



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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John Hickenlooper, Governor

Mike King, DNR Executive Director

James Eklund, CWCB Director

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

DATE: January 26-27, 2015 Board Meeting

AGENDA ITEM: 12. Wild and Scenic Rivers Alternatives Update

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 (UCRW&S) Group; and 3) the Lower Dolores Plan Working Group (LDPWG). Updates on these processes are set forth below.

Staff recommendation: This item is informational only, with no Board action requested.

Discussion:

Upper Colorado River Wild and Scenic Stakeholder Group Update

The BLM Kremmling Field Office’s Proposed Resource Management Plan (RMP)/Final Environmental Impact Statement (EIS) was released on March 21, 2014 and the Colorado River Valley Field Office’s Proposed RMP/Final EIS was released on March 24, 2014 with both the Records of Decision (RODs) due out in February and March 2015, respectively. The joint BLM and USFS’s Final Wild and Scenic Rivers Suitability Report (Suitability Report) was released with each of the BLM’s RMP/EISs. The USFS White River National Forest also issued a Draft ROD for adoption of the Suitability Report on April 7, 2014. The USFS White River National Forest final ROD will be issued concurrently with the Colorado River Valley Field Office’s ROD.

The UCRW&S Group held its regular meeting on January 13, 2015 in Summit County and its next regular meeting is scheduled for March 12, 2015 at the same location. The UCRW&S Group meeting included discussions on the 2015 budget, a 2015 Monitoring Plan proposal, and updates by the various workgroups.



UCRW&S Group members that represent state agencies held their first State Interest Group (SIG) Meeting on January 5, 2015. Representatives from the CWCB and Colorado Parks and Wildlife (CPW) attended the meeting. Members elected officers, made recommendations for Governance Committee (GC) representatives and adopted the SIG charter. Additional information on the UCRW&S Group can be found at <http://www.upcowildandscenic.com>.

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

The RPW Steering Committee held a regular meeting on December 15, 2014 in Durango, CO with its next meeting scheduled for February 5, 2015 in the same location. The Steering Committee is currently engaged in negotiations and development of consensus approaches for the protection of the five rivers and specific outstanding remarkable values (ORVs) in the San Juan River basin. At the meeting, the group discussed the existing proposal by Trout Unlimited and the alternate proposal by the Wilderness Society and the San Juan Citizen's Alliance. The group has identified areas of agreement between the two proposals and topics that require more discussions. Both of the outstanding proposals include combinations of removal of suitability, wild and scenic designation and maintaining suitability within some of the five watersheds of the San Juan Basin. The RPW is also celebrating the passage of the Hermosa Creek Watershed Protection Act. The Act was signed into law on December 19, 2014 as part of the National Defense Authorization Act. The RPW expressed their appreciation to the CWCB for supporting the RPW process and its efforts on Hermosa Creek. Additional information on the RPW can be found at <http://ocs.fortlewis.edu/riverprotection>.

Lower Dolores Plan Working Group Update

On September 6, 2014, the Legislative Subcommittee of the Lower Dolores Plan Working Group reached a key milestone in the National Conservation Area legislative proposal process by completing a legislative principles document. The document lays out the framework for the proposed federal legislation that would establish the National Conservation Area (from below McPhee Dam to Bedrock) and remove the finding of Wild and Scenic suitability from the Dolores River, among other things. The Legislative Subcommittee is currently briefing key stakeholder groups and individuals. In February or early March of 2015, the draft Congressional bill will be circulated so that stakeholders can then review and give input on actual legislative language. Several key stakeholders intend to conduct a legal review of the framework and bill. The Legislative Subcommittee will take all the input received and adjust the proposed NCA package as necessary. Alongside this effort, the Implementation Team, a multi-party group formed to work on improving the status of the native fish in the context of available water supplies, is currently drafting a Memorandum of Agreement (MOA). This MOA enables the team to operate within a more formalized structure which is necessary for the legislation specifically related to the topics of flows and native fish. The group anticipates briefing the CWCB on this document at a future CWCB meeting. A formal briefing with the Tres Rios Field Office and the San Juan Public Lands is slated for February, 2015. Additional information on the Lower Dolores Plan Working Group can be found at <http://ocs.fortlewis.edu/drd/meetings.asp>.

