

## Enviros weigh in on Black Canyon

*A show of support*

by Pete Sharp

Although it has been opposed by numerous other entities, five conservation organizations working together from across Colorado, including High Country Citizens' Alliance, will support the United States' application for quantification of previously granted general water rights for the Black Canyon of the Gunnison. Fulfilling the canyon's biological needs and a longstanding effort to keep basin water from mining interests and from flowing unnaturally east is the coalition's motive. Although HCCA generally supports the application, they do intend to negotiate to better pin down the amount needed by both the Black Canyon and ranchers in an effort to find enough water for both uses.

In order to ensure their ability to participate in water court proceedings, HCCA, Western Colorado Congress (WCC), Western Slope Environmental Resource Council (WSERC), the regional Wilderness Society office and the Law and Water Fund of the Rockies (The LAW fund) all have filed statements of opposition—the legal name for the form to be submitted by interested parties whether they will argue for or against the application.

The United States' application has encountered strong resistance within the ranching community upstream of the Aspinall stor-

Canyon if the quantification is granted. Seventy five percent of the water rights above the Aspinall Unit were acquired after 1933—most in 1941.

"The right was there and everyone knew it," commented HCCA's Executive Director Mark Heller in an interview Monday. "Entities have gotten used to the way things are, but now things are more complicated with more demands on the same amount of water including municipal, agricultural and power generation."

Heller emphasized the group's history of working with ranchers and their needs and the desire to continue to do so while addressing the purpose of an environmental group. He stated that the local environmental group wants both sides to get the water they need from the same finite supply of water.

"HCCA has had a long history of getting the best solutions for the basin in general and the people in it," added Heller. "But we are an environmental group; we understand the needs of the non-human world. This will require all to work closely and patiently with each other."

In 1933, the condition of the Gunnison River in the Black Canyon was one of sometimes raging, sometimes barely existent flows depending on the season since any controlling influence of the Aspinall Unit was not felt until the Blue Mesa Reservoir began

steadily increase and decrease from that one-day peak over a period of several days. The shoulder flow's purpose is intended to drown vegetation and the peak would wash it away.

Tara Thomas, Executive Director of WSERC, added, "Ensuring the biological health of the canyon should be at the top of the Park Service's priority list and we agree that more water may be needed to protect it properly."

"I'd like to know exactly how much water is needed by the park service and ranchers," said Heller.

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*"Is shoving the water down the Black Canyon toward Nevada better than sending it to Denver?"*

—John McClow

"We're beginning negotiations with incomplete information."

In an interview Tuesday, John McClow, attorney for Upper Gunnison River Water Conservancy District, responded, "It looks to me like an enormous amount of water. What they should get is enough water."

He added, "The flows they suggest would deprive ranchers during the height of irrigation season for the purpose of drowning trees in the Black Canyon. This would threaten the valley's agricultural heritage."



I age unit (Blue Mesa, Morrow Point and Crystal reservoirs) and from surrounding counties and other water rights holders since it was submitted to Water Division No. 4 of the District Court in February. More than 100 entities, starting with the Upper Gunnison River Water Conservancy District (UGRWCD) and including counties and individual water rights holders, have formally expressed their disapproval of the application in statements of opposition.

The Black Canyon of the Gunnison was given water rights when it was decreed a national monument in 1933; however, no specific amount of water was assigned. The current application seeks a certain amount of water, dependent on how wet or dry the year is, to restore conditions of the Black Canyon to levels present in 1933. Any entity which acquired rights after 1933, would be subject to a "call" from the Black

filling in 1965. Vegetation on the canyon floor was minimal because the rise and fall of water levels prevented seedlings from taking hold in the soil. However, with completion of the entire Aspinall unit in 1980, water flows were closely regulated and vegetative matter proliferated. The proposed flow rates are intended to closely simulate natural flows thereby eradicating new vegetation and their seedlings. In addition, according to the park service, the new flows would provide a better environment for native fish species.

The United States' application outlines what it believes the canyon is entitled to—a base flow of 300 cubic feet per second (cfs), with a shoulder season flow of 700 cfs in an average year from May 1 through July 25 and a one-day peak flow of 7,500 cfs in an average year which would have to

As for the trout environment, the park service claims that the increased flows would greatly benefit the population allowing it to prosper. Colorado Trout Unlimited Executive Director David Nickum agrees but not without concern.

"By and large, the natural flow would be beneficial to the fishery and canyon," said Nickum elaborating that the shoulder and peak flow's flushing action would minimize the potential for Whirling Disease washing the disease-causing worms from the sediment. However, the proposed ramping down rate of 400 cfs from peak flow could be detrimental.

"The drop in flow could strand trout so by ramping down at 250 cfs, fish would have time to find deeper water," added Nickum. "By being in the negotiations we hope to address this concern."

## on water application

A chief issue of HCCA and the other organizations is keeping basin water in the basin.

"Our concern is that water stays in the basin for agricultural or in-stream flows," commented Heller. "That it not be diverted out of basin or used to support development or mining."

According to WCC president Art Stephens, approval of the United States' application would allocate enough water to inhibit the feasibility of trans-mountain diversion.

"By protecting its water right, the Park Service's claim would play a major role in keeping valuable water within the Gunnison River basin," commented Stephens. "This application is about keeping the basin, including the Black Canyon, healthy and wet. By quantifying, it would present a further hindrance to trans-mountain diversion."

McClow agreed that, yes, it would prevent water from heading east, but the water would still be out of the basin.

"Is shoving the water down the Black Canyon toward Nevada better than sending it to Denver?" queried McClow.

McClow explained that sending water downstream is not the answer to preventing trans-mountain diversion. Because of the 1941 priority date for 75 percent of the basin's water rights, they are heavily protected.

He emphasized, "UGRWCD is concerned very much so with trans-mountain diversion. We will have to build in protections (in future agreements to prevent it)."

Heller expressed concerns that if the Park Service ends up with the water they ask for and it turns out to be more than is necessary, the Park Service could

subordinate or sell the water outright to ranchers who in turn could sell it to mining interests or to Front Range water districts. The water's 1933 "first in time, first in right" priority date would be part of the theoretical transfer trumping the 1941 right. McClow agreed but addressed the concern and difficulties inherent in such activity.

"If ranchers sell out, it's theoretically possible because water is property that can be sold," began McClow. "However, there are many rules in water law related to the transfer of water which would make it very difficult."

McClow explained that the party transferring the water would have to prove that such a transfer would not injure other water rights holders in the basin.

"If, for example, the Union Park Water Authority was to buy a rancher's rights they would intend to divert that water to the Front Range which would result in every junior water right being injured," added McClow.

Trans-mountain diversion is, as McClow put it, "100 percent consumptive" in that once the water is used by Union Park in this example, it's gone forever which injures downstream users. However, irrigation by senior rights holders is only 30 percent consumptive by comparison because eventually approximately 70 percent of the water drains back into the basin for further use.

"But Mark (Heller) is correct to be concerned about that," said McClow.

A final decision by the court is not expected for at least three years. During that time, HCCA and UGRWCD will be seeking answers to how much water is actually needed by all stakeholders.