

**River Protection Workgroup for the Upper Animas River
Meeting #6 November 17, 2011 5:30 - 9:30 p.m.
Silverton Town Hall, Silverton, CO**

MEETING SUMMARY

What happened at this meeting?

- *New handouts made available, including The Compendium to Wild & Scenic Rivers, The Guide for Riverfront Property Owners and the revised Info Sheet
- *Review of previous meeting
- *Presentation of “Protecting Rivers and Streams through Colorado’s In-Stream Flow Program” by Linda Bassi, CWCB
- *Presentation of Overview of Wild & Scenic Rivers Act by Roy Smith, BLM Water Rights Specialist
- *Short presentation by Chuck Wanner with the Five Rivers Chapter of Trout Unlimited and Steve Fearn, Southwestern Water Conservation District
- *Question and answer session for each presenter

The River Protection Workgroup for the Animas River conducted their sixth meeting on Thursday, November 17, 2011. Approximately thirty (30) 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. Marsha reviewed the following handouts:

- Proposed Outcomes of the Meeting (refer to the agenda)
- Minutes from last meeting updated by Bruce Whitehead with technical information (approving them was suggested for next time as they got to the group shortly before the meeting)
- Values Statement Draft #3, 11/16/2011 (as information)
- Initial Information Sheet (as information)
- The schedule of meetings
- Next Meeting: December 15, 2011, Silverton Town Hall, 5:30-8:30 p.m.
- Process Principles, Ground Rules, Consensus, RPW Process Framework
- All RPWG documents are available on the website

Marsha reminded participants to pick up all handouts on the table and noted the revised Values Statement and the revised Initial Information Sheet as important to read. She also reminded the Working Group that she welcomes changes to minutes for past meetings, but please remember that meeting minutes are only a summary and they do not include every single detail from each meeting. Please submit any corrections or suggestions you have for these minutes to Marsha via phone or email.

Marsha noted that the group is getting more and more specific at each meeting. Therefore, reading the document on river and stream protection tools is important and everyone was asked to do this. This list may not include every tool the Workgroup comes up with but it

includes 14 pages of known tools and was compiled by the Steering Committee. The group then went into the purpose of the meeting which was to review tools. None of the tools presented were couched as “proposals” but rather this was an educational exercise.

Linda Bassi was introduced. She is with the Colorado Water Conservation Board (CWCB). As per the “Glossary of Agencies,” which has been available to the group since the beginning, the CWCB is described below.

The CWCB, a state agency, was created to aid in the protection and development of the waters of the state. The CWCB consists of 15 members generally appointed by the governor and confirmed by the Colorado Senate: eight representing the state’s major water basins; one from the city and county of Denver; the executive director of the Colorado Department of Natural Resources; and five ex-officio, non-voting members representing other state agencies. The CWCB meets every two months in meetings open to the public. The CWCB has several major areas of responsibility including but not limited to:

Instream Flow (ISF): The CWCB is the only entity within Colorado which may hold a water right within a stream reach to protect ISF minimum flows between specific points for natural streams as required to preserve the natural environment to a reasonable degree. The CWCB staff receives detailed recommendations for new ISF water rights appropriations from state and federal agencies, conservation groups and the public; reviews the recommendations in accordance with the CWCB's ISF Rules; evaluates the scientific basis of new ISF recommendations including map work, water availability analyses, hydraulics, and biological parameters; and processes recommendations including providing public notification and presenting the recommendations to the CWCB.

The CWCB also protects stream reaches through donations and acquisitions of "water, water rights, or interests in water" on a voluntary basis to preserve or improve the natural environment. The CWCB staff, which receives several water rights donation offers each year, conducts detailed hydrologic and water rights analyses to confirm the yield of the offered water and works with the donor and the attorney general's office to develop an acquisition agreement. If the donation is accepted, the CWCB must gain water court approval of the change of the donated rights to ISF use.

Interstate Compact Protection: The CWCB helps to protect Colorado's water entitlements under various interstate water compacts, including the Colorado River Compact, the Upper Colorado River Compact, the Animas-La Plata Compact and the La Plata River Compact, which affect water users in Southwest Colorado and other compacts for streams which leave the state, including the Republican, South Platte, Arkansas rivers, Costilla Creek and the Rio Grand.

Flood mapping: The CWCB is charged with authority over floodplain mapping (see C.R.S. § 37-60-101, et. seq.). For additional information, see www.CWCB.state.co.us.

