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STATE OF COLORADO
DEPARTMENT OF LAW

AGENDA

Colorado Natural Resources Trustees Meeting
November 14, 2023
1:00 pm to 3:00pm

Location:

Ralph L. Carr Judicial Building
1300 Broadway, Denver CO
Room: 1E

Note: A hyperlink to a Microsoft Teams meeting will be emailed to Trustees and staff and will be posted on the Trustee website:
<https://coag.gov/office-sections/natural-resources-environment/trustees/whats-new/>

Open Session

1. Approve Agenda – 1 minute
2. Approval of Minutes from August 14, 2023 Meeting – 5 minutes

Action Item:

- (1) Review and approve minutes from August 14, 2023 meeting

Document:

- (1) Draft minutes from August 14, 2023 meeting

3. Budgets Update – (Jennifer Talbert) - 5 minutes

Action Items: None

Document:

- (1) Budget Spreadsheet

4. California Gulch – (David Banas, Susan Newton, Rob Harris) – 15 minutes

Action Item:

- (1) Approve/Deny Central Colorado Conservancy project

Documents:

- (1) Memo from David Banas
- (2) Central Colorado Conservancy project proposal
- (3) Draft resolution

5. Rocky Mountain Arsenal – Thornton Project Extension (Rob Harris) – 5 minutes

Action Item:

- (1) Approve/Deny extension of Thornton project approval

Documents:

- (1) Memo from Rob Harris
- (2) Draft resolution

6. Rocky Mountain Arsenal – Presentation from City and County of Denver – (David Banas, Susan Newton, Rob Harris) – 15 minutes

Action Items: None

Documents: None

7. Rocky Mountain Arsenal – Update on SPP – (David Banas, Susan Newton, Rob Harris) – 5 minutes

Action Items: None

Documents: None

8. Home Lake State Wildlife Area – (Shelley Hickerson, Mindi May) – 10 minutes

Action Items: None

Documents: None

9. North Saint Vrain – (Melody Mascaranez, Jason King) – 5 minutes

Action Items: None

Documents: None

10. Bonita Peak Mining District – (Jennifer Talbert) – 5 minutes

Action Items: None

Documents: None

ITEM #2

Colorado Natural Resource Damages Trustees
Meeting Minutes
August 14, 2023
(Approved _____)

In Attendance:

TRUSTEES

Phil Weiser, Attorney General

Ginny Brannon, Director, Division of Reclamation, Mining & Safety, Colorado Department of Natural Resources (DNR)

Trisha Oeth, Director of Environmental Programs, Colorado Department of Public Health and Environment (CDPHE)

TRUSTEE STAFF

Lukas Staks, Senior Assistant Attorney General, Office of the Attorney General, Natural Resources and Environment Section (NRE)

David Kreutzer, First Assistant Attorney General, NRE

David Banas, Senior Assistant Attorney General, NRE

Jason King, Senior Assistant Attorney General, NRE

Emily Splitek, Senior Assistant Attorney General, NRE

Shelley Hickerson, Assistant Attorney General, NRE

Jennifer Talbert, CDPHE

Doug Jamison, CDPHE

Melody Mascarenez, CDPHE

Susan Newton, CDPHE

Mark Rudolph, CDPHE

Robert Harris, DNR

Mindi May, DNR

OTHER STATE STAFF

Laura Kelly, Senior Paralegal, NRE

Savannah Padilla, Administrative Assistant, NRE

PUBLIC

David Lucas, U.S. Fish and Wildlife Service (USFWS)

Megan Klosterman, USFWS

Monique Rivera, USFWS

Teresa Crain, USFWS

Sarah Metzer, USFWS

Open Session

Trustee Weiser called the hybrid meeting (held in Carr Building, Room 1E and via Teams) to order at approximately 2:00 p.m. on August 14, 2023. The meeting's purpose was to brief the Trustees on the current status of issues relating to Natural Resource Damages (NRDs) projects, and to request direction and/or approval for various actions.

Agenda

David Banas noted that the discussion regarding ethics could take place in public session, and suggested the Trustees amend the Agenda to remove the Executive Session. Trustee Brannon moved to approve the Agenda as amended. Trustee Oeth seconded the motion, and the motion was unanimously approved.

Minutes

Trustee Weiser presented the minutes from the May 11, 2023 Trustee Meeting. Trustee Brannon moved to approve the May 11, 2023 minutes. Trustee Oeth seconded the motion, and the motion was unanimously approved.

Budgets Update

Trustee Weiser asked which of the accounts had remaining funds that needed to be allocated. Jennifer Talbert responded that the Bonita Peak, Cal Gulch, St. Vrain, Rocky Mountain Arsenal (including part of Standard Metals), and Lowry Landfill NRDs accounts had remaining funds. Trustee Weiser suggested that Trustee staff could provide workstreams at the next Trustee Meeting to make sure allocations were on track to put those funds to work.

Lowry Landfill

Emily Splitek reported that \$675,900 remains in the Lowry Landfill NRDs account. A Solicitation for Project Proposals was issued in November 2022, and Trustee staff received two project proposals. One proposal was withdrawn but the remaining proposal submitted by the U.S. Fish and Wildlife Service (USFWS), on behalf of the Rocky Mountain Arsenal National Wildlife Refuge ("Refuge"), was recommended by Trustee staff and would utilize all the remaining funds. Ms. Splitek introduced Megan Klosterman, Deputy Manager of the Colorado Front Range National Wildlife Refuge Complex, who presented details about the proposed First Creek Restoration Project ("Project"). Ms. Klosterman explained how the Project would restore approximately 3.5 miles of First Creek and expand access to the Refuge.

Ms. Talbert inquired about whether USFWS can meet the two-year deadline to enter into a contract to perform the work. Ms. Klosterman responded that they had already started that process and the timeline in the draft resolution would be sufficient. Trustee Weiser inquired about the increased wildfire risk and fuels management at the Refuge. David Lucas confirmed that this Project is separate from remediation efforts at the Refuge. Robert Harris mentioned Senate Bill 23-270 which is a new authority for water rights administration, and Ms. Klosterman assured him that USFWS is aware of all the current rules and regulations regarding water rights.

Trustee Oeth moved to approve the resolution awarding the First Creek Restoration Project \$675,900 plus all accrued interest in the Lowry Landfill NRDs account. Trustee Brannon seconded the motion, and the motion was unanimously approved.

Blue Tee NRDs Fund Allocation

Mr. Banas explained that, in 2018, a multi-state settlement with Blue Tee Corporation stemming from Blue Tee's liabilities for both NRDs and CERCLA response costs for numerous sites in the Bonita Peak Mining District resulted in \$478,000 to Colorado. At that time, the Trustees decided to delay a decision about how to allocate the settlement funds between CDPHE's CERCLA Remediation Program and the NRDs Program until settlements were reached with three other

defendants. In May 2023, the Trustees asked staff to recommend a plan to allocate the Blue Tee funds between the two respective programs to allow staff to solicit project proposals using NRDs money from all four settlements. Mr. Banas stated that Trustee staff recommended splitting the Blue Tee funds 50/50 between the two programs, with interest going to the Remediation Program due to its ongoing obligations in the future. The Trustees agreed unanimously that staff should move forward with splitting the Blue Tee funds as described above.

