However, the Forest Service will not



state what their "consultation process" is and what it looks like so the County can participate accordingly. The information we have been provided is that once the NEPA process has concluded the proposal will be provided to the SHPO and then the SHPO will make comments. There has been no attempt to have any consultation among the parties that have an expertise and interest in this area. This, in our view, does not provide for any consultation among the parties in compliance with the federal regulations and will not lead to more informed decision making.

We believe the depth and breadth of this project requires compliance with the federal regulations to include the consultation with local agencies, the SHPO, and the Tribal Historic Preservation Officer (THPO).

Garfield County believes that the Forest Service may have already made the determination that some of the buildings that are eligible for inclusion on the National Historic Register will have an adverse effect. This belief is based on your letter that the forest service would like to make "improvements" in some of these properties. Therefore, as we understand the Section 106 process, we are at the point of consulting to determine whether those adverse effects can be made less harmful. The Section 106 process is important because it also provides the public an opportunity to participate in the decision making. Garfield County wants to ensure its citizens are being afforded the right to participate as outlined in the federal regulations.

It is unclear whether the Forest Service has a written policy regarding their procedures under Section 106. If they do, they have not provided them to us. We understand the Advisory Council on Historic Preservation (ACHP) issues the regulations and oversees the operations of the National Historic Preservation Act (NHPA). Please let us know how we can meaningfully participate as a consulting agency in this Section 106 process.

Sincerely,



Heather K. Beattie
Garfield County Attorney

Heather Beattie

From: Norton - HC, Holly <holly.norton@state.co.us>
Sent: Wednesday, March 20, 2024 4:12 PM
To: Heather Beattie; scott.fitzwilliams@usda.gov; Patrick Eidman - HC; Dawn DiPrince - HC; Mitchell Schaefer - HC; Megan Borthwick
Subject: Fwd: GarCo Request for Section 106 Consultation for Sweetwater Lake
Attachments: 2024.03.07 GarCo Letter to SHPO and FS.pdf; 2023.10.26 GarCo Letter to FS re NHPA.pdf

Follow Up Flag: FollowUp
Flag Status: Flagged

Hello Ms. Beattie,

Thank you for reaching out to our office. Pursuant to 36 CFR § 800.2(c)(3) Garfield County is entitled to participate in the Section 106 consultation process as a consulting party. Ultimately, this decision rests with the Forest as the federal agency over the undertaking. We look forward to their decision and working with you all in the future.

Cheers,
Holly Norton

Dr. Holly Kathryn Norton

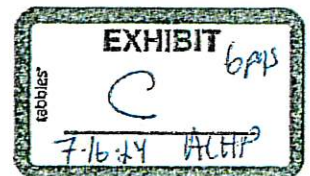
Director, Office of Archaeology & Historic Preservation
State Archaeologist & Deputy State Historic Preservation Officer
History Colorado
303/866-2736
Cell: 315/237-2378
1200 Broadway|Denver, Colorado 80203|HistoryColorado.org

Under the Colorado Open Records Act (CORA), all messages sent by or to me on this state-owned email account may be subject to public disclosure

----- Forwarded message -----

From: Heather Beattie <hbeattie@garfield-county.com>
Date: Thu, Mar 7, 2024 at 1:45 PM
Subject: GarCo Request for Section 106 Consultation for Sweetwater Lake
To: patrick.eidman@state.co.us <patrick.eidman@state.co.us>, mitchell.schaefer@state.co.us <mitchell.schaefer@state.co.us>, dawn.diprinace@state.co.us <dawn.diprinace@state.co.us>, scott.fitzwilliams@usda.gov <scott.fitzwilliams@usda.gov>

Good morning,



Attached please find Garfield County's request to be a consulting agency in the Section 106 process currently being undertaken for the Sweetwater Lake area. I understand this request goes the Forest

Service; however, several months ago we asked them for this status and have not received any response (see attached letter). Please confirm receipt. We look forward to working with you on this project.

