



February 29, 2000

Board of Directors
Upper Gunnison River Water Conservancy District
275 S. Spruce Street
Gunnison, CO 81230

Dear Friends:

Over 25 years ago Colorado law provided for the state (Colorado Water Conservation Board) to establish and hold water rights for minimum in-stream flows to "preserve the environment to a reasonable degree". Only the state can appropriate and hold these in-stream flow rights, on behalf of the people of Colorado. In the early '80's the County facilitated the local public process whereby the CWCB established such rights/flows for many segments of the creeks and streams in Gunnison County, and others have since been attained here. Over time, the state has obtained in-stream flow rights covering over 8,000 miles of rivers and tributaries throughout Colorado. Still, some important stream segments in our county have not been addressed.

We understand that no state in-stream flow rights have been established in some key stream segments in Gunnison County – including, for example, the Gunnison River north of the City of Gunnison and along Tomichi Creek near the City. Others may be identified. It only seems sensible to work with the Colorado Water Conservation Board program to establish minimum in-stream flow rights where available and appropriate. These rights, when established, are junior in priority to existing rights to divert (for agriculture, municipal, domestic, industrial purposes, etc.) which are already duly appropriated and thus senior in time. They do help to assure that at least some water would flow in a stream, if over time further water claims/diversions occur. They could potentially put more lawful rights in place in our watershed, which would further reduce unappropriated water available, if any, should any trans-mountain project be proposed in the future. Further, to sustain the aquatic resources – the fishery – as well as scenic and recreational tourism, this matter is of importance.

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The County is willing to dedicate our support to the Upper Gunnison River District in this matter, which is very important to our future.

Please let us know your general views on proceeding in this matter. If you share this concern, we suggest our staffs meet to discuss collaboration and how we could proceed together in cooperation with the CWCB and other appropriate entities.

Sincerely,



John DeVore
County Manager,
on behalf of and at the direction of the Board of County Commissioners

enclosure

cc: Dan Merriman
Mayor and Councilpersons,
City of Gunnison,
Town of Crested Butte,
Town of Mt. Crested Butte.

Colorado's Instream Flow Program was created in 1973 with the passage of Senate Bill 97. It recognized that water could be "beneficially used" within the stream bed and banks for the purpose of preserving the natural environment to a reasonable degree. Prior to this time, the law did not recognize instream use as a "beneficial use".

The Colorado Water Conservation Board (CWCB) is vested with the authority to appropriate waters of natural streams and lakes in amounts that are determined to be necessary to preserve the natural environment to a reasonable degree.

The CWCB requests recommendations for instream flows or for minimum lake levels from:

- The Colorado Division of Wildlife
 - The Colorado Division of Parks and Outdoor Recreation
 - Agencies of the U.S. Department of Agriculture and the U.S. Department of Interior
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The recommending agency provides information to the CWCB regarding the natural environment on each stream recommended for an instream flow appropriation. Traditionally, the presence of a cold water fishery has been used to characterize the natural environment and the recommended amounts of water are based on preserving the existing fishery.

The CWCB presently holds instream flow water rights on over 7900 miles of stream, and minimum lake level decrees on 485 natural lakes in the state.

The CWCB protects these water rights by participating in Water Court proceedings.



In addition to filing for new water rights, the CWCB also has the ability to *acquire* water, water rights, or interests in water from private individuals or governmental entities to provide the flows necessary to preserve the natural environment to a reasonable degree.

This approach has been used to provide for instream flows in the following cases:

- 137 The City of Boulder has donated senior water rights to the CWCB to maintain instream flows in Boulder Creek.
 - 137 The Nature Conservancy has donated senior water rights to the CWCB to protect instream flows in Boulder Creek and the Gunnison River through the Black Canyon National Monument.
 - 137 The U.S. Bureau of Reclamation, in cooperation with the CWCB and the U.S. Fish and Wildlife Service has agreed to release water from Ruedi Reservoir to provide flows for Endangered Fish in the Colorado River near Grand Junction.
 - 137 Several other water rights transactions are being investigated to provide protection for Endangered Fish in the Yampa River Basin.
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