



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

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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:** March 22-23, 2017 Board Meeting

**AGENDA ITEM:** 32. Bureau of Land Management (BLM) Royal Gorge Field Office (RGFO) Draft Wild and Scenic Rivers Suitability Report

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**Background:**

On March 10, 2017, CWCB staff received notice that the Bureau of Land Management (BLM) Royal Gorge Field Office (RGFO) released a public draft of its Wild and Scenic Rivers Suitability Report (Suitability Report). Of the 19 stream segments assessed, the Suitability Report proposes five stream segments as suitable. These suitable segments all lie within the Arkansas River basin as shown in Figure 1 and summarized in Table 1. The deadline for comments on the Suitability Report is May 5, 2017. Staff had the opportunity to prepare comments on a previous cooperating agency release of the Suitability Report. Those comments, along with comments from Colorado Parks and Wildlife, are attached.

Staff's attached letter refrained from providing comments on the proposed suitability determinations themselves, as the Board had not had the opportunity to address the matter in a public meeting. Staff is requesting that the Board direct the CWCB Director to prepare and submit a comment letter to the RGFO on behalf of the Board.

As part of developing comments on the Suitability Report, the Board should consider that the CWCB offers funds to river stakeholders that wish to explore alternatives to Wild and Scenic river designation. Any potential alternatives considered would aim to protect outstandingly remarkable values (ORVs) while also protecting Colorado's ability to fully use its compact and decree entitlements. At this stage, a Wild and Scenic rivers stakeholder process has not yet convened to discuss suitability on these reaches. An informal survey of river stakeholders has indicated mixed interest. If Arkansas River basin stakeholders decide to take advantage of these funds and form a Wild and Scenic river stakeholder group, comments from the Board at this time supporting or opposing suitability could eclipse that process. Rather, Staff recommends remaining neutral on suitability pending more input from stakeholders.

