

**Candidate Conservation Agreement with Assurances
for the Colorado River Cutthroat Trout
between Three Forks Ranch Corporation and
the U.S. Fish and Wildlife Service**

This Agreement, effective and binding on the date of the last signature below, is between Three Forks Ranch Corporation (herein referred to as "Three Forks Ranch" or the "Ranch") and the U.S. Fish and Wildlife Service ("FWS" or "Service"). This Agreement and the associated Enhancement of Survival Permit (the "Permit") are issued pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended ("ESA"). This Agreement will provide Three Forks Ranch regulatory assurances that should the Colorado River Cutthroat Trout ("CRCT") be listed under the ESA, the cooperation of the Ranch in providing suitable CRCT habitat will not result in any land use restrictions on the property described in the map attached as Exhibit A (the "Property"), or impact the ability of the Ranch to operate a sport fishery including intentional and incidental take of the CRCT on any stream or other water body located on the Property.

- I. Covered Lands and Waters. The covered lands under this Agreement and the Permit are the fee title Property and all waters on the Property. The waters covered by this Agreement include, but are not limited to those parts of the Little Snake River, Roaring Fork of the Little Snake River, South Fork of the Little Snake River, Middle Fork of the Little Snake River, North Fork of the Little Snake River and all tributaries, lakes and ponds located on the Property. Leased lands and Federal grazing permit allotments are not included as Covered Lands and Waters.

- II. Authorities and Purpose:
 - (a) Sections 2, 7 and 10 of the ESA, allow the FWS to enter into this Agreement. Section 2 of the ESA states that encouraging parties, through a system of incentives to develop and maintain conservation programs, is a key to safeguarding the Nation's heritage in fish, wildlife, and plants. Section 7 of the ESA requires the FWS to review programs that they administer and to utilize such programs in furtherance of the purposes of the ESA. By entering into this Agreement, the FWS is utilizing its Candidate Conservation Programs (Final Policy for Candidate Conservation Agreements with Assurances (the "Policy")) attached hereto as Exhibit B, to further the conservation of the Nation's fish, wildlife, and plants. Lastly, Section 10(a)(1)(A) of the ESA authorizes the issuance of permits to "enhance the survival" of a listed species.

(b) The purposes of this Agreement are for the FWS to join with Three Forks Ranch and the States of Colorado and Wyoming to implement conservation measures for the CRCT (*Onchorynchus clarki pleuriticus*) in Routt County, Colorado and Carbon County Wyoming. Under the terms of this Agreement as specified below, the Ranch will create CRCT habitat and implement a Grazing Plan that all parties expect will promote the recovery of the CRCT. If similar measures were adopted in other parts of the CRCT's historic range, they could prevent the need to list the species under the ESA. An additional purpose of this Agreement is to protect Three Forks Ranch against any land use restrictions should the CRCT become listed under the ESA, and to allow the Ranch some intentional and incidental taking of the CRCT should that species become listed under the ESA. These purposes are consistent with the Policy. The CRCT is a "covered species" for purposes of this Agreement and the Policy.

III. Background. In December of 1999, the FWS received a petition to list the CRCT under the ESA. Due to budgetary constraints, the FWS had not rendered a decision on the petition as of May 1, 2002. The FWS has also been sued in Federal District Court for the District of Columbia for its failure to list the CRCT.

The CRCT historically occupied portions of the Colorado River drainage in Wyoming, Colorado, Utah, Arizona, and New Mexico. It is the only indigenous trout of the Upper Colorado River system. Some reports estimate that the species now occupies 1 to 5 percent of its historic range. Hybridization with non-native salmonids, physical habitat degradation, and disease have been implicated in the decline of this species. The States of Colorado, Utah and Wyoming have prepared a Conservation Agreement and Strategy for Colorado River Cutthroat Trout which is attached as Exhibit C. Detailed information on the status and natural history of this species is available in that document along with pertinent literature citations. Within the watershed of the Little Snake River in the vicinity of Three Forks Ranch, CRCT populations occur in the Roaring Fork of Little Snake River (Wyoming); the South Fork of the Little Snake, Johnson, and Oliver Creeks which are tributary to the South Fork of the Little Snake River (Colorado); and the North Fork of the Little Snake River (Wyoming). On the Ranch and its leased and federal grazing allotments, CRCT populations now occur in the South Fork of the Little Snake River and Johnson and Oliver Creeks. Populations in the South Fork, Oliver and Johnson creeks are small but believed to be stable (Bill Elmlad, CDOW). Genetic purity and estimated adult populations for these streams are: South Fork Little Snake River - A-, 700; Johnson Creek - B, 200, and Oliver Creek - A-, 600 (see Exhibit C for explanation of genetic purity codes). CRCT populations occur in the Roaring Fork (A, 500) and the North Forks (A, 1600) of the Little Snake just outside of the Ranch's fee title (North Fork) and federal grazing allotments (Roaring Fork). The State of

Wyoming is finishing restoration efforts in the North Fork and plans to initiate restoration in the Roaring Fork in the next two years pursuant to agreements yet to be negotiated with the Ranch. An additional one mile of the North Fork in Colorado could be restored with construction of an artificial barrier.

