

BEFORE THE COLORADO WATER CONSERVATION BOARD

STATE OF COLORADO

Prehearing Statement of Sheep Mountain Alliance

IN THE MATTER OF STAFF'S RECOMMENDATIONS FOR AN INSTREAM FLOW APPROPRIATION ON THE DOLORES RIVER FROM ITS CONFLUENCE WITH THE SAN MIGUEL RIVER TO ITS CONFLUENCE WITH WEST CREEK, WATER DIV. 4

Pursuant to Rule 5n(2) of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules"), Sheep Mountain Alliance ("SMA") hereby submits its prehearing statement in support of the Colorado Water Conservation Board ("CWCB") staff's recommendations for an instream flow appropriation on the Dolores River between its confluence with the San Miguel River and its confluence with West Creek (the "ISF"). SMA supports the appropriation on the reach in the location, timing, and amounts adopted by the CWCB. The CWCB adopted the locations, timing, and amount set forth in the CWCB Staff Analysis and Recommendation made available to the CWCB and the public at the January 27-28, 2014, CWCB regularly scheduled board meeting.

A. FACTUAL CLAIMS

1. There is a natural environment that can be preserved on the subject reach of the Dolores River. The finding of a natural environment is based upon the fish surveys conducted the Colorado Division of Wildlife, riparian inventories, and aquatic macroinvertebrate surveys conducted by the Bureau of Land Management (the "BLM").
2. The instream flow location, amount, and timing originally recommended by the CWCB staff:
 - a) are based upon an accurate PHABSIM (Physical Habitat Simulation) analysis, which is a standard scientific methodology for identifying the amount of the physical habitat available for fish at various flow rates in a specified stream channel;
 - b) are based upon a set of habitat suitability curves that are appropriate for the fish species and the life stages to be protected;
 - c) are based upon a set of habitat suitability curves that are appropriate for the Dolores River stream channel;
 - d) are based upon a reasonable selection of protective flow rates take from the weighted usable area curves produced by PHABSIM analysis;
 - e) are based upon an accurate application of the R2Cross hydraulic modeling procedures;
 - f) are based upon an accurate application of hydraulic criteria for instream flow determinations utilizing the R2Cross methodology; and
 - g) are required to preserve the natural environment to a reasonable degree.
3. The natural environment on the subject reach of the Dolores River:
 - a) includes native and introduced fishes, aquatic macroinvertebrates, and riparian communities;
 - b) can be preserved with an instream flow appropriation that is based upon the flow needs of flannelmouth sucker and bluehead sucker, because those species are indicator

- species for other elements of the natural environment that rely upon a hydrograph with a natural shape, and the two species have somewhat different habitat preferences;
- c) will be preserved to a reasonable degree with the proposed ISF water right; and
 - d) can exist without material injury to existing water rights, including conditional surface water rights and conditional storage rights.
4. The water availability analysis conducted by the CWCB in support of the instream flow appropriation:
- a) is based upon scientifically accepted hydrology analysis procedures;
 - b) relies upon data from two historic gaging sites on the Dolores River and the San Miguel River near the confluence of these two rivers (near the upper terminus of the ISF), which demonstrate that sufficient water is available for the proposed appropriation; and
 - c) reflects an amount of water that is available for appropriation as an ISF right, utilizing standard procedures employed by the CWCB to evaluate a range of hydrologic year types.
5. SMA supports the CWCB staff recommendations as set forth in the January 2014 Staff Analysis and Recommendation on the subject reach of the Dolores River.
6. SMA hereby adopts the factual claims set forth in CWCB, BLM and CPW staff's Prehearing Statements.

B. LEGAL CLAIMS

1. SMA is a party to these proceedings pursuant to Rule 51 of the ISF Rules.
2. Because instream flow water rights are nonconsumptive and do not divert water from the stream, the CWCB can appropriate an instream flow water right that is based upon the flow of water that will be diverted downstream by a senior water right.
3. Even though the proposed ISF will be junior to existing water rights on the stream system, the CWCB can make appropriations based on water availability at the time of the proposed appropriation, without subtracting flow rates or volumes that have been adjudicated to conditional or presently unexercised water rights.
4. The proposed instream flow water right will not deprive the people of the State of Colorado of their right to develop the volume of water allocated to the State of Colorado under the Colorado River Compact. The proposed instream flow water right leaves adequate water volumes available for new junior water rights and future water development.
5. In determining the amount of water available for an instream flow appropriation, the CWCB is not limited to the amount of water available during drought years. Instead, the CWCB may consider the amount of water available in a range of hydrologic conditions.
6. The CWCB has the discretion to determine the amount and timing of water necessary to preserve the natural environment to a reasonable degree.
7. The CWCB staff ISF recommendation for the subject reach of the Dolores River meets all of the substantive and procedural requirements outlined in the ISF Rules.

