



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

1313 Sherman Street
Denver, CO 80203

P (303) 866-3441

F (303) 866-4474

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: May 20-21, 2015 Board Meeting

AGENDA ITEM: 21. Wild and Scenic Rivers Update and Fund Annual Review

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 along with updates on the BLM's upcoming Royal Gorge Field Office Resource Management Plan (RMP) revision and the BLM's Grand Junction Field Office Proposed RMP and Final Environmental Impact Statement (EIS). Also, Staff's annual update on the use of the Wild and Scenic Alternatives Fund is presented below.

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, and
- 2) make no revisions to the existing Terms and Conditions, which are attached.

Discussion:

Upper Colorado River Wild and Scenic Stakeholder Group Update

The BLM Kremmling Field Office's Proposed RMP/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) expected out by the end of May 2015. The joint BLM and USFS's Final Wild and Scenic Rivers Suitability Report (Suitability Report) was released with each of the BLM's RMP/EIS documents. 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 Upper Colorado River Wild and Scenic Stakeholder Group (Stakeholder Group) held its regular meeting on March 12, 2015 in Summit County and its next regular meeting is scheduled for June 3, 2015 at the same location. The Stakeholder Group meeting included discussions on the 2015 budget, the 2015 monitoring plan proposal, finances, and updates by the various workgroups and interest groups. The Stakeholder group approved its 2015 monitoring plan with modifications and its 2015 annual budget. 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 River Protection Workgroup (RPW) Steering Committee held a regular meeting on April 20, 2015 in Durango, Colorado with its next meeting scheduled for June 18, 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 specifically related outstanding remarkable values (ORVs) in the San Juan River basin, while protecting the ability of water users within Colorado to fully use its compact entitlements. Currently, there is an existing proposal by Trout Unlimited and an alternate proposal by the Wilderness Society and the San Juan Citizen's Alliance. The steering committee appointed a small group that is meeting regularly in an attempt to work out the differences between the two proposals. The small group is working toward an agreement-in-principle that incorporates features from both of the proposals. There is a "tide of optimism" among many of the small group members for reaching a draft agreement-in-principle. The agreement-in-principle may potentially include the removal of suitability, Wild and Scenic designation, and the maintenance of suitability within the five watersheds of the San Juan Basin. Additional information on the RPW can be found at: <http://ocs.fortlewis.edu/riverprotection>.

Lower Dolores Plan Working Group Update

In March 2015, the Legislative Subcommittee of the Lower Dolores Plan Working Group released a discussion draft of proposed federal legislation that would establish a National Conservation Area ("NCA") (from below McPhee Dam to Bedrock) and remove the finding of Wild and Scenic suitability from the Dolores River, among other things. The discussion draft of the legislation and a document answering Frequently Asked Questions about the draft are attached to this memo. Stakeholders are in the process of reviewing and providing input on the draft. In response to some stakeholders' concerns about certain legal aspects and potential consequences of establishing a NCA, the Southwest Water Conservation District, Dolores Water Conservancy District, Montezuma Valley Irrigation Company, Dolores County and potentially other stakeholders will retain attorney David Robbins to conduct a legal review of the draft legislation. Questions raised include if and how the proposed NCA could impact water supplies and water rights; and the difference, from a water issues perspective, between a National Monument and NCA. On May 5, 2015, Mr. Robbins met with a large group of stakeholders to listen to concerns and identify relevant questions. Additional information on the Lower Dolores Plan Working Group can be found at: <http://ocs.fortlewis.edu/drd/meetings.asp>.

BLM's Grand Junction Field Office Proposed RMP and Final Environmental Impact Statement (EIS)

On May 23, 2013, the CWCB requested that the BLM's Grand Junction Field Office consider specific comments on their Draft RMP and EIS related to wild and scenic suitability. In its Proposed RMP and Final EIS released on April 10, 2015, the BLM's Grand Junction Field Office accommodated the CWCB request as follows:

- Changing the short reach near the state line ("state line reach") on the Dolores River from "suitable" to "not suitable"; and
- including the following finding with its suitability determination for the section of the Dolores River adjacent to the Sewemup Wilderness Study Area ("Sewemup reach"):

If the Colorado water court system decrees an instream flow water right for the lower Dolores River in the locations, flow rates, and timing appropriated by the CWCB at its March 2014 board meeting, and if the instream flow right is vigorously enforced by the CWCB, the BLM does not believe it would be necessary to quantify, assert, or adjudicate a federal reserved water right if this segment is ultimately designated into the National Wild and Scenic Rivers system.

