

**CASE NO. 1:24-CV-00235**  
**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between Save the Poudre, Petitioner, and the Northern Integrated Supply Project Water Activity Enterprise, Respondent-Intervenor, in Save the Poudre v. Lieutenant General William H. Graham, Jr., in his official capacity as the Chief of the U.S. Army Corps of Engineers, Case No. 1:24-cv-00235, United States District Court, District of Colorado (“Case No. 1:24-cv-00235”). Petitioner and Respondent-Intervenor are collectively referred to herein as the “Parties” and individually referred to as Save the Poudre or NISP Enterprise, as appropriate. The Northern Integrated Supply Project is referred to herein as “NISP”. This Agreement shall be effective on the date it has been executed by both Parties. Prior to execution by all Parties, this Agreement shall have no legal or evidentiary effect.

In consideration of the mutual terms and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, and for the purpose of settling the above-referenced litigation without further judicial proceedings, the Parties agree as follows:

1. The Parties have simultaneously executed this Settlement Agreement and the attached Stipulation of Dismissal in Case No. 1:24-cv-00235.
2. Save the Poudre will, within one (1) business day of the execution of the Stipulation of Dismissal by Save the Poudre, the United States of America, and the NISP Enterprise, file the Stipulation of Dismissal with the United States District Court, District of Colorado in Case No. 1:24-cv-00235.
3. The NISP Enterprise will pay a total of \$100,000,000 according to the following terms and schedule:
  - A. Payment will be made when due to the Community Foundation of Northern Colorado (“NoCo Foundation”) to be held in a segregated interest bearing fund approved by the Fund Committee (“Cache la Poudre River Improvement Fund” or “Fund”), or to such other alternative fund, entity or funding mechanism as is mutually acceptable to the Parties and approved by the Fund Committee as described below (NoCo Foundation and any alternatives are identified as a “Fund Recipient”), to be governed and disbursed exclusively for Cache la Poudre River Improvement Fund Project purposes as described in Paragraph 4.
  - B. Payment Schedule:
    - i. \$5,000,000 within three (3) business days of dismissal with prejudice in Case No. 1:24-cv-00235 (unless additional time is requested by the Fund Recipient or agreed to by the Parties).
    - ii. \$5,000,000 within three (3) business days of issuance of final notice to proceed to the General Contractor for NISP for construction of the main

dam required for the formation of Glade Reservoir, a copy of which will be contemporaneously provided to Save the Poudre.

- iii. \$7,500,000 within three (3) business days of issuance of final acceptance of the main dam allowing for the formation of Glade Reservoir by the Colorado State Engineer pursuant to Section 8.3 of the Rules and Regulations for Dam Safety and Dam Construction, 2-CCR 402-1, effective January 1, 2020, a copy of which will be contemporaneously provided to Save the Poudre.
  - iv. For the remaining amount (\$82,500,000), \$7,500,000 per year for 11 consecutive years following the calendar year in which the payment required by Paragraph 3.B.iii occurs. Each such annual payment will occur on or before August 1 of each calendar year in which it is due.
  - v. If any person or entity initiates litigation or an administrative process challenging the regulatory approvals for NISP (which includes all components of NISP, including without limitation the Glade and Galeton Reservoirs with associated pipelines), including under the Record of Decision of the United States Army Corps of Engineers for NISP dated December 9, 2022 together with any administrative updates or modifications pursuant to 33 CFR § 325.7, the schedule above and the NISP Enterprise's payment obligations stated herein shall be immediately stayed. A copy of any such litigation or administrative process triggering a stay will be contemporaneously provided to Save the Poudre. Once any such litigation or administrative challenge is resolved, including all appeals and remands (including if required, new analysis or supplementation), and if the NISP Enterprise thereafter proceeds with construction and operation up to its currently approved amounts of storage for Glade Reservoir, then all remaining payments agreed upon herein will resume within sixty (60) days thereafter. If NISP does not proceed, at the sole discretion of the NISP Enterprise, then no further payments will be required.
4. Moneys paid into the Cache la Poudre River Improvement Fund will be used for the study, design, construction, permitting, operation, implementation, and maintenance of projects to improve aquatic habitat, riparian habitat, water quality, water flows, and boating and other recreational opportunities in the reach of Cache la Poudre River between immediately above the diversion works for the Munroe Gravity Canal and the Cache la Poudre River's confluence with the South Platte River ("Cache la Poudre River Improvement Fund Projects"). A non-exclusive but representative list of types of Cache la Poudre Improvement Fund Projects is attached to this Settlement Agreement as Exhibit A, provided, however, that other Cache la Poudre Improvement Fund Projects consistent with this Paragraph 4 may be selected and advanced pursuant to this Settlement Agreement. The Parties acknowledge that contracting and implementation of Cache la Poudre River Improvement Fund Projects may require a project manager, and that Northern Colorado Water Conservancy District may be considered as a project manager with approval of the Fund Committee. Fund expenditures shall not be used for any project already described or committed to by the NISP Enterprise in the Mitigation

and Enhancement Plan”<sup>1</sup> or any other document or plan described or committed to by the Enterprise prior to the execution date of this Agreement.

