

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Ted Kowalski, Chief, Interstate, Federal & Water Information Section
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DATE: April 29, 2013

SUBJECT: **Agenda Item 21, May 14-15, 2013 Board Meeting**
Interstate, Federal & Water Information/Stream & Lake Protection Sections – Wild and Scenic Rivers Update

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

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CWCB Director

Background

The CWCB Staff continues to work with stakeholder groups to develop resource protection methods that could serve as alternatives to federal determinations by the U.S. Bureau of Land Management (“BLM”) or U.S. Forest Service (“USFS”) that certain river segments are “suitable” for designation under the Wild and Scenic River Act. There are currently three stakeholder groups that are continuing to work on Wild and Scenic protections: 1) the San Juan River basin group (separated into five different basins) (“River Protection Workgroup” or “RPW”); 2) the Upper Colorado River Wild and Scenic Stakeholder Group (“UCRW&S”); and 3) the Lower Dolores Plan Working Group (“LDPWG”). Updates on these processes are set forth below.

Working Group Updates

Upper Colorado Stakeholder Group Update

The Upper Colorado River Wild and Scenic Stakeholder Group held its regular meeting on March 7, 2013 in Summit County and its next regular meeting is scheduled for May 8, 2013 at the same location. The Stakeholder Group is working on monitoring efforts including gathering data collected by others (i.e. Colorado Parks and Wildlife fish biomass surveys and Bureau of Reclamation’s recreational permit data) as well as collecting their own data (i.e. recreation surveys). This year’s recreation observations and intercept surveys began on April 25th at the Radium, State Bridge and Grizzly sites. The Stakeholder group is working on drafting a policies and procedures document, a Memorandum of Understanding (MOU) for the provisional period

and its 2012 Annual Report. For more information, see the following link:
<http://www.upcowildandscenic.com/>.

The Bureau of Land Management (BLM) Kremmling Field Office Final Resource Management Plan (RMP)/Environmental Impact Statement (EIS) is anticipated to be released in July with the Record of Decision (ROD) expected out in January 2014. The Colorado River Valley Field Office Final RMP/EIS is anticipated to be released in September with the ROD out in March 2014. The final Wild and Scenic Rivers Suitability Report (which will cover both field offices) will come out concurrently with the Kremmling Field Office Final RMP/EIS.

It is anticipated that the UCRW&S Group will be submitting a proposal in the near future seeking additional monies from the Wild and Scenic Alternatives Fund to support their ongoing work.

Representatives from the UCRW&S Group will be providing the CWCB with an update on their activities on May 14, 2013 at the CWCB's regular board meeting.

River Protection Workgroup Update (various sub-basins of the San Juan River)

The River Protection Workgroup (RPW) Steering Committee held a regular meeting on April 2, 2013. The RPW Steering Committee's next meeting is scheduled for May 23, 2013. The Steering Committee is planning the "Regional Discussion" which will begin sometime this summer after all five public workgroups (Hermosa Creek; San Juan River - East and West Forks; Upper Animas River; Vallecito Creek/Pine River; and the Piedra River) are completed. During the April meeting, the Steering Committee discussed drafting a proposal to request Wild and Scenic Rivers Alternative Funds from the CWCB for the Regional Discussion process with plans to submit their proposal later this spring.

The proposed "Hermosa Watershed Protection Act", a product of the Hermosa Creek RPW, was originally introduced to Congress by Senator Bennet in 2012. Senator Bennet and Congressman Tipton reintroduced the act as companion bills on April 25, 2013. The bill reflects a balance between conservation, economic development and other uses. The RPW for the Animas River did not meet since the last CWCB meeting. However, they will be meeting on April 29, 2013 in Silverton, CO to review the draft summary report of the group.

The RPW for the Piedra River held meetings on March 12, 2013 and April 16, 2013 in Pagosa Springs, CO and its next meeting is scheduled for June 11, 2013 at the same location. The group discussed a proposed compromise that suggests dropping wild and scenic suitability status in exchange for expanding the Piedra Area (established by the 1993 Colorado Wilderness Act) across the Piedra River. This designation would prevent major impoundments within the expanded Piedra Area and potentially on the main stem above Highway 160. The group may also continue to explore the possibilities of increasing ISF in certain stream segments. More discussion is needed on which areas could be candidates for increasing ISF levels to maintain a healthy habitat. In the meantime, a smaller subgroup will be meeting to discuss details related to the expansion of the Piedra Area and the limitations on new major impoundments.

