



# DELTA COUNTY, COLORADO

## BOARD OF COUNTY COMMISSIONERS

COUNTY COURTHOUSE • 501 PALMER STREET • SUITE 227 • DELTA • COLORADO • 81416-1796

PHONE: (970) 874-2100 FAX: (970) 874-2114

[www.deltacounty.com](http://www.deltacounty.com)

Dist. 1: Mike Lane - Dist. 2: Don Suppes - Dist. 3: J. Mark Roeber

### BOARD OF COUNTY COMMISSIONER SPECIAL REGULAR MEETING

**Tuesday, March 26, 2019**

**9:00am - 10:00am**

**Delta County Courthouse – Room # 236  
501 Palmer St., Delta, CO 81416**

9:00 AM

PLEDGE OF ALLEGIANCE  
ADDITIONS TO THE AGENDA  
APPROVAL OF AGENDA

CONSTITUENT TIME: This is the time for members of the public to present issues of concern or interest to the Board. All issues requiring further research will be forwarded to the appropriate staff for response at a later time. No decisions are made by the BoCC during constituent time.

#### COMMISSIONER BUSINESS:

- Gray & Black Marijuana Enforcement Grant
  - Authorization to submit for 2019 Grant Cycle
- Great Outdoors Colorado (GOCO) Escalante Grant Application
- Consideration and BoCC Signatures for GMUG Forest Plan
  - Wild and Scenic River Comments
- Consideration and BoCC Signatures for North Fork Mancos Master Development Plan
  - United States Forest Service Comment Letter
  - Bureau of Land Management (BLM) Comment Letter
- Consideration and BoCC Signatures for Request Letter to Colorado Department of Transportation (CDOT) to Improve Highway 92 Austin Bridge
- Consideration and BoCC Signatures for Letter of Support of David Bernhardt as Secretary of the Interior.

10:00 AM

ADJOURN

The next Board of County Commissioner Meeting is Tuesday, April 2, 2019

#### CERTIFICATION OF POSTING

On Monday, March 25, 2019 at 8:00 AM, Darnell Place-Wise did post the above AGENDA as public notice of the 03/25/19 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, and Colorado.



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March 26, 2019

United States Forest Service  
Grand Mesa, Uncompahgre and Gunnison National Forests  
Attn: Plan Revision Team  
2250 South Main Street  
Delta, CO 81416

## GENERAL COMMENTS

### 1. Regulatory Burden Associated with Suitability Analysis

Delta County is not in favor of Wild & Scenic eligibility status for stream segments within our County, due to the unnecessary regulatory burden it would place on our citizens and property owners. A determination of eligibility for a stream segment obligates the Forest Service to manage that area to preserve the Outstanding Resource Values (ORVs) that were identified for that stream segment. All the segments in our County are proposed for “Wild” classification, which is reserved for areas “free of impoundments and generally inaccessible except by trail... that represent vestiges of primitive America.” Therefore, we anticipate that Forest Service management for these areas would prioritize the preservation of existing conditions, especially unimpaired flow of surface waters and an absence of permanent human presence such as roads or water management appurtenances.

We understand that Eligibility determination is not the final word in the process, and that an Eligible segment could be released from restrictive management after a Suitability Determination is completed. However, the fact remains that any proposed action that would affect conditions along an Eligible segment would require the lengthy and arduous process of Suitability Determination prior to approval. This requirement represents, in and off itself, a restrictive regulatory burden on our citizens who depend on the land to support their livelihood, and it represents a de facto restriction of access to these areas.

### 2. Consideration of In-Stream Flow

The supporting materials do not indicate that the Forest Service has evaluated or considered the availability of unappropriated water in each of the proposed segments. Many or most of the identified ORVs depend upon the continued presence of free-flowing water in the stream, but in many cases the water that supports those ORVs is only present when existing water users are not diverting. It is inappropriate to base an eligibility determination on an ORV that may not persist due to changing operations or demands of water users as they exercise their existing rights of diversion.

The specific concerns with existing water appropriations and levels of guaranteed in-stream flows are addressed for each segment individually. However, it is the general position of Delta County that any ORV identified which depends on water availability (including Scenery, Recreation, Fish, Wildlife, or Botanic), should only be considered if existing in-stream flows have been appropriated which are sufficient to support the preservation of that ORV in perpetuity.

