



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

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**TO:** Colorado Water Conservation Board Members

**FROM:** Brandy Logan, Stream & Lake Protection Section  
Andrew Rickert, Interstate, Federal & Water Information Section

**DATE:** July 19, 2023

**AGENDA ITEM:** 5. Wild and Scenic Rivers Update and Fund Annual Review

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### 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.

### 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”)<sup>1</sup>. 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.”<sup>1</sup>

The Board annually evaluates whether the Fund is needed and whether the guidelines it has adopted for allocations of the Fund are adequate without revisions. This memo provides the

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<sup>1</sup> §37-60-122.3, C.R.S. (2022).



Board with information about the status of WSR-funded processes across the state in order to make this determination.

## **Discussion**

### *Upper Colorado River Wild and Scenic Stakeholder Group Update*

The Upper Colorado River Wild and Scenic Stakeholder Group (UCRW&S or SG) 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) Wild and Scenic Eligibility Reports for Segments 4 through 7 of the Upper Colorado River. The SG includes water users from both the West Slope and East Slope, environmental interests, anglers, recreational interests, and local and state government representatives.

The Amended and Restated Upper Colorado River Wild and Scenic Stakeholder Group Management Plan (Plan) was completed in June 2020 and includes final ORV Indicators and Resources Guides related to recreational fishing and floatboating. The effective date of the Plan commenced June 12, 2015, upon issuance of records of decision by BLM and USFS<sup>2</sup>. The SG continues to successfully implement the Plan—major accomplishments include:

- Annual monitoring including collecting recreational and angling survey information, quality trout and biomass data, macroinvertebrate samples, and water quality and temperature data.
- Implemented long-term protection measures and met specified milestones outlined in the Plan. This included the appropriation and adjudication of CWCB instream flows for the Wild and Scenic segments consistent with the SG's recommendations.
- Explored and implemented voluntary cooperative measures when available and annually assess the need for, focus of, and availability of cooperative measures.
- Held regular quarterly SG meetings, annual meetings, and various special meetings.
- Finalized documents necessary to form a legal entity to receive and manage endowment funds. The SG will receive approximately \$1,375,000 in endowment funds committed through a number of agreements with Northern Water, Denver Water, and the Colorado River District.<sup>2</sup> This endowment fund will be used in conjunction with the Fund, if needed, to continue to protect the ORVs through the SG Plan.

The SG has already received funding this year to support group coordination and monitoring activities specified in the Plan. They will be making an additional request later this year to support additional monitoring efforts aimed at better understanding long-term channel maintenance. This extra level of monitoring will occur once every 10 years.

### *Lower Dolores Plan Working Group Update*

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<sup>2</sup> Colorado River Cooperative Agreement (CRCS); 5412.5 Water IGA (2012) with Northern Water, Grand County, Middle Park WCD, and the Colorado River WCD; Windy Gap FIRMing Project IGA (2012).

The Lower Dolores Plan Working Group (LDPWG) has been working for years to develop alternative protection for the Wild and Scenic values associated with the lower Dolores. This group proposed to 1) create a National Conservation Area and 2) continue to understand and improve native fish habitat through the Dolores River Native Fish Monitoring and Recommendations Team (M&R Team). The BLM has agreed to permanently remove portions of the Lower Dolores River from future eligibility consideration if those actions occur.

The legislation to create a National Conservation Area has wide-spread support local support. The legislation was reintroduced in the senate by Senators Bennet and Hickenlooper on March 3rd and Congresswoman Boebert the following week. Senator Bennet recently formally asked for a hearing in the Senate Committee on Energy and Natural Resources which is anticipated to occur this summer.

The M&R Team continues to implement monitoring efforts and make recommendations to water managers. Ample snowpack this year provided for some of the largest releases of water from McPhee Dam in the last 20 years. Releases started in late April and are anticipated to extend into July. The M&R Team assisted in developing ecological goals for the spill which included scouring flows, fish sampling flows, and maintaining cold water temperatures early in the year. The M&R Team has worked to monitor the spill by installing cameras and conducting sediment assessments at several sites.

Fort Lewis College is assisting the M&R Team in conducting a number of monitoring efforts on the Dolores River. This group secured a WSRF Grant in 2020 for \$165,617 for a 5-year project (DRAMS). In addition, Fort Lewis College applied for W&S funding on behalf of the group for \$73,565.04 for a 2-yr project for: 1) M&R Team coordination 2) hydraulic modeling 3) PIT tag analysis of native fish migration patterns. This proposal was recommended for approval by staff and approved by Director Mitchell in consultation with Director Cloud and Director Anderson.

### *BLM's Eastern Colorado Resource Management Plan*

The BLM released the proposed Resource Management Plan on July 6, 2023. This document and the supplemental Suitability Report found 60 stream miles suitable for inclusion in the Wild and Scenic program, including portions of the Arkansas River. Approximately 52 miles of eligible streams were not found to be suitable. The BLMs Plan includes language that, "The Colorado Water Conservation Board implements the State's Instream Flow Program. The program provides a tool to assist in the protection of flow-dependent outstandingly remarkable values through the state water right system. Working with the Colorado Water Conservation Board to secure instream flow water rights enables the BLM to meet its flow protection goals for outstandingly remarkable values. Establishing state-based instream flow water rights serves as an alternative to obtaining flow protection through wild and scenic river designation by Congress, which includes a federal reserved water right." Publication of this document begins a 60-day Governor's consistency review period and a 60-day period for public comment.

## Fund Expenditures

Expenditures for Fiscal Year 2022-23 and expected requests for FY 2023-24 are set forth below. The estimated request for FY 2023-24 was developed in coordination with the Upper Colorado River Wild and Scenic Stakeholder Group and the Lower Dolores Plan Working Group and FLC.

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### FY 2022-2023

UCRW&S: Funds Spent	(\$102,182.99)
UCRW&S: Funds Encumbered	(\$104,312.25)
LDPWG: Funds Spent	(\$0)
LDPWG: Encumbered	(\$73,565.04)
<b>Total Encumbered</b>	<b>(\$177,877.29)</b>
<b>Total Spent</b>	<b>(\$102,182.99)</b>

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### FY 2023-2024

UCRW&S: anticipated request	>\$100,000.00
LDPWG: anticipated request	\$0
<b>Total Request</b>	<b>&gt;\$100,000.00</b>
<b>Anticipated unencumbered funds for FY23-24</b>	<b>\$142,674.96</b>

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## 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.<sup>3</sup> 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.

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<sup>3</sup> C.R.S. 37-60-122.3

- 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.

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 CWCB.

## **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 CWCB programs.