

Summary of the Proposed Dolores River National Conservation Area (NCA)

September 2021

Purposes

The overarching purposes of the proposed National Conservation Area bill are to:

- Ensure protection of all identified Outstandingly Remarkable Values (ORVs).
- Respect and protect water rights, private property rights, the use of the Dolores Project and its allocations, and other historic uses.
- Develop an alternative to Wild and Scenic River suitability and potential designation.

Background

A proposed National Conservation Area (NCA) for the Dolores River from below McPhee Dam to Bedrock has been discussed for many years. In 2008 the Dolores River Dialogue, which is a coalition of diverse interests in the region, at the request of the U.S. Forest Service (USFS) and Bureau of Land Management (BLM), convened a broad-based community group called the Lower Dolores Plan Working Group. The charge to the group was to study pressing issues in the Dolores River corridor from McPhee to Bedrock. At that time the river had already been found suitable for a Wild and Scenic River (WSR) federal designation. The group was tasked with submitting a report to the public land managers to inform an update of the then 19-year old Dolores River Corridor Plan, which provides management direction for the river, and determine if any agreement could be reached for an alternative to a potential WSR designation.

The Lower Dolores Plan Working Group, through consensus agreement, decided to explore the concept of an NCA and appointed a small group (Legislative Subcommittee) to draft a proposal for further vetting. The Legislative Subcommittee included counties, water managers, conservation groups, landowners, recreationists, energy companies, and staff from the federal elected officials' offices (more specifics below).

This proposal has been brought forth in the spirit of the Dolores River Dialogue's Purpose Statement:

The DRD is a coalition of diverse interests, whose purpose is to explore management opportunities, build support for and take action to improve the ecological conditions downstream of McPhee Reservoir while honoring water rights, protecting agricultural and municipal water supplies, and the continued enjoyment of rafting and fishing.

Why did the Working Group believe an NCA is needed? Why not just leave things as they are?

Local communities have raised a number of key issues about future management of the Dolores River below McPhee Reservoir. Many of the concerns can be resolved and improved through NCA legislation:

- Dating back to the 1970s, the BLM has found the river "suitable" for designation under the Wild and Scenic Rivers Act. "Suitability" means a river is a candidate for full designation. A

full designation would require an Act of Congress and would include a federal reserved water right.

- Populations of three native fish species in the river (Flannelmouth Sucker, Roundtail Chub, and Razorback Sucker) have declined throughout the Colorado River Basin and there is a potential that they could be listed under the Endangered Species Act.
- Some interests support the long-term protection of the Dolores River Corridor and are supportive of suitability and eventual designation, but are willing to support another tool that would also maintain protections for Outstandingly Remarkable Values (ORVs). ORVs are values identified by federal agencies that make a river or stream eligible or suitable for Wild and Scenic River designation.

These factors, along with others, create a lot of uncertainty regarding management on the Dolores River due to existing or potential federal actions. Therefore, proposed federal legislation would provide long-term certainty for interests in the region.

What was contained in the ORIGINAL (2015) NCA proposal?

- Establishment of a new NCA; establishment of a Special Management Area (SMA) on USFS lands adjacent to the NCA; and establishment of a new Wilderness Area inside the NCA where there is an existing Wilderness Study Area. Lands included in the original NCA/SMA proposal were in Montezuma, Dolores, San Miguel, and Montrose Counties.
- The permanent release of portions of the Dolores River and tributaries within the NCA boundary from consideration for Wild and Scenic River status.
- Protection for existing water rights and private property rights.
- Continued recognition of and adherence to Dolores Project commitments.
- Will not affect jurisdiction over county roads (section 6.a. below).
- Travel would be restricted to designated routes and local travel management policies.
- A commitment to continue to work to improve native fish habitat and status through a cooperative effort with the Dolores River Native Fish Monitoring and Recommendation Team, within the constraints of existing Colorado water law and Dolores Project contracts and allocations.
- Whitewater boating will continue to be protected and managed for in the NCA, within available water supplies.
- Protection of the Outstandingly Remarkable Values (ORVs, values identified by federal agencies that make a river or stream eligible or suitable for Wild and Scenic River designation) associated with Wild and Scenic suitability, within available water supplies.
- A mineral withdrawal for the NCA, meaning no *new* mining claims or oil and gas leases would be allowed within the river corridor. Valid existing rights would be honored.