8. The CWCB's appropriation of an instream flow water right on the subject reach of the Dolores River would further the express intent of C.R.S § 37-92-103(3) to "correlate the activities of mankind with some reasonable preservation of the natural environment."

9. SMA hereby adopts the legal claims set forth in the CWCB, BLM and CPW staff's Prehearing Statements.

C. EXHIBITS TO BE INTRODUCED AT HEARING

1. January 2014 Staff Analysis and Recommendation on the subject reach of the Dolores River. This report, along with its supporting data, analyses and appendices, contains maps of the proposed reach, proposed ISF amounts and timing, and water availability calculations. This report, including appendices, is available for review on the CWCB's website at <http://cwcb.state.co.us/environment/instream-flow-program/Pages/2015ContestedISFAppropriations.aspx>. SMA will refer to this report and the supporting data, analyses and appendices as **SMA Exhibit 1**.

2. Range-Wide Conservation Agreement and Strategy for Roundtail Chub, Bluehead Sucker, and Flannelmouth Sucker, September 2006. This document is available for review on the CWCB website at: <http://cpw.state.co.us/Documents/WildlifeSpecies/SpeciesOfConcern/RecoveryPlans/ChubSuckerRangeWideConservationAgreementandStrategy01-04-07.pdf>. SMA will refer to this document as **SMA Exhibit 2**.

3. Colorado's Water Supply Future, Colorado Water Conservation Board, Southwest Basin Non-consumptive Needs Assessment Report, March 2011. This document is available in its entirety for review on the CWCB website at: <http://cwcb.state.co.us/water-management/basin-roundtables/Documents/Southwest/SWBasinNeedsAssessmentReport.pdf>. SMA will refer to this report as **SMA Exhibit 3**.

4. Copies of stakeholder letters and petitions in support of the ISF, including petitions and letters that may be collected prior to the Board meeting. Letters and petitions in addition to the letter attached hereto will be circulated to the Board and all parties prior to the hearing. SMA will refer to all letters and petitions in support of the ISF as **SMA Exhibit 4**.

5. Portions of the Southwest Basin Roundtable's Basin Implementation Plan, attached hereto. SMA will refer to the BIP as **SMA Exhibit 5**.

6. Portions of the Final Wild and Scenic River Eligibility Report for the BLM Uncompahgre Planning Area dated June 2010. This document is available in its entirety for review at: http://www.blm.gov/pgdata/etc/medialib/blm/co/field_offices/uncompahgre_field/rmp/rmp_docs.Par.16348.File.dat/Final%20WSR%20Eligibility%20Report%20Final%20Web%20071210.pdf. SMA will refer to this report as **SMA Exhibit 6**.

7. Portions of the BLM Colorado Southwest Resource Advisory Council Wild and Scenic River Suitability Recommendations for the San Miguel and Dolores Rivers and Tributaries. This document is available in its entirety for review at: http://www.blm.gov/pgdata/etc/medialib/blm/co/field_offices/uncompahgre_field/rmp/wsr_docs.Par.31074.File.dat/2011-0225%20WSR%20Dolores%20San%20Miguel%20Segment%20Analysis%20RAC%20Recommendation.pdf. SMA will refer to this document as **SMA Exhibit 7**.

8. SMA may introduce demonstrative, rebuttal, or other exhibits as allowed by the CWCB or agreed upon by the parties.
9. SMA may rely upon exhibits introduced or disclosed by any other party to this hearing.

D. LEGAL MEMORANDUM

SMA's legal memorandum is attached to this prehearing statement as Exhibit A and is incorporated by this reference.

Respectfully submitted this 25th day of June, 2015.