BLM's Royal Gorge Field Office Resource Management Plan (RMP) Revision

BLM's Royal Gorge Field Office will be kicking off their RMP revision in May with a Draft Suitability Report anticipated to be out in June 2015. The Department of Natural Resources (DNR) is currently working on a Memorandum of Understanding (MOU) to establish a cooperating agency relationship for this project. The CWCB staff will participate along with DNR as a cooperating agency.

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, 2014 ¹	\$472,095.47
Funds spent this fiscal year to date by LDPWG	(\$16,000.00)
Funds spent this fiscal year to date by UCRW&S ²	(\$45,644.07)
Funds spent this fiscal year to date by RPW	(\$6019.00)
Remaining funds	\$404,432.40
Encumbered funds under PO with RPW	(\$33,981.00)
Encumbered funds under PO with UCRW&S	(\$74,478.40)

Unencumbered funds remaining	\$295,973.00
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¹\$400,000 annual refresh on July 1 plus existing encumbered funds

² Funds used by 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 or implementing alternatives to Wild and Scenic designations and anticipate the need for additional funding in the future. 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. As indicated above, the BLM has indicated that the Royal Gorge Field Office will be coming out with a draft Eligibility Report in June 2015. Additionally, the USFS is currently in their assessment phase for their upcoming Rio Grande National Forest Plan Revision. The BLM's Gunnison Field Office and San Luis Valley Field Office will likely not begin similar work until 2017.

Attachments

**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 CWCBC 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.

**Draft discussion version of proposed
Dolores River National Conservation
Area legislation. Subject to change based
on public input and further discussion.**

Title: To establish the Dolores River National Conservation Area and the Dolores River Special Management Area in the State of Colorado, to designate the Dolores River Canyon Wilderness in the State, to protect private water rights in the State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Dolores River National Conservation Area, Dolores River Special Management Area, and Wilderness Designation Act”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Definitions.

**TITLE I—DOLORES RIVER NATIONAL CONSERVATION
AREA**

Sec.101.Establishment of Dolores River National Conservation Area.

Sec.102.Management of Conservation Area.

Sec.103.Dolores River National Conservation Area Advisory Council.

TITLE II—DESIGNATION OF WILDERNESS AREA

Sec.201.Addition to National Wilderness Preservation System.

Sec.202.Administration.

**TITLE III—DOLORES RIVER SPECIAL MANAGEMENT
AREA**

Sec.301.Designation of Dolores River Special Management Area.

TITLE IV—TECHNICAL MODIFICATIONS TO

POTENTIAL ADDITIONS TO THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

Sec.401.Release of Dolores River study area.

TITLE V—GENERAL PROVISIONS

Sec.501.Management of covered land.

Sec.502.Protection of water rights.

Sec.503.Application.

Sec.504.Effect on private property and regulatory authority.

Sec.505.Native American cultural and religious uses.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONSERVATION AREA.—The term “Conservation Area” means the Dolores River National Conservation Area established by section 101(a).

(2) COUNCIL.—The term “Council” means the Dolores River National Conservation Area Advisory Council established under section 103(a).

(3) COVERED LAND.—

(A) IN GENERAL.—The term “covered land” means—

(i) the Conservation Area; and

(ii) the Special Management Area.

(B) EXCEPTION.—The term “covered land” does not include the wilderness area.

(4) DESIGNATED ROUTE.—The term “designated route” means a route designated for motorized vehicles under the management plan for the covered land.

(5) DOLORES PROJECT.—The term “Dolores Project” has the meaning given the term in section 3 of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2974).

(6) DOLORES RIVER NATIVE FISH MONITORING AND RECOMMENDATION TEAM.—The term “Dolores River Native Fish Monitoring and Recommendation Team” means the entity established by [_____].

(7) MAP.—The term “Map” means the map entitled [“_____”] and dated [_____].

(8) PUBLIC LAND.—The term “public land” has the meaning given the term “public lands” in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702).

(9) SECRETARY.—The term “Secretary” means—

(A) in titles I and II, the Secretary of the Interior;

(B) in title III, the Secretary of Agriculture; and

(C) in title V—

(i) the Secretary of the Interior, with respect to land under the jurisdiction of the Secretary of the Interior; and

(ii) the Secretary of Agriculture, with respect to land under the jurisdiction of the Secretary of Agriculture.

(10) SPECIAL MANAGEMENT AREA.—The term “Special Management Area” means the Dolores River Special Management Area designated by section 301(a).

