

**Dec. 3, 2009 -- Property Transaction Proposal**  
**Division of Wildlife**

*Trout Creek State Habitat Area Conservation Easement*

Chaffee County

15 acres

About 3 miles south of Buena Vista, along Highway 285 and east of Johnson Village

**Section 33-1-105 (3)(a), C.R.S. states:**

In the event that the [Wildlife] Commission plans to acquire the fee title to any real property or to acquire an easement for a period to exceed 25 years or at a cost to exceed \$100,000 or to enter into any lease agreement for the use of real property for a period to exceed 25 years or at a cost to exceed \$100,000, or to sell or otherwise dispose of the fee title to any real property which has a market value in excess of \$100,000, the Commission shall first submit a report to the Capital Development Committee [CDC] which outlines the anticipated use of the real property, the maintenance costs related to the property, the current value of the property, any conditions or limitations which may restrict the use of the property, and, in the event real property is acquired, the potential liability to the state which will result from such acquisition. The CDC shall review the reports submitted by the Commission and make recommendations to the Commission concerning the proposed land transaction within 30 days from the day on which the report is received. The Commission shall not complete such transactions without considering the recommendations of the CDC, if such recommendations are timely made.

**The required report is attached. CDC staff's questions about the report are listed below.**

**Action Required**

Recommend support for the acceptance of the Trout Creek State Habitat Area Perpetual Conservation Easement (15 acres).

**CDC Staff Questions**

1) Please explain how the proposed conservation easement is an acceptable settlement to the parties involved in the Water Court case.

DOW Response: The proposed conservation easement is only related to one objector in the case: the Colorado Water Conservation Board ("CWCB"). The construction of Trout Creek Reservoir inundated an approximately .8 mile reach of the CWCB's instream flow water right on Trout Creek, which interfered with the CWCB's ability to use its water right to preserve the natural environment to a reasonable degree on Trout Creek by changing from a stream environment to a lake environment. The CDOW provided input to the CWCB on this matter regarding impacts of the inundation on potential brook trout spawning and boreal toad habitat. In September 2004, the CWCB approved Mr. Moltz's request to inundate the Trout Creek instream flow conditioned upon Mr. Moltz conveying a conservation easement to an entity of the CWCB's choosing (CDOW). The purpose of the conservation easement is to protect potential boreal toad habitat along the Creek.

2) Why is the property owner volunteering to pay the cost of the conservation easement? What is the advantage of this transaction to the property owner?

DOW Response: The Division of Wildlife is requiring that the proponents pay all the transactional costs that are related to the conservation easement. The proponents did not volunteer to pay the costs. The proponents, Paul Moltz and Ronald W. Southard (the property owner) jointly requested that the DOW consider the acceptance of the conservation easement. It is our understanding that Mr. Moltz and Mr. Southard have transacted numerous business transactions between themselves for many years. The advantage of this transaction to the property owner is unknown at this time, except for the fact that he is helping Mr. Moltz complete the transaction by allowing the conservation easement to be placed on his property with no monetary remuneration.

3) The property transaction proposal states that the property will be protected from future development. Is there an imminent risk of development in the area that might threaten wildlife?

DOW Response: Yes, there is risk of development in the area. Any small property in Chaffee County, is subject to development, subject to the County approval process. There is development above and below this property on Trout Creek.

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4) Do anglers have public access to adjacent segments of Trout Creek?

DOW Response: The public has access for fishing upstream, adjacent to the property. The public also has access approximately one half mile downstream from the property.

## Capital Development Committee December 2009—Property Transaction Proposal

Department of Natural Resources  
Division of Wildlife

<b>Action Required</b>	Pursuant to C.R.S. 33-1-105(3)(a), recommend to the Colorado Wildlife Commission support for the Division of Wildlife's proposal to accept a perpetual Conservation Easement.		
<b>General Information</b>			
Name	Trout Creek State Habitat Area Conservation Easement		
Number of acres	Approximately 15 acres		
Location	The property is 4 miles east of Johnson Village on Highway 285/24, along Trout Creek.		
County	Chaffee		
<b>Costs / Source of Funding</b>			
Purchase Price	N/A	Funding Source	N/A
	Spending authority has already been approved for this project in the Long Bill		
	Fiscal Year		N/A
	Line Item		N/A
	Appropriation		N/A
	Remaining Unexpended Balance		N/A
Annual Operation Costs	\$500.00	The annual operations costs will come from the Wildlife Management Line Item under the Division Operations Group in the Long Bill.	