RUSSELL & PIETERSE, LLC



Jennifer Russell, Attorney Reg. # 22047
Attorneys for Sheep Mountain Alliance
PO Box 2673
Telluride, CO 81435
jenny.russell@lawtelluride.com

CERTIFICATE OF SERVICE

I hereby certify that I have duly served the copies of the foregoing PREHEARING STATEMENT OF SHEEP MOUNTAIN ALLIANCE upon all parties herein by email this 25th day of June, 2015, addressed as follows:

Colorado Water Conservation Board Linda Bassi Colorado Water Conservation Board 1313 Sherman Street, Room 718 Denver, CO 80203 303-866-3441 ext. 3204 linda.bassi@state.co.us	Colorado Water Conservation Board Susan Schneider First Assistant Attorney General Colorado Attorney General's Office 1300 Broadway, 7th Floor Denver, CO 80203 (720) 508-6311 susan.schneider@state.co.us
<u>Bureau of Land Management</u> Roy Smith DOI, BLM, Colorado State Office 2850 Youngfield Street Lakewood, CO 80215-7093 303-239-3940 r20smith@blm.gov	<u>Colorado Parks and Wildlife</u> Jay Skinner Colorado Parks and Wildlife 6060 Broadway Denver, CO 80216 303-291-7260 jay.skinner@state.co.us
<u>Colorado River Water Conservation District</u> Peter Fleming P.O. Box 1120 Glenwood Springs, CO 81602-1120 970-945-8522 pfleming@crwcd.org	<u>Conservation Colorado Education Fund</u> <u>San Juan Citizens Alliance</u> <u>Western Resource Advocates</u> Robert Harris Bart Miller Western Resource Advocates 2260 Baseline Road, Suite 200 Boulder, CO 80302 303-444-1188 bart.miller@westernresources.org rob.harris@westernresources.org
<u>Dolores Water Conservancy District</u> <u>Southwestern Water Conservation</u> <u>District</u> John B. Spear Maynes, Bradford, Shipp & Sheftel, LLP P.O. Box 2717 Durango, CO 81302 970-247-1755 bspear@mbssllp.com	<u>John S. Hendricks</u> <u>Western Sky Investments, LLC</u> Mark E. Hamilton William H. Caile Holland & Hart LLP 600 E. Main St., Suite 104 Aspen, CO 81611-1991 970-925-3476 mehamilton@hollandhart.com whcaile@hollandhart.com
<u>San Miguel County Board of County</u> <u>Commissioners</u> Steven J. Zwick P.O. Box 791 Telluride, CO 81435 970-728-3879 stevez@sanmiguelcounty.org	



Jennifer Russell

Sheep Mountain Alliance Prehearing Statement Legal Memorandum

This legal memorandum is in support of the ISF appropriation on the Dolores River.

I. INTRODUCTION AND BACKGROUND

The Colorado Water Conservation Board (“Board”) is a unique entity charged with preserving the natural environment to a reasonable degree for the people of the State of Colorado.¹ The Board initiates water appropriations in fulfillment of this unique statutory responsibility.²

In charging the Board with this authority, the legislature clearly envisioned that the instream flow program would reasonably obtain its goal of preserving the environment by ensuring that certain stream reaches would not be further depleted.³ The primary value of an instream flow right is its ability to preserve the stream conditions existing at the time of its appropriation.⁴ It protects a portion of the flows remaining in the river after decreed senior rights are satisfied.

In order to encourage other entities to participate in Colorado’s instream flow program, the legislature directed the Board to request instream flow recommendations from other state and federal agencies.⁵ This ISF comes at the recommendation of the Colorado Department of Wildlife and the Bureau of Land Management and is based upon 10 years of intensive sampling by the CPW on the Dolores River. The agencies have identified populations of fish species that are recognized as species of special concern by the state (roundtail chub) or are considered sensitive species by the BLM (roundtail chub, flannelmouth sucker and bluehead sucker). Sensitive species are declining so rapidly that federal listing may become necessary.

A significant purpose of the proposed Dolores River instream flow appropriation (“ISF”) is to implement the five-state conservation agreement regarding the management of these species (the “Three Species Agreement”).⁶ If successful, the ISF could curtail the need for federal listing of the species, which would constitute a direct, significant benefit to the public, particularly members of the public who live and work in the Dolores and San Miguel River Basins (the “Basins”).

This legal memorandum focuses on the principal argument made against the ISF (and previous ISFs) by the Southwestern Water Conservation District (“SWCD”), as set forth in its previous statements at Board meetings and in communications with Board staff and others. SWCD claims that the ISF will prevent future consumptive-use development in the basin,

¹ *Aspen Wilderness Workshop, Inc. v. Colo. Water Conservation Bd.*, 901 P.2d 1251, 1256 (Colo. 1995).

