

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
Linda Bassi, Chief, Stream & Lake Protection Section
Suzanne Sellers, Interstate, Federal & Water Information
Section

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

James Eklund
CWCB Director

DATE: October 17, 2013

SUBJECT: **Agenda Item 20, October 21, 2013 Board Meeting**
Interstate, Federal & Water Information/Stream & Lake Protection Sections –
Final San Juan National Forest's (USFS) and Proposed Bureau of Land
Management (BLM) Tres Rios Field Office's Land and Resource Management
Plan & Environmental Impact Statement

Background

The San Juan National Forest (USFS) and the Bureau of Land Management (BLM)'s Tres Rios Field Office released a joint Land and Resource Management Plan (LRMP)/Environment Impact Statement (EIS) ("joint plan") on September 20, 2013. The BLM and USFS jointly developed the LRMP and EIS, however the BLM and USFS are each taking separate agency actions because the BLM's LRMP applies to BLM managed lands, and the USFS's LRMP applies to Forest Service lands. At this point, both agencies have issued a final EIS. The USFS has also finalized its LRMP and issued a Record of Decision (ROD). Whereas, the BLM's LRMP is currently proposed and the BLM has not issued a ROD. The BLM and USFS have separate appeal and protest requirements. Any protests on the BLM's portion of the joint plan are officially due on October 21, 2013. Any appeals of the USFS's portion of the plan must be filed by December 21, 2013. These dates may be extended due to the federal government shutdown, but they have not been extended as of the finalization of this memo.

The purpose of this memo is to provide the Board with some background information on the joint plan in preparation for the Board's discussion of the joint plan in Executive Session.

The joint plan's recommended alternative (Alternative B) includes finding roughly 350 miles of Colorado's rivers suitable for inclusion in the National Wild and Scenic Rivers (Wild and Scenic) System to protect Outstanding Remarkable Values (ORVs). These river segments are shown on the attached Map (Figure 3.9). Additional details on the USFS's recommendations

for rivers to be included in the Wild and Scenic System will not be discussed further in this memo as the Board will be meeting again in November and can consider those segments at that time.

The BLM's LRMP is recommending that segments of the Dolores River, Coyote Wash, the Animas River and Mineral Creek are suitable for inclusion in the Wild and Scenic System. The attached maps (Figures 1, D-1 and D-2) illustrate these reaches as well as the existing and proposed instream flows (ISFs) on the Dolores River. Also attached are summary tables (Tables 1, 2 and 3) that include the details on each of the BLM's Wild and Scenic recommendations and the existing and proposed ISFs for the Dolores River. Note that the flannelmouth sucker and the bluehead sucker were not included as ORVs for the Dolores River in the Draft LRMP/EIS, but are now considered ORVs in the current joint plan.

The joint plan also includes aquatic ecosystem and fishery standards that set forth options for identifying minimum flow rates required to support aquatic habitat and provide that stream flows "shall be maintained" at those rates.

Lastly, the CWCB's comment letter on the Draft LRMP/EIS dated April 9, 2008 is attached. Many of the concerns raised in the CWCB's comment letter were not adequately addressed in the joint plan.

