

**San Juan National Forest/Public Land  
Management Plan Revisions  
Governmental Water Roundtable  
Meeting 6 – Oct. 5, 2005  
Summary**

<http://ocs.fortlewis.edu/forestplan/>,

click on Governmental Water Roundtable

**Seated at the Roundtable:**

Robin Schiro, Archuleta County  
Bruce Smart, City of Cortez  
Ken Beegles, Colo. Div. Water Resources  
Bruce Whitehead (Alt), Colo. Div. Water Res.  
David Graf, Division of Wildlife  
Dan Merriman, Colo. Water Conserv. Board  
John Taylor, Hinsdale County  
Gerald Koppenhafer, Montezuma County  
Mark Braly, Rio Grande County  
Steve Fearn, San Juan County  
Mark Stiles, San Juan Public Lands Center  
Kelly Palmer, SJPLC  
Thurman Wilson, SJPLC  
Chuck Lawler, Southern Ute Tribe  
Peter Ortego, Ute Mt. Ute Tribe  
Steve Harris (Alt), SW Water Cons. Dist.  
Carl Knight (Alt), Ute Mt. Ute Tribe

**Interested Audience Participants:**

Brian Davis, SJPLC  
Dave Gerhardt, SJPLC  
Chuck Wanner, San Juan Cit. Alliance  
Kay Zillich, SJPLC  
Cindy Hockelberg, USFS  
Eric Janes, for Colo. Sen. Jim Isgar  
Ann McCoy Harold, for U.S. Sen. Allard  
Ann Brown, for U.S. Sen. Salazar  
John Whitney, for U.S. Rep. Salazar  
Roy Smith, Colorado BLM.  
Carrie Campbell  
Alfred Hughes, PSCo/Xcel Energy

**Announcements:** **Ken Beegles** announced that he is retiring as Division Engineer with the Colorado Division of Water Resources at the end of November to go into private practice. He has spent 30 years with the agency.

**Mark Stiles, Manager of the San Juan Public Lands Center**, said that on Sept. 14, 2005, the Colorado Department of Natural Resources (DNR), Colorado Water Conservation Board (CWCB), and BLM Colorado entered into a Memorandum of Understanding similar to the one between the USFS and CWCB and DNR, signed April 16, 2004 on a “framework...to work together in a cooperative manner on issues regarding the management of water and water resources.” The MOU was distributed in hard copy and will be placed on the Roundtable website. Mark also announced that **Sally Wisely** is the new state director for BLM Colorado.

**Facilitator Mike Preston** said previous Wild and Scenic River studies on the Dolores, Pine and Piedra Rivers have been made available by Laura Stransky of SJPLC, and arrangements are being made to scan them for placement on the website. Peter Ortego, attorney for the Ute Mountain Ute Tribe, brought in a copy of the Brunot Agreement regarding hunting access by Ute tribal members so it can be scanned and put on the web

site as well. Roundtable members and presenters are urged to keep bringing items to be placed on the web site. Electronic format is preferable, but printed documents can be scanned.

**Wild and Scenic Rivers: Roy Smith, Water-Rights and Instream-Flow Coordinator with the BLM in Colorado, and Kay Zillich of the San Juan Public Lands Center** gave a presentation on Wild and Scenic Rivers (WSRs) for the second-cut discussion on the topic.

Roy provided a handout on the legal position of the BLM/USFS entitled “Wild & Scenic River Water Rights Quantification Overview,” which will be posted on the Roundtable website. Roy reviewed the designation process: The agencies use their planning process to decide if a river segment is eligible, then if it is suitable for WSR designation, but Congress alone has the power to grant the designation. No effort is made to secure a Federal Reserved Water Right until Congress acts. Colorado’s only WSR is an 89-mile stretch of the Cache la Poudre River near Fort Collins.

Roy said the consensus from these cases that he overviewed is that the Federal Government can claim only what water is necessary to support the Outstanding Recreational Values (ORVs) that prompted the WSR designation. ORVs are river-related values that are unique within the region, or are outstanding examples of a more common value.

In certain cases, the amount of water necessary to support one or more ORVs may be all the unappropriated flow, but that depends on what ORVs need to be supported. For instance, a river where archaeology is the sole ORV would require less water than one where whitewater rafting is an ORV.

In the case of the Cache la Poudre, when the USFS and National Park Service sought to ascertain how much water was needed to support the ORVs, studies indicated that amount was everything left after all of the water-management practices had been implemented. The Cache la Poudre is intensively managed and provides domestic and agricultural water for much of northern Colorado. The water right for the WSR is junior to all appropriations prior to 1986, and the legislation prohibits bypass flows and maintenance restrictions on existing water facilities. In this case, the agencies would have asked for even more water if it were available.

