

For Immediate Release
Weds, October 8, 2003

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Water Court Judge Grants Stay in Black Canyon Case **Closed-door Agreement Between State & Feds On Hold Pending Federal Court Review**

Gunnison, CO—Colorado water court Judge Steven Patrick yesterday froze state water court proceedings regarding the United States' right to stream flows for the Black Canyon of the Gunnison National Park until important matters of federal law are resolved in federal district court. In early September, a coalition of five citizen groups filed suit in the federal court, arguing that the United States has failed in its duty to protect the park's ecological, recreational, and aesthetic values for present and future generations and asking the federal court to set aside a closed-door settlement deal between the State of Colorado and United States under which the federal water right for stream flows for the national park would be substantially reduced.

In January 2001, the United States filed an application to quantify its federal reserved water right for the Black Canyon. The State of Colorado opposed the application. After years of private negotiations, in April 2003 officials from the United States and Colorado Department of Natural Resources announced a settlement agreement under which the United States would relinquish much of the federal government's claim to stream flow rights in the Gunnison River. According to the agreement, the federal government proposed to rely on a new state-held instream flow water right for protection of the park's natural resources. But the 2003 state water right would only receive water left over after meeting all other water uses, including potentially huge future diversions to Colorado's Front Range.

Expecting that resolution of the federal water right would provide permanent protection for stream flows and environmental quality in the Black Canyon, the citizens groups became involved in the state water court case in 2001. According to the groups, the proposed settlement presented to the state court in April would provide very little, if any, protection for the park's natural resources. The coalition filed the federal lawsuit in response to the settlement agreement and asked the water court to freeze proceedings until the questions presented to federal court have been settled. The federal lawsuit asserts that the April agreement violates the National Park Service Organic Act, the Black Canyon Act, the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA).

"Judge Patrick's order was a common-sense decision that will allow important questions of federal law to be answered before further action by the water court," said Bart Miller, Water Program Director for Western Resource Advocates and an attorney for four of the citizens' groups. "The stay of the state proceedings will allow the federal court to determine whether the United States is fulfilling its legal duties to the Black Canyon before the federal government goes forward with its attempt to reduce its water claim through the state water court."

"We think Judge Patrick took a reasonable course in granting our petition for stay," said Drew Peternell, an attorney for Trout Unlimited, the other plaintiff in the federal case. "Under federal law, the United States has a duty to preserve the natural resources of national parks, and citizen groups like ours have

the right to challenge the United States' failure to do so in federal court. It makes sense to allow our federal court claims to proceed before the United States takes further steps in state court that could result in reduced stream flows and diminished environmental health for the Black Canyon."

"Judge Patrick found that the citizens' groups rights under federal law, as asserted in the federal lawsuit, could be greatly prejudiced if the state proceedings continued without prior resolution of the federal law issues. According to the judge, that potential prejudice outweighed any inconvenience of delaying the water court case," explained Miller. "This was a fair call on the part of Judge Patrick."

The federal government virtually abandoned its duty to protect the Black Canyon of the Gunnison National Park with its agreement this past spring with the State of Colorado, according to Wendy McDermott, director of High Country Citizens' Alliance, one of the parties to the federal suit. "The deal proposed this spring would continue to upset the Park's ecological balance that evolved with the seasonal fluctuations in flow. There's no point even pretending that the Park would be protected for future generations under the April settlement," McDermott said.

"The proposal for the Black Canyon that the Bush administration presented to the state water court is so inconsistent with the ecological needs of the park that we felt we had no choice but to file the federal complaint and to seek stay of the state proceedings," Peternell added. "We would have loved to have seen the federal government resolve its Gunnison River water claims without litigation before the state water court, but we simply cannot accept a settlement that provides so little natural resource protection for the Black Canyon."

The plaintiffs in the federal case are High Country Citizens' Alliance, The Wilderness Society, Western Colorado Congress, Western Slope Environmental Resource Council and Trout Unlimited. The defendants are Interior Secretary Gale Norton, the Interior Department, National Park Service Director Fran Minella and the National Park Service.

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