

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Ted Kowalski and Linda Bassi

DATE: September 4, 2009

SUBJECT: **Agenda Item 25, September 15-16, 2009 Board Meeting**
Water Supply Protection Section – Wild and Scenic
Rivers

Bill Ritter, Jr.
Governor

Harris D. Sherman
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

Background

As we have discussed at a number of previous meetings, there are several different BLM and USFS field offices that have initiated NEPA analysis through their planning processes, including considering whether certain river segments are appropriately “suitable” for designation under the Wild and Scenic River Act. With regard to these processes, the CWCB Staff (Ted Kowalski and Linda Bassi) have continued to attend meetings with the various stakeholders, who include environmental interests, local governments, recreational interests, federal agencies, state agencies, and water providers, to explore a variety of alternatives for protecting the Outstandingly Remarkable Values (“ORVs”) associated with these river segments without affecting Colorado’s ability to fully use its compact entitlements. Stakeholder groups are currently discussing alternatives in the Dolores River basin (“DRD group”), the San Juan River basin (separated into five different basins) (“RPW group”), the Upper Colorado River basin (“the Upper Colorado group”), and the lower Gunnison, Dolores, and Colorado River basins (“the lower Colorado group”). Each group is at a different stage in the process and an update on each group’s efforts is provided below.

This past legislative session, the General Assembly enacted Senate Bill 09-125, which created the Wild and Scenic Rivers Fund (“Fund”) and continuously appropriated \$400,000 annually from the CWCB’s Construction Fund to develop protection of river-dependent resources as an alternative to wild and scenic river designation. This Fund refreshes up to \$400,000 each year; however, the “Board shall review the purpose of the Fund annually and hereby is authorized to cease providing moneys in the following year if, in its discretion, the Board determines that the purposes for which the Fund was established has ceased. The Board may set terms and conditions as it deems appropriate concerning the annual expenditures of moneys from the Fund.” Additional background is provided below.

Staff Recommendation

The Staff recommends that the Board provide direction on whether to adopt criteria and guidelines, and what to include within those criteria and guidelines. In addition, the Staff recommends that the Board provide feedback on the current status of the various processes.

Additional Background on the Various Processes and Criteria and Guidelines

The various stakeholder processes are in very different stages. Following is a brief description of the current status of the various processes, as well as a brief discussion about potential criteria and guidelines.

Upper Colorado Stakeholder Group Update

The Upper Colorado Stakeholder Group has made significant progress on developing a plan for submission to the BLM. The current draft plan would include ORV descriptions and indicators that are not flow-based and that could not be used as a regulatory mechanism to thwart proposed projects. In addition, the draft plan includes resources guides, some of which are flow-based, but these are provisional and they are not pass-fail measures (i.e. the fishing flows are based on a running five year average). Recently the group had a difficult discussion about the recreational boating resource guides, but may have found a way to resolve this issue. The group is discussing the possibility of including “poison pill” language within the plan that would be tied to a successful resolution of the universal negotiations on Denver’s and Northern Colorado Water Conservancy’s firming projects. If the universal negotiations related to the firming projects fail, then either West slope or East slope interests (or both) could invoke the “poison pill” language (the West slope interests because the flow guides are based on PACSIM, or the East slope interests because the flow guides are higher than they deem necessary to protect the ORVs). The group may ask the BLM for a modest additional extension of time (30-60 days) to work in good faith toward negotiated recreational boating flow guides, but it is unclear whether this will be necessary. The Staff may bring a final plan to the Board for approval at the November Board meeting if the group is able to finalize a plan by then.

Lower Dolores River Management Plan Update

The Lower Dolores Management Plan Working Group (“Dolores Group”) is working in conjunction with the Dolores River Dialogue¹ (“DRD”) to develop alternatives to Wild and Scenic designation on the Dolores River below McPhee Dam. The proposed alternatives will be submitted to the San Juan Public Lands Center (“SJPLC”), which is comprised of both the Bureau of Land Management (“BLM”) and U.S. Forest Service (“USFS”), as part of the San Juan Public Lands Land Management Plan Revision process. While the January 2008 Draft Plan Revision contained a preliminary finding of suitability for the Dolores River from McPhee Dam to Bedrock, it also recognized the role of the DRD in finding alternatives to Wild and Scenic designation, stating that: “Should the DRD make substantial progress in identifying and securing needed protections of the ORVs, the recommendations of the group could be used to supplement or replace this preliminary finding of suitability.” To that end, the Dolores Group and the DRD will work with the SJPLC to update the 1990 Dolores River Corridor Management Plan, and to develop alternative methods of protecting identified Outstanding and Remarkable Values (“ORVs”) on the Dolores River. The updated Plan will be referred to as the Lower Dolores River Management Plan.