Vail/Mill Creek

Jason King reported that, after ten months of negotiations with Vail Resorts, Vail agreed to pay \$275,000 for Vail's spill of snowmaking water into Mill Creek in September 2021. Per the Settlement Agreement, 90% of the settlement funds will go toward a restoration project in the Gore Creek Basin and the other 10% will be deposited in the Water Quality Improvement Fund. Mr. King added that he had been working with the AGO's Communication Director to draft a press release which will be shared with counterparts in CDPHE and DNR. Trustee staff recommended that the Trustees sign the settlement agreement.

Trustee Brannon moved that the Trustees approve and sign the settlement agreement with Vail Resorts in the amount of \$275,000. Trustee Oeth seconded the motion, and the motion was unanimously approved.

Bonita Peak Mining District

Emily Splitek introduced Mark Rudolph of CDPHE, the newest member of the NRDs team, who has experience with remediation efforts and stakeholder groups in San Juan County, La Plata County, and BPMD. Ms. Splitek reported that the BPMD settlement funds from the federal government were received in June, and Trustee staff is ready to move forward with spending the combined approximately \$7 million in the BPMD NRDs account. First, Ms. Splitek requested guidance from the Trustees about spending half of the funds now, and the other half after portions of the remediation work has been done. She added that Trustee staff envisions kicking off the NRDs Solicitation for Project Proposals (SPP) process – possibly as early as this fall - with public meetings in Durango and Silverton.

Ms. Splitek also requested guidance regarding the term in the settlement agreement which requires the preparation of a restoration plan ("Plan"), which is not part of Trustee staff's usual process. She noted that the preparation of a restoration plan is a significant undertaking, and that settlement funds can be used to hire a contractor to prepare a Plan. Trustee staff approached both Abt and IEC (customary NRDs contractors) to obtain cost estimates for preparing such a Plan and providing staff with technical support throughout the SPP process. The cost is anticipated to be up to, but no more, than \$100,000. Trustee Oeth inquired about whether other states do restoration plans. Ms. Splitek responded that this is mostly a federal government requirement, and added that New Mexico agreed to a restoration plan in their settlement with the federal government (and both Abt and IEC assisted New Mexico with their restoration plan). Mr. Banas added that Trustee staff thought a restoration plan was a good idea on the merits for this site, and not just an agreed-to term. Discussion ensued about whether CDPHE has the capacity and resources to prepare such a Plan, and why this situation requires a contractor.

The Trustees approved the funding be split into two phases, and the hiring of a contractor to prepare a restoration plan.

Trustee Weiser raised the issue of Trustees attending a stakeholder meeting this fall, or whether the Trustees' fourth quarter meeting (scheduled for November 14, 2023) could be held in October in Silverton or Durango. Discussion ensued about the difference between a formal Trustee meeting and Trustees attending local stakeholder meetings, and the timing of certain project proposals. It was decided that the November 14 Trustee meeting in Denver would remain on the calendar, but if the timing works, there could be separate meetings in Silverton and Durango.

California Gulch

Mr. Banas and Susan Newton reported that they are working with the Colorado Central Conservancy on a project proposal for the acquisition of an additional parcel which is adjacent to previous property acquisitions, and the proposal will be presented to the Trustees at the next Trustee meeting.

Beaver Brook Dam

Mr. King reported that the Lookout Mountain Water District ("District") reconstructed a dam in Beaver Brook, which is located between Golden and Evergreen. He explained that the District used grout for the flow-through tunnel that was not allowed to cure, resulting in a tannish sediment discharging and settling onto Beaver Brook which was elevated in calcium and pH. Mr. King and Mindi May reviewed an engineering report provided by the District which 1) showed the pH coming down; 2) concluded that the sediment resulted from the grout not being cured; and 3) recommended treatment options. Trustee staff met with Army Corps of Engineering who is taking the lead on the enforcement side. The Corps is requiring the District to implement those treatment measures and continue to monitor for calcium and pH. Mr. King concluded that it is unclear what resources were injured (it appeared on the spill line a few months after it happened), no dead fish or other aquatic resources were confirmed, and there is no baseline data for Beaver Brook to use for comparison and assessment of damages. From a NRDs perspective, Trustee staff recommended that the incident was not worth pursuing and no further investigation was needed. The Trustees agreed.

Home Lake State Wildlife Area

Mindi May reported that on May 31, 2023, Colorado Parks and Wildlife (CPW) was contacted by the Rio Grande County Sheriff's Office concerning dead vegetation and a misuse of herbicides around Home Lake. She added that CPW investigated and did not find a fish kill, but did find approximately 250,000 dead snails. Other impacts included the need to close Home Lake for a month out of abundance of caution in case the herbicides might have accumulated in the fish and be ingested by humans. Additionally, Ms. May noted that CPW refrained from normal irrigation of some wetlands for a month, but only due to heavy rains, there was no impact to wetlands.

Shelley Hickerson explained that upon investigation, CPW and Abt found three hazardous substances in the water and soil, and determined the responsible party is a crop duster that was seen flying erratically over the lake dropping herbicide directly onto the lake. Alternatively, she reported that the Colorado Department of Agriculture believes the responsible party is the landowner who was chemigating (mixing herbicides with water during irrigation). Ms. Hickerson reported that Trustee staff is assessing the recent sampling results, but as of now, the

only known injuries are the snails, a hazardous substance present in the water, and damage to the trees and foliage around the south side of the lake. She added more investigation is needed to decide whether the injuries are sufficient to pursue a NRDs claim. In response to Trustee Weiser's inquiry, Mindi May responded that Trustee staff is still sorting out who the responsible party is, whether it was crop dusting or chemigation. Discussion ensued about the feasibility of fish tissue. Mr. Banas noted that loss of recreational use is a compensable injury as a potential NRDs claim and that Trustee staff would continue to investigate.

Rocky Mountain Arsenal

Mr. Banas reported that approximately \$9 million remains in the RMA NRDs account and Trustee staff drafted an SPP earlier this year to be issued by September 1, 2023. He added that staff is still waiting for court approval to amend the Consent Decree, but in the meantime, staff is going forward with the SPP process which is likely to take a year or more.

Legal Questions about Ethics

Lukas Staks followed up on a conflicts of interest question from the recent Trustee training. He cited several authorities that addressed whether a public official could sit on the board of a nonprofit entity and also take official acts with respect to that nonprofit entity. Mr. Staks concluded that, while such a scenario may not strictly violate any law or executive order, there would likely be appearance of impropriety considerations.

At approximately 3:35 p.m., Trustee Oeth moved to adjourn the meeting. Trustee Brannon seconded the motion, and the motion was unanimously approved.