Staff Recommendation

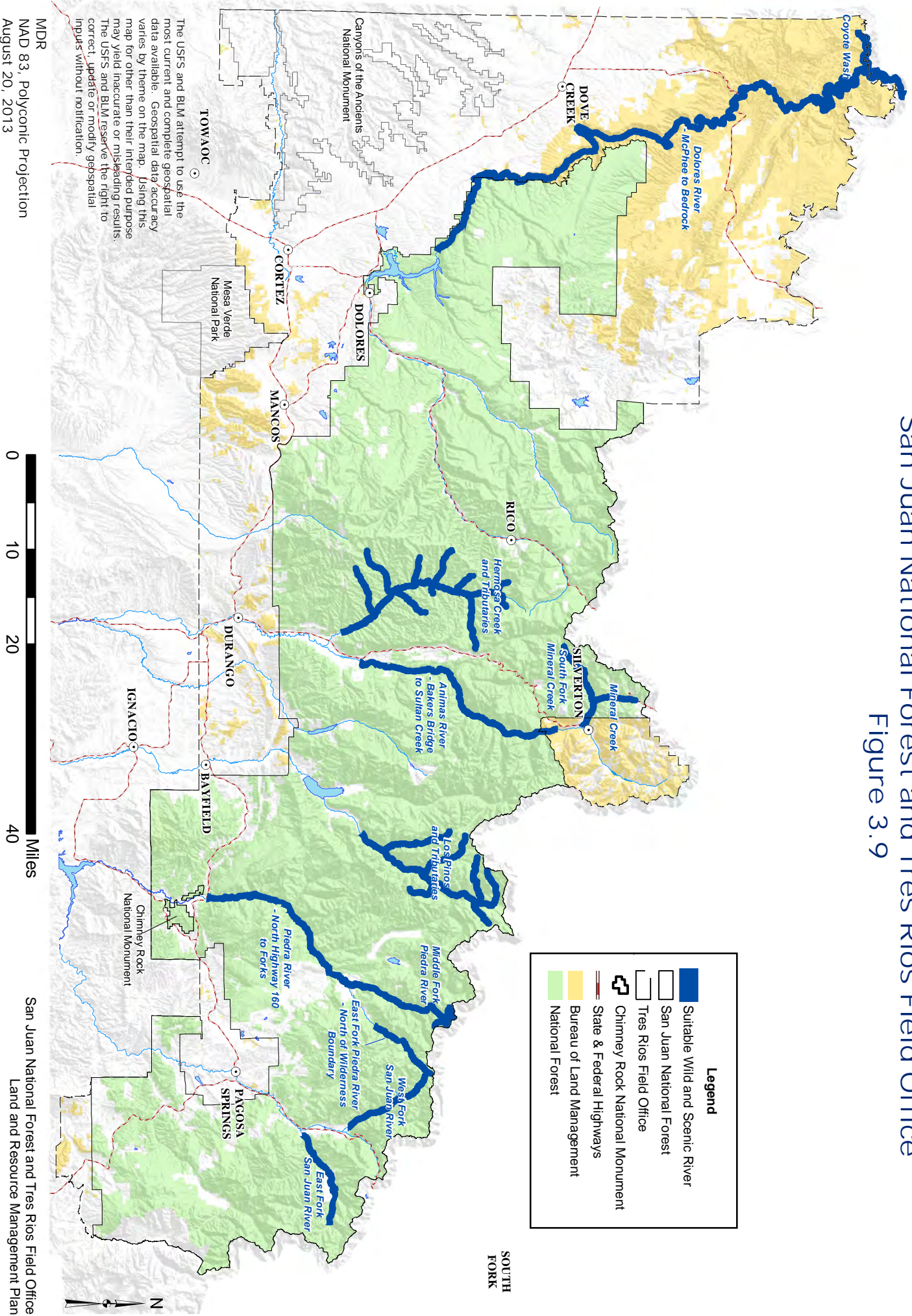
This memorandum provides background information only. During executive session at the Board meeting, the Attorney General's Office and staff will discuss options for and recommendations related to responding to the joint plan.