Thank you,

Heather K. Beattie

Garfield County Attorney

108 8th Street, Suite 219

Glenwood Springs, Colorado 81601

Phone: 970-945-9150, ext. 1715

Fax: 970-484-5005

Email: hbeattie@garfield-county.com

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March 7, 2024

Patrick Eidman
Dawn DiPrince
State Historic Preservation Officer
History Colorado

Scott Fitzwilliams
Forest Supervisor
White River National Forest
U.S. Forest Service

Via email to: Mitchell.schaefer@state.co.us, Patrick.eidman@state.co.us,
Dawn.diprince@state.co.us, scott.fitzwilliams@usda.gov

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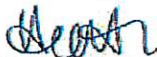
state what their "consultation process" is and what it looks like so the County can participate accordingly. The information we have been provided is that once the NEPA process has concluded the proposal will be provided to the SHPO and then the SHPO will make comments. There has been no attempt to have any consultation among the parties that have an expertise and interest in this area. This, in our view, does not provide for any consultation among the parties in compliance with the federal regulations and will not lead to more informed decision making.

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Sincerely,



Heather K. Beattie
Garfield County Attorney

Scott Fitzwilliams
Forest Supervisor
White River National Forest
U.S. Forest Service

Via: Hand Delivery at Cooperative Meeting #4- 10/26/23

Dear Mr. Fitzwilliams,

Thank you for allowing Garfield County to be a cooperative agency in this NEPA process for Sweetwater Lake. As for the issue of water rights, we have a copy of a document titled "Water Right Acquisition Recommendation," which includes different information that what is contained in the slides for Meeting #4. The Water Rights Summary (FS) for some reason states that the Total Absolute Rights for Irrigation are 5.66; however, adding up the numbers in the table on that slide provides the number is 3.66 cfs for irrigation. It appears from the second table in the slides that the total estimated number of visitors is approximately 104,476. The domestically available 3.5 cfs is less than the estimated 4.71 cfs necessary for that number of visitors. Will the FS be filing a water court case to change the use of irrigation water to domestic to satisfy the additional domestic needs or will the FS be utilizing different visitor numbers to bring down the amount of domestic water needed for the project? It is unclear from the slides whether the Water Rights Summary (CPW) Acquired in May 2023 means that CPW has acquired these water rights or not, please confirm.

The slides also contain photos of the cabins at Sweetwater Lake. We want to address the Forest Services' application of the National Historic Preservation Act (NHPA) Section 106 process. That process is designed to encourage historic preservation of eligible properties. During the first cooperative meeting in July 2023 when asked whether SHPO was going to be involved in the cooperative meetings NEPA process we were told no because they are on a "higher level" than cooperators and this process would not be useful to them. We are again asking how the FS will comply with Section 106? It is Garfield County's understanding that the FS has gathered the information necessary to determine whether certain cabins and other buildings are eligible for listing on the National Register of Historic Places (NR) as required under 36 CFR 800.4. There are several sites on the Sweetwater Lake parcel that are determined eligible for NR status according to studies we have received for the Sweetwater parcel. Specifically, the Sweetwater Rock Art Cave has prehistoric archeological significance.

In addition, the cultural resource survey commissioned by either the FS or Colorado Parks and Wildlife (CPW) in 2021 also determined that thirteen (13) buildings on the

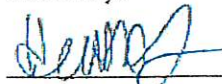
Sweetwater Lake parcel have been determined eligible for the NR on February 10, 2021, based on their contribution to the historical significance and context of Colorado Mountains Recreation, Tourism, and Development. We understand from previous meetings that the FS is undertaking Level II surveys of the area. Garfield County is requesting to be a consulting party in the FS Section 106 process under 36 CFR 800.2(c)(3) as the local government with jurisdiction over the area. See also 36 CFR 800.3(f)(1).

We are bringing up these concerns now because we have recently received reports that all the buildings on the property have been locked and the current special use permit holder is not permitted to use the buildings any longer. We know that pursuant to 36 CFR 800.1(c) that an agency official is not prohibited from conducting or authorizing *nondestructive* project planning activities before completing compliance with Section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize, or mitigate the undertakings adverse effects on historic properties. However, we emphasize that regulation also provides "[t]he agency official shall ensure that the Section 106 process is initiated early in the undertaking's planning so that a broad range of alternatives may be considered during the planning process for the undertaking." Please let us know if the FS is undertaking the Section 106 compliance or if that has been delegated to the proposed future permit holder, CPW.

