

## **River Protection Workgroup for the Animas River**

### **Meeting #10**

April 30, 2012, Kendall Mt. Recreation Center, 5:30-8:30 p.m.

#### *What happened at this meeting?*

- \* New handouts made available and discussed
- \* Review list of values and current protections from previous meetings
- \* Review of segment analysis sheet and pro/con discussion of potential protection tools for Baker's Bridge north to just below Silverton
- \* Discussion of possible Durango area informational meeting

\*\* Next meeting: May 24, 2012, 5:30-8:30 p.m., meeting location: Kendall Mountain Recreation Center \*\*

The River Protection Workgroup for the Animas River conducted their tenth meeting on Monday, April 30, 2012. Approximately fifteen (15) people were in attendance. Marsha Porter-Norton facilitated the meeting. The meeting began with introductions of the attendees. The agenda was explained and agreed upon by those present.

#### **Opening**

The facilitator reviewed the agenda and proposed outcomes, and both were agreed to. The RPW ground rules, process principles and framework were briefly reviewed as is done at each meeting. The facilitator stated that most of this meeting would be spent focusing on potential protection tools. Marsha directed the group to the Tool Kit handout, which discusses various tools for water and watershed protection. It covers federal, state and local tools. The group spent the bulk of the evening discussing questions on tools and exploring pros and cons specifically for the segment that goes from Baker's Bridge to just below Silverton. As well, the group discussed what information was needed on various tools. It was clarified that the charge of the group at this stage is to explore whether current protection tools in place are sufficient to protect the values. If not, what additional ideas should be considered? To do this, the group is taking ideas generated in the last meetings, by segment, and exploring the tools in-depth; asking for more information where necessary; doing a 'pro//con' analyses; and having general discussion.

The outcome of this group will be recommendations on individual segments or on the entire watershed or on WSR sections. A report will be written, summarizing recommendations and disseminated widely to public and private entities. Consensus will be attempted but if not reached, that is acceptable as

well. The report will reflect various views. It was stated that the group will also explore at this meeting whether to hold one informational meeting downstream.

### **New Handouts**

Segment Analysis and Brainstorming – includes protections, values and ideas for protections in place on each segment.

### **Review of list of values and protections and pro/con analysis of potential tools**

The complete list of values, current protections and ideas for protection can be found at <http://ocs.fortlewis.edu/riverprotection/animas/handouts.htm>.

#### Baker's Bridge to Below Silverton – general overview:

- Found to be preliminarily suitable
- Values identified by group: rafting, train, recreation, scenery, geology
- Values identified by the USFS/BLM: recreation and scenery, cultural/historical
- Ideas for Protection: state in-stream flow; status-quo; leave it preliminarily suitable; WSR; use county land use codes; designate two WSAs adjacent as Wilderness Areas (need to get WSA study areas mapped); mineral withdrawal within the area between wilderness areas and private land; management scheme by USFS such as the planning tool in the plan; design a special area (see the St. Vrain example in the Tool Kit)

### **Evaluation and Discussion of Potential Protection Tools for the segment: Baker's Bridge to Below Silverton**

#### **In-Stream Flows (ISF)**

Everyone was clear on what this tool is and was reminded that Linda Bassi of the Colorado Water Conservation Board visited the group in the fall and educated everyone on ISF.

#### In-Stream Flow – Cons:

- We have 17 in-stream water rights upstream of this segment, so why would we need to consider the need for more?
- There are significant senior water rights downstream, a Recreational In-stream water right in Durango, and the Lake Nighthorse (A-LP) water rights ensure that those water rights go through the canyon. Some view this as a protection. It was noted that we haven't looked at a hydrograph through the course of the year after Chuck asked if a hydrograph exists. A suggestion was made for Bruce to work with the DWR and CWCB to gather this info. 200 cfs is pulled from the two ditches in the Animas Valley.

## **Status Quo**

### Status Quo – Pros:

- John Ferguson stated that he felt the status quo was pretty good because of natural constraints and Wilderness protection, the Antiquities Act, and county restrictions – so it's protected well now.
- There has not been much mining below the wilderness boundary to Baker's Bridge in this area to date.
- Steve Fearn stated that there's a value in leaving flexibility. Matt said there are several unpatented claims in the canyon in the vicinity of the railroad. He said it's difficult for the FS to deny entry for someone who wants to stake a valid claim. On the other hand, there are entities that have to approve claims, other than the FS, who would be rigorous in protecting values.
- Pete asked whether suitability would be left "on the list" with the FS. If it's left in the final plan, it will continue to be managed that way.