Attachments

Suitable Wild and Scenic Rivers

San Juan National Forest and Tres Rios Field Office

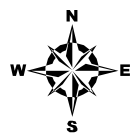
Figure 3.9



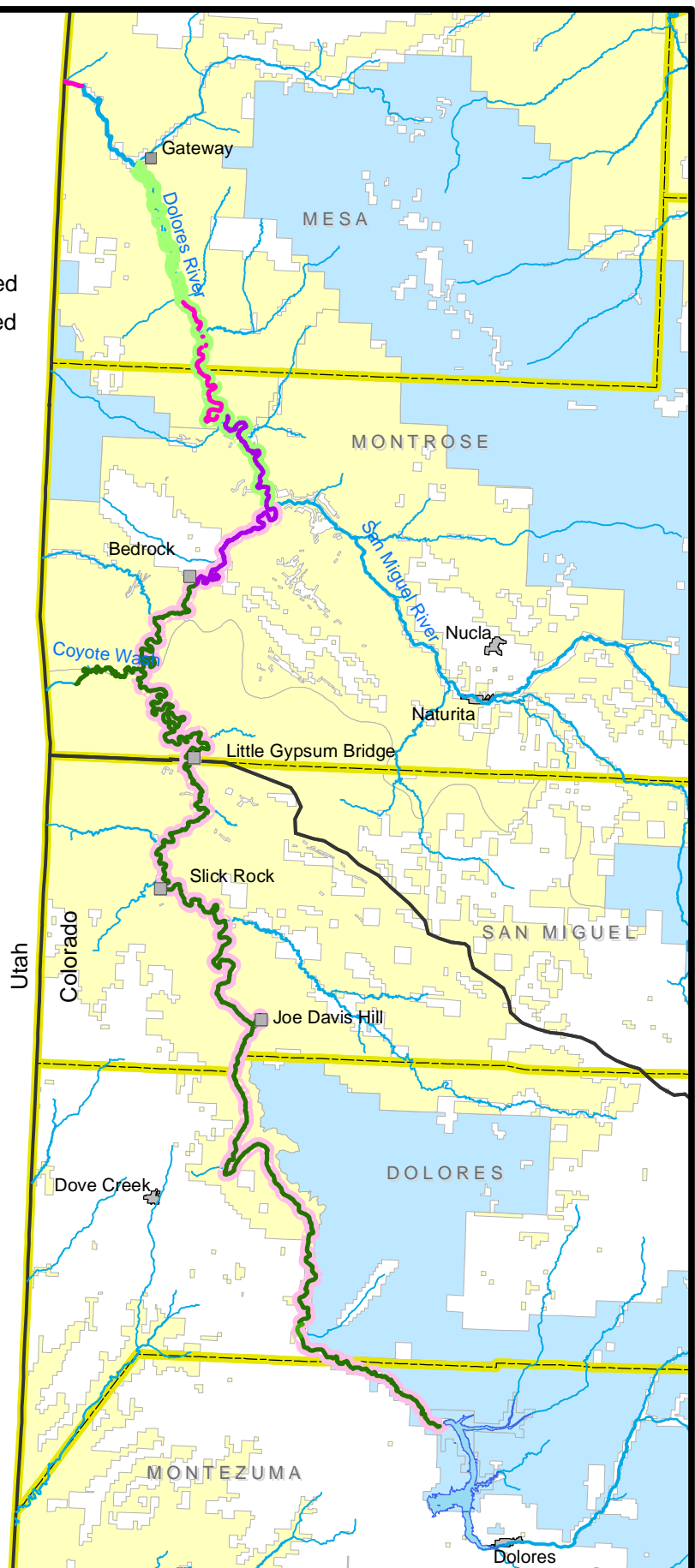
Wild & Scenic Rivers Suitability Status
Dolores River
McPhee Reservoir - CO/UT Boundary
Water Divisions 4 & 7
Figure 1

Legend

- GFO Prelim Suitability Recommended
- UFO Prelim Suitability Recommended
- SJPLC Suitable
- Decreed CWCB ISF
- Proposed CWCB ISF
- Municipal Boundaries
- Water Divisions
- County Boundaries
- BLM
- USFS