(11) STATE.—The term “State” means the State of Colorado.

(12) WILDERNESS AREA.—The term “wilderness area” means the wilderness area designated by paragraph (22) of section 2(a) of the Colorado Wilderness Act of 1993 (16 U.S.C. 1132 note; 107 Stat. 756; 114 Stat. 1955; 116 Stat. 1055) (as added by section 201(a)).

TITLE I—DOLORES RIVER NATIONAL CONSERVATION AREA

SEC. 101. ESTABLISHMENT OF DOLORES RIVER NATIONAL CONSERVATION AREA.

(a) Establishment.—Subject to valid existing rights, there is established the Dolores River National Conservation Area in the State.

(b) Area Included.—The Conservation Area shall consist of approximately [____] acres of Bureau of Land Management land in the State, as generally depicted on the Map.

(c) Map and Legal Description.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and legal description of the Conservation Area with the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) EFFECT.—The map and legal description prepared under paragraph (1) shall have the same force and effect as if included in this title, except that the Secretary may correct minor errors in the map or legal description.

(3) PUBLIC AVAILABILITY.—A copy of the map and legal description shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 102. MANAGEMENT OF CONSERVATION AREA.

(a) Purposes.—In accordance with this Act, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and other applicable laws, the Secretary shall manage the Conservation Area in a manner that conserves, protects, and enhances the native fish, whitewater boating, recreational, scenic, cultural, archaeological, natural, geological, historical, ecological,

watershed, wildlife, educational, and scientific resources of the Conservation Area.

(b) Management Plan.—

(1) PLAN REQUIRED.—Not later than 3 years after the date of enactment of this Act, the Secretary shall develop a management plan for the long-term protection, management, and monitoring of the Conservation Area.

(2) CONSULTATION.—The Secretary shall prepare the management plan required under paragraph (1) in consultation with the State, units of local government, and the public.

(3) RECOMMENDATIONS.—In preparing the management plan under this subsection, the Secretary shall consider recommendations from the Council.

(4) TREATY RIGHTS.—In preparing the management plan under paragraph (1), the Secretary shall ensure that the management plan does not alter or diminish the treaty rights of any Indian tribe.

(c) Uses.—The Secretary shall allow only such uses of the Conservation Area that the Secretary determines would further the purpose of the Conservation Area described in subsection (a).

(d) Incorporation of Acquired Land and Interests.—Any land or interest in land located within the boundary of the Conservation Area that is acquired by the United States after the date of enactment of this Act shall become part of the Conservation Area and be managed as provided in this Act.

(e) Agreement.—To further the purposes of this Act, in preparing the management plan under subsection (b), the Secretary shall seek to enter into a memorandum of agreement with the Dolores River Native Fish Monitoring and Recommendation Team to address the protection and ongoing management of fisheries in the Conservation Area.

(f) Department of Energy Leases.—

(1) IN GENERAL.—Nothing in this title affects valid leases existing on the date of enactment of this Act issued under the uranium leasing program of the Department of Energy within the boundaries of the Conservation Area.

(2) MANAGEMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), land designated for the program described in paragraph (1) shall be—

(i) exempt from section 501(c); and

(ii) managed in a manner that allow the leases to fulfill the purposes of the program, consistent with the other provisions of this title and title V.

(B) DESIGNATION.—Land subject to a lease described in paragraph (1) shall be considered part of the Conservation Area and managed in accordance with other provisions of this title upon a finding by the Secretary that—

(i) the lease has been released from the leasing program by the Secretary of Energy; and

(ii) the land that was subject to the lease is suitable for inclusion in the

Conservation Area.

(C) EFFECT.—Nothing in subparagraph (B) prevents the Secretary of Energy from extending any lease described in paragraph (1).

SEC. 103. DOLORES RIVER NATIONAL CONSERVATION AREA ADVISORY COUNCIL.

(a) Establishment.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish an advisory council, to be known as the “Dolores River National Conservation Area Advisory Council”.

(b) Duties.—The Council shall advise the Secretary with respect to the preparation, implementation, and monitoring of the management plan prepared under section 102(b).

