

River Protection Workgroup for the Animas River
Summary - Meeting #15, Thursday, October 25, 2012
Kendall Mt. Rec. Center
5:30 to 8:30 p.m.

Introductions and overview of meeting goals:

Marsha Porter-Norton welcomed everyone. After a round of quick introductions, Marsha reminded everyone that the major goal of the group is to produce a final report which will be widely disseminated and will reflect the group's work. The workgroup is now in the process of discussing ideas for protection of values on the remaining segments and capturing the range of opinions including any areas of consensus. At the last meeting, the workgroup did find consensus on several issues which are reflected in the September minutes. The agenda was reviewed. Todd H. will offer a 30-minute presentation during this meeting as previously agreed to by the group. Discussion of Cement Creek and the Upper Animas will also be discussed tonight, time permitting, along with finishing up ideas for Mineral Creek and South Mineral Creek. Also, group member Bill Dodge submitted a watershed-wide proposal which was handed out. The next couple of meetings will be a continuation of the segment-by-segment analysis and assessing agreement or a range of views on protections.

Review of definition of consensus and dissemination of final report:

Marsha reviewed the definition of consensus because someone had asked her about it in an email. Since the group is now in the final phase of setting its recommendations, she said a review of what consensus means would be helpful so everyone is clear. Reading from the chart, the group members have a responsibility to listen to others who might not agree. Differences of opinion are natural and expected. Everyone is asked to try to make a good-faith effort to reach a decision that everyone can support. The list of interests generated last time can be used to understand what the interests are in the room. Consensus doesn't necessarily mean you agree with a decision but that you can support it. It's not about voting in the traditional sense. It's about discussion and seeing where any common ground might be forged and/or where a range of opinions is expressed.

Marsha also reviewed the ground rules that have been previously established and accepted by the group. Ken asked how differences of opinions would be reflected in the report. Marsha stated that in past reports, different views on specific topics were reflected in the way the recommendations were crafted and

also in the minutes, which were part of the report. This is why the RPW project invests in having a professional recorder. The minutes will definitely reflect all the views on protections, people's ideas, concerns, questions, etc. Marsha said she would send the group the reports produced through the RPW to date so members can see how different views were reflected (for Vallecito Creek/Pine; for Hermosa Creek; and for the upper San Juan). It was stated that not reaching consensus does not mean failure.

Then, Marsha went through some background on the key reason the RPW project was formed and why five Workgroups have been formed in the region. The draft Forest Plan for the San Juan Public Lands guides how those lands will be managed. It was drafted in 2007 by the Forest Service, not by the RPW. In the draft Forest Plan, it states that the five River Protection Workgroup's findings may be incorporated into the final plan, which has not been released yet. The RPW group is not a formal advisory group to the Forest Service or BLM but the Workgroups do have some potential influence, she said. When the report is finished, it will go to the BLM and FS supervisors, to elected officials and to anyone who wishes to see it, and will be posted on the website. Marsha said she brought this point up just to relay to the Workgroup again the opportunities that exist.

Bob, from TU, asked if the FS had to have a comment period if there were changes to the final FS report that were not reflected in the draft. It was determined that an answer would be sought from Mark Stiles on this question.

Mineral and South Mineral Creek's Opportunities, Consensus Findings and Range of Opinions, continued:

The group heard the points of agreement from the September 2012 meeting regarding Iron Fens and Black Swifts, and the range of ideas for setting up a Local Advisory Council and balancing mineral development with natural values.

Additional comments from this meeting/discussion:

Iron Fens

- ⇒ It was learned since the last meeting that a map of the location of Iron Fens does exist via the Mountain Studies Institute (MSI) and will be provided at the next meeting and/or by email.
- ⇒ Ann stated that information on ground water hydrology and surface water, as it relates to Fens, would be useful. Aaron from MSI stated that this information is available and he will provide it to the group.
- ⇒ Steve suggested that we not look at all of the Fens and a general policy for them but rather the more significant ones, such as the Chatanooga, Mineral and South Mineral fens. Steve said there is already an ISF (In Stream Flow)

to protect the Chatanooga Fens.

- ⇒ Bruce asked Aaron, from MSI, if he felt that flows to the fens had been depleted. Aaron said that the Ophir Pass fen has certainly been impacted, not necessarily by depletion but perhaps by road construction. MSI is studying whether there are construction techniques that would allow for movement of water to continue to happen unhindered. It may not be so much the amount of water that flows but where it moves into the fens. If it gets channeled through ditches or culverts, it may not be getting the amount of water needed. Steve asked if the Ophir Pass Fen was in this watershed and Aaron said yes, it is.

