

**River Protection Workgroup for the Animas River  
Summary - Meeting #18, Thursday, February 28, 2013  
Town Hall  
5:30 to 8:30 p.m.**

**Introductions and meeting opening**

Marsha Porter-Norton, facilitator, reviewed the process principles and ground rules of the RPW. She noted that this may be the last meeting where content is discussed but there may be another meeting or two to talk about the final report. A review of the purpose of the group occurred, which is to identify the level of protection needed for the various segments of the Animas in the area of focus. Marsha also reviewed the major components of the process, various presentations given, and materials that have been developed by the group (i.e., the values statement, information sheet, segment-by-segment analysis, etc.), all of which are available on the website at <http://ocs.fortlewis.edu/riverprotection/animas/handouts.htm>. Marsha also reviewed the purpose of the final report, which is to summarize the process, values identified, areas of consensus and areas where there is a range of opinions. An overview of the meeting agenda and goals concluded the opening segment of the meeting.

**Main Stem of the Animas**

(Continued from the January 17, 2013 meeting)

Marsha reviewed a handout that summarized the ideas for protection generated by the group (available on the website), including:

- ⇒ State in-stream flow (group agreed this is not a tool to explore)
- ⇒ No new major impoundments (early consensus reached at a previous meeting)
- ⇒ Support efforts to improve water quality in this section (consensus found in previous meeting)
- ⇒ Wild and Scenic River (no agreement reached, range of views expressed below)
  - No WSR suitability
  - No WSR designation
  - Status quo is enough to protect the values
  - Yes to WSR suitability
  - Yes to WSR designation
  - Change the suitability segment. Two ideas: 1) truncate the segment in the northern reach due to mineral claims; 2) only include the segment in La Plata County.

**Additional comments/discussion on WSR:**

- Kevin, a local resident, corrected a statement made by another participant in the prior meeting. He spoke to Evan, from the DSNR, who reiterated to him that they are indeed still opposed to WSR. They have a permit with the Army Corp now and feel, Kevin said, that WSR designation would bring another layer of regulation that could negatively impact their business.
- Steve F. said that WSR comes with a federally reserved water right which is initially not quantified, so it's an unknown. If there are water rights upstream of a WSR water right, it can adversely affect that right. With established water rights upstream of the main canyon, he feels that WSR can't happen – it's a fundamental conflict. Steve

spoke with Roy Smith with the State BLM office (and an expert on WSR in Colorado) who said they could work with us on that water right. The problem, Steve said, is that it is "permissive", meaning they make the decision. It's a risk that SWCD (Southwestern Water Conservation District) is not willing to take. San Juan County Commissioner Scott Fetchenhier asked if a new federally reserved water right would be junior to more senior rights. Yes, Steve responded, they would be junior to absolute rights but not junior to conditional water rights (per Roy Smith see below). Mark S. asked Steve if he knew for a fact that conditional water rights are indeed junior to a WSR water right. According to Steve, Roy Smith said that conditional water rights would not be recognized. Steve feels this is a gray area. Bob, from TU, asked Steve if the state or SWCD had a problem with suitability staying in place. Steve said it does keep uncertainty present in river management. For that reason, they'd rather see it go away.

- San Juan County Commissioner Pete McKay said that he read in the minutes that status quo was an acceptable outcome of this process and that it was represented as the view of San Juan County. He disagreed and said he feels WSR could be an appropriate tool used for the Animas River and Mineral or South Mineral Creeks. He said that he hopes that suitability for WSR stays in place for areas where it has been found suitable. He feels that the permanent protection of these special waterways for economic and ecological values for future generations will override other concerns.
- Kevin Heiner, a boater, spoke about boating as an ORV. Last meeting, we heard from the public boating community that use the upper Animas, he said. Kevin supported Commissioner McKay's statement that, from the perspective of private boaters, WSR would be an ideal designation that would ensure that water remains in the river, that water quality stays healthy and that no more federal funds are spent on dams. With that said, he feels the private boating community would support other tools that would protect the values in place.
- Ray asked if there were real or imagined threats to the stream flow or rafting industry. Kevin replied that a dam would be a threat. The fact that it is a free-flowing river is a value. Ray reminded the group that there is agreement for no new major impoundments on the main stem.
- Ken Emory stated that there is a philosophical disagreement. He feels that the current protections are adequate. His main concern is around uncertainty with the federal government, especially related to water rights and the promise of "we will work with you."
- Greg, a local resident, said the status-quo changes all the time. In the 70's, it was the same status-quo but mining was in full swing and very productive and the area was not as beautiful and clean as it is today. He has been working with the San Juan Economic Development group for a few years. Most of the growth in the past few years has been due to recreational tourism. He feels that there needs to be some way of ensuring that the status-quo you see today is the same you'll see in 20 or 30 years. Most people that have moved to this county in the last 20 years did so because of the scenic beauty vs. the industrial capability of the area. Not to say that couldn't happen again, but it has been primarily focused on recreational tourism. We should be exploring ways to protect those values formally.
- Marsha reminded the group, including new attendees, that to date, the Workgroup didn't conclude that status-quo is preferable in all segments. They did reach consensus that status-quo was preferable for Cement and the Upper Animas. The group explored

-- and gained agreement on -- additional protection tools on Mineral and South Mineral (please refer to previous notes).