(c) Applicable Law.—The Council shall be subject to—

(1) the Federal Advisory Committee Act (5 U.S.C. App.); and

(2) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(d) Membership.—

(1) IN GENERAL.—The Council shall include 13 members to be appointed by the Secretary, of whom, to the extent practicable—

(A) 2 members shall represent water interests in the Conservation Area;

(B) 2 members shall represent conservation interests in the Conservation Area;

(C) 2 members shall represent recreation interests in the Conservation Area, 1 of whom shall specifically represent boating interests;

(D) 1 member shall be a representative of Montezuma County, Colorado;

(E) 1 member shall be a representative of Dolores County, Colorado;

(F) 1 member shall be a representative of San Miguel County, Colorado;

(G) 1 member shall be a representative of Montrose County, Colorado;

(H) 1 member shall be a private landowner in the Conservation Area;

(I) 1 member shall be a holder of a grazing-allotment permit in the Conservation Area; and

(J) 1 member shall be a representative of the Ute Mountain Tribe.

(2) REPRESENTATION.—The Secretary shall ensure that the membership of the Council is fairly balanced in terms of the points of view represented and the functions to be performed by the Council.

(e) Termination.—The Council shall terminate on the date that is 1 year after the date on which the management plan developed under section 102(b) is adopted by the Secretary.

TITLE II—DESIGNATION OF WILDERNESS AREA

SEC. 201. ADDITION TO NATIONAL WILDERNESS PRESERVATION SYSTEM.

(a) Designation of Wilderness.—Section 2(a) of the Colorado Wilderness Act of 1993 (16 U.S.C. 1132 note; 107 Stat. 756; 114 Stat. 1955; 116 Stat. 1055) is amended by adding at the end the following:

“(22) Certain public land administered by the Bureau of Land Management that comprises approximately [_____] acres, as generally depicted on the map entitled [_____] and dated [_____] , which shall be known as the ‘Dolores River Canyon Wilderness.’”.

(b) Dolores River Boundary.—

(1) IN GENERAL.—In areas in which the mainstem of the Dolores River is used as a reference for defining the boundary of the wilderness area, the boundary of the wilderness area shall—

(A) be located at the edge of the Dolores River; and

(B) change according to the level of the Dolores River.

(2) EXCLUSION FROM WILDERNESS.—Regardless of the level of the Dolores River, no portion of the Dolores River shall be included in the wilderness area.

(3) USE OF MOTORIZED OR MECHANIZED VEHICLES.—No motorized or mechanized vehicles shall be allowed on the portion of the Dolores River located adjacent to the wilderness area.

(c) Map and Legal Description.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and legal description of the wilderness area with the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) EFFECT.—The map and legal description under paragraph (1) shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in the map or legal description.

(3) AVAILABILITY.—The map and legal description under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 202. ADMINISTRATION.

(a) Management.—Subject to valid existing rights, the wilderness area shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), except that—

(1) any reference in that Act to the effective date of that Act shall be considered to be a reference to the date of enactment of this Act; and

(2) any reference in that Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary of the Interior.

(b) Incorporation of Acquired Land and Interests.—Any land or interest in land within the

boundaries of the wilderness area that is acquired by the United States after the date of enactment of this Act shall be added to, and administered as part of, the wilderness area within which the acquired land or interest is located.

(c) Grazing.—Grazing of livestock in the wilderness area, where grazing was established before the date of enactment of this Act, shall be administered in accordance with—

(1) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and

(2) the guidelines set forth in appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101–405).

(d) Adjacent Management.—

(1) NO BUFFER ZONES.—Congress does not intend for the designation of land as the wilderness area to lead to the creation of protective perimeters or buffer zones around the wilderness areas.

(2) NONWILDERNESS ACTIVITIES.—The fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness area shall not preclude the conduct of those activities or uses outside the boundary of the wilderness area.

(e) Wildfire, Insect, and Disease Management.—

(1) IN GENERAL.—In accordance with section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)), the Secretary may take such measures in the wilderness area as the Secretary determines to be necessary for the control of fire, insects, and diseases (including, as the Secretary determines to be appropriate, the coordination of the activities with a State or local agency).

(2) EFFECT.—Nothing in this title precludes a Federal, State, or local agency from conducting wildfire management operations (including operations using aircraft or mechanized equipment) in accordance with section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)).

(f) Climatological Data Collection.—Subject to such terms and conditions as the Secretary may require, nothing in this title precludes the installation and maintenance of hydrologic, meteorologic, or climatological collection devices in the wilderness areas if the facilities and access to the facilities are essential to flood warning, flood control, and water reservoir operation activities.

TITLE III—DOLORES RIVER SPECIAL MANAGEMENT AREA

SEC. 301. DESIGNATION OF DOLORES RIVER SPECIAL MANAGEMENT AREA.