² *Id.* at 1259.

³ *Colo. Water Conservation Bd. v. City of Central*, 125 P.3d 424, 439 (Colo. 2005).

⁴ *Id.*

⁵ C.R.S. § 37-92-102(3).

⁶ *See generally* Utah Department of Natural Resources, Rangewide Conservation Agreement for the Roundtail Chub, Bluehead Sucker, and Flannelmouth Sucker (2006) (implementing conservation measures for the fish species).

and the Board should not appropriate the ISF unless there is a “future use allocation” for such future development. The proposed future use allocation also is referred to as a “carve-out”, a “depletion allowance” or a “subordination” to unknown future development.

The Board should reject SWCD’s proposed “future use allocation”.

II. FUTURE USE ALLOCATIONS VIOLATE STATE WATER LAW

SWCD once again comes before the Board contesting an instream flow application not on any legitimate statutory basis, but on its belief that an ISF should be subordinate to some speculative and undefined future need for water. The Supreme Court already rejected the same argument, stated differently, made by SWCD and the Colorado River District (“CRD”) almost 35 years ago. In that case, the Colorado Supreme Court rejected SWCD and CRD’s argument that language in Senate Bill 79 (the law creating the instream flow program), which states that nothing in the legislation “shall deprive the people of the state of Colorado of the beneficial use of those waters available by law”⁷, means that later junior appropriators may have their water rights adjudicated, and those rights will be superior to the water rights decreed to the CWCB for instream flow purposes.⁸

The Court rejected the Districts’ arguments, stating:

The legislative intent is quite clear that these appropriations are to protect and preserve the natural habitat and that the decrees confirming them award *priorities which are superior to the rights of those who may later appropriate. Otherwise, upstream appropriations could later be made, the streams dried up, and the whole purpose of the legislation destroyed.*⁹

Using slightly different language, SWCD again seeks to remove instream flow water rights from the prior appropriation system, making them second-class rights not protected by a priority date. Further, SWCD wants to elevate completely speculative future uses to the status of a decreed water right without meeting any of the requirements that any other water right is required to meet under state law. The Board should reject the future use allocation concept.

Instream flows are no different in concept from other appropriative rights. They must be decreed to be administered; are given a fixed priority date, a specified flow rate, time and place of use; and *are administered like any other water right*, but no means of diversion is required.¹⁰

A priority in a water right is a private property right, and much of the value of a water right lies in its priority.¹¹ Adjudicating a water right realizes the value and expectations that enforcement through administration of the right’s priority secures, and a junior appropriator

⁷ C.R.S. § 37-92-102(3).

⁸ *Colo. River Water Conservation Dist. v. Colo. Water Conservation Bd.*, 594 P.2d 570, 575 (Colo. 1979).

⁹ *Id.* (Emphasis added.)

¹⁰ *Colo. Water Conservation Bd.*, 125 P.3d at 437-438.

¹¹ *Id.* at 434.

is entitled to maintenance of stream conditions existing at the time of its appropriation.¹² To deprive a water user of his priority is to deprive him of a most valuable property right.¹³ In the case of an instream flow right, depriving the ISF of its priority deprives the people of the State of Colorado of its private property right in those flows.

Water is a public resource.¹⁴ The water of every natural stream is the property of the public, subject to appropriation.¹⁵ Neither a private party nor a governmental agency may obtain a right to use a portion of the public's water resource unless it establishes intent to make a non-speculative appropriation.¹⁶

To obtain a conditional water right, an applicant bears the burden of demonstrating that: (1) it has taken a “first step”, which includes an intent to appropriate the water and an overt act manifesting such intent; (2) its intent is not based on a speculative sale or transfer of the water to be appropriated; and (3) there is a substantial probability that the applicant “can and will” complete the appropriation with diligence and within a reasonable time.¹⁷

The right to appropriate water does not include a right to speculate as to the future use and possible transfer of the water to another user(s).¹⁸ C.R.S. § 37-92-103(3)(a), which codified the anti-speculation principle, provides that no appropriation of water, either absolute or conditional, can be held to occur when the proposed appropriation is based on the speculative transfer of the appropriative rights to persons not parties to the proposed appropriation. *A speculative transfer is evident where the appropriator does not have “a specific plan and intent to divert, store ... and control a specific quantity of water for specific beneficial uses.”*¹⁹