As an example, GV-3 Kelso Creek has been determined as potentially eligible based solely on the Fish ORV (i.e., the presence of a genetically-pure population of native cutthroat trout). However, Kelso Creek is fully appropriated by existing irrigation diversion rights, with no instream flow guaranteed, and calls have been placed on junior water users in both 2018 and 2017, indicating that water availability is insufficient in some years to meet existing demand. Therefore, the Forest Service cannot dependably manage this stream segment to preserve the fish population, since the rights of existing water users would

pre-empt such management. Since the Forest Service does not have the authority to manage this segment sufficient to preserve the identified ORV, the ORV should not be considered valid. Any other determination represents an overreach of the Forest Service's authority. A similar examination of available water and existing water appropriations should be completed for all segments prior to making final Eligibility determinations.

### **3. Inconsistency with the Purpose of the Congressionally-Designated Areas, "Tabeguache" and "Roubideau"**

The Colorado Wilderness Bill of 1993 created the Tabeguache and Roubideau Areas (see Sec. 9 of the bill) as distinct from designated wilderness because, unlike the wilderness designated in the bill, the Areas did not encompass the headwaters of their respective drainages. Congress made the distinction explicit in the Act, stating that "the lands designated as wilderness by this Act are located at the headwaters of the streams and rivers on those lands, with few, if any... opportunities for diversion, storage, or other uses of water occurring outside such lands" (Sec. 8(a)1(A)). Since the Tabeguache and Roubideau Areas did not encompass the headwaters of their respective streams, the Act did not designate them as Wilderness but rather as special Areas, and stated explicitly that "Nothing in this Act shall constitute or be construed to constitute either an express or implied reservation of any water or water rights with respect to the ...Roubideau and Tabeguache Areas" (Sec. 8(b)2(A)). This distinction was made to preserve the ability for water development in the headwaters of these streams.

A Wild & Scenic designation on Roubideau Creek, Tabeguache Creek, or their tributaries would have the effect of curtailing water developments in the headwaters above these Areas. Any future development would be contrary to a Wild & Scenic designation, and would be reasonably expected to be denied by the Forest Service. Even a determination of Wild & Scenic Eligibility, as proposed in the current draft report, would significantly discourage development since a Suitability Determination would have to be prepared prior to any water development being allowed.

This curtailment of potential future water development would be contrary to the process and values of these areas as designated through Colorado Wilderness Bill process, and would explicitly violate the intention of Sec. 8(b)2(A). Delta County opposes Wild & Scenic eligibility for river segments within the Tabeguache and Roubideau Areas on this basis, including segments N-4, 14, and O-1.

### **4. Unnecessary Duplication of Regulation**

The majority of the proposed segments are within existing protective designations, specifically the Tabeguache and Roubideau Areas. These designated Areas already provide a restrictive and protective management regimen that encompasses the proposed stream courses and a 0.5-mile buffer corridor that was considered in the draft Eligibility Report. The ORVs identified for these segments include Scenery, Heritage, Geology, and Botanic: the protections established for these Areas by the Colorado Wilderness Bill of 1993 tier to the Wilderness Act and includes strict prohibitions that are sufficient to protect these ORVs. For example, the Scenery ORV is sufficiently protected with the Tabeguache Area, given that roads, motorized equipment are prohibited, minerals have been withdrawn from appropriation, and no additional grazing or logging is reasonable feasible.

The Wild and Scenic River Act is intended to "preserve" and "protect" selected rivers as a "complement to the established national policy of dam and other construction"; that goal of preservation and protection has already been achieved for the segments within the Tabeguache and Roubideau Areas, and would not be improved by a WSR eligibility determination.

In the case of the proposed segments within the Escalante Creek drainage (GV-1, GV-2, GV-3), the only ORV identified is the presence of a genetically-pure greenback cutthroat trout (GBCT) population: the GBCT is currently listed as threatened under the Endangered Species Act (ESA). Delta County feels that the ESA listing is an appropriate and sufficient mechanism of protection for the species, and that further restrictions enacted under the WSR Act are an unnecessary and burdensome duplication of protective regulations. Forest management plans uniformly specify protection of ESA-listed species in their management guidelines; the current GMUG plan stipulates that Forest Service compliance would assure

no adverse effect to listed species, and we assume that any final revised plan would include similar language. Therefore, the Forest Service is already committed by regulation and legislation to preserving GBCT and their habitats within the Escalante Creek segments. WSR designation would not provide additional protection, and is therefore not justified; further, the Forest Service does not apply additional land-use restrictions every time a threatened species is known to be present, and arbitrarily using this condition just for this population of GBCT seems arbitrary and capricious.

