



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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John Hickenlooper, Governor

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TO: Colorado Water Conservation Board Members

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

DATE: September 20-22, 2016 Board Meeting

AGENDA ITEM: 13. Bureau of Land Management (BLM)'s Uncompahgre Field Office (UFO)
Recommendations on Suitability for the National Wild and Scenic Rivers System
(NWSRS)

As a result of conversations with interested stakeholders and receipt of additional information subsequent to sending out the Board notebook, staff has revised the draft comment letter to BLM. A redlined version and a clean version are attached for Board review and discussion.

Attachments





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Robert Randall, DNR Executive Director

James Eklund, CWCB Director

DRAFT

October __, 2016

Barbara Sharrow
Acting Southwest District Manager
Bureau of Land Management
Uncompahgre Field Office
2465 S. Townsend Ave.
Montrose, CO 81401

**Subject: Uncompahgre Field Office (UFO) Draft Resource Management Plan (RMP)
/Environment Impact Statement (EIS)**

Dear Ms. Sharrow:

The Colorado Water Conservation Board (CWCB) appreciates the opportunity to comment on the Bureau of Land Management (BLM)'s preferred alternative (Alternative D) that recommends three segments in the Lower Gunnison Basin, eight segments in the San Miguel Basin and five segments in the Dolores River Basin as suitable for inclusion in the National Wild and Scenic Rivers System (NWSRS), as presented in the Uncompahgre Field Office (UFO) Draft Resource Management Plan (RMP)/Environment Impact Statement (EIS).

The CWCB recognizes the strength of a Wild and Scenic suitability determination as a land management tool and a means to protect outstandingly remarkable values (ORVs). The CWCB also acknowledges that a suitability determination can hold implications for water rights and water development within the State of Colorado. The recommendations in this letter are intended to address the CWCB's water-related concerns while recognizing the environmental values the BLM is working to protect, and the BLM's desire to use suitability as a land management tool. As emphasized in Colorado's Water Plan, our state is striving to meet water supply demands of our growing population while fostering a strong resilient natural environment.

Stakeholder Process Background

Utilizing the CWCB's Wild and Scenic Alternatives fund, the Gunnison Basin Wild & Scenic Stakeholder Group met in Delta, Colorado roughly ten times between October 2010 and February 2011. The process resulted in a consensus recommendation that many of the segments in the Gunnison Basin should be considered "not suitable." However, the group did not reach consensus on the suitability of the three tributary segments that the BLM has proposed as suitable.



For the San Miguel and Dolores Rivers, the Southwest Resource Advisory Council (SW RAC) subgroup conducted ten public meetings between November 2010 and January 2011. Through this stakeholder process, the SW RAC considered private land, the potential for mining, and existing and proposed projects, and recommended that some reaches not be found suitable. The SW RAC held public hearings and voted unanimously to recommend that eight segments in the San Miguel Basin and five segments in the Dolores Basin be found suitable. The BLM incorporated these recommendations into its preferred Alternative D.

Update of Information

The CWCB recognizes that much of the work for the suitability analysis was completed many years ago. Accordingly, the BLM is aware of the need to update the suitability analyses to incorporate new information. The CWCB recommends that the BLM consider the following new information that has come out to update the BLM's original suitability analysis:

- Colorado's Water Plan (CWP)
- Southwest (SW) Roundtable's Basin Implementation Plan (BIP), including an updated Identified Projects and Processes (IPP) list
- Dolores Water Conservancy District (DWCD) 2014 Water Management and Conservation Plan
- Stipulation Between the CWCB Staff and the DWCD, In the Matter of the CWCB Staff's Recommendation for an Instream Flow Appropriation on the Dolores River (Dolores ISF Stipulation)
- Letter from Ruth Welch, BLM Acting State Director, to Mike King, Executive Director, Colorado Department of Natural Resources, January 6, 2015 (Tres Rios RMP Letter)
- San Miguel River Flow Survey being prepared by American Whitewater, due out in 2017
- DWCD Drought Contingency Plan, due out April, 2017
- Colorado Decision Support System (CDSS)
- Statewide Water Supply Initiative (SWSI) 2010 (Appendix P - Summary of Draft Wild and Scenic River Suitability Report contains several references to SWSI 2004)

Specific requested updates to Appendix P are also set forth below:

1. On page P-37 in the first paragraph of the "Water Rights and Uses" section, please revise the last sentence to read as follows: "The CWCB took final action on the appropriation at a hearing on September 13, 2011, and the Division 4 Water Court decreed this instream flow water right on May 20, 2013." This comment also applies to the last sentence of the second paragraph of the "Water Rights and Uses" section on page P-41.
2. For the Lower Dolores River segment, in the first paragraph on page P-47, please delete the second sentence ("There is no instream flow water right protection on the segment.") and replace it with: "In January 2015, the CWCB declared its intent to appropriate an instream flow water right on the Dolores River from its confluence with the San Miguel River to the confluence with West Creek for the following flow rates: 900 cfs (4/15-6/14), 400 cfs (6/15-7/15), 200 cfs (7/16-8/14), 100 cfs (8/15-3/15), and 200 cfs (3/16-4/14). The CWCB took final action on the appropriation at a hearing in September 2015, and filed an application for this instream flow water right on December 30, 2015 that is pending in the Division 4 Water Court."

Permitting Concerns

Sections 7(a) and (b) of 36 CFR 297 indicate that any water projects with a federal nexus that exist in, above or below a designated Wild and Scenic reach could be prohibited or restricted through the consultation process if they would “invade the area or unreasonably diminish the ORV.” If a stream segment were designated as Wild and Scenic, this provision would apply to all existing, new or enlarged structures (regardless of water right status) that have a federal nexus, such as being located on federal land, using federal funds or requiring a Section 404 permit from the Corps of Engineers.

While the current process is only a step towards a Wild and Scenic designation, this same provision would apply to structures on BLM lands at the suitability stage. Upon a finding of suitability, the BLM would be required to manage suitable segments as if they were designated when reviewing proposed actions on BLM land.

Colorado’s Water Plan contemplates the construction and/or enlargement of reservoirs to meet future water demands. The SW Roundtable’s BIP indicates that the region’s municipal and industrial demand is expected to be met by “investigating means of providing additional water, firming of existing supplies, and enlargement of distribution systems,” with many of the necessary water rights already decreed. Furthermore, the BIP identifies permitting as one of the primary constraints in developing these future projects.

Montrose County holds conditional water rights within the San Miguel Basin pursuant to decrees entered in Case Nos. 10CW164, 10CW165, 10CW166 and 10CW169. The development of reservoir sites associated with these rights represents a reasonably foreseeable action within the RMP planning area. This action should be included in Draft RMP Section 4.2.2 “Past, Present and Reasonably Foreseeable Future Actions” as well as any other sections that are applicable to this action.

CWCB has partnered with Montrose County to assist in the required geotechnical and feasibility analyses necessary for development of the conditional water rights. These analyses are otherwise known as the Montrose County Firming Project. Given the substantial work and investment that has already gone into this project, CWCB wishes to assure that the proposed RMP does not adversely impact the future potential of the conditional water rights held by Montrose County. In furtherance of this goal, CWCB requests that the following language be included in the RMP.

Development of Montrose County’s existing conditional water rights within the San Miguel Basin shall be subject to review to the extent required by law. Nothing in this RMP, including an administrative determination of WSR suitability, shall be construed as a prohibition on the rights of Montrose County with regard to development of the existing water rights decreed in Case Nos. 10CW164, 10CW165, 10CW166 and 10CW169. The BLM recognizes that Montrose County secured these water rights to meet future demands. To avoid conflicts with any applicable suitability requirements, the BLM commits to working with Montrose County on water supply project design and mitigation features.

The Board understands that the BLM may also use the suitability findings as a basis for the agency’s comments on projects that have a federal nexus. Additional planned projects that may fall into this category include the following (this list is not exhaustive):

- Upper Plateau Storage Reservoir
- Gurley Reservoir
- Straw Dam

- Lone Cone Reservoir
- Projects identified in 2014 DWCD Water Management Plan
- Other projects listed as IPPs

It is unclear at this time whether the BLM or other federal agencies would consider the implementation of these projects as unreasonably diminishing the flow related ORVs in the proposed downstream segments. For projects with downstream suitable segments, a federal agency's determination that diminishment of an ORV would occur may lead to permitting delays and reduced yield from these future projects. Additionally, the CWCB is concerned that required mitigation could reduce the project yields such that the region may not be able to meet its future demands. The CWCB proposes that the BLM, the CWCB, the DWCD (where applicable) and any interested project sponsors work together to address these concerns while considering mitigation measures needed to protect the ORVs. We recommend that these meetings occur prior to issuance of the proposed final RMP/EIS.