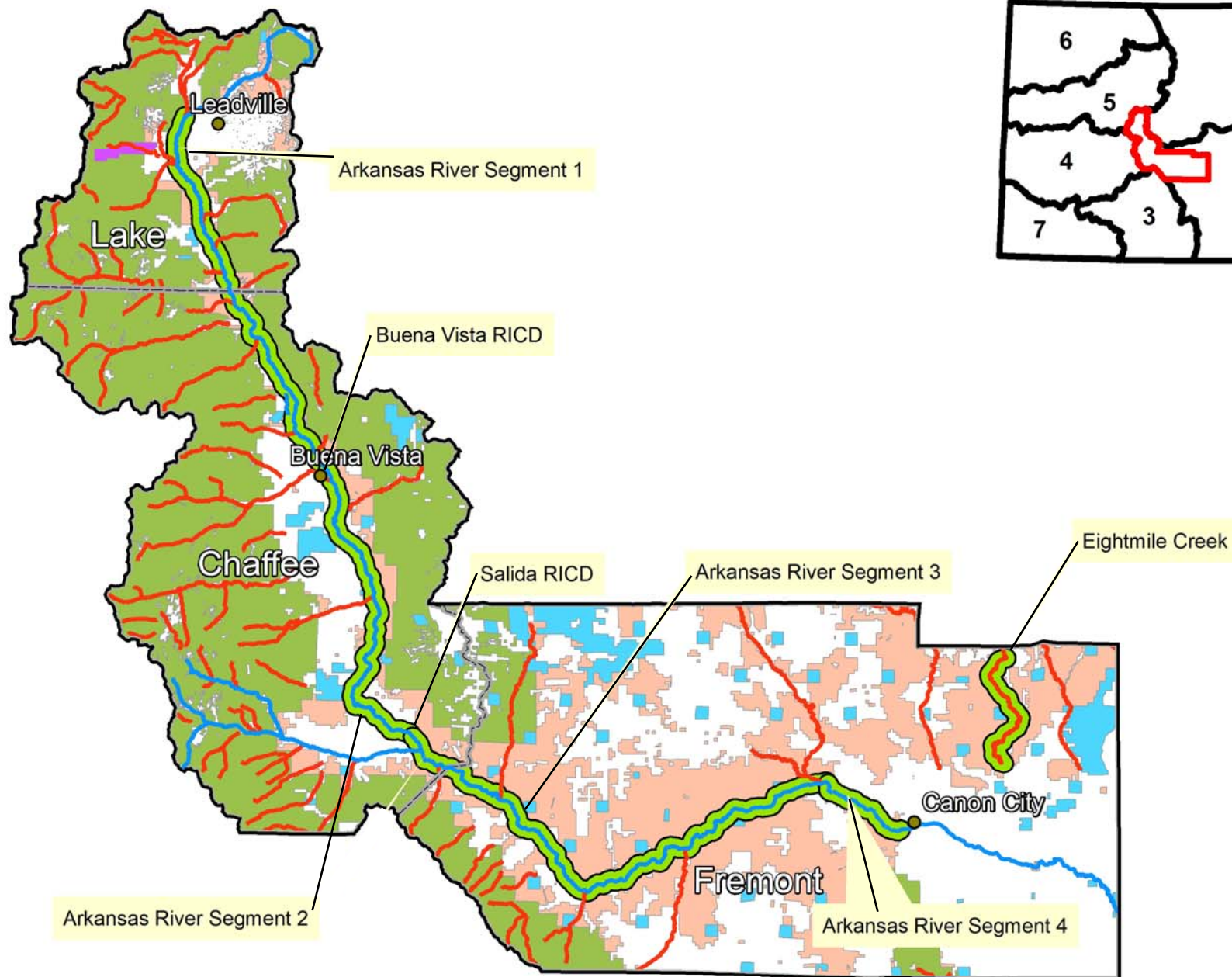
If a stakeholder process were to convene, the CWCB could encourage the BLM to honor any consensus recommendations that may result from that process. Further, any consensus recommendations could inform the CWCB's future opinions on suitability when it comments on the RGFO's upcoming draft Eastern Colorado Resource Management Plan (RMP).



Because the future status of the Waters of the United States (WOTUS) Rule is unknown, it is difficult to determine how much of an impact a suitability finding would have on non-federal land owners within a suitable stream segment. Consequently, Staff recommends that the Board request that the BLM consider modifying any proposed suitable segments to exclude stream reaches adjacent to non-federal land where the land owner has not consented.

**Staff recommendation:** Staff recommends that the Board direct the CWCB Director to prepare and submit a comment letter to the RGFO on behalf of the Board. Further, Staff recommends that the comment letter remain neutral on the subject of suitability until a Wild and Scenic stakeholder group has the opportunity to convene. Finally, Staff recommends that the Board request that the BLM consider modifying any proposed suitable segments to exclude stream reaches adjacent to non-federal land where the land owner has not consented.

Attachments



0 7.5 15 22.5 30 Miles



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March 22-23, 2017 CWCB Board Meeting  
Agenda Item 32: BLM Royal Gorge Field  
Office Draft Wild and Scenic Suitability Report



Table 1. Draft Wild and Scenic Rivers Suitability Determination by BLM Royal Gorge Field Office

