

**San Juan National Forest/Public Land Management Plan Revisions
Governmental Water Roundtable
Summary Meeting 5 – September 7, 2005**

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Seated at the Roundtable:

Pat Page (Alt), Bureau of Reclamation
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
Al Heaton, Dolores 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
Janice Sheftel, SW Water Cons. Dist.
Peter Ortego, Ute Mt. Ute Tribe
Carl Knight (Alt), Ute Mt. Ute Tribe

Interested Audience Participants:

Brian Davis, SJPLC
Kay Zillich, SJPLC
Eric Janes, for Colo. Sen. Jim Isgar
Ann McCoy Herald, for U.S. Sen. Allard
Ann Brown, for U.S. Sen. Salazar
John Whitney, for U.S. Rep. Salazar
Roy Smith, Colorado BLM.
Eric Fenstick

Thurman Wilson of the San Juan Public Lands Center gave a presentation on Wilderness, as the term is used under the 1964 Wilderness Act. The San Juan National Forest contains portions of three designated Wilderness areas:

- Lizard Head, on the west side.
- San Juan, on the east.
- Weeminuche, on the east.

The San Juan National Forest shares management for the Lizard Head Wilderness Area with the Grand Mesa-Uncompahgre-Gunnison National Forest and for the other two areas with the Rio Grande National Forest. Altogether, there are 415,000 acres of Wilderness within these areas in the SJNF.

The Colorado's Wilderness Act of 1993 also designated 62,500 acres in the SJNF as the Piedra Wilderness Study Area, to be managed as if it were a Wilderness area. The San BLM Lands include no designated Wilderness Areas.

The Wilderness Act of 1964 created the National Wilderness Preservation System, designated certain lands as Wilderness areas “where man himself is a visitor who does not remain”, and directed land-management agencies to examine their lands to see which, if any, might be suitable for inclusion in the Wilderness system. Four federal agencies

have lands managed as Wilderness Areas: the USFS, BLM, National Park Service and U.S. Fish and Wildlife Service.

The decision to designate a parcel as Wilderness can be made only by Congress, not by the managing agency. It is each agency's responsibility to conduct an inventory of roadless areas within its boundaries; to evaluate those areas to see if they fit requirements for Wilderness capability, availability and need; and to then make recommendations to Congress on which areas, if any, should become Wilderness. However, Congress is not required to follow those recommendations.

The Forest Service began a nationwide Roadless Area Review and Evaluation (RARE) in the early 1970s, but it was widely criticized and was abandoned. The USFS conducted another effort (RARE II) in the late 1970s, but that attempt was found by a court not to be site-specific enough and was shelved. The emphasis then shifted to having individual National Forests conduct inventories of their lands as part of the Forest Planning process to ascertain their suitability for Wilderness designation.

On the BLM side, the Federal Land Policy and Management Act (FLPMA) likewise directed the agency to do an inventory of its roadless areas. As a result of the inventory some lands became Wilderness Study Areas (WSAs), areas that are being considered for Wilderness. Pending Congressional designation, these areas are managed to preserve their Wilderness characteristics.

In the State of Colorado, Congress has designated three BLM-managed WSAs as Wilderness: Black Ridge near Grand Junction, Gunnison Gorge near Montrose, and a portion of American Flats, adjoining the Uncompahgre Wilderness.

However, Congress has not acted on many other WSAs, so three areas on the San Juan Public Lands remain WSAs: McKenna Peak, Menifee Mountain and Weber Canyon. These are being managed to preserve their Wilderness characteristics, until Congress chooses to act.

The Colorado Wilderness Act of 1980 added language providing for WSAs to be released from consideration and to be managed for multiple use. Follow up question: How are "release" decisions made?

The USFS and BLM have different approaches to Wilderness. As directed by FLPMA, the BLM took a comprehensive look at its roadless areas and made its recommendations to Congress regarding Wilderness designations. This agency is not required to conduct continuing reviews of its land for potential Wilderness areas. Rather, the BLM is looking at roadless areas for management purposes, not for Wilderness recommendations.

