



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
Carlee Brown, Interstate, Federal & Water Information Section

DATE: May 23-24, 2018 Board Meeting

AGENDA ITEM: 11. Wild and Scenic Rivers Update and Fund Annual Review

Background

CWCB Staff is actively engaged in policy processes related to the Wild and Scenic Rivers Act, both through direct communications with the federal agencies contemplating making findings of suitability for Wild and Scenic River (WSR) designation and through coordination with stakeholder groups investigating alternatives to such findings. CWCB generally advocates for the use of state mechanisms—primarily the Instream Flow Program—to protect resources and avoid the potential restrictions that could result from WSR designations.

The General Assembly has similarly encouraged a state- and locally-led approach to WSR issues through the creation of the Wild and Scenic Rivers Fund (“the Fund”). In the act creating the Fund, the General Assembly directed \$400,000 to be made available for “the board to work with stakeholders within the state of Colorado to develop protection of river-dependent resources as an alternative to wild and scenic river designation.”¹

The Board evaluates whether the Fund is needed and whether a refresh is appropriate on an annual basis. This memo provides the Board with information about the status of WSR processes across the state in order to make this determination.

Staff Recommendation

Staff recommends that the Board:

- 1) Affirm that the need and purpose of the Wild and Scenic Rivers Fund still exists and is expected to continue in the future; and
- 2) Affirm that the existing Terms and Conditions for the Allocation of Funds from the Wild and Scenic Rivers Fund are adequate without revisions.

¹ §37-60-122.3, C.R.S. (2017).



Discussion

Federal Planning Processes

CWCB Staff actively participates in planning processes led by the U.S. Bureau of Land Management (BLM) and U.S. Forest Service (USFS). Often, the agencies' revisions of resource management plans and forest plans involves evaluation of WSR suitability. CWCB staff coordinates with Board members from the area in question to develop comments.

USFS: Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forests' Plan Revision

The Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forests are conducting a public scoping process for revisions to the GMUG Forest Plan. The GMUG is currently soliciting feedback on its scoping material, documentation outlining the needs for change in the Forest Plan and the vision for the Plan. The larger Forest Plan revision process includes comment periods for revisions of Draft Assessment Reports (2017), an update of the 1983 Forest Plan itself (2018), and development of a draft Environmental Impact Statement (2019). Additionally, the GMUG plans to complete an identification and eligibility evaluation for Wild, Scenic, and Recreational (WSR) rivers through a separate, simultaneous public engagement process, but has not yet announced the exact timeline for the WSR process.

CWCB staff provided comments on GMUG's Draft Assessment Reports in December 2017.² CWCB's letter encouraged GMUG to employ the Instream Flow (ISF) Program as a mechanism to protect flow-related values in lieu of pursuing federal reserved water rights. In its March 2018 Revised Draft Forest Assessments, GMUG addressed CWCB comments by including references to the ISF Program. CWCB staff intends to coordinate with Board members in the GMUG area to provide input throughout the Forest Plan revision process, including the current comment period on scoping materials which runs through June 2, 2018.

USFS: Rio Grande National Forest Plan Revision

The Rio Grande National Forest is revising its 1996 forest plan. CWCB Director Becky Mitchell issued comments on the draft Environmental Impact Statement (EIS) and draft revised Land Management Plan on December 20, 2017.³ A final EIS and draft plan decision was scheduled for release in Winter 2017, but that has since been delayed.

BLM: Uncompahgre Field Office Resource Management Plan

BLM is in the process of revising its Resource Management Plan (RMP) for the Uncompahgre Field Office (UFO). The Department of Natural Resources is a Cooperating Agency in this process, and CWCB has been given the opportunity to engage through that status. CWCB offered detailed comments on the draft RMP and Environmental Impact Statement (EIS) on October 7, 2016. The UFO's public response to comments was delayed due to retirements, staffing changes, and the challenge of processing more than 50,000 public comments, so it was not until March of this year that the UFO issued detailed responses to Cooperating Agency comments. CWCB Staff has reviewed UFO's response to CWCB's comments and wishes to have

² Staff provided the final letter to the Board in the most recent WSR issues update on January 22-23, 2018. The memo and letter are available at [this link](#).

³ Staff provided the final letter to the Board in the most recent WSR issues update on January 22-23, 2018. The memo and letter are available at [this link](#).

continued conversations with BLM Staff before the RMP reaches its next milestone for review. That will occur this fall, when the notice of the proposed RMP will be released.

