



Technical Memorandum

Prepared for: Lower South Platte Water Conservancy District

Project Title: South Platte Regional Water Development Concept Feasibility Study

Subject: Organizational Frameworks

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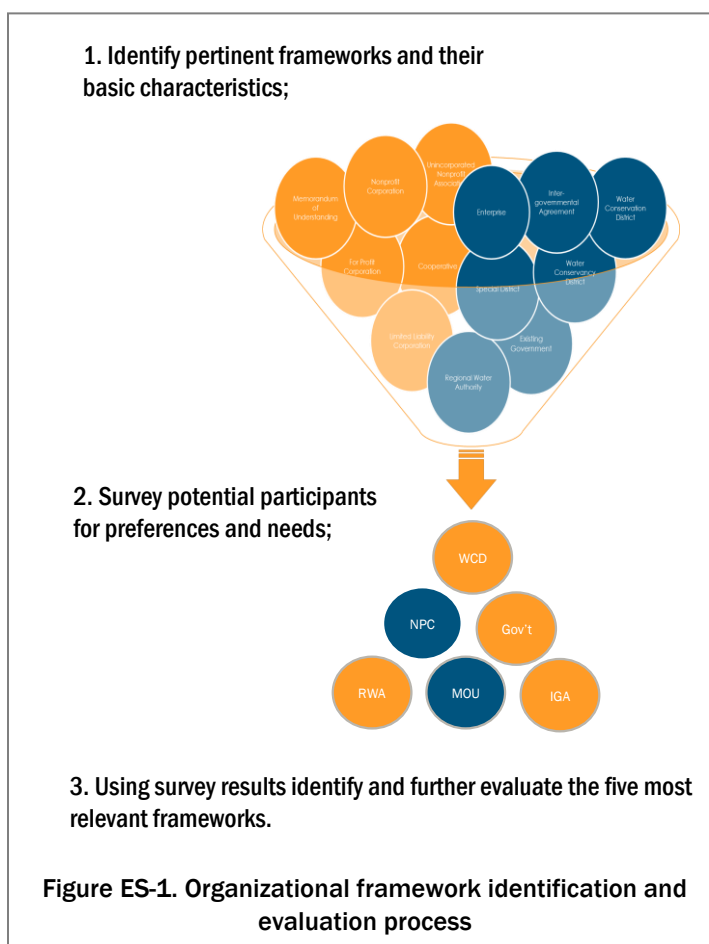
Executive Summary

The South Platte Regional Opportunities Water Group (SPROWG) feasibility study (Study) is evaluating concepts for developing additional water supplies in the South Platte River Basin. SPROWG is a regional concept that could include participation by a variety of municipal, agricultural, and industrial water users as well as environmental and recreational groups. At this time the SPROWG Concept is being investigated by an ad-hoc group of water users and agencies. Eventually, a more formal organizational arrangement will be needed to finance, design, permit, construct, operate, and maintain a selected project. The SPROWG study included an investigation into the potential organizational frameworks under which the project may desire to form.

Each organizational framework has inherent benefits and constraints. The right organizational framework for SPROWG must meet the needs and interests of the participants. In deciding, the participants must consider a variety of criteria. An entity is defined by many characteristics including but not limited to how it is formed or dissolved, how it generates revenue, how it is governed, the tax status of the entity, who is allowed to participate, how it is staffed and how the budget is allocated. The purpose of the study was not to provide a recommendation of the most applicable organizational framework but to provide an appropriate level of detail regarding the potential frameworks to provide participants the information necessary to make an informed decision.

The SPROWG Study evaluated organizational frameworks in two distinct phases. The first phase included a high-level evaluation of potentially-applicable organizational frameworks. Of the various organizational frameworks allowed under Colorado state law, the study evaluated thirteen for the allowed method of formation, generating revenue, governance, ownership, distribution of profits, tax status and staffing. Each organizational framework included notes on the allowable characteristics under each category. Elements from this initial evaluation were then incorporated into the project participant survey with the purpose of identifying the characteristics of most import to users. As a result of the survey, six organizational frameworks were identified, from the original thirteen, for additional analysis. The organizational frameworks evaluated in the second phase included: nonprofit corporations, water conservancy districts, existing governmental entities, regional water authorities, intergovernmental agreements and memoranda of understanding.

Ultimately, the best framework for a project is that which meets the participants' interests and needs, as determined by the participants themselves and no one else. The study incorporated a



qualitative assessment of the six organizational frameworks. The qualitative assessment evaluated each organizational framework with seven criteria. This allowed the organizational frameworks to be compared on a qualitative basis.

The frameworks were evaluated on the following criteria:

- Adaptability – ability to adapt to future changes including but not limited to participants, project components, and project operations.
- Flexibility – ability to change the organization to accomplish different or additional goals.
- Ease of formation—ease with which the organization can be formed.
- Long-term certainty – ability of the organization to provide confidence that it will be able to deliver its identified purpose in future years.
- Legal protections – ability of the organization to provide legal protections for its participants as well as for all developed projects.
- Inclusiveness – ability to accommodate a variety of types of project participants.
- Interim effectiveness – ability to serve as an interim organizational framework during project development, permitting and design when project concepts and participants may still be in flux.

The organizational frameworks were then assigned a qualitative score from 1 to 10 with 1 representing a complete inability to meet the criteria and a score of 10 indicating that the criteria are completely met. Scores of 3 or less are considered low, 4-7 medium, and 8-10 high. Scores are depicted as red, yellow, or green to represent the score as low, medium, or high, respectively. The rankings provided represent a broad, general interpretation of the legally allowable nature and characteristics of each organizational framework described more completely in Section 2.

The assigned scores, as described in Section 3, are shown in the table below. Each of the organizational frameworks have areas of strength and weakness. While these findings are not a recommendation, they can be used for deciding on the right organizational framework for the project. For example, should the SPROWG participants desire an organizational framework in place in the near term, while not all the project components have been fully defined, the participants may be better served to consider a memorandum of understanding or intergovernmental agreement. While a MOU or an IGA offer ease of formation and ample adaptability as well as flexibility, they may not provide the long-term certainty or robust legal protections desirable in a project like SPROWG. Thus, as the project becomes more developed, a more formal and robust organizational framework may be necessary. At which point, the project participants may desire to create a more formal organization that provides additional benefits including greater long-term certainty and legal protections.

Organizational Framework	Adaptability	Flexibility	Ease of formation	Long-term certainty	Legal protections	Inclusiveness	Interim effectiveness
Nonprofit Corporation	Yellow	Yellow	Yellow	Green	Green	Green	Yellow
Existing Government	Yellow	Red	Yellow	Green	Green	Yellow	Yellow
Water Conservancy District	Yellow	Red	Red	Green	Green	Red	Red
Regional Water Authority	Yellow	Yellow	Yellow	Green	Green	Yellow	Yellow
Memorandum of Understanding	Green	Green	Green	Red	Red	Green	Green
Intergovernmental Agreement	Green	Green	Green	Yellow	Red	Yellow	Green

High (8-10)	Green
Medium (4-7)	Yellow
Low (1-3)	Red

Section 1: Introduction

The South Platte Regional Opportunities Water Group (SPROWG) feasibility study (Study) is evaluating concepts for developing additional water supplies in the South Platte River Basin. SPROWG is a regional concept that could include participation by a variety of municipal, agricultural, and industrial water users as well as environmental and recreational groups. At this time the SPROWG Concept is being investigated by an ad-hoc group of water users and agencies. Eventually, a more formal organizational arrangement will be needed to finance, design, permit, construct, operate, and maintain a selected project (see Figure 1).

The purpose of this technical memorandum is to provide a broad perspective of potential organizational frameworks that could be adopted by SPROWG participants to develop, construct and operate SPROWG facilities. It describes the defining characteristics of potential frameworks and compares the various options. The objective was not to recommend one specific organizational framework, but to present potentially viable options.

This technical memorandum is divided into three sections. The first section provides a high-level review of thirteen potential organizational frameworks. The second section provides a more in-depth look at the six organizational frameworks that were deemed most relevant by the SPROWG municipal and industrial, agricultural, and environmental and recreational stakeholders. The third section offers a high-level qualitative comparison of the six most promising organizational frameworks, using criteria considered by the Advisory Committee and Task Force.

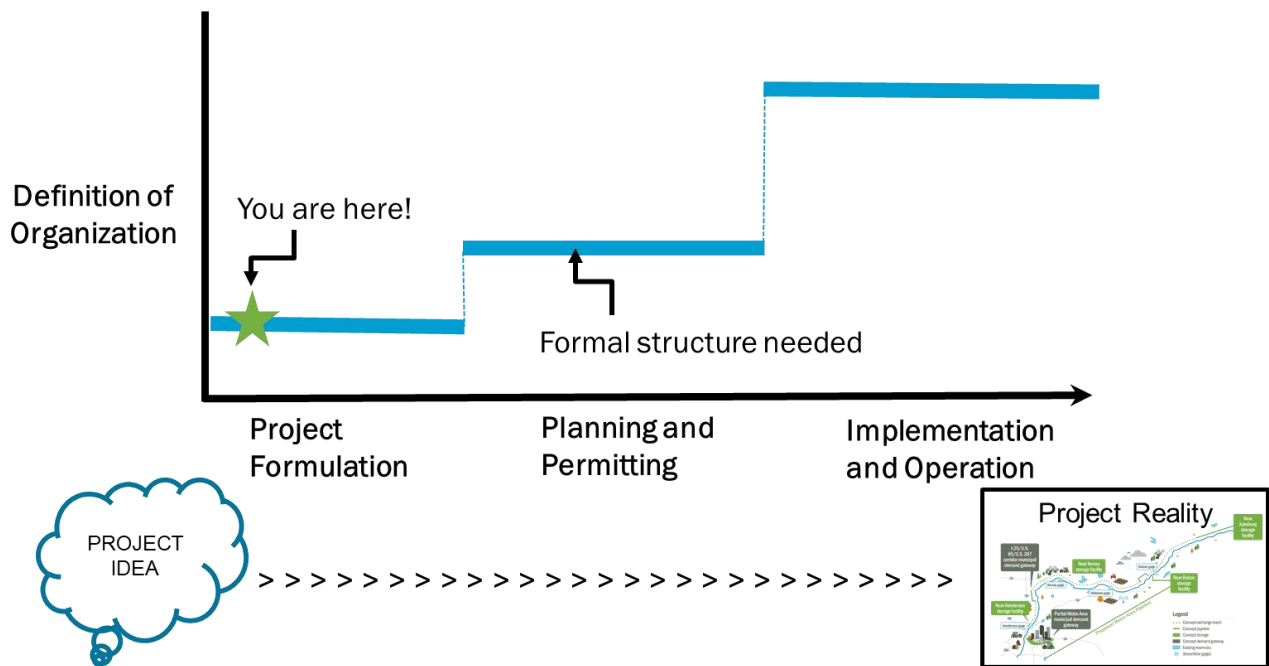


Figure 1. Evolution of Regional Project Development and Implementation

Section 2: Long-List of Potential Organizational Frameworks

In Colorado, many types of multi-party agreements exist that define the relationship between contracted entities. Under Colorado statutes, governmental and non-governmental entities can enter into agreements for a specific water-related purpose, project or mission. With numerous types of inter-entity agreements and organizational structures available, the SPROWG participants must carefully weigh defining characteristics of potential structures prior to considering specific organizational framework options. Key characteristics are shown in Figure 2 and may include factors such as types of entities allowed to participate; rules governing formation or dissolution; methods of governance; methods of financing and handling of revenue; tax status; staffing options; and ownership of assets.

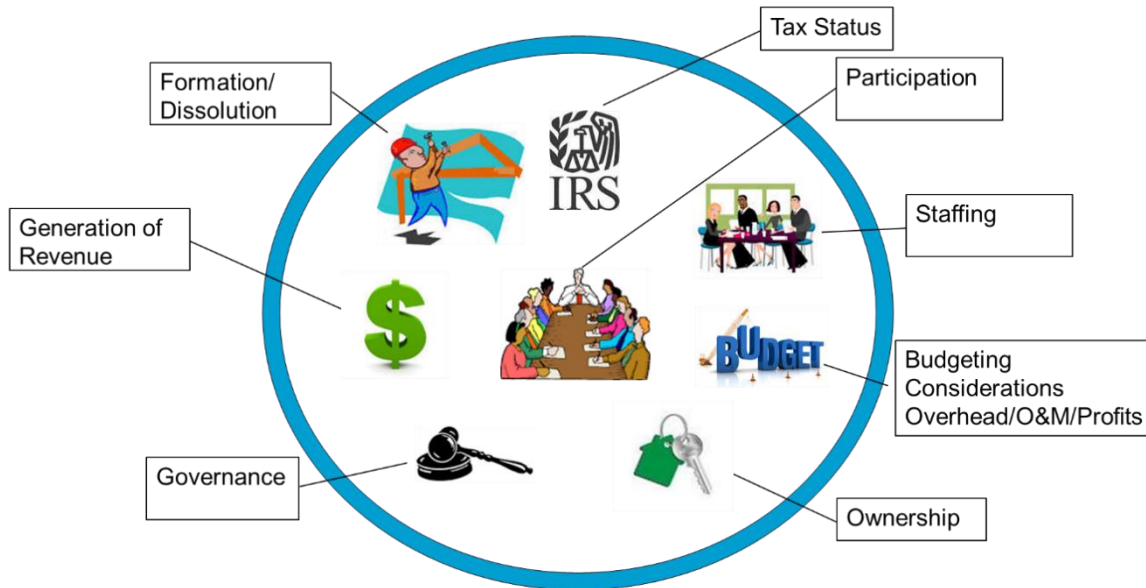


Figure 2. Organizational Framework Characteristics

This section provides an overview of thirteen types of organizational frameworks or institutional models and identifies key characteristics, many of which are specified in Colorado statutes. In the case of some organizational frameworks, specific characteristics may be defined by agreement of the participants. The list of potential organizational frameworks was developed based on review of existing multi-party organizations in Colorado and the experience of the SPROWG consulting team and Advisory Committee.