National Forests, on the other hand, are directed to re-study their lands for Wilderness recommendations with every management plan revision.

Thurman said there has been criticism that most current Wilderness areas are at high elevation and that there are not enough areas representative of lower-elevation ecosystems, such as those falling under the purview of the BLM.

Thurman also said that within the San Juan National Forest, much of what was roadless in the late 1970s remains roadless today, although some lands were released to multiple use. Additionally, some new roadless areas were found in the most recent inventory that had been missed in the first inventory. There are 600,000 roadless acres in addition to the Wilderness areas mentioned previously.

The San Juan Public Lands roadless inventory should be completed this fall. Officials will then evaluate roadless areas for Wilderness capability, availability and need.

Janice Sheftel of the Southwestern Water Conservation District asked whether there is an agency bias toward recommending that lands for which there is a possibility of qualifying for Wilderness be designated as Wilderness. Thurman said he has never been given an agency stance one way or another.

Mark Stiles, Manager, San Juan Public Lands Center, said that in Colorado, areas that have not been designated as Wilderness would be “slam-dunks” as Wilderness anywhere else in the country. There are designated Wilderness areas outside Colorado that would not even be considered for Wilderness if they were within Colorado, such as Fire Island, N.Y.

Carl Knight, Land Commissioner for the Ute Mountain Ute Tribe, said the Wilderness areas being discussed lie in an area covered by the Brunot Treaty with the Ute Tribes, which predates the creation of the State of Colorado. He said there are questions about whether travel management restrictions apply to the Utes when they are exercising Brunot Treaty hunting rights in roadless and Wilderness areas.

Peter Ortego, Attorney for the Ute Mountain Ute Tribe, said the Ute Mountain Ute and Southern Ute Indian Tribes are pursuing hunting rights in almost the entire southwest portion of the State, including Wilderness areas. The Tribes are very concerned about restrictions on access, because their hunting rights predate the existence of the state and natives have been using these areas for a long time. There needs to be sensitivity to this issue, and the Utes do not want a battle over access. Designation of roadless areas could prevent roads from being repaired.

Facilitator Mike Preston asked if Peter would provide pertinent documents relating to the tribe’s rights so that they could be posted on the web site. Peter agreed to do so.

Eric Fenstick of the Colorado BLM Office said there are some misconceptions about Wilderness areas. Many people do not realize that grazing may be allowed. Also, if there is a wildfire, agencies can seek approval to do whatever is necessary to protect life and property, but must reclaim the land afterward.

In answer to a question, Thurman said the process of evaluating areas for Wilderness status is a public process. There has already been some input from the Community Study Groups.

Thurman also said that since existing leases for oil and gas development must be respected this can affect consideration for Wilderness designation. That is the situation with the HD Mountains. While many people would like to see the HDs become Wilderness, there are valid rights incompatible with Wilderness designation. Oil and gas leases don't preclude an area from being recommended for Wilderness, but they might mean taking a harder look at the area. Potential water projects might also be such a factor.

Mark Stiles said Congress has taken a variety of approaches in dealing with water issues in Wilderness areas. Such areas do not automatically carry Federal Reserved Water Rights, which are addressed in increasing detail in the Congressional legislation designating Wilderness areas. The Colorado Wilderness Act of 1993 established Wilderness Areas in the State in a way that deferred consideration of Federal Reserved Water Rights

Congress set the boundary of the Black Ridge Wilderness Area to avoid including the Colorado River. Mark said any new Wilderness legislation in Colorado likely will take a stance on reserved water rights.

Janice Sheftel will provide the Colorado Wilderness Act of 1993 to be placed on the web site.

Thurman Wilson's power point presentation entitled "Roadless Area Inventory and Wilderness Evaluation" can be viewed on the Roundtable website.