The General Assembly enacted the “can and will” statute to reduce speculation associated with conditional decrees and to increase the certainty of the administration of water rights in Colorado.²⁰ The statute goes beyond the anti-speculation doctrine by requiring an applicant seeking a conditional water right decree to demonstrate that the water “can and will” be beneficially used.²¹

A future use allocation fails to meet even minimum standards for obtaining a conditional water right under state law. SWCD seeks a future use allocation to set aside water for future unknown users without a specific plan and intent to divert, store and control a specific quantity of water for specific beneficial uses. It simply alleges that there may be some future need, by someone, somewhere in the Basins, for water that ought to have a priority senior to

¹² *Id.*

¹³ *Id.* (citing *Nichols v. McIntosh*, 34 P. 278, 280 (Colo. 1893)).

¹⁴ *Pagosa Area Water & Sanitation Dist. v. Trout Unlimited*, 170 P.3d 307, 313 (Colo.2007) (*Pagosa I*).

¹⁵ Colo. Const. art. XVI, § 5.

¹⁶ *Pagosa I*, 170 P.3d at 314.

¹⁷ *Id.*

¹⁸ *Raftopoulos Bros. v. Vermillion Ranch Ltd Partnership*, 307 P.3d 1056, 1064 (Colo. 2013).

¹⁹ C.R.S. § 37-92-103(3)(a)(II). (Emphasis added.)

²⁰ *Raftopoulos Bros.*, 307 P.3d at 1066.

²¹ *Id.*

the instream flow. This is exactly the type of “speculative hoarding” that the anti-speculation principle and C.R.S. § 37-92-103(3)(a) were designed to prohibit.

In the case of the Dolores ISF, the CWCBC delayed filing on the water right for over a year, which gave anyone with any real, non-speculative, need the time to file on water rights that would be senior to the ISF.

SWCD also seems unaware of the risks to the prior appropriation system that its proposed “carve-out” raises. If one legitimate decreed use of water can be subordinated to wholly speculative future uses, what would prevent another legitimate but arguably less popular use of water (such as agriculture) from being similarly subordinated in the future?

III. THE PUBLIC SUPPORTS THE ISF

SWCD’s position supporting a future use allocation directly contravenes the economic interests of many in the Dolores/San Miguel River Basins. The primary purpose of this ISF is to provide the minimum flows necessary to preserve sensitive fish species and prevent a federal endangered species listing of those species. Sheep Mountain Alliance, its members and many citizens and business owners in the Basins recognize that the real threat to future development in the Basins is an endangered species listing, and they strongly support the ISF. SWCD itself is well aware of the problems and enormous costs of recovery once a species is listed because it participates financially and otherwise in the San Juan River recovery program. Yet, SWCD has refused to acknowledge the legitimate, economic concerns of those in the Basins regarding the impact of an endangered species listing.

Apart from the endangered species issue, business owners and others in the Basins support the ISF because they understand the need for healthy, flowing rivers to support the tourism and recreation industries that are the center of our West Slope economies, including within the Basins. This support is demonstrated by the letter from business owners in the Basins attached as **SMA Exhibit 4**.

Finally, the Southwest Basin Roundtable, in which the Basins are located, also has concrete goals of preserving the fish species identified under the Three Species Agreement. According to the 2015 Basin Implementation Plan, “[i]n the Southwest Basin, flow protection provided by downstream compact deliveries, ISF appropriations, or voluntary flow agreements may be an important means of maintaining native fisheries.” **SMA Exhibit 5**.

IV. CONCLUSION

SWCD’s proposed carve-out for future, speculative uses and users would violate state law and relegate instream flows to second-class water rights without the priority date to which they are entitled. A similar proposal was rejected by the Colorado Supreme Court decades ago as contrary to the intent and purpose of S.B. 79. SMA urges the Board to reject SWCD’s proposed carve-out not only because it is contrary to the legislative intent of S.B. 79, but also because it contrary to the state’s prior appropriation system.

The natural environment, including adequate instream flows, is a critical part of the Dolores/San Miguel River Basins’ economy. In addition, a federal listing of the sensitive fish species will negatively affect the Basins’ ability to grow and develop in the future. The

Exhibit A

proposed ISF protects the economies of the Basins by protecting sensitive fish species to avoid federal listing and protecting the environmental and recreational values upon which the Basins' economy depends. Only the Board can protect these critical flows, help to avoid federal listing and protect the Basins' tourism and recreation economy. We request that the Board move forward with this ISF appropriation on the Dolores River.