In addition, we would like to clarify that the Forest Service is referring not to GBCT (*Oncorhynchus clarkii stomias*) but actually to green lineage Colorado River cutthroat trout (*Oncorhynchus clarkii pleuriticus*, GL-CRCT). Recent genetic work and phenotypic analysis have confirmed GBCT as the native cutthroat trout species of the South Platte basin, and has further confirmed that the GL-CRCT is a distinct subspecies historically confined to the Colorado, Gunnison and Dolores Basins. Although the U.S. Fish and Wildlife Service (USFWS) currently manages all native Colorado cutthroat trout populations as “threatened” at this time until additional genetic research can be finalized, current recovery efforts are focused on replicating the native South Platte Basin GBCT in hatcheries and re-establishing those historic populations. If the USFWS reconsiders the status of the GL-CRCT and its inclusion in the ESA protections in a future listing decision, Delta County wants to clarify that the South Platte GBCT is not present in this location.

While GL-CRCT is widespread throughout the streams of the GMUG, it is not abundant. In fact, the WSR review notes derived from internal Forest Service meetings specifically cite the existence of “conservation populations of CRCT” on other stream segments, but states that these populations “do not meet the threshold of an ORV.” Segments where CRCT are present but were not deemed sufficient to support an ORV include the North Fork of Tabeguache, as well as Elk Creek and Deep Creek in other regions of the Forest Planning Area. It is not clear why the fish population in the Escalante Creek segments justifies an ORV determination, when other populations in nearby streams do not.

Therefore, Delta County objects to the determination of Eligibility for the Escalante Creek segments (GV-1, GV-2, GV-3) on two separate grounds. One, sufficient protections already exist for the single ORV identified for these segments, since the fish is already listed under the ESA and the species and its habitats are additionally protected by the Forest Service through Forest Plan guidelines. Two, there is inconsistent application of the Fish standard, where conservation populations of native cutthroat trout are judged to constitute an ORV in this drainage but are not in other nearby drainages.

Sincerely,

Delta Board of County Commissioners

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Don Suppes, Chair

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J. Mark Roeber, Vice-Chair

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Mike Lane, Commissioner



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March 26, 2019

Nicole Mortenson  
Grand Mesa Uncompahgre and Gunnison  
National Forest All Unites  
2250 Highway 550  
Delta, CO 81416

[nmortenson@fs.fed.us](mailto:nmortenson@fs.fed.us)

Attn: North Fork Mancos

Delta Board of County Commissioners (BoCC) has submitted comments on the North Fork Mancos (NFM) Development Plan on March 22, 2017 and June 7, 2018. Delta BoCC realizes that the BLM EA has to evaluate the project as if the entire development happens all at the same time when in reality the NFM will be a phased impact over several years. Additionally, there have been oil and gas operations in this area for the past 18 years and this project area has been through a full Environmental Impact Assessment and Environmental Assessment.

Delta BoCC acknowledges the specific 2-D and 3-D Seismic studies that will identify operation sites and therefore reduce the potential for additional exploratory wells. Delta BoCC appreciates the work that Gunnison Energy (GE) has put into the project to reduce the number of trucks on the road by securing the use of rail and water from Oxbow. Previous impacts concerning water, impacts to roads, recreation, tourism, soils, dust, and air quality have been addressed in the submitted Environmental Assessment (EA). Delta BoCC requests that our additional concerns be addressed as this project moves forward.

Off-site impacts to the County, Municipalities, roads and traffic:

Delta County is a pass through county for this project and our roads will therefore take the majority of the impact. Coordination between Gunnison County, BLM, USFS, GE, and Delta County is essential. The US Forest Service road 265 is maintained by Delta County Road and Bridge department and is heavily traveled by constituents and tourists. Delta County BoCC would request that the road and Stevens Gulch Road be consistently maintained to the USFS standards during peak project periods. Additionally, we would request signage depicting heavy truck traffic and narrow roads be advised to users at each end of road 265 and other area roads as needed.

