



MONTROSE COUNTY
BOARD OF COUNTY COMMISSIONERS
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March 21, 2019

Grand Mesa, Uncompahgre & Gunnison National Forests,
Attn: Plan Revision Team
2250 S. Main St.
Delta, CO 81416.

Re: Wild and Scenic River Considerations in GMUG Plan Revision

Plan Revision Team:

The Montrose County Board of County Commissioners is providing the following comments with regard to the Wild and Scenic Rivers Act considerations being undertaken as part of the GMUG plan revision process.

1. Regulatory Burden Associated with Suitability Analysis

The Montrose County Board of County Commissioners is not in favor of Wild & Scenic eligibility status for stream segments within our County, due to the unnecessary regulatory burden it would place on our citizens and property owners. A determination of eligibility for a stream segment obligates the Forest Service to manage that area to preserve the Outstanding Resource Values (ORVs) that were identified for that stream segment. All the segments in our County are proposed for "Wild" classification, which is reserved for areas "free of impoundments and generally inaccessible except by trail... that represent vestiges of primitive America."¹ Therefore, we anticipate that Forest Service management for these areas would prioritize the preservation of existing conditions, especially unimpaired flow of surface waters and an absence of permanent human presence such as roads or water management appurtenances.

We understand that Eligibility determination is not the final word in the process, and that an Eligible segment could be released from restrictive management after a Suitability Determination

¹ Public Law 90-542; 16 U.S.C. 1271 et seq. Wild and Scenic Rivers Act of 1968

is completed. However, the fact remains that any proposed action that would affect conditions along an Eligible segment would require the lengthy and arduous process of Suitability Determination prior to approval. This requirement represents, in and off itself, a restrictive regulatory burden on our citizens who depend on the land to support their livelihood, and it represents a de facto restriction of access to these areas.

2. Consideration of In-Stream Flow

The supporting materials do not indicate that the Forest Service has evaluated or considered the availability of unappropriated water in each of the proposed segments. Many or most of the identified ORVs depend upon the continued presence of free-flowing water in the stream, but in many cases the water that supports those ORVs is only present when existing water users are not diverting. It is inappropriate to base an eligibility determination on an ORV that may not persist due to changing operations or demands of water users as they exercise their existing rights of diversion.

The specific concerns with existing water appropriations and levels of guaranteed in-stream flows are addressed for each segment individually. However, it is the general position of Montrose County that any ORV identified which depends on water availability (including Scenery, Recreation, Fish, Wildlife, or Botanic), should only be considered if existing in-stream flows have been appropriated which are sufficient to support the preservation of that ORV in perpetuity.

As an example, GV-3 Kelso Creek has been determined as potentially eligible based solely on the Fish ORV (i.e., the presence of a genetically-pure population of native cutthroat trout). However, Kelso Creek is fully appropriated by existing irrigation diversion rights, with no instream flow guaranteed, and calls have been placed on junior water users in both 2018 and 2017², indicating that water availability is insufficient in some years to meet existing demand³. Therefore, the Forest Service cannot dependably manage this stream segment to preserve the fish population, since the rights of existing water users would pre-empt such management. Since the Forest Service does not have the authority to manage this segment sufficient to preserve the identified ORV, the ORV should not be considered valid. Any other determination represents an overreach of the Forest Service's authority. A similar examination of available water and existing water appropriations should be completed for all segments prior to making final Eligibility determinations.

3. Inconsistency with the Purpose of the Congressionally-Designated Areas, "Tabeguache" and "Roubideau"

The Colorado Wilderness Bill of 1993⁴ created the Tabeguache and Roubideau Areas (see Sec. 9 of the bill) as distinct from designated wilderness because, unlike the wilderness designated in

² Colorado Department of Natural Resources, CWCB/DWR. Decision Support Systems, Structure Call Analysis. Available at <https://dnrweb.state.co.us/cdss/AdministrativeCalls/StructureCalls>. Accessed March, 2019.