In the case of a different WSR on the Upper Missouri River, quantifying the water needed to support the ORVs would have been such an enormous task that officials agreed that the ORVs would be restricted to appropriations through 1987 and that future development of 10 acre feet or more would be limited to a carve-out of one million acre feet.

What the examples that Roy researched demonstrate is that a WSR designation does not automatically mean the acquisition of a Federal Water Right for all the unappropriated flow. Instead, the water right is based on the ORVs being supported. In each situation,

negotiators worked out a different solution. However, the consensus is that a WSR designation does include some variation on a Federal Water Right. Roy said Congress may or may not define what the ORVs are for a WSR. The federal agency, based on Congressionally determined or agency determined ORVs, originates a claim in state water court for the necessary water. Typically these claims have been adjudicated in state court systems rather than removed to federal court.

The BLM is presently negotiating resolution of water rights for two WSR stretches in New Mexico: the East Fork of the Jemez River from the Santa Fe National Forest boundary to its confluence with the Rio San Antonio, and 25 miles of the Rio Chama. Roy said that quantifying water needed to support a WSR has traditionally been a fairly difficult process because of the conflict of values involved.

Mark Stiles said in the San Juan Public Lands planning process they are looking at whether river segments determined to be eligible are suitable for WSRs. By moving analysis to the suitability level the list of WSR segments that need to be preserved for WSR characteristics will be specific and finite. Identification of the ORVs that exist on these segments would be applied in the adjudication of water, but such adjudication would not be initiated until Congress designates a segment as a WSR.

**Kay Zillich, ID Team Leader for WSR Component of the Plan Revisions**, presented and discussed draft working documents on WSR Eligibility and Classification for the Dolores River and Animas River watersheds. The documents showed the segments into which each river and its tributaries are broken and discussed ORVs and classifications (wild, scenic, recreation) for the different segments. These working documents will be placed on the Roundtable website.

**Steve Harris of the Southwestern Water Conservation District** questioned the ORVs chosen on certain segments of the Dolores River, such as McPhee to Bradfield, Bradfield to the pump station, and the pump station to Disappointment. All of those segments mention habitat for the Threatened and Endangered Roundtail Chub as an ORV. Steve noted that the Roundtail Chub is not on the federal Endangered Species list and asked how the habitat is unique to that particular river. He said there are no chubs in that section.

Dave Gerhardt responded that there are indeed chubs in those river segments and that these species are on the state list of Species of Special Concern. He said they are seeing chubs all the way up to McPhee Dam. Roy added that one of the assumptions used by the interdisciplinary team that analyzed San Juan Public Lands rivers for eligibility and suitability was that anything that provided habitat for Sensitive, Threatened or Endangered species was considered to have an ORV. He said the habitat for those species must be limited in quantity or the species would be more common. Mark Stiles said planners are only at the eligibility analysis at this stage.

**Dan Merriman, Director of the Colorado Water Conservation Board's Colorado Stream & Lake Protection Program**, asked what the public input process will be for the eligibility and suitability determinations. Thurman Wilson of the San Juan Public Lands Center said the agencies plan to have an open house or forum on the topic.

Kay noted that WSR classification is part of the San Juan National Forest Plan Revision and as such there will be the opportunity for the public to comment. Dan said the attention the issue draws will depend on whether actual legislation is proposed for a WSR designation for a particular river segment. If the discussion is simply part of the Forest Plan Revision process, there will be less public interest. Thurman reiterated that it is up to Congress to decide whether a WSR designation is warranted. The agencies are charged with studying and analyzing the rivers for their eligibility.

Kay said that even without a WSR designation, the eligibility and suitability analysis does affect how the rivers and streams are managed because the agencies want to protect the ORVs, not destroy them through their management practices. Thurman added that some of the rivers were studied in the late 1970s or 1980s and were found suitable for WSRs, so management plans have tried to protect the ORVs to this point. Over the year, new river segments have popped up as being suitable, while others have dropped out.

Facilitator Mike Preston suggested the map of WSR-eligible river segments be put on the web site. He asked what avenue is best for allowing public input on the WSR issue to be brought to the agencies for consideration. Roy said the discussion of trade-offs (benefits vs. down-side of WSR designation) are matters for consideration in the agencies' suitability analysis. If protecting an ORV means not doing a particular water development, for instance, then that issue should be considered in the suitability analysis.

