

**MEMORANDUM OF AGREEMENT  
BY AND AMONG THE COLORADO DEPARTMENT OF NATURAL RESOURCES  
AND THE DEPARTMENT OF TRANSPORTATION  
REGARDING SENATE BILL 40 CERTIFICATION**

**WHEREAS**, the Department of Natural Resources (DNR) is responsible for protecting and preserving the state's fish and wildlife resources from actions of any state agency that may obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries, as prescribed in 33-5-101, CRS 1973, as amended, commonly referred to as Senate Bill 40 (SB40); and

**WHEREAS**, the Colorado Parks and Wildlife (CPW) is the office within DNR which reviews plans submitted by state agencies proposing actions with adverse impacts to streams protected under SB40 and grants SB40 Certification for actions which include appropriate measures to eliminate or diminish adverse effects to such streams or their banks or tributaries; and

**WHEREAS**, the Colorado Department of Transportation (CDOT) is responsible for the construction and maintenance of the state transportation system consisting of both federal-aid and nonfederal-aid highways and all bridges and drainage structures located on or beneath the state transportation system; and

**WHEREAS**, some CDOT construction and maintenance activities unavoidably impact streams or their banks or tributaries and thus require SB40 Certification; and

**WHEREAS**, the CDOT acknowledges that its decisions should be environmentally responsible and should promote a transportation system that encourages preservation and enhancement of the natural environment, including Colorado's stream and riparian areas; and

**WHEREAS**, both the DNR and the CDOT are interested in reducing the time and expense required to complete SB40 Certification while ensuring the intent of SB40 is upheld; and

**WHEREAS**, the CPW and CDOT have developed and agreed upon a set of Guidelines for Senate Bill 40 Wildlife Certification (Guidelines) which include procedures for both a Formal SB40 Certification and a Programmatic SB40 Certification, that shall apply to certain activities resulting in minimal impact.

**NOW, THEREFORE**, it is hereby agreed that:

1. Future highway construction and maintenance activities that satisfy the requirements for use of the Programmatic SB40 Wildlife Certification as described in the Guidelines may be undertaken without written certification from CPW.
2. All other highway construction projects and maintenance activities that impact any stream or its banks or tributaries will require formal application to the CPW for SB40 Certification.

3. Representatives of the CPW and the CDOT shall meet at the request of either agency, to review the effectiveness of the Guidelines, and make changes as necessary and agreed upon by both parties.

4. If either signatory to this Agreement determines that the terms of the Agreement cannot be met or believes a change is necessary, that signatory will immediately request the consulting parties to consider an amendment or addendum that shall be executed in the same manner as the original Agreement.

5. Any party to this Agreement may suspend it by written notice to the other consulting party. If this occurs, the parties will consult further to determine whether the issues can be resolved and the Agreement reimplemented in an amended form.

6. Changes to the Guidelines may be approved by the CPW Director and the CDOT Chief Engineer or their designated representatives provided the terms and conditions of this Agreement are upheld.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on this, the 8<sup>th</sup> day of July, 2013

COLORADO DEPARTMENT OF NATURAL RESOURCES

By: M.K.  
Executive Director

Date 7/8/13

COLORADO DEPARTMENT OF TRANSPORTATION

By: Timothy D. Harned  
Executive Director

Date 6/4/13

*for*

**ATTACHMENT A**  
**Colorado Parks and Wildlife**  
**Application for SB40**  
**Wildlife Certification**  
**May 16, 2013**

APPLICATION FOR SB 40 WILDLIFE CERTIFICATION

Name of Agency \_\_\_\_\_ Address \_\_\_\_\_

Contact Person \_\_\_\_\_

Project Name and Number \_\_\_\_\_

Location of Project: County \_\_\_\_\_ T. \_\_\_\_\_ R. \_\_\_\_\_ ¼ Sec. \_\_\_\_\_

Distance and Direction from Nearest Town \_\_\_\_\_

Name of Stream(s) Affected \_\_\_\_\_

INSTRUCTIONS TO APPLICANT: This form must be completed and submitted to the Colorado Parks and Wildlife (CPW) Regional Office at least 60 days prior to planned construction or maintenance activities. To expedite processing, please provide the information requested by typing or printing clearly. Within 30 days of receipt of a completed application, CPW will notify you of its decision. Your cooperation is appreciated.

PLEASE ATTACH THE FOLLOWING INFORMATION:

- A. One copy of the plan view and cross sections
- B. Applicable correspondence related to the project and the 404 permit application, if any.
- C. A brief description of the proposed project, alternatives considered, mitigation measures and reclamation/revegetation plan.

PROJECT SCHEDULE – Provide approximate dates for the following:

Start of Construction: \_\_\_\_\_  
Construction Period(s) in live water: \_\_\_\_\_  
Completion of construction: \_\_\_\_\_  
Bid advertised: \_\_\_\_\_

ADDITIONAL REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mail to: Regional Wildlife Manager  
Colorado Parks and Wildlife Regional Office  
\_\_\_\_\_  
\_\_\_\_\_

Date received by CPW: \_\_\_\_\_

April 1, 2013