



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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John Hickenlooper, Governor

Robert Randall, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

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

DATE: November 15-16, 2017 Board Meeting

AGENDA ITEM: 6. Comments on the Rio Grande National Forest Plan Revision Draft Environmental Impact Statement and Rio Grande National Forest Draft Revised Land Management Plan

Background

The Rio Grande National Forest (RGNF) issued its RGNF Plan Revision Draft Environmental Impact Statement (EIS) and RGNF Draft Revised Land Management Plan (LMP) in September 2017. These documents recommend that 12 segments remain eligible and 6 segments remain suitable for inclusion in the National Wild and Scenic Rivers System (NWSRS). These recommendations do not appear to have changed from the 1996 Forest Plan. These documents also recommend one new segment (Deadman Creek) as eligible. The 6 suitable segments were recommended as suitable to Congress by the State of Colorado in 1979 as a result of a congressionally-mandated study.

Staff Recommendation

Staff recommends that the Board provide input on Staff's proposed comment letter as part of the Department of Natural Resources' (DNR) comments to the RGNF. DNR is the cooperating agency for the RGNF Plan revision process, which includes participation from four divisions: Colorado Parks and Wildlife, Colorado Water Conservation Board, the Division of Water Resources, and the Colorado State Land Board. Staff's proposed comment letter will be combined with other division responses as part of a DNR-wide response.

Discussion

The deadline for comments on the draft documents is December 29, 2017. In anticipation of this deadline, Staff has obtained input from the Attorney General's Office and Director Dutton as part of preparing the attached draft comment letter for the Board's consideration.

Attachment





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Dan Dallas
Rio Grande National Forest Supervisor
Attn: Forest Plan Revision
1803 U.S. Highway 160
Monte Vista, CO 81144

DRAFT

Subject: Comments on the Rio Grande National Forest Plan Revision Draft Environmental Impact Statement and Rio Grande National Forest Draft Revised Land Management Plan

Dear Mr. Dallas:

The Colorado Water Conservation Board (CWCB) appreciates the opportunity to comment on the Rio Grande National Forest (RGNF) Plan Revision Draft Environmental Impact Statement (DEIS) and RGNF Draft Revised Land Management Plan (LMP). These documents recommend that 12 stream segments remain eligible and six stream segments remain suitable for inclusion in the National Wild and Scenic Rivers System (NWSRS). These recommendations do not appear to have changed from the 1996 Forest Plan. These documents also recommend one new stream segment (Deadman Creek) as eligible. The six suitable segments were recommended as suitable to Congress by the State of Colorado in 1979 as a result of a congressionally mandated study.

The Final EIS and LMP should consider and incorporate the negotiated restrictions on management of suitable and eligible stream segments as well as the prohibition against additional reserved water rights. As you are no doubt aware, the Forest Service (FS), State of Colorado, and water users spent nearly 21 years negotiating the Forest Service's claims to reserved water rights for the RGNF and Gunnison National Forest within Water Division 3. See Findings of Fact, Conclusions of Law, and Judgment and Decree, Case No. 81-CW-183 (Decree). The Decree confirmed the Forest Service's federal reserved water rights on 303 streams in those National Forests. To our knowledge, these are the only decreed reserved water rights on any National Forest in the nation. The Decree also incorporated limitations on future Forest Service reserved rights claims within this area. Most significantly, paragraph 14 of the Decree prohibits the Forest Service from claiming additional reserved rights for those National Forests:

Paragraph 14: "In settlement and compromise of the claims in this case, the signatories to this decree agree, and it is hereby found, except as provided in Paragraph 28, below, that the quantities of water decreed to the United States herein are fully sufficient to fulfill any and all federal reserved instream flow water rights under existing federal law and all appropriates in stream flow water rights that the United States may be entitled to for the Gunnison and Rio Grande National Forest



within Colorado Water Division No. 3." and "Except as provided in Paragraph 24.d., the United States agrees that, in the future, it will not claim additional appropriative instream flow water rights, in Colorado Water Division No. 3 for National Forest purposes."

