

# DELTA COUNTY, COLORADO

Board of County Commissioners

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Dist. 1: Mike Lane - Dist. 2: Don Suppes - Dist. 3: J. Mark Roeber

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March 26, 2019

United States Forest Service  
Grand Mesa, Uncompahgre and Gunnison National Forests  
Attn: Plan Revision Team  
2250 South Main Street  
Delta, CO 81416

## GENERAL COMMENTS

### 1. Regulatory Burden Associated with Suitability Analysis

Delta County 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." 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 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 Delta 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 2017, indicating that water availability is insufficient in some years to meet existing demand. 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 1993 created the Tabeguache and Roubideau Areas (see Sec. 9 of the bill) as distinct from designated wilderness because, unlike the wilderness designated in 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 would be reasonably expected to 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). Delta 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 1993 tier to the Wilderness Act 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). Delta County feels that the ESA listing is an appropriate and sufficient mechanism of 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 plan 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 work and phenotypic analysis 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 populations. If the USFWS reconsiders the status of the GL-CRCT and its inclusion in the ESA protections in a future listing decision, Delta 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. 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.


Therefore, Delta 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.

Sincerely,

Delta Board of County Commissioners

  
Don Suppes, Chair

  
J. Mark Roeber, Vice-Chair

  
Mike Lane, Commissioner