ITEM #3

Last modified 10/30/2023

Natural Resource Damages Accounts

NRD Matter	Bonita Peak	California Gulch	Fountain Creek	Idarado	Lowry	N. St. Vrain
Total Settlement	\$6,600,000.00	\$10,000,000.00	\$345,000.00	\$1,000,000.00	\$1,606,930.00	\$245,305.00
Total NRD dollars spent	\$0.00	\$8,928,044.87	\$0.00	\$1,561,412.98	\$1,257,894.52	\$0.00
Account Balance as of 9/30/2023	\$6,682,320.71	\$5,607,477.66	\$371,763.06	\$206,913.95	\$697,406.97	\$251,696.88
Trustee Resolution Date	NONE	3/17/2022	4/23/2019	6/24/2019	8/14/2023	NONE
Current Trustee awarded amount	\$0.00	\$3,953,875.00	\$371,763.06	\$287,000.00	\$0.00	\$0.00
Contract Encumbrances	\$0.00	\$5,513,357.96	\$0.00	\$168,200.00	\$0.00	\$0.00
Remaining funds	\$6,682,320.71	\$94,119.70	\$371,763.06	\$38,713.95	\$697,406.97	\$251,696.88
Type of Restriction	Restoration Plan required	Follow Restoration Plans developed by State and USFWS	None	None	Groundwater nexus to the South Platte	None
Remaining funds available	\$239K from Blue Tee will be added from the HSRF in Phase 2.	\$94K remaining for new contracts; DOI has ~\$1M remaining	Interest to CPW, no remaining funds available	Interest to Governor's Basin Project, no remaining funds available	Interest to USFWS, no remaining funds available.	Settlement from December 2022, all funds available
Update	CDPHE in procurement process for restoration plan contractor	Received proposal to spend the remaining CDPHE held funds, which will also include some federal funds.	CPW is obtaining matching funds - need CDPHE contract by April 2024	Society Turn almost done, TLR to acquire Silver Mountain Mine, Governor Basin delayed due to EPA remedial requirements.	USFWS SOW for the contract is almost completed	CDPHE working on the SPP, which is expected to be published in December

Natural Resource Damages Accounts

NRD Matter	RMA Recovery Fund	RMA Foundation Fund	Shattuck	Standard Metals	Summitville	Suncor	Uravan	Vail Mill Creek
Total Settlement amount	\$17,400,000.00	\$10,000,000.00	\$1,250,000.00	\$415,368.00	\$5,000,000.00	\$1,230,000.00	\$1,000,000.00	\$248,660.00
Total NRD dollars spent	\$12,188,591.80	\$8,697,832.00	\$1,272,904.00	\$0.00	\$5,144,896.92	\$708,191.40	\$1,177,922.42	\$0.00
Balance as of 09/30/2023	\$8,588,799.28	\$1,525,618.93	\$24,055.81	\$481,207.01	\$250,029.59	\$571,587.77	\$197,122.54	\$248,660.00
Trustee Resolution Date	3/24/2021	3/28/2018	3/17/2022	12/9/2022	1/21/2021	6/9/2022	3/24/2021	NONE
Current award	\$5,707,087.93	\$1,388,523.00	\$30,000.00	\$0.00	\$1,171,620.00	\$1,267,454.00	\$270,000.00	\$0.00
Contract Encumbrances	\$1,281,787.88	\$550,000.00	\$30,000.00	\$0.00	\$225,396.00	\$510,353.00	\$183,813.87	\$0.00
Remaining funds	\$7,307,011.40	\$975,618.93	-\$5,944.19	\$481,207.01	\$24,633.59	\$61,234.77	\$13,308.67	\$248,660.00
Type of Restriction	None	Foundation Fund can only be used with NGC	None	None	Money must be spent in the Alamosa River Watershed	None	None	None
Remaining funds available	All funds available on line I9	Waiting for Amended Consent Decree to remove NGC requirements	Only available funds will be paid out	\$230K awarded; remaining funds for Silverton	Interest to TU, no remaining funds available	Interest to TU, no remaining funds available	Interest to WEEDC, no remaining available funds	All funds available on line P9
Update	These funds were combined for the SPP, which was published in September. We are waiting for project proposals to be submitted.		Project is underway.	Gossan Creek Project delayed due to Lowline Gunnison Fire	In Stream Flow Project is under contract	Restoration is almost completed	Restoration projects are almost completed	CPW identifying project in Gore/ Mill Creek

ITEM #4

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STATE OF COLORADO
DEPARTMENT OF LAW

November 14, 2023

M E M O R A N D U M

TO: Colorado Natural Resources Trustees
FROM: David Banas, Senior Assistant Attorney General
RE: California Gulch: Central Colorado Conservancy Land Acquisition

BACKGROUND

In 2020, the Trustees entered into a Memorandum of Understanding (MOU) with the federal trustee agencies for the injured natural resources at the California Gulch Superfund Site in Lake County, Colorado to jointly administer settlement funds held by the State and by the United States Department of Interior (DOI). The MOU requires State Trustee approval before any State or federal funds are administered.

UPDATE

In 2022, the Trustees approved NRD funds for the Central Colorado Conservancy (CCC) to acquire parcels of property near the Arkansas River between Leadville and Buena Vista to create the Andrick Preserve. Subsequently, the Trustees approved CCC changing one of these parcels to a more desirable river front parcel. With this change, approximately \$160,000 remains in the CCC contract.

Now CCC seeks to purchase an additional 17 parcels totaling approximately 107 acres to expand the Andrick Preserve. Specifically, CCC requests the Trustees approve use of the remaining \$160,000 plus an additional allocation of \$350,000 from federal California Gulch funds.

The attached Phase 4 project proposal describes the parcels and budget for this acquisition. If the Trustees approve, for ease of allocation, DOI would transfer \$350,000 to CDPHE, which would allocate this money by amending the existing contract with CCC.

RECOMMENDATION FOR ACTIONS

Staff recommends the Trustees approve the application of the existing \$160,000 to these new parcels, plus a new allocation of \$350,000, which DOI will transfer to CDPHE to administer.

ATTACHMENTS

- (1) CCC Property Acquisition description
- (2) Draft Resolution approving expenditure of funds



ARKANSAS RIVER COMMUNITY PRESERVE

PHASE 4 ACQUISITIONS

Proposal to the Natural Resource Trustees for the Upper Arkansas River California Gulch Natural Resources Damages – Submitted October 13, 2023

SUMMARY

The Central Colorado Conservancy (Conservancy) respectfully requests funding from the Natural Resource Trustees (Trustees) for the Upper Arkansas River California Gulch Natural Resources Damages in the amount of **\$350,000** to protect up to **17** parcels containing up to **107.05** acres in Lake County (Figures 1 and 2). The funding will be used to acquire the parcels in fee simple and protect them under perpetual conservation easement. These acquisitions would expand the current extent of the Arkansas River Community Preserve (ARC Preserve), which currently conserves over 270 acres along the Arkansas River, including over two miles of river frontage, in southern Lake County. This next phase of acquisitions will continue to conserve the river corridor, expand protection of key wildlife habitat and migration corridors, and improve public access to the ARC Preserve. We intend to build on the successes in permanent land protection we accomplished with past funding and support from the Trustees, for which we are grateful. With your support, we plan to continue the positive impacts of habitat conservation and land stewardship for the benefit of riparian health, wildlife, and the public.

Central Colorado Conservancy will negotiate and manage the property acquisitions from willing landowners and will have fee simple ownership of the purchased properties. The conservation easements on any newly acquired parcels will be held by Colorado Open Lands (COL), a 501(c)3 nonprofit, accredited land trust, which holds the conservation easement on the current extent of the Preserve. Lake County Government holds the public access easement on the ARC Preserve and will manage future public access and recreation. Management planning is in process for public recreation on the ARC Preserve. When open, Lake County residents and visitors will be able to use the Preserve to access the Arkansas River for fishing, trails and open space within the acquired parcels and in adjoining public lands.

