

# STATE OF COLORADO

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## Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Linda Bassi, Section Chief  
Jeff Baessler, Deputy Section Chief  
Stream and Lake Protection Section

DATE: May 10, 2010

SUBJECT: **Agenda Item 34, May 18-19, 2010, Board Meeting**  
**Stream and Lake Protection Section – New Appropriation Recommendations**  
**Big Dominguez and Little Dominguez Creeks, Water Division 4**

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Bill Ritter, Jr.  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

### Summary

This memo outlines the background of the Dominguez Canyon Wilderness Area legislation and the instream flow (“ISF”) recommendations from the U.S. Bureau of Land Management (“BLM”) to support the wilderness management purposes and preserve the water resources of the wilderness area. This memo provides an overview of the technical analyses that were performed by both the BLM and CWCB staff to provide the Board with sufficient information to declare its intent to appropriate in accordance with the Instream Flow Rules. Detailed analyses of each stream segment are contained in the accompanying notebook to provide the Board with the necessary technical bases for these appropriations. Finally, this memo also addresses various issues that have arisen that are related to the atypical nature of these ISF recommendations.

### Staff Recommendation

Staff recommends that the Board:

1. Pursuant to ISF Rule 5d., declare its intent to appropriate an ISF water right on each segment of Big Dominguez Creek and Little Dominguez Creek listed on the attached Tabulation of Instream Flow Recommendations, in the amount of all the annually available flow on the subject streams, minus the development allowance described in this memo.
2. Direct Staff to publicly notice the Board’s declaration of its intent to appropriate, including the Board’s intent to include the following non-precedent language in the water court decree for these ISF water rights: “This ISF water right appropriation is based upon the facts and circumstances particular to this situation and to these stream reaches, and shall have no precedential effect on future ISF appropriations.”

3. Establish the following initial schedule for the notice and comment procedure pursuant to ISF Rule 5c.:

<b>Date</b>	<b>Action</b>
May 19, 2010	Board declares its intent to appropriate and hears public comment
June 14, 2010	Notice to Contest due
June 24, 2010	Deadline for notification to ISF Subscription Mailing List of Notices to Contest (no notification necessary if no NTCs received)
July 5, 2010	Notices of Party Status and Contested Hearing Participant Status due At the July Board meeting, if necessary, Staff informs Board of Parties and Participants; Board sets hearing date

### **A. Background**

The Dominguez Canyon Wilderness was created on March 30, 2009 as part of the 2009 Omnibus Public Lands Management Act (“Act”). The legislation provides an opportunity for the Board to appropriate ISF water rights 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, which 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 BLM has worked with the CWCB staff and stakeholders to develop ISF recommendations for Big Dominguez Creek and Little Dominguez Creek, which are the two primary stream systems located within the Wilderness Area.

On January 25, 2010, the BLM submitted a formal written recommendation to the CWCB for ISF appropriations on Big Dominguez Creek and Little Dominguez Creek within the Wilderness Area boundaries. The BLM’s recommendation differs from standard ISF recommendations in that it does not identify specific flow rates and seasons. Rather, the BLM recommends that the CWCB develop a quantified estimate of future water use related to private property parcels located in and immediately adjacent to the two watersheds (“development allowance”), and then appropriate all of the flow that is annually available in each creek after the development allowance is satisfied. The goal of this approach is to protect variability in flows that includes base flows, snow melt runoff flows, annual flood flows from thunderstorm events, and less frequent large flood events. The volume of water protected by these ISF water rights would vary substantially in response to natural variations in hydrologic conditions. The BLM has recommended this approach to fulfill the broad purposes of the Act outlined above.

The CWCB holds an ISF water right on Big Dominguez Creek for 1.5 cfs from the headwaters to the confluence with the Gunnison River, appropriated and decreed in 1984. That ISF water right was quantified using R2Cross. The subject ISF recommendation on Big Dominguez Creek should not be deemed an increase to the existing ISF water right because it has been developed to preserve various aspects of the wilderness area natural environment.

## B. Natural environment

To appropriate ISF water rights on Big and Little Dominguez Creeks, the Board must determine that there is a natural environment on these streams. The BLM has conducted field surveys and studies of the natural environment resources on these streams and has found natural environments that can be preserved. To quantify the resources and to evaluate ISF requirements, the BLM collected biologic, hydrologic, hydraulic, geomorphic and water quality data that were analyzed by CWCBC staff.

The legislation that created the Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness Area (“DCWA”) expressly refers to the natural environment in its definition of the purpose of the Act:

*to conserve and protect for the benefit and enjoyment of present and future generations—*

*(1) the unique and important resources and values of the land, including the **geological**, cultural, archaeological, paleontological, **natural**, **scientific**, **recreational**, **wilderness**, **wildlife**, **riparian**, historical, educational, and **scenic resources** of the public land; and*

*(2) **the water resources of area streams, based on seasonally available flows, that are necessary to support aquatic, riparian, and terrestrial species and communities** (emphasis added).*

The Act also references the Wilderness Act, 16 U.S.C 1131 et seq., to further define its purpose. The Wilderness Act defines a wilderness as:

*... an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.*

The BLM has undertaken extensive field surveys, studies and literature reviews to identify specifically the unique characteristics of the area’s water dependent natural environment as well as the associated flows that would be required to reasonably maintain the natural environment in its present wilderness state. The survey and study of the DCWA resulted in six separate reports that are included in the appendices of the Recommendation Summary Report. These reports include: 1) Fisheries Report; 2) Aquatic Macro invertebrate Report; 3) Riparian Report; 4) Water Quality Report; 5) Hydrology Report; and 6) Hydraulic Modeling Report, and are attached at Tabs 9 through 14 respectively.

The natural environment studies and surveys indicate that these creeks possess many unique attributes, summarized below:

- These creeks are two of very few examples in Colorado of mid-to-low elevation perennial streams with largely unaltered natural hydrology.
- The creeks support
  - several plant communities that are becoming increasingly rare in the intermountain west, including naturally reproducing cottonwood galleries, willow and poplar species, red-osier dogwood, cattails, equisetum, and various grasses and sedges;
  - high quality examples of fully functioning aquatic ecosystems, including robust fish and amphibian populations;
  - three distinct fish populations separated by natural barriers: rainbow trout at high elevation; specked dace at mid-elevation; and roundtail chub (a BLM Sensitive Species and a State Species of Concern) in the lowest portions of the creek; and

- a highly diverse and abundant aquatic macro-invertebrate community.
- The creeks support very high water quality.
- The unique geologic formations through which the creeks flow have created numerous waterfalls, plunge pools, spring outcrops, and a well-defined canyon.
- The creeks exhibit a wide variety of channel types (ranging from very narrow and straight reaches to reaches with shallow broad meanders), which have created a large number of terrestrial microclimates and a variety of aquatic habitats that support an atypical quality and abundance of water dependent species. Further, the sediment regime created by the eroding sandstone within the canyon provides a dynamic environment for continued change and rejuvenation of the canyon riparian communities.

The significance of the riparian community to these stream systems cannot be overstated. The ecological importance of cottonwoods is especially great in arid regions of the western United States because in most areas, no native replacement tree species occur. (See Tab 18). Riparian cottonwood forests “provide prime habitat for a range of terrestrial animals and abundant and diverse bird species,” and “are linked to and benefit the adjacent riverine aquatic ecosystems by providing shade that reduces water temperature and by contributing organic matter, leaves and woody debris that provide a basis for the aquatic food web.” The maintenance of these cottonwood populations depends on periodic recruitment to compensate for ongoing mortality. (See Tab 19).

### **C. Amount required to preserve the natural environment to a reasonable degree**

The BLM asserts that the attributes of the natural environment listed above depend upon a natural and seasonally variable flow regime, requiring most of the unappropriated flows that currently exist in the basin. The BLM has provided extensive scientific justification for protecting the entire range of flow rates and timing found in the two stream systems as necessary to preserve the natural environment to a reasonable degree. The hydrology of the streams was scientifically quantified, and maximum upper limits were verified by the Hydrologic Modeling Report, which linked the larger flow events on the hydrograph to the maintenance of pristine riparian communities. Although the recommendation does not identify specific flow amounts, the hydrology of the streams can be defined by four separate flow periods.

Flow Period	Big Dominguez Creek (cfs)	Little Dominguez Creek (cfs)	Ecological Function
Base Flows (typically July through February)	1.53 to 3.86	1.20 to 2.15	Support of fish and macro-invertebrate life cycles including rainbow trout, speckled dace, & roundtail chub*
Snow Melt Runoff Flows (typically March through June)	75	65	Recharge of the aquifer for support of riparian vegetation
Annual Flood Flows (typically short-term thunderstorm events July through September)	250	200	Periodic inundation of shrubby riparian zone
Less Frequent Large Flood Events (thunderstorm driven events recurring on 3 to 10 year intervals)	725	500	Sediment deposition and subsequent establishment of cottonwood seedlings

\* It is important to note that the higher flow amounts identified in the table above also support the ecological function of fish and macro-invertebrate life cycles.