- IV. Description of Existing Conditions and Improvements on the Ranch. Prior to the current ownership of Three Forks Ranch, the streams on the Ranch were degraded by accelerated stream bank erosion, sediment deposition, and resultant increases in the width to depth ratio, mostly due to excessive cattle grazing in riparian areas. Since acquiring Three Forks Ranch in 1998, the current ownership has completed the restoration of more than 14 miles of the Little Snake River and tributaries on portions of the Property. The Ranch has also implemented a grazing system designed to avoid or reduce livestock use of riparian areas. A complete description of pre-restoration conditions and the stream restoration can be found in Little Snake River and Tributaries Proposed Stream Restoration and Fish Habitat Enhancement prepared for Three Forks Ranch by Dave Rosgen of Wildland Hydrology Consultants, attached as Exhibit D, and the grazing plan for the Ranch (the "Grazing Plan") attached as Exhibit E. According to the Bureau of Land Management Environmental Assessment (Exhibit F) prepared for transfer and modifications to several grazing permits within the subject area most stream systems were found to be "functioning at risk" due primarily to past grazing practices. Season long grazing led to bank trampling, reduced riparian vegetation, and increased siltation. The past grazing practices were similar across all ownerships utilized by Ranch livestock with comparable impacts to riparian and aquatic systems.

The stream restoration effort has reconstructed salmonid habitat within the Little Snake River and its tributaries mentioned above. Prior to the restoration, certain stream reaches on the Ranch had become artificial barriers to upstream movement of non-native salmonids because of degraded habitat. To avoid hybridization of existing CRCT populations in the South Fork of the Little Snake and Johnson and Oliver Creeks, small tributaries to the South Fork of the Little Snake, Three Forks Ranch constructed an artificial barrier on the South Fork to preclude upstream movement of non-native salmonids. Natural barriers exist on the North Fork and the Roaring Fork of the Little Snake River and additional fish barriers are not required.

Three Forks Ranch is working with the States of Colorado and Wyoming on placing CRCT populations in two ponds connected to small tributaries to the Middle Fork, and one pond connected to the Roaring Fork of the Little Snake River, for raising and holding CRCT populations and brood stock. These waters are hereafter referred to in this agreement as the "CRCT Waters". Three Forks has constructed fish barriers in connection with these ponds and streams to prevent migration of non-native

salmonids into the CRCT Waters. Prior to introduction of the CRCT into the CRCT Waters, the two state wildlife agencies will eliminate non-native salmonids from the CRCT Waters. Agreements between the Colorado Division of Wildlife and Wyoming Game and Fish Commission and the Colorado Division of Wildlife and the Ranch for fish management and brood stock establishment are attached as Exhibits G and H respectively .

V. Duration of the Agreement and Permit. This Agreement and the associated Permit issued in accordance with Section 10(a)(1)(A) of the ESA, are in effect for 10 years or for as long as Three Forks Ranch is under its current ownership, whichever is longer; provided, however, that Three Forks Ranch may cancel this Agreement and forfeit the associated permit upon 90 days advance notice to FWS. Upon sale of the Property, the FWS will give the new owner the option of renewing or canceling the Agreement and the associated Permit. Should the Agreement and associated Permit expire, be canceled or forfeited, the Ranch may exercise its rights under the agreements attached as Exhibit H, and require the State of Colorado to remove CRCT from the CRCT Waters.

VI. Conservation Measures and Obligations of the Parties.

(a) During the term of this Agreement, Three Forks Ranch agrees to:

- (1) Allow the States of Colorado and Wyoming to use the CRCT Waters in CRCT stocking and restoration efforts in the two States. The full extent of the Ranch's obligations under this paragraph are contained in the attached agreement (Exhibit H) and this Agreement adds no new obligations not contained in the attached agreements.
- (2) Maintain the fish barrier the Ranch installed on the South Fork of the Little Snake River.
- (3) Continue the Grazing Plan.