The total projected costs for all 17 targeted parcels is budgeted at **\$927,520** to cover land acquisition, transaction fees, and operational costs (see attached budget). The highest priority acquisitions are the Ferguson and White parcels, which are currently for sale. With the allocation of the remaining **\$161,800** from our current California Gulch NRD funding contract #2022*3923, combined with match funding to be requested from Great Outdoors Colorado (GOCO) and Conservancy donors, the Conservancy will be able purchase the Ferguson and White parcels. We are coupling the acquisition of the Ferguson and White parcels because purchasing together will conserve the wildlife corridor they encompass.

With an additional **\$350,000** from the Trustees, that would be combined with match funding, we could also acquire the four Jones parcels, the eight Bockstiegel parcels, the Hussey parcel, and the Pierce parcel, in addition to the Ferguson and White parcels. The next highest priority for acquisition are the Jones parcels, which are currently on the market. The Bockstiegel parcels are not currently listed,

however, the owner has previously expressed interest in selling. The Hussey and Pierce parcels are currently the lowest priority in this suite of acquisitions. Neither of the parcels are currently for sale, and it is unlikely that the parcels will be able to be developed in the short-term as neither have access. The Conservancy would prohibit an access road through the ARC Preserve as it would not be compatible with the conservation purposes nor would it be allowed under the conservation easement. However, they could potentially secure access through adjacent federal lands.

OBJECTIVES

This next phase of ARC Preserve land acquisitions will continue the Conservancy's strategy of conservation through acquisition along high-priority locations in the Arkansas River headwaters in Lake County. The 17 properties we have identified in Figure 2 will continue to expand protections along the river and riparian corridors and will expand into upland shortgrass prairie and sagebrush steppe habitat adjacent to the river corridor. Without protection of these parcels, the development and the subsequent loss or diminishment of public benefit and conservation values is likely inevitable. Both Lake and Chaffee counties are experiencing significant population growth and development pressure. The river corridor in Southern Lake County and the area adjacent to Twin Lakes is already highly subdivided and will likely see major development in the short term. This phase would help protect sections of undeveloped parcels adjacent to the Arkansas River corridor along the Top of the Rockies Scenic Byway (HWY 24 in Lake County). If the targeted properties become developed, current wildlife migration corridors within the riparian zone and to the uplands would be disrupted. Without protection, the likely land use change that would occur would fragment the landscape with its current connectivity to the river, greatly reduce its capacity to provide wildlife habitat, and prevent inclusive public accessibility.

The continued protection of land along the Arkansas River corridor has been prioritized by relevant federal, state, and local government entities. In 2010, the Lake County Open Space Initiative (LCOSI) undertook a publicly-transparent process of identifying and prioritizing Lake County properties of conservation value. The project's targeted area remains amongst the highest rated properties. Amongst LCOSI's active participants are Lake County, Colorado Parks and Wildlife and the Arkansas Headwaters Recreation Area (AHRA), the Bureau of Land Management (BLM), US Fish and Wildlife Service, Central Colorado Conservancy, major Lake County private landowners including the City of Aurora, non-profits like the Greater Arkansas River Nature Association, community members at large, and other agencies.

PARCELS PROPOSED FOR ACQUISITION

Ferguson and White—82.22 Acres

The Ferguson and White parcels will help to conserve a side canyon that encompasses a migration corridor between the Arkansas River and national forestland to the west. This corridor is primarily used by ungulates, including bighorn sheep, mule deer, and elk, but would also conserve prime habitat for mountain lion and other species. This section of the river corridor and adjacent uplands has been cited as highest value wildlife habitat that will be extremely sensitive to development (Figure 3). It will also help retain a buffer zone of undisturbed and highest quality habitat adjacent to a high disturbance area (Figures 4 and 5).

Mr. Ferguson owns two, adjoining 40-acre parcels and we are in conversations with him to purchase up to 72 acres of these two parcels; he would like to keep a portion of one of the 40-acre parcels. A survey of his properties is scheduled for early November to determine the exact acreage he will sell to us. The

Whites own 10.22 acres adjacent to Ferguson's property and a parcel the Conservancy purchased in 2022. We are in discussions with the White's realtor.

Acquisition of the Ferguson parcels was outlined in previous proposals to the Trustees; however, we were unable to purchase Ferguson's property in 2022 due to a shift in allocating funding to river front parcels that became available that were purchased instead. Purchasing the Ferguson parcels remains a high priority for the Conservancy and ARC Preserve wildlife habitat protection. It is imperative to acquire both the Ferguson and White properties together in order to provide a protected corridor between the Arkansas River and the Ferguson parcels to better connect to federal lands to the west.

Jones and Bockstiegel—5.25 Acres

The Jones and Bockstiegel parcels would provide much needed public access on the northern end of the ARC Preserve. Presently, public access to the ARC Preserve exists from the southern end, however, access points are not in ideal locations, in particular for reaching the Arkansas River. These properties are part of a highly subdivided area to the north of the ARC Preserve. Given this, securing public access on the northern end of the ARC Preserve is more difficult. Fortunately, Jones owns four parcels and Bockstiegel owns eight. Acquisition of these properties is most feasible while they are in the current ownership structure and before individual parcels are sold to multiple different buyers.

Within the current extent of the ARC Preserve, there are minimal suitable parking options for those who would want to access the ARC Preserve. These parcels could support a small parking area and some infrastructure, possibly including a restroom or a picnic area. It is important to note that these parcels are not contiguous to the existing ARC Preserve rather they are adjacent to BLM lands and another large track of private land. Through management planning, we would work with the BLM to identify an appropriate trail route to reach the Arkansas River from this new northern access point that Jones and Bockstiegel parcels would provide.

Pierce and Hussey—19.58 Acres

The Pierce and Hussey parcels would complete the Preserve's connectivity to adjacent BLM land on the east side of the river, that connects to national forestland. Filling in the current checkerboard ownership within this section of the ARC Preserve would improve the public benefit of this project. Acquiring these parcels would support the health of wildlife by providing additional contiguous land that is protected for habitat—particularly for wildlife access to crucial water resources and open space.