While the BLM's scientific analyses are sound, Board members have questioned whether the BLM's recommendation will result in ISF water rights that are the minimum amount necessary to preserve this unique natural environment to a reasonable degree. ISF water rights that protect the full regime of flow, including its natural variability, would achieve the Act's goal of protecting seasonally available flows that are necessary to support aquatic, riparian, and terrestrial species and communities. The various aspects of the natural environment that these ISF water rights will preserve, particularly the riparian plant community, coupled with the fact that these ISF water rights will preserve the natural environment of a Wilderness Area, support the conclusion that all annually available flows (minus the development allowance) constitutes the minimum amount necessary to preserve this natural environment to a reasonable degree. The scientific literature and BLM reports indicate that without this natural and seasonally variable flow regime, the natural environments on these Wilderness Area streams would not be preserved in their current state, as intended by the Act. Virtually all aspects of natural hydrology would be required to maintain a channel, its biota and its adjacent riparian community. For example, a thunderstorm event on Big Dominguez Creek that has an occurrence of once every 3—10 years produces 725 cfs, which inundates the floodplain and supports the establishment of cottonwood seedlings. Without this periodic floodplain deposition, the riparian community would diminish. Flows that occur very rarely are as essential to the preservation objective as the seasonal base flows that preserve fish and macro-invertebrate populations.

Further, since 1993, the natural hydrology of wilderness streams has been protected in other Wilderness Areas in Colorado. This has been accomplished through carefully crafted administrative approaches that have been negotiated in stakeholder discussions. To maintain wilderness streams in their natural condition, water user interests and environmental interests have agreed to legislative language that expressly denies any new federal water right to support wilderness values, while simultaneously prohibiting federal agencies from approving any new water facilities that would divert water from wilderness streams. It is important to note that this approach has been used in Wilderness Areas that are located in the headwaters of the affected streams, and did not address situations in which private property or private water rights are located upstream from designated wilderness areas. This approach has been used in about 21 Wilderness Areas in Colorado, including Black Ridge Canyons Wilderness, Spanish Peaks Wilderness, and the James Peak Wilderness.

#### **D. Water Availability**

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 reviewed the BLM's hydrology report, analyzed available USGS gage records, performed independent verification of the BLM hydrology using standard USGS procedures and analyzed pressure transducer data to identify the amount of water physically available in each stream. In addition, staff analyzed the water rights tabulation for each stream and has consulted with the Division Engineer's Office to identify any potential water availability problems. Based upon its analyses, staff has determined that water is available for appropriation on each stream to preserve the natural environment to a reasonable degree without limiting or foreclosing the exercise of valid water rights.

## **E. Correlating the activities of mankind with reasonable preservation of the natural environment**

The DCWA is located in the lower portion of both the Big Dominguez and Little Dominguez Creek watersheds. The upper portion of the watershed is comprised primarily of USFS lands interspersed with 16 private parcels that comprise approximately 2227 acres. These parcels are located on the Uncompahgre Plateau at the headwaters of the watersheds. There are a number of existing private and federal water rights in these watersheds that consist primarily of springs and stock ponds decreed for stock watering, domestic purposes and wildlife/fish uses.

Recognizing that the Board must correlate the activities of mankind with some reasonable preservation of the DCWA natural environment, the BLM has proposed that a development allowance be established that would allow for additional water development on both the private and federal parcels to “maintain existing land uses and viable agricultural practices.” Such a development allowance should take into account relevant factors such as elevation, climate, soils, water availability and historic water use practices, and should be developed in a manner that ensures that the proposed rate and volume of the allowance would not interfere with the natural hydrologic variability in the streams that is required to preserve the DCWA natural environment.

As a first step in identifying the amount of water needed for such an allowance, the Colorado River Water Conservation District, in coordination with CWCB staff, sent letters to landowners and water rights holders of record upstream of the Wilderness Area informing them of these potential ISF water rights and inquiring about their current and projected water supply needs. In addition, staff contacted the U.S. Forest Service (“USFS”) and requested that it also attempt to identify any future water supply needs. This correspondence resulted in a number of additional water rights applications by private landowners sufficient to meet much of the potential water demands for grazing and livestock watering. In addition, the USFS sent a letter (Tab 7) to the CWCB quantifying its projected water needs and requested that these needs also be recognized as part of the development allowance. BLM also quantified a small amount of additional water needs that are included in the allowance.

To provide the Board with a technical basis for the development allowance, the CWCB staff retained DiNatale Water Consultants, Inc. to evaluate the potential for additional water development in the Big Dominguez and Little Dominguez basins upstream of the Wilderness Area. The complete report is included in the notebook at Tab 5. The following table takes into account all the correspondence and analyses, and identifies the best estimate of the maximum potential direct flow and volumetric limits associated with the development allowance:

	Maximum Storage Volume Allowed - AF (Total of all new water rights)	Max Diversion Rate (cfs) (April 15 – June 30)*	Max Diversion Rate (cfs) (July 1 – October 31)*
<b>Big Dominguez</b>			
Private Parcels	100	3.30	0.198
USFS	1.14	.066	
BLM	1.0	0.11	

Little Dominguez			
Private Parcels	1	0.033	0.033
USFS	.76	.066	
BLM	2.0	0.22	

\* The diversion rates are further limited to the maximum storage volume allowed in each case.

Staff and BLM analyses indicate that these development allowance volumes and rates are sufficiently small so as not to affect the natural hydrologic variability on Big and Little Dominguez Creeks.

## **F. Issues**

Two legal/policy issues have arisen resulting from the BLM's recommendation of all of the annually available flow in Big and Little Dominguez Creeks minus a development allowance to preserve the natural environment of Big and Little Dominguez Creeks within the Wilderness Area. These issues are: (1) whether the Board has the authority to determine what constitutes a natural environment as well as the authority to establish the minimum amount of water that would be necessary for its reasonable preservation; and (2) whether the Board has ever successfully used the ISF program to address other atypical natural environment preservation goals.

### **1. Board Authority**

It has been questioned whether the recommended ISF water rights fit within the Board's statutory authority to appropriate ISF water rights, both in the context of what aspects of the natural environment the ISF water rights will preserve, and the amount of the proposed ISF water rights.

In May 1979, the Colorado Supreme Court's ruling in the Crystal River case<sup>1</sup> recognized the Board's authority and discretion to interpret its enabling statutes. In particular, the Court found that the CWCB has the required expertise and access to expert scientific opinion (through the Colorado Division of Wildlife, and subsequently, other recommending entities such as the BLM) to determine the habitat and life forms to be preserved and the amount of water needed for instream flow water rights on a case-by-case basis. The Court specifically stated, "To require an enumeration of the forms of plant and animal life, as well as natural formations, which the legislature wished to preserve, would be to impose an impossible task. The legislative objective is to preserve reasonable portions of the natural environment in Colorado. Factual determinations regarding such questions as which areas are most amenable to preservation and what life forms are presently flourishing or capable of flourishing should be delegated to an administrative agency which may avail itself of expert scientific opinion. This is particularly true, considering that the General Assembly undoubtedly anticipated that the considerations for each locale might vary. . . . The General Assembly clearly intended to have the Colorado Water Board preserve various life forms." Consequently, the Board has discretion under the statute to appropriate ISF water rights to preserve aspects of the natural environment other than fish, such as rare riparian plant communities.

Because the science supports the need for seasonally available flows (snowmelt runoff, flood flows, base flows, storm events) to maintain the riparian plant community and other aspects of the natural environments of Big and Little Dominguez Creeks, there is a rational connection

<sup>1</sup> Colorado River Water Conservation Dist. v. Colorado Water Conservation Bd., 594 P.2d 570, 478 (Colo. 1979).

between preserving those aspects of the natural environment with all of the annually available flow minus a development allowance and preserving the natural environment to a reasonable degree as contemplated by the statutes governing the ISF Program.

## **2. Existing non-traditional ISF appropriations made by the CWCB**

The CWCB has appropriated ISF water rights in the past that preserve aspects of the natural environment other than cold water fisheries. On numerous occasions, the CWCB has relied upon methodologies and science-based approaches that have resulted in large minimum flow appropriations up to and including all of the unappropriated flow. Such appropriations demonstrate the Program's flexibility in addressing reasonable preservation of the natural environment where there are competing factors and interests. In addition, these appropriations strengthen the state's authority to determine the allocation of Colorado's water resources, and allow for collaborative solutions to challenging natural resource issues involving diverse stakeholders. A summary of non-traditional ISF appropriations by the CWCB is included in the notebook at Tab 6.