Linda Bassi presented a Power Point called “Protecting Rivers and Streams Through Colorado’s In-Stream Flow Program” (find it on the Web site here: <http://ocs.fortlewis.edu/riverprotection/animas/resourceDocuments.htm>). Note: Linda oversees the implementation of the Colorado In-Stream Flow and Natural Lake Level Program which includes new in-stream flow water right appropriations, legal and physical protection of the board’s in-stream flow water rights, and acquisitions of water for in-stream flow use by the board. Linda also is responsible for the development of legislation, policies and rules, and education and outreach activities related to the program.

Overview of the river and stream tools administered and offered by the CWCB:

The CWCB works with communities all over the state. One tool they implement is the Colorado In-Stream Flow (ISF) program. This program is implemented on a voluntary basis. According to Linda’s Power Point: ISF water rights can provide permanent protection of flow-related Outstandingly Remarkable Values (ORVs) through a decreed water right administered within Colorado’s priority system. Linda noted that the ISF tool can be used as an alternative to the Wild and Scenic River designation (which is a federal tool) whereas ISF is a State of Colorado tool. The values that the ISF can help protect include:

- Habitat of warm water or cold water fish species
- Wildlife (otters, bald eagles)
- Streams
- Riparian vegetation
- Recreational fishing

Linda then explained, in great detail, that an ISF water right goes through Colorado Water Court just like any other water right. ISFs go “in line,” so to speak, with all other water rights – they are not senior to water rights granted before the ISF is finalized. Linda also went into detail about a group called the Upper Colorado River Stakeholders that the CWCB has advised and is a part of. This group had a challenge finding a tool that could work with many diverse entities and their interests. They have devised a comprehensive program that involves ISF (email Marsha if you would like to see it). Their plan will include measures to track the status of USFS-identified ORVs and resource management protocols to support ORVs (e.g., recreational fishing and boating on the Colorado River). Linda gave this example to show how a workgroup can study and then recommend a “suite” of tools for protection that are not inclusive of the Wild and Scenic River (WSR) status or suitability.

Two other tools Linda detailed included the outright acquisition (voluntary) of water and/or water leasing. These processes are detailed but can protect values using Colorado’s water system (for details, refer to the Power Point or email Marsha).

Issues raised in the Q&A portion:

- The CWCB is not a regulatory agency and does not have anything to do with regulating mining, water quality or mining permits.
- There are guidelines for when water can be used under the leasing program. If the targeted amounts are there 50% of the time, it is considered available for leasing.

- “Is there a minimum standard for water quality”? Linda stated that if there are living organisms including macroinvertebrates, it is a natural environment. Roy Smith of the BLM added that it has to be a natural environment which includes fish and macroinvertebrates.
- “What happens if the stakeholder group (on the Colorado) is not met”? Linda said the BLM may need to step in and implement some other voluntary measures. ISF applications to the CWCB are then filed in water court with very specific stipulations and procedures. It’s a complex process but it’s a tool for use in Colorado.
- “When the ISF application process occurs, does it include the appropriation date or does it refer back to the original date”? Linda replied that the application maintains the date of the senior water right. It can then be leased to the CWCB and this will protect it from abandonment and historic consumptive use.
- “If someone has a potential claim against in-stream flows, do you have the ability to reject mining claims, and would dealing with water use for mines be a right that can be injured”? Linda responded that the CWCB does not deal with mining issues.
- “Are the short-term leases made available in special circumstances”? Linda stated yes, these short-term leases are used to address emergency situations such as in drought years, but can also serve to see how an in-stream water flow lease might work. Short-term leases do not provide permanent protection.
- Marsha said that none of the tools assume there is a problem. The tool is not being promoted – tools are strictly for education and have demonstrated how other groups have handled the Wild & Scenic issue around the state.
- “What about in-stream diversions for recreation”? Linda replied that the decreed purpose of in-stream flows is not for recreation. The CWCB cannot appropriate recreational in-stream diversions.
- Comment: ISF can cover tributaries but are also on major rivers such as the Dolores. When looking at this tool, it is important to also look at what percentage of the total water the ISF comprises.
- “What is the species conservation trust fund”? Linda said they appropriate money for programs submitted by the executive director of the Department of Natural Resources. It’s designed to conserve native species that have been listed as threatened or endangered under state or federal laws. This trust is funded by severance taxes.
- “How do you look at economic values”? Water right owners are benefited as well as the community – by having healthy streams that promote wildlife.
- “What experience do board members have”? The CWCB board is made up of ranchers, attorneys, accountants and other professionals with varying expertise. See the CWCB website for more information about specific board members and their background: <http://cwcb.state.co.us/about-us/cwcb-board/Pages/main.aspx>
- “Is it correct to assume that main leases are for agriculture”? Linda replied that there are a variety uses – some may be for agriculture.