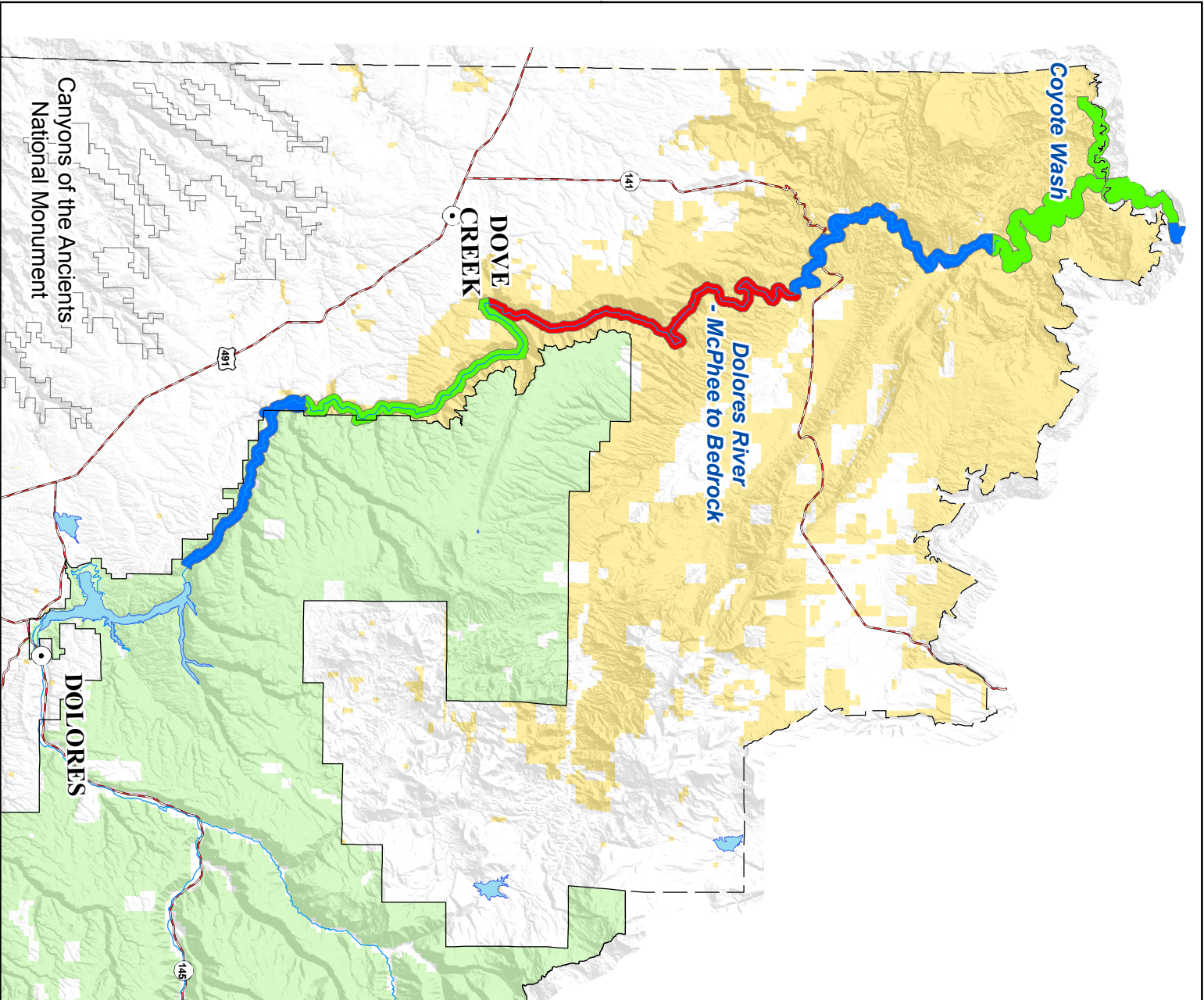
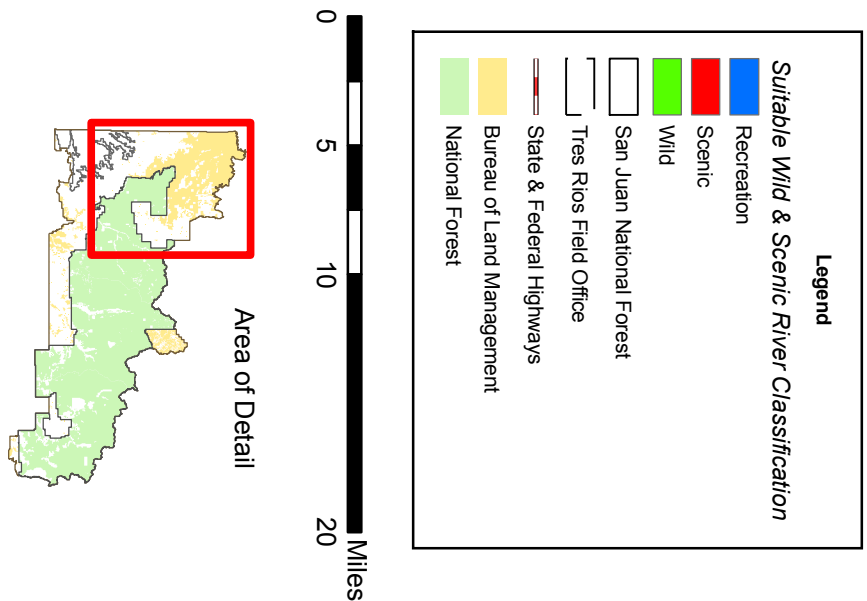
0 2.5 5 10 15 20 Miles



Wild and Scenic Rivers Dolores River and Tributaries

San Juan National Forest and Tres Rios Field Office

Figure D-1



The USFS and BLM attempt to use the most current and complete geospatial data available. Geospatial data accuracy varies by theme on the map. Using this map for other than their intended purpose may yield inaccurate or misleading results. The USFS and BLM reserve the right to correct, update or modify geospatial inputs without notification.