## **G. Alternative Approach**

In an attempt to address concerns expressed by some Board members, CWCB staff investigated an alternative quantification approach. Using this approach, a set of flows defined by season would be computed to achieve the wilderness preservation objectives. For example, flows would be computed for a specified duration in amounts that would protect low flow fish habitat or in amounts that would maintain annual in-channel sediment transport (snowmelt bankfull discharge and duration). The identified flows could be displayed against a hydrograph that depicts the "typical" flow regime (e.g., mean daily, median, geometric mean, etc). The resulting recommendation would look like most of the recommendations the Board routinely encounters. However, this recommended flow regime would not include rare flow events or even common high intensity – short duration thunderstorm events that play an important role in developing and maintaining the morphology of the stream, along with the bed and overbank disturbance needed for the regeneration of riparian vegetation. To meet the intent of preserving the "natural wilderness environment," the ISF water rights must also protect these rare short-term highly variable flow events. Because the alternative approach would not result in full preservation of the natural wilderness environment, staff elected to not pursue it.

## **H. Stakeholder Collaboration and Support**

Numerous stakeholders have expressed support for the appropriation of ISF water rights for protection of the DCWA. Letters of support received to date are included at Tab 27. Staff will provide additional letters of support in the Board notebook and at the Board meeting. Staff heard many expressions of support for a CWCB appropriation on Big and Little Dominguez Creeks during its outreach efforts. This support attests to the work and collaboration that occurred between diverse stakeholder interests in the drafting of the DCWA legislation. Local support has been especially strong, and the Grand Junction Sentinel took a supportive position in its March 12, 2010 editorial (Tab 25). Additionally, these ISF appropriations implement the Memorandum of Understanding entered into by the BLM, Colorado Department of Natural Resources, and CWCB in September 2005 (Tab 8). The MOU's purpose was to establish a framework for the parties to work together in a cooperative manner on issues regarding the management of water and water uses on BLM lands in Colorado. Among other things, the parties agreed to seek innovative ways to achieve instream flow protection.



## Staff Recommendation

Staff recommends that the Board:

1. Pursuant to ISF Rule 5d., declare its intent to appropriate an ISF water right on each segment of Big Dominguez Creek and Little Dominguez Creek listed on the attached Tabulation of Instream Flow Recommendations, in the amount of all the annually available flow on the subject streams, minus the development allowance described in this memo.
2. Direct Staff to publicly notice the Board's declaration of its intent to appropriate, including the Board's intent to include the following non-precedent language in the water court decree for these ISF water rights: "This ISF water right appropriation is based upon the facts and circumstances particular to this situation and to these stream reaches, and shall have no precedential effect on future ISF appropriations."
3. Establish the following initial schedule for the notice and comment procedure pursuant to ISF Rule 5c.:

<b>Date</b>	<b>Action</b>
May 19, 2010	Board declares its intent to appropriate and hears public comment
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Attachments

# **Grand Junction Daily Sentinel (editorial)    March 12, 2010**

## **Future may be clear for Dominguez waters**

A little more than a year after Congress established the Dominguez-Escalante National Conservation Area, state water officials and federal agencies are trying to reach agreement on how best to protect the waters of Big and Little Dominguez Creeks within the NCA boundaries.

The BLM has proposed an unusual plan for resolving the issue, under which the state may file for instream water rights for the two streams that run through a wilderness area in the NCA. The concept is one the Colorado Water Conservation Board should accept when it takes up the question in May.

At the heart of the proposed solution is an agreement written into the federal legislation that created the NCA: If the state files for adequate instream water rights for the two wilderness creeks, the Interior Department won't assert a federal water right.

The Daily Sentinel has long maintained that it serves Colorado interests better if the state files for instream flow rights through state water courts, rather than having federal officials simply lay claim to the rights. With that in mind, we support the agreement written into the Dominguez-Escalante legislation.

Furthermore, the water language in the bill was developed through a cooperative effort before the legislation was introduced. Contrast that with Denver Congresswoman Diana DeGette, whose bill to create more than 30 wilderness areas around the state was heard in a U.S. House committee Thursday. The water language in her bill is opposed by many water entities in the state.

The difficulty comes in determining how much water is appropriate "for wilderness management purposes." Not much water flows through either Big or Little Dominguez Creek most of the year — less than 4 cubic feet per second even in Big Dominguez.

But at other times — during spring runoff, summer rains or the much larger storms that occur every 10 years or so — the flow can be much larger. It can be around 75 cubic feet per second during spring runoff and as much as 10 times that during large floods.

The BLM has asked the state to seek a variable instream water right that recognizes streamflow can change dramatically.

That's not how Colorado instream flow rights have traditionally been appropriated in the past. A set minimum amount has been the typical filing. But a variable rights have been filed for a handful of other streams in the state..

Private water rights are also an issue. Even though the headwaters of both Big and Little Dominguez Creeks are both high up on the Uncompahgre Plateau in the Uncompahgre National Forest, there is private land within the national forest that depends on water from the two creeks. The BLM proposal recognizes that, and acknowledges rights will be senior to the state's instream flow filings, and there will be some modest amount of water for additional future development of those rights.

The exact volume of water that should be claimed for each part of the year may need some tweaking. But the concept the BLM has submitted appears a sensible way to protect the waters of the two streams. It can ensure enough water "to support wilderness management purposes" without turning management of the streams over to the federal government.

[http://www.gjsentinel.com/opinion/articles/future\\_may\\_be\\_clear\\_for\\_doming](http://www.gjsentinel.com/opinion/articles/future_may_be_clear_for_doming)

## **Grand Junction Daily Sentinel (letter)**

### **Innovative proposal will protect Dominguez waters**

Regarding the March 11 editorial by The Daily Sentinel, "Future may be clear for Dominguez waters": Trout Unlimited applauds the Sentinel for supporting a balanced, innovative plan to meet the water needs of the Dominguez-Escalante National Conservation Area and Dominguez Canyons Wilderness Area.

Healthy wilderness rivers and streams require more than minimal flows. They also require larger "flushing" flows in the spring to ensure that natural stream processes and hydrology are maintained. In last year's Black Canyon of the Gunnison settlement, for instance, all parties agreed on the need for flushing flows to mimic the flow variability that occurs under natural conditions.

In the Dominguez case, the BLM plan is innovative in calling for the state to claim water rights to meet the flow needs of the federal wilderness area. This arrangement allows Colorado to maintain control over the water resource while satisfying the purposes of the federal wilderness designation which, as the Sentinel points out, resulted from a constructive, cooperative effort.

The Colorado Water Conservation Board should approve this plan to keep the Big and Little Dominguez creeks running wild.

DREW PETERNELL, Director

Colorado Water Project

Trout Unlimited

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April 29, 2010

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

VIA Email: [Linda.Bassi@state.co.us](mailto:Linda.Bassi@state.co.us)

Dear Colorado Water Conservation Board Directors,

The Nature Conservancy (TNC) submits this letter in formal support of the intent to appropriate instream flow (ISF) water rights on Big Dominguez Creek and Little Dominguez Creek in the newly designated Dominguez Canyon Wilderness Area. TNC supports the appropriation of instream flow rights for the Big Dominguez and Little Dominguez Creeks in both a sufficient size and timing to protect water related values.

In March of 2009, through an act of Congress that reflected a consensus among stakeholders, Colorado was presented with the unique opportunity to work with the CWCB to protect the vital resources of the newly designated Dominguez Canyon Wilderness area. The CWCB now has the opportunity, via this new legislation, to protect some of Colorado's best wild areas and waters without jeopardizing existing water rights.

CWCB staff has worked collaboratively with the Bureau of Land Management (BLM) and many other stakeholders to assess the flows needed to protect the wilderness values and purposes of the Dominguez Canyon Wilderness Area. From that collaborative effort, a recommendation has arisen that serves the needs of water rights holders and upholds the wilderness values of the newly designated wilderness as envisioned by Congress. We believe that the recommendations put forward by BLM and CWCB staff provide water rights sufficient not only to keep the streams flowing but also to protect the aquatic and riparian ecosystems which rely on them. Further, and importantly, appropriation of ISFs for these streams will avoid the assertion of a federal reserved water right for the wilderness.

We understand there has been some concern over peak flow ISF levels needed to protect the environment to a reasonable degree. Within the CWCB's ISF program, R2CROSS has been the traditional approach to quantifying ISFs. This method is suitable for identifying the minimum flow necessary to allow trout to survive in cold-water streams. However, R2CROSS is not designed to ensure protection of all components of the environment. There exists abundant scientific evidence available in hundreds of peer-reviewed publications indicating that more complex flow patterns—peak flows, minimum flows, and variability in all aspects of the hydrologic regime—are needed to protect river health. We believe comprehensive ISF recommendations put forth by the Bureau of Land Management with support from CWCB staff are fully justifiable to protect the important stream resources in the Dominguez watershed.

