

# DENVER WATER

1600 West 12th Avenue • Denver, Colorado 80204-3412  
Phone 303-628-6000 • Fax No. 303-628-6199 • denverwater.org



January 13, 2012

Karl Mendonca, Acting Field Manager  
U.S. Bureau of Land Management  
Colorado River Valley Field Office  
2300 River Frontage Road  
Silt, CO 81652

*Via U.S. Mail and email*  
kmendonc@blm.gov

Dave Stout, Field Manager  
U.S. Bureau of Land Management  
Kremmling Field Office  
P.O. Box 68  
Kremmling, CO 80459

*Via U.S. Mail and email*  
dstout@blm.gov

Leigh D. Espy, Deputy State Director  
U.S. Bureau of Land Management  
Resources and Fire  
2850 Youngfield Street  
Lakewood, CO 80215

*Via U.S. Mail and email*  
lespy@blm.gov

Scott Fitzwilliams, Forest Supervisor  
U.S. Department of Agriculture  
White River National Forest  
900 Grand Avenue  
Glenwood Springs, CO 81601

*Via U.S. Mail and email*  
[sfitzwilliams@fs.fed.us](mailto:sfitzwilliams@fs.fed.us)

Re: Denver Water's Comments on the DRMP/DEIS for U.S. Bureau of Land Management (BLM) Kremmling and Colorado River Valley Field Offices and U.S. Forest Service (USFS) White River National Forest

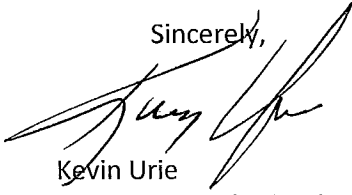
Dear Mr. Mendonca, Mr. Stout, and Ms. Espy and Mr. Fitzwilliams:

The City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water) has participated in the Upper Colorado River Wild and Scenic Stakeholder Group (SG) since its inception and has been a cooperating agency in the BLM's NEPA process to update its Resource Management Plan. Denver Water does not believe the administrative record supports alternatives that would find Segments 4-7 suitable. However, Denver Water fully supports the SG's Management Plan (Plan) submitted to the BLM and USFS in February 2011 and as updated in January 2012. Denver Water

also supports the joint letter submitted by the SG on January 10, 2012. Denver Water requests that the BLM and USFS select Alternative B2 in the DEIS as its wild and scenic management action with regard to Colorado River Segments 4-7 (Segments 4-7). We also request that the BLM accept the Plan as written by the SG without material changes made or required by the BLM or USFS in the Records of Decision. While Denver Water preserves its comments submitted throughout this BLM and USFS decision-making process, Denver Water urges the agencies to adopt Alternative B2 and manage Segments 4-7 such that the previously determined "eligibility" status is maintained and any decisions on suitability remain neutral, as requested by the SG.

Denver Water submits the comments on the DEIS, attached to this letter. These comments are not intended to conflict with or be viewed as being unsupportive of elements of the Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Urie", written over a white background.

Kevin Urie  
Environmental Scientist/Planner, Denver Water

Enclosures

## Comments on the Draft Resource Management Plan and Draft Environmental Impact Statement for the Colorado River Valley Field Office, Colorado

1. In Chapter 3, Current Conditions, Water Use (page 3-28), for purposes of describing the state's instream flow program, please use the language from C.R.S. 37-92-102 rather than a BLM interpretation of instream flow protections.
2. Page 3-198 describes the Shoshone agreement between Xcel and Denver Water. Please correct the party names (Xcel and Denver Water). More importantly, the description of the agreement is not accurate; Denver Water cannot "dictate a reduction in the Shoshone water right." Instead, in times of drought, the agreement provides that Xcel will reduce its diversions and receive payment to compensate for lost power production. When Xcel reduces its diversions, those upstream entities with junior storage rights, including Denver Water, the Bureau of Reclamation and others, are allowed to store water under their rights.
3. Denver Water disagrees with a description of the Plan and an impact associated with it, which is found on page 4-159. It reads: "Alternative B2 would adopt and implement the stakeholder alternative management plan to manage minimum flows in the WSR-eligible sections of the Colorado River. This could alter the recent flow regime of the Colorado River, with the potential for either adverse or beneficial impacts on riparian resources." Denver Water suggests removing the underlined language. Neither the SG nor the Plan has the ability to "manage minimum flows." It is not the intent of the Plan to alter flow regimes and Denver Water disagrees that this is an impact of the Plan.
4. Denver Water requests revisions made to a description of what is offered under the Plan related to the Plan's Cooperative Measures. Under a description of Alternative B2 beginning on page 4-203, the document states: "This is because the water stakeholders would attempt to operate their facilities in a manner that meets water supply objectives and protects the ORVs and subsequently aquatic species and their habitats. With no stakeholder plan, water flows would continue to be subject to the water rights system." Denver Water suggests removing the underlined language and replacing it with: "This is because the Plan includes a commitment by the SG to explore a variety of cooperative measures, which are defined as voluntary actions that will be explored and may be implemented to assist in protection of the ORVs." Furthermore, even with the Plan, water flows will continue to be subject to the water rights system. Therefore this last underlined sentence should be removed.
5. For purposes of analyzing the Plan, the BLM make assumptions about the Plan, beginning on page 4-697. Denver Water suggests rewording an assumption to avoid misinterpretation. One assumption provides that the Plan will consider the hydrologic changes of the Windy Gap Firming and Moffat Projects, "and implement actions necessary to insure that ORVs continue to be supported even when the projects are operating." This should be reworded to say "Unless the Plan's "Poison Pill" is invoked, efforts under the Plan incorporate modeled hydrology with the Moffat Project and the Windy Gap Firming Project in place."