(a) In General.—Subject to valid existing rights, certain Federal land in the San Juan National Forest comprising approximately [] acres, as generally depicted on the Map, is designated as the “Dolores River Special Management Area”.

(b) Purposes.—In accordance with this Act, the National Forest Management Act of 1976 (16

U.S.C. 1600 et seq.), and other applicable laws, the Secretary shall manage the Special Management Area in a manner that conserves, protects, and enhances the cultural, archaeological, natural, geological, historical, ecological, watershed, wildlife, educational, recreational, scientific, scenic, and native fish resources of the Special Management Area.

(c) Management Plan.—

(1) PLAN REQUIRED.—Not later than 3 years after the date of enactment of this Act, the Secretary shall develop a management plan for the long-term protection, management, and monitoring of the Special Management Area.

(2) CONSULTATION.—The Secretary shall prepare the management plan required under paragraph (1) in consultation with the State, units of local government, and the public.

(3) RECOMMENDATIONS.—In preparing the management plan under this subsection, the Secretary shall consider recommendations from the Council.

(d) Uses.—The Secretary shall allow only such uses of the Special Management Area that the Secretary determines would further the purpose of the Special Management Area described in subsection (a).

(e) Incorporation of Acquired Land and Interests.—Any land or interest in land located within the boundary of the Special Management Area that is acquired by the United States after the date of enactment of this Act shall become part of the Special Management Area and be managed as provided in subsection (b).

TITLE IV—TECHNICAL MODIFICATIONS TO POTENTIAL ADDITIONS TO THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

SEC. 401. RELEASE OF DOLORES RIVER STUDY AREA.

(a) Purpose.—The purpose of this section is to release the portion of the Dolores River within the covered land from designation for potential addition under the Wild and Scenic River Act (16 U.S.C. 1271 et seq.).

(b) Release.—Section 5(a)(56) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)(56)) is amended by inserting “and the segments of the Dolores River located in the Dolores River National Conservation Area or the Dolores River Special Management Area designated by the Dolores River National Conservation Area, Dolores River Special Management Area, and Wilderness Designation Act” before the period at the end.

TITLE V—GENERAL PROVISIONS

SEC. 501. MANAGEMENT OF COVERED LAND.

(a) Motorized Vehicles.—

(1) IN GENERAL.—Except in cases in which motorized vehicles are needed for administrative purposes or to respond to an emergency, the use of motorized vehicles in the covered land shall be permitted only on a designated route.

(2) ROAD CONSTRUCTION.—Except as necessary for administrative purposes, protection of public health and safety, or providing reasonable access to private property, the Secretary shall not construct any permanent or temporary road within the covered land after the date of enactment of this Act.

(b) No Buffer Zones.—

(1) IN GENERAL.—The establishment of the Conservation Area or Special Management Area shall not create an express or implied protective perimeter or buffer zone around the Conservation Area or Special Management Area.

(2) PRIVATE LAND.—If the use of, or conduct of an activity on, private land that shares a boundary with the Conservation Area or Special Management Area is consistent with applicable law, nothing in this Act concerning the establishment of the Conservation Area or Special Management Area prohibits or limits the use or conduct of the activity.

(c) Withdrawals.—Subject to valid existing rights, all public land within the covered land, including any land or interest in land that is acquired by the United States within the covered land after the date of enactment of this Act, is withdrawn from—

(1) entry, appropriation or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(d) Willing Sellers.—Any acquisition of land or interests in land under this Act shall be only by purchase from willing sellers, donation, or exchange.

(e) Grazing.—The Secretary shall issue and administer any grazing leases or permits and trailing permits and administer allotments in the covered land in accordance with the laws (including regulations) applicable to the issuance and administration of leases and permits on other land under the jurisdiction of the Bureau of Land Management or Forest Service, as applicable.

(f) Access to Private Land.—To ensure reasonable use and enjoyment of private property, the Secretary shall provide adequate and feasible access—

(1) to private property that is located within and adjacent to the covered land; and

(2) through the Conservation Area or Special Management Area to owners of private land located within or adjacent to the Conservation Area or Special Management Area, if other routes to the private land are blocked by physical barriers, such as the Dolores River or the cliffs of the Dolores River.

(g) Easements.—The Secretary may lease or acquire easements on private land from willing lessors, donors, or willing sellers for recreation, access, conservation, or other permitted uses, to the extent necessary to fulfill the purposes of the Conservation Area or Special Management Area, as applicable.