San Juan County Commissioner Ernie Kulhman asked if the intent of the FS was to include Mineral and South Mineral for WSR status. Marsha said that these two segments are considered preliminarily suitable now, as is the Main Stem of the Animas. She read from the section of the Information Sheet that relates to this topic. The original goal of the workgroup, it was clarified, was to look at the segments that have been found to be suitable for Wild and Scenic Status and determine the desired level of protection while considering all the values and a suite of tools. However, the group did agree, at a previous meeting, to also look at additional segments, including Cement Creek (two segments) and the Animas above Silverton which were not found to be suitable. The reason for this is just to discuss them as these segments obviously "feed into" the other ones. Marsha clarified that just because the group is discussing these upper segments does not mean the group has to recommend anything....right now, we are at a discussion phase, she said.

Ernie stated that this could go on forever, and that he understood there would be no votes but rather there would be consensus. Steve stated that we are not just looking at Wild & Scenic. Marsha clarified that the group's job is to see if there is any consensus on the tools for protection the group has listed as possibilities. Ernie stated that he is not in support of Wild & Scenic. Marsha said that is fine and invited him to voice that when we discuss that potential tool later in the meeting(s).

Marsha reviewed for the group the ORVs (Outstandingly Remarkable Values) on the segments which led the USFS to find them preliminarily suitable. She reiterated that like last meeting, the group did find consensus on several issues.

Todd stated that the sacrifice necessary to come to these meetings, in order to prevent their properties from being stolen and limited, was difficult. The group was reminded that in a previous meeting there was support and affirmation for private property rights. Todd said discussing any tools that relate to private property harms property rights.

Marsha asked the group if they wanted to stop discussing Mineral and South Mineral Creek and/or the other segments. She clarified that this could mean that for sure suitability would be in place for three segments (Main Steam, Mineral and South Mineral) when the USFS Plan comes out. Does the group want to disband right now? She said that with some of the comments being made about how long the group is taking, that she felt the question should be addressed head on. She asked: What does the group wish to do right now? Wendy stated that this process, from the beginning, has been about more than Wild & Scenic – what slows it down is revisiting things, which we’re doing right now. There are a lot of values represented here and she’d like to see the process through; to finish what we set out to do. Bruce reminded the group that the FS has already found certain segments as suitable, and so, this group has the opportunity to determine if there are alternatives out there that make more sense and to express those publicly in a report. Bruce said that to quit now would be saying that the group is ok with what’s already in the draft Forest Plan. Ken said it doesn’t matter what this group comes up with, that Forest Supervisors do what they want to anyway. He said what the group comes up with will likely not make a difference and they will just keep all the streams suitable in their final Forest Plan.

Ken then asked why we are talking about the watershed. Marsha clarified that there has been no consensus on the question of whether the group wants to take a watershed approach in terms of any protection tools. She said, this is on the agenda (at a future meeting) simply for discussion purposes. The group can decide where to go with any watershed-wide ideas about how to protect values. Ray stated that he’s a property rights advocate because it’s the only way that you’re allowed to do productive work. Marsha again reminded the group that there was consensus previously that this group recognized the ability for individuals to make a living in this focus area (see Values Statement) and the group agreed that private property rights should be honored.

Ann stated that certain segments are listed as preliminarily suitable. Right now, we’re still in a fluid situation and no segments are designated as officially “suitable” and will not be until the San Juan Public Lands Forest Plan comes out in final. Jimbo stated that this is a voluntary process and there is a diversity of people involved. He doesn’t feel the FS would say they’ll consider the group’s recommendations if they weren’t serious about it. Steve reminded the group that the FS has removed eligibility from certain segments in the upper watershed as part of the Government-to-Government Roundtable which occurred before the RPW project was started. John Taylor said he has been convinced by the FS that if we come up with a consensus on a range of issues, including Wild & Scenic, they will give it absolute consideration.

Marsha said she hears there is concern about how long the process is taking and honors some members' frustrations. She said it sounds like the sooner we can wrap it up, the better. She's also hearing that this is an opportunity to discuss not only WSR as a tool but alternatives and tools to protect all the values. She said that some may become frustrated and leave the process prior to its conclusion. She hopes that isn't the case but participation in the group is a choice. This is the most complicated of all five of the streams the RPW is focusing on. She said there are many views; there are complicated water rights; there are many values in play – social, economic, ecological and cultural. It was then suggested that the group try to wrap up the segments and get a report out after the first of the year if at all possible. There was no consensus vote taken on this approach. It was acknowledged that some in the group may wish to quit because of various reasons but the workgroup will continue to meet and there is interest among many in reaching the end of the process.