He said not all agencies go so far as to analyze suitability; some stop at the first step, eligibility. However, suitability analysis allows the agencies to take particular streams off the table for WSR designation, at least until the next Resource Management Plan is developed. Thurman said the Water Roundtable group can provide valuable input to the agencies, especially regarding trade-offs.

**David Graf of the Colorado Division of Wildlife**, who is a member of the Dolores River Dialogue, said the DRD is reaching a point where it would be valuable to hear what the agencies are thinking about the Dolores River. He also suggested that the agencies take the WSR discussion to other groups as well.

Mike Preston asked if a third-cut discussion on the WSR topic was necessary. After some discussion it was agreed that the group had enough information for the present on WSR. Mike encouraged Roundtable participants to provide feedback to the agency on reaches that are under serious consideration with regard to WSRs, trade-offs, and other options for protecting ORVs. He also asked the Roundtable to give some thought to an effective public-outreach process for the WSR topic.

**Water Facilities Permitting - Dutton Ditch: Carrie Campbell, Manager of the Pagosa Area Water and Sanitation District (PAWSD),** provided an overview of the Dutton Ditch permit and bypass flow stipulation. PAWSD provides water and sewer service to Pagosa Springs. The Dutton Ditch carries water from Fourmile Creek into Lake Hatcher and Stevens Reservoir. It is the only source supplying those reservoirs. Because it was an open, earthen ditch, it was losing considerable water.

The combination of drought and residential growth prompted the district to seek a permit to install a pipeline in the ditch. PAWSD made an application to the San Juan National Forest, which decided that a year-round bypass flow of 3 cfs was needed. Although that decision was controversial, the district determined the bypass flow was not detrimental to its project, agreed to the requirement, and moved forward with the pipeline project. It is hoped that the pipeline will be finished by Nov.1 of 2005.

Mark Stiles said the San Juan National Forest received PAWSD's application and required the bypass flow in order to maintain biological function in Fourmile Creek. PAWSD would be taking the water out in February/March through June, before major spring flows, so maintaining trout habitat in the stream was a concern. The MOU with the CWC and DNR was not in place at the time, but was being discussed. Mark said, from his viewpoint, the San Juan National Forest did work with PAWSD to resolve its concerns, although some interests outside the negotiation believed that the USFS strong-armed PAWSD into agreeing to the bypass flow in order to proceed with its project. Carrie said PAWSD willingly agreed to the bypass stipulation because it was structured in a way that didn't damage their interests.

Steve Harris questioned whether the USFS had the right to require a new bypass flow for a change in the Special-Use Permit when the only thing being changed, the installation of a pipeline, was a land use issue. The water right and the point of diversion were the same, he pointed out.

Mark said that if a Special-Use Permit is being modified in any way, the agency is required to conduct NEPA analysis including examination of the need to update stipulations, as necessary, to comply with current policies. Steve said he does not agree, but in any case this makes the MOU even more important. Mark responded that the MOU says the USFS will not require bypass flows unilaterally, and even though the MOU was not in place, this wasn't a unilateral action since PAWSD agreed to the bypass flow.

**Steve Fearn, representing San Juan County,** said the general perception was that if PAWSD had not agreed to the bypass flow, it would have faced litigation and extreme delay in its project. Although the parties were able to negotiate an agreement, the concern from a water-user's standpoint is the threat of not being able to proceed with a project in a timely fashion.

Steve Harris said he hopes when the USFS sees a bypass-flow issue looming, it will contact the CWC and DNR and try to work things out another way. He said he hoped

the Revised Forest Plan would contain a statement to that effect. He said he has worked with the BLM-Colorado and Roy Smith on several issues and both parties were able to get most of what they wanted, but that such negotiations take time.

Dan Merriman said that, for a bypass to be a bypass, it must be water that could have been diverted that is not. If there had been a way for the CWCB to have been involved in the PAWSD discussion, the problem might have been resolved through an Instream Flow that would have been protected through that stream reach and would have been recognized under state law. Mark Stiles said that possibility is not precluded at this point.

**Ann McCoy Harold, representing Senator Wayne Allard,** reminded the group of the January 19, 2005 letter from Under Secretary Mark Rey to Senator Allard (on the roundtable website) and stated that the Senator remains concerned about bypass flows being required by the USFS.