(h) Wildfire, Insect, and Disease Management.—The Secretary may take any measures that the Secretary determines to be necessary to control fire, insects, and diseases in the covered land, (including, as the Secretary determines to be appropriate, the coordination of the measures with the State or a local agency).

1 (i) Management of Ponderosa Gorge.—

2 (1) IN GENERAL.—The Secretary shall manage the areas of the Conservation Area and
3 Special Management Area identified on the Map as “Ponderosa Gorge” in a manner that
4 maintains the wilderness character of those areas as of the date of enactment of this Act.

5 (2) PROHIBITED ACTIVITIES.—Subject to paragraph (3), in the areas described in
6 paragraph (1), the following activities shall be prohibited:

7 (A) New permanent or temporary road construction or the renovation of existing
8 nonsystem roads.

9 (B) The use of motor vehicles, motorized equipment, or mechanical transport,
10 except as necessary to meet the minimum requirements for the administration of the
11 Federal land and to protect public health and safety.

12 (C) Projects undertaken for the purpose of harvesting commercial timber (other than
13 activities relating to the harvest of merchantable products that are byproducts of
14 activities conducted for ecological restoration or to further the purposes of this Act).

15 (3) UTILITY CORRIDOR.—Nothing in this subsection affects the operation, maintenance, or
16 location of the utility right-of-way within the corridor, as depicted on the Map.

17 (j) Effect.—Nothing in this Act prohibits the Secretary from issuing a new permit and right-of-
18 way for a width of not more than 150 feet for an existing right-of-way that serves an existing
19 transmission line, on the condition that the Secretary shall relocate the right-of-way in a manner
20 that furthers the purposes of this Act.

21 **SEC. 502. PROTECTION OF WATER RIGHTS.**

22 (a) Allocations.—Water allocations from the Dolores Project to further the purposes of this
23 Act shall be carried out subject to—

24 (1) the reclamation laws;

25 (2) Dolores Project water contracts; and

26 (3) obligations to holders of allocations for Dolores Project water.

27 (b) Dolores Project.—

28 (1) OPERATION.—The Dolores Project and the operation of McPhee Reservoir shall
29 continue to be the responsibility of, and be operated by, the Bureau of Reclamation, in
30 cooperation with the Dolores Water Conservancy District, in accordance with Federal laws
31 applicable to the Dolores Project.

32 (2) EFFECT.—Nothing in this Act affects the Dolores Project and the operation of
33 McPhee Reservoir, in accordance with—

34 (A) the environmental assessment and finding of no significant impact prepared by
35 the Bureau of Reclamation Upper Colorado Region and approved August 2, 1996; and

36 (B) the operating agreement entitled “Operating Agreement, McPhee Dam and
37 Reservoir, Contract No. 99–WC–40–R6100, Dolores Project, Colorado” and dated
38 April 25, 2000.

1 (c) Management of Flows.—In managing flows below McPhee Dam to conserve, protect, and
2 enhance the native fish resources in the Conservation Area, the Commissioner of Reclamation
3 shall—

4 (1) carry out the management activities in accordance with—

5 (A) the reclamation laws;

6 (B) Dolores Project water contracts; and

7 (C) boating commitments; and

8 (2) take into account input from the Dolores River Native Fish Monitoring and
9 Recommendation Team, including input relating to—

10 (A) the ongoing adaptive management science that evolves from flow management
11 experiments; and

12 (B) the monitoring of the results of the experiments referred to in subparagraph (A).

13 (d) Large-scale Water Development.—Subject to valid existing rights, the Secretary shall
14 ensure that any new large-scale water development located outside the covered land with a
15 potential impact on any portion of the Dolores River in the Conservation Area would not
16 unreasonably diminish the scenic, recreational, and fish and wildlife values of the Conservation
17 Area.

18 (e) Prohibition of New Dams and Large-scale Water Developments.—

19 (1) IN GENERAL.—Subject to paragraph (2), no new dams shall be constructed on the
20 covered land.

21 (2) LIMITATION.—Nothing in paragraph (1) prevents the construction of small diversion
22 dams or stock ponds, new minor water developments according to existing decreed water
23 rights, or modifications to existing structures on the covered land.

24 (f) Cooperative Agreements.—In preparing the management plan under subsection 102(b), the
25 Secretary of the Interior, with respect to land under the jurisdiction of the Secretary of the
26 Interior, and the Secretary of Agriculture, with respect to land under the jurisdiction of the
27 Secretary of Agriculture, shall enter into a cooperative agreement with the Dolores River Native
28 Fish Monitoring and Recommendation Team to address the protection and ongoing management
29 of the flow-dependent resources of the covered land.