Roy Smith, Water-Rights and Instream Flow Coordinator with the BLM in Colorado, gave a presentation on the **Wild and Scenic Rivers (WSR) Act.** The Act requires public-lands agencies to inventory, during land-use planning, all significant streams within their boundaries, even if such an inventory has previously been performed, so long as Congress hasn't released specific rivers from consideration for WSR designation. There are four stages within an analysis of a stream for WSR status: Eligibility, Classification, Suitability, and Designation:

Eligibility is a broad look at whether a stream meets the two basic criteria for WSR designation: the stream must be generally free-flowing (with few diversions or levees, no channel modifications, etc.), and must possess at least one Outstandingly Remarkable Value (ORV).

An ORV is something rare and outstanding in a statewide, regional or national context, or something that provides a superior example of a widespread value. It must be stream-related and lie within the river corridor, considered to be one-quarter mile from the center

of the corridor. Examples of ORVs are fish habitat, scenery, recreation, wildlife habitat, cultural resources and ecology.

Agency staff makes preliminary eligibility evaluations. After findings are published, there is a 30-day comment period.

Tentative classification is the next step. Each stream segment is classified as Wild, Scenic, or Recreational. Wild means essentially primitive and unpolluted. Scenic means the stream may have some development and a few access points. Recreational means the stream may have fairly extensive development. This classification does not require that recreation be the ORV for that particular stream. The Cache La Poudre River is an example of a stream with a recreation classification, as the river runs along a highway.

Suitability, the next stage in the process, is a determination of whether a stream is manageable as a WSR. Factors include ownership of lands beside the stream, use trade-offs and conflicts, regarding other current or potential uses of the stream corridor, usage levels, and availability of other methods for protecting ORVs. For instance, when considering a WSR designation, the agency must recognize that the designation will draw attention to the stream and more people will use it. The trade-offs must be considered. Will the additional visitors trample the very values that are supposed to be protected?

The agency develops suitability recommendations and a range of alternatives, then seeks public comment.

Once a stream segment is recommended as Suitable, the recommendation is made part of a Record of Decision. The stream then falls under an interim status, to be protected as a WSR until Congress acts.

Designation is the final step. Only Congress can designate a WSR. Agencies can only recommend. If a WSR is designated by Congress, the agency develops a management plan. Designation historically includes a Federal Reserved Water Right. The managing agency quantifies the amount and timing of water needed. Water rights are then adjudicated in state court. When a Federal reserved water right is not feasible, the stream may be protected without naming it a WSR. A Federal reserved water right carries the priority date of the WSR designation.

Dan Merriman, Director of the Colorado Water Conservation Board's (CWCB) Colorado Stream & Lake Protection Program, noted that, in the case of Colorado's only WSR, the Cache La Poudre River, the amount of water reserved was all the unappropriated water in the stream. There is concern that this may set a precedent for future WSRs in Colorado.

Roy Smith said the Idaho Supreme Court has held that the water right for a WSR should be the minimum needed. The Oregon Supreme Court has held that it is the amount reasonably required to support the relevant ORVs for the river being considered. The issue is examined on a case by case basis. Whether a river is classified as Wild, Scenic or

Recreational makes a difference in its management. For example, a river classified as Recreational might not need all the unappropriated water. There can be a designated WSR below a dam.

Eric Fenstick said the Wild classification removes future mineral leasing options, but that is not necessarily true for Scenic or Recreational classifications. Roy and Eric said there is a set of Q & A's regarding the meaning of the classifications and suggested there be a link to the Q & A's on the web site.

Roy indicated the agencies want to complete the WSR process through the Suitability determination during the San Juan Public Lands plans revisions effort. WSR studies are not being conducted simultaneously on all the lands of the agencies statewide, but Canyons of the Ancients National Monument is going through the same process.