³ Capesius, J.P., and Stephens, V. C., 2009, Regional Regression Equations for Estimation of Natural Streamflow Statistics in Colorado: U. S. Geological Survey Scientific Investigations Report 2009-5136, 32 p.

⁴ 107 Stat. 756 - Colorado Wilderness Act of 1993

the bill, the Areas did not encompass the headwaters of their respective drainages. Congress made the distinction explicit in the Act, stating that “the lands designated as wilderness by this Act are located at the headwaters of the streams and rivers on those lands, with few, if any... opportunities for diversion, storage, or other uses of water occurring outside such lands” (Sec. 8(a)1(A)). Since the Tabeguache and Roubideau Areas did not encompass the headwaters of their respective streams, the Act did not designate them as Wilderness but rather as Special Areas, and stated explicitly that “Nothing in this Act shall constitute or be construed to constitute either an express or implied reservation of any water or water rights with respect to the ...Roubideau and Tabeguache Areas” (Sec. 8(b)2(A)). This distinction was made to preserve the ability for water development in the headwaters of these streams.

A Wild & Scenic designation on Roubideau Creek, Tabeguache Creek, or their tributaries would have the effect of curtailing water developments in the headwaters above these Areas. Any future development would be contrary to a Wild & Scenic designation, and could potentially be denied by the Forest Service. Even a determination of Wild & Scenic Eligibility, as proposed in the current draft report, would significantly discourage development since a Suitability Determination would have to be prepared prior to any water development being allowed. This curtailment of potential future water development would be contrary to the process and values of these areas as designated through Colorado Wilderness Bill process, and the would explicitly violate the intention of Sec. 8(b)2(A). Montrose County opposes Wild & Scenic eligibility for river segments within the Tabeguache and Roubideau Areas on this basis, including segments N-4, 14, and O-1.

4. Unnecessary Duplication of Regulation

The majority of the proposed segments are within existing protective designations, specifically the Tabeguache and Roubideau Areas. These designated Areas already provide a restrictive and protective management regimen that encompasses the proposed stream courses and a 0.5-mile buffer corridor that was considered in the draft Eligibility Report. The ORVs identified for these segments include Scenery, Heritage, Geology, and Botanic: the protections established for these Areas by the Colorado Wilderness Bill of 1993⁵ tier to the Wilderness Act⁶ and includes strict prohibitions that are sufficient to protect these ORVs. For example, the Scenery ORV is sufficiently protected with the Tabeguache Area, given that roads, motorized equipment are prohibited, minerals have been withdrawn from appropriation, and no additional grazing or logging is reasonable feasible.

The Wild and Scenic River Act is intended to “preserve” and “protect” selected rivers as a “complement to the established national policy of dam and other construction”; that goal of preservation and protection has already been achieved for the segments within the Tabeguache and Roubideau Areas, and would not be improved by a WSR eligibility determination.

In the case of the proposed segments within the Escalante Creek drainage (GV-1, GV-2, GV-3), the only ORV identified is the presence of a genetically-pure greenback cutthroat trout (GBCT) population: the GBCT is currently listed as threatened under the Endangered Species Act (ESA). Montrose County feels that the ESA listing is an appropriate and sufficient mechanism of

⁵ Ibid.

⁶ Public Law 88-577 (16 U.S.C. 1131-1136) – The Wilderness Act of 1964

protection for the species, and that further restrictions enacted under the WSR Act are an unnecessary and burdensome duplication of protective regulations. Forest management plans uniformly specify protection of ESA-listed species in their management guidelines; the current GMUG plan⁷ stipulates that Forest Service compliance would assure no adverse effect to listed species, and we assume that any final revised plan would include similar language. Therefore, the Forest Service is already committed by regulation and legislation to preserving GBCT and their habitats within the Escalante Creek segments. WSR designation would not provide additional protection, and is therefore not justified; further, the Forest Service does not apply additional land-use restrictions every time a threatened species is known to be present, and arbitrarily using this condition just for this population of GBCT seems arbitrary and capricious.