BLM: Eastern Colorado Resource Management Plan

BLM is preparing an Eastern Colorado Resource Management Plan (RMP) designed to provide comprehensive management direction for all resources and uses for the areas covered by the Royal Gorge Field Office (RGFO) in eastern Colorado. The Department of Natural Resources is a Cooperating Agency in this process, and CWCB has been given additional opportunities to engage through that status. In March 2018, the RGFO released its draft RMP and EIS to cooperating agencies for a brief review prior to full public release. CWCB Staff provided comments through DNR on April 13, 2018, after consulting with Director Goble. Comments were issued at the staff level due to the short nature of the Cooperating Agency review.⁴ The comments emphasized the use of voluntary flow protection mechanisms, including the Instream Flow Program and a separate stakeholder effort known as the Voluntary Flow Management Program. The letter also asked for additional recognition of Colorado's Water Plan and the Arkansas Basin Roundtable's Basin Implementation Plan, including the recognition of potential storage projects.

The draft RMP and EIS will be made public this summer. CWCB Staff will inform the Board of the public comment period when it opens and offer draft comments, if appropriate.

Stakeholder Groups

The primary stakeholder group actively exploring alternatives to WSR protections is the Upper Colorado River Wild and Scenic Stakeholder (UCRW&S) Group. Additionally, the Lower Dolores Plan Working Group continues to receive and process input on draft National Conservation Area legislation. The Group's Native Fish Monitoring and Recommendation Team has been meeting to discuss monitoring results from last year's managed release from McPhee Reservoir and to share those results with the public.

Upper Colorado River Wild and Scenic Stakeholder Group

The UCRW&S Group was formed to protect the outstandingly remarkable values (ORVs) identified in the U.S. Bureau of Land Management (BLM) and U.S. Forest Service (USFS) WSR Eligibility Reports for Segments 4 through 7 of the Upper Colorado River. The group includes water users from both the West Slope and East Slope, environmental interests, anglers, state and local government representatives, and recreational interests. The Governance Committee (GC) meets quarterly.

The GC last met on March 19, 2018. At that meeting, the GC approved the extension of deadlines for certain goals set forth by the stakeholders, including the creation of an Endowment Fund and the time to adopt ORV indicators and resource guides for Floatboating. These extensions are within the time horizon known as the "Provisional Period" that ends no later than June 12, 2020, as contemplated in the UCRW&S Group's Management Plan. There was some ambiguity in the Plan with respect to the deadline for the ORV indicators and resource guides, so the GC's action resolved that uncertainty and ensured that the group has

⁴ CWCB Staff will provide the letter to Board members upon request. Due to the confidential nature of documents shared through Cooperating Agency status, Staff has not provided the letter commenting on those documents with this memo.

the time it needs to complete its work. The timeline for the Endowment Fund was extended to allow time for other issues to resolve, including permitting for major water supply projects.

The GC also received updates from the ad-hoc groups that are working to define ORV indicators and resource guides. The Floatboating Ad-Hoc Committee reported that it has nearly finished its draft ORV indicators for the consideration of the GC at its next meeting in June. The Fishing Ad-Hoc Committee reported on its recent discussions, noting that a one-size-fits-all approach to ORV indicators and resource guides is not likely. Group members also stated that more biosurvey data is needed for State Bridge and Catamount.

The next GC meeting is scheduled for June 7, 2018.

Fund Expenditures

Expenditures for Fiscal Year 2017-18 and expected requests for FY 2018-19 are set forth below. The estimated request for the next fiscal year was developed in coordination with the UCRW&S Group.

FY2017-18		
Unencumbered balance from FY16-17	\$426,901.56	
Construction Fund Refresh for FY 17-18	\$99,455.00	
Balance as of July 1, 2017		\$526,356.56
UCRW&S: Funds Spent	(\$83,438.93)	
UCRW&S: Funds Encumbered	(\$115,826.07)	
Lower Dolores Plan Working Group: Funds Spent	(\$12,075.08)	
Lower Dolores Plan Working Group: Encumbered	(\$7,682.36)	
Total Encumbered		(\$123,508.43)
Total Spent		(\$95,514.01)
Anticipated ending balance for FY17-18		\$307,334.12
FY2018-19		
Anticipated Construction Fund Refresh for FY 18-19	\$92,665.88	
UCRW&S: Estimated Request	(\$89,229.00)	
Anticipated unencumbered funds for FY18-19		\$310,771.00

Terms and Conditions

The Terms and Conditions (T&C) of the Fund require that the Board annually consider and make any necessary revisions to the terms and conditions on an annual basis. The T&C were most recently revised at the March 2018 Board meeting following a process that began during the Board's 2017 review of the Fund. The Board first considered proposed edits at the [July 2017 meeting](#) and asked Staff to work closely with individual Board members on the document, which was presented to the Board at the [March 2018 meeting](#). The edits included (1) excerpts from the [statute](#); (2) a fuller description of the role of stakeholder groups receiving funds; and (3) several editorial changes for clarity.

The T&C are included as an attachment to this memo.