January 15, 2014

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

Dear Mr. Hamel and CWCB Board Members:

As some of the 1000 businesses in the Protect the Flows network, we submit the following comments in support of the instream flow (ISF) recommendation for the lower Dolores River from the confluence of the San Miguel River to confluence with West Creek. **As business owners, we support common sense solutions for managing the river in a way that supports our West Slope tourism and recreation economy for years to come.** Our network of businesses, owned and operated along the Colorado River and its tributaries (including the Dolores), includes outfitters, restaurants, guides, chambers of commerce, and more. We understand, firsthand, the critical importance of a healthy, well managed river that balances the needs of all users. Healthy, flowing rivers support the \$26 billion dollar annual tourism and outdoor recreation economy in the West, and are a vital component of rural economies.

Here in Colorado, total output resulting from recreation on the Colorado River and its tributaries is nearly \$10 billion annually. A river that flows strong beckons people to come visit. Visitors rent boats, eat at restaurants, buy gas and gear, and fall in love with the area.

The importance of this stream reach has led to cooperation between the Bureau of Land Management (BLM) and the Colorado Parks and Wildlife (CPW) to document the natural environment and to implement cooperative studies to determine the flow rates needed to support the natural environment.

But keeping the lower Dolores running strong requires sound management practices and protection. One such protection is the proposed ISF water right. This will help with maintaining a flowing river which, in turn, will protect fish, riparian habitat, and the long term health of the river. But we know this right is not at the detriment of others.

Most notably, the instream flow water right proposed can be achieved while still allowing water to be developed for current and future needs municipal to agricultural uses. Further, this water right is junior to established senior and conditional water rights in the reach.

The Dolores River is a world-class resource deserving of every protection available. It's free flowing waters support rare fish species in addition to its scenic value, making it a popular recreation and tourism destination. The success of our businesses is highly dependent on adequate flows and without protection there is no assurance those flows will continue. We respectfully request your support for this ISF filing for not only this iconic river, but also for our West Slope economies.

Sincerely,

Godot Communications
Kathy Kittelsen, Owner
Boulder

Peregrine River Outfitters
Tom Klema, Owner
Durango

Osprey Packs, Inc.
Gareth Martins, Director of Marketing
Cortez

Performance Video
Kent Ford, Owner
Durango

Dolores River Boating Advocates
Lee-Ann Hill, Program Coordinator
Dolores

Salt River Rafting
James Wilkes, Owner
Durango

4 Corners Riversports
Tony Miely & Andy Corra, Co-Owners
Durango

Surf the San Juans LLC
Anna & Drew Fischer, Owners
Durango

Mild to Wild Rafting and Jeep Trail Tours, Inc.
Alex Mickel,
Durango

Vino Salida
Judy Smith-Shuford, Owner
Durango

Mountain Waters Rafting & Adventure
Company
James Wilkes, Owner
Durango

Rimrock Adventures
Travis Baier, Owner
Fruita

SMA EXHIBIT 4

CBVphotographics
Copi Vojta, Owner
Glenwood Springs

Cherry Berry
Kellan Jordan, Owner
Palisade

Inyanga Ranch LLC
Stuart Ross, Owner
Glenwood Springs

High County Orchards
Theresa High, Owner
Palisade

Adventure Bound Inc. / River Expeditions
Tom Kleinschnitz, President
Grand Junction

Mesa Park Vineyards
Brooke Webb, Owner
Palisade

Desert Sun Vineyards
Doug Hovde, Owner
Grand Junction

High Camp Hut
Cindy Farny, Owner
Telluride

Whitewater West
Pete Atkinson, Owner
Grand Junction

Jagged Edge
Erik Dalton, Owner
Telluride

Scott Fly Rod Company
Jim Bartschi, President
Montrose

La Cocina de Luz
Lucas Price, Owner
Telluride

Dvorak Raft, Kayak & Fishing Expeditions
Bill Dvorak, Owner
Nathrop

Melange
Melissa Harris, Owner
Telluride

Box Canyon Lodge and Hot Springs
Karen Avery, Owner
Ouray

Picaya
Lisa Horlick, Owner
Telluride

The Hub
Brian Werner, Owner
Telluride

Ice House Lodge & Camel's Garden Hotel
Michael Zivian, Owner
Telluride

BootDoctors/ Further Adventures
Bob Gleason, President
Telluride

Steaming Bean
Meghan McCormick, Owner
Telluride

Honga's Restaurant
Honga Im, Owner
Telluride

Telluride Outside/Telluride Angler
John Duncan, Owner
Telluride

cc: Governor John Hickenlooper, James Eklund, Linda Bassi, John Melhoff

4/17/2015

Basin Implementation Plan

Southwest Basin Roundtable

2

Ann Oliver and Carrie Lile
HARRIS WATER ENGINEERING, INC.