A request was made that the first round of WSR studies on SJPLC streams be made available on the web site. Kay Zillich will check into this.

Pat Page of the Bureau of Reclamation asked how the Colorado office coordinates with other offices in other states if a stream is in more than one state.

Eric replied that if a river flows into another state, the agency would want to coordinate with the agency in the other state but that the WSR Act says WSR designation cannot interfere with interstate compacts.

Pat Page also asked what would happen if ORVs conflict, such as endangered fish and recreation. Eric answered that fish can be protected by the Endangered Species Act without a WSR designation for the river, if such fish are the only ORV.

Mark Stiles said that a Wilderness designation offers more flexibility regarding reserved water rights than a WSR designation. The final answer is up to Congress. The original Wilderness Act does not provide much specific guidance regarding reserved water rights, whereas the WSR legislation does.

Roy Smith's power point presentation can be viewed by at the Roundtable website linked to the title: "Wild and Scenic Rivers Act."

Kay Zillich of the San Juan Public Lands Center gave a presentation on the selection of streams as eligible for WSR designation on the San Juan National Forest. Streams eligible for WSR status are defined as bodies of water with sufficient flow to sustain the stream's ORVs. Because 665 uniquely named streams were found to exist on the SJNF, the agency decided to consider only third-order and larger streams. (Two first-order streams make a second-order stream, and two second-order streams make a third-order stream.) There are 370 uniquely named third-order streams on the SJNF. Specialists in substantive areas added a few more streams from the lower Dolores area and around Silverton. Large rivers such as the Pine, Piedra, Animas and Dolores were then broken

into smaller segments. In the end, 310 segments were selected to be analyzed more closely for WSA eligibility.

An interdisciplinary team analyzed the 310 stream segments to determine whether ORVs were present. 73 segments were found to possess one or more ORVs and, therefore, were considered eligible for WSR status. The segments were then considered for classification and suitability. Only those segments one mile or longer were classified based upon current water-resource and shoreline development, water quality and accessibility.

Previous studies had reviewed streams up to their headwaters, so additional segments from these previous studies were added, bringing the number of different segments to 97. The Team will receive input on the eligibility and suitability of those segments but will make recommendations for WSR designation to Congress only at Congress' request. Those streams found Suitable for WSR status will be managed to preserve their ORV characteristics.

Thurman said large portions of the Dolores, Pine and Piedra were found Suitable in previous studies, so they are already being managed as such to protect their ORVs.

Dan Merriman asked how changes in water rights would be addressed within Suitable segments. Roy Smith responded that this issue would not arise unless a river is designated as a WSR. Eric added that the agency does not have standing to contest a change of water rights on a river classified as suitable but not designated as a WSR by Congress.

Roy said the WSR designation is not like a Wilderness designation. Depending on a river's classification, many different activities may occur in a WSR corridor. If the ORV is a scenic cliff, for instance, not much water may be needed to maintain that value.

Janice asked how such a designation for the Dolores River below McPhee Dam might affect the operation of the dam. With the conflicting values of fishery vs. rafters, what might the management prescription look like? Janice pointed out that rafting was not a Dolores Project purpose. Janice asked how the Dolores River Dialogue (DRD) was addressing these below-McPhee Reservoir issues. David Graf and Dan Merriman, who are part of the DRD, responded that the current focus of the DRD was on gathering and analyzing scientific information to build a foundation for considering these and other issues in the near future. Eric added it would depend on the ORVs of Dolores River segments. Different classifications might be considered for different segments of the river. It would be important to cooperate with entities involved with McPhee, such as BOR and DWCD.

Dan said that the WSR designation has not come up in DRD discussions, but should be part of future meetings. Eric commented that even without the WSR designation, there will be discussions about recreation and the fishery on the Dolores.

Dan asked whether the analyses of the stream segments being prepared as part of the forest planning process are full-blown Environmental Impact Studies. Eric replied that they are not because the current analyses are being undertaken under a different part of the WSR Act than the portion that requires an EIS.