Results of the high-level review of the long list of possible SPROWG organizational frameworks are presented in the organizational framework matrix at the end of this section. The matrix was a tool for members of SPROWG to identify the organizational frameworks most suited to a potential regional project based on the prioritized criteria.

2.1 Considerations

A multi-party project necessitates an agreement among the participating entities that defines why, how, and when collaboration will occur. Though a much more in-depth analysis is necessary before pursuing negotiations to form any regional organization, primary considerations can provide insight into which frameworks should be included for analysis or agreement. The organizational framework matrix allows interested entities to identify those potential organizational structures that are consistent with the criteria or factors most important to them. For this technical memorandum,

identifying characteristics include method of formation, methods of generating revenue, options for governance, ownership considerations, distribution of profits, tax status, and staffing considerations.

2.1.1 Identified Organizational Frameworks

The organizational framework matrix identifies thirteen distinct organizational frameworks and compares them at a high level. In addition, the organizational frameworks are divided into two separate categories to denote the allowance of participation of only governmental entities or governmental and non-governmental entities, including private businesses. Notes for each organizational framework provide historical or legal context under Colorado law. For each framework a partial list of Colorado examples is provided.

Table 1. Organizational Framework Characteristics: NON-GOVERNMENTAL ENTITIES—Government and private entities may participate

Organizational Framework	Notes	Colorado Examples	Method of Formation			Methods of Generating Revenue				Options for Governance			Ownership Considerations			Distribution of Profits			Tax Status			Staffing																
			Legislative act	Local government—judicial creation	Petition for formation	Intergovernmental agreement	Memorandum of understanding	Other: noted	Tax/fee collection	Mill levy	Member assessments	Grants and loans	Equity investment	Other: noted	Board Elected by Voters	Board appointed by elected officials	Board appointed by membership	Weighted voting of membership	Equal voting of all membership	Other: noted	Organization Owns Assets	Membership - ownership interest through equity in organization	Membership - ownership interest for use of facilities and Services	Membership own assets and enter into an agreement with entity	Other: noted	Based on equity ownership	Based on use of facilities or services	No distribution	Taxable	Tax-exempt	Government	Other: noted	Hired employees of organization	Hired through independent contracts	Consultants	Staff sharing between participants	Other: noted	
Cooperative	Formation requires filing articles of incorporation with the Secretary of State. May be taxable or tax-exempt.	Northeast Colorado Water Cooperative							■	■	■	■		■	■	■				■	■	■			■	■	■	■	■	■	■	■	■					
For-profit Corporation	Formation requires filing articles of incorporation with the Secretary of State. Includes public benefit corporations.	Lower Arkansas Valley Super Ditch Company, Inc.							■	■	■			■	■										■					■	■	■						
Memorandum of Understanding	Formation requires agreement among participants. In general, MOUs are non-binding, however, they may include legally binding elements. An MOU will not be treated as a separate entity for tax purposes unless it qualifies as a partnership. The ownership of assets, distribution of profit and governance are determined by the agreement.	Chatfield Reservoir Reallocation Water Storage Participant MOU; Eagle River MOU				■		■	■	■							■				■	■					■			■	■	■	■					
Nonprofit Corporation	Formation requires filing of articles of incorporation with the Secretary of State. Maybe taxable or tax-exempt if it satisfies IRS and State requirements. With limited exceptions, nonprofit corporations do not have owners and may not make distributions of profits to membership.	Chatfield Reservoir Mitigation Company 501(c)(12); South Platte Water Related Activities Program 501(c)(3); Mutual ditch and Reservoir Companies (various)						■	■	■				■	■	■									■	■	■	■	■	■	■	■	■					
Partnership/Limited Liability Company	Formation requirements are specific to the type of entity. A general partnership is formed by agreement. A limited partnership or limited liability partnership is formed through the filing of a certificate with the Secretary of State. A Limited Liability Company is formed through the filing of articles of organization with the Secretary of State. Most are flow-through entities with the exception being LLCs which have elected to be treated as corporations for tax purposes. LLCs may be either taxable or tax-exempt.								■	■	■			■	■	■									■			■	■	■	■	■	■					
Unincorporated Nonprofit Association	Formed through a formal agreement among participants. Must be formed for a nonprofit purpose. May be taxable or tax-exempt if they satisfy IRS and State requirements. Entity and participants can own assets. Ability to distribute profits is dependent on the purpose for which the entity was formed.	Animas-La Plata Operations and Maintenance Association						■	■	■							■				■				■	■	■	■	■	■	■	■	■	■				

Table 2. Organizational Framework Characteristics: GOVERNMENTAL ENTITIES—Only governmental entities may participate (continued)

Organizational Framework	Notes	Colorado Examples	Method of Formation						Methods of Generating Revenue						Options for Governance				Ownership Considerations				Distribution of Profits			Tax Status			Staffing								
			Legislative act	Local government—judicial creation	Petition for formation	Intergovernmental agreement	Memorandum of understanding	Other: noted	Tax/fee collection	Mill levy	Member assessments	Grants and loans	Equity investment	Other: noted	Board Elected by Voters	Board appointed by elected officials	Board appointed by membership	Weighted voting of membership	Equal voting of all membership	Other: noted	Organization Owns Assets	Membership - ownership interest through equity in organization	Membership - ownership interest for use of facilities and Services	Membership own assets and enter into an agreement with entity	Other: noted	Based on equity ownership	Based on use of facilities or services	No distribution	Taxable	Tax-exempt	Government	Other: noted	Hired employees of organization	Hired through independent contracts	Consultants	Staff sharing between participants	Other: noted
Special District	Formation, powers and limitations of special districts are provided in Title 31 of Colorado's Revised Statutes. Types of Special Districts includes ambulance, fire protection, health assurance, health services, metropolitan, park and recreation, sanitation, water, and, water and sanitation. Creation requires the submittal of a service plan to the county commissioners or municipal board. In general, a special district shares the same governance structure the entity from which it is formed.	Pinery Water and Sanitation District; Centennial Water and Sanitation District		■					■		■								■	■		■								■	■	■					
Water Conservation District	Formed through a legislative act. Governed by a board that receives appointment from county commissioners.	Colorado River Conservation District; Southwestern Colorado Water Conservation District; Rio Grande Water Conservancy District; Republican River Water Conservancy District		■					■	■	■			■					■										■		■	■					
Water Conservancy District (WCD)	Formed at the request of communities and are local instrumentalities of state government. Formation is created through procedures in state district courts. Requirements for the forming of a WCD are found in the Water Conservancy Act of 1937. The Tax Payors Bill of Rights (TABOR) applies to WCD. As such, creation requires a vote of the people. Board is appointed by district judge.	Lower South Platte Water Conservancy District; Central Colorado Water Conservancy District; Northern Colorado Water Conservancy District; Logan County Water Conservancy District		■	■				■	■	■			■					■										■		■	■	■				

Section 3: Relevant Frameworks

The SPROWG Task Force and Advisory Committee were tasked with selecting up to five organizational frameworks to assess in more detail (see Figure 3). The SPROWG consulting team distributed a survey to municipal, industrial, agricultural, and environmental/recreational stakeholders to gather information concerning their preferences for and interest in a SPROWG project. Questions related to preferred characteristics of organizational frameworks were included in the surveys to regional stakeholders.

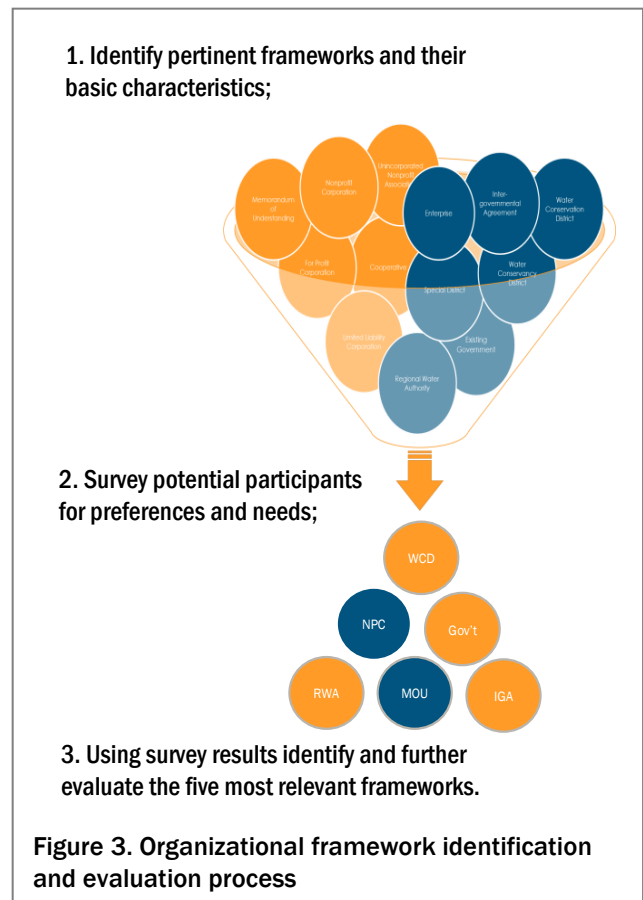
After consideration of the survey results (and review by the Task Force and Advisory Committee), the five most relevant frameworks for SPROWG were selected as follows: non-profit corporation, existing government (state or local), regional water authority, water conservancy district, and intergovernmental agreement (IGA). Additionally, the Task Force and Advisory Committee decided to include memorandum of understanding (MOU) to be evaluated with IGA as a potential interim option. The selected frameworks were chosen based on their responsiveness to the key priorities identified by survey respondents, as further discussed in the Technical Memorandum regarding “Outreach.”

Section 2 provides additional analysis of these organizational frameworks includes specifics of formation and other notable attributes. Additionally, relevant case studies are provided for each organizational framework. Due to state-by-state regulations and laws regarding formation of governmental and non-governmental entities, these case studies are largely Colorado-specific.

The following evaluation of the five selected organizational frameworks is not intended to be a recommendation from the consulting team on the best organizational framework for future SPROWG proponents. The purpose of this evaluation is to provide project proponents with additional information for future consideration as the best-fit organizational framework is explored. Each organizational framework is accompanied by a qualitative analysis of the framework’s ability to meet criteria of adaptability for future needs, flexibility to accomplish different or additional goals, the ease with which an organization can be formed, long-term certainty that the organization will be able to deliver its purpose, legal protections for the organization and for any developed projects, inclusiveness or ability to accommodate a variety of participants, and effectiveness as an interim framework during early phases of a project.

3.1 Nonprofit Corporations (NPC)

Incorporating as an NPC allows an entity many benefits that may or may not be available under other organizational frameworks. These benefits include, but are not limited to, the relative ease of creation and dissolution, the ability to apply for exemption from federal and state taxes if certain requirements are satisfied and the power to elect a board of directors and create and adopt bylaws. The following subsection provides a brief overview of the powers, financing capabilities and tax status for NPCs in Colorado.



3.1.1 Formation, Powers, and Dissolution

Per the Colorado Revised Nonprofit Corporation Act¹, existing governmental and non-governmental entities may file articles of incorporation with Colorado's Secretary of State to create an NPC. When incorporating an NPC, the incorporator must provide basic information pertaining to the organization in its Articles of Incorporation, including the name of one or more incorporators, the entity name, statement of purpose, a statement whether the NPC will have perpetual life or dissolve after a period of years, certain provisions required for state and federal tax-exempt status, distribution of assets on dissolution, the address of the NPC's principal place of business and the name and address of the registered agent or person to whom legal notices should be sent. Once an NPC has filed its articles of incorporation, it must prepare bylaws. The bylaws of an NPC must comply with Colorado law and contain procedures the corporation will follow for holding meetings, electing officers and directors, and taking care of other corporate formalities required in Colorado.

A board of directors governs an NPC. The directors may or may not be named in the Articles of Incorporation. Regardless, following incorporation the directors named in the Articles or appointed by the incorporator must hold a meeting to adopt initial bylaws, appoint officers, set the accounting period and tax year, and authorize the officers to open a corporate bank account. The bylaws of an NPC provide definition for membership structure, provide for meetings of members and the board of directors, and the election of officers, include indemnification provisions, and may include the process for dissolution.