ATTACHMENTS

- Figure 1: Map of existing extent of the Arkansas River Community Preserve
- Figure 2: Map of the proposed parcel acquisitions
- Figure 3: Map of habitat sensitivity to human impact in Lake County
- Figure 4: Map of disturbed areas in Lake County
- Figure 5: Map of habitat quality in Lake County
- Proposed Project Budget

Figure 1: Map of existing extent of the Arkansas River Community Preserve

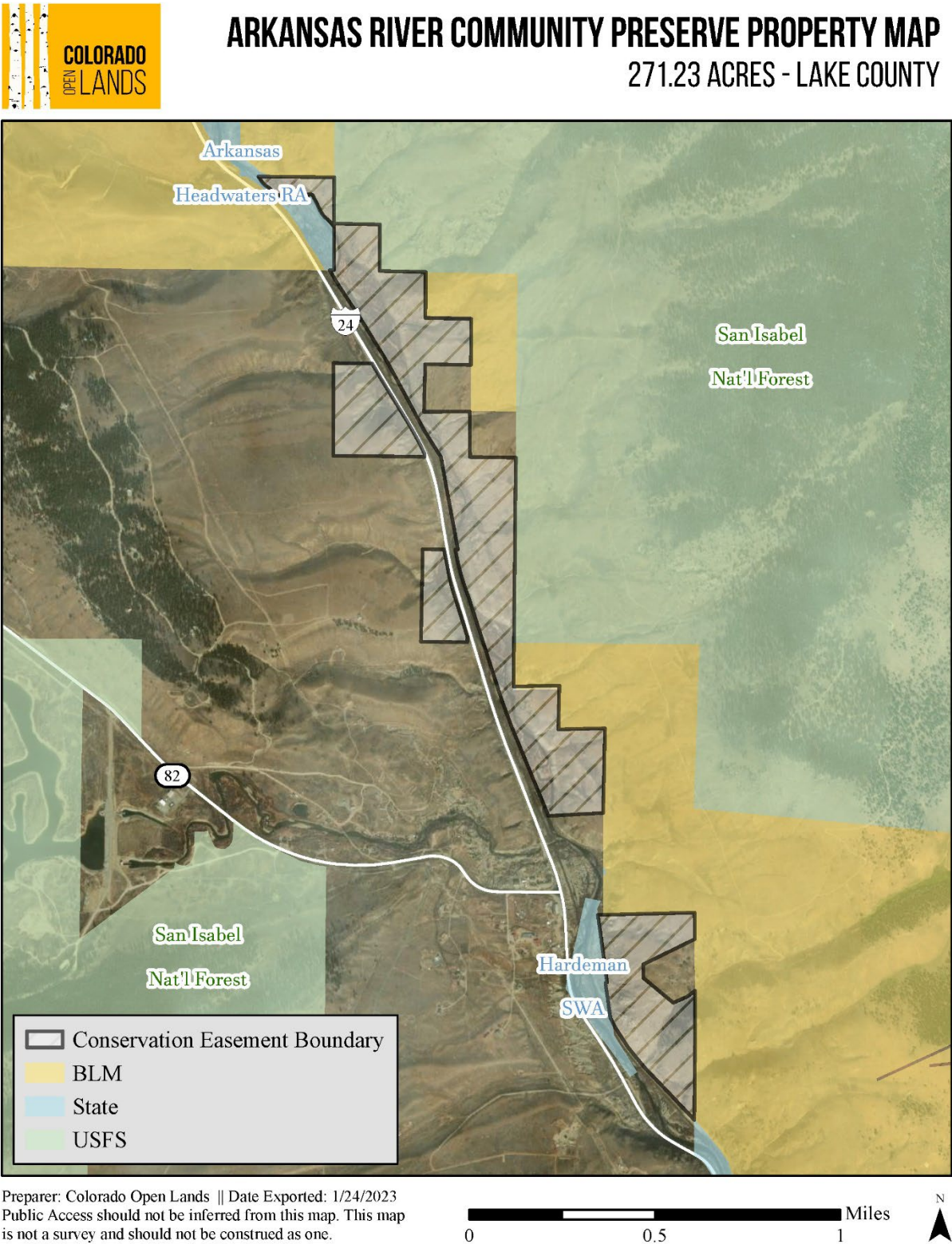


Figure 2: Map of the proposed parcel acquisitions

ARC Preserve- Potential Acquisitions

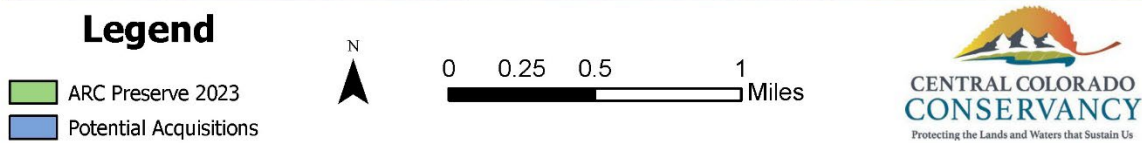
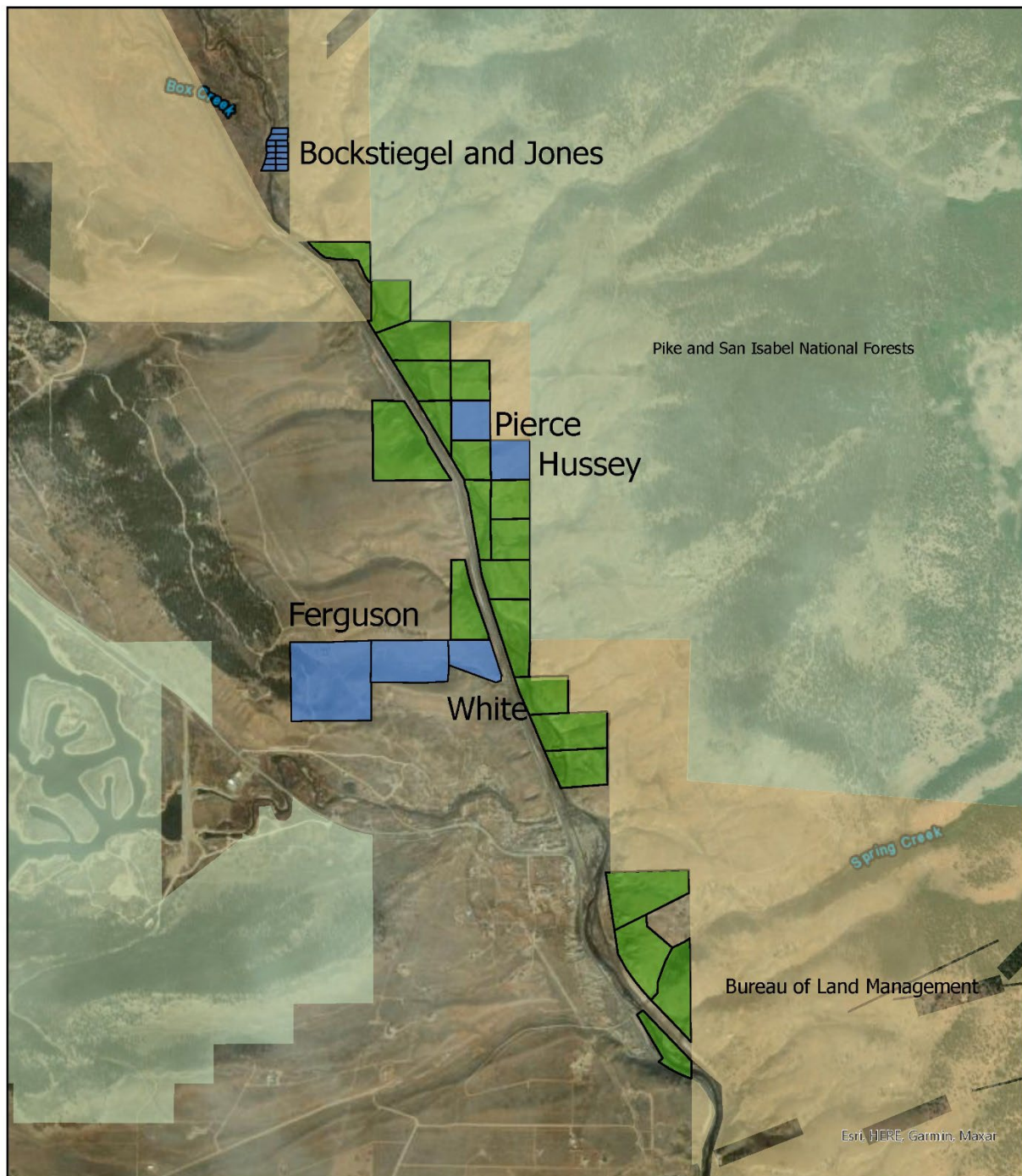