In addition, we would like to clarify that the Forest Service is referring not to GBCT (*Oncorhynchus clarkii stomias*) but actually to green lineage Colorado River cutthroat trout (*Oncorhynchus clarkii pleuriticus*, GL-CRCT). Recent genetic work⁸ and phenotypic analysis⁹ have confirmed GBCT as the native cutthroat trout species of the South Platte basin, and has further confirmed that the GL-CRCT is a distinct subspecies historically confined to the Colorado, Gunnison and Dolores Basins. Although the U.S. Fish and Wildlife Service (USFWS) currently manages all native Colorado cutthroat trout populations as “threatened” at this time until additional genetic research can be finalized, current recovery efforts are focused on replicating the native South Platte Basin GBCT in hatcheries and re-establishing those historic populations¹⁰. If the USFWS reconsiders the status of the GL-CRCT and its inclusion in the ESA protections in a future listing decision, Montrose County County wants to clarify that the South Platte GBCT is not present in this location.

While GL-CRCT is widespread throughout the streams of the GMUG, it is not abundant^{11,12}. In fact, the WSR review notes derived from internal Forest Service meetings specifically cite the existence of “conservation populations of CRCT” on other stream segments, but states that these populations “do not meet the threshold of an ORV.” Segments where CRCT are present but were not deemed sufficient to support an ORV include the North Fork of Tabeguache, as well as Elk Creek and Deep Creek in other regions of the Forest Planning Area. It is not clear why the fish population in the Escalante Creek segments justifies an ORV determination, when other populations in nearby streams do not.

⁷ U.S. Forest Service, Rocky Mountain Region. 1991. Final Supplemental Environmental Impact Statement for the Amendment of the Land and Resource Management Plan, Grand Mesa, Uncompahgre, and Gunnison National Forests. Delta, CO.

⁸ Metcalf et al. 2012. Historical stocking data and 19th century DNA reveal human-induced changes to native diversity and distribution of cutthroat trout. *Molecular Ecology* 21:5194-5207.

⁹ Bestgen, K. R., K. B. Rogers, and R. Granger. 2013. Phenotype predicts genotype for lineages of native cutthroat trout in the Southern Rocky Mountains. Final Report to U. S. Fish and Wildlife Service, Colorado Field Office, Denver Federal Center (MS 65412), Denver, CO. Larval Fish Laboratory Contribution 177.

¹⁰ U.S. Fish and Wildlife Service, 2016. Western Native Trout Status Report, 2016 – Greenback Cutthroat Trout.

¹¹ Hirsch, C.L., S.E. Albeke, and T.P. Neslwer. 2005. Range-Wide Status of Colorado River Cutthroat Trout (*Oncorhynchus clarkii pleuriticus*). USDA Forest Service, Glenwood Springs, CO.

¹² Young, M.K. 2008. Colorado River Cutthroat Trout (*Oncorhynchus clarkii pleuriticus*): a technical conservation assessment. [Online]. USDA Forest Service, Rocky Mountain Region. Available: <http://www.fs.fed.us/r2/projects/scp/assessments/coloradorivercutthroattrout.pdf>.

Therefore, Montrose County objects to the determination of Eligibility for the Escalante Creek segments (GV-1, GV-2, GV-3) on two separate grounds. One, sufficient protections already exist for the single ORV identified for these segments, since the fish is already listed under the ESA and the species and its habitats are additionally protected by the Forest Service through Forest Plan guidelines. Two, there is inconsistent application of the Fish standard, where conservation populations of native cutthroat trout are judged to constitute an ORV in this drainage but are not in other nearby drainages.