Marsha showed the group the Information Sheet which depicts the ISF for the reaches in the Upper Animas region and noted that the group can calculate how much the ISF comprises.

The group adjourned for a break at 6:52 and reconvened at 7:07 p.m.

Marsha introduced two new handouts: A Compendium of Questions & Answers Relating to Wild & Scenic Rivers and Guide for Landowners on Wild & Scenic Rivers. Find them on the RPW Web site under the San Juan Workgroup at:

<http://ocs.fortlewis.edu/riverprotection/sanjaun/resourceDocuments.htm>

Roy Smith, BLM Water Rights Specialist, gave a presentation on Wild & Scenic Rivers as a potential tool for river protection which can be found at:

<http://ocs.fortlewis.edu/riverprotection/animas/resourceDocuments.htm>. Roy has worked at the BLM state office for 20 years and works with many communities who are addressing similar issues. He is available as a resource outside of this meeting. Highlights from his presentation include:

- WSR is a federal tool. The local USFS and BLM offices, when they do their management plans, are required to do an inventory of which rivers in their jurisdiction might be “eligible” or “suitable” for WSR (refer to the Information Sheet for the suitable segments on the Animas that the Working Group has been discussing since the first meeting). There are four steps to actually designating a WSR which takes an act of Congress (there is one in Colorado on the Cashe La Poudre River). These steps are: eligibility, tentative classification, suitability, and designation.
- The status of the Animas River per the 2007 Draft Land Management Plan is:
 - Eligible – 30.77 miles from Baker’s Bridge to Silverton
 - Suitable – 27.1 miles from Baker’s bridge to 3.6 miles south of Silverton
 - ORVs – recreation, scenery, cultural/historic
- WSRs are designated because they have important values as deemed by the BLM and USFS. The definition of an Outstandingly Remarkable Value (ORV) is:
 - rare, uncommon, extraordinary
 - a superior example of a widespread value
 - outstanding in a statewide, regional, or national context
 - stream related
 - based on the expertise of professionals who are knowledgeable about that value
- Potential and designated WSRs are classified in three categories (all of the segments on the Upper Animas are classified as “recreation”). It is the level of development in the stream corridor that puts the segment in one of these areas:
 - A *Wild* river is free of impoundments, with shorelines or watersheds essentially primitive, and with unpolluted waters.
 - A *Scenic* river may have some development, and may have road and railroad access points.
 - A *Recreational* river may have more extensive development along its shoreline, including transportation routes, and may have undergone some impoundment or diversion.
- Roy asked the group to remember four principles:
 1. The WSR Act directs all federal agencies to have the same goal – protection of designated rivers.

2. If a river is designated by Congress, the most direct interaction with the WSR Act will occur if you need land use authorization, permits, funding, or technical assistance from federal agencies.
3. The identification of ORVs and the classification of the river segment can provide flexible management to address local needs and issues.
4. The WSR Act does not create proactive federal regulatory authority over private land.

A WSR designation directs all federal agencies to consider the WSR in their actions and they are charged with protecting the values. Agencies involved in river corridor management are:

- EPA – water quality
- Army Corps of Engineers – wetland dredge/fill permits
- Federal Energy Regulatory Commission – hydroelectric and thermal facility permits
- Natural Resource Conservation Service – funding/tech assistance for agricultural projects
- Federal Highway Administration – road funding/permitting
- Note: Federal agencies may not take actions that harm free-flowing nature, water quality, or outstandingly remarkable values.

The most direct way that most in the group would interact with a WSR is through permits:

- Existing permits and uses on federal lands are allowed to continue.
- New permits or renewal of existing permits must protect WSR values.
- Federal agencies required to protect free-flowing nature, water quality, and outstandingly remarkable values.

Other information from Roy included:

- If a river is designated, a management plan is done.
- The WSR Act does not create proactive federal regulatory authority over private land.

Roy also described how WSR deals with access, recreation, bordering lands, mining implications and the federally reserved water right that comes with a WSR designation:

- If Congressional designation occurs, the managing agency quantifies the amount and timing of water necessary to support outstandingly remarkable values.
- Water right adjudicated in state court – BLM has been enjoined under the McCarran Amendment in Colorado and must use state water courts.
- The federal water right receives a priority equal to the date of designation – junior to all existing rights.