We enthusiastically recommend that the CWCB accept the staff recommendation and file an intent to appropriate instream flow water rights for both Big Dominguez and Little Dominguez Creeks.

Sincerely,  
Adam Bergeron  
Water Project Director  
The Nature Conservancy





RECEIVED

APR 30 2010

Colorado Water Conservation Board

April 30, 2010

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

Re: Dominguez Canyons Instream Flow Recommendations

Dear Board Members,

On behalf of Trout Unlimited's Colorado Water Project, Colorado Trout Unlimited and Trout Unlimited's Grand Valley Anglers and Gunnison Gorge Anglers Chapters, the undersigned are writing to urge you to adopt your staff's recommendations for instream flow appropriations for Big Dominguez Creek and Little Dominguez Creek in the Dominguez Canyons Wilderness Area. These special creeks are worthy of the highest level of protection available under the Colorado Water Conservation Board ("CWCB") instream flow program.

Trout Unlimited is a national, non-profit coldwater fisheries conservation organization. In Colorado, we have roughly 10,000 members, including approximately 300 members in our Grand Junction based Grand Valley Anglers Chapter and 225 members in our Delta and Montrose based Gunnison Gorge Anglers Chapter. Trout Unlimited is highly interested in the CWCB instream flow program and in the continuing health of Big and Little Dominguez Creeks. These creeks are exceptional resources and their upper reaches harbor healthy population of rainbow trout.

In March of 2009, Congress passed the Omnibus Public Lands Act of 2009, officially creating the Dominguez Canyons Wilderness Area adjacent to the Gunnison River. The legislation represented a consensus among various stakeholders, including conservation interests and water user groups, and presented Colorado with a unique opportunity to use the CWCB instream flow program to protect the water-dependent wilderness values of the newly designated wilderness area. In particular, the legislation asks the CWCB to use its instream flow program to appropriate instream flow water rights for Big and Little Dominguez Creeks in quantities sufficient to preserve their wilderness character. The legislation further provides that the Department of Interior will refrain from invoking federal authorities to protect stream flows in these creeks so long as the Secretary determines that the state water rights are sufficient to meet federal purposes.

Colorado has long sought to minimize the use of federal powers to protect streams flows in rivers and creeks in this state. The Dominguez Canyons Wilderness legislation recognizes this interest without undermining the United States' need to preserve the wilderness character of Big

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***Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization***

1320 Pearl Street, Suite 320, Boulder, CO 80302  
(303) 440-29370 • Fax: (303) 440-7933 • [www.tu.org](http://www.tu.org)



and Little Dominguez Creeks. The staffs of the CWCB and the Bureau of Land Management have forged a recommendation that accommodates state and federal interests and the interests of current and future water users in Colorado. By seizing this opportunity, the CWCB can demonstrate the viability of the state instream flow program in meeting federal needs without the assertion of federal authorities.

It is with our strongest support that we urge you to adopt your staff's recommendation for instream flow water rights on Big and Little Dominguez Creeks. Thank you for considering our comments on this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Drew Peternell', is written over the word 'Sincerely,'.

Drew Peternell, Director  
Trout Unlimited's Colorado Water Project

David Nickum, Executive Director  
Colorado Trout Unlimited

Dave Trimm, President  
Trout Unlimited's Grand Valley Anglers Chapter

Anthony Chelf, President  
Trout Unlimited's Gunnison Gorge Anglers Chapter

May 4, 2010

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

VIA Email: Linda.Bassi@state.co.us

Dear Board,

On behalf of the Colorado Environmental Coalition, Rocky Mountain Chapter of the Sierra Club, and San Juan Citizens' Alliance, I heartily submit this letter of support for the intent to appropriate water rights on Big Dominguez Creek and Little Dominguez Creek in sufficient size and timing to protect water related values in the newly designated Dominguez Canyon Wilderness Area, as proposed by CWCB staff.

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 new opportunity the CWCB can forge a new way forward to protect Colorado's best wildlands in a manner consistent with protection for and full exercise of other, existing water rights. To demonstrate the utility of the state-based approach, we made a recommendation to the CWCB in September of 2009 that the CWCB make determinations of needs utilizing a strong science based approach and appropriates water rights to protect the Dominguez Canyon Wilderness.

CWCB staff has worked collaboratively with the Bureau of Land Management (BLM) and many other stakeholders to assess the flows needed to protect the wilderness values and purposes. That effort has come up with a recommendation that has been tailored to the needs of current and future generations and which protect the wilderness as envisioned by Congress. We believe that the recommendations put forward by BLM and CWCB staff provide water rights sufficient not only to keep the streams flowing but to protect the aquatic and riparian ecosystems which rely on them, but will also avoid the assertion of a federal reserved water rights for the wilderness.

We enthusiastically recommend that the CWCB accept the staff recommendation and file an intent to appropriate for both Big Dominguez and Little Dominguez Creeks.

Sincerely,



for

Becky Long  
Colorado Environmental Coalition

Meghan Maloney  
San Juan Citizens' Alliance

Steve Glazer  
Rocky Mountain Chapter of the Sierra Club

# HIGH COUNTRY CITIZENS' ALLIANCE

PO Box 1066 • Crested Butte, Colorado 81224  
(970) 349-7104 • FAX: (970) 349-0164  
Office@hccaonline.org • www.hccaonline.org

5/5/10

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

VIA Email: Linda.Bassi@state.co.us

Re: Dominguez water right filings

Dear Board,

These comments are submitted on behalf of the members of High Country Citizens' Alliance, a local, 600+ member grassroots conservation group in the headwaters of the Gunnison River Basin. The mission of our organization is to champion the protection, conservation and preservation of the natural ecosystems within the Gunnison River Basin. In the spirit of our mission, we offer our endorsement and support for the Board's intent to appropriate water rights in Big and Little Dominguez creeks in sufficient quantities and timing necessary to support the resilience of the native aquatic, riparian and terrestrial species found in this unique environment. Many of our members have recreated in this newly designated wilderness and encourage you to appropriate the flows needed to allow this area to thrive in its natural equilibrium.

Though the skilled leadership of then-Senator Ken Salazar, Congress gave Colorado the unique opportunity to avoid federal/state water right conflicts of the past. Your staff collaborated effectively with the BLM to bring a science-based approach to determine what would be needed to protect the precious resources of Dominguez Canyon for the enjoyment of current and future generations as envisioned by Congress.

We acknowledge your staff's effort, with the assistance of the CRWCD, to reach out to the landowners in the basin whom might be impacted by your effort. We think the provision you are putting on your appropriation to carve out up to 100 af for future junior depletions is fair and reasonable for all concerned. You should feel comfortable to, and we would be pleased for you to, move this appropriation forward.

Sincerely,



Water Program Director





April 26, 2010

Mr. Geoff Blakeslee, Chair  
CWCB Board  
ATTN: Linda Bassi  
1313 Sherman St., 7<sup>th</sup> Floor  
Denver, CO 80203

**RE: DOMINGUEZ WILDERNESS INSTREAM FLOWS**

Dear Chairman Blakeslee:

The Board of the Colorado River District last week in its regular quarterly meeting reviewed the outline and structure of CWCB staff's proposed instream flow appropriations for segments of Big and Little Dominguez Creeks that lie within the recently created Dominguez Wilderness Area. The Board endorsed unanimously the proposed approach to these two particular instream flow appropriations.

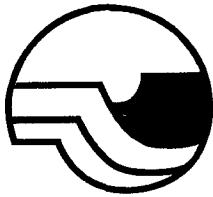
The River District believes the approach staff proposes for the structure of the Dominguez instream flows is appropriate to the situation and consistent with both the instream flow statute and the federal legislation enacting the wilderness area. Additionally, the River District appreciates staff working with and through the River District to reach out to area water users and the Board's hiring of a consultant to forecast future water uses to be addressed by a development allowance.

We plan on having a River District staff member available for testimony in support of these filings at your May board meeting.

Sincerely,

A handwritten signature in blue ink, which appears to read "R. Eric Kuhn", is positioned below the "Sincerely," text.