### Summary of Proposal

With this transaction, the Division of Wildlife will accept a perpetual conservation easement on the subject property owned by the proponent. This project will protect in perpetuity, a section of Trout Creek and 100' riparian buffer on both sides of the creek (from high water mark) from the development of roads, bridges, buildings or any other improvements.

Grantor's conveyance of this Easement is being made pursuant to a settlement reached between the Colorado Water Conservation Board and Water Court Applicant Paul Moltz in District 2 Water Court Case No. 02CW073 (the "CWCB Settlement").

The proponents contacted the Area 13 Field Staff and requested that the DOW consider accepting this conservation easement in order to effect a settlement in CWCB Case Number 02CW073. The conservation easement will not allow public access. Mineral development is prohibited.

All transactional expenses for this easement are to be borne by the proponent.

According to the maps referenced below, the Property generally lies outside the scope of potential Wind, Geothermal, and Solar energy potential.

**Solar**: July, 2007 National Renewable Energy Laboratory (NREL), US Dept. of Energy;

**Geothermal**: November, 2003 US Department of Energy, Office of Energy Efficiency and Renewable Energy, Geothermal Technologies Program;

**Wind**: March, 2004, Colorado Governor's Office of Energy Management and Conservation, from US Department of Energy, National Renewable Energy Laboratory.

Wind, geo-thermal and solar energy development will be prohibited in the Conservation Easement.

Attachments:

- Map
- Concurrence letters

# Trout Creek Conservation Easement Project #09-015-SE

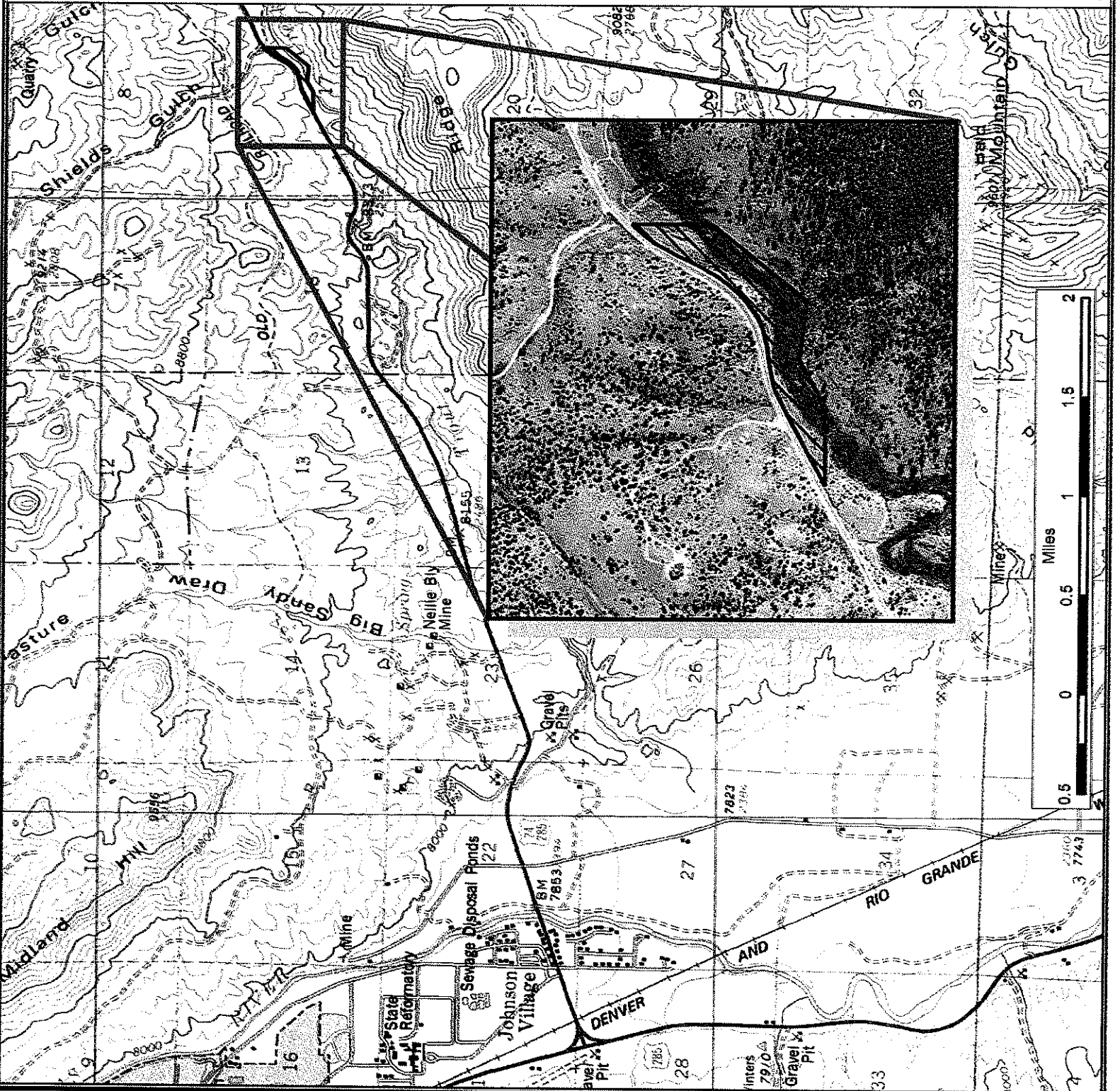
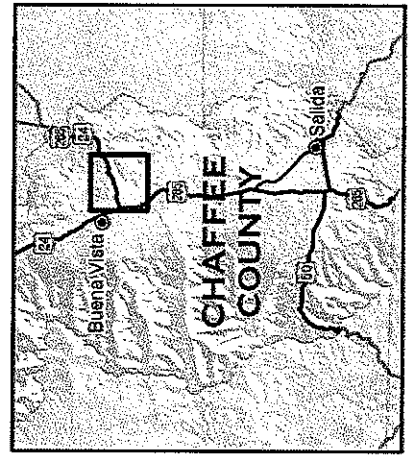
 Trout Creek Conservation Easement (approx. location)



