

April 29, 2011

Katie Stevens, Field Manager  
Dominguez-Escalante National Conservation Area  
US Bureau of Land Management  
2815 H Road  
Grand Junction, CO 81506

Re: Stakeholder Recommendations for Management of Stream Segments within the Dominguez-Escalante National Conservation Area (NCA) Found Eligible for Inclusion in the National Wild & Scenic Rivers System

Dear Ms. Stevens:

The Gunnison Basin Wild & Scenic Rivers Stakeholder Group is a diverse community of stakeholders that has met five times since February 24, 2010, to assess streams and stream corridors within the Dominguez-Escalante National Conservation Area that the Bureau of Land Management (BLM) found eligible for inclusion in the National Wild & Scenic Rivers System. The interests represented include landowners, farmers, ranchers, outfitters, water providers, water managers, recreational prospectors, electrical utility representatives, all-terrain vehicle riders, river recreationists, local governments, the state of Colorado, and interested citizens.

#### *Context*

The group recognizes the challenging task the BLM has in managing these streams and stream corridors, given the increases in recreational use that have occurred in recent years. For the past 120 or 130 years, grazing has occurred in this area. The Outstandingly Remarkable Values (ORVs) that BLM has identified for these streams and stream corridors are, in many cases, the result of the management practices of local ranchers and, more recently, the BLM's management practices. Future management is complicated with increased human use.

Changes seen over the years at the Escalante Potholes area best illustrate this challenge. Historically, few people except for hunters and ranchers drove up Escalante Canyon. Over time, the area around the pot holes on Escalante Creek became an example of severe resource degradation from over-use and misuse. Broken bottles, cans, and litter, many accidents and several deaths have resulted from increased human activity due to the promotion and popularity of the site. In recent years there has been improvement in the Potholes area, but the impacts associated with increased use by people is still very noticeable.

#### *Process for Developing Recommendations*

The group began their review by mining their collective knowledge of the eligible stream corridors in the NCA, as well as the BLM's eligibility reports and presentations by BLM and Colorado Division of Wildlife (CDOW) staff, to develop information on existing uses and local values, potential threats to the Outstandingly Remarkable Values (ORVs) identified by BLM, and existing protections for the ORVs. This information is summarized in the attached charts.

Following this information gathering and sharing phase, the group articulated the activities and attributes they feel are most important to protect on the eligible stream segments and their

recommendations for managing them, including whether or not the segments should be found and managed as “suitable” for inclusion in the National Wild & Scenic Rivers System. Overall, the group expressed a strong feeling that agricultural activity in these stream corridors and private property rights, including water rights, are of paramount importance and should not be adversely impacted nor impeded. The group also expressed concern that cultural resources in the stream corridors are not adequately protected currently, but that a “suitable” designation associated with the Wild & Scenic Rivers Act is not the appropriate means to protect them. Detailed recommendations for each of the analyzed stream segments appear below. These recommendations have been refined through stakeholders’ review and revision of drafts of this letter and the accompanying charts via a series of email exchanges.

### **Gunnison River, Segments 1 and 3**

#### Activities and Attributes that are Important to Maintain

The group listed the following activities and attributes as important to protect in this corridor:

- Agriculture: all agricultural activities, including orchards, crops, and grazing.
- Livestock transit
- Mechanized recreational prospecting
- Utility corridor (including access for maintenance of power lines)
- Camping
- Boating
- Horseback riding
- Fishing
- Hunting
- Water rights
- Potential water rights
- Historical and cultural ORVs
- Private property rights
- Private property access
- Roads up on the rim (existing legal access)
- Endangered and sensitive fish ORV

#### Management Recommendations: Wild & Scenic Suitability

The group unanimously agreed to recommend that the segments be found “not suitable” for Wild & Scenic status because of concerns about the segments’ eligibility and manageability and the potential for a suitability finding to bring negative impacts to private property rights, water rights, grazing rights and historical and cultural ORVs. In addition, the group determined that fish and recreational ORVs are already adequately protected by reservoir operations, existing water rights upstream and downstream, and the presence of endangered fish and the attendant Recovery Program that together assure adequate flows. The group recommended that BLM take additional action to safeguard historical and cultural ORVs, as well as allow recreational prospecting. Additional details on each of these points are provided below.

#### *Concerns about Segment Eligibility and Manageability*

Members of the group questioned whether the degree of modification to these segments in the form of rip-rap and irrigation diversions really qualified them to be eligible for inclusion in the National Wild & Scenic Rivers System. Concern was also raised about the railroad running along the segments: if the underlying property is privately owned by the railroad, it may drop the ownership of the segments’ banks below a reasonable eligibility threshold. Even if the railroad is on BLM-managed property, the degree of railroad control over their rights of way would impede management of the corridor by the BLM. However, the railroad’s ability to limit access across their tracks inherently reduces public access, thereby providing additional indirect management of lands along the railroad and river segments from Whitewater to Delta.