**TERMS AND CONDITIONS
FOR THE ALLOCATION OF FUNDS FROM
THE WILD AND SCENIC RIVERS FUND**

Adopted January 27, 2010

Revised March 21, 2018

Introduction

The Colorado General Assembly established the Colorado Water Conservation Board's (CWCB's) Wild and Scenic Rivers Fund ("the Fund") in 2009.⁵ The legislature: (1) provided that the Fund would be refreshed annually up to \$400,000; (2) stated that the Fund should be used to "work with stakeholders within the state of Colorado to develop protection of river-dependent resources as an alternative to wild and scenic river designation under the federal Wild and Scenic Rivers Act"; and, (3) provided that the Board may adopt terms and conditions for fund disbursements.

The Fund is used for two primary purposes: (1) to support local resource protection groups ("stakeholder groups") that form to develop protection of river-dependent resources as an alternative to wild and scenic river designation under the federal Wild and Scenic Rivers Act, exploring different approaches that will most benefit the resource and the community, and (2) for CWCB Staff operational expenses related to participation in such stakeholder groups. These terms and conditions are designed to assure that the Fund is used to support the efforts of these various stakeholder groups in an equitable and efficient manner.

It is the goal of the CWCB to ensure wise and effective use of monies from the Fund. The CWCB strongly encourages the use of this Fund for projects that result in the compilation of the best available data at the earliest stages of the federal agencies' plan revisions and processes to evaluate streams and rivers for eligibility and suitability for Wild and Scenic designation.

Administration of the Fund

The CWCB will:

- Annually review information regarding the Fund in May of each year.
- Consider and make any necessary revisions to these terms and conditions on an annual basis.
- Determine if the purposes for which the Fund was established have ceased, and if so, de-authorize the Fund.

The CWCB Director will:

- Approve or deny the use of all funds, after consultation with the Board member(s) of basins involved with the project.

⁵ C.R.S. 37-60-122.3

The CWCB Staff will:

- Ensure that the Fund is managed consistently with state statutes, applicable state fiscal rules, and these terms and conditions.
- Review applications and recommend use of the Fund. The CWCB Director must approve all applications to use the Fund.
- Enter into contracts with appropriate entities and ensure that the projects identified in the application and work plan are implemented within the time and budget identified in the application.
- Ensure that sound fiscal, fiduciary, and accounting practices are implemented.

Stakeholder Groups

Stakeholder groups are associations of interested parties and organizations that cooperate and collaborate to protect outstandingly remarkable values (“ORVs”) associated with rivers within Colorado, while protecting Colorado’s ability to fully use its compact and decree entitlements.

Stakeholder groups may receive a Fund allocation to support distinct projects and/or ongoing stakeholder processes (collectively referred to as “projects”). Applications may be submitted by the stakeholder group itself or an entity applying on behalf of the group, as described in the next section. Ideally, stakeholder groups will include both traditional consumptive water interests and non-consumptive water interests.

Colorado's Instream Flow Program offers a means to protect flow-related ORVs without a Wild and Scenic designation; thus, stakeholder groups are encouraged to consider instream flows as a primary tool in the effort to protect such ORVs.

Fund Eligibility Requirements

CWCB Staff may use the Fund to pay for travel costs or other operating expenses incurred by the Staff for activities related to participation in stakeholder groups. In addition, non-federal entities may apply for use of monies from the Fund. Eligible entities that may sponsor projects and apply for allocations from the Fund include:

- Public (Government) - municipalities, enterprises, counties, and State of Colorado agencies.
- Public (Districts) - special, water and sanitation, conservancy, conservation, irrigation, and water activity enterprises.
- Private Incorporated - mutual ditch companies, homeowners’ associations, and non-profit corporations.
- Private - individuals, partnerships, and sole proprietors.
- Non-governmental organizations - broadly defined as any organization that is not part of the government.

Project Sponsorship Process

Project sponsors may submit applications for monies from the Fund at any time. The Board will be notified of any requests for use of the Fund that are granted, partially approved, or denied, through the Director's report or a memorandum to the Board.

To apply for use of the Fund, the project sponsor must submit a written request to the CWCB Director ("application" or "request for funds"). These terms and conditions will guide the CWCB Director's and Staff's review and analysis of the application, and will form the basis for the CWCB Director's decision to either fund, partially fund, or not fund the request. Therefore, project sponsors should prepare their applications to meet these terms and conditions.

Application information and requirements may vary depending upon the stakeholders involved, the status of a federal agency's Wild and Scenic review process, and other unique circumstances that may exist. The project sponsor is encouraged to discuss the application with CWCB Staff if any questions arise.