¹ The Dolores River Dialogue is a collaborative group of conservation, water management, land management, recreational and governmental representatives working since January 2004 to explore opportunities to manage McPhee Reservoir to improve downstream ecological conditions while honoring water rights and protecting agricultural and municipal water supplies and the continued enjoyment of rafting and fishing. The group includes the Dolores Water Conservation District, the Montezuma Valley Irrigation Company, the Division 7 Engineer, the Bureau of Reclamation, the Colorado Division of Wildlife, San Juan Public Lands, Montezuma County, Dolores County, the Colorado Water Conservation Board, Trout Unlimited, The Nature Conservancy, Fort Lewis College and the Dolores River Coalition.

The Dolores Group includes diverse stakeholders with many perspectives and interests in the lower Dolores River Valley, including representatives from three surrounding counties (Dolores, Montezuma, and San Miguel); the Towns of Dove Creek and Dolores, the City of Cortez, water managers and water rights holders; grazing and property owner stakeholders; oil, gas, mineral and mining representatives; government agencies; recreationists; conservation groups; staff members from the USFS/BLM; and other interests. The goal of the Dolores Group is to gather information; identify values worthy of protection in the planning area; formulate ideas for protection of the values; and make recommendations to the USFS and BLM. Once the Dolores Group makes its recommendations, the Dolores Public Lands Office (the BLM/USFS Management Unit that is responsible for the subject reach of the Dolores River and for updating the Lower Dolores Corridor Management Plan) will initiate a formal Environmental Assessment process, solicit public involvement, and issue a decision notice likely by March 2010.

To date, the Dolores Group has held several meetings and field trips, with a focus on education and issue identification. Topics addressed at these meetings include recreation on the lower Dolores River; fish, ecology and wildlife on the River; archaeology, geology and scenery on the River; various tools for protecting flows; and grazing along the River. The Dolores Group has developed fact sheets and a list of issues, opportunities and concerns related to each topic. Next steps are to formulate alternatives to protect the ORVs to submit to the Public Lands Center for inclusion in the Environmental Assessment. For more information, see the DRD website at <http://ocs.fortlewis.edu/drd/default.asp>

River Protection Workgroup Update

The River Protection Workgroup is a group of interested stakeholders including the Southwestern Colorado Water Conservation District, the U.S. Forest Service, the State, local governments, environmental organizations, the tribes, and others who are exploring river resource protection in a manner that allows Colorado water users to fully develop our compact entitlements. This group has a steering committee and had divided the basin into five sub-basins so that each sub-basin could hold a series of meetings and adopt a proposal that meets their local needs and purposes. The sub-basins are the Hermosa Creek basin, the San Juan River basin, the Pine River basin, the Piedra River basin, and the Animas River basin. Over the last two years, the Hermosa Creek sub-basin has been engaged in a public process to explore resource protection consistent with the steering committee's goals. At the last meeting, this sub-basin settled on a proposal to proceed now with land protections on Hermosa Creek in the form of a National Conservation Area and a Wilderness Area, using the existing 1993 Wilderness Act legislative language on water, with the understanding that all of the parties have agreed to "circle back" to this group to provide water protection once the other sub-basin processes are complete or near complete. The Project Manager, Marsha Porter-Norton, is drafting a final report on the Hermosa Creek sub-basin's work and proposal that will be presented to the public group for approval at a November 3, 2009 meeting. In the meantime, the other sub-basins will conduct their work on an expedited schedule.

Grand Junction Process

This process is in its infancy. The stakeholders have contributed funds towards this effort, and the Colorado River Water Conservation District has agreed to act as the fiscal agent. The District has entered into a contract with Heather Bergman, of the Keystone Center, to act as a facilitator, and there is a meeting scheduled for September 14, 2009 in Grand Junction.

Criteria and Guidelines

As described above, Senate Bill 09-125 authorized the Board to “set terms and conditions as it deems appropriate concerning the annual expenditure of moneys from the [Wild and Scenic] Fund.” Staff requests the Board’s feedback as to whether it would like to adopt criteria and guidelines or any kind of policy regarding the use of the Fund. Here are some initial questions for the Board:

- Would you like to approve use of funds for the various projects around the State or delegate this to the Director, as you have done up to this point?
- What kind of match would you like to see from project proponents? Can “in-kind” services serve as a match? Can previously dedicated resources serve as a match?
- What types of services are appropriate to be paid from the Fund? (i.e. data collection, facilitation).
- How would the Board like to see geographic distribution of the Fund occur?
- Should there be a cap on the amount of funding that any one process receives on an annual basis, or on a cumulative basis?
- Are there other criteria and guidelines the Board would like to see Staff consider?

Staff looks forward to discussing this matter with the Board.