Further, Garfield County understands that federal regulations, 36 CFR 800.2(4), 36 CFR 800.3(b), 36 CFR 800.8, encourages the federal agency to plan consultations in coordination with the requirements of other federal statutes, like NEPA. There are, of course, regulations in NEPA that encourage the integration of other planning reviews, such as Section 106. 40 CFR 1500 et seq. As you know, the purpose of the coordination and integration of the processes provides a more efficient framework, improves public understanding, and leads to more informed decisions. Please let us know if the FS intends to use the NEPA process to comply with Section 106.

Please acknowledge our request to be a consulting agency in your Section 106 process. We may choose to notify the independent agency that oversees the federal government's compliance with Section 106 if we do not receive a timely response to our request. Again, we thank you for working with the County on this FS project.

Sincerely,



Heather K. Beattie
Garfield County Attorney



SWEETWATER LAKE PUBLIC MEETING QUESTIONS & ANSWERS

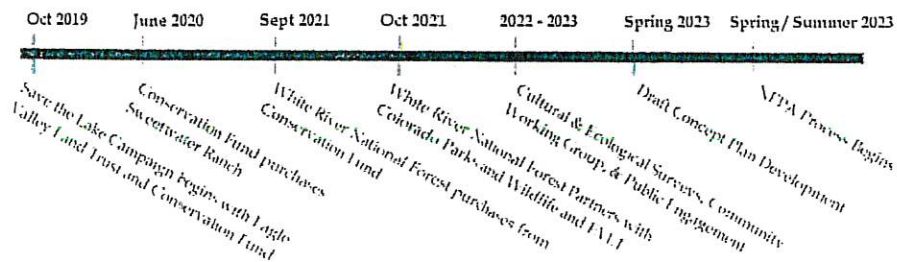
March 6, 2023

General Questions

- Where will this recorded presentation be posted? Also, knowing not all questions will be answered in the time available, will all questions and the corresponding answers be posted at the same place? **[Answered in Meeting]**
 - All meeting information will be posted on the EVLT website.
- How many attendees attended the virtual public meeting? **[Answered in Meeting]**
 - There were approximately 110 meeting attendees during the meeting.
- Are the draft planning plans shown in the earlier slides available to the public?
 - The draft plans have been examples, and are currently under refinement based on information from the public survey, discussions with the Sweetwater Lake Working Group, and resource information collected on the site. The draft plans will become part of the proposed action that the public will be able to comment on during the scoping and comment periods in the formal NEPA process.
- Where do we find the survey? **[Answered in Meeting]**
 - The survey links can be found on the EVLT website as well as here:
 English: <https://www.surveymonkey.com/r/PCHP56X>
 Spanish: <https://www.surveymonkey.com/r/PILMHRV>

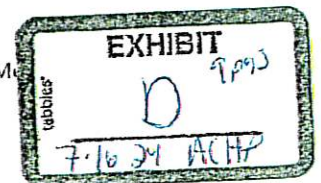
Partnership

- What is the timeline of how the partnership came about? When was CPW engaged?



-
- The Save The Lake campaign started in October of 2019. In April of 2020, The Conservation Fund and USFS sought input from CPW on best recreation management practices for a property like Sweetwater, as the probability that the property would end up in USFS ownership was increasing. EVLT began participating in these conversations in May of 2020. Throughout the next 6 months, those conversations included a proposition

Sweetwater Lake March 6 Public Meeting





about CPW's management as a State Park, and this idea was pitched to CPW Leadership in October of 2020. They approved further discussion to explore the possibility. In January of 2021, as a part of CPW's New State Park nomination process, the Sweetwater property was formally nominated by USFS and CPW.

- Does this partnership meet the original objectives of the Save the Lake Campaign? [Answered in Meeting]
 - Yes, the goals can be found in original Save the Lake Campaign Flyer:



The Conservation Fund (TCF) and the Eagle Valley Land Trust (EVLIT) are leading a campaign to raise \$3.5M to purchase Sweetwater Lake for the public before it is sold for development or extractive commercial uses. We need your help to make it happen.

The property—if acquired—will provide new public access to the iconic Sweetwater Lake and surrounding public lands. The 488-acre parcel is an important community asset, but public access was revoked after development plans for 340 homes, a hotel, and golf course failed to materialize.