- *Recognizes that the flows necessary to support the full complement of values are not currently well understood.*
- *Limit Conflicts and Promote Collaboration within the Framework of State, Tribal and Federal Plans, Policies, Authorities and Rights.*

The Roundtable has established 21 goals (Table 1) to address the following seven themes (in no particular order):

- A. Balance All Needs and Reduce Conflict
- B. Maintain Agriculture Water Needs
- C. Meet Municipal and Industrial Water Needs
- D. Meet Recreational Water Needs
- ★ E. Meet Environmental Water Needs
- F. Preserve Water Quality
- G. Comply with CO River Compact and Manage Risk

In order to clarify the desired results of these goals and to help the Roundtable gauge progress toward meeting the goals over the planning horizon of this BIP (thru 2050), the Roundtable has agreed upon 31 Measureable Outcomes (Table 1). While recognizing the value of identifying measureable outcomes, the Roundtable is also cognizant of its limitations.

One limitation is that the development of ambitious but realistic measurable outcomes requires an understanding of the extent to which the Roundtable's stated goals are already being met. Measurable outcomes in this BIP were developed without a thorough understanding of the current status of those measures and of water supply needs, particularly for environmental and recreational values.

An additional limitation is that there are factors which may complicate the attainment of these outcomes. These factors include uncertainty around the ability of sponsors to implement Identified Projects and Processes (IPPs) due to issues with funding, permitting, partner support, etc.; lack of sufficient support/interest in implementing a Measureable Outcome, concern for unintended consequences, as well as difficulty in obtaining the necessary data to assess some of the identified outcomes.

Given these limitations and consistent with its principle that this BIP be a "living document," the Roundtable intends periodic reviews and updates of its Measureable Outcomes as more reliable information is developed and attainment is better understood.

TABLE 1. CONTINUED...

E. MEET ENVIRONMENTAL WATER NEEDS		
ID	Goals	Measurable Outcomes (by 2050)
E1	Encourage and support restoration, recovery, and sustainability of endangered, threatened, and imperiled aquatic and riparian dependent species and plant communities. <i>(See list of such species in the Southwest Basin)**</i>	<ol style="list-style-type: none"> 1. Implement 15* IPPs to directly restore, recover or sustain endangered, threatened, and sensitive aquatic and riparian dependent species and plant communities. 2. At least 95% of the areas with federally listed water dependent species have existing or planned IPPs that secure the species in these reaches as much as they can be secured within the existing legal and water management context.
E2	Protect, maintain, monitor and improve the condition and natural function of streams, lakes, wetlands, and riparian areas to promote self-sustaining fisheries, and to support native species and functional habitat in the long term, and adapt to changing conditions.	<ol style="list-style-type: none"> 3. At least 90% of areas with identified sensitive species (other than ESA species) have existing or planned IPPs that provide direct protection to these values. Based on the map of environmental attributes generated for SWSI 2010 (Figure 1) 90% for individual species equates to approximately 169 miles for Colorado River cutthroat trout, 483 miles for roundtail chub, 794 miles for bluehead sucker, 700 miles for flannelmouth sucker, 724 miles for river otter, 122 miles for northern leopard frog, 921 miles for active bald eagle nesting areas and 229 miles for rare plants. 4. Implement 26* IPPs to benefit the condition of fisheries and riparian/wetland habitat. 5. At least 80% of areas with environmental values have existing or planned IPPs that provide direct protection to these values.

*Note that several of these outcomes, indicated by an asterisk, pertain directly to supporting implementation of the projects and processes, either planned or in progress, that are currently on the Southwest Basin's IPP list. They will be periodically reviewed and updated in the future.