### Status Quo – Cons:

- Chuck said that things do change. There can be too many protections but if you have a single protection, there's more clarity too. He's not convinced of the durability of certain protections and said they don't prevent a major impoundment. He wouldn't mind seeing WSR on that stretch and doesn't think there would be a very large water right required for a historical stretch, which this would be. He's open to status quo with suitability included and sees some potential for protecting some of the lands surrounding the river. The St. Vrain language on this stretch of the river might be a good way to go (refer to the tool kit). Preventing substantial construction in the canyon is possible. If no WSR or suitability, the train is not protected.
- Question: Is preliminary suitability a driver for cleaning up the river? Steve stated that there had to be a plan in place for water quality in order for suitability to be found. How long it will take to accomplish that plan is an unknown. Water quality standards could be adjusted to what's realistic for this stretch. The state is the driver over water quality.
- Comment: Melissa reminded everyone that San Juan County is a right-to-mine county and it's easier to get a mining permit than a permit to build a house. A comment was made that WSR has condemnation rights. It was agreed that the conversation about that would be tabled until later in the meeting when WSR was discussed as a potential tool.

### Threats:

- Marsha asked if there were any threats to the identified values on this section. Steve said he's happy to support taking an impoundment off the table. Pete would strongly support Steve's offer to take dam sites off the table, as they have been identified in the SWSI study.

- If the train stopped running, it would be a major threat to Silverton's viability. Would WSR protect the train? Disagreement was voiced about that. The historic value of the train is one of the ORVs the FS found that led to this stretch being suitable for WSR. The corridor for the train is protected by a long-term lease. John stated that there was nothing we could do to keep the train going if it chose to stop running. Steve stated that in the past when the railroad was threatened, the community of Silverton stepped in and prevented that. He feels Silverton and Durango would "save the train" if needed. No eminent threat to the train NOT running was cited. This was a topic talked about in the abstract.
- Ken stated that the right to condemnation comes with WSR. Chuck stated that he thought condemnation wasn't a possibility due to FS ownership, but will follow up with the group to make sure this statement is true.
- John Whitney said recreational WSR can be tiered to protect specifically those values. Part of that could state that it's protecting the train's right to get through the canyon. Matt confirmed that is true. If something threatened the train or their ability to operate or if there was a massive slide and the train needed to get in there to get it cleared, a way would be made for that to happen because Congress would have directed that. Jimbo reiterated the importance of the railroad being protected.
- Several people said they would like to hear from representatives from the train to see what they think.

#### Status Quo – General Comments:

- Matt, from the USFS Columbine District, stated that a Special Management Area does not equal a mineral withdrawal, and a scenic corridor does not limit development.
- A question was asked about the draft plan and if it called for status quo. It was stated that it does call for status quo.
- John Ott spoke about water quality in the canyon and said it's still pretty bad but it's possible to continue to improve that water quality. A question was asked about who controls water quality – it's the State Water Quality Control Commission.
- There are two cases in court right now regarding water development on this segment.

#### **Wild and Scenic River (WSR)**

##### WSR – Pros:

- Permanence could protect the train, prevent an impoundment and protect against some threats. This tool is permanent unless Congress was to rescind the legislation (note: a WSR takes an act of Congress).
- Courtney, from La Plata County, stated that if designated WSR, further setbacks may influence what La Plata County requires now, which is only 50 feet.

### WSR – Cons:

Many of the issues that were brought up in past meetings were summarized including restrictions that come with WSR designation, private lands and questions about how they would be affected near Baker's Bridge, and affects on mineral development. A summary:

- It could restrict what one can and can't do on private land.
- There are other ways to protect the train. Ken stated that the more we take local control, the better. We could designate a National Recreation Area.
- Steve stated that WSR could threaten water rights and potential development of water rights. A question was asked if there was ever a WSR designation without a reserved water right. Steve and Matt said typically, no, there is always a reserved water right but it doesn't have to equal all unallocated water.
- John Ferguson objected to removing any segment from mineral development, and also felt WSR could preclude other access to the river by the FS, to those who are not young, are not able-bodied, can't ride a horse, etc. Marsha asked the group how access is handled under WSR, based on this concern. Matt said the FS would still have access for forest management. They would be sensitive to what the impacts would be on recreation and visual qualities. They're not going to build roads – the only access would be via railroad. There's very little access in this area as it is.

### Comments:

Pete asked where the train is on this issue. It's unknown at this time, though they have been invited to the process. Another question was whether the pollution impacts of the train would be mitigated under WSR designation? Chuck stated that there are some claims in the top mile or so of the suitable area. That area could be left out of a potential WSR designation – a truncated boundary. This was a new idea put on the list.