Tres Rios Resource Management Plan Update

The BLM Tres Rios Field Office Land and Resource Management Plan ("Tres Rios RMP") has been the subject of discussion with this Board in connection with stakeholder concerns about several Dolores River issues. Colorado's Department of Natural Resources (DNR), CWCB and CPW have been involved in discussions about the Tres Rios RMP and the USFS San Juan National Forest Plan. A recent letter from Ruth Welch, State Director of BLM, to DNR Executive Director Mike King is attached for the Board's information. BLM personnel also

have been in contact with the Southwestern Water Conservation District, Dolores Water Conservancy District, and tribal stakeholders to discuss their concerns. BLM has informed CWCB staff that it anticipates the ROD for the Tres Rios RMP will be issued in mid to late February. Roy Smith of the BLM will update the Board on this RMP and other BLM issues at the March 2015 CWCB meeting.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
6400 (CO-932)

JAN 06 2014

received by CWCB in
January 2015

Mr. Mike King
Executive Director
Colorado Department of Natural Resources
1313 Sherman St., Room 718
Denver, CO 80203

Dear Mr. King:

Thank you for meeting with me on December 22, 2014, to discuss the Tres Rios Resource Management Plan (RMP) and items of concern to the water districts in southwest Colorado.

As we discussed, the Tres Rios RMP has not been signed and protest responses have not been provided to the protestors. The Bureau of Land Management (BLM) has agreed to make changes to language in the RMP in accordance with the Governor's Consistency Review. Those changes will be reflected in the Record of Decision (ROD) and final plan. These changes include converting the aquatic habitat language from a standard to a guideline and a commitment to working with stakeholder groups who are addressing "outstandingly remarkable values" (ORV). The BLM is convinced that cooperation and collaboration is essential for addressing issues related to native fish management in the Dolores River. For that reason, the BLM has been and will continue to be committed to being involved in the Dolores River Dialogue.

Further, we discussed the Tres Rios Field Manager's letter to the Dolores Water Conservancy District dated October 6, 2014 (enclosed). My staff worked with the field manager on this response and we concur with the responses provided. As we discussed, the identification of an ORV creates commitments solely for the BLM on actions within the BLM's jurisdiction and not for any other federal agency or entity. The BLM's identification of ORVs cannot be used to modify binding water delivery contracts executed by the Bureau of Reclamation (BOR). The BLM and the BOR operate under completely separate authorities. The BLM is granted operational authority by the Federal Land Policy and Management Act of 1976, while Reclamation is granted operational authorities by the Reclamation Act of 1902. In addition, Reclamation authority is governed by the Colorado River Basin Act of September 30, 1968 (Public Law 90-537), which specifically authorized the Dolores Project.

We also discussed proposed language changes for the RMP, which the water districts provided earlier this month to the field manager. The BLM is considering these proposed changes and acknowledges that the delay of the ROD has prevented predictability for the water districts to

make a decision about how to participate in other decision making arenas, such as appropriation of in-stream flow water rights.

We appreciate the chance we had to discuss the concerns of the water districts. The BLM is committed to working with the State and the water districts as we manage resources in southwestern Colorado.

Sincerely,

 Acting

Ruth Welch
State Director

Enclosure

cc: Mike Preston, Dolores Water Conservancy District
James Eklund, Colorado Water Conservation Board, 1313 Sherman St., Rm 721, Denver, CO 80203
Bruce Whitehead, Southwestern Colorado Water Conservation District, 841 E. 2nd Ave., Durango, CO 81301
Ed Warner, DOI, Bureau of Reclamation, Western Colorado Area, 2764 Compass Dr., Grand Junction, CO 81506
Lori Armstrong, Southwest District Manager
Connie Clementson, Tres Rios Field Manager



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
TRES RIOS FIELD OFFICE

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Dolores, CO 81323
www.blm.gov/co/st/en/fo/sjplc.html



In Reply Refer To:
4750 (COS01000)

October 6, 2014

Mr. Mike Preston
Dolores Water Conservancy District
P.O. Box 1150 - 60 Cactus Street
Cortez, CO 81321

Dear Mr. Preston,

The purpose of this letter is to provide Dolores Water Conservancy District (DWCD) with additional information concerning the limits of Bureau of Land Management (BLM) authority when implementing various provisions of the Wild and Scenic Rivers Act.

The BLM hopes this information is useful as DWCD evaluates how to respond to the BLM's Record of Decision (ROD) for the Tres Rios Resource Management Plan (RMP). The BLM would like to schedule a meeting with you immediately after the ROD is released to discuss any additional questions you might have concerning the BLM's implementation of the RMP.

There are several questions that have been posed by DWCD as the BLM has formulated the RMP. The attachment to this letter attempts to provide BLM's perspective on those questions. If you have any questions about the BLM responses, our proposed meeting would be an excellent time to discuss those.

Sincerely,

Connie Clementson
Field Manager

Cc: Mike King, Colorado Department of Natural Resources
James Eklund, Colorado Water Conservation Board
Bruce Whitehead, Southwestern Colorado Water Conservation District

Questions and Answers for Dolores Water Conservancy District

1. What effect will the identification of outstandingly remarkable values (ORVs) have on BLM's decision making processes?

The Identification of an ORV is simply a label used to describe values that already exist in the river corridor. The identification of an ORV indicates that BLM considers the value of significant importance in a regional context, and that BLM will give the value special consideration during BLM decision-making processes.