Bob had a question about the train as a value. The D&SNGRR came to a few meetings expressing that they didn't support Wild & Scenic. He asked how that would be reflected. Marsha said the report reflects the deliberations, including the statements by the D&SNGRR and any other stakeholders. Ann clarified that what's discussed in the room is included in the minutes. Ken said that the majority of the people in the room are paid lobbyists. Marsha said that is not the case and also, it is not helpful to pick on who is in the room. She said we could count the number of lobbyists but asked, is that really helpful? She suggested that the ground rules, from the beginning, are to ensure an open table – everyone has a seat and a place here, no matter their affiliation or their interest. The alternative, she suggested, would be to pick 10 or so people to be in the group and suggested that would likely not be fair. She asked if that would be a way to go and there was no support for this.

The group agreed to move on. They took up where the meeting ended last time which is to continue discussing protections for Mineral and South Mineral including:

4 issues left to discuss on Mineral and South Mineral Creeks:

- Establishing a Research Natural Area
- Status quo specifically defined for this area
- Protect and improve water quality; affirm work being done
- WSR – suitability or designation

Establishing a Research Natural Area (includes additional comments on Black Swifts):

Discussion and comments

(Note: Please see the minutes from September 2012 regarding ideas for other protections discussed by the group.)

Background: The idea for an RNA came out of a recognition of the ecological values. A document from the USFS was distributed previously that explains what RNAs are. It is not a BLM tool and does not apply to private lands. There is a link on the website for more information on RNAs.

Comments:

- ❑ An RNA affords another layer of bureaucracy that we don't need.
- ❑ An RNA is almost more restrictive than Wilderness.
- ❑ What is the value that would be protected that couldn't be protected otherwise?
- ❑ The current FS Draft Plan shows an increase from 4 to 9 RNAs. This is a big number and this tool leaves a lot of power in the hands of the local Forest Supervisor.
- ❑ Wendy said she brought up these ideas as a way to protect the Black Swift. There are some other tools out there that might work better for protecting them. RNAs do have their time and place but Wendy said she is willing to let this go if other tools could be found to protect the Black Swifts – some of which were agreed to last time.
- ❑ Have the Black Swifts been studied thoroughly by the FS and BLM? FS said they haven't studied it enough.
- ❑ One of the ideas previously discussed was to support the FS in doing further studies on the Black Swifts.
- ❑ With droughts, we're not really completely in control of the flows that protect the Black Swifts.
- ❑ John T. clarified that Black Swifts are not threatened; they are a FS "sensitive species." So, he suggested we need to do things that keep them from being threatened or endangered because that is when federal intervention could come in. Now, there might be a chance to devise a local tool.
- ❑ Steve said that regarding the idea of an In-Stream Flow (see 9/13 minutes) a determination would need to be made by CWCB to assess what amount of water would be needed to protect the Black Swifts' habitat. The state would need to look at the potential unintended consequences of doing so as part of the process in place to establish In-Stream Flows. Marsha reported that Linda Bassi, from the CWCB, stated (in an email to her) that there is a precedent by the CWCB in Colorado for an ISF to protect the Black Swifts. Bruce said yes, this is at Hanging Lake

- by Glenwood. The group was reminded that Linda did a presentation last fall on the CWCB and in-stream flows (refer to handouts on the Web site for her presentation).
- ❑ Marsha reminded the group that they reached consensus last meeting to explore protection tools for the Black Swift, including potential seasonal closures and/or an ISF.
 - ❑ Jimbo reiterated what John T. said: We don't want the Black Swift to be listed. This would bring in a lot of interest from people that don't live in this area, which is probably not what the group wants in terms of having local control.
 - ❑ Jimbo also stated that an ISF might be more difficult than the potential of an RNA. He would like to keep the idea of an RNA in the report.
 - ❑ Todd said it was not a good idea to recommend something that you don't know all the ramifications of. He also cautioned against using the word "in perpetuity."
 - ❑ Wendy suggested that folks re-read the information that Ann provided previously which can be found on the website at:
<http://ocs.fortlewis.edu/riverprotection/animas/handouts.htm>
 - ❑ Steve asked if there could be an agreement stating that, of the two areas where Black Swift nests are now present, perhaps the group could recognize the value of protecting them. Administratively, the FS has tools for protecting them. Steve said water is the key tool that the FS has identified as necessary for protection.