Federally Listed**

Southwest Willow Flycatcher (Endangered)

Sensitive Species**

Colorado River
Cutthroat Trout

Roundtail
Chub

Bluehead
Sucker

Flannelmouth
Sucker

River
Otter

Northern
Leopard Frog

Active Bald
Eagle Nests


Federally Listed Species not included in SWSI 2010 Needs Assessment**

New Mexico Meadow Jumping
Mouse (Endangered)

Yellow-billed Cuckoo
(Threatened)

Gunnison Sage Grouse
(Threatened)

TABLE 2. SOUTHWEST BASIN ENVIRONMENTAL AND RECREATIONAL ATTRIBUTES AND CATEGORIES IDENTIFIED IN SWSI 2010 (CWCB 2011)

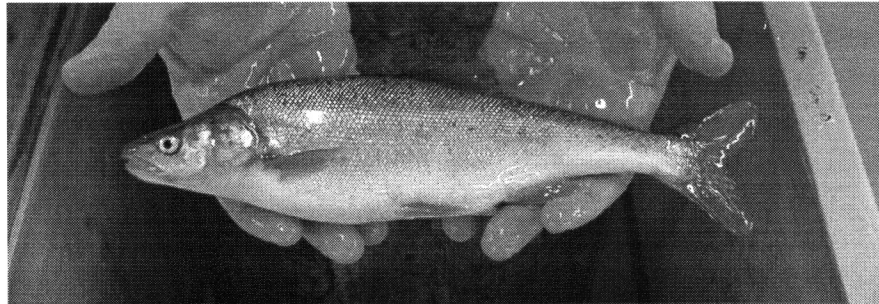


SUB-CATEGORY	CATEGORY	ATTRIBUTE
Aquatic-Dependent State Endangered, Threatened and Species of Concern.	1	Colorado River Cutthroat Trout
	2	Roundtail Chub
	3	Bluehead Sucker
	4	Flannelmouth Sucker
	5	River Otter
	6	Northern Leopard Frog
	7	Active Bald Eagle Nests
	8	Southwestern Willow Flycatcher
Special Value Waters	9	Outstanding Waters
	10	Wild and Scenic Eligibility/Suitability
	11	CWCB ISF Water Rights
	12	CWCB Natural Lake Level Water Rights
	13	Durango Nature Studies
Rare Plants and Significant Riparian/Wetland Plant Communities	14	Rare Plants
	15	Significant Plant Communities
Whitewater and Flat-water Boating	16	Whitewater Boating
	17	Flat-water Boating
Cold and Warm water Fishing	18	Gold Medal Trout Streams
	19	Other Fishing Streams and Lakes
Waterfowl Hunting/Viewing	20	Audubon Important Bird Areas
	21	Waterfowl Hunting/Viewing Parcels
	22	Ducks Unlimited Projects

THREE SPECIES AGREEMENT

Three native fish species, roundtail chub, bluehead sucker, and flannelmouth sucker, occupy some lower portions of most of the sub-basins represented within the Southwest Basin. Concerns about declines in the three species within the entire Upper Colorado River Basin (including the San Juan River drainage) prompted resource agencies to draft and adopt a multi-state, multi-agency, range-wide conservation, and strategy agreement. Known as “The Three Species Agreement”, the agreement provides the framework for conservation actions designed to preserve these species across their historic Colorado and five other Colorado River Basin states. Signatories to the agreement include the Colorado River Basin states, the United States Forest Service (USFS), BLM, BOR, and sovereign tribes.

The range-wide declines described in the Three Species Agreement speak to the species’ potential for listing by the USFWS. The Three Species Agreement articulates that within their jurisdictional authority, signatories are responsible for taking action to conserve native fish. The agreement is predicated on the concept that collectively, local, state, federal agencies, and other willing partners can work together with the communities most affected by a potential listing to develop and implement voluntary actions that preempt the need for federal listing of any of these species under the ESA.



Roundtail chub (USFWS)

Within the Southwest Basin, these species are present in many low-elevation tributaries to the San Juan River. The Ute Mountain Ute and Southern Ute tribes have been active participants in habitat and flow restoration projects on behalf of these native fish, and a fairly intensive effort was launched in 2010 to preserve these species below McPhee Dam in the Dolores River drainage.

CPW is currently developing a state-specific strategy that describes how Colorado is implementing management actions that will help conserve these species. Monitoring of populations remains critical to determine the status of the fishery and the persistence of threats to these populations.

While these fish tend to be located lower in watersheds that have already undergone upstream water development, it is imperative that fishery managers work cooperatively with water managers to continue to implement the voluntary actions articulated in the Three Species Agreement. In the Southwest Basin, flow protection provided by downstream compact deliveries, ISF appropriations, or voluntary flow agreements may be an important means of maintaining the native fishery.