A new Forest Plan by Forest Service (FS) is expected to be released this summer, most likely before the stakeholder process is complete. A representative from the Forest Service indicated that they are monitoring workgroup discussions and the issues and concerns being raised will be considered/addressed in the final forest plan. The forest supervisor indicated that the FS is willing to consider recommendations of the working group even if they are finalized after the Record of Decision is issued. In that case, an amendment to the new forest plan could be negotiated and drawn up to address recommendations of the groups. For more information, see the following link: <http://ocs.fortlewis.edu/riverprotection>.

Lower Dolores Plan Working Group Update

As part of its education and outreach efforts on the A Way Forward (“AWF”) Implementation, Monitoring and Evaluation Plan, the AWF Implementation Team requested stakeholders to submit comments on the Plan to the Team by the end of March 2013. The next step is to develop a revised version of the Plan that will address concerns raised by stakeholders. The AWF Implementation Team and the Lower Dolores Plan Working Group Legislative Subcommittee will coordinate closely on the revisions. The Implementation Team and Legislative Subcommittee met in January with representatives from the BLM Tres Rios Field Office and the San Juan National Forest to brief the BLM and USFS on the Group’s work, and will meet again in June or July. The Legislative Subcommittee has been meeting regularly and is focusing on three areas: (1) boundaries of the National Conservation Area that would be established by the proposed legislation the Subcommittee is drafting; (2) working to involve all affected counties in the discussion; and (3) fleshing out how the legislation would address protection of the native fish and flow-related ORVs. The information on native fish status and needs provided by the AWF Study will help inform the legislative drafting. A full Dolores River Dialogue meeting has been scheduled for July 2, 2013. Topics to be discussed at this meeting include the revised AWF Implementation, Monitoring and Evaluation Plan; a 319 Watershed Plan that the Dolores River Dialogue Steering Committee has been working on; and drought forecasting. Staff anticipates that the LDPWG will submit a request for funding from the Wild and Scenic Alternatives Fund in the near future to support the work of the Legislative Subcommittee. Additional information on the Lower Dolores Plan Working Group can be found at <http://ocs.fortlewis.edu/drd/meetings.asp>.

Wild and Scenic Alternatives Fund Update

The Terms and Conditions Developed by the Colorado Water Conservation Board for the Allocation of Funds from the Wild and Scenic Alternatives Fund (Terms and Conditions) require that the Board:

- “Annually review information regarding the Fund, in May of each year.
- Each year consider and make any necessary revisions to these terms and conditions.
- Determine if the purposes for which the Fund was established have ceased, and if so, de-authorize the Fund.”

Below is a summary table detailing the status of the monies in the Wild and Scenic Alternatives Fund:

Amount in fund on July 1, 2012 ¹	\$499,822.00
Funds spent this fiscal year to date by RPW	\$34,020.00
Funds spent this fiscal year to date by UCRW&S	<u>\$74,221.59</u>
Total spent this fiscal year to date ²	<u>\$108,242.59</u>
Remaining funds	\$391,580.41
Encumbered funds under PO with RPW	\$5,980.00
Encumbered funds under PO with UCRW&S	<u>\$35,615.00</u>
Unencumbered funds remaining	\$349,985.41

¹\$400,000 refresh on July 1 annually plus existing encumbered funds

² Funds used by LDPWG and UCRW&S from other grants are not reflected

The terms and conditions of the Wild and Scenic Alternative Funds are attached for the Board's review. Staff believes that these Terms and Conditions are necessary and adequate in their current form.

As described in the updates above, the existing Wild and Scenic Stakeholder groups are developing alternatives to Wild and Scenic designations and anticipate the need for additional funding in the future. Additionally, monies from this fund may also be used to support a larger Dolores River Workshop to be discussed further under Agenda Item 22. Lastly, as other federal agencies update their management plans in the future they will be required to evaluate the eligibility of rivers within their jurisdiction for inclusion in the National Wild and Scenic Rivers System.