R. Eric Kuhn,  
General Manager



Mesa County, Colorado  
**BOARD OF COUNTY COMMISSIONERS**

District 1 - Craig J. Meis (970) 244-1605  
District 2 - Steven Acquafresca (970) 244-1604  
District 3 - Janet Rowland (970) 244-1606

P.O. Box 20,000 • 544 Rood Avenue • Grand Junction, Colorado 81502-5010 • FAX (970) 244-1639

May 3, 2010

Geoff Blakeslee, Chairman  
Colorado Water Conservation Board  
1313 Sherman St., 7<sup>th</sup> Floor  
Denver, CO 80203

**RECEIVED**  
MAY 07 2010  
Colorado Water Conservation Board

Dear Chairman Blakeslee:

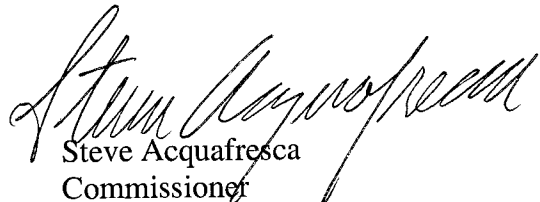
The Mesa County Board of Commissioners is in support of the proposed instream flow filing coming before the Colorado Water Conservation Board in May for creeks within the Dominguez Wilderness Area.

We feel this filing will protect existing water rights and will provide for future water development. We feel it will also protect wilderness environment and meet federal legislative intent.

Sincerely,

  
Craig J. Meis, P.E., Chair  
Board of Commissioners

  
Janet Rowland  
Commissioner

  
Steven Acquafresca  
Commissioner

s:\kc&bl\letters\support\cwcb.doc



RECEIVED

MAY 06 2010

COLORADO RIVER WATER  
CONSERVATION DISTRICT

BOARD OF COUNTY COMMISSIONERS

May 4, 2010

Mr. Geoff Blakeslee, Chairman  
Colorado Water Conservation Board  
1313 Sherman Street, 7<sup>th</sup> Floor  
Denver CO 80203


RE: Dominguez Wilderness Instream Flows

Dear Chairman Blakeslee:

Montrose County Board of County Commissioners supports the outline and structure of the CWCB staff's proposed instream flow appropriations for segments of the Big and Little Dominguez Creeks that lie within the recently created Dominguez Wilderness Areas. Montrose County and the Board have a great interest and concern about proposed State water usage and water appropriations. We feel that the CWCB is being responsible and upholding Colorado water laws regarding instream flow for the Dominguez Creeks.

Instream flow appropriations for the future would be achievable and realistic; therefore, the Board supports and desires the appropriations be approved as requested.

Sincerely,



Ronald D. Henderson  
Chairman

/ihsn

Copy: Linda Bassi, CWCB  
Christopher Treese, CRWCD

Tony Prendergast  
1308 Clear Fork Road  
Crawford, Colorado 81415

6 May 2010

**RECEIVED**

MAY 10 2010

Colorado Water Conservation Board

Colorado Water Conservation Board  
1313 Sherman, Room 721  
Denver 80203

Dear Colorado Water Conservation Board Members,

As a private citizen from Delta County who worked hard on the effort to create the Dominguez Canyon Wilderness, I support the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. I encourage you to promptly approve the appropriate instream flow filings to establish this important and timely protection.

In addition to protecting the uniquely preserved and natural riparian, habitat, wildlife, stream channel, and scenic values of Dominguez Canyon Wilderness, these instream flow filings represent an important opportunity for a state-federal partnership in providing that streamflow protection.

By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state's authority and control regarding instream flow protection.

Thank you very much for your careful consideration of this innovative and fitting approach to water management. Please approve the Dominguez streams-protection recommendation.

Sincerely,



Tony Prendergast



1430 Larimer Street, Suite 300  
Denver, Colorado 80202

TEL: 720.570.2897  
FAX: 303.996.2017  
WEB: [www.coloradowatertrust.org](http://www.coloradowatertrust.org)

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Patti Wells  
Ruth Wright

STAFF:

Amy W. Beatie, *Executive Director*

May 10, 2010

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

Dear Colorado Water Conservation Board:

Typically, the Colorado Water Trust ("CWT") focuses on the acquisition side of the state's instream flow program. However, CWT wishes to lend its support to the success of the entire instream flow program. To that end, CWT encourages the Colorado Water Conservation Board ("CWCB") to declare its intent to appropriate instream flow water rights on Big Dominguez Creek and Little Dominguez Creek. CWT believes the CWCB has the legal flexibility to apply its existing tools to unique circumstances to preserve instream flows.

The General Assembly delegated broad authority to the CWCB for stream protection. The CWCB may "appropriate . . . such waters of natural streams . . . as the board determines may be required for minimum stream flows . . . to preserve the natural environment to a reasonable degree." C.R.S. § 37-92-102(3). The statute explicitly gives the Board discretion to determine at what level streamflows should be preserved to protect Colorado's rivers.

Moreover, the Board, as an agency board, possesses wide discretion when interpreting and executing legal mandates. If a court reviews your actions, it may only disagree with them if you acted "arbitrarily or capriciously." A court will not find an agency decision arbitrary or capricious unless it finds "that there is no competent evidence supporting the agency's decision." *Dolan v. Rust*, 576 P.2d 560, 562 (Colo. 1978). As guidance to make such a determination, the court will "ascertain whether the agency examined the relevant data and articulated a rational connection between the facts found and the decision made." *Maggard v. Dep't of Human Services*, 226 P.3d 1209, 1212 (Colo. Ct. App. 2009) (citing *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1574 (10th Cir.1994)). This means that as long as there is evidence in the record to support your decision to move ahead with the Dominguez filing, a court is likely to uphold your decision if it is reviewed.

The Dominguez Creek appropriation presents an opportunity. The streams flow through a Wilderness Area in one of the least populated areas of the state. The scientific surveys of the area indicate a superb and isolated ecological environment that benefits significantly from its largely unaffected natural hydrograph. Current water users would be unaffected

by the appropriation, and the minimal projected future development would be protected by a development allowance. The CWCB should preserve this natural environment to a reasonable degree by appropriating the entire hydrograph minus the development allowance.

Finally, a word about our interest: as an organization, CWT has never commented on a CWCB appropriation before. We work entirely within the CWCB's acquisitions program; it helps us maintain a voluntary, market-based approach to stream protection. We write today because we believe in the CWCB's power to craft unique appropriations for unique streams. No two stream reaches are the same, either ecologically or administratively, and so we encourage the CWCB to continue to think creatively about how to craft stream protections to match such diversity. We believe that appropriating these instream flow rights in the Dominguez Creeks would be a valid exercise of CWCB authority, and CWT encourages the Board to declare its intent to appropriate.

Sincerely,

A handwritten signature in black ink, reading "Amy W. Beatie". The signature is fluid and cursive, with a long horizontal stroke at the end.

Amy W. Beatie



PO Box 1442, CARBONDALE, CO 81623

[www.wildernessworkshop.org](http://www.wildernessworkshop.org)

TEL 970.963.3977

FAX 970.963.8447

May 7, 2010

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

Dear Colorado Water Conservation Board Members,

Wilderness Workshop enthusiastically supports the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. We encourage you to promptly approve the appropriate instream flow filings to establish this important and timely protection.

In addition to protecting the uniquely preserved and natural riparian, habitat, wildlife, stream channel, and scenic values of Dominguez Canyon Wilderness, these instream flow filings represent an important opportunity for an important state-federal partnership in providing that streamflow protection.

By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state's authority and control regarding instream flow protection.

Thank you very much for your careful consideration of this innovative and fitting approach to water management. Please approve the Dominguez streams-protection recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sloan Shoemaker', written in a cursive style.

Sloan Shoemaker, Executive Director





Colorado Water Conservation Board  
1313 Sherman St., Room 721  
Denver, CO 80203

May 6, 2010

Dear Colorado Water Conservation Board Members,

Colorado Wild strongly supports the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. We encourage you to promptly approve the recommended instream flow filings to establish important and timely protection for the Wilderness.

Wilderness areas are those that “appear[] to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable”. (The Wilderness Act, section 2(c)). Having natural water flows in the two main streams in the Dominguez Canyon Wilderness will help ensure that this provision will be met, as such flows will maintain natural stream channels and good fish habitat.

In addition to protecting the uniquely preserved and natural values of Dominguez Canyon Wilderness, these instream flow filings represent an excellent opportunity for an important state-federal partnership in providing that streamflow protection. This issue is often contentious, but would here be perfectly congruent with the legislation that established the Dominguez Canyon Wilderness.

By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state’s authority and control regarding instream flow protection.

Thank you very much for your careful consideration of this innovative and fitting approach to water management. Please approve the staff recommendation for protecting stream flows in Dominguez Canyon.

Sincerely,

Rocky Smith, ForestWatch Campaign Coordinator  
Colorado Wild  
1030 Pearl #9  
Denver, CO 80203  
[rocky@coloradowild.org](mailto:rocky@coloradowild.org)





PO Box 389, Telluride, CO 81435 • 970-728-3729 • FAX 970-239-4989 • [www.sheepmountainalliance.org](http://www.sheepmountainalliance.org)

May 7, 2010

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

Dear Colorado Water Conservation Board Members,

Sheep Mountain Alliance enthusiastically supports the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. We encourage you to promptly approve the appropriate instream flow filings to establish this important and timely protection.

