

Water Protection Work Group Recommendations and Minimum Requirements
for the Lower Dolores River NCA Legislation
January 18, 2016

The Water Protection Work Group (WPWG) includes representatives of adjudicated water users, MVI, DWCD, San Juan Basin Farm Bureau, Southwest Colorado Livestock Association, Montezuma County, and Dolores County. Prior public promises that the NCA legislation “is not about taking water” are appreciated and allow us to move forward with some assurance. The WPWG seeks to protect the municipal water supplies to residents in Montezuma County, Dolores County, the City of Cortez and the town of Dove Creek, and agricultural water supplies essential to the economy of our region, from any consequences arising from legislation to enact a National Conservation Area on the Lower Dolores River below McPhee Dam. To accomplish its objectives, the WPWG submits the following recommendations and specific minimum requirements to David Robbins, Esq.:

General Recommendations

WPWG participants believe that any NCA legislative proposal must provide adequate protection for both the environment in the San Juan Basin and its water users. A narrow focus on the water needs of the lower Dolores River must not be offered by the NCA Proposal. The legislation cannot overlook 125 years of beneficial San Juan Basin water usage or the San Juan Basin riparian environment created by that use.

Ambiguity and conflicting provisions must be left out of the NCA draft legislation.

The Act should include a preamble sufficient to place the Act into context, given the unique characteristics of our region. The Dolores River is the sole source of water for much of Montezuma and Dolores Counties that are outside of the Dolores River basin, as well as the water supply for the Lower Dolores NCA area. This differentiates our region’s hydrology, history, water sources and water uses from other regions in Colorado and the United States. (A suitable preamble is being written and will be forwarded to Attorney Robbins after committee approval.)

Since the Dolores River is being removed from Wild & Scenic Rivers Act (WSRA) consideration, prior determinations, if any, regarding “Outstanding Remarkable Values” (ORVs) shall not be a factor in managing the NCA.

The proposed advisory committee, which was designated in the draft legislation, as well as the adaptive management monitoring team that was envisioned, require thorough definition. Enumerating specific water dependent management objectives in the Act, will unnecessarily interfere with community input at the management planning stage. Those objectives may also create unacceptable ambiguity in the legislation, requiring that all stakeholders would have to provide further conditions and details for inclusion into the Act. The Act will include land-use management requirements that are beyond the scope of our work so long as they do not impact water. While community education and debate of those topics is important to many stakeholders, including members of our work group, we believe those aspects of the NCA should proceed independently from the water discussion.

Specific Minimum Requirements

- 1) The Act must be written to explicitly prohibit any federal express or implied water rights on the Dolores River;
- 2) The Act must release the Dolores River, upstream from the confluence with the San Miguel River, from consideration under the Wild & Scenic Rivers Act (16 USC Chapter 28). The Act must also provide that no WSRA water right impacts associated with the Dolores River below the confluence of the San Miguel River can reach upstream into the water rights protected in this Act.

- 3) Nothing in the Act nor any management plan under the Act can affect, limit or supersede any water right or interest in water existing under Colorado State law prior to the act, or arising under Colorado State law subsequent to the Act.
- (4) Neither the Act nor future management of the NCA shall operate, permit, or be interpreted to affect the Dolores Project or the operation of McPhee Reservoir in any way.
- 5) Water allocations and associated contracts from the Dolores Project must not be addressed in the Act, nor shall they be affected by the Act or future management of the NCA under the Act.
- 6) Neither the Act, nor future management of the NCA, shall modify any of the existing obligations of the Commissioner of Reclamation with respect to flows and releases from McPhee Dam nor, introduce any new considerations for future policy.
- 7) “Large Scale Water Projects” must be defined to exclude all existing projects, diversions, structures, and water rights. This definition in the Act must also be written so that the Act will not impact or influence future projects or water rights from moving forward through Colorado’s state water law system, as long as no individual project or right exceeds 50,000 AF of annual use.
- 8) The Act shall require that any management plan shall consider environmental impacts, if any, to ground water levels, existing seeps and springs, wildlife, vegetation of all kinds, and aquatic life in the area outside of the NCA boundaries, including without limitation, the San Juan River basin.
- 9) Neither the Act nor future management of the NCA can address or attempt to modify the “2000 Separate Operating Agreement” or the 1996 Environmental Assessment, which each speak for themselves.
- 10) The Act shall provide that either (A) the management objectives of the NCA exclude fish and water, or (B) to the extent that the management objectives of the NCA now or in the future relate to fish or water, neither the Act, nor any future management plan shall ever be interpreted to impact or influence releases or spills from McPhee Dam, the waters upstream from McPhee Dam, or the Dolores Project.
- 11) In managing the NCA and adopting future management plans, consultation between all affected federal agencies shall be required with respect to all matters potentially affecting fish populations in the Dolores River and any such actions shall be based solely on the best available scientific and commercial data available. This shall be in addition to the expected input from the advisory committees.

The foregoing has been unanimously approved by the Water Protection Work Group participants:

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