Staff Recommendation

Regarding the Wild and Scenic Alternatives Fund, the Staff recommends that the Board:

- 1) acknowledge that the need and purpose of the Wild and Scenic Alternatives Fund still exists and is expected to continue in the future,
- 2) make no revisions to the existing Terms and Conditions, and
- 3) continue to support the existing processes discussed above and be prepared to consider offering support to new processes that may arise in the future.

attachment

TERMS AND CONDITIONS DEVELOPED BY THE
COLORADO WATER CONSERVATION BOARD
FOR THE ALLOCATION OF FUNDS FROM
THE WILD AND SCENIC ALTERNATIVES FUND

Background

In 2009, the General Assembly: 1) established the Colorado Water Conservation Board Wild and Scenic Rivers Act Alternatives Fund (“the Fund”); 2) provided that the Fund would be refreshed annually up to \$400,000; 3) stated that the Fund should be used to support cooperative and collaborative processes designed to protect outstandingly remarkable values (“ORVs”) associated with rivers within Colorado, while protecting Colorado’s ability to fully use its compact and decree entitlements; and, 4) provided that the Board may adopt terms and conditions for fund disbursements. In response to federal processes, local groups may form alternative resource protection groups (“alternatives groups”) that explore different avenues for resource protection. These terms and conditions are designed to assure that the Fund is used to support the efforts of these various alternatives groups in an equitable and efficient manner.

Introduction

Except for funds used by the CWCB staff for operational expenses, requests for use of the Fund shall be provided to the CWCB Director in writing. It is the goal of the CWCB to ensure wise and effective use of monies from the Fund. The CWCB strongly encourages the use of this Fund for projects that result in the compilation of the best available data at the earliest stages of the federal agencies’ plan revisions and processes to evaluate streams and rivers for eligibility and suitability for Wild and Scenic designation.

Administration of the Fund

The CWCB will:

- Annually review information regarding the Fund, in May of each year.
- Each year consider and make any necessary revisions to these terms and conditions.
- Determine if the purposes for which the Fund was established have ceased, and if so, de-authorize the Fund.

The CWCB Director will:

- Approve or deny the use of all funds, after consultation with the Board member(s) of basins involved with the project.

The CWCB Staff will:

- Ensure that the Fund is managed consistently with state statutes, applicable state fiscal rules, and these terms and conditions.
- Review applications and recommend use of the Fund. The CWCB Director must approve all applications to use the Fund.
- Enter into contracts with appropriate entities and ensure that the project identified in the application and work plan is implemented within the time and budget identified in the application.
- Ensure that sound fiscal, fiduciary and accounting practices are implemented.

Overview of the Fund Management

Eligibility Requirements for Project Sponsorship

The Staff may use the Fund to pay for travel costs or other operating expenses incurred by the Staff for activities related to participation in alternatives groups. In addition, non-federal entities may apply for use of monies from the Fund. Eligible entities that may sponsor projects and apply for allocations from the Fund include:

- Public (Government) - municipalities, enterprises, counties, and State of Colorado agencies.
- Public (Districts) - special, water and sanitation, conservancy, conservation, irrigation, and water activity enterprises.
- Private Incorporated - mutual ditch companies, homeowners associations, and non-profit corporations.
- Private - individuals, partnerships, and sole proprietors.
- Non-governmental organizations - are broadly defined as any organization that is not part of the government.

Project Sponsorship Process

Project sponsors may submit applications for monies from the Fund at any time. The Board will be notified of any requests for use of the Fund that are granted and/or denied, through the Director's report or a memorandum to the Board.

Written Request Submittal Requirements

To apply for use of the Fund, the project sponsor must submit a written request to the CWCB Director ("application" or "request for funds"). The CWCB Director's and Staff's review and analysis of the application, utilizing the terms and conditions, will form the basis for the CWCB Director's decision to fund, partially fund, or not fund the request. Therefore, project sponsors should prepare their applications to address these terms and conditions. The following paragraphs provide a general overview of the information that is needed to complete an application for use of the Funds.

Application information and requirements may vary depending upon the stakeholders involved, the status of a federal agency's Wild and Scenic review process, and other unique

circumstances that may exist. The project sponsor is encouraged to discuss the application with CWCB staff if any questions arise.

Description of Project Sponsor(s) and/or Stakeholders involved in the process

Each request for funding should include a description of the entity/entities that are involved in the process. The project sponsor may be a non-federal public or private entity. Given the diverse range of potential project sponsors, not all of the following information may be relevant. Where applicable and relevant, the description should include the following:

- Type of organization, official name, the year formed, the statute(s) under which the entity was formed, a contact person and that person's position or title, address and phone number.
- The project sponsor's background, interest and capacity, organizational size, staffing and budget, and funding.