5. Distributions of money from the Fund, for the purposes specified in Paragraph 4, shall be overseen by a committee composed of six members (“Fund Committee”), which shall meet at least semi-annually until all money from the Fund has been expended.
  - A. Save the Poudre and the NISP Enterprise shall each select three (3) individuals to then become members of the committee. Any distribution of money from the Fund shall require at least four (4) votes in favor of a Proposed Project.
  - B. It is anticipated that other entities may contribute to the Cache la Poudre River Improvement Fund. Such additional contributing entities may be made members of the Fund Committee by an affirmative vote of at least four (4) members of the Fund Committee, subject to modification or replacement of this Agreement as described below in Paragraph 12.
6. Save the Poudre agrees to dismiss Case No. 1:24-cv-00235 with prejudice upon the execution of this agreement. If Save the Poudre believes that the NISP Enterprise has breached any payment obligation as specified in Paragraph 3.B. of this agreement, then Save the Poudre shall provide notice of the alleged breach to the NISP Enterprise’s counsel, and the NISP Enterprise shall have twenty (20) business days to cure the alleged breach. In the event that Save the Poudre and the NISP Enterprise are not able to resolve any alleged breach to its mutual satisfaction, Save the Poudre may seek to enforce the NISP Enterprise’s payment obligations in Paragraph 3(B) of this agreement, the remedy for which shall be limited to performance of the NISP Enterprise’s obligations under this Settlement Agreement. The obligations of the NISP Enterprise to pay the amounts due in Paragraph 3 shall be a contractual obligation that may be enforced only by the Fund Recipient or by Save the Poudre or its officers. This enforcement shall be limited to the payment of money pursuant to this Settlement Agreement, and does not extend to the Fund Committee’s decisions regarding distribution of funds under the terms of Paragraph 3 or other actions of the Fund Committee. The Parties agree that judicial venue for any such legal proceeding shall be in the Larimer County District Court, State of Colorado, and the Parties hereby consent to the jurisdiction of that court.
7. Save the Poudre agrees that both it and its current and future officers will not oppose, in any judicial or administrative forum, the regulatory approvals, construction, and operation of NISP (which includes all components of NISP, including without limitation the Glade and Galetton Reservoirs with associated pipelines) including the regulatory approvals under the Record of Decision of the United States Army Corps of Engineers for NISP dated December 9, 2022 (including any administrative updates or modifications pursuant to 33 CFR § 325.7). Save the Poudre also agrees that it and its current and future officers will not support any litigation challenging NISP brought by other parties. If the NISP Enterprise believes that Save the Poudre has breached its obligations under this Paragraph, then the NISP Enterprise shall provide notice of the alleged breach to Save the Poudre’s counsel, and Save the Poudre shall have twenty (20)

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<sup>1</sup> <https://www.northernwater.org/NISP/environmental/mitigation-and-enhancement-plan>

business days to cure the alleged breach. Enforcement of Save the Poudre's obligations under this Paragraph 7 shall be limited to performance of its obligations under this Settlement Agreement and shall not include money damages.