In addition to protecting the uniquely preserved and natural riparian, habitat, wildlife, stream channel, and scenic values of Dominguez Canyon Wilderness, these instream flow filings represent an important opportunity for an important state-federal partnership in providing that streamflow protection.

By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state's authority and control regarding instream flow protection.

Thank you very much for your careful consideration of this innovative and fitting approach to water management. Please approve the Dominguez streams-protection recommendation.

Sincerely,

Hilary White

Executive Director



*Working to Protect Native Species and Their Habitats*

P.O. Box 1512, Laramie, WY 82073 (307) 742-7978 fax: 742-7989

May 7, 2009

Colorado Water Conservation Board  
1313 Sherman, Room 721  
Denver 80203

Dear Colorado Water Conservation Board Members,

Biodiversity Conservation Alliance strongly supports the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. We encourage you to promptly approve the appropriate instream flow filings to establish this important and timely protection.

In addition to protecting the uniquely preserved and natural riparian, habitat, wildlife, stream channel, and scenic values of Dominguez Canyon Wilderness, these instream flow filings represent an important opportunity for an important state-federal partnership in providing that streamflow protection.

By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state's authority and control regarding instream flow protection. Instream flows are critical for the maintenance of viable populations of trout and other fishes and aquatic organisms.

Thank you very much for your careful consideration of this innovative and fitting approach to water management. Please approve the Dominguez streams-protection recommendation.

Sincerely,

Erik Molvar  
Executive Director



May 5, 2010

Colorado Water Conservation Board  
1313 Sherman, Room 721  
Denver 80203

Dear Colorado Water Conservation Board Members,

Great Old Broads for wilderness enthusiastically supports the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. We encourage you to promptly approve the appropriate instream flow filings to establish this important and timely protection.

In addition to protecting the uniquely preserved and natural riparian, habitat, wildlife, stream channel, and scenic values of Dominguez Canyon Wilderness, these instream flow filings represent an important opportunity for an important state-federal partnership in providing that streamflow protection.

By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state's authority and control regarding instream flow protection.

Thank you very much for considering this innovative and fitting approach to water management. Please approve the Dominguez streams-protection recommendation.

Sincerely,

Veronica Egan, Executive Director



# Wild Connections

FROM THE MOUNTAINS TO THE PRAIRIES

1420 Pinewood Road  
Florissant, CO 80816  
719-686-5905  
[info@wildconnections.org](mailto:info@wildconnections.org)  
[www.wildconnections.org](http://www.wildconnections.org)

May 4, 2010

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

Dear Colorado Water Conservation Board Members,

Wild Connections supports the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. We encourage you to approve the appropriate instream flow filings to establish this important and timely protection.

It is important to protect the riparian habitat, stream channel and the wildlife that depends on adequate water in the streams. Protecting the instream flows will also greatly enhance the scenic values of the Dominguez Canyon Wilderness. Further, the instream flow filings are an opportunity for a state-federal partnership in providing that stream flow protection.

By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state's authority and control regarding instream flow protection.

Thank you very much for your careful consideration of this innovative and reasonable approach to water management. Please approve the Dominguez streams-protection recommendation.

Sincerely,

Jean C. Smith  
Associate Director

## STATE OF COLORADO

Bill Ritter, Jr., Governor

DEPARTMENT OF NATURAL RESOURCES

**DIVISION OF WILDLIFE**

AN EQUAL OPPORTUNITY EMPLOYER

Thomas E. Remington, Director

6060 Broadway

Denver, Colorado 80216

Telephone: (303) 297-1192

wildlife.state.co.us



*For Wildlife-  
For People*

May 17, 2010

Ms. Linda Bassi  
Colorado Water Conservation Board  
Stream and Lake Protection Section  
1313 Sherman Street, Room 723  
Denver, Colorado 80203

**Re: BLM Instream Flow Recommendations for Big and Little Dominguez Creeks**

Dear Linda,

The purpose of this letter is to transmit the Colorado Division of Wildlife's (CDOW) support for the Bureau of Land Management's (BLM) instream flow recommendations for Big and Little Dominguez Creeks. CDOW staff has reviewed the BLM's natural environment studies and proposed instream flow recommendations and believe they provide reasonable natural environment protection for the wilderness management purposes identified for the Dominguez Canyon Wilderness Area.

**Background**

As stated in the CWCB's May 4, 2010, staff memorandum:

The Dominguez Canyon Wilderness was created on March 30, 2009 as part of the 2009 Omnibus Public Lands Management Act (Act). The legislation provides an opportunity for the Board to appropriate ISF water rights 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, which 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 BLM has worked with the CWCB staff and stakeholders to develop ISF recommendations for Big Dominguez Creek and Little Dominguez Creek, which are the two primary stream systems located within the Wilderness Area.

DEPARTMENT OF NATURAL RESOURCES, Mike King, Executive Director  
WILDLIFE COMMISSION, Tim Glenn, Chair • Robert Streeter, Vice Chair • Mark Smith, Secretary  
Members, David R. Brougham • Dennis Buechler • Dorothea Farris • Allan Jones • John Singletary • Dean Wingfield  
Ex Officio Members, Mike King and John Stulp

### **Natural Environment to be Protected**

The legislation that created the Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness Area (DCWA) expressly refers to the natural environment in its definition of the purpose of the Act:

*To conserve and protect for the benefit and enjoyment of present and future generations:*

*(1) the unique and important resources and values of the land, including the geological, cultural, archaeological, paleontological, natural, scientific, recreational, wilderness, wildlife, riparian, historical, educational, and scenic resources of the public land; and*

*(2) 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 also references the Wilderness Act, 16 U.S.C 1131 et seq., to further define its purpose. The Wilderness Act defines a wilderness as:

*. . . an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.*

The BLM has provided the CWCB with the results of their natural environment studies as well as the associated flows that would be required to reasonably maintain the natural environment in its present wilderness state. The natural environment studies and surveys indicate that these creeks possess many unique attributes (see CWCB Memorandum).

### **Discussion**

The CDOW supports the BLM's instream flow recommendations for Big and Little Dominguez Creeks because of the unique environments they would protect and the high level of positive support for the recommendations from the wide range of stakeholders involved in the process. Moving forward with these recommendations also satisfies the goals of the Memorandum of Understanding (MOU) between the Department of Natural Resources and the BLM. As the MOU states:

*It is in the public interest to find collaborative solutions to challenging natural resource issues under cooperative agreements. Cooperation will result in more benefits to the public, to water resources, and to federal land than interaction through other means.*

Appropriating these instream flow recommendations would provide another great example on how the State's instream flow program can accomplish innovative solutions through State and Federal collaboration relating to the non-consumptive needs of the State's natural resources.

### **CDOW Recommendation**

The CDOW recommends that the CWCB form its intent to appropriate the BLM recommended instream flows for Big and Little Dominguez Creek to preserve their unique natural environments.

If you have any questions regarding this letter please give me a call.

Sincerely,

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

Mark Uppendahl  
Colorado Division of Wildlife  
Instream Flow Program Coordinator

Cc: Jay Skinner, CDOW Water Resources Unit Manager – w/o attachments





May 7, 2010

Mr. Geoff Blakeslee, Chair  
Colorado Water Conservation Board  
1313 Sherman St., 7<sup>th</sup> Floor  
Denver, CO 80203

Attention: Ms. Linda Bassi

**RE: BIG AND LITTLE DOMINGUEZ CREEKS - DOMINGUEZ WILDERNESS INSTREAM FLOWS**

Dear Chairman Blakeslee,

At its May 5, 2010 meeting the Grand Junction City Council authorized this letter of support and endorsement of the proposed appropriation of instream flows (ISF) in the Big and Little Dominguez Creeks. The City Council and staff have reviewed and agreed with the CWCB's proposed instream flow appropriations. We especially support the Board in its appropriation of an instream flow water right to support wilderness management purposes in lieu of creating a federal right.

The City likewise supports the partnering of the State and Federal governments in the protection of the water resources of the creeks, based on seasonally available flows as recommended by the BLM, which support the aquatic, riparian and terrestrial life in and around the streams. While the protection of those aspects of the streams is important, we also appreciate your involvement of the landowners and water rights holders of record upstream of the Dominguez Wilderness Area. It is important that those persons have been informed of the potential ISF water rights and that concern is shown about their current and projected water supply needs and possible further development of those rights.

On behalf of the City Council we hope that your project surpasses its goals of environmental conservation and protection and that it serves as a continuing model of State and Federal cooperation. We will look forward to hearing of these successes.