Under the Nonprofit Corporation Act a nonprofit corporation has the power to:

- To sue and be sued;
- To have a corporate seal;
- To make and amend bylaws;
- To purchase, receive, lease and otherwise acquire, and to own, hold, improve, use and otherwise deal with real or personal property;
- To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- To purchase, receive, subscribe for and otherwise acquire shares;
- To execute contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
- To lend money, invest and reinvest its funds, and receive and hold real and personal property;
- To elect or appoint directors, officers and employees, define their duties, and fix their compensation;
- To pay pensions and establish pension plans, pension trusts, profit sharing plans and other benefit or incentive plans for any of its current or former directors, officers, employees, and agents;
- To make donations for the public welfare;
- To impose dues, assessments, admission and transfer fees upon its members;
- To indemnify current or former directors, officers, employees, fiduciaries, or agents;
- To cease its corporate activities and dissolve.²

Colorado law provides additional requirements and powers for specific types of NPC. For example, ditch and reservoir companies that are incorporated NPCs must satisfy other requirements for incorporation and must include provisions concerning the rights and privileges of their shareholders.

¹ Colorado Revised Statutes (C.R.S.) § 07-121-101.

² C.R.S. § 07-123-102(1).

An NPC may be dissolved voluntarily or through a judicial ruling.³ To dissolve voluntarily, the directors and members of the NPC must approve the dissolution and the NPC must file articles of dissolution with the secretary of state.⁴ An NPC may also be dissolved in judicial proceedings by the attorney general should it be established that the organization is unlawful or by its directors, members, or creditors.⁵

3.1.2 Mutual Ditch Companies Structured as NPCs

Many mutual ditch and/or reservoir companies (“MDCs”) are structured as NPCs, formed for the purpose of constructing a ditch, reservoir, or pipeline to convey or store water. To incorporate as an NPC, a ditch and/or reservoir company must state in its articles of incorporation “the stream, channel, or source from which the water is to be taken; the point or place at or near which the water is to be taken; the location...of any reservoir intended to be constructed; the line...of any ditch or pipeline intended to be constructed; and the use to which the water is intended to be applied.”⁶ The bylaws of an MDC that is incorporated as an NPC must also state to whom water is served as well as the designated purpose. The bylaws may also state how water is distributed to members as well as procedures for selling any additional unused water.

MDCs are usually nonprofit entities financed primarily through shareholders’ pro rata stock assessments and fees. MDCs typically issue shares of stock which represent the shareholder’s right to receive water. Although MDCs are sometimes formed by agreement as unincorporated entities, most MDCs are incorporated to shield their shareholders from liability. Under Colorado law, while the company holds legal title to the water rights and represents the interests of its shareholders (for example, in water court proceedings), each shareholder is the beneficial owner of a pro rata interest in the assets of the company.⁷

Shareholders in an MDC may participate in governance to varying extents, depending on the articles of incorporation and bylaws of the company, and an MDC’s articles and bylaws may provide for classes of shares with special or conditional voting rights subject to the requirements of the Ditch and Reservoir Companies statute as well as the requirements of the nonprofit corporations statute if the MDC is also an NPC.

3.1.3 Financing and Profits

In accordance with Colorado law, an NPC may “incur liabilities, borrow money, issue notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of any of its property, franchises or income”.⁸ Operating income may be collected through dues, assessments, admission fees, or transfer fees from the corporation’s membership.

An NPC may accrue profits; however, with few exceptions, profits may not be distributed to members or participants. Similarly, an MDC organized as an NPC exists primarily for the purpose of providing water to its shareholders, who own the right to receive and use water, and generally may not sell water for profit to outside entities that are not shareholders.

³ C.R.S. § 07-134-101; C.R.S. § 07-134-301.

⁴ C.R.S. § 07-134-103.

⁵ C.R.S. § 07-134-301.

⁶ C.R.S. § 07-42-101.

⁷ *Jacobucci v. District Court in and for Jefferson County*, 189 Colo. 380 (1975).

⁸ C.R.S. § 07-123-102(1)(g).

3.1.4 Taxation

Once formed, an NPC may apply for an exemption from federal and state taxes. There are many different types of tax-exempt entities, including 501(c)(3) charitable entities, 501(c)(4) social welfare organizations, and 501(c)(12) mutual ditch and irrigation companies, and like organizations. Each type of entity has specific organizational and operational requirements. To obtain recognition of federal tax-exempt status from the Internal Revenue Service (IRS), an NPC must complete and file an exemption application with the IRS. If an entity is applying for recognition as a 501(c)(3) charitable entity, it must file a Form 1023. Other types of organizations may, but in most cases are not required to, file for recognition of tax-exempt status on Form 1024. NPCs that qualify for exemption from federal income tax may still be subject to tax if they have unrelated business income. The exemption application forms are long and detailed and require the applicant provide detailed information including the NPC's history, finances, organizational structure, governance policies, operations, and activities.⁹ The IRS website provides many resources for completion of the 1023 and 1024 application forms, including both interactive and standard forms. An NPC that is exempt from federal income tax will also be exempt from Colorado state income tax. In addition, depending on what type of tax-exempt entity it is, it may apply for exemption from Colorado state sales tax and property tax Colorado tax exemption.

3.1.5 Ownership

In accordance with Colorado law, NPCs have the power to “purchase, receive, lease, and otherwise acquire, and to own, hold, improve, use and otherwise deal with, real or personal property or any legal or equitable interest in property”.¹⁰ They may also “purchase, receive, subscribe for and otherwise acquire shares and other interests in, and obligations of, any other entity.”¹¹ All assets are held by the NPC alone. Additionally, NPCs may sell, mortgage, lease, exchange or dispose of any or all its property in accordance to its bylaws.¹²

3.1.6 Case Study: Chatfield Reservoir Mitigation Company (CRMC)

The CRMC was formed in 2015 to implement the Chatfield Storage Reallocation Project (“Reallocation Project”), including acting as the general contractor in connection with construction, environmental mitigation and recreational modifications required to allow increased, reliable water storage capacity in Chatfield Reservoir. CRMC is a Colorado non-profit corporation and is exempt from federal income tax under Section 501(c)(12), which covers mutual ditch and irrigation companies and “like organizations.”

In 2014, the Department of the Army, Corps of Engineers (the “Corps”) entered into an agreement with the Colorado Department of Natural Resources (“CDNR”) for Reallocation of Water Storage Space, Recreation Modifications, and Compensatory Mitigation Features to the Chatfield Dam and Reservoir (the “Water Storage Agreement”) authorizing the Project to proceed. Pursuant to the terms of the Water Storage Agreement, the Corps authorized CDNR to utilize an additional 20,600 feet of storage space at the Chatfield Reservoir, contingent on CDNR fulfilling certain environmental mitigation and recreation modification obligations. Specifically, the Water Storage Agreement requires CDNR to take certain measures to compensate for the loss of environmental resources at Chatfield State Park (“park”) related to the reallocation of storage space in Chatfield Reservoir including protection and development of Preble’s Jumping Mouse habitat, wetlands, and bird habitat on 165 acres of land in the park, certain off-site lands, and a portion of the Pike National Forest.

⁹ <https://www.irs.gov/forms-pubs/about-form-1023> (November 1, 2019)

¹⁰ C.R.S. § 7-123-102(1)(d).

¹¹ C.R.S. § 7-123-102(1)(f).

¹² C.R.S. § 7-123-102(1)(e).

After entering into the Water Storage Agreement, CDNR entered into Water Provider Agreements (“WPAs”) with eight entities, which are themselves State agencies, municipalities and water districts (each a “Water Provider”). Pursuant to the WPAs, CDNR granted to each Water Provider proportionate rights to store water in the reallocated storage space in Chatfield Reservoir. In return for its proportionate share of water storage space, each Water Provider assumed a pro rata share of CDNR’s environmental mitigation and recreation modification obligations under the Water Storage Agreement. CRMC was then incorporated by the Water Providers.

CRMC was funded initially by the financial contributions of the Water Providers, which in most cases (but not exclusively) were provided through loans from the Colorado Water Conservation Board. CRMC maintains separate accounts for construction and mitigation activities, and for operation of the corporation itself. CRMC has its own staff employees.

CRMC is governed by a Board of Directors, elected by the Water Provider members. There are five directors, and while the directors are elected by a weighted vote based on the percentage ownership interests of the Water Providers, each director has an equal vote in the governance of the CRMC. One of the directors must come from one of the State agency participants.

3.1.7 Case Study: South Platte Water Related Activities Program (SPWRAP) 501 (c)(3)

The SPWRAP is a Colorado non-profit corporation incorporated in 2005 and is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The original incorporators were the Board of Water Commissioners of the City and County of Denver and the Northern Colorado Water Conservancy District. As a Section 501(c)(3) corporation, SPWRAP is tax-exempt and is operated exclusively for charitable, scientific and educational purposes, namely, to assist in the recovery of threatened or endangered species through operation of the Colorado Program Component of the Platte River Recovery and Implementation Program (PRRIP) in a manner that ensures Colorado’s compliance with the PRRIP. It is the exclusive vehicle by which Colorado water users may participate in PRRIP and obtain the benefits of that program—the certainty of Endangered Species Act (ESA) compliance for their projects and avoidance of standalone project mitigation requirements under the ESA.

The SPWRAP has five classes of membership: Class A (Agricultural), Class I (Industrial), Class M (Municipal), Class W (Water Conservancy and Water Conservation Districts), and Class X (Miscellaneous). Both governmental and non-governmental entities may become members of SPWRAP.¹³

The SPWRAP is funded through assessments of its members. Because of the unique requirements of the Colorado Program Component of the PRRIP, the founders of the SPWRAP determined that participation based strictly on the amount of depletions caused by each water user was neither practical nor desirable. Instead, assessments and membership interests are allocated and assessed based on “Units,” with Units being issued in differing manners for each membership class. For example, Class A members are issued one Unit for each ten acres irrigated by the member’s ditch system in the previous year, whereas Class M members are issued six Units per single family equivalent tap (SFE). All members must fully participate by maintaining coverage and being assessed for all their covered water uses.

Governance of the SPWRAP is by a Board of nine directors. Directors are elected as follows: Class A, I, and W members are each entitled to elect one director, while Class M (Municipal) members are entitled to elect six directors. Class X (Miscellaneous) members are not entitled to elect any directors. As such, governance of the SPWRAP is weighted towards its municipal members.

¹³ In order to preserve the tax-exempt status under Section 501(c)(3), the SPWRAP Articles of Incorporation provide that, upon dissolution the assets of the corporation must be distributed to another entity formed for the same purpose, or otherwise meeting the requirements of 501(c)(3), and cannot be disbursed to the individual members.

3.1.8 NPC and the SPROWG Concept

As an organizational framework for water-related entities, NPCs have a strong presence in Colorado and the South Platte Basin. As such, a type of NPC would be applicable to the SPROWG concept.

While a viable option for the SPROWG Concept, participants are advised to carefully consider the advantages and disadvantages prior to forming an NPC. Advantages of this organizational framework include broad availability to potential classes of participants or members. In fact, of those this study investigates NPCs are among the most inclusive frameworks. Membership or participation allows for both governmental and non-governmental entities as well as participants with differing purposes (municipal, industrial, or agricultural). Additionally, the physical location of participants’ service area is not a constraint in NPCs. In projects like the Chatfield Reservoir Reallocation, participants are located throughout the South Platte Basin. Additionally, each participant has different needs and abilities for how the project will be incorporated into their portfolio. These diverse attributes of the participants were among the drivers that resulted in the creation of the Chatfield Mitigation Company as an NPC.

However, the advantages of NPCs must be weighed against their inherent limitations. While forming a NPC can be a relatively simple process, consisting of filing articles of incorporation and preparing bylaws, the process could become significantly more complex in order take into account factors likely to be present in a SPROWG project, such as different classes of members, varying roles and contributions, and the participatory rights of those members. Under these circumstances, limitations within the NPC framework would include a potentially lengthy and involved formation process, given the need to create a structure which appropriately reflects the rights and obligations of potential members. Once formed, the same considerations could also make it difficult to adapt the NPC to include additional participants, or provide additional services or purposes. Such changes would likely require amendments to the articles and/or bylaws of the NPC, the ease of which would in turn depend on how the NPC was set up initially, including the voting rights and powers of the members. Finally, if an NPC has applied for and received exemption from state and federal taxes, care would need to be taken to ensure that any such changes did not jeopardize the NPC’s tax-exempt status. For these reasons, among others, NPCs do not appear to function well as an interim framework. This said, NPCs are a good option for later stages of project implementation, where other frameworks, such as MOUs and IGAs, may provide an interim organizational framework for earlier phases.

Additional advantages and disadvantages of NPCs are summarized in Table 3.

Table 3. NPC Advantages and Disadvantages	
Advantages	Disadvantages
Provides long-term certainty that the entity will exist in the future.	More rigorous, though not impossible to adapt to future needs.
Provides strong legal protections for projects developed as well as participants, entity staff and elected board of directors.	Less flexible to change bylaws to add new a new identified purpose.
Among the most inclusive of the organizational frameworks. Governmental and non-governmental entities alike can participate.	Formation can be time consuming, depending on complexity.
Eligible for state and federal tax-exempt status.	Receiving tax-exempt status requires filing with both the state and the IRS.
Capable of growing from some organizational frameworks (IGA, MOU)	Not a great interim option due to constraints on adaptability and flexibility.

3.2 Existing State or Local Government

Under the Colorado Constitution and statutes, political subdivisions (e.g. county, city, town, water, sanitation, irrigation, drainage or other special district pursuant to law) may cooperate and contract with one another, including creating separate political entities or subdistricts, to provide any function, service, or facility lawfully authorized to each of the contracting or cooperating governments.¹⁴ Examples of entities that may be formed by existing governments include but are not limited to: water authorities, special districts, water conservancy districts, water conservation districts, ditch and reservoir districts, and irrigation districts. The ease with which a new subdistrict may be formed varies greatly depending on the type of organization from which it is created. The following subsection provides a brief overview of the allowances, powers, financing capabilities and tax status for entities created under existing governments in Colorado.

