

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
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TO: Colorado Water Conservation Board Members

Bill Ritter, Jr.
Governor

FROM: Linda J. Bassi
Jeff Baessler
Stream and Lake Protection Section

James Martin
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

DATE: January 14, 2010

Dan McAuliffe
CWCB Deputy Director

SUBJECT: **Agenda Item 11b, January 26-27, 2010 Board Meeting
Stream and Lake Protection Section – San Miguel River Recommendation in
Water Division 4.**

Summary

This memo outlines the history of the San Miguel River ISF recommendation and provides an overview of the technical analyses that were performed by both the recommending entities and staff to provide the Board with sufficient information to declare its intent to appropriate in accordance with the Instream Flow Rules. Staff's detailed analysis of this recommendation is contained in the "Instream Flow Recommendation Notebook."

Staff has been working on this recommendation since February 2005, and has participated in multiple meetings with stakeholders in an attempt to address concerns. At this time, some stakeholders have expressed a desire to move forward with the recommendation with no further delay, while others have requested that the recommendation be delayed for another year and/or tabled indefinitely.

Staff recommends that the Board consider the stakeholders' concerns and make a determination as to when to formally declare its intent to appropriate an ISF right for this segment of the San Miguel River.

Background

A recommendation for an ISF right on the San Miguel River from Calamity Draw to the confluence with the Dolores River was first discussed with the Board at its February 2005 Instream Flow Workshop. However, a formal recommendation, in writing with specificity, was not received by Staff until its February 2008 workshop. Official Board and public notice for this recommendation was sent out in March 2008, November 2008, March 2009, and November 2009.

Discussions with stakeholders regarding this recommendation began shortly after the March 2008 notice. At that time, staff was also in the process of evaluating the donation of the Umetco water rights and discussed those rights with stakeholders. The intent of these discussions was to

address issues concerning a new ISF appropriation, as well as how the donated rights could potentially be used by either the local communities or the ISF program.

Staff has met with stakeholders in the field to discuss the recommendation and has also had numerous public meetings in Norwood, Naturita, and Telluride over the past two years, including meetings with the Montrose County Commissioners, San Miguel County Commissioners, and the San Miguel Water Task Force. As a result of these meetings and discussions, the Southwestern Water Conservation District (SWCD) has agreed to assist Montrose County and San Miguel County to assess their future water needs, and inventory projects and management options to meet those needs. SWCD's goal is to determine future water needs in the Basin and each County, and then determine water rights currently existing that can meet part or all of the needs. SWCD will also determine if additional water rights applications are necessary to meet future needs. The SWCD and the counties have written letters to the Board requesting that the recommendation be delayed to January 2011 to allow time for SWCD to complete the water assessment.

Although these stakeholders have requested a delay, others have sent letters stating that the ISF recommendation is unnecessary and that the science that supports the recommendations is flawed. As a result, these stakeholders have asked the Board to reject the proposed San Miguel River ISF recommendation. In addition, a number of other stakeholders fully support the recommendation and are disappointed over the delay that has already occurred. They contend that the Board has already provided a one year delay beyond the standard process for appropriating ISF rights and therefore should form its intent to appropriate at this Board meeting. Letters and correspondence regarding this recommendation have been included in the Instream Flow Recommendation Notebook and are also available on the Board's web site. Letters received after the Instream Flow Recommendation Notebook was mailed are attached to this memo and/or will be provided to the Board at the meeting.

Staff Analyses and Technical Investigations

Staff has reviewed the San Miguel River recommendation to ensure that the data set is complete and standard methods and procedures were followed. In addition, staff has completed its water availability studies. Staff's executive summary and technical analysis for this stream segment is contained in the Instream Flow Recommendation Notebook (mailed separately).

Natural Environment Studies

The Bureau of Land Management (BLM), and Colorado Division of Wildlife (CDOW), have conducted field surveys of the natural environment resources on this stream and have found a natural environment that can be preserved. To quantify the resources and to evaluate instream flow requirements, the recommending entities have collected biologic and hydraulic data that were analyzed by CWCB staff. Based on the results of these analyses, staff prepared a recommendation of the amount of water necessary to preserve the natural environment to a reasonable degree for the segment listed on the attached Tabulation of Instream Flow and Natural Lake Level Recommendations.