Figure 3: Map of habitat sensitivity to human impact in Lake County

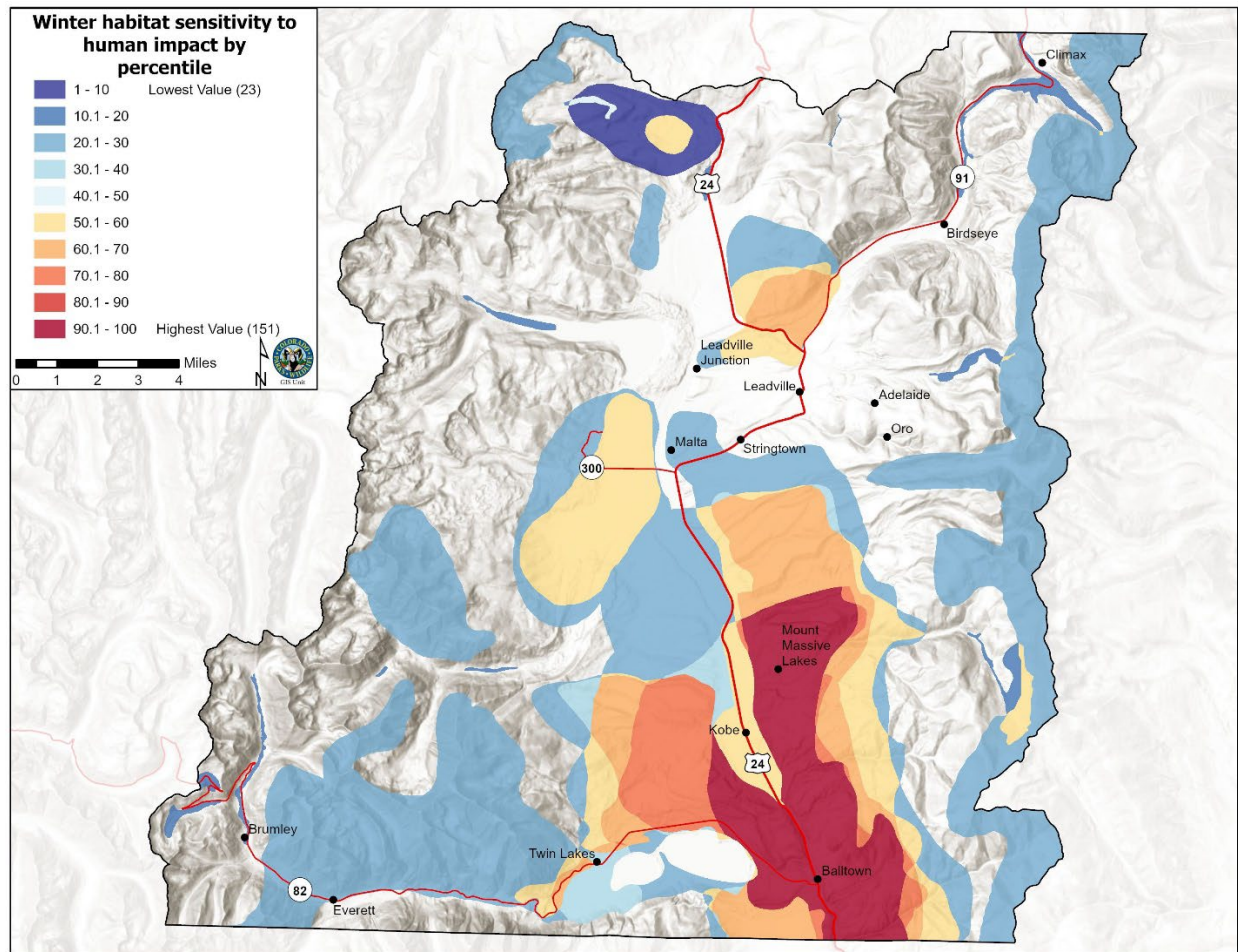


Figure 4: Map of disturbed areas in Lake County

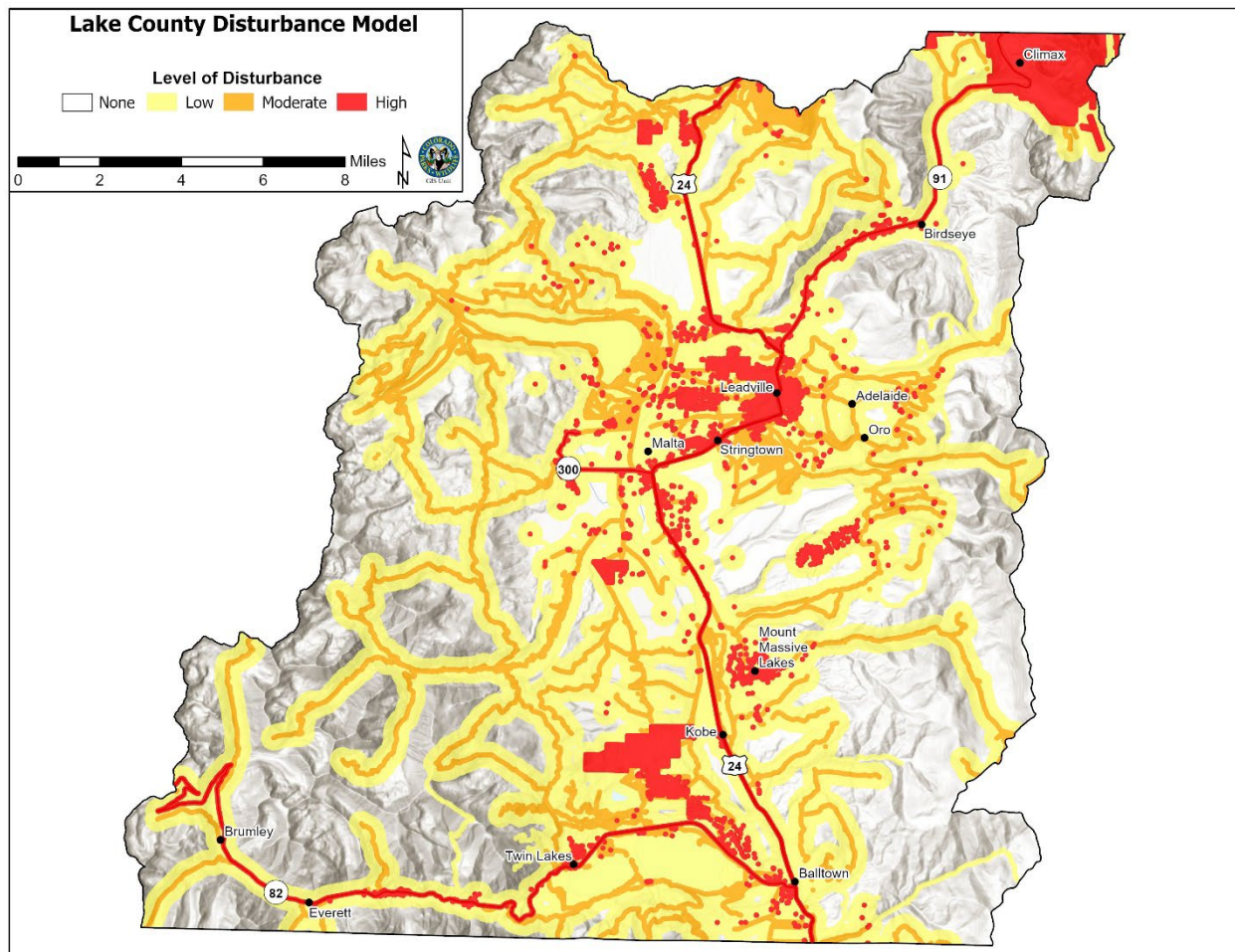
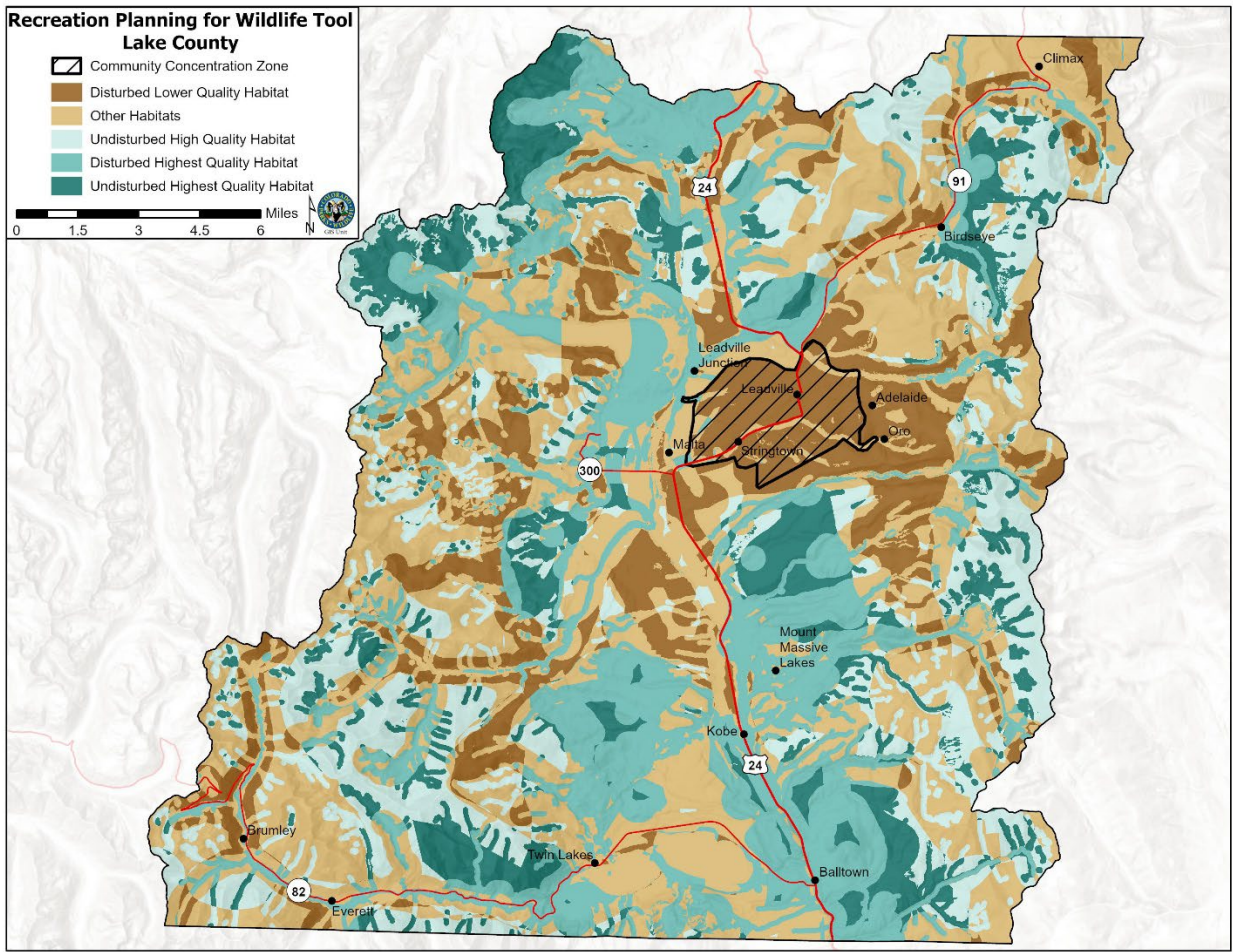


Figure 5: Map of habitat quality in Lake County





Arkansas River Community Preserve - Phase 4 Acquisitions

Proposal to the Natural Resource Trustees for the Upper Arkansas River California Gulch Natural Resource Damages

Project Budget submitted October 13, 2023

	Total Budget	Request to NRD Trustees	GOCO Match	CCC Match	Request by Property Ownership					
ITEM					Ferguson (up to 72 acres)	White (10.22 acres)	Jones (up to 1.7 acres)	Bockstiegel (up to 3.55 acres)	Hussey (9.7 acres)	Pierce (9.81 acres)
Land Acquisitions	\$710,440	\$397,300	\$284,000	\$41,140	\$432,000	\$52,000	\$62,400	\$55,640	\$50,440	\$50,960
Appraisals	\$45,000	\$35,000	\$6,500	\$3,500	\$10,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000
Baseline Reports	\$12,500	\$10,000	\$1,500	\$1,000	\$2,500	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