3.2.1 Formation, Powers, and Dissolution

Within an existing government or political subdivision, a subdistrict may be formed. Broadly speaking, a new subdistrict is provided the same rights, powers and restrictions as the existing political subdivision from which it is formed. For example, under the Water Conservancy Act, water conservancy districts may, upon the petition of the owners of property within and partly within the district, form a subdistrict for a specific purpose.¹⁵ A WCD's appointed board of directors manage and operate all subdistricts. A subdistrict of a WCD shares the powers of the entity from which it is formed and governed.

3.2.2 Financing and Profits

A new subdistrict must follow similar rules and regulations as established for the entity from which it is formed. However, in some cases new bylaws and articles of incorporation must be drafted, approved by the entities board and filed with the state. So long as they adhere to all pertinent Colorado laws and statutes, these new bylaws and articles of incorporation may identify specific powers for financing as well as the ability to distribute profits.

3.2.3 Taxation

As a governmental entity, a new subdistrict of an existing governmental entity may be subject to the prevailing tax status or may apply with the IRS for a Federal taxpayer identification number (TIN) also referred to as an Employer Identification Number (EIN). Using this identification number or that of its parent organization, the new subdistrict will be exempt from most sales tax. Additionally, as a political subdivision, most subdistricts are also not subject to federal income tax on income derived from the exercise or administration of any public function.¹⁶

3.2.4 Ownership

The ownership of a new subdistrict of an existing governmental entity as well as the assets it acquires must adhere to applicable laws and regulations. In many cases, ownership is determined by the bylaws of the forming governmental entity. In other cases, such as a water authority, ownership of assets is defined in the organization's bylaws and formation documents.

¹⁴ Colo Const. art. XIV § 18(2)(a).

¹⁵ C.R.S. § 37-45-120.

¹⁶ www.irs.gov/government-entities/federal-state-local-governments

3.2.5 Case Study: Windy Gap Project Municipal Subdistrict

Formed in 1970 by six Colorado front range communities, the Municipal Subdistrict (Subdistrict) to Northern Colorado Water Conservancy District (Northern) has as its principal purposes the planning, financing, construction, operation, and ownership of the Windy Gap Project.¹⁷ Part of the Colorado Big Thompson project, the Windy Gap Project delivers water to East Slope participants from Windy Gap Reservoir, stored in Lake Granby before being delivered to water users through the Colorado Big Thompson Project's East Slope distribution system. The project, as originally permitted and constructed, can divert 48,000 acre-feet of water per year to its participants. The Municipal Subdistrict has delivered water to members of the Subdistrict since it came online in 1985.¹⁸

Formation of the Subdistrict required signatures of at least 5 percent of the landowners as well as 25 percent of the owners of irrigated land within Northern's six-county jurisdiction. Once the signature requirement was met, the district submitted petitions for formation to the District Court in Greeley. The court approved the formation of the Subdistrict on July 6, 1970. By statute, the Subdistrict shares a Board of Directors with Northern. From the Board, the Subdistrict then elects its own officers. Much of the resources, staffing, and equipment necessary for the Subdistrict's operations are shared with Northern.

Allocations from Windy Gap follow allotment contracts between the Subdistrict and the participating entities. Initial allocations were divided equally among the six participating cities with each receiving one-sixth share of the project. Within their contractual rights and with the approval of the Board, participants may transfer all or part of their allotment to another entity so long as it is within Northern's jurisdiction. It is through transfers of shares that six additional participants gained allotments in Windy Gap Project.

Due to limitations in storage the Windy Gap Project is currently unable to deliver its allowable annual yield of 48,000 acre-feet per year. The Windy Gap Firming Project, as planned, will expand the current storage and related facilities so that the project will be capable of delivering an additional 30,000 acre-feet of firm annual yield to participants. The stated intent of the Windy Gap Firming Project is to "improve the yield from an existing project and existing Windy Gap water rights".¹⁹ For this purpose, the subdistrict proposed in the Windy Gap Firming Project Environmental Impact Statement (WGFP EIS) the development of Chimney Hollow Reservoir for the purpose of providing dedicated East Slope storage to operationally firm water supplies delivered from Windy Gap Reservoir.

The United States Department of the Interior and the Bureau of Reclamation released a Record of Decision (ROD) for the WGFP EIS on December 19, 2014. With the ROD, the Subdistrict was able to begin the development of the WGFP which includes the construction of Chimney Hollow Reservoir as well as other new infrastructure for conveyance of C-BT water.

Northern's Subdistrict for the Windy Gap Project was and continues to be successful in implementing its intended purpose and has provided enough flexibility to expand allocations as well as plan for expansion.

3.2.6 Existing Governmental Entities and the SPROWG Concept

The SPROWG Concept envisions a diverse set of participants located throughout the South Platte River Basin. Due to the types of potential participants (municipal, industrial, agricultural) and their respective locations only certain types of existing governmental entities are applicable. Setting aside the possibility that the SPROWG project would be developed by a single, existing governmental entity (a municipal water department, for example), the most likely scenario would appear to be the formation of a separate subdistrict by an

¹⁷ http://www.northernwater.org/docs/Water_Projects/windygap2003.pdf

¹⁸ <http://www.northernwater.org/docs/WindyGapFirming/FactSheetWGFP.pdf>

¹⁹ Windy Gap Firming Project Final Environmental Impact Study, ES.

existing entity such as the example above, where a subdistrict is formed from an existing Water Conservancy District (WCD). Forming a subdistrict from an existing WCD requires a minimum of two key steps. The applicant must receive signatures from 5 percent of the landowners within the jurisdiction as well as 25 percent of the owners of irrigated land. The petition is then filed with the district court. Should no opposition be made, the new Subdivision is then created. For purposes of implementing the SPROWG Concept, there are no governmental entities, other than the State of Colorado, whose geographic jurisdiction is sufficiently encompassing to include all the most likely prospective SPROWG participants and facilities. Thus, unless prospective project participants are reduced in number and scope to those whose service areas are contained entirely within the jurisdiction of an existing governmental entity other than the State of Colorado, a subdistrict to an existing political subdivision of the State does not seem to be a viable option to plan, finance, develop, and operate the SPROWG Concept. While this option may not seem viable given the current configuration of the SPROWG Concept, it has been retained on the list in the event that the SPROWG Concept is reduced in scope and given that such subdistricts are relatively commonplace. Additional advantages and disadvantages are included in Table 4.

Table 4. Existing Government Advantages and Disadvantages	
Advantages	Disadvantages
Once formed have strong assurances for longevity.	In certain cases, a subdistrict can be challenging to form due to statute requirements including petition signature requirements.
Depending on the parent district's bylaws, the subdistrict may be adaptable to adjust for future needs and flexible to add new purposes or goals.	All characteristics are limited by those defined in the by-laws of the parent district.
Shared governance with the parent district can simplify the formation process.	
A good option for projects where specificity of participation, project allocation and cost sharing are needed.	

3.3 Water Conservancy District (WCD)

A WCD may be created for purposes including the prevention of floods, protecting the public and private property from inundation, and the conservation, development, utilization, and disposal of water for irrigation, municipal and industrial uses. Once created, WCDs remain under the jurisdiction of the state district court. They are created at the request of communities and are local instrumentalities of state government. The following subsection provides a brief overview of the allowances, powers, financing capabilities, and tax status for WCDs in Colorado.

3.3.1 Formation, Powers, and Dissolution

The formation of a WCD is both a cumbersome and time-consuming process. WCDs are created and governed by the Water Conservancy Act of 1937²⁰. Formation requires a petition of the people be submitted to the state district court. To qualify, a petition for formation of a WCD must receive a statutorily specified number of signatures in accordance to the size or valuation of the proposed district. For example, a proposed WCD with a valuation assessment of irrigated lands, including improvements that in total are less than twenty million dollars must submit a petition with at least twenty-five percent of the owners of irrigated lands.²¹

A WCD is governed by a board of no more than fifteen directors appointed by the incorporating district court who have backgrounds relevant to the beneficial use of water within the district (e.g. agricultural, municipal, or industrial).²² Directors of a WCD must also own property within the county of the district.²³ Each board appointee holds office for a designated amount of time. Per Colorado law, each WCD's board is comprised of positions with one of three lengths of service. Specifically, one-third of the board appointments are for 1-year, 2-years, or 4-year terms.²⁴

Once formed, a WCD has the power to:

- Determine policies and operating procedures;
- Own real property, including water rights, water works, and sources of water supply, and any and all real and personal property;
- Sell, lease, or dispose of water, waterworks, water rights and sources of supply of water for use within the district;
- Hire staff and contractors;
- Petition to create a subdistrict;
- Exercise the power of eminent domain;
- Construct and maintain work;
- Contract with the government of the United States or any agency thereof to construct, preserve, operate and maintain tunnels, reservoirs, diversion canals, and works, dams, and all necessary works therein;
- Acquire perpetual rights to the use of water from works and to sell and dispose of perpetual rights to use of water to public and private individuals and corporations;
- Fix rates for water not allocated to land for which it can be sold or leased;
- Invest or deposit any surplus money in the district's treasury;
- Borrow money and incur debt and to issue bonds;
- Make and enforce reasonable rules and regulations for the management, control, delivery, use and distribution of its water; and to
- Allocate and reallocate the use of water to lands within the district.²⁵

WCD may be dissolved if the district does not receive authorization from voters to levy taxes or if the board votes to file a petition for dissolution.²⁶ Filing a petition or resolution for dissolution requires a vote of three-fourths of the WCDs Directors. The petition or resolution must then be filed in the district court from which the WCD was formed.²⁷

3.3.2 Financing and Profits

A WCD is financed through taxes imposed on the constituents of the district. To comply with the Taxpayers Bill of Rights (TABOR), constituents of the WCDs must vote to approve the creation and taxing authority of the entity. Once approved by a vote of the people, subject to the requirements of TABOR, the board of a WCD has the power to levy and collect taxes and special assessments for maintaining and operating projects and to pay debts of the district.²⁸

3.3.3 Taxation

As a governmental entity, once incorporated a WCD must apply with the IRS for a Federal taxpayer identification number (TIN) also referred to as an Employer Identification Number (EIN). Using this identification number, a regional water authority is exempt from most sales tax. Additionally, as a political subdivision, WCDs are also not subject to federal income tax.²⁹

3.3.4 Ownership

In accordance with Colorado law, a WCD may purchase, lease, hold, sell, and own real property including water rights, water works, and other real property.³⁰

3.3.5 Case Study: Northern Colorado Water Conservancy District (Northern)

Northern was created in 1937 to contract with the U.S. Bureau of Reclamation (“Reclamation”) to build the Colorado-Big Thompson Project (“C-BT Project”). The C-BT Project provides supplemental water to more than 640,000 acres of irrigated farm and ranch land and about 985,000 people in portions of eight counties in Northeastern Colorado. The C-BT Project currently includes twelve reservoirs, 35 miles of tunnels, 95 miles of canals and 700 miles of transmission lines. The Project delivers more than 200,000 acre-feet annually from a collection system in the upper Colorado River basin from which water is conveyed through Alva B. Adams tunnel to Estes Park and the eastern delivery system. Construction of the Project was an enormous undertaking and highlights the potential for collaborative projects under the Water Conservancy District Act.

The Colorado legislature passed the Colorado Water Conservancy Act in 1937. Using the framework established by the Act, Northern was created later the same year by decree of the Weld County District Court. Northern negotiated a repayment contract with Reclamation, then sought and secured residents’ approval for a property tax to ensure repayment. Construction involved more than 100 separate features and was completed over a period of nearly 20 years beginning in 1938. The C-BT Project is mostly owned by the

²⁰ C.R.S. § 37-45-101, *et seq.*

²¹ C.R.S. § 37-45-109(2)(a).

²² C.R.S. § 37-45-114(1)(a).

²³ C.R.S. § 37-45-114(1)(a).

²⁴ C.R.S. § 37-45-114(1)(b).

²⁵ C.R.S. § 37-45-118(1)(a-p); C.R.S. § 37-45-146; C.R.S. § 37-45-134(1)(a-e).

²⁶ C.R.S. § 37-45-146; C.R.S. § 37-45-147.

²⁷ C.R.S. § 37-45-146.

²⁸ C.R.S. § 37-45-121.

²⁹ www.irs.gov/government-entities/federal-state-local-governments (November 1, 2019)

³⁰ C.R.S. § 37-45-118(1)(a-p); C.R.S. § 37-45-146; C.R.S. § 37-45-134(1)(a-e).

United States through Reclamation, although Northern owns certain portions of the C-BT system on the East Slope downstream of Horsetooth and Carter Lake Reservoirs.

Northern includes a Municipal Subdistrict, which was organized as a separate subdistrict of Northern by Court decree in 1970, pursuant to the Water Conservancy Act. Under the provisions of the Act, the Municipal Subdistrict is a separate and independent conservancy district with the same powers and legal standing as the parent district. The Municipal Subdistrict has authority to take on projects that are separate from those undertaken by Northern, but also has an agreement with Northern whereby Northern provides administrative, operations and maintenance functions for the Subdistrict. Among other things, the Municipal Subdistrict operates the Windy Gap Project.