Sincerely,



Teresa Coons  
Mayor

pc: City Council  
City Manager Laurie Kadrich  
City Attorney John Shaver  
Utilities and Street Systems Director Greg Trainor

**GAIL SCHWARTZ**  
Senate District 5

State Capitol Building  
200 E. Colfax Avenue  
Denver, Colorado 80203  
Capitol: 303-866-4871  
Capitol FAX: 303-866-4543  
Home: 970-925-3013

E-mail: [gail.schwartz.senate@gmail.com](mailto:gail.schwartz.senate@gmail.com)



**Senate Chamber  
State of Colorado  
Denver**

Local Government and  
Energy Committee  
Chair

Agriculture & Natural  
Resources Committee  
Member

Committee on Legal Services  
Member

Capital Development Committee  
Member

May 10<sup>th</sup>, 2010

**RECEIVED**

**MAY 14 2010**

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

Colorado Water Conservation Board

Dear Colorado Water Conservation Board Members,

I am writing this letter in support of the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. We encourage you to promptly approve the appropriate instream flow filings to establish this important and timely protection.

In addition to protecting the uniquely preserved and natural riparian, habitat, wildlife, stream channel, and scenic values of Dominguez Canyon Wilderness, these instream flow filings represent an important opportunity for an important state-federal partnership in providing that streamflow protection.

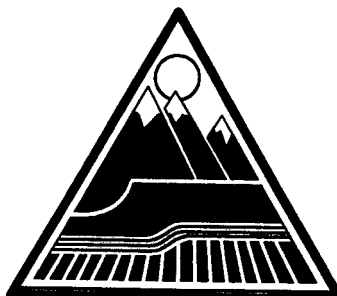
By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state's authority and control regarding instream flow protection.

Thank you very much for your careful consideration of this innovative and fitting approach to water management. Please approve the Dominguez streams-protection recommendation.

Sincerely,

A handwritten signature in cursive script that reads "Gail Schwartz".

Gail Schwartz  
Senator – District 5



# DELTA COUNTY, COLORADO

## BOARD OF COUNTY COMMISSIONERS

COUNTY COURTHOUSE • 501 PALMER STREET • SUITE 227 • DELTA • COLORADO • 81416-1796

PHONE: (970) 874-2100 FAX: (970) 874-2114

[www.deltacounty.com](http://www.deltacounty.com)

Dist. 1: Lela J. "Jan" McCracken - Dist. 2: C. Bruce Hovde - Dist. 3: R. Olen Lund

May 10, 2010

**RECEIVED**

**MAY 14 2010**

Mr. Geoff Blakeslee, Chairman  
Colorado Water Conservation Board  
1313 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

Colorado Water Conservation Board

RE: Dominguez Wilderness Instream Flows

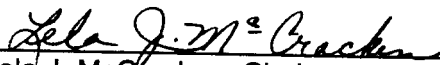
Dear Chairman Blakeslee:

The Board of Delta County Commissioners (Board) supports the Colorado Water Conservation Board's (CWCB) proposed instream flow appropriation for the Big and Little Dominguez Creeks that lie within the recently created Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness Area. The Board particularly appreciates CWCB's reliance on Colorado water law and specifically Colorado's instream flow program as it developed its proposal for an instream flow appropriation.

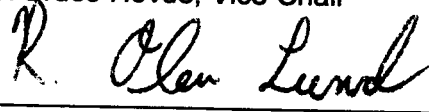
The Board does wish to go on record stating that its support is based on the uniqueness of this instream flow appropriation proposal for this specific situation. The Board would not support this proposal necessarily becoming a precedent for future instream flow appropriations.

In this situation, the Board feels this filing will protect existing water rights, will provide for future water development and will meet federal legislative intent.

Sincerely,

  
Lela J. McCracken, Chair

  
C. Bruce Hovde, Vice Chair

  
R. Olen Lund, Commissioner

Cc: Christopher J. Treese, CWCB



Center for Native Ecosystems

*Celebrating 10 years of saving endangered plants and wildlife in the Greater Southern Rockies.*

May 11, 2010

Colorado Water Conservation Board  
Attention: Linda Bassi  
Stream and Lake Protection Section

Dear Linda and others,

I am writing to express my and Center for Native Ecosystems' support for your staff's (and the Bureau of Land Management's) recommendation to establish instream flow protection for Big and Little Dominguez Creeks in the newly established Dominguez Canyons wilderness. Natural water flows are an important part of the character of a wilderness area, and maintaining adequate instream flows in the Dominguez Canyon Wilderness Area is an appropriate application of this water rights tool.

In addition, natural flows are an important aspect of healthy aquatic and riparian habitats, and the wilderness area supports important examples of such habitat, supporting dozens of native species. Rare, imperiled, and otherwise sensitive species of fish, wildlife, and plants are especially dependent on naturally flowing waterways in unaltered settings such as wilderness areas.

Thank you for your attention and consideration.

Sincerely,

Josh Pollock  
Conservation Director



**Colorado  
Mountain  
Club**

Front Range Office  
710 10<sup>th</sup> St. 200  
Golden, CO 80401  
303.996.2746  
303.279.9690 FAX

Grand Junction Office  
1000 N. 9<sup>th</sup> St., #40  
Grand Junction, CO 81501  
970.618.1341  
970.243.0413 FAX

Carbondale Office  
PO Box 1348  
Carbondale, CO 81623  
970.618.1341

May 11, 2010

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

**RECEIVED**

**MAY 11 2010**

Colorado Water Conservation Board

Dear Colorado Water Conservation Board Members,

The Colorado Mountain Club enthusiastically supports the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. We encourage you to promptly approve the appropriate instream flow filings to establish this important and timely protection.

Founded in 1912, the Colorado Mountain Club boasts 8,000 members statewide. Our mission is to protect, preserve, and make readily available Colorado's world class backcountry. CMC was intimately involved in the creation and passage of the Dominguez Escalante National Conservation Area and leads trips to the Dominguez Canyon Wilderness Area every year.

In addition to protecting the uniquely preserved and natural riparian, habitat, wildlife, stream channel, and scenic values of Dominguez Canyon Wilderness, these instream flow filings represent an important opportunity for an important state-federal partnership in providing that streamflow protection.

By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state's authority and control regarding instream flow protection.

Thank you very much for your careful consideration of this innovative and fitting approach to water management. Please approve the Dominguez streams-protection recommendation.

Sincerely,

Bryan Martin  
Director of Conservation



RECEIVED

MAY 17 2010

Colorado Water Conservation Board

BOARD OF COUNTY COMMISSIONERS

May 11, 2010

Mr. Geoff Blakeslee, Chairman  
Colorado Water Conservation Board  
1313 Sherman Street, 7<sup>th</sup> Floor  
Denver CO 80203

RE: Draft Dominguez-Escalante ISF Water Right

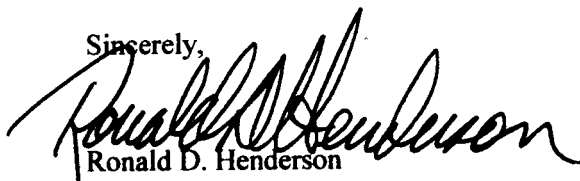
Dear Chairman and Board Members:

Montrose County has reviewed the April 7, 2010 report prepared by DiNatale Water Consultants, Inc., providing analysis of existing water use and projected future needs on private lands in the Big Dominguez and Little Dominguez drainage basins. The conclusion of the analysis is not surprising for our semi arid environment. The report finding insufficient direct flow water for the decreed condition seems typical of the Uncompahgre Plateau.

The proposed "carve out" or reservation of reasonably foreseeable future consumptive use water for an additional 101 ac-ft of storage seems reasonable; however; changes of use to the existing water rights should also be protected. Since the proposed In-Stream Flow (ISF) is not a quantified right, a change in use could subject the water right to being junior to the ISF, effectively eliminating it and growing the un-quantified ISF.

Montrose County is supportive of the CWCB filing for the Dominguez-Escalante ISF water right in support of wilderness management purposes, provided; that the filing "carve out" the recommended 100 ac-ft of storage on Big Dominguez and 1 ac-ft on Little Dominguez, and in addition that the **ISF remains junior to all future changes to the existing water rights.**

Sincerely,



Ronald D. Henderson  
Chairman

/bwsn

Copy: Linda Bassi, CWCB  
Christopher Treese, CRWCD  
Brian Wilson, Public Works



Colorado Water Conservation Board  
1313 Sherman, Room 721  
Denver 80203

Dear Colorado Water Conservation Board Members,

The Wilderness Society is very pleased to offer its strong and enthusiastic support for the instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness, as recommended by the CWCB staff and by the Bureau of Land Management. We encourage you to promptly approve the appropriate instream flow filings, as proposed by staff, to establish this important and timely protection.