Protecting Sweetwater Lake means:

- Creating new public recreational access to Sweetwater Lake for fishing, horseback riding, boating, and camping.
- Opening access to surrounding public lands including Flat Tops Wilderness, White River National Forest (the most visited National Forest in the U.S.), and the Ute trail.
- Conserving critical habitat for elk, deer, osprey, bald eagles, and other wildlife.
- Protecting the Upper Colorado Watershed.
- Opening new public access to the historic Ute Cave while protecting cultural resources.

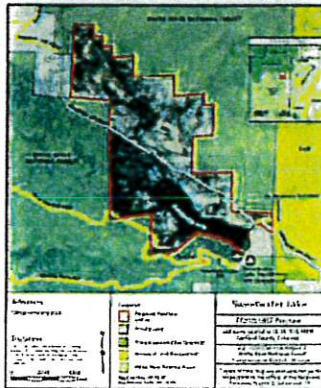
TCF, a national non-profit land conservation organization, secured a contract to purchase the property against competing bids from private developers. With your help, TCF, EVLIT, and other local partners are raising money to purchase Sweetwater Lake for our community.

If the required public and private funding can be raised, TCF will move forward in purchasing the property. TCF will hold the property until the U.S. Forest Service can purchase and integrate it into the surrounding White River National Forest.

DONATIONS REQUESTED
(100% TAX DEDUCTIBLE)

PHONE: (970) 748-7654
ONLINE: www.evlit.org/savethelake

MAIL: Eagle Valley Land Trust
PO Box 3016, Edwards, CO 81632
Memo: Save The Lake



CONSERVE

SWEETWATER LAKE
FUNDRAISING GOAL
\$3,500,000

KEY FEATURES
Recreation Access: Sweetwater Lake, White River National Forest, Flat Tops Wilderness, Ute Indian Cave
Habitat Protection: Permanent conservation of important watershed, habitat for bald eagles, osprey, elk, deer, and other wildlife

PARTNERS
The Conservation Fund, Eagle Valley Land Trust, Garfield County, Brink Outfitters, U.S. Forest Service, Colorado Parks and Wildlife, Sweetwater Lake Community, Walking Mountains Science Center

The Conservation Fund
jordan.spring@conservationfund.org | 303.444.4269

Eagle Valley Land Trust
berget@evlit.org | 970.748.7654

Save The Lake | [Web: www.evlit.org/savethelake](http://www.evlit.org/savethelake) | Phone: 970.748.7654 | Email: berget@evlit.org



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- If the partnership between the USFS and CPW falls through, how will the USFS manage the land it purchased?
 - The FS would have to determine if they could develop the site without CPW as their partner. Currently, the Forest Service does not have funding that it could significantly invest in the site. If the Forest Service cannot develop the site, then the site would be managed with minimal infrastructure and staff. No commercial services would be available at the site, little to no amenities would be available. The FS would focus on health and safety management only. The buildings on site would likely be permanently closed or removed. If the FS could secure funding to develop the site, then the FS would offer the site out via its policy of using a competitive bid through a prospectus process, and offer a concessionaire permit to the selected bid. At this time, the most likely scenario is that the Forest Service would remove aging site infrastructure and minimally manage the site with no amenities.

Site Naming

- Can you explain why the site needs a different name? **[Answered in Meeting]**
 - There is a process for determining the name of the site. There is no final decision on whether, if at all, the site will be renamed from "Sweetwater." Keeping the name "Sweetwater" or a version of that is an option at this time.

Site Design and Infrastructure

- Can you please explain why the original purchase was for 488 acres, but the project boundaries have been expanded to over 800 acres? Is it possible the project boundaries would be expanded again? **[Answered in Meeting]**
 - The project boundary includes the existing USFS campground, the existing USFS land north of the County road and the USFS triangle south of the road, and some land up to the Keep Ditch in order to manage irrigation. This boundary alignment also follows land features to help clearly delineate the management area from other public and private lands, which will help prevent trespass and other impacts to local landowners.
- Will the existing, adjacent Sweetwater Campground be incorporated into the project area or remain separate? **[Answered in Meeting]**
 - At this time, the existing Sweetwater Campground is included in the project area.
- Will new development occur elsewhere on the site?
 - The objective, where practical, will be to avoid development in previously undisturbed or environmentally sensitive areas while focusing development in previously disturbed areas (e.g. where buildings, roads, pastures, parking, and the existing campground occupy the ground).