(b) FWS agrees to the following:

- (1) Permit Issuance: Issue Three Forks Ranch the Permit under Section 10(a)(1)(A) of the ESA, in accordance with 50 CFR 17.22(a) and (d) and 17.32(a) and (d), with a term concurrent with the term of this Agreement, that would provide Three Forks Ranch with authorization for intentional and incidental take of CRCT consistent with this agreement and provide

regulatory assurance should the species be listed under the ESA during the time this Agreement is in effect.

- i. Incidental take. The Permit will authorize incidental take of CRCT resulting from the ordinary operation of Three Forks Ranch as a cattle ranch and guest ranch. The “ordinary operation” of the Ranch for said purposes includes, but is not limited to, livestock grazing; normal ranch vehicle and/or recreational equipment operation; ordinary operation of all domestic and commercial facilities on the Ranch; wastewater management facilities; stocking of non-native fish where CRCT have not been introduced; prescribed burning; haying; revegetation/seeding; fishing by the Ranch its employees and guests for fish other than the CRCT; selective timber harvest; hunting activities on the Ranch; fence/road repair, realignment, and/or resurfacing; maintenance of riparian vegetation and instream structures; failure of manmade structures including instream structures, ponds, dams, barriers, or diversion structures; erosion control; herbicide application in compliance with label requirements and restrictions; and all other customary Ranch operations. An example of an incidental take could be the accidental death of a CRCT due to increased turbidity during channel maintenance. The Permit would not cover any incidental take of the species in areas outside of the Covered Lands and Waters.
- ii. Intentional take. The Permit will authorize the Ranch to operate a catch-and-release sport fishery for CRCT in the CRCT Waters and all other waters on the Ranch. It is understood there can be hooking mortalities with all fishing methods, including catch-and-release fishing methods, so fatally injured CRCT can be harvested by the Ranch or its guests. Only fish that appear to be fatally injured may be harvested. The Ranch will conduct catch-and-release fishing for CRCT according to the best practices for catch-and-release fishing as outlined in the Catch and Release Foundation’s Release Guidelines. Attached as Exhibit I. When said practices are followed, it is expected that fish mortality will be less than 10%.
- iii. Fish Health: FWS agrees that health certifications for all lots of introduced native and non-native fish shall be completed by the appropriate state wildlife agency (Colorado or Wyoming) and that such certificates represent the extent of fish health protection required of the Ranch.

(2) Provide further technical assistance as requested.

VII. Expected Conservation Benefits. The FWS has determined that the benefits of the conservation measures described in this agreement, which address several known impacts to CRCT, including hybridization, competition, and habitat degradation, would preclude or remove any need to list the covered species if similar techniques and methods were applied in other areas to improve CRCT habitat and populations.

The conservation measures consist of (a) the construction of the ponds in the CRCT Waters, and associated fish barriers, and (b) construction and maintenance of a fish barrier in the South Fork of the Little Snake River, and (c) the Three Forks Ranch Grazing Plan.

The CRCT Waters will allow the States to collect and raise CRCT in a controlled setting close to their streams of origin. Genetic integrity will be maintained allowing for restoration projects which will mimic the natural genetics of local populations to the greatest possible degree. Pursuant to and consistent with the attached agreements (Exhibits G and H), the States of Wyoming and Colorado can use the CRCT Waters as a source of CRCT for reintroduction elsewhere in the Little Snake River system, thus providing for an increase in the regional population.

The fish barrier on the South Fork was constructed to ensure that non native salmonids in the Little Snake River do not use improved habitat conditions to gain access to Johnson and Oliver Creeks. This barrier will prevent upstream migration at any stream flow, eliminating the potential for non natives to compete, prey upon, or hybridize with Colorado River cutthroat trout in Johnson and Oliver Creek.

The Grazing Plan will insure restoration and maintenance of the riparian vegetation that has been identified as important to CRCT. Under the Grazing Plan, fencing, rotational grazing, deferred grazing, and alternative livestock water supply are and will be employed by Three Forks Ranch to exclude and/or reduce grazing in riparian zones on private and public lands. The area managed by Three Forks Ranch for grazing includes much of the headwaters and headwater streams of the Main Stem Little Snake and it's South, Middle, North and Roaring Fork of the Little Snake River tributaries. The positive impacts of a well managed grazing system will greatly aid the States in maintenance and re-establishment of CRCT populations in the area. An estimated 12 stream miles of currently occupied CRCT habitat will be positively impacted through implementation of the grazing system.