WildlifeGIS



Mapped By: Dawn Browne  
CDOW Wildlife GIS Group  
Projection: UTM, Zone 13  
Datum: NAD 1983  
Date: September 2009



## STATE OF COLORADO

Bill Ritter, Jr., Governor  
DEPARTMENT OF NATURAL RESOURCES  
**DIVISION OF WILDLIFE**

AN EQUAL OPPORTUNITY EMPLOYER

Thomas E. Remington, Director  
8060 Broadway  
Denver, Colorado 80218  
Telephone: (303) 297-1192  
wildlife.state.co.us



*For Wildlife-  
For People*

James L. Aragon, Area Wildlife Manager  
7405 US Highway 50  
Salida, CO. 81201  
Telephone: (719)530-5522  
Cell Phone: (719)530-1819  
FAX: (719)530-5554

State Senator Gail Schwartz  
200 East Colfax  
Denver, CO. 80203

September 16, 2009

Dear Senator Schwartz,

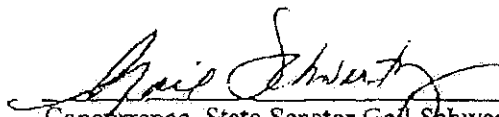
The Colorado Division of Wildlife (CDOW) has been approached and asked to be holders of a conservation easement located on Trout Creek within Chaffee County. This conservation easement is approximately 11 acres in size and will offer protection from development a segment of Trout Creek and the adjoining riparian area. Prior to State acquisition, the CDOW is requested by the State Capital Development Committee to advise the appropriate State Senator, State Representative and Board of County Commissioners, to receive written concurrence with the conveyance.

The proponent of this conservation easement, Mr. Paul Moltz, contacted the CDOW and requested that the CDOW consider accepting this conservation easement in order to effect a settlement in Colorado Water Conservation Board (CWCB) Case Number 02CW73. The easement would preclude construction of roads, bridges, buildings and any other improvements in the defined area. No public access will be allowed by the conservation easement.

The CDOW respectfully requests your concurrence to move forward with this transaction. If you approve, please sign the appropriate line at the bottom of this letter and return to me at the above address or fax number. If you have questions or would like to discuss this matter further, please call me at the above phone numbers. Thank you for your time and consideration.

Sincerely,

James L. Aragon  
Area Wildlife Manager

  
Concurrence, State Senator Gail Schwartz

STATE OF COLORADO

Bill Ritter, Jr., Governor  
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COPY

State Representative Tom Massey,  
200 East Colfax  
Denver, CO. 80203

September 16, 2009

Dear Representative Massey,

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Area Wildlife Manager

  
Concurrence, State Representative Tom Massey

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Chaffee County Board of Commissioners  
P.O. Box 699  
Salida, CO. 81201

September 16, 2009

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Sincerely,

James L. Aragon  
Area Wildlife Manager

Concurrence, Chaffee County Board of Commissioners