Title and Closing Costs	\$6,500	\$4,500	\$1,000	\$1,000	\$1,500	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Environmental Assessment	\$9,500	\$7,500	\$1,000	\$1,000	\$2,000	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500
Mapping/Surveys	\$30,000	\$22,500	\$2,500	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
CCC Stewardship Fund	\$17,500	\$12,000	\$3,000	\$2,500	\$5,000	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
CCC Project Fee	\$17,500	\$0	\$12,500	\$5,000	\$5,000	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
COL Stewardship Fund	\$10,000	\$3,000	\$6,000	\$1,000	\$4,000	\$2,000	\$1,000	\$1,000	\$1,000	\$1,000
COL Project Fee	\$7,500	\$0	\$4,000	\$3,500	\$2,000	\$1,500	\$1,000	\$1,000	\$1,000	\$1,000
Legal Fees	\$31,000	\$0	\$3,000	\$28,000	\$6,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Surveys-2022 Acquisitions	\$20,000	\$20,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Property Taxes	\$10,080	\$0	\$0	\$10,080	\$2,400	\$1,200	\$880	\$1,200	\$2,200	\$2,200
TOTALS	\$927,520	\$511,800	\$325,000	\$102,720	\$477,400	\$83,200	\$91,780	\$85,340	\$81,140	\$81,660
Existing NRD Funding		\$161,800								
2023 Request to Trustees		\$350,000								

