

**MEMORANDUM OF UNDERSTANDING  
THE BIG SKY OWNERS ASSOCIATION**

and

**THE BIG SKY COUNTY WATER AND SEWER DISTRICT #363**

**September 15, 2015**

This MEMORANDUM OF UNDERSTANDING is made and entered into by and between the Big Sky Owners Association, mailing address PO Box 160057 Big Sky, MT 59716 and the Big Sky County Water and Sewer District #363, mailing address PO Box 160670 Big Sky MT, 59716.

**Introduction:**

The Big Sky Owners Association (BSOA) and the Big Sky County Water and Sewer District #363 (WSD) are jointly interested in improving and managing water, water use, and water rights for use in the Big Sky Meadow Village area.

This memorandum of understanding is limited to the project commonly referred to by both BSOA and WSD as the Little Coyote Pond Project (Project), as more fully described herein. This agreement regards activities for securing water rights and other governmental agency permits related to pond and stream restoration and enhancements located in and along the West Fork of the West Gallatin River (West Fork) and the pond. Both BSOA and WSD will work cooperatively to accomplish these common goals.

**Whereas**, BSOA owns certain lands associated with the Little Coyote Pond and the West Fork in the general location of the pond and the reach of free flowing river above and below the pond.

**Whereas**, WSD owns and operates two West Fork water rights. These two water rights are listed in the Montana Department of Natural Resources and Conservation (DNRC) database as 41H-148445 and 41H148446.

**Whereas**, WSD currently uses both water rights to provide water to Big Sky Resort for irrigation for the Meadow Village golf course. The intake for the golf course irrigation system is located in Little Coyote Pond. WSD wishes to continue using the intake and irrigation system at its discretion during the course of this project and into the future.

**Whereas**, BSOA desires to enhance the Little Coyote Pond by reconfiguring the pond such so that it is no longer on stream and to create adequate fish passage. Reestablishing the West Fork channel near the pond will likely slightly reduce the pond size because of site constraints. In addition, inlet head gates and conveyance channels will be installed in the West Fork by BSOA. BSOA also desires to create an aesthetically pleasing environment to facilitate public use.

**Now Therefore**, the parties agree as follows:

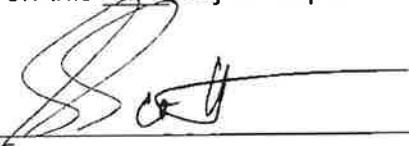
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1. BSOA will engage and fund the services of a qualified engineer for the purposes of providing project design services, securing any needed permits for doing the described work for the Project. In addition the engineer will oversee construction activities and file any follow up reports as needed to permitting agencies. BSOA will furnish WSD with copies of project designs and all construction permits. WSD agrees to cooperate with the permitting process. BSOA's design and construction activities shall not interfere with WSD's ability to supply irrigation water.
2. BSOA will engage the services of a water rights consultant who will draft a water right change application. The water right change application will be submitted to the WSD Board and attorney for review and signature. The change application will include the following:
  - a. Seek to change the minimum amount of water necessary to operate the pond.
  - b. Seek to add the purposes of recreation and fishery to both water rights if feasible.
  - c. If acreage retirement is necessary and feasible to provide needed volumes for the added purposes, the application will propose to utilize the minimum needed.
  - d. Include supporting documentation such as but not limited to copies of existing water right abstracts and project designs.
3. Upon review and approval by WSD of the water right change application, WSD will sign the application and return to BSOA for submittal to the Montana Department of Natural Resources and Conservation (DNRC).
4. The parties acknowledge that WSD is a water supply entity that provides water to its customers pursuant to contracts with the WSD. As such an entity, WSD owns no irrigated acreage that it can retire for purposes of a change application. WSD reserves the right, in its sole discretion, to reject and refuse to sign a water right change application that WSD believes in good faith reduces the amount of water available for use by WSD for district purposes to an unacceptable amount or reduces irrigated acreage to amounts unacceptable to WSD. WSD further reserves the right to reject any modifications to an application made or proposed by BSOA or DNRC that WSD, in its sole discretion, believes in good faith will reduce the priority or the amount of water available to WSD for district purposes to unacceptable amounts. BSOA reserves the right in its discretion to withdraw from this Memorandum of Understanding if it determines the proposed project is not feasible.
5. BSOA and WSD will work cooperatively to provide all necessary documentation related to resolving any and all permitting issues.
6. BSOA with its engineer and consultant will take the lead regarding any meetings with the agencies reviewing permit submittals. WSD will be informed of all meetings and be afforded an opportunity to participate.

7. Upon receipt of all required permits, BSOA will, at its expense, engage the services of a licensed contractor to perform the work described in the plans developed by the engineer for the Project. WSD agrees to cooperate with the construction process.
8. Upon the successful completion of the water right change application process and issuance of a change authorization from the DNRC, WSD will convey to BSOA the volumetric portion of WSD's water rights that can no longer be used for irrigation as a result of the Project. The BSOA will pay WSD the agreed-upon fair market value for the volume of water conveyed, or some other agreed-upon compensation.
9. In the event the parties cannot agree upon the compensation to be paid by BSOA for any volume of water to be conveyed, the fair market value shall be determined by taking the average of two appraisals performed by qualified appraisers, with one appraisal commissioned by BSOA and the other commissioned by WSD.
10. Upon completion of the Project, the operation and maintenance of the Little Coyote Pond system shall be the responsibility of the BSOA. WSD shall be responsible for the operation and maintenance of the intake structure in the pond.
11. This Memorandum of Understanding is not meant to impose any liability on either party hereto. This MOU is an expression of intent only, and shall not create any binding effect for which either party would have a legal remedy in damages or in equity.
12. The sole purpose of this Memorandum of Understanding is to express a mutual willingness by BSOA and WSD to move forward in good faith towards completion of the Project, under the terms provided herein.

Signatures of Party Representatives:

Agree on this 21<sup>st</sup> day of September 2015



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SUZAN SCOTT, EXECUTIVE DIRECTOR  
BIG SKY OWNERS ASSOCIATION

Agree to this 22<sup>nd</sup> day of September 2015



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RON EDWARDS, GENERAL MANAGER  
BIG SKY COUNTY WATER & SEWER DISTRICT