Segment	Segment Length	W&S Class	ORVs	ISF/RICD
Arkansas River Segment 1: Confluence of East Fork and Tennessee Creek to Buena Vista	36.3 miles (22% BLM)	Recreational	Recreation (including boating and fishing), scenery, wildlife, botany, fish, and cultural	Chaffee County RICD Case No. 04CW0129 at bottom of reach.
Arkansas River Segment 2: Buena Vista to Salida	29.1 miles (32% BLM)	Recreational	Recreation (including boating and fishing), scenery, wildlife, botany, fish, and cultural	Chaffee County RICD Case No. 04CW0129 at bottom of reach.
Arkansas River Segment 3: Salida to Parkdale	47.9 miles (53% BLM)	Recreational	Recreation (including boating and fishing), scenery, wildlife, botany, fish, and cultural	
Arkansas River Segment 4: Parkdale to Cañon City	8.0 miles (35% BLM)	Recreational	Recreation (including boating and fishing), scenery, and wildlife	
Eightmile Creek: Near Nipple Mountain to near the mouth of Phantom Canyon	15.1 miles (95% BLM)	Recreational	Recreation (based upon cultural and scenic values), scenery, botany, and cultural	ISF with Case Nos. 98CW157 and 98CW158.

Notes:

ISF = Instream Flow    BLM = Bureau of Land Management    ORV = Outstanding Remarkable Value    RICD = Recreational In-channel Diversion  
W&S = Wild and Scenic



## COLORADO

### Department of Natural Resources

Executive Director's Office  
1313 Sherman Street, Room 718  
Denver, CO 80203

January 9, 2017

John Smeins, Eastern Colorado RMP Project Manager  
BLM-Royal Gorge Field Office  
3028 East Main Street  
Canon City, CO 81212

RE: Draft Wild and Scenic River Suitability Report

Dear Mr. Smeins:

Thank you for the opportunity to submit comments during the cooperating agency release of the Draft Wild and Scenic River Suitability Report. We appreciate your willingness to collaborate early on in this process and look forward to continued coordination with you. The Colorado Department of Natural Resources submits the following comment letters prepared by two of our divisions: Colorado Parks and Wildlife and the Colorado Water Conservation Board.

If you have any questions, please contact me at 303-866-3311 x8671, or division contacts listed in the following comment letters.

Sincerely,

Amy Laughlin  
Policy Advisor







# COLORADO

## Parks and Wildlife

Department of Natural Resources

SE Region Office  
4255 Sinton Rd.  
Colorado Springs, CO 80907  
P 719.227.5200 | F 719.227.5297

January 10, 2017

Mr. Keith Berger, Field Manager  
BLM Royal Gorge Field Office  
3028 E. Main Street  
Canon City, CO 81212

RE: Colorado Parks and Wildlife's Comments on the Wild & Scenic River Suitability Report (Draft Cooperator Version) for the Royal Gorge Field Office.

Dear Mr. Berger:

Thank you for the opportunity to comment on the draft Wild & Scenic River (WSR) Suitability Report for the U.S. Bureau of Land Management's (BLM) Royal Gorge Field Office. Colorado Parks and Wildlife (CPW) appreciates the opportunity to work with BLM as a cooperating agency to review the draft of this document. As a cooperating agency, CPW appreciates early and regular opportunities for coordination with BLM on how the WSR report will impact wildlife and outdoor recreational opportunities, both of which are of utmost importance to CPW and the people of the state of Colorado. We appreciate the BLM's consideration of our comments into the draft WSR report.

The mission of Colorado Parks and Wildlife is to perpetuate the wildlife resources of the state, to provide a quality state parks system, and to provide enjoyable and sustainable outdoor recreation opportunities that educate and inspire current and future generations to serve as active stewards of Colorado's natural resources. CPW has a statutory responsibility to manage all wildlife species in Colorado, and to promote a variety of recreational opportunities throughout Colorado, especially on state parks and recreation areas.

CPW appreciates the extensive effort that BLM put into the development of this WSR Suitability Report and the thorough examination of river and stream segments in BLM's eastern Colorado planning area. BLM's 2015 Final WSR Eligibility Report identified 19 river and stream segments in the Royal Gorge management area as eligible for potential designation. The draft Suitability Report reviewed here looks at those eligible segments to determine whether they are suitable or not suitable for further consideration for a Wild and Scenic designation. The fourteen topic areas examined for each eligible segment included unique river characteristics, land



ownership, current management, land use and zoning issues, water resources, future planning and potential impacts, and current protections.