Water:

Protection of the quality and available quality of water is always a concern for Delta County, particularly when construction and/or oil and gas development is conducted in any upstream watersheds of water sources draining into and used by Delta County residents. The potential for impact was noted in the hydrology studies commissioned by Delta County in 2012-2015. To address potential impact, Delta BoCC requests that baseline water quality be measured and reported from project area and surrounding tributaries including Somerset.

Delta County BoCC understands that water from Muddy and West Muddy Creeks in addition to water from Elk Creek mine are coming from existing water rights. In 2018 these tributaries did not run any water, therefore Delta County requests that GE submit a drought and augmentation plan that would include how GE would modify its operations.

Geologic:

The area along Hwy 133 is unstable and prone to rockslides and delays. Delta BoCC requests that during peak periods of truck traffic, GE work with our Office of Emergency Management to address contingency plans if a slide occurs.

As in previous comment letters, Delta County believes that the reclamation be completed in a timely manner and that follow-up for either abandonment or functioning wells occur to ensure timelines are met.

In closing, Delta County realizes that many of the items listed above will be addressed in the county permitting process and acknowledges that the previous BLM NEPA analysis has provided the specifics in these areas. Delta County has witnessed GE recent activities within the area and has found GE as well as the private land owners have minimized and mitigated the impacts of ongoing development. Delta BoCC is supportive of the revised EA as it has reduced the number of trucks from the original proposal, is utilizing existing rail and infrastructure and has reduced the potential impact on wildlife habitat.

Sincerely,

Delta Board of County Commissioners

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Don Suppes, Chair

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J. Mark Roeber, Vice-Chair

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Mike Lane, Commissioner



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March 26, 2019

Allen Crockett  
BLM Colorado River Valley Field Office  
2300 River Frontage Road  
Silt, CO 81652

[Comments-rocky-mountain-gmug@fs.fed.us](mailto:Comments-rocky-mountain-gmug@fs.fed.us)

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March 26, 2019

Michael Goolsby  
Colorado Department of Transportation  
222 South 6th St., #317  
Grand Junction, CO 81501-2769

Dear Mr. Goolsby,

Delta Board of County Commissioners (BoCC) has consistently supported Colorado Department of Transportation and is an active member of the Gunnison TPR group. The BoCC specifically is writing this letter to urge you and CDOT to expedite the repairs of the State Hwy Bridge located west of Austin, CO on Hwy 92. In August of 2016, load limit signs were placed at the bridge by CDOT with no notification to Delta County. When inquiries were made at the time as to the reason, we were told that the abutments needed to be repaired.

During this time, heavy loads have consistently been using Delta County roads to bypass the bridge. While we understand that projects take time, we do feel that it is past time for the necessary repairs to be made and the bridge be restored to the original load limit to not only improve safety of Hwy 92 but reduce the impact to our county roads.

Delta BoCC requests CDOT respond to this request during the April joint meeting. If you have additional questions, feel free to contact our Delta County Administrator, Robbie LeValley at 970-874-2102 or [rlevalley@deltacounty.com](mailto:rlevalley@deltacounty.com).

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Delta Board of County Commissioners

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March 26, 2019

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. President:

Delta Board of County Commissioners would like to thank you for your nomination of David Bernhardt as Secretary of the Interior. Delta County is located on the western slope of Colorado and is comprised of 57% public lands of which a significant portion of that is managed by the Bureau of Land Management. In addition, our county is home to Gold Medal fishing, abundant wildlife, low-sulfur coal mines, agriculture production, and limited natural gas. Delta County has balanced all of these multiples uses for generations.

Mr. Bernhardt grew up near Delta County and knows how the multiple use mandate of the BLM is applied practically across the landscape. He has broad and extensive experience in both the public and private sector and understands the complexities of the laws and regulations from all sides. Additionally, Mr. Bernhardt has significant knowledge of the full scope and complexness of the U.S. Fish and Wildlife regulations. This broad based and in-depth knowledge makes David Bernhardt the right person at the right time to lead the Department of Interior.

We appreciate your nomination of David Bernhardt for the position of Secretary of the Interior and we strongly encourage the Senate to confirm his nomination quickly.

Sincerely,

Delta Board of County Commissioners

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Don Suppes, Chair

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J. Mark Roeber, Vice-Chair

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March 26, 2019

Honorable Michael Bennet  
261 Russell Senate Building  
Washington, D.C. 20510

Dear Senator Bennet:

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