Description of Project Sponsor(s) and/or Stakeholders involved in the process

Each request for funding should include a description of the entity/entities that are involved in the process. The project sponsor may be a non-federal public or private entity. Given the diverse range of potential project sponsors, not all of the following information may be relevant. Where applicable and relevant, the description should include the following:

- Type of organization, official name, the year formed, the statute(s) under which the entity was formed, a contact person and that person's position or title, address and phone number.
- The project sponsor's background, interest and capacity, organizational size, staffing and budget, funding, partner organizations, and volunteer commitments.

Background

Purpose

This section should provide: (1) a brief overview of goals of the stakeholder group; (2) the status of the federal agency's (or agencies') Wild and Scenic process; and, (3) a description of the project the funds would support.

Project Area Description

The project area is generally the geographic area that is being discussed. This description should include a listing of the rivers that are under Wild and Scenic consideration by a federal agency. The description also should include the following items:

1. A narrative description of the project area that includes the county (or counties), the location of towns or cities, topography, land ownership along the river systems, and locations of major rivers.

2. An area map showing each of the items above, as well as the locations of existing facilities, proposed project facilities and river segments that are being considered for listing as eligible and/or suitable for Wild and Scenic designation.

Scope of Work

The request for funds must provide a scope of work. The scope of work should include a detailed summary of how the project will be accomplished. The scope of work must include a description of the activities and tasks that will be undertaken, logistics, and final product/deliverables to be produced with the monies distributed by the Fund for the various tasks.

The scope of work should include the following:

- Detailed summary of the work plan.
- Description of the work plan's goals and how the work will accomplish those goals.
- Description of how the work will be accomplished and the anticipated deliverables/products.
- A list of participants.
- A description of the selection process of any contracting entity that will complete the scope of work; or, if an entity has already been selected, a list of the contracting entity's qualifications to accomplish the project.
- A detailed budget describing activities, level of effort, and rates. The budget shall also detail the source and amount of matching funds and/or in-kind contributions, if any. If applicable, the budget should also include any other outstanding or previously applied for funding that also supports the project.
- A detailed project schedule that includes key milestones.

Reporting

The project sponsor shall provide progress reports to the CWCB at least every 6 months, and on a more regular basis to the CWCB Staff, beginning from the date of the CWCB approval of the project. The progress report shall describe the completion or partial completion of the tasks identified in the scope of work, including a description of any major issues that have occurred and any corrective action taken to address these issues.

Final Deliverables

At completion of the project, the project sponsor shall provide a final report to the CWCB that summarizes the project and documents how the project was completed. This report may include photographs, summaries of meetings and/or additional reports.

Evaluation Process for Allocation of Funds

Allocation of funds will depend upon availability of funds and an evaluation of the project using the terms and conditions in this section.

Matching Requirement

Applicants will be required to demonstrate a 20 percent (or greater) match from other sources of the total amount of funds requested. Recognizing the limited resources of some entities, in-kind services will be eligible as matching funds, but written documentation of in-kind services will be required. Past expenditures directly related to the project may be considered as matching funds if the expenditures occurred within 12 months of the date the request for funds was submitted to the CWCBC.

Terms and Conditions

The following terms and conditions will be utilized to further evaluate requests for funds:

- a. The number and types of entities represented by the application and the degree to which the project will promote cooperation and collaboration among traditional consumptive water interests and/or non-consumptive interests.
- b. Whether the project could help in assuring that ORVs or potential ORVs are protected while protecting Colorado's ability to fully use its entitlements under compacts or decrees.
- c. Whether the project will still enable Colorado to fully use its compact and decree entitlements.
- d. Urgency of need for the project and/or any compelling "window of opportunity" that may be missed without the requested funding.
- e. The length of time needed to implement the project. Projects that can be accomplished within a specified time period will receive more favorable consideration for receiving monies from the Fund. In addition, projects that will be completed in a timely manner, rather than projects that have been subject to many lengthy delays, will receive more favorable consideration for receiving monies from the Fund.
- f. The expertise and ability of the project sponsor and participants to implement the project.
- g. The level of matching funds the project sponsor and/or stakeholders are providing. The greater the amount of matching funds, the more likely the project will receive monies from the Fund, provided that all other terms and conditions are satisfied.
- h. The degree to which the project will help meet environmental or recreational needs and protect ORVs identified through the Wild and Scenic suitability process.
- i. The degree to which the project will assist in the administration of compact-entitled waters or address problems related to compact-entitled waters and compact compliance, and the degree to which the project promotes maximum utilization of state waters.
- j. Whether the project will assist in, or not impair, the recovery of native species that have been listed as threatened or endangered under federal or state law or that are candidate species or are likely to become candidate species, species at risk and species of special concern, or species the decline or extinction of which may affect the welfare of the citizens of the state.
- k. Whether the project will complement or assist in the implementation of other CWCBC programs.