Water Availability Studies

Staff has conducted an evaluation of water availability for the streams listed. To determine the amount of water physically available for the Board's appropriations, staff analyzed available USGS gage records, available streamflow models, and/or utilized appropriate standard methods to develop a hydrograph of mean daily flows for each stream flow recommendation. In addition, staff analyzed the water rights tabulation and has consulted with the Division Engineer's Office. Based upon its analyses, staff has determined that water is available for appropriation to preserve

the natural environment to a reasonable degree without limiting or foreclosing the exercise of valid water rights.

Staff Recommendation

At this time, staff believes that it has compiled enough information to formally recommend an ISF appropriation on the San Miguel River from Calamity Draw to the confluence with the Dolores River. The basis for such a recommendation is contained in the “Instream Flow Recommendation Notebook.” However, staff also recognizes the concerns of stakeholders and the Board’s responsibility to balance the needs of mankind with some reasonable preservation of the natural environment. Therefore, staff recommends that the Board consider the issues and determine when it will form its intent to appropriate an ISF water right on this segment of the San Miguel River.

Attachments



Colorado Water Conservation Board

Instream Flow Tabulation - Streams



Water Division 4

Case Number	Stream	Watershed	County	Upper Terminus	Lower Terminus	Length (miles)	USGS QUADS	Amount(dates) (CFS)	Approp Date
09/4/A-009	San Miguel River	San Miguel	Montrose	confl Calamity Draw at lat 38 15 24N long 108 36 49W	confl Dolores River at lat 38 22 47N long 108 48 01W	16.50	Atkinson Creek	115 (3/1 - 4/14)	
							Nucla	325 (4/15 - 6/14)	
							Red Canyon	170 (6/15 - 7/31)	
							Uravan	115 (8/1 - 8/31)	
								80 (9/1 - 2/29)	

Totals for Water Division 4	Total # of Stream Miles =	16.5
	Total # of Appropriations =	1
<i>(Totals do not include donated/acquired water rights)</i>		



**SHEEP
MOUNTAIN
ALLIANCE**

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January 19, 2010

Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

Re: Proposed Instream Flow: San Miguel River

Honorable Board Members:

This letter is submitted on behalf of the 400-member Sheep Mountain Alliance (“SMA”) in support of the proposed instream flow for the reach of the San Miguel River from Calamity Draw to the confluence with the Dolores River (the “Instream Reach”). SMA’s members recreate on the San Miguel River through fishing, boating, bird watching and similar activities; and a number of SMA members also depend upon the San Miguel River for their livelihoods. SMA strongly opposes any delay in the appropriation of the proposed instream flow.

The Instream Reach has been identified as having an outstanding population of three fish species of concern: roundtail chub, flannelmouth sucker, and bluehead sucker. As the staff report on the proposed appropriation highlights, establishment of such instream flows is a priority conservation action under a multi-state agreement involving the Bureau of Land Management, Colorado Division of Wildlife and other agencies to prevent listing of these species under the Endangered Species Act. The proposed instream flow also will ensure habitat for globally imperiled riparian communities and other important riparian communities.

SMA supports immediate appropriation of the proposed instream flow. Protection of the species of concern through instream flows will help prevent a listing of the species under the ESA. Listing of the species will have a significantly greater impact on development in San Miguel and Montrose counties than the proposed instream flow. As a junior water right, the instream flow will have no impact on existing water rights uses. In addition, few existing water rights users will be impacted if they wish to change their water rights, since the majority of water rights on the San Miguel River are above the Instream Reach. SMA also supports appropriation of the instream flow because it supports the goals of the instream flow program: protection of the natural environment to a reasonable degree. As Southwest Colorado continues to grow and develop, it is important that we have a means of guaranteeing the protection of functioning ecological systems. As the staff report notes, the proposed flow already has been reduced in the spring and summer months due

to availability concerns and is proposed to maximize existing bluehead and flannelmouth sucker habitat *under a declining hydrograph*.