MDR
MAD 83, Polyconic Projection
May 30, 2013

Wild and Scenic Rivers Animas River and Tributaries San Juan National Forest and Tres Rios Field Office Figure D-2

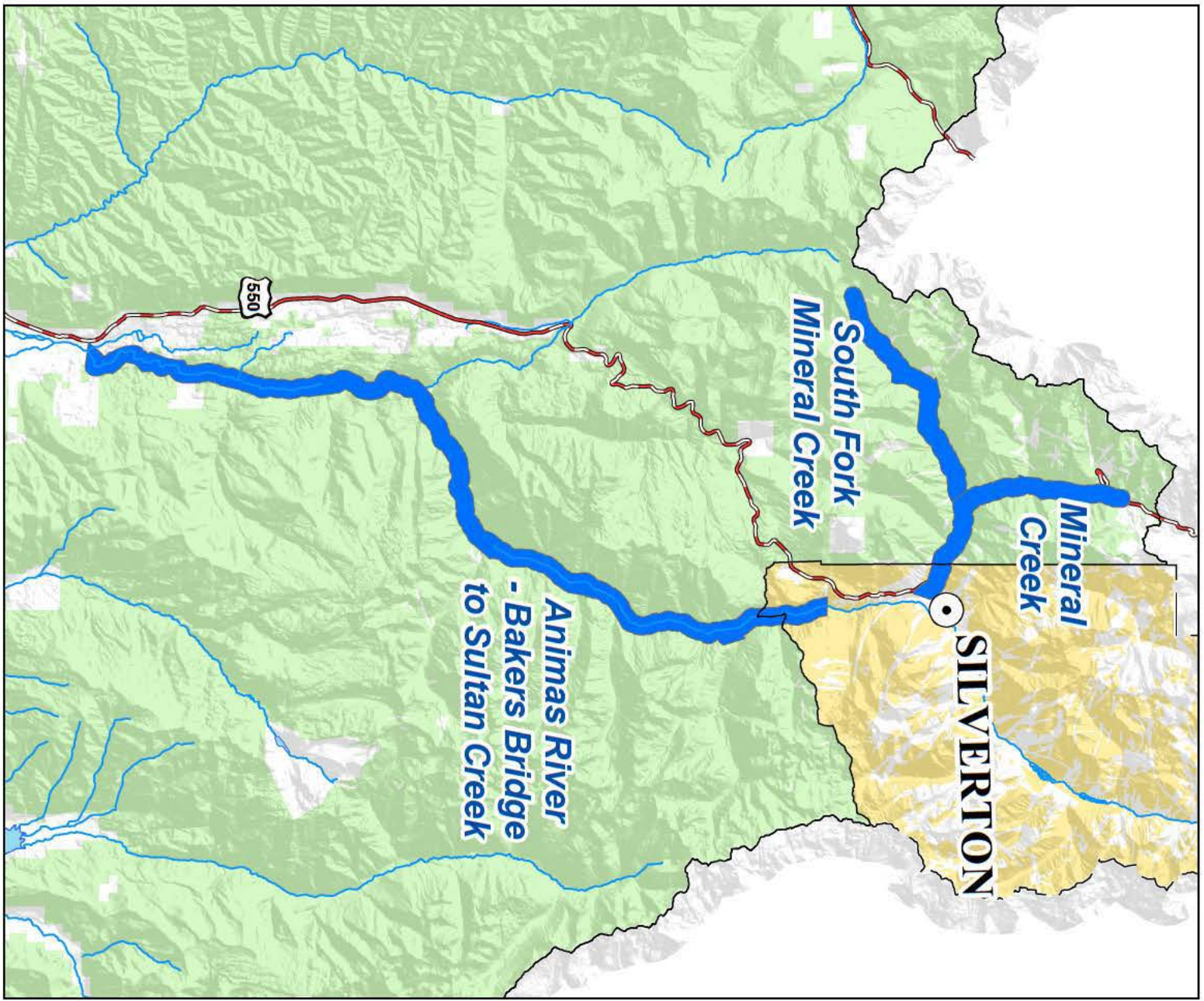
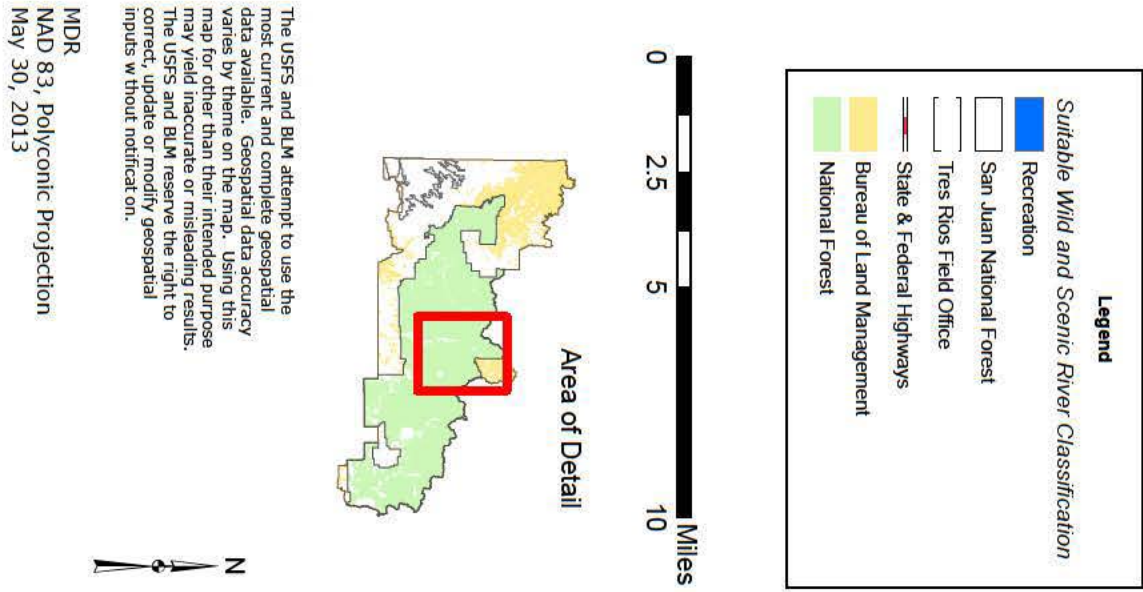