After discussion, there was agreement as follows:

- *Find a way(s) to make sure Black Swifts are protected, other than an RNA, including exploration of:*
 - *Seasonal closures*
 - *ISF*
 - *More information from the FS including how they manage the Black Swifts now, as well as mapping of nests (including land ownership)*
 - *Recommend a study on the impact of human activities on Black Swifts (One key question: Do ice climbers in winter leave any type of human scent or other impacts that influence summer nesting?)*

Letter from "Keep the Alpine Triangle Just Like It Is Coalition":

Ken E. handed out a letter to the group from the "Keep the Alpine Triangle Just Like It Is Coalition", dated October 25, 2012. There are eight groups that are involved in the Coalition. He said that the Coalition's basic questions have been answered. The Train has said no to Wild & Scenic and the RPW group is not actively pursuing an NCA (National Conservation Area) on the Alpine Loop. The Coalition's position is that status-quo is adequate in our focus area. Marsha clarified that the focus of this group is not whether a WSR designation or an NCA

should be approved. She said the purpose of the group is broader and is to look at all the values and whether current protections are adequate or not. Bruce asked if the Coalition would be opposed to an ISF for Black Swifts. Ken said, "no, they would not be opposed." Ken said he wanted everyone to know where his group is coming from.

Wild & Scenic – suitability or designation:

Discussion and comments

The group agreed to talk about the two segments (Mineral and South Mineral Creek) separately. Marsha reminded the group that a document was sent out to the group summarizing all the questions the group has had during the meetings regarding WSR. This document can be found on the website along with information about WSR at:

<http://ocs.fortlewis.edu/riverprotection/animas/handouts.htm>

South Mineral Creek:

- ❏ This is a known mineralized area. Existing federal and state laws regulate mining. There are a lot of overlapping protections. To add WSR to this would take away potential development of mineral resources. Existing protections are adequate.
- ❏ Commissioner Ernie Kulman reiterated that a portion of this area is proposed for designation as a Special Management Area (SMA) by Senator Bennet in a current bill in front of the US Senate, and San Juan County supports that tool.
- ❏ Todd has found evidence of strategic mineral deposits in this area. The molybdenum deposit would need to be accessed by South Mineral Creek.
- ❏ Wendy clarified that mineral withdrawal is not automatic with a WSR designation. She said the value on this segment (as per the USFS Draft Plan) is recreational which is the least restrictive category, and so, a mineral withdrawal is not automatic when recreational is the WSR category.
- ❏ Todd said it's still a possibility. He felt that if this segment was designated as a WSR, it is likely that minerals would not be allowed to be taken out.
- ❏ Bob would like to see suitability maintained on this segment (which is not full WSR designation). Ty said he agreed and that it would allow protections now that are not permanent. Both said their reasons were that they wanted more protections. Bruce pointed out that the FS would manage it the same if it was designated suitable, even if it doesn't come with a federally reserved water right.
- ❏ Ray said there are probably several Animas River Stakeholder Group projects that would require getting heavy equipment up there, which might be restricted under WSR designation or suitability.

- ❏ Wendy said she is in favor of keeping WSR suitability for now because the group has spoken about the concept of exploring an ISF to protect Black Swifts. The FS has said there is a threat in terms of losing water. Suitability is a good extra management tool when the FS looks at projects. The FS does not have specific guidelines for Black Swifts now, she said.
- ❏ Darlene Marcus, with Congressman Tipton's office, noted that she is not opposed to an ISF but would like to know about any unintended consequences and who could be affected.
- ❏ Steve said there are ISFs now on Mineral Creek and said he does not support Wild & Scenic designation because of the federal reserved water right that comes with a Wild and Scenic River.
- ❏ For clarification, Kevin stated that he sees the only difference between suitability and designation is that there is not a federally reserved water right. Bruce said they manage it as if designation has happened.
- ❏ Marsha said she would email everyone the compendium on the WSR Act. It can be found on the website at:
<http://ocs.fortlewis.edu/riverprotection/animas/resourceDocuments.htm>
 She asked the group to review the compendium and make a determination for themselves about the differences between WSR designation and suitability, reminding everyone that facts very much matter at this point.
- ❏ Ann stated that if there was support for designation in the group, she would support it too. However, she said, she's comfortable with the ideas and agreements from the group around Black Swift and Iron Fen protections. If the group was able to strongly support those ideas, she would be comfortable with not then supporting WSR.
- ❏ Kevin said he agrees that this group is fiercely independent and that he feels the group, if WSR designation is taken off the table, could find some agreements on these other protections.
- ❏ Ty made it clear that TU has not come forth with an official position on the WSR issue yet. They are still listening and learning about the opinions of this group.
- ❏ Commissioner Kuhlman said he is individually stating his opposition to WSR designation and not speaking for the San Juan County Commission. He said he is one vote on the Commission and does not support WSR.
- ❏ The Train, Tall Timbers and the Coalition that Ken represents have said they are officially opposed to WSR designation. (Note: Tall Timbers and the train were weighing in on the Main Steam segment.)
- ❏ Bruce said he is hearing that there will be no consensus on WSR designation.
- ❏ Ann added that one of the major pieces missing for her is the danger of some major impoundment on South Mineral Creek.