### *Negative Impacts of Suitability*

The group identified the following negative impacts from a potential suitability finding:

- Negative private property impacts. These concerns were based upon legal opinions received by landowners who have land adjacent to these river segments:
  - Concerns about BLM control extending to the high water mark of the river even on segments where BLM owns only one bank.
  - Concerns that an involuntary and unwelcome scenic easement may be imposed on adjacent landowners as reportedly occurred in other areas.
- Negative water rights impacts from a suitability finding:
  - Concerns about ability to maintain and/or modify existing diversion infrastructure.
  - Increased risk and cost associated with securing required federal permits for any new upstream depletions.
  - Potential limitations on future water development options or water use changes, including exchanges of water rights through a “suitable” reach.
- Negative impacts on grazing rights:
  - Precedents exist for grazing rights to be challenged on the banks of Wild & Scenic streams.
- Negative impacts on historical and cultural ORVs from a suitability finding:
  - Increased publicity would increase visitation and attendant vandalism, as well as unintentional damage.

The concerns about private property and grazing rights impacts are over the long term, looking into the future, especially upon permit renewal. While current BLM managers may state that these rights will not be affected, the way the law is written leaves open the possibility that land owners and grazing rights holders could be affected should a third party sue, forcing the BLM to assert additional control of both sides of a river segment.

### *Existing Protections*

The group determined that fish and recreational ORVs for the segment are already protected by the adjacent designated Wilderness and the following conditions that regulate the river’s flows:

- Downstream senior water right held by Redlands Water & Power Company and the flows assured by Aspinall Unit operational commitments concerning release of stored water necessary to operate the Redlands fish passage.
- Aspinall Unit operations to provide necessary flows for two species of fish listed as endangered under the Endangered Species Act.
- Aspinall Unit flows to mitigate impacts of depletions associated with the federal Dallas Creek and Dolores projects.
- Upstream Black Canyon National Park water right, guaranteeing minimum flows of 300 cubic feet/ second and seasonal flows that mimic a natural hydrograph based on annual snowpack and runoff projections.

Additional protections are also provided by the Dominguez Canyons Wilderness Area, which touches the banks of these segments and the water rights within the Wilderness area assured by the enabling legislation. Additionally, the Gunnison River segments are totally encompassed

within the Dominguez-Escalante NCA boundaries, eliminating the need for additional protection and redundant management and their associated costs.

#### Management Recommendations: Other Measures

The group unanimously agreed that the BLM should implement the following additional measures to enhance protections of historical and cultural ORVs:

- Conduct accurate and proper recording to preserve scientific data.
- Invite and recruit volunteer site stewards to monitor the sites and report problems to BLM (once it was clarified that volunteers would not do any enforcement themselves; it was noted that outfitters are currently the only ones doing this).
- Enforce existing protections.
- Refrain from publicly identifying locations.

The group also had an extensive discussion on recreational prospecting, which is very important to some for its recreation value, but important to many for its historical link to the development of our country. Recreational prospectors who participated in the group made the case that the current limitations on the use of mechanized equipment are overly burdensome.

#### **Rose Creek and Big and Little Dominguez Creeks, Segments 1 and 2**

##### Activities and Attributes that are Important to Maintain

The group listed the following activities and attributes as important to protect in these stream corridors:

- Water rights.
- Recreational and cultural ORVs: it was noted that these can come into conflict, with additional visitors leading to more vandalism and unintentional damage, as when people touch rock paintings and damage them with the oils from their skin.
- Trail rights (including for livestock transit).
- Grazing.
- Ability to maintain ponds, fencing and other grazing infrastructure.

##### Management Recommendations: Wild & Scenic Suitability

The group unanimously agreed to recommend that the segments be found “not suitable” for Wild & Scenic status because of the same potential impacts to water and grazing rights listed for the Gunnison River and because:

- All the ORVs except for the cultural ORV are already protected by designated Wilderness and existing management.
- Big and Little Dominguez Creeks’ flow-related values are specifically protected in the enabling legislation for the Dominguez Canyons Wilderness Area.
- The Colorado Water Conservation Board holds existing in-stream flow rights and has filed for additional in-stream flow rights that comprise the entire flow of the creeks minus a limited, future development allowance. The combination of these instream flow rights will be protective of the wildlife ORV and the activities listed above.
- A Wild & Scenic suitability finding would hurt, rather than protect, the cultural ORV, as increased publicity would lead to more visitors, with attendant vandalism and unintentional damage.

- A suitability finding would slow down BLM management decisions because of consultation requirements that would be required.
- Large irrigation dams, impoundments and diversions render the segments unsuitable.

#### Management Recommendations: Other Measures

The group unanimously recommended the same tools to protect the cultural ORV as recommended for the Gunnison, with additional comments that:

- BLM could improve signs and provide additional protections on a site-specific basis (for example, placing rocks near rock art as a barrier to prevent cattle from rubbing on them).
- When recreational and cultural ORVs come into conflict, site-specific management is needed to ensure protection of both ORVs, with a case-by-case determination about which value should be prioritized.