The conservation measures and the Ranches' interest in cooperating with the States of Colorado and Wyoming on the conservation and restoration of CRCT will help

achieve the objectives of the Conservation Agreement and Strategy for Colorado River Cutthroat Trout.

VIII. Monitoring and Reporting. The Little Snake River and Tributaries Proposed Stream Restoration and Fish Habitat Enhancement plan includes provisions for monitoring the physical habitat improvements and the fishery responses to those improvements. The effectiveness of the Grazing Plan will be monitored by Three Forks Ranch and the Bureau of Land Management, Little Snake Field Office, and the USDA Forest Service. Fish population monitoring will be undertaken by the States of Colorado and Wyoming and/or a contractor for Three Forks Ranch.

IX. General Provisions.

(a) Sale of the Property. Should Three Forks Ranch contract to sell the Property, it will notify the FWS at least 60 days in advance of the closing of the potential sale, and notify the prospective landowner of the existence of this Agreement in order for the potential new owner to decide whether to continue this Agreement. If the new landowner does not become a party to this Agreement and the Permit is not transferred, or a new permit is not issued, he/she will not receive the benefits of the Permit authorizing intentional and incidental take of CRCT.

(b) Regulatory Assurances: The FWS provides Three Forks Ranch ESA regulatory assurances found at 50 CFR 17.22(d)(5) and 17.32(d)(5). Consistent with the Policy, conservation measures and land, water or resource use restrictions in addition to the measures and restrictions described in this Agreement will not be imposed should CRCT become listed under the ESA in the future. These assurances apply to the Covered Lands and Waters. In the event of unforeseen circumstances, the FWS will not require the commitment of additional land, water, or other natural resources beyond the level otherwise agreed to in this Agreement without the consent of Three Forks Ranch. The Permit will authorize Three Forks Ranch to incidentally and intentionally take CRCT (if it is listed during the term of this Agreement) as long as such take is consistent with this Agreement and the Permit terms and conditions. The application for the enhancement of survival permit is included as Exhibit J to this Agreement.

(c) Level of Take. Should the CRCT be listed under the ESA, authorization for incidental and intentional take under the Permit extends only to the activities detailed in this Agreement. Incidental and intentional take and the resulting effects to CRCT are expected to be minimal. The actual level of take of individual CRCT is unquantifiable. The Service has determined that the level of take is consistent with

the overall goal of precluding the need to list the species, if it is assumed that conservation measures were also to be implemented on other necessary properties.

(d) Third Party Beneficiaries. This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed under existing law.

(e) Rules of Construction. The terms of this Agreement shall be governed by and construed in accordance with applicable federal law. All activities undertaken pursuant to this Agreement or the permit must be in compliance with all applicable state and federal laws and regulations.

(f) Notices. Any notices or reports required by this Agreement shall be delivered in writing to:

(a) Mr. David Pratt
Three Forks Ranch Corporation
P.O. Box 69
Savery, WY 82332

(b) Field Supervisor
U.S. Fish & Wildlife Service
755 Parfet Street, Room 361
Lakewood, CO 80215

The Service has determined that the activities authorized under the permit may cause take on an on going basis and that Three Forks Ranch need not provide notice to FWS, Colorado or Wyoming. Three Forks Ranch should provide the Service and the States an annual report estimating the number of fish mortalities as a result of fishing.

If Three Forks Ranch removes constructed fish barriers, changes the grazing plan in a manner detrimental to CRCT or eliminates restored instream habitat it will forfeit the permit and shall notify the Service and the States of Colorado and Wyoming at least 90 days in advance of taking such action. In addition, Three Forks Ranch will further allow for a reasonable opportunity to salvage

CRCT in the absence of high flows, ice, snow and other environmental conditions which impede salvage operations.

(g) Literature Cited.

CRCT Task Force. 2001. Conservation agreement and strategy for the Colorado River cutthroat trout (*Oncorhynchus clarki pleuriticus*) in the States of Colorado, Utah, and Wyoming. Colorado Division of Wildlife, Fort Collins. 87p.

THREE FORKS RANCH CORPORATION



by David Pratt, President

7-15-02

Date

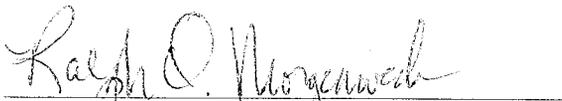
UNITED STATES FISH & WILDLIFE SERVICE



by LeRoy W. Carlson, Field Supervisor
Ecological Services, USFWS

5-16-02

Date



by Ralph O. Morgenweck, Regional Director
Region 6, USFWS

7-29-02

Date