### **La Plata and San Juan County Land Use Codes**

(Discussed in previous meetings and reflected on page 7 of the Info Sheet)

### Comments:

- Land is mostly managed by FS in La Plata County, but there's more private land along the river corridor than in San Juan County. San Juan County is pretty protected now.
- A suggestion was made to make the two county's protections of the river corridor areas more consistent. Buffers are not set in stone in La Plata County, so there's no good protection right now.

## Wilderness Study Areas (WSAs) – designate as Wilderness

### Comments:

There are two WSAs in this area of focus. Matt stated that the two WSAs were recommended to be removed in 1995 because FS felt it would be more difficult to manage as Wilderness. They wanted to have them revert back to BLM standard land. This didn't pass in Congress, as it was part of an omnibus package. BLM [is only agency that can do a WSA](#). As a roadless area, FS could authorize significant helicopter logging, etc., as long as roads aren't being built.

Marsha Porter-Norton 7/18/12 4:07 PM

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**Pros:** Protection is permanent vs. being managed as a Wilderness.

**Cons:** It would take away the [BLM's](#) ability to manage more flexibly, especially related to fire mitigation. Permanence is permanent – it can't be changed back easily since it's an act of Congress.

Marsha Porter-Norton 7/18/12 4:07 PM

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## Mineral withdrawal within the area between Wilderness areas and private land

### Comments:

Wind, water and solar energy potential – is it excluded under WSR? We need information on whether there is any mineral development potential in this section. Steve is not aware of any potential here. Is this even necessary?

### Pros:

- Jimbo stated that he wondered why anyone would want to allow mineral development in an area that could negatively impact the value to the train.
- Steve stated that if a mining operation went in, it could be required that it appear to look historical. It's not in the San Juan County code.

### Cons:

Because of future technologies, we shouldn't lock things up permanently. It could affect future economic opportunities.

## Design a "Special Area" (see St. Vrain example in Tool Kit)

### Comments:

Federal legislation was used on St. Vrain. Early consensus was reached that no dams (impoundments) would be explored for this segment. Steve stated that politically he didn't think a major dam would happen anyway. Matt stated that there will be increased pressure for higher elevation dams in the future; as climate change is making the snowpack not what it used to be.

Pros:

This can be a tool that allows a locally crafted solution. This is what the Hermosa Creek Workgroup opted for, combined with other tools.

Cons:

This can be very challenging, i.e., Hermosa legislation. It's not a given that the legislation would go through.

**National Recreation Area (NRA)**

Comments:

- Ken E. gave an overview of his knowledge of NRAs: There's no inclusion of NRA protected lands in the National Landscape System such as there is with an NCA. It's a tool for use on USFS lands only and it requires federal legislation. You have to identify outstanding values, how to protect them, etc.
- How would the train be operated? The understanding that the train couldn't be altered, if it's privately owned, was stated.
- An NRA designation would be in lieu of WSR.
- The group suggested we get a speaker on NRAs to learn more.

Pros:

It's an alternative to WSR and can be tailored for a given area. It could be keyed to recreation and it gives a lot more flexibility. Recreation is so big in this corridor that this tool is better suited. It gets rid of the federal water rights issue. Could the NRA solve a water quantity issue?

Cons:

There is a risk that it would be changed in Washington – lots of unknowns with the use of any federal legislation.

Kevin asked if we are stuck with WSR. No. Steve clarified that suitability gives guidance on how it's managed and if nothing happens, the FS will probably keep suitability in the upcoming final plan. In order to move forward to legislation, we need to have a broad base of support. If this group doesn't go anywhere on WSR, it will probably stay in the final plan until the next plan is done. Congress required the FS to look at areas that could be suitable for WSR. They have not done that with NRAs. Matt stated that if the final plan shows this segment as preliminarily suitable, he, as a manager, can't jeopardize suitability until there's a chance for the community to weigh in. Until that plan is final, management doesn't change. Matt said it will go in the plan as suitable. This group could recommend other things which could weaken or strengthen FS management.

**Watershed vs. segment view of protections**

It was agreed that the discussion about whether the protections would be looked at from a watershed vs. segment basis would be tabled until a later meeting.

**Interest from downstream users and stakeholders in and info meeting**

Marsha asked how the group felt about a Durango-area meeting. She said that this was talked about at the beginning due to the nature of this river...there are many downstream users and interested people. Steve mentioned one of the concerns of the Steering Committee was that you would introduce a whole new set of participants that don't have all the background. The group felt this should be an informational meeting only and that such a meeting shouldn't mean Workgroup progress is thwarted. It will happen in early June. Everyone is welcome. Pete said he felt that it should happen in Durango itself.

Marsha thanked everyone for a great meeting with a lot of in-depth dialogue and discussion.

**The next meetings are set for May 24<sup>th</sup> and June 28<sup>th</sup>, 2012.**

Meeting recorder: Tami Graham