Once an ORV is identified, BLM decision-making processes must be consistent with these values. It does not mean, however, that BLM must manage for that value to the exclusion of or minimization of other land uses for which BLM is legally obligated to manage. For example, identification of an ORV cannot be used as a rationale to cancel existing land use authorizations on BLM lands simply because exercise of the authorization may impact the ORV.

Finally, the identification of an ORV is also an official record of BLM's analysis of the river corridor and an official commitment to the Congress and the President that BLM will not make decisions that could degrade the ORVs.

2. What sort of decisions could be influenced or impacted by the identification of an ORV? How far do BLM's commitments extend when BLM identifies an ORV?

BLM's identification of an ORV creates commitments only for the BLM. It influences decisions solely under BLM management authority. No other federal agency, including the U.S. Bureau of Reclamation (Reclamation) has an obligation to change its management practices because BLM identifies an ORV. Identifying ORVs is a BLM administrative action that ultimately appears in a land use plan. An administrative action by BLM cannot be used to change existing legal and contractual obligations that are fulfilled by other agencies. For example, a BLM administrative decision cannot be used to modify obligations that Reclamation has under the laws that authorized the Dolores Project. In addition, a BLM administrative decision cannot be used to modify binding water delivery contracts executed by Reclamation.

When BLM identifies an ORV, the types of BLM decisions that could be modified to take ORVs into account include:

- applications for new land use authorizations along the river corridor, such as roads, utility corridors, etc.
- rehabilitation projects along the river corridor, such as removal of weeds and invasive species
- recreation management along the river corridor, such as projects to build new recreational facilities
- proposed surface disturbing projects in the Dolores River watershed that might change sediment loads to the river, such as vegetation treatments

The list above is not exhaustive, but it illustrates the type of land management decisions that are within the BLM's authority.

3. What is the relationship between BLM authorities under the Wild and Scenic Rivers Act and Reclamation's authorities?

BLM and Reclamation operate under completely separate authorities. BLM is granted operational authority by the Federal Land Policy and Management Act of 1976, while Reclamation is granted operational authorities by the Reclamation Act of 1902. In addition, Reclamation authority is governed by the Colorado River Basin Act of September 30, 1968 (Public Law 90-537), which specifically authorized the Dolores Project. Congress has not granted any authority to BLM that would allow the agency to dictate how a Reclamation project is operated, nor could a BLM administrative decision supersede congressionally enacted legislative direction for the Dolores Project.

When BLM identifies ORVs and determines that a river is suitable under the Wild and Scenic Rivers Act, the authority to protect the ORVs is limited to existing BLM authorities under the Federal Land Policy and Management Act. A suitability determination by BLM does not obligate other agencies to utilize their authorities to protect the ORVs identified by the BLM. The only situation in which other federal agencies are obligated to utilize their authorities to protect the ORVs identified by BLM is when Congress decides to officially designate a river segment into the National Wild and Scenic Rivers System. Congress has not done so for the Dolores River.

4. Does the ongoing operation of any Reclamation facility depend upon BLM land use authorizations or other decisions?

The BLM checked its records and could not identify any project facilities, such as pump stations, canals, and laterals that have been authorized under right-of-way grants issued by BLM. Rather, all BLM lands that were needed for project construction and operation, such as BLM lands around the perimeter of McPhee Reservoir, were withdrawn to Reclamation. When a withdrawal occurs, the agency receiving the withdrawal receives administrative authority to manage the withdrawn lands. When Reclamation facilities operate on withdrawn lands, BLM no longer reviews and reauthorizes the land use, as it does with right-of-way grants.

5. Does BLM plan to become involved in Reclamation's decision making, from the Wild and Scenic Rivers' perspective?

BLM recognizes that Reclamation must balance multiple legal mandates and legal contractual obligations in the operations of the Dolores Project. Given Reclamation's obligations, BLM is convinced that cooperation and collaboration is essential for addressing issues related to native fish management in the Dolores River. For that reason, BLM has been and will continue to be committed to being involved in the Dolores River Dialogue, which is an independently formed group of stakeholders who are attempting to collaboratively address river management issues..

If Reclamation seeks public comments on one of its decision that requires National Environmental Policy Act analysis, the Wild and Scenic Rivers Act does not mandate that BLM provide comments regarding Dolores River ORVs. In those situations, the BLM will provide comments only if BLM believes that a Reclamation decision will have a significant impact on the portions of the river that BLM manages, and

if BLM believes that the issue of concern to BLM is not being fully addressed as part of the Dolores River Dialogue.

Even if BLM does provide comments on a Reclamation decision, the Wild and Scenic Rivers Act does not obligate Reclamation to change its decision to respond to BLM comments. Rather, BLM anticipates that Reclamation would respond within the constraints of its legal and contractual obligations.