- Will the existing cabins be upgraded/renovated? Are the cabins considered historical?
[Answered in Meeting]
 - The USFS is currently working with the State Historic Preservation Office to determine the historic level of the cabins. There have been no determinations on what will happen to the cabins in the future. Based on previous inspections, it has been determined the cabins are not fit for public occupancy at this time, and would require substantial investment to bring them back to a standard for public use.
- Is it possible the area will not be developed and will be kept more primitive?
 - Without a long-term design established at this point, the partners are weighing a wide variety of development possibilities. Keep in mind, any desire to sustain amenities, such as food service and commercial opportunities will likely require a level of visitation that would ensure financial viability.

Site Management

- What is the process for CPW to choose a private business to run concessions on the site?
 - CPW best practice would involve a competitive bidding process for future commercial activities at Sweetwater. CPW also has the flexibility to contract on a short- or long-term basis, and select vendors that provide the best opportunity to meet management objectives in the best interest of the property, its resources and recreational opportunities.
- How will traffic be managed on the road to/from the site? How will funds be raised to improve and manage the road infrastructure in the long-term? [Answered in Meeting]
 - Responses to the open survey will help determine public preferences for managing traffic on the roadway to/from the site. The partners are also working with Eagle and Garfield Counties to understand road traffic counts as well as other roadway information to support the development of a plan to manage traffic. Garfield County has a 5-year road maintenance plan, and there are no planned projects for Sweetwater Road.
- What are the plans for the intersection of Sweetwater Road and the Colorado River Road? Is there a signage plan?
 - The partners are considering strategies for signage to both facilitate access to the site, as well as to educate visitors on any potential process needed to visit Sweetwater (i.e. capacity restrictions). At this time, and until long-term management recommendations are identified, no signage plan is in place.
- How will businesses at the end of the road, past the project area, be affected by any changes? What can property owners that border the Sweetwater property expect? [Answered in Meeting]
 - The partners have engaged many of the neighboring property owners in this process to understand their interests around Sweetwater. The partners encourage the property



owners to continue participating in discussions with USFS and CPW, and welcome their input. Since no decisions have been made about the long-term plan for the site, impacts are unknown at this time.

- Will there be a usage study for the site? If so, when?
 - Market analysis of who is most likely to visit Sweetwater is underway, including through the open online survey, and will factor into the design discussions for the long-term plan at Sweetwater Lake. Information has been gathered through a series of public engagement opportunities to determine past usage of the Sweetwater property.
- How many visitors do you expect to visit the site?
 - Without having the recommended long-term plan in place, the partners do not have estimates for the level of visitation expected at Sweetwater. Visitation will largely be driven by the proposed volume of day-use vs. overnight recreational opportunities, the level and type of amenities provided, and through marketing strategies to promote the desired level of use at Sweetwater.
- Will there be changes to the management or regulations of the public land surrounding the project boundaries?
 - The upcoming NEPA will apply to the project boundary only. The FS manages the surrounding lands via the current Travel Management Plan which manages trails for foot and horse use only. We do not anticipate changes to that plan. Lands to the north and west of the project area fall within the Flattops Wilderness Area and are managed accordingly with those current regulations. We do not anticipate changes to those regulations.

NEPA

- Can you explain what “standing” means in the NEPA process? **[Answered in Meeting]**
 - Standing refers to the opportunity for an individual or organization to become an objector to a draft decision based on the comments provided by the individual or organization in an open comment period or for new information presented in the final environmental analysis not previously disclosed in an open comment period.
- How will we know when the NEPA draft is out, how to access it, and more details about how to comment? **[Answered in Meeting]**
 - Information about opportunities to comment during the NEPA process will be published in local papers as well as online and through multiple outreach channels.
- When the NEPA process takes place will there be a full environmental impact study? **[Answered in Meeting]**



- At this time, an Environmental Assessment is planned. The way the NEPA process works is federal agencies do an EA to determine if there is a FONSI (Finding of no significant impact). The decision in a FONSI states whether or not an EIS is necessary, but if the Forest Supervisor determines that there will be "significant impacts" (as defined by the Council on Environmental Quality (CEQ) at the USFS), then we would move to an EIS.