Reason for deletion: The Skees water rights are located within the Tabeguache Special Management Area, established under the Colorado Wilderness Act of 1993. Under that Act, the BLM cannot approve any new structures, and cannot approve modifications (such as enlargement or change in location) to existing structures. However, based upon the dates of the water rights, both facilities operate under grandfathered, pre-Federal Land Policy and Management Act rights-of-way. That means that the owners have the right to operate and maintain their facilities in accordance with historical practices, even though the facilities are within a wilderness area. Based on the foregoing, the classification that BLM chooses for the suitable segment would make no difference to the water rights owner.

Federal Reserved Water Rights

Historically, the CWCB has taken the position that federal reserved water rights are not the best method for protecting flow-related ORVs in river corridors. Rather, the CWCB's Instream Flow (ISF) Program may provide adequate protection of flow-related values in the subject stream segments. The CWCB notes that in recent decisions, the BLM has taken into account its long-standing working relationship with the CWCB and use of the state's ISF Program. However, the CWCB and the BLM have not yet had an opportunity to develop a joint approach for addressing float boating recreational ORVs until now. For San Miguel Segments 1, 2 and 3, Lower Dolores, and Dolores Segments 1a and 2, the CWCB requests that the BLM consider any recreational float boating protections that may be gained by coordinating with local governmental entities on obtaining a recreational in-channel diversion water right (RICD) rather than obtaining a federal reserved water right. The CWCB acknowledges that whitewater structures would be required to obtain a RICD right; however, the SW Roundtable's BIP indicates that local water users are considering a RICD as an IPP for the San Miguel River.

The CWCB requests that the BLM analyze and address the projected flow needs for recreational ORVs and compare those to the average amount of water available on the subject stream segments to identify the likelihood of a conflict between meeting recreational and water development needs. The CWCB also requests that the BLM analyze and consider the totality of existing senior water rights that may already pull water through these reaches to support the recreational ORVs. For example, the BLM should consider the flows that will be pulled downstream by the pending ISF appropriation on the Dolores River when evaluating impacts of upstream projects during the permitting process. The CWCB requests that the BLM

present the results of these analyses during the requested meetings, mentioned above, with the CWCB, the DWCD (where applicable), interested project sponsors, and other stakeholders.

Dolores River Segment Comments

Clarification of Proposed Suitability Findings on Dolores Project Operations

In the analysis of the proposed suitability determinations on the Dolores River, the BLM has noted several times that flow through the Dolores River sections is greatly diminished by the operation of the McPhee Dam upstream. The issue of the relationship between Wild and Scenic Rivers Act suitability determinations and the operation of the Dolores Project was raised in the recent Tres Rios Resource Management Plan process and was addressed by the BLM in the Tres Rios RMP Letter and in the section of the Tres Rios Resource Management Plan addressing Government to Government consultation—Ute Mountain Ute. The CWCB invites the BLM to work with the CWCB to develop language for the UFO RMP and EIS that provides similar clarity on the relationship of the UFO Wild and Scenic Rivers Act suitability determinations and the operation of the Dolores Project. Such language could include incorporating the January 6, 2015 letter from the BLM State Director to the Executive Director of the Colorado Department of Natural Resources by reference, citing the Government to Government consultation provisions in the Tres Rios RMP, and some version of the following language to be included as findings for the Dolores River segments:

The Wild and Scenic Rivers Act suitability determinations found in Sections [denote section of the UFO RMP] will not affect the delivery of water allocations in the Dolores Project. Rather, the suitability determinations are intended to guide BLM land use decisions that could affect the streams that are determined to be suitable. When the BLM determines that a river is suitable under the Wild and Scenic Rivers Act, the authority to protect ORVs is limited to existing BLM authorities under the Federal Land Policy and Management Act. A suitability determination by BLM does not obligate other agencies, such as Reclamation, to utilize their authorities to protect the ORVs identified by the BLM. Congress has not granted any authority to BLM that would allow the BLM to dictate how a Reclamation project is operated, nor could a BLM administrative decision supersede congressionally enacted legislative direction for the Dolores Project. Accordingly, the Dolores River suitability determinations and the BLM identification of flow-based ORVs on the Dolores River below the Dolores Project will not affect the delivery of water allocations or water rights decrees for the Dolores Project.