Discussion and questions:

- “What is the region that is used to compare to if a value is rare or unique”? For some of the values in this area the region is the Southern Rocky Mountain region. For the Dolores/Cortez area it is the Colorado Plateau region.

- “How can a river be considered that has pollution issues”? The local USFS looked at this issue when they did their 2007 Draft Land Management Plan. They said that a plan was in place for addressing water quality issues for the segments they deemed to be suitable.
- “Is WSR used to regulate water quality”? Marsha asked Roy to provide some clarification on this question which he later did in an email that went to the group.
- “What if a person is concerned about hydroelectric development on the river and wishes to see it continue”? Current uses of a river are grandfathered in. New development of hydro power could be affected by a WSR.
- “If someone is seeking an Army Corp of Engineers permit, are they required to protect values and who do they have to consult with”? They are required to consult with the river management agency such as the USFS, Department of Natural Resources or BLM.
- Roy clarified the issue of the corridor area. This ¼ mile corridor that comes with a WSR designation is on each side of the high water mark. It could possibly go from canyon rim to canyon rim depending on the topography – there is some latitude when it comes to moving boundaries around. Chuck Wanner said the corridor cannot be more than 320 acres in one given mile so it’s not always a ¼ mile each way from the center of the stream because of topography and/or other factors.
- “How is the operation of the railroad affected by Wild & Scenic”? Mark Stiles noted that in the Draft Land Management Plan done by the USFS, the first sentence mentions D&SNGRR as an ORV related to scenery and recreation. Since the railroad is there, the river could only be designated as recreational. It was noted that highway and trail corridors can exist alongside W&S rivers and do so in many places in the United States.
- “Is there an interim phase that we are in since this river is preliminarily suitable but not designated”? Yes, this phase is defined as preliminarily suitable in draft plan and an interim protection is in place until completion of the final plan. Interim protection means that if the river segment is either in eligible or suitable status, the managing agency must maintain the outstandingly remarkable values, water quality, classification, and free-flowing nature.
- “Can a classification be changed”? Yes, Congress can change the classification or residents can recommend that the classification be changed. Roy also recognized that sometimes values compete against each other.
- “Can we compare wild rivers to wilderness”? There are differences. For example, Wilderness does not allow any motorized or mechanized activity. Again, under the recreation classification, WSR can allow human influences to be near them (e.g., a railroad, power plant, road, etc.).
- “What about the location of new mining claims? Can they be allowed and are they allowed according to the 1872 mining claim law”? New mining claims are allowed on segments classified as recreational or scenic.
- “For water permitting issues, does every federal agency have to weigh in”? No. Any agency that has to issue a permit has to consult with a relevant river management federal agency, such as BLM or USFS. Mark Stiles added that if a federal agency has a role due to its normal practice, then that agency has to consider the implications of a WSR.

- “What chance would you have of creating a new structure on federal land, such as a ditch”? A WSR designation, unlike some misperceptions that have occurred, does not mean that everything grinds to a halt. It just means you have to consider whether it impacts the values (ORVs) that led to the suitability.
- “Many of these values are subjective and open to interpretation. Who verifies whether these values are legitimate”? Roy said he will not argue that there are different interpretations of values. Marsha gave the example of this from the Lower Dolores where private landowners were concerned about getting grants from NRCS if WSR designation occurred. Marsha asked, “If we have a combination of private and federal lands in this segment, are there more regulations on the federal land portion”? Roy replied yes.
- “What happens if there is a conditional water right above the reach”? Conditional rights are respected and handled within the Colorado water law system. If that right is ever developed and a federal permit is needed for construction, the river management federal agency has to say what the implications are.
- “Is it true that in upstream development if you do not implicate an ORV downstream, then you cannot argue with a federal agency regarding denying a permit”? Yes, it is true that when Congress designates a WSR there is going to be a federal water right, but sometimes development of a conditional water right upstream is possible if the development doesn’t significantly affect the federal water right.
- “What about the impact downstream”? If the proposed development doesn’t back up water into the designated stream segment, then the federal water right on the designated segment would not have an impact on the proposed development. It may or may not be allowed or may be allowed with conditions.
- “How are objections to water rights development handled if it’s a WSR”? It’s handled in water court through the usual processes (Colorado’s court).
- “If Congress passes legislation for WSR, what date is the water right considered to be final”? It’s the date the law passes, so the water right would be junior, once it’s granted in Water Court, to all other existing rights.
- “How do you quantify the water needed”? This is on a case by case basis. The managing agency conducts studies to determine the amount and timing of water needed to support the ORVs. A WSR does not have to tie up all the water that’s unallocated to the WSR. The amount just has to be adequate to protect the values.
- “Who manages the WSR itself”? The designated river is typically managed by the federal agency that owns the most lands along the river.
- Jon Ott added that the purpose of the 1968 Wild & Scenic Act was to try to stop rampant development of dams.
- Marsha then reminded the group that the Draft Land Management Plan stated that these segments are suitable and that this is a chance for the community to weigh in or not. What will come out of this is a community report that gives us all a chance to look at ORVs and other values and determine the group’s plan and findings for how they see the protection of those values.
- “What if I am a private landowner within the corridor – what do I need to be concerned about”? If you need technical assistance, funding, or building then you just have to comply with local land use laws and ordinances.

