

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 11-cv-02896-AP

THE WATER SUPPLY AND STORAGE COMPANY,  
a Colorado Non-Profit Mutual Ditch and Reservoir Company.

Plaintiff,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE.

Defendants.

and,

COLORADO TROUT UNLIMITED,

Defendant-Intervenor.

**FIRST AMENDED JOINT CASE MANAGEMENT PLAN  
FOR PETITIONS FOR REVIEW OF  
AGENCY ACTION IN ENVIRONMENTAL CASES**

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**1. APPEARANCES OF COUNSEL**

**A. Attorneys for Plaintiff The Water Supply and Storage Company (“WSSC”):**

Howard Kenison, Esq.  
Patrick G. Compton, Esq.  
Lindquist & Vennum PLLP  
600 17<sup>th</sup> Street, Suite 1800 South  
Denver, Colorado 80202-5441

**B. Attorneys for Defendants United States Department of Agriculture, Tom Vilsack, United States Department of Agriculture Forest Service, Maribeth Gustafson, Glenn P. Casamassa, United States Department of the Interior, Ken Salazar, United States National Park Service, and John Wessels (“Federal Defendants”):**

David Gehlert, Esq.  
Natural Resources Section  
Environment and Nat. Resources Div.

U.S. Department of Justice  
999 18<sup>th</sup> Street South Terrace, Suite 370  
Denver, Colorado 80294

and

Nathalie Cohen, Esq.  
Assistant U. S. Attorney  
U.S. Attorney's Office  
1225 17th Street  
Suite 700  
Denver, CO 80202

**C. Attorneys for Defendant-Intervenor Colorado Trout Unlimited (“CTU”):**

David Glandorf, Esq.  
Gibson, Dunn & Crutcher, LLP  
1801 California Street, Suite 4200  
Denver, Colorado 80202-2642

and

Michael K. Murphy, Esq.  
Jennifer A. Nelson, Esq.  
Gibson, Dunn & Crutcher, LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036

**2. STATEMENT OF LEGAL BASIS FOR SUBJECT MATTER JURISDICTION**

The District Court has original jurisdiction over the claims alleged by WSSC pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as a defendant), and 5 U.S.C. § 706 (Administrative Procedure Act). The Federal Defendants dispute that the Court has jurisdiction with respect to WSSC's Third Claim for Relief.

**3. DATES OF FILING OF RELEVANT PLEADINGS**

**A. Date Petition for Review Was Filed:**

WSSC's operative pleading is its First Amended Complaint (“Complaint”), which was filed on November 9, 2011.

**B. Date Petition for Review Was Served on U.S. Attorney's Office:**

WSSC's Complaint was served on the U.S. Attorney's Office on November 10, 2011.

**C. Date Answer or Other Response Was Filed:**

The Federal Defendants filed their Answer (“Answer”) on January 9, 2012. CTU’s Answer was accepted for filing on January 26, 2012.

**4. STATEMENT(S) REGARDING WHETHER THIS CASE RAISES UNUSUAL CLAIMS OR DEFENSES**

This case does not present any unusually complicated or out-of-the-ordinary claims, such as constitutional challenges to a statute or regulation, alleged due process violations, or requests for emergency relief.

**5. OTHER MATTERS**

None.

**6. BRIEFING SCHEDULE**

**A. Deadline for Filing Administrative Record:**

March 26, 2012.

The administrative record was filed on March 26, 2012. Defendants supplemented the administrative record on May 1, 2012.

**B. Deadline for Parties to Confer on Record Disputes:**

June 15, 2012.

**C. Deadline for Filing Motions to Complete and/or Supplement the Administrative Record:**

July 16, 2012.

**D. Opening Brief:**

WSSC’s Opening Brief will be due August 31, 2012. The Opening Brief will generally conform to the requirements of Fed. R. App. Rules 28 and 32, and 10<sup>th</sup> Cir. R. 28 and 32, with the exception that the Opening Brief may contain up to 40 pages, as long as it does not contain more than 18,500 words.

**E. Response Briefs:**

The Federal Defendants’ Response Brief and CTU’s Response Brief will each be due October 15, 2012. Each Response Brief will generally conform to the requirements of Fed. R. App. Rules 28 and 32, and 10<sup>th</sup> Cir. R. 28 and 32, with the exception that each Response Brief may contain up to 40 pages, as long as it does not contain more than 18,500 words.

**F. Reply Brief and Supplemental Brief:**

WSSC's Reply Brief will be due November 16, 2012. The Federal Defendants may file a Supplemental Brief, on or before November 16, 2012, solely limited to responding to arguments presented by CTU in its Response Brief. WSSC's Reply Brief and any Supplemental Brief filed by the Federal Defendants will generally conform to the requirements of Fed. R. App. Rules 28 and 32, and 10<sup>th</sup> Cir. R. 28 and 32 applicable to reply briefs, with the exception that either the Reply Brief or Supplemental Brief may contain up to 20 pages, as long as it does not contain more than 9,250 words.

**7. STATEMENTS REGARDING ORAL ARGUMENT**

**A. WSSC's Statement:**

WSSC respectfully requests oral argument in this matter. This case may present issues regarding the nature and breadth of the United States' authority under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1765, et seq. ("FLPMA" or "Act") upon which the Court may find oral argument beneficial.

**B. The Federal Defendants' Statement:**

The Federal Defendants join in WSSC's Statement Regarding Oral Argument and request for oral argument.

**C. CTU's Statement:**

CTU joins in WSSC's Statement Regarding Oral Argument and request for oral argument.

**8. CONSENT TO EXERCISE OF JURISDICTION BY MAGISTRATE JUDGE**

**A. ( ) All parties have consented to the exercise of jurisdiction of a United States Magistrate Judge.**

**B. ( X ) All parties have not consented to the exercise of jurisdiction of a United States Magistrate Judge.**

**9. OTHER MATTERS**

None.

**10. AMENDMENTS TO JOINT CASE MANAGEMENT PLAN**

The parties acknowledge and agree that this Joint Case Management Plan may be altered or amended only upon a showing of good cause.

DATED this 15<sup>th</sup> day of May, 2012.

BY THE COURT:

*s/John L. Kane*

The Honorable John L. Kane,  
United States District Court Judge

APPROVED and SUBMITTED this 7<sup>th</sup> day of May, 2012:

*Original Signature on File*

*s/ Howard Kenison*

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**Attorney for the Federal Defendants**

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*s/ David Glandorf*

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**Attorneys for Defendant-Intervenor  
Colorado Trout Unlimited**