

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



TO: Colorado Water Conservation Board Members

Bill Ritter, Jr.
Governor

FROM: Linda Bassi
Jeff Baessler
Stream and Lake Protection Section

Harris D. Sherman
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

DATE: September 4, 2009

Dan McAuliffe
CWCB Deputy Director

SUBJECT: **Agenda Item 22, September 15-16, 2009, Board Meeting**
Stream and Lake Protection Section – Instream Flow Recommendations on
Dominguez Creek and Little Dominguez Creek in Water Division 4

Background

The Dominguez Canyon Wilderness was created on March 30, 2009 as part of the 2009 Omnibus Public Lands Management Act. The legislation provides an opportunity for the Colorado Water Conservation Board (CWCB) to appropriate an instream flow water right to support wilderness management purposes, in lieu of creating a federal right for wilderness management purposes. The stated purpose of the Act, among other things, is to “conserve and protect for the benefit and enjoyment of present and future generations . . . the water resources of area streams, based on seasonally available flows, that are necessary to support aquatic, riparian, and terrestrial species and communities.” The Act provides that the Secretary of the Interior “may appropriate and seek adjudication of water rights to maintain surface water levels and stream flows on and across the Wilderness to fulfill the purposes of the Wilderness.” However, the Act goes on to provide that the Secretary “shall not pursue adjudication of any Federal instream flow water rights if . . . the Secretary determines, upon adjudication of the water rights by the Colorado Water Conservation Board, that the Board holds water rights sufficient in priority, amount and timing to fulfill the purposes of the Act. Pursuant to this legislation, the U.S. Bureau of Land Management (BLM) has indicated its intent to work with the CWCB to develop instream flow recommendations for Big Dominguez Creek and Little Dominguez Creek, which are the two primary stream systems located within the wilderness.

Staff has been in discussions with the BLM and various stakeholders and has performed a site visit to both streams. In addition, staff identified the land owners upstream of the wilderness area and sent them an informational letter which briefly explained the wilderness legislation and the possibility of CWCB instream flow water rights to address wilderness needs.

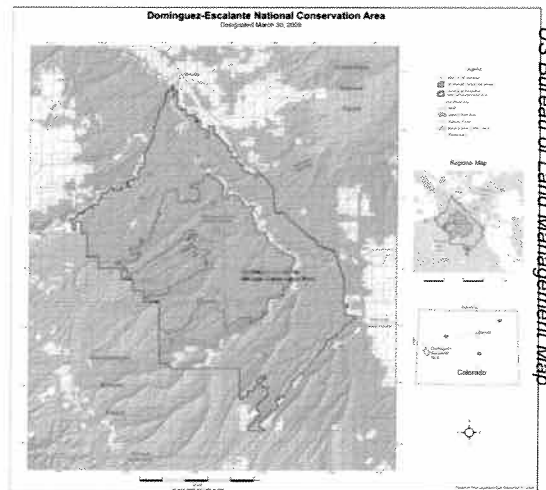
Roy Smith of the BLM staff will provide the Board with an overview of the wilderness legislation and the development of ISF recommendations for both Big Dominguez and Little Dominguez Creeks.

Protecting the Dominguez Canyon Wilderness and Water

On March 30, 2009, Congress passed legislation designating the Dominguez Canyon Wilderness Area. The new 66,000-acre wilderness lies in the heart of the Dominguez-Escalante National Conservation Area, west of the Gunnison River and south of Grand Junction, Colorado. The wilderness designation provides a unique and important opportunity for the State of Colorado to use its instream flow program to protect federal wilderness values.

Wilderness Values

The Dominguez Canyon Wilderness Area is characterized by great topographical, ecological and biological diversity, with elevation ranging from 4,800 feet in the upper Sonoran desert ecosystem along the Gunnison River to 9,000 feet in the Douglas fir and aspen forests high on the Uncompahgre Plateau. The area supports a complex diversity of wildlife, including mule deer, elk, black bear, pronghorn, numerous upland game birds, wintering bald eagles, and one of the state's premier herds of desert big horn sheep. This pristine wild area is a refuge for horseback riders, hikers, hunters, anglers, rafters, bird-watchers, geologists, and archeologists, among other human visitors.



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The Dominguez legislation requires protection of the water resources of area streams, based on seasonally available flows, as such flows are necessary to support aquatic, riparian, and terrestrial species and communities. The legislation provides a unique opportunity to protect these vital water resources utilizing the Colorado Water Conservation Board (CWCB) instream flow program. Under the legislation, the Secretary of the Interior agrees not to pursue a federal water right so long as the CWCB obtains and protects water rights sufficient in priority, amount, and timing to fulfill the purposes of the wilderness. If the Interior Department determines that the CWCB has not obtained sufficient water rights, it will pursue its own federal instream flow water rights.