Phase I of the Colorado River Water Supply Availability Study modeled anticipated decreases in water availability in the Dolores River by 2070. The study predicts a 129,000 acre-foot annual decrease in natural flows in the river, a 32% decrease in historic flow. It is likely that the San Miguel River will experience similar decreases in natural flows. The decrease in flows will further endanger the fish species and the riparian habitat.

SMA supports the instream flow in order to protect the baseline natural riparian environment and the fish species. The anticipated decreases in natural flows in the rivers in our region demonstrate the importance of the proposed instream flow in providing the minimum quantity of water necessary to protect the San Miguel River ecosystem. Such protection should be ensured first, so that San Miguel and Montrose counties and municipalities can then determine how much water is available for further development.

We urge the CWCB to move forward with the appropriation at its January meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. White', with a stylized flourish at the end.

Hilary White
Executive Director

cc: Board of Directors, Sheep Mountain Alliance



real estate. water. business.

January 19, 2010

Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

Re: Proposed Instream Flow: San Miguel River

Honorable Board Members:

This letter is in support of the proposed instream flow for the reach of the San Miguel River from Calamity Draw to the confluence with the Dolores River (the "Instream Reach"). My family and I regularly recreate on the San Miguel River, and we believe that a healthy river ecosystem is critical to our economy and our well-being. We also are active boaters and birdwatchers and members of the San Miguel Whitewater Alliance. We strongly oppose any delay in the appropriation of the proposed instream flow.

The Instream Reach has been identified as having an outstanding population of three fish species of concern: roundtail chub, flannelmouth sucker, and bluehead sucker. As the staff report on the proposed appropriation highlights, establishment of such instream flows is a priority conservation action under a multi-state agreement involving the Bureau of Land Management, Colorado Division of Wildlife and other agencies to prevent listing of these species under the Endangered Species Act. The proposed instream flow also will ensure habitat for globally imperiled riparian communities and other important riparian communities.

We support immediate appropriation of the proposed instream flow. Protection of the species of concern through instream flows will help prevent a listing of the species under the ESA. Listing of the species will have a significantly greater impact on development in San Miguel and Montrose counties than the proposed instream flow. As a junior water right, the instream flow will have no impact on existing water rights uses. In addition, few existing water rights users will be impacted if they wish to change their water rights, since the majority of water rights on the San Miguel River are above the Instream Reach.

We also support appropriation of the instream flow because it supports the goals of the instream flow program: protection of the natural environment to a reasonable degree. As Southwest Colorado continues to grow and develop, it is important that we have a means of guaranteeing the protection of functioning ecological systems. As the staff report notes, the proposed flow already has been reduced in the spring and summer months due to availability concerns and is proposed to maximize existing bluehead and flannelmouth sucker habitat *under a declining hydrograph*.

Phase I of the Colorado River Water Supply Availability Study modeled anticipated decreases in

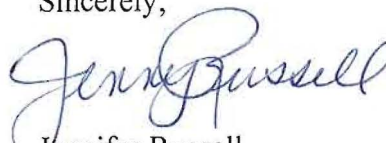
Letter to CWCB: San Miguel River Appropriation
January 19, 2010
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water availability in the Dolores River by 2070. The study predicts a 129,000 acre-foot annual decrease in natural flows in the river, a 32% decrease in historic flow. It is likely that the San Miguel River will experience similar decreases in natural flows. The decrease in flows will further endanger the fish species and the riparian habitat.

We support the instream flow in order to protect a baseline natural riparian environment and the fish species. The anticipated decreases in natural flows in the rivers in our region demonstrate the importance of the proposed instream flow in providing baseline protection for the San Miguel River. Such protection should be ensured first, so that San Miguel and Montrose counties and municipalities can then determine how much water is available for further development.

We urge the CWCB to move forward with the appropriation at its January meeting.