Arkansas River Community Preserve - Phase 4 Acquisitions

Budget Notes:

- 1) Match funding to be requested from the Great Outdoors Colorado (GOCO) and Central Colorado Conservancy (CCC) donors.
- 2) The Central Colorado Conservancy (CCC) and Colorado Open Lands (COL) Project Fees support staff time to implement the acquisition of the identified properties. The Stewardship Fund supports CCC and COL to monitor and steward the properties in perpetuity.
- 3) The acquisition of the Ferguson properties was included in CCC's previous proposal to the NRD Trustees (current contract 2022*3923); however, we were unable to purchase Ferguson in 2022 due to a shift in allocating funding to purchase river frontage properties that became available.
- 4) The Ferguson and White properties are currently for sale and are coupled in order to conserve the wildlife corridor they encompass. CCC does not intend to purchase one without the other.
- 5) The Jones and Bockstiegel properties are a priority over the Hussey and Pierce properties as they would provide much needed public access on the northern end of the ARC Preserve in Lake County.
- 6) The acquisition of Ferguson and White parcels would take place in one closing, ideally with the Jones' parcels. The other properties would likely be on different timelines with different closings, depending on the speed of landowner negotiations. Every effort would be made to minimize the number of separate closings.
- 7) Surveys for 2022 acquisitions under current contract 2022*3923 had not taken place at the time of closing in October 2022. Surveyors in the area were booked in 2023. We anticipate completing these surveys in spring 2024.
- 8) Under the Access Easement conveyed by CCC to Lake County, the properties become exempt from taxation. However, that does not apply to the year in which the properties are purchased, and CCC is responsible for paying property taxes for that year.

**Colorado Natural Resources Trustees
Resolution of November 14, 2023
Concerning the California Gulch Funds and Central Colorado
Conservancy Property Acquisition**

Whereas, the Colorado Natural Resources Trustees (“Trustees”) are responsible for the management and direction of Colorado’s natural resource damages program and have coordinated with federal trustee agency counterparts to form a Trustee Council pursuant to a 2020 Memorandum of Understanding (“MOU”);

Whereas, pursuant to the MOU, the State Trustees must approve of expenditures of both State and federal funds;

Whereas, approximately \$160,000 remains in the State Central Colorado Conservancy (CCC) contract;

Whereas, CCC has requested allocation of an additional \$350,000 from the federal Cal Gulch account to fund its Phase 4 land acquisition proposal;

Whereas, the Trustee Council has determined: (1) that the acquisition of these parcels is consistent with the Restoration Plan and Environmental Assessment for the Upper Arkansas River Watershed; (2) that the project has a strong nexus to the natural resources injured because it protects riparian habitat, the same type of resources as those that were injured; and (3) that existing planning processes have identified riparian habitat restoration as a high priority in the Arkansas River Valley and in the watershed.

Now therefore, the Colorado Natural Resource Trustees resolve as follows:

Pursuant to the MOU, the Trustees support the Department of the Interior transferring \$350,000 to CDPHE and CDPHE allocating these funds and the remaining \$160,000 in the State contract to CCC to purchase the parcels identified in CCC’s Phase 4 project proposal.

Philip J. Weiser, Colorado Attorney General

Date

Trisha Oeth, Director of Environmental Health
and Protection, Colorado Department of Public
Health and Environment

Date

Dan Gibbs, Executive Director,
Colorado Department of Natural Resources

Date

ITEM #5

PHIL WEISER
Attorney General

NATALIE HANLON LEH
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Solicitor General

TANJA WHEELER
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STATE OF COLORADO
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Natural Resources and
Environment Section

November 14, 2023

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: Rob Harris, Colorado Department of Natural Resources
David Banas, Senior Assistant Attorney General

RE: Rocky Mountain Arsenal Foundation Fund: City of Thornton's Request for
a One-Year of Extension of Big Dry Creek Project Funding

BACKGROUND

In 2012, the Trustees approved a set of projects proposed by the Northeast Greenway Corridor group for the \$10 million in the Rocky Mountain Arsenal Foundation Fund. One of these projects was Thornton's "Big Dry Creek" project for which the Trustees approved \$750,000 to acquire and restore approximately 130 acres along Big Dry Creek. In 2018, the Trustees approved a five-year extension to that approval – that is, until October 9, 2023.

UPDATE

Since 2019, Thornton has spent \$700,000 of its original \$750,000 NRD allocation, completing most of the Big Dry Creek project, including reconnecting the creek to its historic floodplain, and meeting the project's upland and riparian tree and shrub success criteria, as well as its wetland benching success criteria. However, despite beginning treatment of invasive cheatgrass in the fall of 2021, and native vegetation reseeded in early 2023, Thornton has not yet achieved its benchmarks with respect to restoration of the upland seeded area.

On October 9, 2023, Thornton requested a one-year extension for the \$50,000 remaining in its project approval. Thornton plans to spend the remaining \$50,000 on uplands reseeding this fall and winter.

RECOMMENDED ACTION

Staff recommends that the Trustees grant the City of Thornton's request for a one-year extension, until November 14, 2024, of its Big Dry Creek project.

**Colorado Natural Resources Trustees
Resolution of November 14, 2023
Concerning the City of Thornton “Big Dry Creek” Project**

Whereas, the Colorado Natural Resource Trustees (“Trustees”) are responsible for the management and direction of Colorado’s natural resource damages program;

Whereas, the Trustees are responsible for administering State funds to restore, replace or acquire the equivalent of injured natural resources;

Whereas, in 2012, the Trustees approved a set of projects proposed by the Northeast Greenway Corridor group for the \$10 million in the Rocky Mountain Arsenal Foundation Fund;

Whereas, one of these projects was Thornton’s “Big Dry Creek” project for which the Trustees approved \$750,000 to acquire and restore approximately 130 acres along Big Dry Creek;

Whereas, in 2018, the Trustees approved a resolution extending the funding period for the restoration portion of this project for an additional five years, until October 9, 2023; and

Whereas, Thornton has requested an additional funding period extension until November 14, 2024 for the remaining \$50,000, which it will spend on uplands reseedling.

NOW THEREFORE, the Colorado Natural Resource Trustees resolve as follows: The Trustees do hereby approve an extension of the funding period of Thornton’s “Big Dry Creek” project in the amount of \$50,000, subject to the following conditions:

- (1) This approval is valid for one year, until November 14, 2024; and
- (2) This approval is conditioned on compliance with all laws and regulations, including but not limited to: State and Federal laws, local ordinances, permitting and zoning requirements, and water rights requirements.

Colorado Natural Resources Trustees Resolution #2023-11-14-02

Philip J. Weiser, Colorado Attorney General

Date

Trisha Oeth, Director of Environmental Health
and Protection, Colorado Department of Public
Health and Environment

Date

Dan Gibbs, Executive Director,
Colorado Department of Natural Resources

Date

ITEMS #6-10
NO DOCUMENTS