Table 1. Wild and Scenic Rivers Suitability Determination by BLM Tres Rios Field Office

Agency	Segment	Segment Length	W&S Class	ORVs	Stakeholder Process	Stakeholder Group Planned Actions
BLM with some USFS segments	Dolores River, McPhee to Bedrock	108.5 miles suitable (includes 11.8 miles of UFO) – roughly 18% state and private lands	Wild, Scenic & Recreation	Fish (roundtail chub, flannelmouth sucker* & bluehead sucker*), Wildlife (canyon tree frog), Recreation (rafting), Scenery, Geology, Ecological, (New Mexico privet & Eastwood's monkeyflower), & Archaeology (cliff dwellings & rock art)	Lower Dolores Plan Working Group (subgroup of DRD)	A LDPWG appointed Legislative Subcommittee is drafting principles for proposed legislation to establish an NCA to protect ORVs & remove suitability. As part of this compromise, the group is discussing whether the Dolores River Canyon WSA should become permanent Wilderness.
BLM	Coyote Wash	7.60 miles - 100% federal lands	Wild	Recreation (hiking) & Ecological (Kachina daisy & Eastwood's monkeyflower)	River Protection Workgroup (RPW)	The Legislative Subcommittee also commissioned A Way Forward native fish study, which led to the formation of an Implementation Team. The Implementation team is currently preparing an Implementation Monitoring and Evaluation Plan for Native Fish scheduled for completion near the end of 2013. This plan may include potential operational changes to McPhee Reservoir to provide flows that would improve habitat conditions for the native fish.
USFS with some BLM segments	Animas River - Bakers Bridge to Sultan Creek	27.19 miles - roughly 10% private lands	Recreation	Recreation (Durango-Silverton Narrow Gauge Railroad, whitewater boating, fishing), Scenery, Cultural & Historical		
USFS with some BLM segments	Mineral Creek	8.65 miles - 16% private lands	Recreation	Recreation & Scenery (San Juan Skyway, All-American Road and a national scenic byway) & Ecology (Baltic sphagnum moss, associated with the Chattanooga iron fen)		

* The flannelmouth sucker and the bluehead sucker were not included in the USFS and BLM's Draft Land and Resource Management Plan and Draft Environmental Impact Statement

Notes:

BLM = Bureau of Land Management ORV = Outstanding Remarkable Value UFO = BLM Uncompahgre Field Office USFS = U. S. Forest Service (San Juan National Forest) W&S = Wild and Scenic WSA = Wilderness Study Area NCA = National Conservation Area DRD = Dolores River Dialogue LDPWG = Lower Dolores Plan Working Group ISF = Instream Flow water right RPW = River Protection Workgroup

Table 1. Wild and Scenic Rivers Suitability Determination by BLM Tres Rios Field Office