30 (g) Existing Water Resource Facilities.—Nothing in this Act—

31 (1) affects any existing water resource facilities on the covered land, including irrigation
32 and pumping facilities, pumps, equipment, mobile pumps or pumping equipment,
33 reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells,
34 hydropower projects, and transmission and other ancillary facilities including power lines,
35 and other water diversion, storage, and carriage structures; or

36 (2) impedes or restricts access to facilities described in paragraph (1) for operation,
37 maintenance, repair, or replacement.

38 (h) Annual Report.—

39 (1) IN GENERAL.—Beginning on the date that is 1 year after the date of enactment of this

1 Act and annually thereafter, the Commissioner of Reclamation shall prepare and make
2 publically available a report that describes any progress with respect to the conservation,
3 protection, and enhancement of native fish in the Dolores River.

4 (2) REQUIREMENT.—In preparing the report under paragraph (1), the Commissioner of
5 Reclamation shall take into account, to the maximum extent practicable, the
6 implementation, monitoring, and evaluation report prepared by the Dolores River Native
7 Fish Monitoring and Recommendation Team for the applicable year.

8 (i) Effect.—Nothing in this Act—

9 (1) affects—

10 (A) any water right that is—

11 (i) decreed under the laws of the State; and

12 (ii) in existence on the date of enactment of this Act;

13 (B) the use, allocation, ownership, or control, in existence on the date of enactment
14 of this Act, of any water or water right;

15 (C) any vested absolute or decreed conditional water right in existence on the date of
16 enactment of this Act, including any water right held by the United States;

17 (D) any interstate water compact in existence on the date of enactment of this Act;
18 or

19 (E) State jurisdiction over any water law; or

20 (2) constitutes an express or implied reservation by the United States of any reserved or
21 appropriative water rights.

22 SEC. 503. APPLICATION.

23 Section 5(d)(1) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(d)(1)) shall not apply to
24 the Conservation Area or the Special Management Area.

25 SEC. 504. EFFECT ON PRIVATE PROPERTY AND 26 REGULATORY AUTHORITY.

27 Nothing in this Act—

28 (1) affects valid existing rights;

29 (2) requires any owner of private property to bear any costs associated with the
30 implementation of the management plan under this Act;

31 (3) affects the jurisdiction or responsibility of the State with respect to fish and wildlife in
32 the State;

33 (4) requires a change in or affects local zoning laws of the State or a political subdivision
34 of the State; or

35 (5) affects the jurisdiction over, use, or maintenance of county roads in the covered land
36 or Bureau of Land Management road number 4543, as generally depicted on the Map.

1 SEC. 505. NATIVE AMERICAN CULTURAL AND
2 RELIGIOUS USES.

3 Nothing in this Act alters or diminishes the treaty rights of any Indian tribe.
4

Proposed Dolores River Canyon National Conservation Area

Questions & Answers

Who is proposing the NCA?

The proposed National Conservation Area or “NCA” originated with the Lower Dolores Plan Working Group, a grassroots group appointed by the Dolores River Dialogue in collaboration with the Dolores Public Lands office to consider if there was an alternative management approach for the Lower Dolores River. Made up of about 50 people representing a broad spectrum of interests including counties, water boards, agriculture, private landowners, conservation groups, and recreational users, the Working Group unanimously decided to study and determine if a NCA along the river corridor from McPhee Dam to Bedrock would be a better way to protect the river’s values and to protect private property and water rights. They appointed a smaller group, the Legislative Subcommittee, to work out the details of a potential NCA. The Subcommittee has been meeting since 2010.

What is the NCA proposal designed to do? The overarching purposes of this proposal are to:

- Respect and protect private property rights, water rights and the use of the Dolores Project and its allocations, and other historic uses.
- Ensure protection of all identified Outstandingly Remarkable Values associated with Wild and Scenic River suitability (which is the river’s current status).
- Develop an alternative to Wild and Scenic River suitability and potential designation.

Why do people believe an NCA is needed?

Why not just leave things as they are?

Three key issues have raised concerns in local communities about future management of the Lower Dolores River:

- The river has been found “Suitable” by the BLM for designation under the Wild and Scenic Rivers Act. Such a designation, which would require an Act of Congress, carries a federal reserved water right.
- Populations of three native fish species in the river have declined throughout the Colorado River Basin and there is a potential that they could be listed under the Endangered Species Act.
- The possibility has been raised that the President of the United States might designate a National Monument along the Dolores River if alternative conservation measures are not taken.