Sincerely,



Jennifer Russell

cc: Board of Directors, Sheep Mountain Alliance
Hilary White, Executive Directors



The Nature Conservancy in Colorado
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Boulder, CO 80302

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nature.org/colorado

January 15, 2010

Jeffrey Baessler
Colorado Water Conservation Board
1313 Sherman St., Room 721
Denver, CO 80203
FAX 303-866-4474

Dear Colorado Water Conservation Board Members,

The Nature Conservancy would like to voice its support for an in-stream flow right for the San Miguel River between Calamity Creek and the confluence with the Dolores River. As a landowner of nearly half of the river miles being considered for an in-stream flow we believe strongly that dedicating the minimum amount necessary to supportive native warm water fish is of critical importance. The Colorado Division of Wildlife and the Bureau of Land Management's in-stream flow proposal is in line with our understanding of what minimal water is needed to support the three warm water fish species. We feel strongly that postponing this decision any longer will erode the effectiveness of an in-stream flow right, and that this in the long run will threaten the health of these fish species. That said, we understand the need to enhance broad support for the proposal and therefore are supportive of CWCB's delay of action until March 2010.

Our support of the in-stream flow right is derived from the presence of three native warm water fish in the San Miguel River. The flannemouth sucker, roundtail chub, and the bluehead sucker have seen large population declines in the southwest United States. Federal and state agencies have recognized this fact and have started working to protect these native fish species.

Of particular concern is the roundtail chub which has been listed as a Species of Concern by the states of Arizona, Utah, Wyoming, and Colorado, as well as being listed in New Mexico as "Endangered," as stated by the Utah Department of Natural Resources. Furthermore, the U.S. Fish and Wildlife Service has added the lower basin roundtail chub to the federal list of candidate species for the Endangered Species Act. This listing requires the Service to annually review findings on the chub until which time a "listing proposal is published, or a not warranted finding is made" as published by the U.S Fish and Wildlife Service Arizona Ecological Services Field Office.

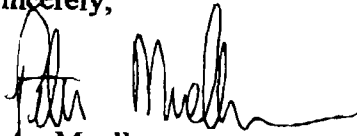
The decline in the numbers of flannemouth suckers and bluehead suckers has also been recognized by several states. The flannemouth sucker has been listed as a Species of Concern by Arizona, Utah, Colorado, and Wyoming. Utah and Wyoming have also listed bluehead suckers as Species of Concern.

Because these species are native, present and healthy in this stretch of the San Miguel River it is expectation that an in-stream flow right on the San Miguel will protect these native fish in perpetuity and improve the overall health of the river. Additionally, taking this in March of 2010 will help prevent the need for further action by federal and state wildlife management agencies

should the native fish decline in health. To this end, we strongly urge you to dedicate the amount of water proposed by the Colorado Division of Wildlife and the US Bureau of Land Management for in-stream flow at your March 2010 meeting.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Mueller', with a long horizontal flourish extending to the right.

Peter Mueller
N. San Juans Project Director
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TOWN OF NATURITA

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January 12, 2010

Linda J. Bassi
Colorado Water Conservation Board of Directors
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203

RECEIVED

JAN 18 2010

Colorado Water Conservation Board

RE: Lower San Miguel River (Calamity Draw to the Confluence) Instream Flow Appropriation

Dear Ms. Gimbel and Board Members:

The Town of Naturita was established in September 15, 1888 and incorporated in August 8, 1951. The Town owns the following water rights which have been decreed for municipal purposes, the source of which water is the Reed and Chatfield Ditch, with Priority Number 76, Decree Date 1911, amount is 1.19 c.f.s., Decreed Use: Municipal, Case Number 1627/ W-3151 and Priority Number 329, Decree Date 1939, amount 0.60 c.f.s., Decreed Use: Municipal, Case Number 4641/ W-3151, Priority Number 329c, Decree Date 1939, Priority Number 329c, Decree Date 1939, amount 4.0 c.f.s., Decreed Use irrigation, Case Number 4641.

The Town of Naturita has been decreed an alternate point of diversion for its municipal water at the location of the Naturita Town Well described as: a point on the NW ¼ NW ¼, Section 29, Township 46 North, Range 13 West, N.M.P.M., 600 FEET FROM THE North line and 600 feet from the West line, and is tributary to the San Miguel River. The Town of Naturita transports our Municipal water shares to Mustang Water Authority through the Colorado Cooperative Company ditch.