Background

Purpose

This section should provide: 1) a brief overview of goals of the alternatives group; 2) the status of the federal agency (or agencies) Wild and Scenic process; and, 3) a description of the project the funds would support.

Project Area Description

The project area is generally the geographic area that is being discussed. This description should include a listing of the rivers that are under "Wild and Scenic" consideration by a federal agency. The description should include the following items:

1. A narrative description of the project area that includes the county (counties), the location of towns or cities, topography, land ownership along the river systems, and locations of major rivers.
2. An area map showing each of the items above, as well as the locations of existing facilities, proposed project facilities and river segments that are being considered for listing as eligible and/or suitable for Wild and Scenic designation.

Scope of Work

The request for funds must provide a scope of work. The scope of work should include a detailed summary of how the project will be accomplished. The scope of work must include a description of the activities and tasks that will be undertaken, logistics, and final product/deliverables to be produced with the monies distributed by the Fund for the various tasks.

The scope of work should include the following:

- Detailed summary of the work plan.
- Description of the work plan's goals and how the work will accomplish those goals.
- Description of how the work will be accomplished and major deliverables/products.
- A list of participants.
- A description of the selection process of the entity that will complete the scope of work, or if an entity has already been selected, then a list of the entity's qualifications to accomplish the project.
- A detailed budget by activity, level of effort, and rates. The budget shall also detail the source and amount of matching funds and/or in-kind contributions, if any. If applicable, the budget should also include any other outstanding or previously applied for funding that also supports the project.
- A detailed project schedule that includes key milestones.

Reporting

The project sponsor shall provide progress reports to the CWCB at least every 6 months, and on a more regular basis to the CWCB staff, beginning from the date of the CWCB approval of the project. The progress report shall describe the completion or partial completion of the tasks identified in the scope of work, including a description of any major issues that have occurred and any corrective action taken to address these issues.

Final Deliverables

At completion of the project, the project sponsor shall provide a final report to the CWCB that summarizes the project and documents how the project was completed. This report may include photographs, summaries of meetings and/or additional reports.

Evaluation Process for Allocation of Funds

Allocation of funds will depend upon availability of funds and an evaluation of the project using the terms and conditions in this section.

Matching Requirement:

Applicants will be required to demonstrate a 20 percent (or greater) match from other sources of the total amount of funds requested. Recognizing the limited resources of some entities, in-kind services will be eligible as matching funds, but written documentation of in-kind services will be required. Past expenditures directly related to the project may be considered as matching funds if the expenditures occurred within 12 months of the date the request for funds was submitted to the CWCB.

Evaluation Terms and Conditions

The following terms and conditions will be utilized to further evaluate requests for funds:

- a. The number and types of entities represented by the application and the degree to which the project will promote cooperation and collaboration among traditional consumptive water interests and/or non-consumptive interests.

- b. Whether the project could help in assuring that ORVs or potential ORVs are protected while protecting Colorado's ability to fully use its entitlements under compacts or decrees.
- c. Whether the project will still enable Colorado to fully use its compact and decree entitlements.
- d. Urgency of need for the project and/or any compelling "window of opportunity" that may be missed without the requested funding.
- e. The length of time needed to implement the project. Projects that can be accomplished within a specified time period will receive more favorable consideration for receiving monies from the Fund. In addition, projects that will be completed in a timely manner, rather than projects that have sought many lengthy delays, will receive more favorable consideration for receiving monies from the Fund.
- f. The expertise and ability of the project sponsor and participants to implement the project.
- g. The level of matching funds the project sponsor is providing. The greater the amount of matching funds, the more likely the project will receive monies from the Fund; provided that all other terms and conditions are satisfied.
- h. The degrees to which the project will help meet environmental or recreational needs as an alternative to protecting the ORVs through the Wild and Scenic designation process.
- i. The degree to which the project will assist in the administration of compact-entitled waters or address problems related to compact entitled waters and compact compliance, and the degree to which the project promotes maximum utilization of state waters.
- j. Whether the project will assist in, or not impair, the recovery of threatened and endangered wildlife species or Colorado State species of concern.
- k. Whether the project will complement or assist in the implementation of other CWCB programs.

For additional information, questions or assistance please contact Ted Kowalski (Colorado Water Conservation Board), at (303) 866-3441 ext.3220 or email Ted at ted.kowalski@state.co.us.