8. The Parties agree that each Party shall bear its own costs and fees (including attorneys' fees) associated with Case No. 1:24-cv-00235.
9. This Settlement Agreement embodies the whole agreement between the Parties, and there are no promises, terms, conditions, or obligations referring to the subject matter hereof other than as herein contained.
10. This Settlement Agreement does not and shall not be interpreted or applied to create any third-party beneficiaries.
11. Any and all obligations of the NISP Enterprise under this Agreement, whether financial or otherwise, shall be payable solely from the revenues, income, rents, and receipts earned by the NISP Enterprise. Nothing herein shall be deemed to prevent the NISP Enterprise from making any payments from any other legally available source. In no event shall the NISP Enterprise be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Agreement or which would cause the NISP Enterprise to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, the NISP Enterprise shall not be required to expend any funds or impair any assets of the Northern Colorado Water Conservancy District in the performance of its obligations under this Agreement. The obligations of the NISP Enterprise under this Agreement do not constitute a debt or indebtedness of the Northern Colorado Water Conservancy District within the meaning of any constitutional, charter, or statutory provision or limitation, and shall not be considered or held to be a general obligation of the Northern Colorado Water Conservancy District.
12. The Parties recognize that modification or replacement of this Settlement Agreement may be required in order to provide for the participation by other entities in the Cache la Poudre River Improvement Fund and subsequent projects. However, this Settlement Agreement shall not be modified or replaced except by a subsequent written agreement that is approved by at least four (4) members of the Fund Committee as defined herein.
13. This Settlement Agreement shall be deemed a contract extending to and binding upon the Parties and their respective successors or authorized assigns as of the effective date above. Any assignment of this Agreement may occur only upon prior written consent of the other Party.
14. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.
15. Each Counsel executing this Agreement represents that they have the authority to execute this Agreement on behalf of and to bind their respective client as identified in the signature blocks for this Agreement.

**Save the Poudre**

By: William S. Eubanks II

Dated: February 28, 2025

William S. Eubanks II, Save the Poudre Counsel

Eubanks & Associates, PLLC

1629 K Street NW, Suite 300

Washington, DC 20006

**Northern Integrated Supply Project Water Activity Enterprise (NISP)**

By: 

Dated: February 28, 2025

Lisa M. Thompson, NISP Enterprise Counsel

Trout Raley, PC

1120 Lincoln St., Suite 1600

Denver, CO 80203

**Exhibit A**  
**Settlement Agreement**  
**CASE NO. 1:24-CV-00235**

The purpose of the Cache la Poudre River Improvement Fund is to fund projects that improve aquatic habitat, riparian habitat, water quality, water flows, and boating and other recreational opportunities in the reach of Cache la Poudre River between immediately above the diversion works for the Munroe Gravity Canal to the Cache la Poudre River's confluence with the South Platte River. The types of projects listed in this Exhibit A are a representative, *but not exclusive*, identification of projects that may be considered.

Fund expenditures shall not be used for any project already described or committed to by the NISP Enterprise in the "Mitigation and Enhancement Plan"<sup>2</sup> or any other document or plan described or committed to by the Enterprise prior to the execution date of this Agreement. Fund expenditures that maximize actual ecological and recreational benefits to the Cache la Poudre River will be a priority. Fund expenditures that include matching grants from other public or private parties may be considered a priority as deemed appropriate by the Committee. The Committee may work with the Fund Recipient to borrow or bond from future payments by the Enterprise as deemed appropriate by the Committee, the Fund Recipient, and the NISP Enterprise. A strategy of the Fund may include establishing a "Poudre River Recreational Water Trail" that prioritizes projects from Gateway Park in Poudre Canyon to Eastman Park in Windsor. Cache la Poudre River Improvement Fund projects that include excessive administrative costs or fees will be of low priority. Further, the Parties herein are not responsible for any future or ongoing expenditures for maintenance or improvements except for as agreed upon in writing for specific projects approved by the Fund Committee.

Cooperation with and consent by the State of Colorado, Larimer and Weld Counties, cities and towns, entities that own or control relevant structures and rights, and affected property owners will be required to implement many of these projects. Some projects may also require federal, state, and local governmental permits or approvals.

Representative List:

- Work with other entities to explore and implement fish and recreational passages for diversion structures so that fish can swim upstream and boats can pass downstream.
- Move diversion points downstream wherever possible so that water may flow farther downstream and within the channel of the Cache la Poudre River but still be gravity-fed to established ditches.
- Develop strategies for water sharing arrangements—including exchanges and trades—between agricultural and municipal users to enhance recreational and environmental uses within the channel of the Cache la Poudre River.

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<sup>2</sup> <https://www.northernwater.org/NISP/environmental/mitigation-and-enhancement-plan>

- Develop an enhanced streamflow monitoring system that engages with relevant cities and water-related companies to provide information that can be used to increase or further optimize available water flows for environmental and recreational purposes
- Clean the Poudre River with projects that improve the water quality of discharges to the Poudre River from various sources.
- Construct “channel enhancement” to create narrower channels in the river so that streamflow is deeper and cooler for better health of aquatic life and improved recreational boating opportunity.
- Re-connect the river to its floodplain to increase the health of the riparian corridor.
- Improve water quality using nature-based ecological restoration processes.
- For willing ditch systems, construct irrigation ditch “pump-up” systems that let water run farther downstream to be pumped back up to the same ditch.
- Acquire and develop additional water supplies to increase flows in the Cache la Poudre River.