The draft Dolores NCA proposal promotes a coordinated effort to improve the health of the native fish while affirming private property rights and water rights associated with the Dolores Project. A locally-crafted solution will address these resource management concerns while honoring the community’s use of its land and water resources.

Where can I learn more? If you have questions or concerns, members of the Legislative Subcommittee are listed on the back of this page along with contact information.

What is contained in the NCA proposal?

Some key components of the proposal are:

- The permanent release of the river from consideration for Wild and Scenic River status
- Protection for existing water rights and private property rights
- Continued recognition of and adherence to Dolores Project commitments
- Recognition of whitewater boating as a commitment that will continue to be protected and managed for in the NCA
- Protection of the Outstandingly Remarkable Values associated with Wild and Scenic suitability within available water supplies
- A mineral withdrawal for the NCA, meaning no *new* mining claims or oil and gas leases would be allowed within the river corridor
- A prohibition on new dams within the NCA (except for small structures such as irrigation diversions and stock ponds)
- The designation of the Dolores River Canyon Wilderness Study Area as Wilderness. (The river itself will not be part of the Wilderness.)
- The River Road from the Dove Creek Pump Station to Slick Rock will remain open.
- A commitment to continue to work to improve native fish habitat and status through a cooperative effort with the Native Fish Monitoring, Evaluation, and Recommendation Team, within the constraints of existing Colorado water law and Dolores Project allocations.

(over)

How would the NCA be created?

If there is broad support for the proposal, the NCA would be created through legislation that would be passed by Congress.

Who would manage the NCA?

- The NCA would remain under the management of the Bureau of Land Management, with a small portion managed by the Forest Service as a Special Management Area.
- Following the passage of legislation to create the NCA, an Advisory Council made up of a diverse set of local stakeholders would be appointed by the Secretary of Interior to make recommendations during development of a Management Plan. The Advisory Council would terminate one year after adoption of the Management Plan.

How would the NCA address concerns about native fish status?

The proposed legislation directs the BLM and Forest Service to seek to enter into a memorandum of agreement with the Native Fish Monitoring, Evaluation and Recommendation Team (formerly the Implementation Team) to address the protection and ongoing management of the fisheries. The team is made up of diverse stakeholders interested in the native fish, whitewater boating, and trout in the Lower Dolores. The team's only role would be to make recommendations to reservoir operators and fishery managers for improving native fish habitat and viability in concert with whitewater boating and with consideration to the trout fishery right below McPhee Dam. *Any adjustments to reservoir operations recommended by the team will be at the discretion of the Bureau of Reclamation and Dolores Water Conservancy District in conformance with Dolores Project and NEPA requirements. The proposed legislation includes no requirements for changes in flow regimes or releases from the dam.*

Why does the Legislative Subcommittee believe an NCA is the best solution for the Lower Dolores?

The NCA proposal is being created through local collaboration and will be tailored to the needs and concerns of local communities. It would be passed by Congress and based on local support and input. An NCA would include provisions to protect water and private property rights as well as for conservation and recreation values. The compromise reflected in this proposal would legislatively remove Wild and Scenic suitability, which is of concern to many, while still maintaining the integrity of the natural values of the river canyon.

Do I have the opportunity to make my opinion heard about the NCA?

The NCA is only a proposal at this point. The legislation is in draft form, and the Legislative Subcommittee is seeking input from all interested parties. The legislation will not become law without broad-based support from affected communities. There will be many opportunities to discuss different provisions in the NCA proposal and to make adjustments.

Members of the Legislative Subcommittee

- | | |
|--|---|
| • Dolores County – Commissioner Ernie Williams | • Nature Conservancy – Peter Mueller |
| • Dolores Water Conservancy District – Mike Preston | • Oil and gas/motorized recreation – Rick Gersch |
| • Grazing/mining – Al Heaton | • San Juan Citizens Alliance – Amber Clark |
| • Montezuma County – Commissioner Larry Don Suckla | • Wilderness Society – Jeff Widen |
| • Montezuma Valley Irrigation Company – Gerald Koppenhafer | • Ex officio member – Sen. Michael Bennet's Southwest Regional Director, John Whitney |
| • Landowner – Cole Crocker-Bedford | |

For More Information contact:

Amber Clark, Legislative Subcommittee Chairperson, 970-565-7191 OR
Marsha Porter-Norton, Facilitator, 970-759-3110 or mporternorton@gmail.com

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