The Mayor and Board of Trustees for the Town of Naturita would like to voice their opposition to the proposed in-stream flow appropriations on the lower San Miguel River between Calamity Draw and the confluence of the Delores River. Such proposals should be abandoned as be inappropriate and unnecessary in these circumstances.

The proposed ISF by CWCB and the DOW creates an undue burden on all users in the lower San Miguel River basin, denying us the flexibility to change our water rights for different uses and places of use as allowed under Colorado Water Law. The Colorado Supreme Court has routinely opined that the flexibility to change water rights to new uses to meet changing demands is one of the most vital characteristics of Colorado's prior appropriation system. The CWCB's proposed over-appropriation of the lower San Miguel River would deny the water users there from such future opportunity to change water rights to meet changing demands for beneficial use, resulting in a devaluing of all such affected water rights.

The proposed ISF is also unnecessary to maintain sufficient flows in this segment of the San Miguel River, as the administration of this portion of the San Miguel River is typically controlled by the downstream call of Tri-State, which acts to maintain river

flows in order to ensure such delivery. The CWCB is authorized to appropriate only the minimum necessary to maintain the natural environment and the environment is already satisfactorily maintained by existing administrative regiments.

The proposed ISF will do little to provide “wet” water to the San Miguel River, due to a flawed CWCB water availability analysis. Bikis Water Consultants has opined that the studies conducted by CWCB/DOW as to water availability are flawed, and that during significant portions of most years, the recommended ISF flows will simply not physically be available in the San Miguel River. Despite the river falling below those amounts that the CWCB asserts necessary to maintain the natural environment, the environment somehow continues to be maintained. CWCB/DOW fails to account for the gaining nature of the lower San Miguel River, including the subject reach, in calculating the minimum ISF required. CWCB’s study area was far upstream on the proposed ISF reach, and failed to account for inflows of surface and ground water below such point which increase the flows of the San Miguel River. As such, CWCB’s calculations as to minimum stream flow requirements are further flawed for down-river portions of the river which experience increased flows. To the extent that any ISF appropriation might be appropriate, such minimum appropriation must necessarily be reduced as flows in the river increase. CWCB/DOW’s engineering calculations concerning the minimum amount of instream flows necessary to protect and maintain the natural environment to a reasonable degree are neither minimums nor reasonable. Bikis Water Consultants determined that CWCB/DOW’s calculations concerning allegedly required minimum flows contained a “relatively high level of uncertainty” with an effective range of 28 c.f.s. to 431 c.f.s., and that necessary scientific criteria could be met at far reduced flows than those claimed by CWCB. Flows less than those claimed to be required by CWCB were experienced by Bikis Water Consultants during their independent study of the stream, with flows of 69 c.f.s. being present in the river on March 17, 2009, a time of year in which CWCB claims a minimum of 115 c.f.s. is required to maintain the natural environment. Again, the natural environment somehow manages to be maintained nonetheless.

There is no evidence that the health of the River is now or ever will be endangered because of the existing water rights regime. An ISF of this size consigns this part of the State to never be able to economically flourish because the cost to maintain the high ISF flows will be prohibitive – i.e. costs for construction of a reservoir to store water in order to make releases to maintain an ISF that is not actually present. The tables presented by the CWCB/DOW at the meetings in Naturita and Norwood were presented by show that the ISF is maintained 50% of the time and misleading, and based upon what Bikis Water Consultants believe to be a flawed model (geometric mean). In fact, based on the Bikis Water Consultants analysis, the recommended ISF flows are actually not met today much of the time.

The Mayor and Board of Trustees of the Town of Naturita is opposed to the proposed instream flow appropriations on the lower San Miguel River. These proposals are inappropriate and unnecessary for the lower San Miguel River.

Thanks for considering our concerns with the lower San Miguel River.

Sincerely
Town of Naturita
Mayor and Board of Trustees

Cc: Jennifer Gimbel, Director, Colorado Water Conservation Board
Bob Herford, Water Division No. 4