- A prohibition on new dams within the NCA. Small structures such as irrigation diversions and stock ponds would still be allowed.

What is different with the *CURRENT (2021)* NCA proposal?

- Several years ago, Montezuma and Montrose Counties removed themselves from the NCA/SMA discussions and therefore the lands in their counties have been removed from the draft legislation. That includes removing the proposed wilderness designation (currently a Wilderness Study Area) which is entirely in Montrose County.
- All of the other provisions described in the original proposal above would still apply to the portion of the NCA/SMA in Dolores and San Miguel Counties. These two counties have informed Senator Bennet's office that they are strongly committed to seeing legislation enacted and hope that Montezuma and Montrose Counties will re-join the efforts.

Future Management of the NCA/SMA

- The Bureau of Land Management would primarily manage the NCA with a smaller portion of land included in this legislation managed by the Forest Service as a Special Management Area.
- *Note: SMAs are only done on USFS lands and NCAs are more typically done on BLM lands. Wilderness can be designated on either USFS or BLM lands.*
- Following the passage of the bill, an Advisory Council made up of a diverse set of local stakeholders would be appointed by the Secretary of the Interior. These stakeholders will represent the same variety of interests covered by the Working Group. The Advisory Council would advise the Secretaries of Interior and Agriculture on preparation, implementation, and monitoring of the Management Plan.

The NCA/SMA and Native Fish

The Dolores River Native Fish Monitoring and Recommendation Team exists to address the protection and ongoing management of the fisheries. The team, which is currently meeting and actively working together, is made up of diverse stakeholders interested in the native fish and whitewater boating in the Lower Dolores. The team's *only* role is to make recommendations to reservoir operators and fishery managers for improving native fish habitat and viability in concert with whitewater boating below McPhee Dam. Any adjustments to reservoir operations recommended by the team is at the discretion of the Bureau of Reclamation (BOR) and Dolores Water Conservancy District in conformance with Dolores Project and NEPA requirements.

The *ORIGINAL (2015)* NCA proposal recommended that the Dolores River Native Fish Monitoring and Recommendation Team be formalized through state legislation, so that the team could be specifically referred to in federal legislation.

The *CURRENT (2021)* proposal does not refer directly to the Dolores River Native Fish Monitoring and Recommendation Team, but does require the Secretary of the Interior to collaborate with

interested stakeholders regarding the management of flows below McPhee Dam for native fish and whitewater boating. This is already happening with the Monitoring and Recommendation Team.

The proposed legislation includes no requirements for changes in flow regimes or releases from the dam. It also does not mandate any water be appropriated to the fisheries or whitewater boating.

Detailed Summary of Legislative Proposal

1. Name of Designated Area

- a. BLM Portion: Dolores River Canyon National Conservation Area (NCA)
- b. USFS Portion: Dolores River Canyon Special Management Area (SMA)

2. Purpose:

“The National Conservation Area (and Special Management Area) will be managed to conserve, protect, and enhance the native fish, whitewater boating, recreational, scenic, cultural, archaeological, natural, geological, historical, ecological, watershed, wildlife, educational, and scientific resources.”

3. Water

- a. The portion of the Dolores River and tributaries within the designated area will no longer be studied for suitability under the Wild and Scenic Rivers Act.
- b. Water rights decreed under Colorado Water Law and water rights that are vested absolute or conditional, upon passage of this legislation, shall not be diminished by this legislation.
- c. No federal reserved or appropriative water rights express or implied will be established by the legislation.
- d. Nothing in the legislation will preclude access to valid existing water diversion, storage and management facilities established under state decrees or pursuant to Bureau of Reclamation laws and contracts.
- e. Any changes to Dolores Project allocations designed to further the purposes of the Act shall be instituted within the framework of Dolores Project Contracts, Reclamation law, the Colorado Ute Settlement Agreement and obligations to Dolores Project allocation holders.
- f. The Bureau of Reclamation has committed to work with other entities to acquire water from willing sellers to expand the base pool, or for other fish and wildlife purposes, in the 1996 Environmental Assessment and the 2000 Operating Agreement. To date no willing sellers have offered to sell water to the fish pool.
- g. The management of flows below McPhee Dam intended to conserve, protect and enhance the native fish resources within the NCA, will be in accordance with Reclamation law and Dolores Project contracts and whitewater boating commitments,

and will be guided by input from interested stakeholders (including the Dolores River Native Fish Monitoring and Recommendation Team and others). Such guidance will include the ongoing adaptive management science that evolves from flow management experiments, and the monitoring of the results of such experiments.