### **Cottonwood and Escalante Creek, Segments 1 and 2**

#### Activities and Attributes that are Important to Maintain

The group identified the following activities as important to maintain:

- Agriculture: all agricultural activities, including orchards, crops, and grazing.
- Livestock transit
- Utility corridor (including access for maintenance of power lines)
- Well maintained and used roads.
- Fishing
- Hunting
- Water rights
- Potential water rights
- Recreational ORVs
- Private property rights
- Private property access

The group also concluded that the Wildlife ORVs listed for these segments in the Wild & Scenic eligibility report (peregrine falcons and river otter) should be eliminated, because they are not supported by recent evidence, as confirmed by CDOW.

#### Management Recommendations: Wild & Scenic Suitability

The group unanimously agreed to recommend that the segments be found “not suitable” for Wild & Scenic status because of the same potential impacts to private property, water and grazing rights listed for the Gunnison River segments and because:

- There is a high level of private ownership on Escalante Creek, with attendant impacts on private property rights and feasibility of management.
- Numerous stream alterations, including diversion dams, headgates, impoundments, rip rap and channeling make the Escalante Creek segments non-suitable.
- Vegetation ORVs on Escalante Creek, Segment 1 are already protected by an Area of Critical Environmental Concern (ACEC) and in-stream flow rights held by the Colorado Water Conservation Board.
- Conditions for flow-dependent ORVs on Escalante Creek are controlled by operation of reservoir releases by water rights holders; current operations benefit ORVs, but BLM has no way of managing this.
- Cottonwood Creek is already protected by its remoteness and difficult access, as well as an existing in-stream flow right held by the Colorado Water Conservation Board.
- The stream segments are entirely within the boundaries of the Dominguez-Escalante NCA, which affords adequate protection without redundant and costly management.

Management Recommendations: Other Measures

The group did not identify additional measures that should be put in place for these segments, and generally agreed that it was desirable not to have additional layers of management.

**Concluding Comments**

In summary, the group felt that with the multiple layers of protection currently in place, it is not necessary or desirable to place additional restrictions or risks on private property rights, including water rights and grazing rights, in order to maintain the values that make these stream corridors special environmental and community assets. It is appropriate, however, to seek ways to protect the special features of these stream corridors, particularly cultural artifacts, in the face of increasing recreational use. Stakeholders are confident this can be effectively and efficiently accomplished without a “suitability” finding on any of the subject stream segments. Further, stakeholders recognize and affirm their interest in adequate and appropriate protections and their willingness to work with BLM on an on-going basis to accomplish these protections in order to assure responsible multiple use of the resource.

The stakeholder group desires to maintain BLM management at the local level with the ability to have flexibility in their decisions based on seeing the resources first hand, rather than having the eligible stream segments managed via inflexible federal law crafted in Washington, D.C. The group also desires to restrict the federal government from obtaining any water rights associated with a Wild & Scenic Rivers designation.

Finally, the stakeholder group participants want to express their appreciation for the considerable support provided by BLM staff throughout the process to help the participants understand the Wild & Scenic Rivers evaluation process. Please share this letter with all BLM personnel involved with making the Wild & Scenic Rivers Act suitability determination.

Sincerely,  
Gunnison Basin Wild & Scenic Rivers Stakeholder Group



**Olen Lund**  
Delta County Commissioner, District #3



**Kenyon E. McGuire**  
Terror Ditch and Reservoir Company



**Mike Berry**  
Tri-County Water Conservancy District



**Eugenie M. McGuire**  
Terror Ditch & Reservoir Company

*Signatures continued on following page.*

**Dick Miller**

My signature represents that of myself, Scott Miller, John and Beth Wool, Kent Davis, Alan Malcolm and Dave Abbott who are all in association with the Escalante Ranch.

**Eric Kuhn**

General Manager,  
Colorado River Water Conservation District

**Cary Baird\***

Baird & Associates, Whitewater

**Bill Pease\***

Prospector, Hunter and Fisherman

**Robert Gill\***

Ranch Manager, Bear Ranch, LLC

**Steven R. Lewis\***

Concerned Citizen, Prospector

**Marty Genereaux\***

Centennial Canoe Outfitters, Inc.

**Thomas Alvey\***

North Fork Water Conservancy District

**Betty Oglesby\***

**Dave Upchurch\***

Landowner

**Richard W. Connell**

Director, Member Services  
Colorado Farm Bureau

**Eric Trommer\***

New Leaf Fruit  
Landowner on Gunnison River

**Mike Wilson\***

Thunder Mountain Wheelers

**Steve Weist\***

Sub RAC Member of BLM Resource  
Management Planning Process

**Doug Atchley\***

Landowner

**Oscar Massey\***

Landowner

**Roger Bentley\***

Landowner

**Dick Steele\***

- Western Colorado Chapter of the Gold Prospectors Association of America
- Colorado Mule Deer Association
- Colorado Sportsmens Wildlife Fund
- Western Colorado Sportsmens Council

**Shelby Bear\***

SCRAC Subgroup

**Scott Ensley\***

Landowner, outdoorsman

*\*Permission to list as signatory provided by email or phone.*

cc: Catherine Robertson, Field Manager, BLM Grand Junction Field Office  
Barbara Sharrow, Field Manager, BLM Uncompahgre Field Office