Upper Dolores River Segment 1a and La Sal Creek Segment Comments

Three of the four segments considered for suitability (Dolores River, Segment 1a and La Sal Creek, Segments 2 & 3) in the Upper Dolores River are in the area currently being considered for a National Conservation Area (NCA). The CWCB anticipates that, if an NCA is established on these segments, Congress will determine that none of these segments are suitable.

Upper Dolores River Segment 2 Comments

For the Dolores River Segment 2, the CWCB is concerned that there could be conflict between the proposed suitability determination and water rights associated with the operation of the Dolores Project. In addition to the CWCB's suggestions regarding "Clarification of Proposed Suitability Findings on Dolores Project Operations," the CWCB proposes that the BLM work with the CWCB, water users, and other collaborative stakeholders on the Dolores River to

protect flow-based ORVs on this reach with the existing ISF water right and available water supply from McPhee Reservoir, in conformance with Dolores Project contracts and Reclamation laws applicable to the Dolores Project. The CWCB requests that the BLM include the following language in the final RMP:

If alternative forms of flow protection are provided to support flow-related ORVs, 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.

Lower Dolores River Segment Comments

The CWCB stipulated with the DWCD in 2015 in the ISF appropriation proceeding on the Lower Dolores River segment. Among other things, this stipulation states that “it is the Board’s intent that this ISF water right is adequate to meet all requirements as a streamflow guideline in federal administrative or regulatory permitting contexts.” We encourage the BLM to consider the spirit of this stipulation when considering flow-related concerns associated with suitability of this reach and to consider the CWCB’s suggestions regarding a “Clarification of Proposed Suitability Findings on Dolores Project Operations.” The stipulation also provides a number of provisions intended to make sure that the pending ISF water right does not reach up the Dolores River, into McPhee Reservoir and above McPhee, to protect State appropriated water rights above the confluence of the San Miguel and the Dolores Rivers. CWCB requests that the intent outlined in the stipulations for protection of upstream water rights be acknowledged by the BLM in the final RMP.

Further, the BLM, in its Grand Junction Field Office (GJFO) Proposed RMP and Final EIS, found a segment of the Dolores River suitable. We recommend that a similar finding be included in any Lower Dolores River Segment’s RMP’s suitability finding as indicated below:

If the Colorado water court system decrees an ISF 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.

Gunnison River Segment Comments

We request and invite the BLM to work with the CWCB in seeking new or increased ISF water rights to address the flow-related ORVs for the proposed Gunnison River Segments with some version of the following language included as findings:

Option A: The BLM determination that _____ Creek is suitable is a preliminary administrative determination subject to further review by the U.S. Department of the Interior. At this time, the BLM will not forward this determination to the Secretary, Congress, or the President for further review and action. If the BLM is able to obtain an alternative form of flow protection to support the _____ outstandingly remarkable value (ORV), the BLM will recommend that action not be taken on the suitability determination and will change the determination to “not suitable” during the next available land use plan amendment process.

Option B: If the BLM is able to obtain an alternative form of flow protection to support flow-related ORVs, 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.

Option C: Use the language in Option A above for segments where there are only flow-related ORVs within the proposed segments and use the language in Option B for segments where there are both flow-related and non-flow related ORVs.

San Miguel Segment Comments

Recognizing the SW RAC's public process that resulted in recommending that eight segments in the San Miguel Basin be found suitable, and provided that the CWCB's permitting, water right and classification concerns are addressed, the CWCB will not recommend against the results of that process. However, the CWCB requests and invites the BLM to work with the CWCB in seeking new or increased ISF water rights to address the flow-related ORVs for the proposed San Miguel River Segments with the following language to be included as findings for these segments:

Option A: The BLM determination that _____ Creek is suitable is a preliminary administrative determination subject to further review by the U.S. Department of the Interior. At this time, the BLM will not forward this determination to the Secretary, Congress, or the President for further review and action. If the BLM is able to obtain an alternative form of flow protection to support the _____ outstandingly remarkable value (ORV), the BLM will recommend that action not be taken on the suitability determination and will change the determination to "not suitable" during the next available land use plan amendment process.

Option B: If the BLM is able to obtain an alternative form of flow protection to support flow-related ORVs, 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.