In general, CPW supports locally driven management practices and cooperative agreements over WSR designations to maintain flexibility in management decisions regarding river protection and water usage. Of the eligible segments analyzed in the report, CPW has ownership or management responsibilities for the 4 Arkansas River segments recommended for suitable listing, and the Beaver Creek, East Beaver Creek and West Beaver Creek segments determined by BLM in the report as not suitable for listing.

**Arkansas River (4 segments):** In the WSR report the Arkansas River was noted for its unusually high number of Outstanding Remarkable Values (ORVs) for rivers in eastern Colorado and for its high use for recreation and the high number of annual visitors. The river also is noted for its high water resource value to municipalities, agriculture, and industrial uses. CPW currently shares management responsibilities along the Arkansas River with US Forest Service (USFS) and BLM through the Arkansas Headwater Recreation Area and concurs with the BLM finding that this collaboration has been a successful management partnership. CPW has significant land interests along these segments through leases with BLM and capital investments in recreational opportunities including boat access areas and campgrounds. The report also states that CPW has successfully managed critical fish and wildlife populations within these river segments and has balanced that with recreational access and opportunities. CPW agrees with the report's conclusion that this is an important resource but continues to support the historically successful collaborative management approaches on the Arkansas River over a WSR designation to protect wildlife, fisheries, and recreational objectives while providing flexibility in managing water supply resources. In particular, CPW does not recommend segments 1, 2, and 3 of the Arkansas River for suitable determination given the diversity in ownership and interests, low percentage of federal ownership in the segments compared to other eligible rivers and streams under review, and the recognition of currently successful management partnerships.

**Beaver Creek, East Beaver Creek, West Beaver Creek:** CPW supports the finding that these segments of Beaver Creek are not suitable for designation under the WSR program. As stated in the report, CPW believes that designation is unnecessary in that all lands are currently publically owned and protected through the existing Colorado State Wildlife Area, the BLM Wilderness Study Area, and CPW's ownership and operation of Skagway Reservoir, located upstream from area of analysis.

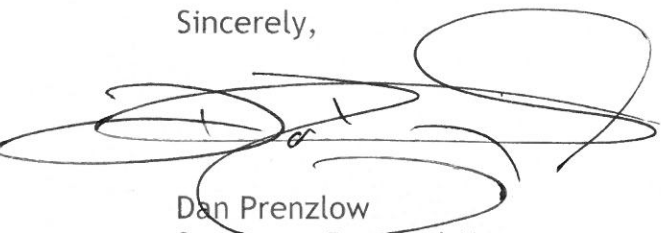
Overall, the WSR Suitability Report was very well organized and information on each segment was easy to access and easy to compare across segments due to the

presentation of topics in each section. Some minor recommendations for the draft report:

- The addition of index maps to the specific river segment maps would assist the reader to know where each specific segment is located in the region.
- An additional column on Table 1.1 or a separate table that consolidates the individual segment findings on suitable/not suitable would be useful.

CPW appreciates BLM's review and consideration of our comments for the WSR report. We look forward to working with BLM as a cooperating agency to provide information and wildlife data, and to assist the BLM in the development of a finalized WSR that will foster protection of wildlife and habitat resources for the life of the plan. If you have any questions, please contact Karen Voltura, Southeast Region Energy Liaison at 719-227-5232 or [karen.voltura@state.co.us](mailto:karen.voltura@state.co.us).