- ❑ Steve said he's comfortable with supporting the issue of no major impoundments on South Mineral Creek. He asked if the group could get consensus on that.
- ❑ Marsha asked the group to discuss whether there was consensus on no new major impoundments on South Mineral Creek.
- ❑ Ernie said there is an existing storage right now that needs to be explored for the community's water supply so he wasn't supportive of this until this is researched.
- ❑ Ann said her concern is a dam across the main part of South Mineral Creek, not existing water storage rights. Ann asked if Silverton's water rights could be perfected with an on-channel storage facility. Bruce stated that a diversion dam can also go across a stream channel. The question is whether it would include storage. He will bring more information on this topic to the next meeting.
- ❑ It was noted that the Piedra Workgroup recently discussed the issue of what constitutes a "major impoundment." Maybe we can learn from their discussion.
- ❑ Ty said TU would be agreeable to defining what types of impoundments would be allowed and what wouldn't. Ty asked if there was a SWSI site on South Mineral Creek. The group said they didn't think so. More clarity on that issue will be presented at the next meeting.

Summary of discussion:

- * There is no consensus for recommending WSR as a tool to protect values (either suitability or full WSR designation).
- * There are many ideas for how to protect the values short of a federal WSR designation.
- * Many reasons were given why people feel the way they do about this tool.
- * Some in the group would like to register support for keeping suitability in place.
- * Some in the group would like to register support for not using a federal tool at all.
- * Some in the group feel that they could let go of WSR because there are other ideas to protect the Fens and Iron Swifts specifically.

Approval of January through September 2012 minutes:

The group was asked if the minutes could be approved from January through September 2012. The group registered no concerns or comments other than one edit from Ken E. from the September 2012 minutes regarding the discussion around the development of a Local Advisory Council as a protection tool. Ken said that SJMA (San Juan Mountains Association), in his view, is anti-motorized so he could not support SJMA being the convener or facilitator of a local advisory council should one ever be formed. All the minutes were then approved.

Todd Hennis presentation on his views of potential mineral development in the Area of Focus:

Todd conducted a 30-minute Powerpoint presentation followed by a short Q & A from the group. The Powerpoint presentation and his handouts can be found on the website.

Question: Are the occurrence of minerals he cited profitable?

Answer: There are three major impediments:

- Uncertainty of being able to extract
- Need to raise \$15 million plus per mine
- Need to bring back skilled labor in town

Question: What is the size of the deposits?

Answer:

- The historic by-product production from this area has been large but not quantified
- Gold King Mine may contain as much tellurium as the two huge mines in China
- Tungsten resources – encouraged group to read 1956 mine report

Question: Why aren't these deposits being mined at this time?

Answer: Tellurium is now worth \$120 to \$160 per pound.

Question: Is it an issue of finding investors?

Answer: Of course it is. We've been in tough economic times and it's an issue of uncertainty. Issues like WSR potential make it uncertain for investors.

Question: How much water is needed in the mining extraction process?

Answer: Every single mining operation has to be a zero (pollution) discharge operation, meaning no water discharged. Usually, there's a lot of recycling of the water on-site. This should not affect downstream water users in any meaningful way.

Question: Could water used in the process be used to pollute waters?

Answer: If you're permitted to mine (meaning an operation has obtained all the permits), you have to treat the water.

Question: In terms of above ground open mining or below ground mining, is there something about the geology here or the location of the ore to say that one would be more likely than another?

Is open pit mining even possible here?

Answer: Not likely. Most are in discrete veins. Predominantly, the mining would be underground.

Todd was thanked for presenting.

The group ran out of time to finish Mineral and South Mineral and Cement Creek's two segments, and the Upper Animas. Next time, the group will attempt to continue finishing these and then move on to the Main Steam and the entire watershed discussion in December.

The paper by Bill Dodge was briefly discussed. Marsha said that in the summer, if everyone recalled, the group was asked to put forth ideas for the future. Bill is submitting his ideas. He is available by cell phone if there are questions. When the entire watershed is discussed, his paper will be vetted by the group.

Next meeting is November 15, 2012 (NOTE: ONE WEEK EARLIER)