**Water Facilities Permitting: Tacoma Hydro/Electra Lake/Cascade Creek: Alfred Hughes, Tacoma Plant Supervisor,** discussed the Tacoma Hydroelectric Project some 20 miles north of Durango as an example of a project in the process of FERC license renewal. Built in 1905 and 1906, the historic project diverts water from Cascade Creek and carries it through a wooden flume into a 2 1/2-mile gravity-fed pipeline, then into Little Cascade Creek, and eventually into Electra Lake. From there it is carried 2 1/2 miles in a pipeline to the Tacoma Powerhouse. After the discharge of electricity, the water flows into the Animas River.

The project leaders are voluntarily using a new integrated licensing process through the Federal Energy Regulatory Commission (FERC). They began by trying to engage all the stakeholders in a cooperative venture to get the project re-licensed. The current license was issued in 1980.

Alfred said the USFS is one of two agencies with mandatory conditioning authority under FERC. (The other is the U.S. Fish and Wildlife Service.) The project's senior water right on Cascade Creek is for 400 cfs, but with the current facilities, it is limited to a maximum of 240 cfs because of the wooden flume, a semi-circular, 10-foot-diameter flume built in 1925. It has been in operation for far longer than its life expectancy of 15 to 20 years, Alfred said.

Alfred said they are looking at re-licensing the project as it is operating now, but they plan to replace the flume eventually. The replacement won't require a USFS permit because FERC is the governing authority in this action with SJNF as a conditioning authority.

Steve Harris said he has been participating in the re-licensing process. Public Service Co./Xcel, operator of the plant, is conducting a study to see what effects additional water would have on Little Cascade Creek and how less water would affect Cascade Creek.

Reading from the amended Resource Management Plan, Steve said that habitat for each species on the forest must be maintained at, at least, 40 percent of potential. He said that makes it sound as though a bypass flow will likely be required.

Steve said the original diversion occurred before the National Forest was created and he believes pre-forest diversions should be granted a different status than diversions that came after. Steve said he fears if the USFS can use this process to get a bypass on a pre-forest diversion, and that Ditch Bill approvals could also require a bypass. Alfred said there is no bypass requirement currently on the facility and it does not have a USFS Special-Use Permit, only a FERC license.

Kelly Palmer, Hydrologist with the San Juan National Forest, said the Resource Management Plan does not say there would have to be a bypass, only that habitat has to be maintained at 40 percent.

**Dave Gerhardt, Fishery Biologist with the San Juan National Forest**, said the habitat standard is decided on a stream-reach basis. If you are diverting 100 percent of the flow 95 percent of the time and only relying on seepage from the flume, your habitat capacity is zero. The Plan says to maintain a minimum of 40 percent habitat, but that does not equate to 40 percent of the water. It is much less than that, but the exact amount has not been defined yet.

Steve Fearn said this could still result in a significant loss of hydropower. Dave Gerhardt said the standard applies to the whole stretch of the stream that provides habitat. The USFS is required to maintain habitat throughout that reach at a minimum of 40 percent. If an additional one-half cfs of water would result in a 10-fold increase in habitat, then he would recommend they go with that. However, it is still under study. Steve Fearn asked if the habitat requirement can be evaluated against the trade-off of having to use extra coal to produce power. Mark Stiles said such factors can be analyzed. Steve Harris asked how the MOU could be applied in this case.

**Cindy Hockelberg of the San Juan Public Lands Center** said the MOU was not signed by FERC, which issues the license. However, the San Juan National Forest will work on reaching a settlement with all stakeholders when it makes its recommendations to FERC. Mark Stiles said a bypass is not a foregone conclusion. However, there is a concern about Cascade Creek without water in it. Part of the study is to help decide what the options are.

Kelly Palmer said the habitat standard is not included in the Plan arbitrarily, but provides a means of ensuring that the USFS is complying with existing environmental laws. She said the new generation of forest Management Plans has fewer strict guidelines and standards than the old.

Mark Stiles said the USFS cannot be capricious. If the plan says to maintain habitat at 40 percent of potential and he signs something that dries up a stretch of stream, the USFS will lose if the decision is challenged in court.

Steve Harris asked whether the new Management Plan could provide different criteria for new diversions than for old ones created before the National Forest. Mark Stiles responded that might affect how the issue is framed but the process would be the same.

Steve Harris said perhaps a tougher standard could be set for new diversions on streams with little development, while efforts could be abandoned to try to bring streams that have been heavily impacted back to their original condition. Mark said if the SJPLC took the position that a stream is already polluted and there's no point in working on it, then the SJPLC would not be trying to rehabilitate the Animas River near Silverton. He said it is beneficial to have water quality returned to a condition where a stream has biological function again. Agencies can't just say that, because something happened 100 years ago, they will ignore its detrimental effects. Roy Smith said the agencies would lose in court if they tried to exempt pieces of streams from existing laws.