Sincerely,



Dan Prenzl  
Southeast Regional Manager

cc: Amy Laughlin, DNR  
Brett Ackerman, SE Deputy Regional Manager  
Karen Voltura, SE REL  
John Smeins, ECRMP Project Manager ([jsmeins@blm.gov](mailto:jsmeins@blm.gov))  
[ECRMP.comments@blm.gov](mailto:ECRMP.comments@blm.gov)





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James Eklund, CWCB Director

January 4, 2017

John Smeins  
Royal Gorge Field Office, BLM  
3028 East Main Street  
Cañon City, CO 81212

**Subject: Cooperator Review of the Royal Gorge Field Office (RGFO) Draft Wild and Scenic River Suitability Report**

Dear Mr. Smeins:

The Colorado Water Conservation Board (CWCB) Staff appreciate the opportunity to comment on the Bureau of Land Management (BLM)'s Cooperator Draft Wild and Scenic River Suitability Report that recommends four segments on the Arkansas River and one segment on Eightmile Creek as suitable for inclusion in the National Wild and Scenic Rivers System (NWSRS).

The CWCB Staff have reviewed the proposed suitability determinations and potential implications for recreation, the environment, water rights, and water development within the State of Colorado. As emphasized in Colorado's Water Plan, our state is striving to meet water supply demands from our growing population while fostering a strong and resilient natural environment. This letter is intended to provide helpful information for the BLM's suitability analysis. This letter refrains from providing comments on the BLM's proposed suitability determinations themselves, as our Board has not had the opportunity to address the matter at a public meeting.

### Stakeholder Process

As previously announced at the December 10, 2016 Cooperating Agencies Meeting, the CWCB offers funds to stakeholders that wish to explore alternatives to Wild and Scenic river designation. Potential alternatives would aim to protect outstandingly remarkable values (ORVs) and Colorado's ability to fully use its compact and decree entitlements. If Arkansas River stakeholders do decide to take advantage of these funds and form a Wild and Scenic river stakeholder group, the CWCB encourages the BLM to honor any consensus recommendations that may result from that process. Further, any consensus recommendations would likely inform the CWCB's opinions on the BLM's upcoming Eastern Colorado Resource Management Plan (RMP) and final suitability report.

### Private Land

The BLM indicates in its suitability report that it considers the current status of land ownership in the area when determining the suitability of each river segment. The CWCB Staff note that a majority (55%) of the land adjacent to the proposed suitable segments along



the Arkansas River is not owned by the BLM. In one of the Arkansas River segments proposed for suitability, BLM ownership is as low as 22%. The CWCB Staff request that the BLM identify in its suitability report any potential consequences of a suitability finding on private land in relation to water use and development.

### Permitting Ramifications

Sections 7(a) and (b) of Public Law 90-542; 16 U.S.C. 1271 et seq. 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 ORVs. 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 on the Front Range and in the Arkansas Basin. The Arkansas Basin Roundtable’s Basin Implementation Plan (Ark BIP) indicates that the region’s future municipal annual water shortage is estimated to be 59,500 acre-feet and the future annual agricultural shortage (above Pueblo) is estimated to be 30,100 acre-feet. Although Aurora Water relies on water supplies from the Arkansas Basin, the city is not located within the basin and therefore was not included in this estimate. Because of this, the actual future unmet demand from Arkansas Basin supplies is anticipated to be even higher.

The Ark BIP’s Master Needs List and water users identify three new projects or enlargements of existing projects that may be located on or directly adjacent to BLM land. We anticipate that these projects may not be eligible to be “grandfathered in” under existing BLM permit conditions, and consequently may be prevented or adversely impacted by a suitability finding (this list is not exhaustive):

- Birdseye Gulch Dam and Reservoir
- Box Creek Reservoir
- Homestake Project, including the Otero Pump Station

The CWCB Staff understand that the BLM may also use the suitability findings as a basis for the agency’s comments on future projects that have a federal nexus. Many of these projects with a potential federal nexus (Clear Creek Reservoir Enlargement, etc.) are already listed in the Suitability Report. An additional planned project from the Ark BIP’s Master Needs List that also falls into this category is the Upper Arkansas Multi-Use Project. It is possible that the BLM or other federal agencies would consider the implementation of these projects as unreasonably diminishing the flow-related ORVs in the proposed suitable segments. For these projects, a federal agency’s determination that diminishment of an ORV would occur may lead to permitting delays and reduced yield from these future projects. Reduced project yields could impact the region’s ability to meet its future water demand of 89,600 acre-feet annually.