The 12-member Northern Board consists of Directors from the eight counties within the Northern boundaries, appointed to 4-year terms by District Court judges. A general manager and the directors of four divisions (Engineering, Operations, Environmental Services, and Administration) all report to the Board.

Northern’s financial structure is complex and is defined by the terms of the Water Conservancy Act and Northern’s repayment contract with Reclamation. Northern can collect 1 mill levy property tax on real property located within the eight counties of its district boundary and assesses for water allotment contracts. Water allotment contracts are perpetual contracts between Northern and water users for the delivery of raw water from the C-BT Project for use within district boundaries. While the Project was constructed and is mostly owned by Reclamation, the Northern Board retains the authority, granted under the Water Conservancy Act, to establish wholesale water assessment rates. Charges for services also contribute to a diverse revenue stream which funds the operation of the C-BT Project.

3.3.6 WCD and the SPROWG Concept

WCDs can provide assurances of longevity, the capacity to adapt to future conditions and changing needs, and a “tried and true” approach to levying taxes, collecting revenue, and constructing large projects. These advantages notwithstanding, the requirements to form WCDs are highly prescriptive, rigid, and could be cumbersome to implement for the SPROWG Concept. Additionally, constraints with respect to the number, type, and geographic location of likely participants render the WCD structure a challenging match for the SPROWG Concept. The South Platte Basin which the SPROWG Concept is designed to benefit is geographically the State’s largest. It is also the State’s most populous, most urbanized, and contains the greatest number of irrigated acres. Accordingly, water users in the basin represent the greatest diversity of type and interest in the State. While probably not impossible, structuring and creating a WCD to be responsive to this diversity and the project goals would be challenging. Table 5 summarizes additional advantages and disadvantages of WCDs.

Advantages	Disadvantages
Once formed provides assurance of the longevity and stability of the organization	Requires extensive process, including public involvement and support, for formation
Ability to levy and collect taxes as well as assess special assessments allows for security in funding of operations, maintenance, and new projects.	The number of signatures required to form is based on the estimated cost of land within all participants’ service areas. With current potential participants throughout the basin, it is anticipated that the requirements could be challenging to meet.
As a local government and a political subdivision, WCDs are not subject to state or federal taxes.	Once established, it is challenging to adapt to include additional purposes.

3.4 Regional Water Authority (RWA)

Under the Colorado Constitution and statute, two or more political subdivisions (e.g. county, city, town, water, sanitation, irrigation, drainage or other special district pursuant to law) may form to create separate political entities such as special districts.³¹ Regional water authorities (“RWA”) are a type of special district created through an intergovernmental relationship. As such, they are governed by part two of Colorado Revised Statutes Title 29, “Intergovernmental Relationships”.³² A regional water authority can be formed with relative ease but must be done in accordance with Colorado law as well as each participating entities’ bylaws. The following subsection provides a brief overview of the allowances, powers, financing capabilities and tax status for regional water authorities in Colorado.

3.4.1 Formation, Powers, and Dissolution

In accordance with Colorado law, “any combination of counties, municipalities, special districts, or other political subdivisions that are each authorized to own, operate, finance, or otherwise provide public improvements for any function, service or facility may enter into a contract...to establish a separate legal entity”.³³ Additionally, any political subdivision in Colorado that is authorized to own and operate water systems or facilities is legally allowed to contract with similar entities to form a water authority.³⁴

The creation of such an entity, including a regional water authority, is established through a legally binding agreement between the participating entities. Pursuant to law, the establishing contract must include the name and purpose of the entity and provide a definition of the membership, board of directors and officers.³⁵ The contract must define the “purposes, powers, rights, obligations and responsibilities, financial and otherwise” of the participants.³⁶

A regional water authority, as defined in its incorporating documents and contracts, has the power to:

- Issue bonds, notes, or other financial obligations;
- Acquire, hold, lease and sell property;
- Employ contractors or employees;
- Enter into contracts;
- Incur debts, liabilities, or obligations;
- Sue and be sued;
- Develop water resources, systems or facilities for the benefit of the participating entities’ constituents.³⁷

As a political subdivision, regional water authorities are required to adopt an annual budget that presents a complete financial plan including proposed expenditures for administration, operation, maintenance, debt service and capital projects for the forthcoming year.³⁸

³¹ Colo Const. art. XIV § 18(2)(a) and (2)(b); C.R.S. § 29-1-202(2),

³² C.R.S. § 29-1-201.

³³ C.R.S. § 29-1-203(1)(a).

³⁴ C.R.S. § 29-1-204.2(1).

³⁵ C.R.S. § 29-1-203(1)(b)(I-II).

³⁶ C.R.S. § 29-1-203(2).

³⁷ C.R.S. § 29-1-204.2(3) (a-p).

³⁸ C.R.S. § 29-1-103(1).

3.4.2 Financing and Profits

A regional water authority may finance projects and operations through an assessment of the membership and through the issuance of bonds, notes or other financial obligations. The structure of which must be defined in the bylaws of the entity. Notably, a regional water authority may not levy a tax.³⁹

3.4.3 Taxation

As a governmental entity, regional water authorities must apply with the IRS for a Federal taxpayer identification number (TIN) also referred to as an Employer Identification Number (EIN). Using this identification number, a regional water authority is exempt from most sales tax. Additionally, as a political subdivision, regional water authorities are also not subject to federal income tax.⁴⁰

3.4.4 Ownership

Under Colorado Law, water authorities may acquire, hold, lease and sell real property.⁴¹ Operations, maintenance, and allocation of property is defined in the entities' bylaws.

3.4.5 Case Study: South Metro Water Supply Authority (SMWSA)

The South Metro Water Supply Authority (SMWSA), a Title 29 regional water authority, is currently comprised of thirteen municipalities and special water districts located in Colorado's Douglas and Arapahoe Counties. The mission of SMWSA is to identify, negotiate, and implement sustainable water projects. At the time of its incorporation, SMWSA's members were nearly entirely reliant on groundwater from the non-tributary Denver Basin aquifers. Non-tributary groundwater is defined as a closed subterranean basin that is not hydrologically connected to any surface water and thus does not naturally recharge. Facing diminishing groundwater levels, SMWSA was formed in 2004 to provide its membership a mechanism to develop other water resources including surface water rights and infrastructure.

As defined in the bylaws, SMWSA is governed by a five-member board of directors. The four largest members by constituency are each allocated a board seat while the remaining nine members elect their representative. General operating expenses for SMWSA are collected from the membership on an annual basis with the four largest members contributing their equal share of two-thirds of the total budget and the smaller members contributing their equal share of the remainder. Under the bylaws, each project pursued by SMWSA membership requires a separately negotiated intergovernmental agreement that defines project costs, beneficiaries and decision making.

At the time of its creation the SMWSA was comprised of twelve municipalities and special water districts. Since 2004, the membership of SMWSA has expanded from the original twelve members to fifteen in 2013 and has contracted to the current thirteen. Though joining SMWSA is not a simple process, the bylaws allow for additional members to join as well as leave the organization. This flexibility has allowed SMWSA the ability to continue in its mission to develop projects that meet the specific needs of its members.

Most projects that SMWSA pursues are funded, governed and implemented in accordance with a separate intergovernmental agreement among the project proponents. Since its formation in 2004, SMWSA has utilized this approach resulting in success in supporting members to reaching their sustainable water supply goals. One notable example of SMWSA's successes is the Water Infrastructure Supply Efficiency (WISE) Partnership, a joint project with Denver Water and Aurora Water. Though originally contracted through a project

³⁹ C.R.S. § 29-1-203.5(2)(b).

⁴⁰ www.irs.gov/government-entities/federal-state-local-governments

⁴¹ C.R.S. § 29-1-204.2(3) (a-p).

specific IGA under SMWSA, a separate regional water authority was eventually created for the development, implementation and operation of the WISE Partnership. The South Metro Water Infrastructure Supply Efficiency Authority (SM WISE Authority) was established in 2011 to plan, construct and operate the members portions of the WISE Partnership. The SM WISE Authority bylaws provide definition to the entities’ purpose, staffing, governance, financing and membership. SM WISE Authority is staffed through a staff sharing agreement with the SMWSA. It is governed by a separate five-person board that is comprised of members in the agreement. The organizations operation budget is financed through a cost sharing clause and while the agreement provides greater detail for how projects are financed. Water received from the WISE Partnership provides many SM WISE Authority members the water necessary to meet all projected future water supply demands.

3.4.6 RWA and the SPROWG Concept

The RWA framework is a viable option for the SPROWG concept. RWA, as most other frameworks, are defined by their executed bylaws and governed by a board of directors. Limitations within the defined bylaws determine the entities ability to adapt to future conditions and flexibility to incorporate new goals or purposes. Therefore, while the potential participants of the SPROWG concept could organize as an RWA, careful consideration while drafting the entities’ bylaws is recommended to avoid unintended consequences. While changing the bylaws of an RWA is possible, it is not a simple process and necessitates engaging legal counsel. Table 6 provides additional examples of the advantages and disadvantages of an RWA.

Table 6. RWA Advantages and Disadvantages	
Advantages	Disadvantages
Allows for a diverse group of governmental participants.	Only governmental entities may be participants.
Ability to incur debts and assess membership for funding needs.	May not levy a tax.
Ability to enter into intergovernmental agreements with other governmental entities.	Depending on the purpose and the participants, formation of a RWA can be a lengthy process.
As a governmental entity and a political subdivision, RWAs are exempt from both state and federal taxes.	

3.5 Memorandum of Understanding (MOU)

A memorandum of understanding (MOU) is generally a non-binding agreement between two or more parties. MOUs may be executed between both governmental and non-governmental entities. Often thought of as a “gentleman’s agreement”, this organizational framework is often used when a binding contract is not necessary or desired but something more substantial than a handshake is needed. Of the organizational frameworks for a regional project, MOUs are the easiest to form and dissolve. However, they also have the least power. As such, MOUs are a good option for an interim step prior to forming a more binding agreement. The following subsection provides a brief overview of the allowances, powers, financing capabilities, and tax status allowed under an MOU executed in Colorado.

3.5.1 Formation, Powers, and Dissolution

MOUs are executed by parties to the agreement. The participants in an MOU is responsible to follow their respective bylaws. MOUs may be a joint venture or partnership. They may not be treated as a separate entity for tax purposes. However, MOUs allow for ownership of assets, distributions and governance by agreement.

3.5.2 Financing and Profits

An MOU may provide documentation of how funding, profits, and losses are allocated among the signatories. These are examples of clauses in an MOU that may be binding. An MOU may only collect funds from the membership. It is not a stand-alone entity, as such it does not have the power to tax, be taxed, purchase or sell assets. Where necessary, funding is provided directly from the participants as indicated in the MOU.

3.5.3 Taxation

An MOU does not hold tax status. Participants in an MOU must comply with all pertinent laws and regulations. The tax status of the participants is not affected by entering an MOU.

3.5.4 Ownership

Ownership of any assets acquired are held by the purchasing entity or organization, not the MOU. However, an MOU may be executed between two or more entities to provide documentation of a shared asset.

3.5.5 Case Study: Eagle River Memorandum of Understanding (Eagle River MOU)

Created in 1998, the Eagle River MOU is representative of a multi-party agreement to jointly develop a water storage project that continues to function over two decades later. The Eagle River MOU was created with a purpose to facilitate collaboration between four entities in the development of a mutually beneficial joint-use water project in the Upper Eagle River Basin.⁴² Participants and signatories of the Eagle River MOU include: the cities of Aurora and Colorado Springs (the Cities); the Colorado River Water Conservation District (CRWCD); Climax Molybdenum Company (Climax); and a Vail Consortium consisting of Eagle River Water & Sanitation District, Upper Eagle Regional Water Authority and Vail Associates, Inc.

The development of the Eagle River MOU followed the failure of the parties to receive a 1041 permit from Eagle County for the Homestake II Project. It provides the framework for the ongoing collaboration of the parties to continue work to develop a storage project up to 30,000 AF in size on the lower Homestake Creek. The Eagle River MOU established a sharing of the project storage as 20,000 AF for Aurora and Colorado Springs, and, 10,000 AF for the Vail Consortium.⁴³ This multi-party agreement is an example of an MOU that continues to function toward its original purpose and includes both binding and non-binding contractual clauses.

As with most MOUs, the Eagle River MOU is largely a non-binding contract. However, certain provisions and clauses of the agreement could be construed as binding. This includes but is not limited to project cost sharing. In accordance to the original agreement, participants agreed to cost sharing for the project study. Section III, E “Study Cost Sharing” identifies the cost sharing split as 25% by the Cities, 25% by Climax, 25% by the Consortium, and 25% by the River District. For subsequent phases, including construction, operation and maintenance of any developed project, the MOU includes a non-binding agreement that the participants will “seek to reach an agreement regarding the sharing of costs...”⁴⁴

Over two-decades since it was enacted, the Eagle River MOU continues to provide a foundation for the collaboration of the original four entities on a joint-project in the Eagle River Basin. In fact, the projects listed in the MOU are identified in respective planning documents as methods for meeting anticipated water supply

⁴² “Memorandum of Understanding Among the Cities of Aurora and Colorado Springs, Colorado River Water Conservancy District, Climax Molybdenum Company and the Vail Consortium” (1998)

⁴³ “

⁴⁴ Eagle River MOU § IX.

gaps in multiple river basins. For example, the Colorado Water Plan, the Colorado Basin Implementation Plan (CBIP), South Platte Basin Implementation Plan (SPBIP) and Arkansas Basin Implementation Plan (ABIP) all identify the Eagle River MOU projects and methods as ways by which identified water supply gaps can partially be closed.⁴⁵

3.5.6 MOU and the SPROWG Concept

Execution of an MOU between two or more parties provides a written agreement of the relationship, partnership or project. While largely a non-binding agreement, MOUs may include binding elements. As such, an MOU is a viable option for the SPROWG Concept. However, if chosen it is advised that an MOU be used as an interim step only. For joint parties seeking to organize under a framework for a specific project or purpose an MOU provides an easy, fast, and relatively straight forward option to record the intent and responsibilities of the parties. However, the lack of structure makes MOUs challenging to provide the level of definition necessary for the planning, design, construction, and operation of a project like the SPROWG Concept. Table 7 provides a partial list of the advantages and disadvantages of MOUs.