- h. The Bureau of Reclamation will report each year on progress toward conserving, protecting and enhancing the native fishery using, in so far as possible, the Implementation, Monitoring and Evaluation Report prepared annually by the Dolores River Native Fish Monitoring and Recommendation Team.
- i. New dams and large-scale water developments are prohibited in the NCA. This is meant to encompass new large water developments such as storage facilities and hydroelectric facilities, but not to include things like existing small diversion dams or stock ponds, new minor developments according to existing decreed water rights, or changed circumstances that could require a modification.
- j. Subject to valid existing rights, ensure that any large-scale water development with a potential impact on the section of the Dolores River within the NCA will not unreasonably diminish the scenic, recreational and fish and wildlife values within the NCA.
- k. Nothing in this legislation will alter the United States' trust responsibility to the Ute Mountain Ute Tribe regarding the land, water, and other Indian Trust Assets of the Ute Mountain Ute Tribe.
- l. The Ute Mountain Ute Tribe's federal reserved water rights allocations in the Dolores Project shall not be diminished or altered by this legislation.

4. *Private Property and Other Existing Rights*

- a. Valid existing rights will be honored and protected.
- b. The legislation will not infringe upon private property rights nor on the authorities of county governments. The Management Plan is only applicable to public land in the designated area. Nothing in the legislation or the management plan will dictate or prohibit actions on private property.
- c. Acquisition of private property within or adjacent to the NCA will only be allowed if there are willing sellers or through voluntary exchanges.
- d. The legislation will not burden any private landowner with costs associated with management plan.
- e. The Secretary shall provide adequate and feasible access:
 - i. to private property that is located within and adjacent to the NCA; and
 - ii. through the NCA to owners of private property located within or adjacent to the NCA, if other routes to the property are blocked by physical barriers.

- f. The Secretaries are authorized to lease or purchase easements on private lands from willing lessors or sellers for recreation, access, conservation, or other permitted uses that fulfill the purposes of the NCA.
- g. The legislation will provide for continued use of and access to the Dove Creek Pump Station.
- h. Valid rights-of-way, including utility corridors, will be honored.

5. *Management Plan*

- a. The Secretary of Interior will appoint the Dolores River National Conservation Area Advisory Council made up of a diverse set of stakeholders to advise the Secretary throughout development and ongoing implementation of the Management Plan.
- b. Completion of a Management Plan for the NCA will be required within three (3) years of designation of the National Conservation Area and will consider recommendations from the Dolores River National Conservation Area Advisory Council, other stakeholders, and the public and interested stakeholders.

6. *Motorized Use in the NCA/SMA*

- a. Motorized use will be on designated routes only. Designated routes will be established as part of the travel management plan required in the NCA Management Plan. The route commonly known as the Dolores River Road, which begins at the Dove Creek Pump Station and follows the river north until it becomes San Miguel County Road N14, will still be subject to the seasonal wildlife closure (as managed by Colorado Parks and Wildlife) currently in effect just north of the Dolores/San Miguel County line. The Dolores River Road will be unaffected by the legislation, except that the non-county portion of the road north of the wildlife closure can be maintained but may not be improved beyond a primitive state, as it is now.
- b. The construction of new roads will only be allowed for administrative purposes, protection of public health and safety, or to provide reasonable access to private property.
- c. Nothing in the proposal affects the jurisdiction over, use, or maintenance of county roads in the designated area.

7. *Grazing Management*

- a. Grazing shall continue within the designated area. Leases and allotments will be administered in accordance with applicable USFS and BLM laws and regulations.

8. *Minerals*

- a. Minerals can continue to be developed where valid claims and leases exist. New mining claims or mineral leases will not be allowed.

- b. The legislation will not change uranium production on Department of Energy leases where it is currently allowed.

9. *Ponderosa Gorge Roadless Area*

- a. The Ponderosa Gorge Roadless Area will be managed to preserve its existing primitive character. This area is located on both sides of the river between Bradfield Bridge Campground and the Dove Creek Pump Station and on the east side of the river from the Pump Station to just north of Snaggletooth Rapid.