**Chuck Wanner of the San Juan Citizens Alliance** said that if you set aside streams that have already been affected, it wouldn't stop impacts on new ones. When you give a lot of a public resource to a private entity such as Xcel, it seems reasonable to care for that resource. He said mistakes have been made in the past and the permitting process provides a chance to make good decisions for the future. It seems reasonable to make Public Service Co. put some of the water resource aside for the public good.

**Water Facilities Permitting: Dry Gulch Reservoir:** Carrie Campbell said this development involves a joint effort between the San Juan Water Conservancy District and PAWSD, who are planning to build a 29,000-35,000 acre foot reservoir on the Dry Gulch tributary of the San Juan River. The proposed reservoir is primarily on private land with a small portion of it on SJNF land. Steve Harris said the diversion is on the San Juan River, not the National Forest, and there is no National Forest land downstream. He said the USFS should not be requiring a bypass flow in order to use this piece of public land.

Kelly Palmer said water is probably not going to be a major issue with the USFS on this project. She doesn't think a bypass flow has even been mentioned. The relevant issue in this case is water flooding National Forest lands. Roy Smith said NEPA requires the impacts to be disclosed but does not dictate whether or not they have to be mitigated.

Dave Gerhardt said the habitat standard is not applicable in this situation because there are no public land streams to which it applies. The habitat standard applies to all streams occupied by any management indicator species. Habitat might be a concern for terrestrial species in this case, but not fish.

Kelly said each project is unique and it is difficult to write tight language to cover all contingencies. She said there are only a handful of bypass flows in Colorado. It is an option for federal agencies, but history shows bypass flows are avoided if there are other means of addressing relevant issues. Dave Gerhardt said only one bypass flow has been stipulated by the SJPLC is the Dutton Ditch permit issued to PAWSD.

**Water Facilities Permitting: Rico Water Supply:** Steve Harris presented information on Rico’s water situation. The town presently gets its water supply from Silver Creek upstream of the town. The water is treated and then used to serve the town. However, projected residential growth will make this supply inadequate during drought periods. Also, the water is difficult to treat. The town is working with DWCD to construct alluvial wells three miles north of Rico. The proposed wells and a portion of the pipeline are on National Forest land. There is a CWCB Instream Flow of about 20 cfs through that section. Studies found there is a clay layer approximately 30 feet down that has a delayed reaction to the river. When the flow is less than the ISF, pumping from below the clay layer would reduce the impact on ISF, and there would be return flows to the river Rico. If construction of alluvial wells should not prove feasible, then several 10 to 20 AF reservoirs would need to be constructed, probably on USFS or BLM land, to provide augmentation water for Rico diversions.

Kelly Palmer said the USFS pays special attention to municipal watersheds. The USFS did a land exchange on the East Fork of the Piedra River for land in Silver Creek specifically to protect Rico’s water supply from development. Mark Stiles pointed that Public Lands are becoming the sites of choice for many developments. A new compressor station is proposed on the National Forest because people don’t want to deal with private landowners, even though private land is available. Likewise, years ago, Montezuma County said it wanted no more pipelines through private land in the Mancos Valley, so the burden was shifted to SJNF land.

**The November Meeting:** Mike indicated that three topics remain on the list for first-cut discussions — the Ditch Bill, Livestock Facilities and Water Quality —The Roundtable will tackle two or all three of these topics at the November 2 meeting.

Mike asked what people saw as subparts to the water quality discussion. Topics listed on the flip chart included watershed issues, land allocations for municipal watersheds, treatment plants, and mine reclamation related to water quality.

Mike Preston said the Water Roundtable group moved down the “Deliberation Funnel” on many key issues from Rationale, to What’s Important, to What Success Looks Like to Options and Tools. He suggested that at the November meeting the Roundtable could start to discuss Plan Concepts which funnel from Roundtable discussions into the formulation of Plan Revision elements related to water. By December, the Roundtable could pick up loose ends relative to 1<sup>st</sup> and 2<sup>nd</sup> cut discussions and move the primary focus to Plan Concepts and Language.

Mark Stiles also asked Roundtable members to write one-line concepts they would like to see included in the Revised Forest Plan. Mark suggested as an example: “Water decisions should allow for a trade-off analysis” as a concept that had come out of the day’s discussion. If there is time, those will also be discussed at the November meeting with more in-depth exploration of concepts in December.

The next Water Roundtable Meeting will be on Wednesday, Nov. 2, at 10 a.m., at the San Juan Public Lands Center, 15 Burnett Court, Durango.