Natural Resources

- Will you be providing information on future uses for the water rights acquired? Will water rights held by The Conservation Fund be sold/used elsewhere in the state? Will the change in water rights impact users downstream? **[Answered in Meeting]**
 - The exact future uses for water available under the rights acquired by the Forest Service will be determined in the final site plan. The Forest doesn't anticipate that any of the uses proposed for the site will fall outside the purposes allowed under the decrees.
 - It is up to the Conservation Fund to decide what to do with any water rights they may own. Both CPW and the Forest Service would like to see these water rights applied to beneficial use in the Sweetwater Lake area. CPW and the Conservation Fund are looking at how this might be possible.
 - Colorado water rights law is complex. The Forest only purchased the amount of rights needed to support the uses on this site. This water was largely already being used when the land was private. CPW, the FS, and EVLT hope to install more efficient systems that may save on water use. Without knowing the uses for any water owned by the Conservation Fund, it's impossible to say if there might be effects to downstream users.
- Did USFS keep enough water to irrigate pastures?
 - The USFS obtained water rights sufficient to operate the property, including the ability to irrigate pastures as use will dictate.
- Given the presence of several plant and animal species that occupy riparian, aquatic, and upland habitat, what are the considerations for recreation closures to protect these plants and animals? **[Answered in Meeting]**
 - Understanding the natural resources of the site is an important part of the project. Currently, the project partners are conducting different analyses to understand whether closures or other measures to protect natural resources will be necessary.
- Are there procedures being discussed to protect the dark skies at Sweetwater Lake and the surrounding area? **[Answered in Meeting]**
 - The partners are interested in exploring all options to protect natural resources, including the dark skies at Sweetwater. This may come in the form of specific lighting design, rules and regulations for overnight use, etc. to maintain dark sky visibility. This, and anything else proposed at Sweetwater will be available for public comment during the NEPA process.



Recreation

- Is there a possibility of a private contractor operating Sweetwater like Trappers Lake? This will control numbers with a reservation system. **[Answered in Meeting]**
 - Trappers Lake is authorized via a different law and permit than that of Sweetwater Lake. That said, the partners are exploring many different options regarding long-term management and operations at Sweetwater and no final decisions have been made.
- Will RVs and their integrated generators be outlawed? **[Answered in Meeting]**
 - No decisions have been made at this time regarding recreation uses. We encourage the public to participate in the public survey and other opportunities to provide input regarding recreation planning. Regulations on similar public lands prohibit the use of generators during designated "quiet hours".
- Will there be a maximum number for hand-launched watercraft? **[Answered in Meeting]**
 - No decisions have been made at this time regarding recreation uses. We encourage the public to participate in the public survey and other opportunities to provide input regarding recreation planning.
- Have there been discussions on a horse camp or accommodating horse trailers at trail heads? Will day use equestrian parking be provided? **[Answered in Meeting]**
 - No decisions have been made at this time regarding recreation uses. We encourage the public to participate in the public survey and other opportunities to provide input regarding recreation planning.
- Will there be Winter Use? Maintained Snowmobile trails or Snowshoe or Cross Country ski Trails?
 - While decisions will be made through the NEPA process, the partnership anticipates winter opportunities such as cabin rentals, ice fishing, and snowshoeing to be available. Due to surrounding USFS lands travel management restrictions, proximity to wilderness areas, and resource protection considerations, winter motorized use at Sweetwater may be unlikely.

Public Engagement

- What are the key issues raised at the Sweetwater Lake Working Group meetings? **[Answered in Meeting]**
 - The Sweetwater Lake Working Group has touched on a number of different topics including maintaining the character of the area, equestrian use, commercial services, and overnight accommodations.
- What is the status or position of the Garfield County Supervisors at this point?



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- Garfield County, as well as Eagle County, have both signed a Cooperating Agency agreement for the NEPA process. Both Counties also attend the Sweetwater Lake Working Group meetings.
- Do you need any public comments to the Gypsum Town Council to help with that cooperating effort?
 - At this time, the partners are working directly with the town of Gypsum on their preferred method of engagement.
- With this property being in Garfield county, why wasn't this meeting published in the Post Independent? **[Answered in Meeting]**
 - The Post Independent ran a story on this meeting on February 23 [\[Link to Story\]](#)