Bruce Smart, Public-Works Director for the City of Cortez, asked how a river benefits from a WSR designation. He said such a designation could bring so much attention and visitor traffic, it would be a “death knell” for the river.

Eric said the major impetus behind the WSR Act was to preserve a certain number of streams from being dammed. The President can authorize a dam in a Wilderness area but it takes Congress to undo a WSR designation.

Mark added that a WSR designation can affect how an agency considers future land uses. If scenery is a stream’s ORV, for instance, the agency might not want to see any power lines along the stream corridor.

Mike Preston led a discussion of types of input into the WSR Process, and how to integrate Roundtable and general public input into the analytical process. Questions to be considered include:

- How compelling are the ORVs for each segment? What would be the effect of WSR designation on the management of the segment?
- Trade-offs: What is given up if eligible river segments are determined suitable?
- What are the best means for protecting ORVs – are there other methods besides WSR designation?

Dan said it would be important to determine where water development might occur and cull those river segments out of the WSR eligible list. In Colorado, many people consider a WSR listing much more restrictive than a Wilderness designation, with potentially more impact because of the reserved rights required and because of potential restrictions on water quality, viewsheds, etc.

Thurman indicated there may need to be separate meetings on the WSR issue to bring other viewpoints to the table. The Water Roundtable can help with the trade-off analysis and identifying potential conflicts. Mike suggested that there will be opportunities to explore these issues outside the Roundtable in which information assembled through the Roundtable process will be useful.

Mike said the second-cut WSR discussion needs to be well-honed. The Water Roundtable group can help bring WSR water issues into focus, but once the Roundtable has digested a topic, what happens next? What conclusions can the group reach? What information can it develop that would be useful broader public involvement process?

Dan stated he would like to hear more discussion about water rights related to the WSR designation. The state Water Supply Initiative (SWSI) water development results need to

be brought forward. He asked whether a District Ranger will have the power under the revised Plans to do something contrary to a Suitability designation. Thurman said he was not sure.

It appears that the SJNF will be revising its plan under the 2005 planning rule rather than the 1982 rule. Under the new rule, decisions are fuzzier. It is unclear when a WSR Suitability determination becomes a formal decision.

Mark said Suitability is a finding. What is done about it is a prescription.

Kelly Palmer, Hydrologist with the SJPLC, stated that if a river is being managed as a WSR, a water facility development proposal would trigger an EIS. Otherwise only an Environmental Assessment might have been required.

Plan for Meeting 6, October 5: There will be two second-cut discussions at the October meeting. One will be a **2nd Cut Discussion on Water Facilities and Permitting Requirements**. Janice asked that the permitting discussion examine the example of the Dutton Ditch near Pagosa Springs. When the Pagosa Area Water and Sanitation District (PAWSD) recently sought a special-use permit to install a pipeline in the Dutton Ditch, PAWSD agreed to the USFS requirement for a bypass-flow. Janice asked what specific portion of the statutes and the current USFS Plan mandated the decision to require a bypass flow. She asked further what would have happened under the Jan. 19, 2005, letter from Mark Rey, Undersecretary of the U.S. Department of Agriculture, to Sen. Wayne Allard's regarding managing water resources on Federal land and under the 2004 MOU between the USFS and the Colorado Department of Natural Resources.

The second second-cut discussion will concern the WSR designation process. Kay will provide more detail on the ORVs on key stream segments under consideration for suitability. Dan asked for more information on how WSR Suitability determination will fit into the revised plans.

Discussion ended with ideas about scheduling future first cut discussions. Livestock water facilities and the Ditch Bill were suggested topics for November. Water quality is another issue which needs to be scheduled for first cut discussion.

The next Water Roundtable Meeting will be on Wednesday, Oct. 5, at 10 a.m., at the San Juan Public Lands Center, 15 Burnett Court, Durango.