Agency	Segment	Segment Length	W&S Class	ORVs	Stakeholder Process	Stakeholder Group Planned Actions
						<p>project and the Town of Silverton water rights. The group also agreed that an ISF is not an applicable protection for this section of the Animas River. Additionally, the local group came to consensus that the following be considered for protection of the fens:</p> <ul style="list-style-type: none">• mapping and prioritization of fens in region for protection• consider new county level protections for fens• study the water sources for the fens to identify appropriate tools

* The flannelmouth sucker and the bluehead sucker were not included in the USFS and BLM's Draft Land and Resource Management Plan and Draft Environmental Impact Statement

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Table 2. Decreed Instream Flow (ISF) Water Rights

Case No.	Stream	Appropriation Date	Instream Flow (cfs)	Watershed	Counties
7-75W1346	Dolores River (McPhee Reservoir Dam to Confl. San Miguel River)	5/1/1975	78 (1/1 - 12/31)	Upper and Lower Dolores	Dolores, Montezuma, Montrose, San Miguel

Table 3. Proposed Instream Flow (ISF) Water Rights

Recommender	Stream	Appropriation Date	Instream Flow (cfs)	Watershed	Counties
BLM & CPW	Dolores River (Confl. San Miguel River to Confl. West Creek [at Gateway])	TBD	900 (4/15 - 6/14) 400 (6/15 - 7/31) 200 (8/1 - 8/31) 132* (9/1 - 2/29) 200 (3/1 - 4/14)	Lower Dolores	Mesa, Montrose

* Likely to change based on additional 2013 data collection

Notes:

CPW = Colorado Department of Parks and Wildlife

BLM= Bureau of Land Management

TBD = to be determined

ISF = Instream Flow

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April 9, 2008

Sally Wisely, State Director, BLM
Rick Cables, Regional Forester, USDA, Forest Service
c/o
San Juan Plan Revision
P.O. Box 162909
Sacramento, CA 95816-2909

Bill Ritter, Jr.
Governor

Harris D. Sherman
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

Re: Comments of the Colorado Water Conservation Board in response to the Notice of Availability of Draft San Juan Public Lands ("SJPL") Land Management Plan ("Draft Plan") and Draft Environmental Impact Statement ("DEIS") published December 1, 2007, 72 Fed. Reg. 71148 (December 14, 2007)

Dear Ms. Wisely and Mr. Cables:

This letter sets forth the comments of the Colorado Water Conservation Board (CWCB), an agency of the Colorado Department of Natural Resources ("Department"), on the above-referenced Draft Plan and DEIS. The CWCB appreciates the cooperative attitude and consideration shown by the Bureau of Land Management (BLM) and United States Forest Service (USFS) during the development of the Draft Plan and DEIS, and looks forward to working with the BLM and USFS cooperatively on federal land management issues as they relate to water.

Historic Range of Variation (HRV) concept

The Draft Plan integrates the HRV concept by comparing the range of conditions that existed from 1500 to 1800, A.D. to today's conditions (Draft Plan, pages 17-25). The CWCB does not support this concept for several reasons. First, this approach is applied to the entire basin but the resource values and requisite protection vary by sub-basin to sub-basin. Second, the HRV approach incorrectly suggests that native species need the same flow regime as existed prior to pre-European-American settlers in order to survive. Thus, the CWCB would prefer that the Draft Plan remove the HRV concept from the Plan.

However, if your agencies insist on keeping the HRV approach in the Draft Plan, the CWCB would request that the Draft Plan and DEIS make it clear that the HRV conditions would be used solely as reference points and not as management goals. Moreover, the Draft Plan should recognize current conditions and existing water rights, and manage the resources in this context—not one that existed prior to human influences. Further, the Draft Plan's requirements that streams be maintained in a free-flowing state and that both existing and future water development provide for instream flows, if implemented, should be accomplished via Colorado's

Instream Flow Program. Finally, the Draft Plan must recognize and allow for the unimpeded use of existing decreed conditional and absolute water rights.