### **Federal Reserved Water Rights Concerns**

As part of its suitability analysis, the BLM must consider the extent that state and local agencies participate in the preservation and administration of the proposed river segments, as well as those agencies' capacity to manage and protect the ORVs. The Board has taken the position that federal reserved water rights are not the best method for protecting flow-related ORVs in river corridors. The CWCBC has historically requested that the BLM consider other existing flow protections for the river values, and where applicable, recommend instream flow ((SF) water rights or increases to existing ISF water rights to CWCBC for appropriation to protect ORVs. The proposed suitable river segments and their ORVs are being protected by these existing mechanisms:

**CWCBC's Instream Flow (ISF) Program:** The CWCBC holds ISF water rights, decreed in Case Nos. 98CW157 and 98CW158, to preserve the natural environment to a reasonable degree on the proposed suitable segment on Eightmile Creek. Note that the draft suitability report only refers to the ISF water right decreed in Case No. 98CW158, and should also include a reference to the ISF water decreed in Case No. 98CW157 for 0.65 cfs (10/15 - 3/31); 1.1 cfs (4/1 - 5/14); 2.5 cfs (5/15 - 7/14); and 1/1 cfs (7/15 - 10/14). As noted, in part, in the draft suitability report, the BLM's recommendation of these ISF water rights in the late 1990s was based upon quantification methodologies focused on the rainbow trout fishery, not on riparian values. If the BLM determines that additional flow protection is needed for the ORVs on Eightmile Creek, particularly the botanical ORVs, the CWCBC encourages the BLM to work through the ISF Program to address additional flow needs, if any.

**Upper Arkansas Voluntary Flow Management Program (UAVFMP) and Related Stipulations:** The UAVFMP is designed to address the fish and recreation ORVs identified for the Arkansas River Segments (1 to 4) recommended for suitability. These flows are also beneficial to the botanical ORV. Although the name of the program, when originally coined, includes the word "voluntary," the flow recommendations have since been codified in various decrees and agreements. For example, the Rocky Ford I and II exchange decrees (Case Nos. 87CW63 and 99CW170) mandate that they must not affect the amount of water that Reclamation would use to support the UAVFMP. These decrees also mandate minimum flow amounts at the Fremont County and Salida wastewater treatment plants. In addition, a stipulation associated with a decree with the Arkansas River Outfitters Association limits the rate at which these exchanges may operate. The decrees and agreement make the flow recommendations all but permanent.

**Transbasin Inflows:** The suitability report itself acknowledges that more than 300,000 acre-feet of water storage has been developed to import water into the upper Arkansas Basin such that flow rates in the Arkansas River are often higher than before these transbasin projects were constructed. These higher flows in and of themselves provide some protection of river-related ORVs.

**Chaffee County Recreational In-channel Diversion (RICD):** Chaffee County holds RICD water rights (Case No. 04CW0129) for the purpose of recreational flows at locations within Arkansas River Segments 1 and 2. These RICDs provide the opportunity for recreational flows between March 15<sup>th</sup> and November 15<sup>th</sup> each year. Although RICD water rights are precluded from making flow requests for ecological purposes,



the resulting flows (up to 1800 cfs) will nonetheless benefit ecological functions through flushing and channel maintenance during spring runoff. Since these RICD water rights were granted, Chaffee County has consistently notified the Division Engineer every year of its 8-day peak use period for the FIBArk festival.

The CWCB Staff would like to thank you for considering our comments. We look forward to working with you to ensure a successful outcome for the citizens of Colorado and the ORVs that you have identified for protection. Please contact Suzanne Sellers or Linda Bassi of my staff if you have any questions.

Best regards,



James Eklund, Director  
Colorado Water Conservation Board