6. A second assumption on page 4-698 that needs some correction is the concept of Cooperative Measures. All parties to the Plan have agreed to explore Cooperative Measures to further protect the ORVs. An opportunity for a water facility to be operated differently, or in conjunction with other facilities, at a particular time to enhance flows in Segments 4-7 could be one example of a Cooperative Measure. There is a commitment to explore and, when available, implement these types of efforts, which is much different than stating “a commitment to operate existing water management facilities to provide flow rates that support the ORVs ....” Also, the same assumption states that an instream flow “would not be able to protect flows needed to support the recreational ORV.” Denver Water does not agree with this assertion, but does agree that these voluntary cooperative measures discussed in the Plan can enhance protections of an instream flow.
7. Table 4.4.3-1 is a Wild and Scenic Rivers Analysis Framework. Denver Water requests that the following statement found in two locations on page 4-703 be removed or clarified. It reads “A CWCB water right also cannot address flow protection for the recreational ORV.” There are two recreational ORVs in Segments 4-7 (fishing and boating) and it may be the case that an instream flow could be protective of both of those recreational experiences.
8. Also in Table 4.4.3-1 on page 4-704 is a description of what the SG will evaluate with regard to new projects that may affect Segments 4-7. The statement that the “[SG] would suggest project configurations and mitigation measures that would protect the ORV” is not accurate. Rather, the Plan asks the project proponent to commit to the SG “to meet either subparagraph a. or b. below:
  - a. Demonstrate that project operations will not unreasonably diminish the ORVs; or
  - b. Demonstrate that project operations will be subject to mitigation to avoid unreasonably diminishing the ORVs.”
9. Page 4-722 provides a description of Alternative B2. Denver Water disagrees with the following statement and requests that it be removed or clarified: “Deferring a suitability determination for the two Colorado River segments would decrease their potential for congressional designation as WSRs.” The Plan aims to protect and manage the ORVs as they exist today to preserve their eligible status. Denver Water does not agree that deferring suitability in favor of the Plan would decrease the potential for congressional designation should the Plan go away but instead preserves the potential for a later determination in absence of the Plan.
10. Appendix C, in Volume IV of the DEIS, contains the draft Wild and Scenic River Suitability Report Executive Summary. Denver Water supports the request of the SG, submitted to the agencies in a letter dated January 10, 2012 to refrain from conducting a suitability analysis on Segments 4-7 if the Plan is adopted by the agencies. This neutral deferral of a suitability determination is very important to Denver Water.

## Comments on the Kremmling Field Office Draft Resource Management Plan, Draft Environmental Impact Statement

1. Page 4-43 of Volume 2, has an inaccurate assumption regarding management of eligible stream segments. The following assumption can be found in other areas of the document under the same heading of "Impacts Resulting from Wild and Scenic River Management," and Denver Water believes it should be clarified that, depending on the classification (recreation, wild, or scenic), certain development can occur within eligible and suitable segments. Under "Impacts Resulting from Wild and Scenic Rivers Management," it is insinuated that "protecting the ORVs" equates to "preventing ground disturbing activities." This is not true under any of the alternatives that seek to protect the ORVs and should be corrected throughout the document.
2. Similar to comment #1, within the "Impacts Resulting from Wild and Scenic Rivers Management" on page 4-73, the document states that "Management under Alternative B1 or Alternative B2 would result in protections to the segments' water resources from use and development." Denver Water requests that this statement be removed or corrected. Not only is this inaccurate about management of eligible or suitable rivers (Alternative B1), but this is incorrect with regard to the Plan (Alternative B2), the very purpose of which is "to balance permanent protection of the ORVs, certainty for the stakeholders, water project yield, and flexibility for water users."
3. Also on page 4-73 in the "Impacts Resulting from Wild and Scenic Rivers Management," is a description about Alternative B2 that indicates that "without implementation of the [Plan], water flows would be subject to the water rights system." Please correct this as water flows are subject to the water rights system with or without the Plan.
4. On page 4-244 within the description of Alternative B1 under "Impacts Resulting from Wild and Scenic Rivers Management" is a statement about the impact to cutthroat trout that is inconsistent with a conclusion found on page 4-239. Here it reads that "Cutthroat trout would not necessarily benefit from these protections because no occupied habitat is found in any of the identified segments." On page 4-239, however, the document states that "cutthroat trout, some select populations of which are identified ORVs, and amphibians would benefit from continuing these protections...." Also, Denver Water would like to point out that cutthroat trout populations are not specifically an ORV. The ORV is recreational fishing.
5. On page 4-319 please correct the statement about Alternative B2 within "Impacts Resulting from Wild and Scenic Rivers Management" that states "under Alternative B1 and Alternative B2, 2 segments would be determined suitable for inclusion in the NWSRS...." Under Alternative B2, the SG has requested that the agencies defer a suitability determination to adopt the Plan.
6. Please see Denver Water's comments # 5 and 6 under Colorado River Valley Field Office DEIS regarding the assumptions about the Plan found on page 4-570 of the Kremmling Field Office DEIS.

7. Please see Denver Water's comments #7 and 8 under Colorado River Valley Field Office DEIS. These comments apply to the same language found in Table 4-70 of the Kremmling Field Office DEIS.
8. On page 4-589 please correct the statement describing Alternative B2, "The second element would be voluntary and cooperative operation of water management facilities owned by the Stakeholders to provide flows needed in order to support the ORVs." Denver Water suggests replacing the underlined portion of the sentence with "... efforts to protect or enhance the ORVs."