Memorandums of Understanding regarding Cooperation on Stream Protection

While the Draft Plan recognizes the MOUs between your agencies and the Colorado Department of Natural Resources, it appears that the Draft Plan may not fully incorporate the spirit or letter of those agreements. First, the Draft Plan states that “cooperative and collaborative efforts are the preferred approach to sustaining aquatic ecosystems and ensuring that viable populations of aquatic species are maintained or improved.” (Draft Plan, pages 252 and 269). But then the Draft Plan states: “In the event that collaborative efforts do not result in more workable and mutually acceptable solutions, the following apply...” and goes on to include certain criteria that should be met for wetted perimeter, mean depth, bankfull width, and mean velocity. While these are the criteria that the CWCB uses in appropriating instream flow water rights, the CWCB also considers water availability and potential injury to vested water rights. The Draft Plan and DEIS do not currently consider these important factors. While the CWCB understands that the Draft Plan needs to address the possibility that cooperative and collaborative efforts may fail, the CWCB urges your agencies to use their best efforts to work with the CWCB to meet their stream protection goals, and to consider all of the criteria the CWCB uses in doing so.

The proposed approach also appears to conflict with statements in the MOUs that the USFS and BLM will determine whether the flow amounts of the instream flow water rights currently held by the CWCB are adequate to satisfy the instream flow needs and, if not, explore other mechanisms with the CWCB to assure adequate protection for such. The portion of the Draft Plan referred to above appears to say that the BLM or USFS will not work with the CWCB to resolve concerns of inadequate instream flow protection, but may move more quickly to unilateral regulatory action and perhaps seek to impose absolute standards. The CWCB would prefer the Draft Plan to acknowledge that your agencies will 1) affirm their continued support for the concepts in the MOUs; 2) consider whether existing CWCB instream flow water rights within the San Juan Public Lands provide adequate protection of the resources sought to be protected; 3) work within the CWCB ISF Program to obtain additional protection where necessary; and 4) continue to support the collaborative work that is occurring through the River Protection Workgroup and the Dolores River Dialogue.

Wild and Scenic River Analysis

The CWCB appreciates the efforts of the USFS and BLM to resolve some of the issues related to the preliminary recommendations of stream segments for federal Wild and Scenic River eligibility and suitability designation in the Draft Plan and DEIS. The CWCB also appreciates your agencies’ recognition of the work being undertaken through the Statewide Water Supply Investigation, the River Protection Workgroup, the Dolores River Dialogue, and the Governmental Water Roundtable, among others. However, the CWCB would like the USFS and BLM to support these processes in a more substantial way.

Specifically, the CWCB requests that the Draft Plan include clear re-opener language such that if any of these collaborative approaches to resource protection succeeds in developing alternatives that will provide resource protection similar to or more comprehensive than a determination of suitability as described in the Draft Plan, then the BLM and the USFS will initiate a plan amendment, with the appropriate level of environmental compliance, and revise the findings that these rivers segments are suitable for designation. This will encourage stakeholders to continue their painstaking collaborative efforts, while, at the same time, further the goals of the BLM, USFS, and the Wild and Scenic Rivers Act to protect the values associated with wild and scenic

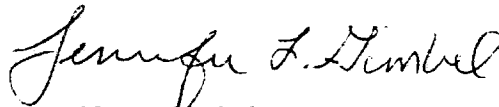
rivers on the San Juan Public Lands. The CWCB has been supporting these processes with significant State resources. The stakeholders (including federal representatives) have also been supporting these processes. For example, the CWCB is working with the Dolores River Dialogue and the USFS/BLM on updating the 1990 Dolores River Management Plan. Including such re-opener language would affirm that your agencies will continue to support and encourage these processes to continue and allow alternatives the opportunity to succeed. Such alternatives, if successful, will ensure State and local support for federal management decisions. Since the BLM or USFS must, of course, agree to any alternative management of the resource, there is no detriment to including such a provision. However, the message that such inclusion sends to local stakeholders is very positive and important.

Invasive Aquatic Species

The CWCB recommends that the Draft Plan address and identify invasive aquatic species in the Invasive Species section on page 115. New Zealand mudsnails, Quagga mussels and zebra mussels are serious threat to both aquatic ecosystems and to water supplies. In light of the recent discovery of zebra mussels in Pueblo Reservoir, it is vital that both state and federal agencies cooperate to preclude such species' introduction into waters in the San Juan Public Lands planning area. The design criteria on page 272 are good steps toward attempting to control the spread of these species. Specifically identifying the invasive species will further aid in this effort.

Thank you again for your courtesy. We respectfully request that the USFS and BLM incorporate these comments into the Draft Plan and look forward to working with you in the protection of resources within the San Juan Public Lands.

Sincerely,



Jennifer L. Gimbels
CWCB Director

cc: Colorado Congressional Delegation
Colorado Water Conservation Board members
Colorado Wildlife Commission
Colorado Department of Parks