Option C: Use the language in Option A above for segments where there are only flow-related ORVs within the proposed segments and use the language in Option B for segments where there are both flow-related and non-flow related ORVs.

The CWCB would like to thank you for considering our comments and we look forward to working with you on addressing these concerns. Please contact Suzanne Sellers or Linda Bassi of my staff if you have any questions.

Best regards,

James Eklund, Director
Colorado Water Conservation Board

cc: CWCB Members
Dana Wilson, Acting Field Manager

Attachments



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~~The following projects are proposed new projects or enlargements of existing projects that are or may be located on BLM land. We anticipate that these projects may not be eligible to be “grandfathered in” under existing BLM permit conditions, and consequently may be impacted by a suitability finding (this list is not exhaustive):~~

- ~~• Montrose County Firming Project~~
- ~~• Paradox Valley Salinity Control Unit~~

Montrose County holds conditional water rights within the San Miguel Basin pursuant to decrees entered in Case Nos. 10CW164, 10CW165, 10CW166 and 10CW169. The development of reservoir sites associated with these rights represents a reasonably foreseeable action within the RMP planning area. This action should be included in Draft RMP Section 4.2.2 “Past, Present and Reasonably Foreseeable Future Actions” as well as any other sections that are applicable to this action.

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The Board understands that the BLM may also use the suitability findings as a basis for the agency's comments on projects that have a federal nexus. Additional planned projects that may fall into this category include the following (this list is not exhaustive):

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- Projects identified in 2014 DWCD Water Management Plan
- Other projects listed as IPPs

It is unclear at this time whether the BLM or other federal agencies would consider the implementation of these projects as unreasonably diminishing the flow related ORVs in the proposed downstream segments. For projects with downstream suitable segments, a federal agency's determination that diminishment of an ORV would occur may lead to permitting delays and reduced yield from these future projects. Additionally, the CWCB is concerned that required mitigation could reduce the project yields such that the region may not be able to meet its future demands. The CWCB proposes that the BLM, the CWCB, the DWCD (where applicable) and any interested project sponsors work together to address these concerns while considering mitigation measures needed to protect the ORVs. We recommend that these meetings occur prior to issuance of the proposed final RMP/EIS.

Classification of Segments

~~The CWCB is concerned that the Skees absolute water rights located within the Tabeguache Creek segment that is currently classified as "Wild" would be restricted in modifying, reconstructing or updating their infrastructure. The decreed diversion location for the Skees Ditch, constructed in 1915, is located on the left bank of Tabeguache Creek within the proposed BLM segment. The Montrose County Assessor's website indicates that the decreed place of use (for irrigation) of this ditch is owned by Garvey Brothers Land and Cattle. Diversion records downloaded from CDSS indicate that water was diverted in this ditch as late as 2004. The same concern applies to the nearby Skees Spring No. 1. These water rights have not been abandoned, and therefore, their owner's ability to reconstruct their diversion structures and divert their water should be maintained. To that end, the CWCB recommends that the BLM inquire with the owner(s) of these water rights about their intent to use it in the future or consider changing the Tabeguache Creek segment to a "recreational" classification to address this concern.~~

Reason for deletion: The Skees water rights are located within the Tabeguache Special Management Area, established under the Colorado Wilderness Act of 1993. Under that Act, the BLM cannot approve any new structures, and cannot approve modifications (such as enlargement or change in location) to existing structures. However, based upon the dates of the water rights, both facilities operate under grandfathered, pre-Federal Land Policy and Management Act rights-of-way. That means that the owners have the right to operate and maintain their facilities in accordance with historical practices, even though the facilities are within a wilderness area. Based on the foregoing, the classification that BLM chooses for the suitable segment would make no difference to the water rights owner.

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Dolores River Segment Comments

Clarification of Proposed Suitability Findings on Dolores Project Operations

In the analysis of the proposed suitability determinations on the Dolores River, the BLM has noted several times that flow through the Dolores River sections is greatly diminished by the operation of the McPhee Dam upstream. The issue of the relationship between Wild and Scenic Rivers Act suitability determinations and the operation of the Dolores Project was raised in the recent Tres Rios Resource Management Plan process and was addressed by the BLM in the Tres Rios RMP Letter and in the section of the Tres Rios Resource Management Plan addressing Government to Government consultation—Ute Mountain Ute. The CWCB invites the BLM to work with the CWCB to develop language for the UFO RMP and EIS that provides similar clarity on the relationship of the UFO Wild and Scenic Rivers Act suitability determinations and the operation of the Dolores Project. Such language could include incorporating the January 6, 2015 letter from the BLM State Director to the Executive Director of the Colorado Department of Natural Resources by reference, citing the Government to Government consultation provisions in the Tres Rios RMP, and some version of the following language to be included as findings for the Dolores River segments:

The Wild and Scenic Rivers Act suitability determinations found in Sections [denote section of the UFO RMP] will not affect the delivery of water allocations in the Dolores Project. Rather, the suitability determinations are intended to guide BLM land use decisions that could affect the streams that are determined to be suitable. When the BLM determines that a river is suitable under the Wild and Scenic Rivers Act, the

authority to protect ORVs is limited to existing BLM authorities under the Federal Land Policy and Management Act. A suitability determination by BLM does not obligate other agencies, such as Reclamation, to utilize their authorities to protect the ORVs identified by the BLM. Congress has not granted any authority to BLM that would allow the BLM to dictate how a Reclamation project is operated, nor could a BLM administrative decision supersede congressionally enacted legislative direction for the Dolores Project. Accordingly, the Dolores River suitability determinations and the BLM identification of flow-based ORVs on the Dolores River below the Dolores Project will not affect the delivery of water allocations or water rights decrees for the Dolores Project.

Upper Dolores River Segments 1a and La Sal Creek Segment Comments

Three of the four segments considered for suitability (Dolores River, Segment 1a and La Sal Creek, Segments 2 & 3) in the Upper Dolores River are in the area currently being considered for a National Conservation Area (NCA). The CWCB ~~anticipates~~proposes that, if an NCA is established ~~that protects both the non-flow and flow related ORVs, the determination for on~~ these segments, Congress will determine that none of these segments are be changed to not suitable. ~~The GJFO included the following language in the Dominguez-Escalante (DE) National Conservation Area's (NCA) proposed Final RMP/EIS, and some version of this language should be included as findings for these reaches:—~~

~~The BLM determination that _____ is suitable is a preliminary administrative determination subject to further review by the U.S. Department of the Interior. At this time, the BLM will not forward this determination to the Secretary, Congress, or the President for further review and action. If the BLM is able to obtain an alternative form of flow protection to support the _____ outstandingly remarkable value (ORV), the BLM will recommend that action not be taken on the suitability determination and will change the determination to "not suitable" during the next available land use plan amendment process.~~

Upper Dolores River Segment 2 Comments

For the Dolores River Segment 2, ~~we request the CWCB is concerned that there could be conflict between the proposed suitability determination and water rights associated with the operation of the Dolores Project. In addition to the CWCB's suggestions regarding "Clarification of Proposed Suitability Findings on Dolores Project Operations," the CWCB proposes that the BLM work with the CWCB, water users, and other collaborative stakeholders on the Dolores River to protect flow-based ORVs on this reach with the existing ISF water right and available water supply from McPhee Reservoir, in conformance with Dolores Project contracts and Reclamation laws applicable to the Dolores Project. Lower Dolores Plan Working Group to include this segment within the proposed NCA. The CWCB requests that the BLM include the following language in the final RMP:~~

~~Option A: In light of the extensive work on upstream and downstream segments that has been done by the Lower Dolores Plan Working Group and the DWCD in negotiating the Dolores ISF Stipulation, if inclusion of this segment within the proposed NCA is not feasible, the CWCB recommends that this segment be found not suitable.~~

~~Option B: If inclusion of this segment within the proposed NCA is not feasible, the CWCB invites the BLM to work with the CWCB to obtain an increase to the existing ISF water right to~~

~~address the flow-related ORVs~~ with some version of the following language ~~being included as findings for this reach:~~

~~The BLM determination that _____ is suitable is a preliminary administrative determination subject to further review by the U.S. Department of the Interior. At this time, the BLM will not forward this determination to the Secretary, Congress, or the President for further review and action. If the BLM is able to obtain an alternative form of flow protection to support the _____ outstandingly remarkable value (ORV), the BLM will recommend that action not be taken on the suitability determination and will change the determination to “not suitable” during the next available land use plan amendment process.~~

~~Option C: If inclusion of this segment within the proposed NCA is not feasible, the CWCB invites the BLM work with the CWCB to obtain an increase to the existing ISF water right to address the flow-related ORVs with some version of the following language being included as findings for this reach:~~

~~If the BLM is able to obtain an alternative form~~s of flow protection are provided to support flow--related ORVs, 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.