Advantages of State Protection

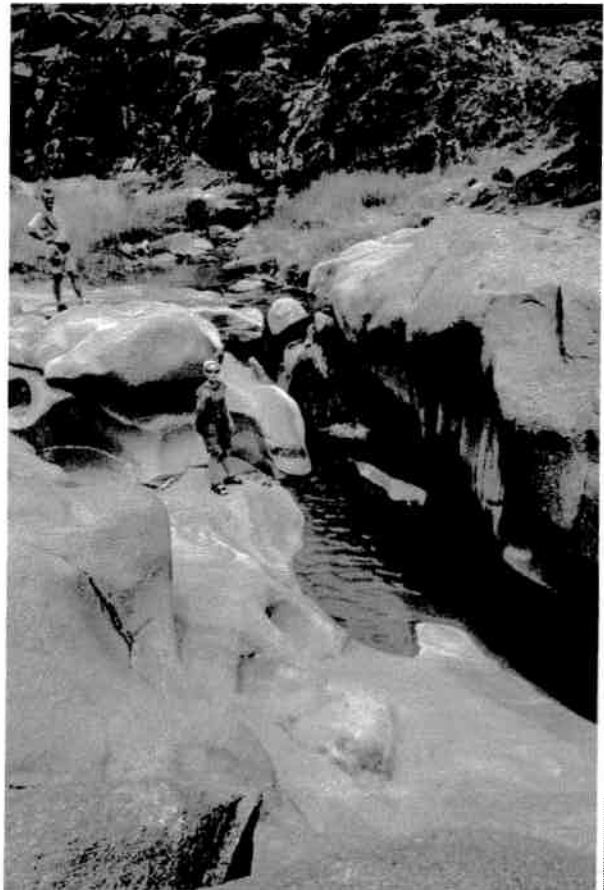
Under the Wilderness Act, Congress directs federal land management agencies to administer wilderness areas "in such a manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character."

Because so often, as is the case in Dominguez Canyon Wilderness, healthy streamflows are a primary component of an area's wilderness character, flow protection is needed to meet that congressional standard. In some cases, this streamflow protection has been accomplished by the direct assertion of federal instream flow water rights.

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An alternative exists, however. In 1973 the Colorado General Assembly granted the CWCB the authority to appropriate instream flow water rights. The Dominguez Canyon Wilderness legislation provides Colorado with the opportunity to use its instream flow program to ensure protection of wilderness streamflows.

Using state-based protection, the CWCB can forge a new way forward to protect Colorado's best wildlands while avoiding injury to other water right holders. To demonstrate the utility of the state-based approach, the CWCB must appropriate meaningful water rights for the Dominguez Canyon Wilderness.



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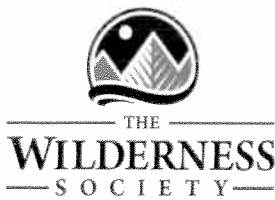
September 14, 2009

Colorado Water Conservation Board
Department of Natural Resources
1313 Sherman Street, Room 721
Denver, CO 80203



Dear Members of the Board,

The undersigned organizations--representing thousands of Colorado--citizens heartily encourage your thoughtful consideration and strong support in the coming months for instream flow appropriations on Dominguez Creek and Little Dominguez Creek in sufficient size and timing to protect water-related values in the newly designated Dominguez Canyon Wilderness Area.



In March of 2009, through an act of Congress that reflected a consensus among stakeholders, Colorado was presented with the unique opportunity to work via the Colorado Water Conservation Board (CWCB) Stream and Lake Protection Program to protect the vital resources of the newly designated Dominguez Canyon Wilderness Area. Capitalizing on this opportunity, the CWCB can forge a new way forward to protect Colorado's best wildlands while not interfering with full exercise of other, existing water rights. To demonstrate the utility of the state-based approach, it is our recommendation that the CWCB make determinations of needs utilizing a strong science-based approach and appropriate water rights to protect the Dominguez Canyon Wilderness.



CWCB staff continues to work collaboratively with the Bureau of Land Management to assess the flows needed to protect wilderness values and purposes. It is especially important in this case that the water rights established be adequate not only to keep the streams flowing and to insure the health of the aquatic and riparian ecosystems that rely on them, but also to avoid the assertion of federal reserved water rights for the wilderness.

We enthusiastically recommend that the CWCB continue to develop flow recommendations that fully support and protect the ecological, recreational and aesthetic values present in the Dominguez Canyon Wilderness area.



Sincerely,

Becky Long
Colorado Environmental Coalition

Bart Miller
Western Resource Advocates

Steve Smith
The Wilderness Society

Drew Peterzell
Trout Unlimited



Steve Glazer
High Country Citizens Alliance

Meghan Maloney
San Juan Citizens Alliance

John Sanderson
The Nature Conservancy



Needed Protection for the Dominguez Canyon Wilderness Area

The Bureau of Land Management (BLM) and the CWCB have worked collaboratively to assess the flows needed to protect the Dominguez Canyon's wilderness values and purposes. It is important that the water rights established be adequate, not only to keep the streams flowing, but to insure the health of the aquatic and riparian ecosystems that rely on them.

The Dominguez Canyon Wilderness legislation contemplates that the water rights appropriated for the wilderness be based on seasonally available flows necessary to conserve and protect the aquatic, riparian and terrestrial species and communities. Appropriations of this sort are not unprecedented: In the past, the CWCB has appropriated instream flow and natural lake level water rights in cooperation with federal agencies to preserve unique natural environments.

The CWCB's statutory has adequate authority to appropriate all seasonally available flow in the streams in the Dominguez Canyon Wilderness Area. It should utilize this authority to move forward with this type of appropriation in order to provide strong state based protections for this special area and to avoid the assertion of federal water rights.



Colorado Environmental Coalition

For more information Contact:

Becky Long, Colorado Environmental Coalition
303.405.6714, becky@cecenviro.org

Bart Miller, Western Resource Advocates
303.444.1188x219, bmiller@westernresources.org

Drew Peternell, Trout Unlimited
303.440.2937x102, dpeternell@tu.org

Steve Smith, The Wilderness Society
303.650.5818x106, steve_smith@twc.org