- “We only have one WSR in the state, so why are private property owners interested in Wild & Scenic protection”? Many landowners are interested in the long-term protection of undeveloped landscapes around their lands and in the possible increase in property values that come with designation. Many Wild & Scenic designated rivers are in the Northeast United States. In the northeast, they are probably interested and attracted to historical preservation, increased income from recreational use, and the fact that Wild & Scenic can bring resources/tools to areas as well as federal assistance in planning.
- “Why is there only one designated Wild & Scenic River in Colorado”? Probably because of the anxiety around federal water rights in major river systems.
- “What about politics and water demands along the Front Range? Does approval of Wild & Scenic have any impact on river designations and the level of protections”? Bruce said Wild & Scenic could potentially have an effect on river designations where there is some development on federal lands.

Chuck Wanner then gave a brief presentation about the Wild & Scenic process. He shared the thought that there are inherent risks and rewards of Wild & Scenic. If the group only sees it as fear, then we might miss out on opportunities. Chuck gave the group an overview of the Poudre River designation as Wild & Scenic because he lived there and was involved in getting the WSR established. He stated that the group may or may not decide to talk about a National Conservation Area as a tool. Steve Fearn stated that the water development community has a concern about the federal reserved water right and the potential limits to future water development including developing conditional rights.

These questions were then asked: “You talked about a river having the Wild & Scenic designation as an asset. How has this designation made a difference? Have you seen it affect other things over time? Are there aspects of the W&S Rivers Act that we can use as beneficial tools for Conservation Districts and if so, what are the benefits”?

Chuck Wanner stated that there are a couple of differences in situations. Many private property owners are for it because it increases property value. Recreation use has increased greatly on the river. The back side of the Rocky Mountain National Park River in the city of Loveland is trying to create a scenic byway and loop like we have here. Steve Fearn stated that there is no advantage to WSR as a tool from his viewpoint. He said SWCD is very supportive of the ISF program.

Marsha reviewed where we are in the process. She reminded the group that we need to come back to the Values Statement at the December meeting. She stated that we need to recognize there are many values in the room, and as a group we need to reflect all of these in the Upper Animas Values Statement. In December, the group will discuss what the current protections are and if they are adequate.

Todd Hennis suggested that an economic panel be used to ensure that there is a fair amount of time given to economic issues. Bruce Whitehead suggested to Marsha and the group that a presentation by the mining industry might be a good idea. Marsha said that given the economic importance of mining and how much it has been discussed in the

group, that this was a good idea. Jimbo stated that in looking at the economics, mining is not the only economic value – the money from recreation is also a big value in the area. Marsha said there is a Web site that offers a complete view of the economics of the two counties involved and she will email their information to the group. This data is compiled by the Region 9 Economic Development District of SW Colorado.

Bill said perhaps in the areas where Wild & Scenic is a success, people are utilizing a variety of tools, not just one or the other. He requested examples of where and how the tools are put together. Roy Smith said this group should look at the Upper Colorado Stakeholders Group as a good resource (the group Linda Bassi highlighted in her presentation).

Todd said he felt that Chuck talking about the National Conservation Area was not appropriate given that the San Juan County Commissioners have come out against a proposed NCA in the Alpine Triangle. Chuck said that comment wasn't appropriate. Ty Churchwell said there are many people here interested in talking about the NCA and would like the group to discuss it. Marsha replied that if there are any concerns about the NCA, then lets be transparent and use the principles in the process to open a dialogue – being civil and bringing accurate information to the table. She continued that what is important is the framework that the discussion is happening in. She reminded the group to read the handout on river and stream protection tools (the Toolkit) before the next meeting in December. Then the group will start talking very specifically. She thanked everyone for being patient tonight.

The next meeting will be held on December 15th at Silverton Town Hall from 5:30 to 8:30 p.m.

The meeting was adjourned at 9:50 p.m.