Table 7. MOU Advantages and Disadvantages	
Advantages	Disadvantages
Easy to form with agreement between two or more parties.	Largely non-binding contracts that can include legally binding elements.
Easy to dissolve	Does not provide long-term certainty.
A common interim framework due to the ease of formation, adaptability to future conditions, flexibility to meet additional needs and inclusive nature.	Though some elements of an MOU may be legally binding, the framework provides little if any legal protections for projects or participants.
Highly inclusive as governmental and non-governmental entities alike may participate.	Easy for participants to default due to non-binding nature.

3.6 Intergovernmental Agreement (IGA)

An intergovernmental agreement (IGA) is a legally binding agreement between two or more existing governmental or quasi-governmental entities. In accordance to Colorado law, IGAs describe the relationship, define authority, and seek to achieve efficiencies through cooperation. An IGA may be used as a contracting mechanism for many purposes including but not limited to cooperative planning, resource sharing, joint planning commissions, and joint projects. The following subsection provides a brief overview of the allowances, powers, financing capabilities and tax status for IGAs executed between two or more governmental entities in Colorado.

3.6.1 Formation, Powers, and Dissolution

Article XIV, section 18 of Colorado’s constitution states that political subdivisions may cooperate and contract with one another or with the government of the United States to “provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or this incur[ment] of debts.”⁴⁶ This section provides the basis for the allowance of

⁴⁵ Source.

⁴⁶ Colorado Constitution, Article XIV, Section 18 (2)(a).

governmental entities to collaborate. Further, Colorado's Local Government Land Use Control Enabling Act provides the express authority for local governments to cooperate. It reads, in part: "Local governments are authorized and encouraged to cooperate or contract with other units of government...for the purposes of planning or regulating the development of land...they may provide through intergovernmental agreements for the joint adoption by governing bodies, after notice and hearing, of mutually binding and enforcement comprehensive development plans for areas within their jurisdiction".⁴⁷ It is through the Colorado Constitution and the Local Government Land Use Act that authorization is given for government and quasi-government entities to contract.

3.6.2 Financing and Profits

An IGA is not a separate governmental entity but a binding contract between two or more governmental entities to collaborate. As such, the participants and signatories of an IGA must provide funding in accordance with their respective bylaws. As a contract, an IGA defines how costs, profits and losses are allocated among the signatories.

3.6.3 Taxation

An IGA is not a separate entity, rather it is a contract between two or more governmental entities. As such, taxation and tax status apply to each of the signatories or participants and not to the contract itself.

3.6.4 Ownership

Ownership of any assets acquired under an IGA is determined through the original contractual agreement or through an amended agreement.

3.6.5 Case Study: Water Infrastructure Supply Efficiency (WISE) Partnership IGA

The WISE Partnership is an example of the use of multiple organizational frameworks throughout a project's development. Formed with the WISE Water Delivery Agreement (WISE WDA), the WISE Partnership is a regional water supply project between Aurora Water, Denver Water and the South Metro WISE (SM WISE) Authority. Formed in 2013, the SM WISE Authority is comprised of ten municipalities and special water districts located in Colorado's Douglas and Arapahoe Counties.⁴⁸ The members include: Centennial Water and Sanitation District, Cottonwood Water and Sanitation District, Dominion Water and Sanitation District, Inverness Water and Sanitation District, Meridian Metropolitan District, Parker Water and Sanitation District, Pinery Water and Wastewater District, Rangeview Metropolitan District, Stonegate Village Metropolitan District, and the Town of Castle Rock. Historically, the SM WISE Authority members have been reliant on non-renewable Denver basin groundwater. The partnership provides the SM WISE Authority participants an alternative to their Denver basin groundwater system. Within the terms of the WISE WDA, Aurora Water and Denver Water commit to delivering over 70,000 AF of their existing South Platte River rights to the SM WISE Authority on a 10-year rolling average.

The WISE WDA developed from a series of cooperative agreements between the three parties including the WISE MOU in 2008 and the WISE IGA in May 2009. As the project progressed, these organizational frameworks met the needs of the participants. The WISE MOU provided the SMWSA (currently the SM WISE Authority) the ability to join the on-going investigation by Aurora Water and Denver Water for a joint water supply

⁴⁷ C.R.S. § 29-20-105(1); C.R.S. § 29-20-105 (2)(a).

⁴⁸ SMWSA is a regional water authority that serves thirteen municipal and special water districts in Douglas and Arapahoe County. SMWSA represented ten of its membership in the early development of the WISE Partnership. Prior to executing the WISE WDA, these ten entities formed the SM WISE Authority. The SM WISE Authority, not SMWSA, is a signatory to the WISE WDA.

project. With limited liability, the WISE MOU began to define the relationship between the three parties to jointly investigate water supply and infrastructure opportunities. As the investigation progressed, the participating entities desired greater definition and security than the MOU could provide. While the WISE MOU identified a conceptual future project, the WISE IGA provided cohesion between the three parties defining their relationship. In addition to providing a legally binding contract to jointly fund the continued engineering investigations, the WISE IGA provided the participants a mechanism to continue negotiations that would result in the WISE WDA.

3.6.6 IGA and the SPROWG Concept

An IGA is a legally binding contract executed between two or more governmental entities that includes a defined purpose as well as the participants’ roles, responsibilities, and benefits. Unlike MOUs, IGAs are legally binding contracts. So long as the bylaws allow, any governmental entity may enter an IGA. The ease with which an IGA is formed is dependent on the parties involved, the purpose of the project, and other potential clauses like project financing. An IGA is a viable option for the SPROWG concept. However, it is advised that an IGA be used as an interim step only. Like MOUs, IGAs lack much of the organizational structure necessary for the planning, design, construction, and operation required for a project like the SPROWG concept. However, the formation of an IGA can provide the structure necessary at the early stages of a project and allow participants to delay the creation of a standalone entity to a later date. Table 8 provides a partial list of the advantages and disadvantages of IGAs.

Table 8. IGA Advantages and Disadvantages	
Advantages	Disadvantages
As a legally binding contract between two or more parties, an IGA provides some legal protections for projects and participants.	While IGAs can exist into the future, protections are not solid or long-lasting in nature.
A good interim organizational framework as it provides project participants a binding agreement which can be superseded by a new organizational framework in the future.	An IGA is not a separate entity. As such, all provisions must be executed by the participants in accordance to the agreement.
Formation is relatively simple requiring negotiations between the related parties.	Formation of an IGA requires devoting resources toward legal counsel of each entity.

Section 4: Comparison of Organizational Frameworks

This section provides a concise comparison of the five types of organizational frameworks that were selected as having the most relevance to a regional Colorado water supply project like SPROWG. This section is not intended to provide a recommendation for a framework or a conclusion as to which framework best meets the needs of a future project. Rather, the comparison is based on the qualities potential project participants could consider important to supplement the characteristics documented in the organizational framework matrix (Section 1).

4.1 Qualitative Analysis

The section that follows provides a comparison of the organizational frameworks based on the following criteria:

- Adaptability – ability to adapt to future changes including but not limited to participants, project components, and project operations.
- Flexibility – ability to change the organization to accomplish different or additional goals.
- Ease of formation—ease with which the organization can be formed.
- Long-term certainty – ability of the organization to provide confidence that it will be able to deliver its identified purpose in future years.
- Legal protections – ability of the organization to provide legal protections for its participants as well as for all developed projects.
- Inclusiveness – ability to accommodate a variety of types of project participants.
- Interim effectiveness – ability to serve as an interim organizational framework during project development, permitting and design when project concepts and participants may still be in flux.

The following qualitative analysis is intended to characterize each framework’s ability to meet the criteria above. Scoring of the frameworks against the criteria was conducted on ten-point scale with a score of 1 representing a complete inability to meet the criteria and a score of 10 indicating that the criteria is completely met. Scores of 3 or less are considered low, 4-7 medium, and 8-10 high. Scores are depicted as red, yellow, or green to represent the score as low, medium, or high, respectfully. The rankings provided represent a broad interpretation of the legally allowable nature of each organizational framework described more completely in Section 2.

4.1.1 Qualitative Analysis: Adaptability

For the purpose of this technical memorandum, the adaptability is defined as the ability of an organizational framework to adapt to future changes including but not limited to participation, project components and project operations. Each organizational framework was individually assessed for its ability to adapt to future changes. Each framework received a score of 1 to 10 with 1 representing a complete lack of adaptability and 10 representing an ability to adapt to any future change.

The qualitative scores assigned to each organizational framework for adaptability are shown in Table 9. The following are qualitative justifications for the assigned score based on the framework’s greatest allowable attributes.

Table 9. Qualitative Analysis- Adaptability		
Organizational Framework	Score	Justification/Reasoning
Nonprofit Corporation	4	Medium score of 4. An NPC may adapt the organization to address future changes, such as participation, project components and project operations. However, doing so must comply with the original intent of the NPC at the time of filing for incorporation. If the change is outside of the original intent this would be significantly more challenging.
Existing Government	4	Medium score of 4. Existing governments are subject to the bylaws of the parent district. As such, they are only as adaptable as the district's bylaws allow. Any change that is outside of the district's bylaws would be extremely challenging to complete.
Water Conservancy District	4	Medium score of 4. The adaptability of a WCD is determined by the original bylaws of the district. Any changes must fall within the allowances set in the bylaws. Thus, it may be extremely challenging or impossible for a WCD to adapt to a change that is outside of the original bylaws.
Regional Water Authority	6	Medium score of 6. RWAs can adapt to future changes as dictated by their bylaws. However, any change desired that is outside of the bylaws will require additional effort. RWAs can be more adaptable than other frameworks (NPC, EG, WCD) due to the structure of the organization, the legal allowances and requirements for change.
Memorandum of Understanding	10	High score of 10. An MOU may be modified to incorporate additional changes through an amendment. Unless otherwise specified in the amendment, this is likely to be non-binding. This score could be medium, depending on the change that is being adapted to.
Intergovernmental Agreement	8	High score of 8. IGAs may be modified to accommodate additional changes through an amendment. The score is reflective of the binding nature of an IGA.

Figure 4 provides a graphical representation of the qualitative scores for adaptability.

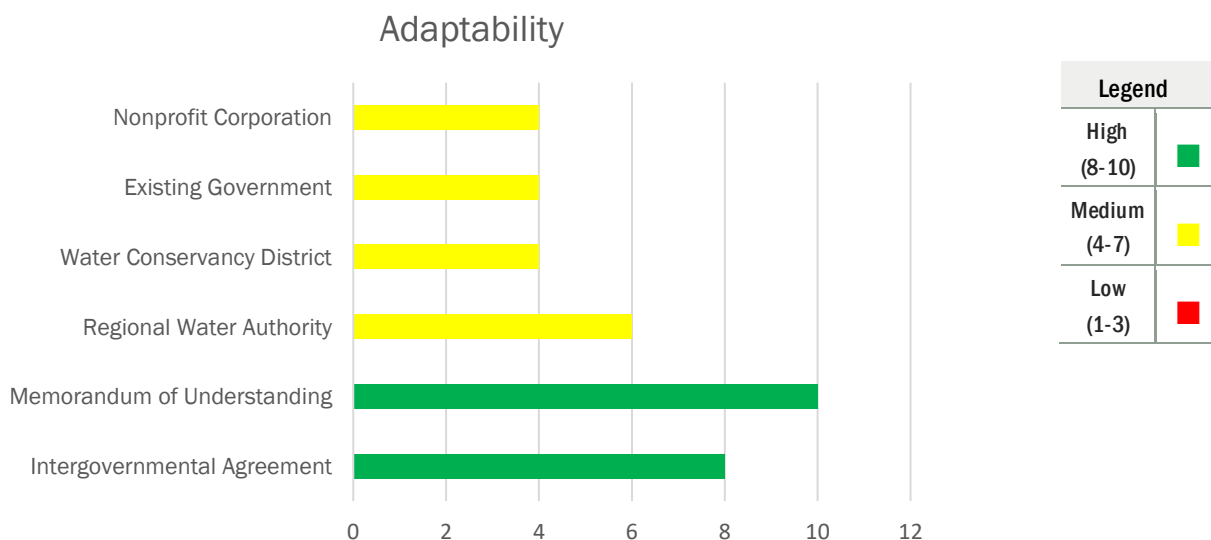


Figure 4. Qualitative assessment of organizational frameworks' adaptability

4.1.2 Qualitative Analysis: Flexibility

For the purpose of this technical memorandum, flexibility is defined as the capacity of a given organizational structure to change to accomplish different or additional goals. Each organizational framework was individually assessed for its flexibility. Each framework received a score of 1 to 10 with 1 representing a complete lack of flexibility and 10 representing a complete flexibility to incorporate to any future change.