In addition to protecting the uniquely preserved and natural riparian, habitat, wildlife, stream channel, and scenic values of Dominguez Canyon Wilderness, these instream flow filings represent an important state-federal partnership toward providing that streamflow protection.

By establishing, in particular, instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the importance and priority of the state's instream flow protection program.

The technical details of this filing have been carefully calculated by the BLM, state staff, and the state's contractors and advisors both to meet the needs of the wilderness and to meet the state's standard for protecting the natural environment. This is a legitimate and effective proposal.

Thank you very much for your careful consideration of this innovative and fitting approach to water management and to wilderness protection. Please approve the Dominguez streams-protection recommendation.

Sincerely,

Steve Smith  
Assistant Regional Director

Central Colorado Wilderness Coalition  
PO Box 588  
Monument, Colorado 80132  
303-660-5849; jorcstan@juno.com

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

Dear Members of the Colorado Water Conservation Board,

Central Colorado Wilderness Coalition is a volunteer-run, regional wilderness research and advocacy group in eastern Colorado. In our work, we have come to understand the importance of instream flows in maintaining natural values in the areas we are endorsing for future wilderness designation. This is particularly true for several of our proposed wildernesses, which are lower elevation, mid-stream areas similar to the Dominguez Creeks. For example, current instream flow decrees in Badger Creek, tributary to the Arkansas River, help maintain an improving fishery and rare riparian plant community, among other values.

For this reason, CCWC enthusiastically supports the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. We encourage you to promptly approve the appropriate instream flow filings to establish this important and timely protection.

In addition to protecting the uniquely preserved and natural riparian, habitat, wildlife, stream channel, and scenic values of Dominguez Canyon Wilderness, these instream flow filings represent an important opportunity for an important state-federal partnership in providing that streamflow protection.

By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state's authority and control regarding instream flow protection.

Thank you very much for your careful consideration of this innovative and fitting approach to water management. Please approve the Dominguez streams-protection recommendation.

Best wishes,

***John Stansfield***

John Stansfield, Coordinator  
Central Colorado Wilderness Coalition





May 14, 2010

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

Dear Colorado Water Conservation Board Members,

San Juan Citizens Alliance enthusiastically supports the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek, in the Dominguez Canyon Wilderness. We encourage you to promptly approve the appropriate instream flow filings to establish this important and timely protection.

In addition to protecting the uniquely preserved and natural riparian, habitat, wildlife, stream channel, and scenic values of Dominguez Canyon Wilderness, these instream flow filings represent an important opportunity for an important state-federal partnership in providing that streamflow protection.

By establishing instream flow rights to all available water in these wilderness streams (minus a carefully calculated allowance for future water development upstream of the wilderness), the State of Colorado will ensure the natural wonder of Dominguez Canyon endures long into the future, while preserving the state's authority and control regarding instream flow protection.

Thank you very much for your careful consideration of this innovative and fitting approach to water management. Please approve the Dominguez streams-protection recommendation.

Sincerely,

Megan Graham  
Executive Director

1822 1/2 Main Avenue  
PO Box 2461  
Durango, CO  
81302

970.259.3583  
970.259.8303



## STATE OF COLORADO

Bill Ritter, Jr., Governor

DEPARTMENT OF NATURAL RESOURCES

**DIVISION OF WILDLIFE**

AN EQUAL OPPORTUNITY EMPLOYER

Thomas E. Remington, Director

6060 Broadway

Denver, Colorado 80216

Telephone: (303) 297-1192

wildlife.state.co.us



*For Wildlife-  
For People*

May 17, 2010

Ms. Linda Bassi

Colorado Water Conservation Board

Stream and Lake Protection Section

1313 Sherman Street, Room 723

Denver, Colorado 80203

**Re: BLM Instream Flow Recommendations for Big and Little Dominguez Creeks**

Dear Linda,

The purpose of this letter is to transmit the Colorado Division of Wildlife's (CDOW) support for the Bureau of Land Management's (BLM) instream flow recommendations for Big and Little Dominguez Creeks. CDOW staff has reviewed the BLM's natural environment studies and proposed instream flow recommendations and believe they provide reasonable natural environment protection for the wilderness management purposes identified for the Dominguez Canyon Wilderness Area.

**Background**

As stated in the CWCB's May 4, 2010, staff memorandum:

The Dominguez Canyon Wilderness was created on March 30, 2009 as part of the 2009 Omnibus Public Lands Management Act (Act). The legislation provides an opportunity for the Board to appropriate ISF water rights 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, which 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 BLM has worked with the CWCB staff and stakeholders to develop ISF recommendations for Big Dominguez Creek and Little Dominguez Creek, which are the two primary stream systems located within the Wilderness Area.

### **Natural Environment to be Protected**

The legislation that created the Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness Area (DCWA) expressly refers to the natural environment in its definition of the purpose of the Act:

*To conserve and protect for the benefit and enjoyment of present and future generations:*

- (1) the unique and important resources and values of the land, including the geological, cultural, archaeological, paleontological, natural, scientific, recreational, wilderness, wildlife, riparian, historical, educational, and scenic resources of the public land; and*
- (2) 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 also references the Wilderness Act, 16 U.S.C 1131 et seq., to further define its purpose. The Wilderness Act defines a wilderness as:

*. . . an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.*

The BLM has provided the CWCB with the results of their natural environment studies as well as the associated flows that would be required to reasonably maintain the natural environment in its present wilderness state. The natural environment studies and surveys indicate that these creeks possess many unique attributes (see CWCB Memorandum).

### **Discussion**

The CDOW supports the BLM's instream flow recommendations for Big and Little Dominguez Creeks because of the unique environments they would protect and the high level of positive support for the recommendations from the wide range of stakeholders involved in the process. Moving forward with these recommendations also satisfies the goals of the Memorandum of Understanding (MOU) between the Department of Natural Resources and the BLM. As the MOU states:

*It is in the public interest to find collaborative solutions to challenging natural resource issues under cooperative agreements. Cooperation will result in more benefits to the public, to water resources, and to federal land than interaction through other means.*

Appropriating these instream flow recommendations would provide another great example on how the State's instream flow program can accomplish innovative solutions through State and Federal collaboration relating to the non-consumptive needs of the State's natural resources.

### **CDOW Recommendation**

The CDOW recommends that the CWCB form its intent to appropriate the BLM recommended instream flows for Big and Little Dominguez Creek to preserve their unique natural environments.

If you have any questions regarding this letter please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Uppendahl', written in a cursive style.

Mark Uppendahl  
Colorado Division of Wildlife  
Instream Flow Program Coordinator

Cc: Jay Skinner, CDOW Water Resources Unit Manager – w/o attachments



**WESTERN RESOURCE  
ADVOCATES**

May 14, 2010

Agenda Item # 34

sent via e-mail

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

**Re: Dominguez Wilderness instream flow recommendation**

Dear members of the Board:

Western Resource Advocates (WRA) strongly supports the CWCB staff recommendation for instream flow protection for Big Dominguez Creek and Little Dominguez Creek. Staff's proposal will protect important wilderness values in these two streams and, at the same time, protect existing and future water uses for local land owners.

Staff's recommendation is the result of close collaboration between CWCB staff, the Bureau of Land Management, Colorado River Water Conservation District, water users, and others. This collaboration created a compromise—a state-based water right for annually available water minus a reasonable carve out for future water development. Staff's recommendation supports the state's authority and control regarding instream flow protection and avoids a federal water right for the wilderness area.

The recommendation is strongly supported by the biological, hydrological, and other research by CWCB staff and BLM. It is supported by existing statutory authority. And, because of the excellent outreach by CWCB, BLM, and the River District, existing uses and future uses will not be injured in any way by a Dominguez instream flow.

Thank you for your support of the Dominguez streams protection recommendation.

Sincerely,

**Bart Miller,  
Water Program Director**

COLORADO • 2260 BASELINE ROAD, SUITE 200 • BOULDER, CO 80302 • 303.444.1188 • FAX: 303.786.8054 • EMAIL: [info@westernresources.org](mailto:info@westernresources.org)  
NEVADA • 204 N. MINNESOTA STREET, SUITE A • CARSON CITY, NV 89703 • 775.841.2400 • FAX: 866.223.8365 • EMAIL: [info@westernresources.org](mailto:info@westernresources.org)  
NEW MEXICO • 409 E. PALACE AVENUE, SUITE 2 • SANTA FE, NM 87501 • 505.820.1590 • FAX: 505.820.1589 • EMAIL: [info@westernresources.org](mailto:info@westernresources.org)  
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WYOMING • 262 LINCOLN STREET • LANDER, WY 82520 • 307.332.3614 • FAX: 307.332.6899 • EMAIL: [info@westernresources.org](mailto:info@westernresources.org)

[www.westernresourceadvocates.org](http://www.westernresourceadvocates.org)