SPECIFIC PROPOSED SEGMENT COMMENTS

1. N-4 North Fork Tabeguache Creek

North Fork Tabeguache Creek has a single identified ORV, Scenery, upon which the draft Eligibility determination was made. However, North Fork Tabeguache Creek is entirely within the existing Tabeguache Area, which already provides high levels of protection for the scenery through restrictive management guidelines prescribed by the Wilderness Act. There is no identified mechanism by which the scenery along this stream segment would be negatively impacted under existing management, and the Tabeguache Area designation would not be affected by the GMUG Plan Revision process (see General Comment #4 for a more in-depth discussion). In summary, Montrose County feels that although the scenery along North Fork Tabeguache Creek may be present in outstanding condition, WSR designation is neither necessary nor appropriate to protect those values.

2. 14 Tabeguache Creek

Tabeguache Creek has two identified ORVs, Scenery and Heritage, upon which the draft Eligibility determination was made. However, Tabeguache Creek is entirely within the existing Tabeguache Area, which already provides high levels of protection for the landscape through restrictive management guidelines prescribed by the Wilderness Act. There is no identified mechanism by which the scenery along this stream segment would be negatively impacted under existing management, and the Tabeguache Area designation would not be affected by the GMUG Plan Revision process (see General Comment #4 for a more in-depth discussion). In summary, Montrose County contends that although the scenery along Tabeguache Creek may be present in outstanding condition, WSR designation is neither necessary nor appropriate to protect those values.

With regard to the Heritage ORV, the resource is protected not only by the congressional Area designation which drastically curtails potential sources of disturbance, but also by the National Historic Preservation Act (NHPA). The Forest Service internal notes indicate that the Heritage resource along the Tabeguache Creek segment is well researched, has been excavated, and has demonstrated scientific importance. Given that level of knowledge about the sites, it is reasonable to expect that any proposed action would include a robust consultation under Section 106 of the NHPA, and that accidental impacts to resources are unlikely to occur. In this case, Montrose County contends that although the Heritage resource along Tabeguache Creek may be present in outstanding condition, WSR designation is not necessary to protect those values, given the existing legislation that protects the area and which would be unaffected by any change in the Forest Plan.

3. O-1 Roubideau Creek & Tributaries

Roubideau Creek and its tributaries all share the same identified ORVs in the draft Eligibility report: Scenery, Geology, and Botanic. Roubideau Creek and its tributaries are entirely within the existing Roubideau Area, which already provides high levels of protection for these identified ORVs through restrictive management guidelines prescribed by the Wilderness Act. There is no identified mechanism by which the ORVs identified for these streams would be negatively impacted under existing management, and the Roubideau Area designation would not be affected by the GMUG Plan Revision process (see General Comment #4 for a more in-depth discussion). Montrose County contends that although the identified resources may be present in outstanding condition within the Roubideau Area, WSR designation is neither necessary nor appropriate to protect those values.

The determination of ORV for Botanic within Roubideau Creek is based on Colorado Natural Heritage Program (CNHP) biodiversity rankings. CNHP ranks Roubideau Creek as B2 for Biodiversity, indicating Very High Significance.¹³ GMUG has determined that rankings of B1 and B2 constitute meeting the standard for a Botanic ORV.¹⁴ However, a large component of CNHP's B2 ranking for Roubideau Creek is based on the presence of "good occurrences of the globally-imperiled good-neighbor bladderpod."¹⁵ The good-neighbor bladderpod is a xeric species confined to exposures of shale and sandy soils dominated by salt desert scrub and sagebrush steppe. These conditions are nearly or completely absent from the portion of Roubideau Creek within the GMUG boundary, and the identified location of the plant is approximately 8 miles downstream from the GMUG boundary. In addition, the plant is not dependent on riparian habitat or water availability provided by Roubideau Creek. Therefore, one of the major vegetation components that CNHP used to determine the B2 ranking is absent from Roubideau Creek in the portion that the Forest Service is evaluating, and is not dependent on stream conditions even where it occurs in the drainage downstream. Therefore, it is inappropriate to make a determination of ORV for Botanic in this section.