The qualitative scores assigned to each organizational framework for flexibility are shown in Table 10. The following are qualitative justifications for the assigned score based on the framework’s greatest allowable attributes under current laws.

Table 10. Qualitative Analysis- Flexibility		
Organizational Framework	Score	Justification/Reasoning
Nonprofit Corporation	4	Medium score of 4. An NPC is somewhat flexible to change the organization to accomplish different or additional goals so long as the intent of the organization, as stated in the bylaws and incorporation documents continue. Should the desired organizational change be outside the scope of the original intent of the organization a much more challenging process could be required to ensure the viability of the organization as well as future tax status.
Existing Government	2	Low score of 2. A subdistrict is only as flexible to incorporate different or additional goals as the district’s bylaws allow. Thus, flexibility may be higher or lower depending on the district type and its bylaws. Score could be higher under certain types of existing government.
Water Conservancy District	2	Low score of 2. A WCD’s intent as stated in the filings to incorporate and bylaws is not flexible to change. A change to accomplish different or new goals that are not within the scope of the original incorporating documents or bylaws could require additionally cumbersome measures, potentially a vote of the people.
Regional Water Authority	4	Medium score of 4. RWAs are more flexible to incorporate different or new goals. The level of effort necessary to accomplish this task is determined by the incorporation documents, whether the goal is within the original scope of the organization, the approval requirements as stated in the bylaws, among others.
Memorandum of Understanding	9	High score of 9. So long as it is agreed upon by all signing parties, an MOU may be amended to accomplish different or additional goals. The score may be lower depending on the type of change and the participants’ organizational changes needed to approve the amendment.
Intergovernmental Agreement	8	High score of 8. So long as it is agreed upon by all signing parties, an IGA may be amended to accomplish different or additional goals. The score may be lower depending on the type of change and the participants’ organizational changes needed to approve the amendment.

Figure 5 is a graphical representation of the qualitative scores assigned to each organizational framework.

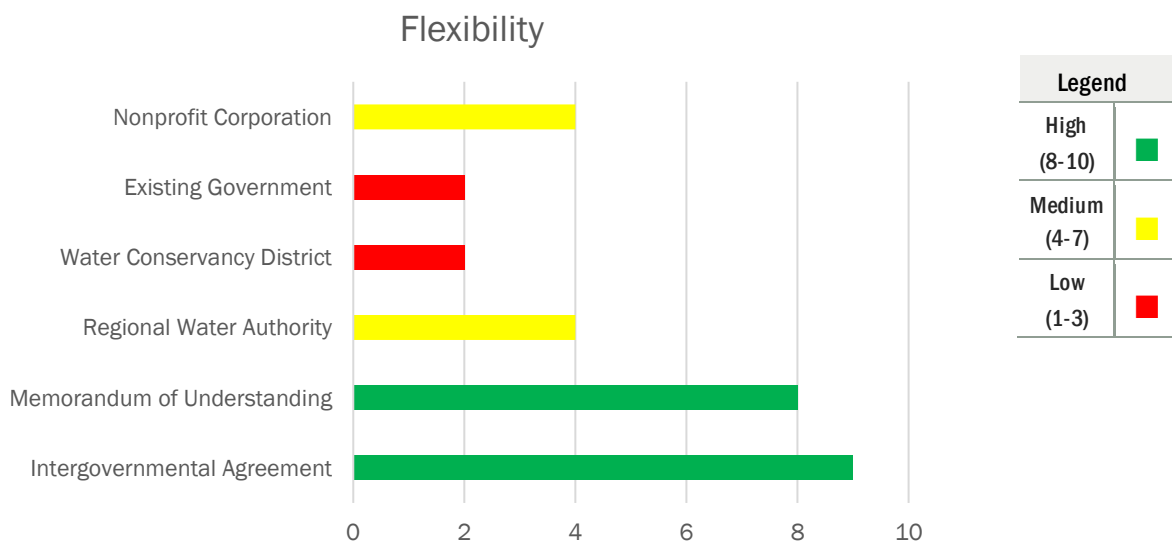


Figure 5. Qualitative assessment of organizational frameworks’ flexibility.

4.1.3 Qualitative Analysis: Ease of Formation

For the purpose of this technical memorandum, the ease of formation is the level of effort required to form the entity. Each organizational framework was individually assessed for its ease of formation. Each framework received a score of 1 to 10 with 1 representing a complete lack of adaptability and 10 representing an ability to adapt to any future change.

The qualitative scores assigned to each organizational framework for ease of formation are shown in Table 11. The following are qualitative justifications for the assigned score based on the framework’s greatest allowable attributes under current laws.

Table 11. Qualitative Analysis- Ease of Formation		
Organizational Framework	Score	Justification/Reasoning
Nonprofit Corporation	6	Medium score of 6. Score is due to the potentially lengthy process to prepare and file articles of incorporation.
Existing Government	6	Medium score of 6. The formation of a subdistrict must follow the bylaws of the district. Thus, the ease of formation may be higher or lower depending on the district’s bylaws.
Water Conservancy District	2	Low score of 2. An WCD is challenging to form due to the strict legal requirements. This score is due to the process for formation under Colorado law which requires three key steps: a petition, ruling by a district judge and a passing ballot initiative to allow the district to assess taxes. Additionally, the petition must be signed by a representative number of landowners and irrigators within the district, as determined by the estimated cost of land.
Regional Water Authority	5	Medium score of 5. An RWA may be harder or easier than the rating. Determining factors for the ease at which a water authority is created include but are not limited to the number of participants and the participants’ bylaws.
Memorandum of Understanding	9	High score of 9. MOUs have no legal requirements for creation. However, execution of an MOU is reliant on the participating entities’ bylaws.
Intergovernmental Agreement	8	High score of 8. IGAs have minimal legal requirements for formation. As with MOUs, the ease of formation is reliant on the bylaws of the participating entities. Additionally, IGAs are fully binding contracts. As such, they are likely to take additional time to form due to negotiations between the parties.

Figure 6 is a graphical representation of the qualitative scores for the ease at which an entity is formed.

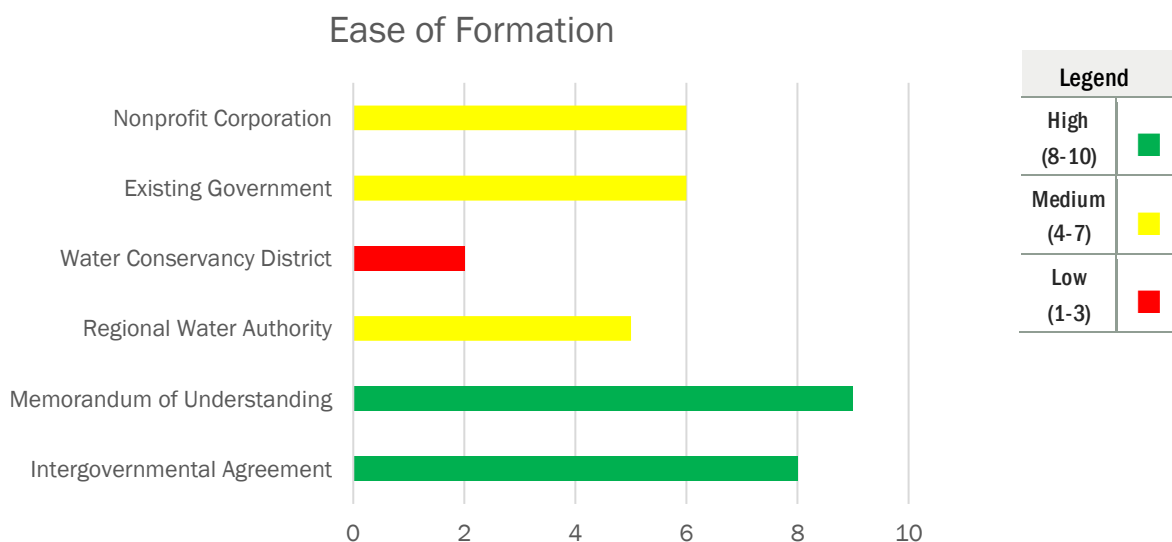


Figure 6. Qualitative assessment of organizational frameworks’ ease of formation.

4.1.4 Qualitative Analysis: Long-term Certainty

For the purpose of this technical memorandum, long-term certainty is the ability of the organization to instill confidence that it will be able to deliver its identified purpose in future years. Each organizational framework was individually assessed for its long-term certainty. Each framework received a score of 1 to 10 with 1 representing a complete lack of capacity to instill confidence in long-term certainty and 10 representing a robust capacity to instill confidence in long-term certainty.

The qualitative scores assigned to each organizational framework for long-term certainty are shown in Table 12. The following are qualitative justifications for the assigned score based on the framework’s greatest allowable attributes under current laws.

Table 12. Qualitative Analysis-Long-term Certainty		
Organizational Framework	Score	Justification/Reasoning
Nonprofit Corporation	8	High score of 8. So long as the purpose and funding remain (and the articles provide for perpetual existence), an NPC has a high level of certainty of existing in the future.
Existing Government	9	High score of 9. Existing government will continue to exist so long as the parent government continues to exist, and the sub district’s purpose continues to be served.
Water Conservancy District	9	High score of 9. Once formed a WCD has a high certainty of longevity. However, WCDs are not infallible. For example, WCD may be dissolved should a vote of the people remove their taxing authority, the board of directors’ votes to dissolve.
Regional Water Authority	7	Medium score of 7. The longevity of an RWA is determined by the founding purpose continuing to serve the needs of the participants. However, the long-term certainty of an RWA is high due to its flexibility to incorporate future organizational needs and the ability to adapt to future circumstances.
Memorandum of Understanding	2	Low score of 2. Though examples exist of MOUs that have continued to exist for decades, it is unlikely that most MOUs will follow suit. This is due to the defining characteristic of an MOU as an unbinding agreement. It is more likely that an MOU will develop into a more structured organizational framework than for it to continue to function into the future.
Intergovernmental Agreement	4	Medium score of 4. As a legally binding contract between two or more governmental entities, a slightly greater long-term certainty exists. This said, long-term certainty relies on the continued existence and participation of the members.

Figure 7 provides a graphical representation of the qualitative scores for long-term certainty.

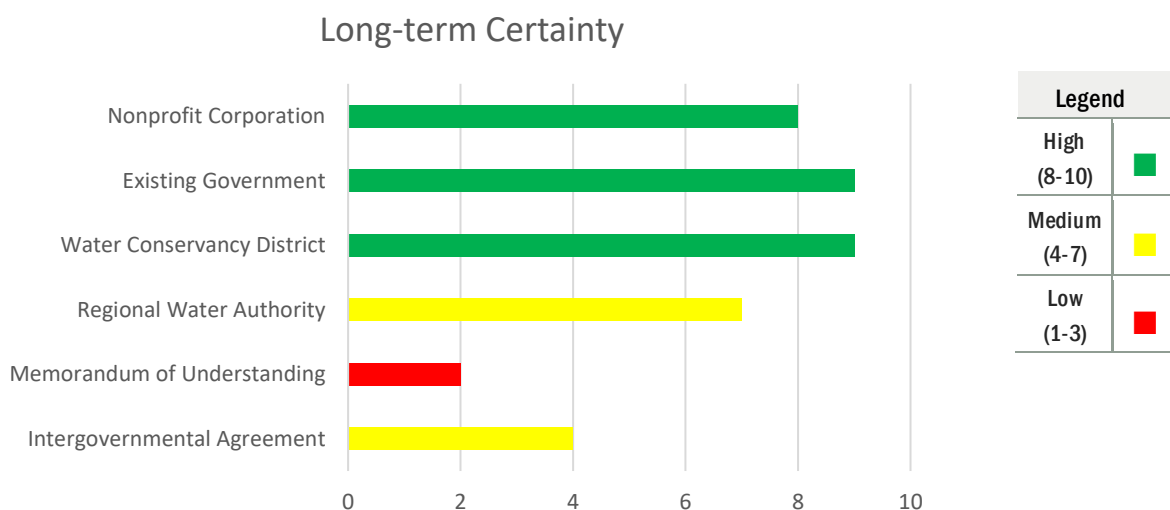


Figure 7. Qualitative assessment of organizational frameworks’ long-term certainty.

4.1.5 Qualitative Analysis: Legal Protections

For the purpose of this technical memorandum, legal protections are defined as the ability of the organization to provide legal protections for its participants as well as for all developed projects. Each organizational framework was individually assessed for its legal protections. Each framework received a score of 1 to 10 with 1 representing a complete incapacity to offer legal protection against liabilities that may arise from the planning, financing, development, and operation of a regional water management concept like SPROWG, and 10 representing robust capacity to offer these types of legal protections.

The qualitative scores assigned to each organizational framework for legal protections are shown in Table 13. The following are qualitative justifications for the assigned score based on the framework's greatest allowable attributes under current laws.