Lower Dolores River Segment Comments

The CWCB stipulated with the DWCD in 2015 in the ISF appropriation proceeding on the Lower Dolores River segment. Among other things, this stipulation states that “it is the Board’s intent that this ISF water right is adequate to meet all requirements as a streamflow guideline in federal administrative or regulatory permitting contexts.” We encourage the BLM to consider the spirit of this stipulation when considering flow--related concerns associated with suitability of this reach- and to consider the CWCB’s suggestions regarding “Clarification of Proposed Suitability Findings on Dolores Project Operations.” The stipulation also provides a number of provisions intended to make sure that the pending ISF water right does not reach up the Dolores River, into McPhee Reservoir and above McPhee, to protect State appropriated water rights above the confluence of the San Miguel and the Dolores Rivers. CWCB requests that the intent outlined in the stipulations for protection of upstream water rights be acknowledged by the BLM in the final RMP.

~~Option A: Recently, the BLM, in its Grand Junction Field Office’s (GJFO) proposed RMP and Final EIS and its Dominguez-Escalante (DE) National Conservation Area’s (NCA) proposed Final RMP/EIS, found segments of the Dolores River and Cottonwood Creek suitable. We recommend that similar language be included in any Lower Dolores River Segment’s RMP’s suitability finding as indicated below:~~

~~If the Colorado water court system decrees an ISF 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 will recommend that action not be taken on the suitability determination and will change the determination to “not suitable” during the next available land use plan amendment.~~

~~Option B: Recently Further~~, the BLM, in its Grand Junction Field Office (GJFO) Proposed RMP and Final EIS, found a segment of the Dolores River suitable. We recommend that a similar finding be included in any Lower Dolores River Segment's RMP's suitability finding as indicated below:

If the Colorado water court system decrees an ISF 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.

Gunnison River Segment Comments

We request and invite the BLM to work with the CWCB in seeking new or increased ISF water rights to address the flow-related ORVs for the proposed Gunnison River Segments with some version of the following language included as findings:

Option A: The BLM determination that _____ Creek is suitable is a preliminary administrative determination subject to further review by the U.S. Department of the Interior. At this time, the BLM will not forward this determination to the Secretary, Congress, or the President for further review and action. If the BLM is able to obtain an alternative form of flow protection to support the _____ outstandingly remarkable value (ORV), the BLM will recommend that action not be taken on the suitability determination and will change the determination to "not suitable" during the next available land use plan amendment process.

Option B: If the BLM is able to obtain an alternative form of flow protection to support flow-related ORVs, 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.

Option C: Use the language in Option A above for segments where there are only flow-related ORVs within the proposed segments and use the language in Option B for segments where there are both flow-related and non-flow related ORVs.

San Miguel Segment Comments

Recognizing the SW RAC's public process that resulted in recommending that eight segments in the San Miguel Basin be found suitable, and provided that the CWCB's permitting, water right and classification concerns are addressed, the CWCB will not recommend against the results of that process. However, the CWCB requests and invites the BLM to work with the CWCB in seeking new or increased ISF water rights to address the flow-related ORVs for the proposed San Miguel River Segments with the following language to be included as findings for these segments:

Option A: The BLM determination that _____ Creek is suitable is a preliminary administrative determination subject to further review by the U.S. Department of the Interior. At this time, the BLM will not forward this determination to the Secretary, Congress, or the President for further review and action. If the BLM is able to obtain an alternative form of flow protection to support the _____ outstandingly

remarkable value (ORV), the BLM will recommend that action not be taken on the suitability determination and will change the determination to “not suitable” during the next available land use plan amendment process.

Option B: If the BLM is able to obtain an alternative form of flow protection to support flow-related ORVs, 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.

Option C: Use the language in Option A above for segments where there are only flow-related ORVs within the proposed segments and use the language in Option B for segments where there are both flow-related and non-flow related ORVs.

The CWCB would like to thank you for considering our comments and we look forward to working with you on addressing these concerns. Please contact Suzanne Sellers or Linda Bassi of my staff if you have any questions.

Best regards,

James Eklund, Director
Colorado Water Conservation Board

cc: CWCB Members
Dana Wilson, Acting Field Manager

Attachments