Finally, a number of the tributaries proposed for inclusion as Eligible segments are small drainage basins with minimal year-round flow. Given the minimal size of the streams, it is not realistic to claim that the Scenery or Geology ORVs are dependent on the preservation of these streams (see below for estimated flow conditions of the individual segments). Since the ORVs are already protected by the existing congressional Area designation, and since much of the identified resources exist independent of the free-flowing condition of Roubideau Creek and its tributaries, Montrose County contends that WSR designation is not an appropriate or necessary mechanism to protect those resources. WSR designation is intended to recognize and preserve "free-flowing streams and related adjacent lands that possess one or more of the [Outstanding Resource]

¹³ Lyon, P. et al, Colorado Natural Heritage Program. The Uncompahgre River Basin, A Natural Heritage Assessment. Prepared for Valley Land Conservancy, March 1999.

¹⁴ U.S. Forest Service, B. Duffy, pers. comm., March 5, 2019.

¹⁵ Lyons et al., pg 115

values...¹⁶ Segments that are reduced to a minimal flow for a significant portion of the year cannot reasonably be considered to have free-flowing characteristics, nor can they be considered to support outstanding values related to their flow.

a. O-1B Traver Creek

U.S. Geological Survey data suggest that average monthly flow is less than 1.0 cfs for five months of the year, and that in low flow conditions the Creek can drop below 0.2 cfs for up to 7 consecutive days¹⁷. Given the regular seasonal occurrence of low flows, it is unlikely that the Scenery and Geology in this stream segment is dependent on the free-flowing condition and persistence of these flows, and WSR designation is not an effective means of conservation.

b. O-1C Al Wright Creek

U.S. Geological Survey data suggest that average monthly flow is less than 1.0 cfs for six months of the year, and that in low flow conditions the Creek can drop below 0.2 cfs for up to 7 consecutive days¹⁸. Given the regular seasonal occurrence of low flows, it is unlikely that the Scenery and Geology in this stream segment is dependent on the free-flowing condition and persistence of these flows, and WSR designation is not an effective means of conservation.

c. O-1D Terrible Creek

U.S. Geological Survey data suggest that average monthly flow is less than 1.0 cfs for five months of the year, and that in low flow conditions the Creek can drop below 0.2 cfs for up to 7 consecutive days¹⁹. Given the regular seasonal occurrence of low flows, it is unlikely that the Scenery and Geology in this stream segment is dependent on the free-flowing condition and persistence of these flows, and WSR designation is not an effective means of conservation.

d. O-1F Bull Creek

U.S. Geological Survey data suggest that average monthly flow is less than 1.0 cfs for five months of the year, and that in low flow conditions the Creek can drop below 0.2 cfs for up to 7 consecutive days²⁰. Given the regular seasonal occurrence of low flows, it is unlikely that the Scenery and Geology in this stream segment is dependent on the free-flowing condition and persistence of these flows, and WSR designation is not an effective means of conservation.

¹⁶ Public Law 90-542; 16 U.S.C. 1271 et seq. Wild and Scenic Rivers Act of 1968, Sec. 2(b)

¹⁷ Capesius, J.P., and Stephens, V. C., 2009, Regional Regression Equations for Estimation of Natural Streamflow Statistics in Colorado: U. S. Geological Survey Scientific Investigations Report 2009-5136, 32 p. Accessed via USGS StreamStats, March 2019.

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ *ibid*

We thank you for your consideration of these comments and we look forward to continued dialogue throughout the planning process.

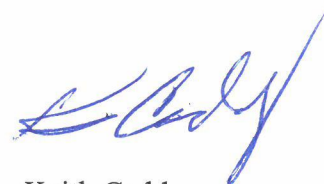
Respectfully,



Sue Hansen
Chair



Roger Rash
Vice-Chairman



Keith Caddy
Commissioner