Table 13. Qualitative Analysis- Legal Protections		
Organizational Framework	Score	Justification/Reasoning
Nonprofit Corporation	8	High score of 8. An NPC can provide legal indemnification of its participants, staff, and projects so long as actions are within the greater laws of the land. Note that NPCs do have the right to sue and be sued.
Existing Government	8	High score of 8. An existing government must follow and comply with all laws and regulations as well as the by-laws of the parent district. If this is done, the assigned staff and projects are provided legal protections. Participants generally are protected legally as a part of the organization and likely under their individual organization as well. Note that existing governments do have the right to sue and be sued.
Water Conservancy District	8	High score of 8. A WCD has legal protections as defined under Colorado Law. Note that WCDs do have the right to sue and be sued.
Regional Water Authority	8	High score of 8. The legal protections of an RWA are dependent on those defined in the letters of incorporation and the entities bylaws. Generally, an RWA provides legal protections for its board, staff, and projects. Note that RWAs do have the right to sue and to sue.
Memorandum of Understanding	2	Low score of 2. The legal protections of an MOU are limited for both participants and the projects. The greatest legal protections that an MOU provides is as successful mechanism to limit legal action between parties, as for cooperative purposes.
Intergovernmental Agreement	3	Low score of 3. An IGA is a legally binding contract between two or more governmental entities. Legal protections of an IGA alone are only as great as the clauses included. Participating entities are protected by their respective organization not by the IGA.

Figure 8 provides a graphical representation of the qualitative scores for legal protections.

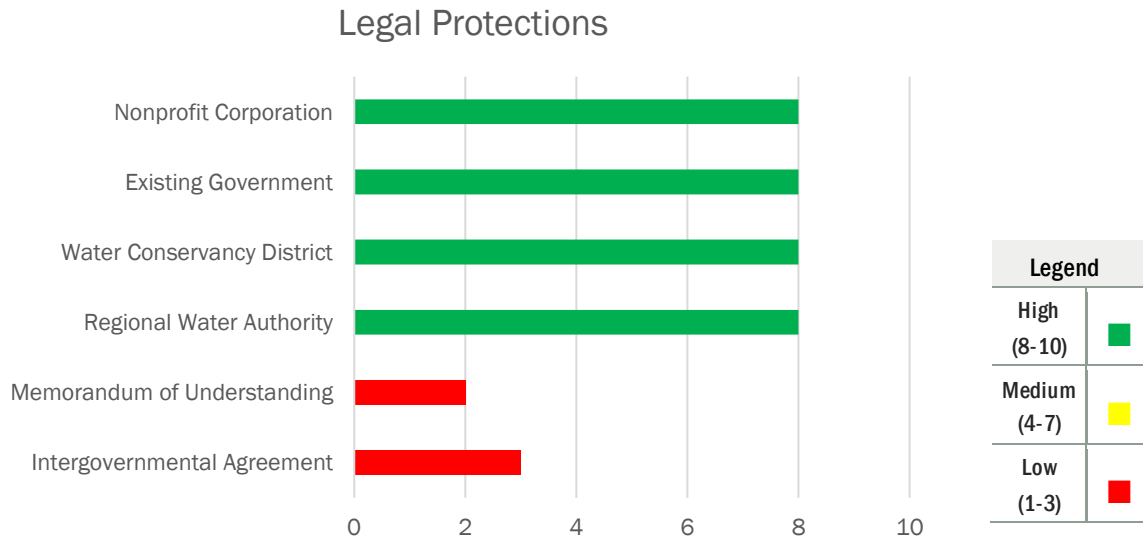


Figure 8. Qualitative assessment of organizational frameworks' legal protections.

4.1.6 Qualitative Analysis: Inclusiveness

For the purpose of this technical memorandum, inclusiveness is the ability of an organizational framework to accommodate a variety of types of project participants. Each organizational framework was individually assessed for its inclusiveness. Each framework received a score of 1 to 10 with 1 representing a complete lack of inclusiveness and 10 representing a high level of ability to include diverse members.

The qualitative scores assigned to each organizational framework for inclusiveness are shown in Table 14. The following are qualitative justifications for the assigned score based on the framework's greatest allowable attributes under current laws.

Organizational Framework	Score	Justification/Reasoning
Nonprofit Corporation	10	High score of 10. NPCs allow for participation of individuals, governmental, and non-governmental entities. Additionally, no constraints exist for the geographical area of participants.
Existing Government	4	Medium score of 4. The inclusiveness of existing government is limited the district's as defined in the bylaws and to governmental entities only. Thus, including entities outside of the district's boundaries is not allowed unless the service area is expanded.
Water Conservancy District	4	Medium score of 4. The inclusiveness of a WCD is determined at the time it files a petition for creation. WCDs only allow for membership of governmental entities. However, beneficiaries (e.g., contract holders) may be public or private.
Regional Water Authority	7	Medium score of 7. The inclusiveness of an RWA is determined by its bylaws and letters of incorporation. RWAs only allow governmental entities to be participants. This score would be lower if the SPROWG Concept includes non-governmental entities as direct participants (e.g., ditch companies or NGOs).
Memorandum of Understanding	10	High score of 10. MOU allow the greatest inclusiveness with allowances for individuals, governmental and non-governmental entities alike.
Intergovernmental Agreement	7	Medium score of 7. An IGA allows for participation of governmental entities only.

Figure 9 provides a graphical representation of the qualitative scores for inclusion.

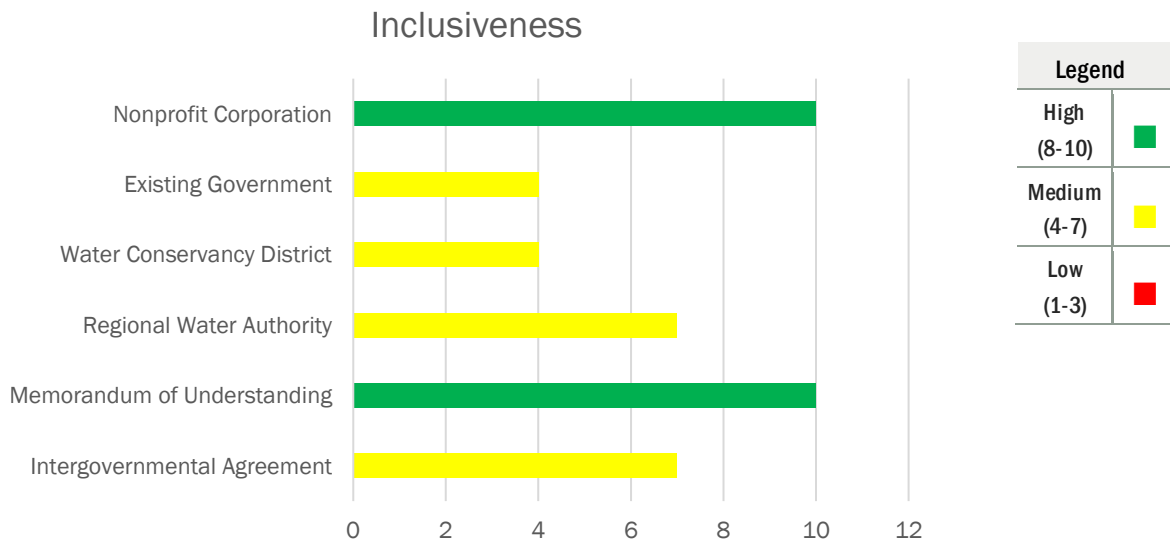


Figure 9. Qualitative assessment of organizational frameworks' inclusiveness.

4.1.7 Qualitative Analysis: Interim Effectiveness

For the purpose of this technical memorandum, interim effectiveness is the ability of an organizational framework to serve as an interim organizational framework during project development, permitting and design when project concepts and participants may still be in flux. Each organizational framework was individually assessed for its interim effectiveness. Each framework received a score of 1 to 10 with 1 representing a very limited or nonexistent capacity for interim effectiveness and 10 representing a robust capacity of interim effectiveness.

The qualitative scores assigned to each organizational framework for interim effectiveness are shown in Table 15. The following are qualitative justifications for the assigned score based on the framework's greatest allowable attributes under current laws.

Organizational Framework	Score	Justification/Reasoning
Nonprofit Corporation	5	Medium score of 5. A NPC is better suited as a permanent framework rather than interim due to the effort required to create and/or dissolve the NPC, and the challenges associated with any changes to the entity.
Existing Government	5	Medium score of 5. The interim effectiveness of existing government or subdistrict is determined by that of the district's bylaws for creating and dissolving a subdistrict. This score could be Low or High depending on this factor.
Water Conservancy District	2	Low score of 2. WCDs require a lengthy process to form including a vote of the people. This alone makes WCDs unlikely candidates for an interim framework.
Regional Water Authority	4	Medium score of 4. RWAs require a lengthier filing process for creation as well as significant negotiation between participants for creation. This when combined with the greater adaptability, flexibility and protections of an RWA make it a better candidate for a long-term framework rather than an interim.

Table 15. Qualitative Analysis- Interim Effectiveness		
Organizational Framework	Score	Justification/Reasoning
Memorandum of Understanding	10	High score of 10. MOUs provide a strong basis from which participants can reach written agreement while making less of a long-term binding commitment. As such, MOUs are perfect candidates for an interim framework. Success as an interim framework can be enhanced by including a clause in the MOU for triggers in which a new organizational framework will be formed, to what purpose as well as the potential type.
Intergovernmental Agreement	10	High score of 10. IGAs provide a strong basis from which participants can reach written agreement and serve as a long-term binding commitment with the ability to evolve into a more structured organization in the future. As such, IGAs are perfect candidates for an interim framework. Success as an interim framework can be enhanced by including a clause in the IGA for triggers in which a new organizational framework will be formed, to what purpose as well as the potential type.

Figure 10 provides a graphical representation of the qualitative scores for interim effectiveness.

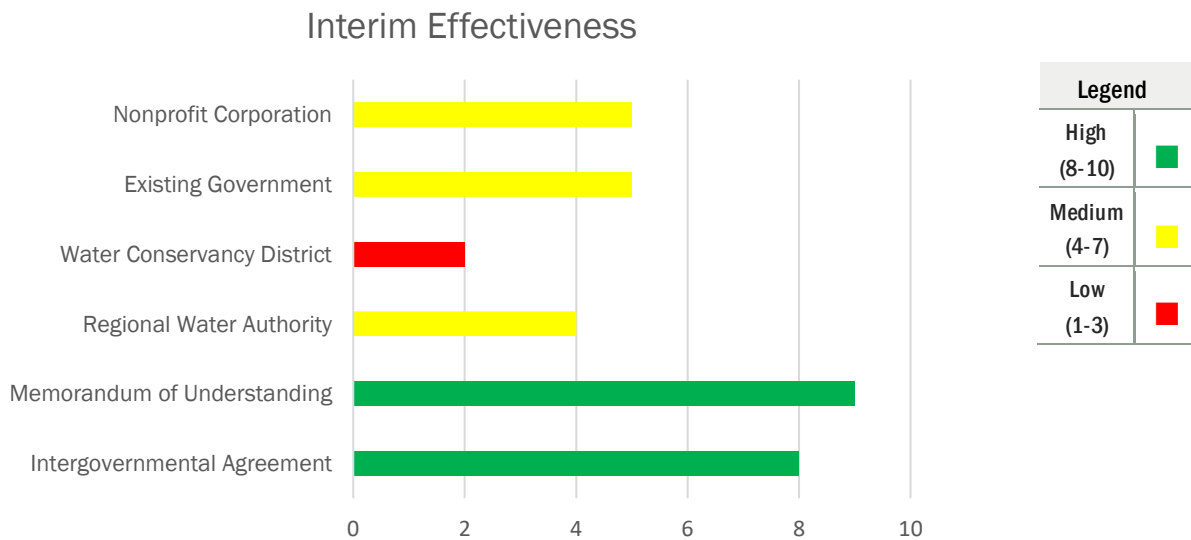


Figure 10. Qualitative assessment of organizational frameworks’ inclusiveness

4.2 Conclusion

Each organizational framework provides distinct benefits and limitations. While some organizational frameworks, such as MOUs and IGAs, are better suited for interim measures, other frameworks are better suited for more permanent measures as they provide greater structure but are harder to form. While some organizational frameworks, such as MOUs and IGAs, seem better suited to serve the organizational needs of a regional water management concept like SPROWG at its inception for an interim period of fairly short duration thereafter, other frameworks seem better suited to meet organizational needs and imperatives over the longer term. These other frameworks, including NPCs, subdistricts, WCDs, and RWAs, offer relative advantages and disadvantages, but in general they provide greater structure and likely are more resilient than less formal frameworks. Therefore, prospective SPROWG participants and beneficiaries may want to consider both interim and longer-term organizational structures. Ultimately, the best framework for a project is that which meets the participants’ interests and needs, as determined by the participants themselves, and

no one else. This requires a careful consideration of the advantages and disadvantages of each framework as it relates to the project specifics.

Table 16 provides a cumulative look at each organizational framework and its ability to meet the identified criteria.

Organizational Framework	Adaptability	Flexibility	Ease of formation	Long-term certainty	Legal protections	Inclusiveness	Interim effectiveness
Nonprofit Corporation	Medium	Medium	Medium	High	High	High	Medium
Existing Government	Medium	Low	Medium	High	High	Medium	Medium
Water Conservancy District	Medium	Low	Low	High	High	Low	Low
Regional Water Authority	Medium	Medium	Medium	High	High	Medium	Medium
Memorandum of Understanding	High	High	High	Low	Low	High	High
Intergovernmental Agreement	High	High	High	Medium	Low	Medium	High

High (8-10)	High
Medium (4-7)	Medium
Low (1-3)	Low