Thus, the FS currently has decreed quantities of water sufficient to fulfill any and all federal reserved and appropriative instream flow water rights to which it may be entitled. Those decreed quantities are adequate to protect the free-flowing character of the eligible and suitable river segments and their associated outstandingly remarkable values (ORVs), as acknowledged further on in the Decree:

Paragraph 16: "...instream flows decreed to the United States herein also satisfy fully any need for instream flows in the Gunnison and Rio Grande National Forests in Water Division No. 3 for maintaining, improving, protecting, and minimizing damage to the following: 1) Riparian ecosystems, which includes stream dependent wetlands; 2) The natural physical function of stream channels; 3) Viable and diverse populations of fish and wildlife, including all habitat necessary for such populations; 4) Scenic and aesthetic conditions and values; 5) Public opportunities for outdoor recreation; 6) Soil conservation and preservation of the quality of soil resources..."

Without the risk of opening the Decree, the Forest Service may not seek to increase those flows (or flows outside those stream segments) either through additional reserved rights or management standards, guidelines, or activities:

Paragraph 19: "This decree may be reopened if the USDA Forest Service, in the exercise of its power to grant or deny land use authorizations on National Forest System lands within Water Division No 3, acts to increase or maintain stream flows, reduce depletions to stream flows, provide favorable conditions of water flow, or provide water for any of the purposes set forth in Paragraphs 14, 15, or 16 above by: (a) requiring the owner of an Existing Water Right to forego the exercise of all or a part of its decreed water right or to relinquish water diverted or stored in priority under its decreed water right, or (b) otherwise taking any action to prevent or interfere with the exercise of all or a part of an Existing Water Right."

The Decree allows the development of water projects on RGNF land, provided that there were decreed existing absolute or conditional water rights for the project as of 1998:

Paragraph 20: "Any decree authorizing a new appropriation through the diversion facilities of an Existing Water Right will not be treated as an Existing Water Right for purposes of Paragraph 19. Unless otherwise provided in the specific provisions concerning individual Existing Water Rights in Paragraph 36, below, any change in point of diversion of any water right to a point of diversion, transportation or storage on National Forest System land granted on an application filed after December 31, 1998 will not be treated as an Existing Water Right for purposes of Paragraph 19."

The CWCB acknowledges the importance of this hard-won settlement that allows the RGNF to protect ORVs through suitability and eligibility determinations while allowing water development to continue within the basin. The CWCB also understands that there is a very good working relationship between the water users in the basin and the RGNF, and we respect that the Decree satisfactorily resolved these complicated matters years ago.

The CWCB is aware of a potential project being considered by the Conejos Water Conservancy District, which would include the enlargement, exchange of water rights to, or reoperation of Trujillo Meadows Reservoir. While the CWCB understands that the project is still in the study phase, we encourage the RGNF staff to continue discussions with the Conejos Water Conservancy District with the hopes of finding a mutual understanding within the terms of the Decree.

Finally, the proposed wilderness area in the Bear Creek drainage is the site of the Beartown Snotel, which is the only Snotel in the Upper Rio Grande basin. The Conejos River drainage has even fewer Snotels and reliable snowpack measuring sites. The proposed wilderness area in the headwaters of the Conejos River between Platoro Reservoir and the existing wilderness boundary is where two SnoLite systems are going to be installed this year. The Conejos Water Conservancy District has obtained a special use permit from the RGNF for installing that equipment. The permit identifies various locations for equipment in the Conejos Peak District, including the two SnoLite sites above Platoro Reservoir, referenced above. It is broadly recognized that water administrators in the Rio Grande basin are hindered by a lack of reliable data. Because a wilderness designation could impact access for maintenance and data collection, and the type of equipment that can be used, the CWCB requests that the RGNF expressly acknowledge existing special use permits for such monitoring equipment, and guarantee motorized access to the permitted locations.

Thank you for considering our comments. The CWCB looks forward to working with you to ensure a successful outcome for the citizens of Colorado and for the ORVs that you have identified for protection.

Best regards,

Rebecca Mitchell, Director
Colorado Water Conservation Board