- Ty asked for clarity on whether the group agreed to no new federal funds for impoundments on the Animas. The group said that was discussed on the Piedra but not on the Animas. The minutes will be reviewed for clarity.
- Andy, a boater, said he felt that WSR would give this section a lot more certainty. He would like to see some examples of some other WSRs in the country where it stifled water rights. From a whitewater and visual stand point, he knows of no other stretch of river in the world that would be more suitable for WSR. He feels the marketing potential is phenomenal and would be a powerful tool, especially under a recreational designation because will protect those values.
- Judy, a local business owner, said that from the point of view of a business person, the long-term approach of the most protection possible is the most wise approach from an economic standpoint. She supports WSR designation, she said.
- Bruce Whitehead responded to Andy's question about whether WSR had hindered water rights on other rivers (i.e., the Poudre). He thought it had. Chuck responded that on the Poudre (outside of Fort Collins and the only WSR in Colorado) there were 82 miles that were suitable. They left off a section on the bottom of the river (9 miles), agreeing not to ask for WSR. Designation occurred on the 72 miles above that, much of which is "wild" vs. "recreational." Bruce said there were reservoir sites that had been identified in the 60's on that stretch. Chuck concurred.
- Marsha explained to the group that they previously had discussed whether to take the time to study WSR in terms of the effects of a designation on various values and both positive effects, and negative ones. The outcome of this discussion is a list of questions (see the Web site). This list of questions is where the group "landed" because there's not a clear-cut answer(s) for the outcomes of a river being designated as WSR. Every river is different and every part of the country is different, with varying circumstances, water law, etc. She also reminded everyone that when this was brought up before the staff developed a list of questions about WSR and it was acknowledged that those questions cannot be "perfectly answered" or answered to everyone's satisfaction but will certainly be noted in the final report as areas discussed.
- Chuck said that when we started this process we'd look at ways to protect the river as well as potential development, and that we'd looked at all options ranging from no change to full WSR designation.
- Pete, from the DSNRR, reiterated that they are mainly concerned with another layer of government to have to go through if WSR went through.
- Ann stated that last meeting she spoke up in favor of suitability which relates to a value she holds for the river and is the relatively intact nature of the ups and downs of the river flows. Those peak flows are the ecological driver of the river, they keep the fishery down through Durango healthy, they recharge people's wells and they support private and commercial boating. The flows also supply the storage water that many of us tap into one way or the other. She is frustrated by the fact that there's no good way to protect those peaks. Suzanne had a hydrograph that showed the peaks being 50% of the time and are not protected by the downstream rights. If you're looking for water, that's a big source of water. She wishes there was a good tool to safeguard those peaks. If there was a state-level tool, she would like to see that. Right now, she sees no protection for those peaks. Bruce asked what she saw as

threats. She said we have discussed the notion of no new major impoundments. It will be a recommendation but it won't be ensconced in any protective framework that she's aware of. It only applies to this reach.

- Steve said we don't have agreement on the tool to achieve no new major impoundments. There exists significant conditional water rights and divergent points upstream of Baker's Bridge. We may not be able to get total certainty on the no new major impoundments in terms of a tool. He doesn't feel that there are any real threats at this point for those natural flows.
- Kevin spoke to economics including a study that was reportedly done on the rafting industry as a 19 million dollar boon to La Plata County. San Juan County doesn't get much of that. The San Juan County economy and culture is around mining and when you have all kinds of regulations like WSR, it scares potential mining companies away. There is a tourism economy here but people work themselves to death for those tourism dollars. He's not against continuing to keep recreation and water quality good.
- Paul, who owns a riverfront home in town, agreed that mining is important for the county but also that a WSR designation would be a boon for the county. He feels that a lot is done for motorized recreation in the county, which is great. He said he wants to do more to attract low-impact recreation and quiet-use recreationists. He's not afraid of the federal government, he said. He relayed that in his experience the USFS and other federal government personnel listened and were easier to work with than some make it sound.
- Ken E. said that motorized recreation brings 102 million dollars to southwest Colorado and indirect sales bring another 56 million dollars.
- Sandy asked for clarification about Steve's concerns regarding conditional water rights in relation to a potential federally reserved water right. Sandy asked about the current water rights utilized for A-LP. Bruce said they were appropriative water rights, not federally reserved water rights.
- Commissioner Ernie Kuhlman asked about the economic benefit of rafting for the county and said he doesn't believe rafting contributes much because they drive their cars/boats to the county, put in and stay elsewhere. Valuations are going down and there's no way to offset that. He went on to say he favor of both mining and recreation.
- Marsha summarized the conversation above and said that it was clear the range of opinions have not changed much but thanked everyone for expressing their views. It's clear, she relayed, that there's no agreement on the WSR tool. She asked if the group was ok closing out the conversation on the Main Stem, knowing the views and range of opinions would be reflected in the report. Jimbo added that he'd like to see the group continue to explore the notion of WSR in the La Plata County segment. Kent suggested this last meeting. He also suggested that the segment up for WSR consideration in La Plata County be about that which is not adjacent to the railroad. This idea will be reflected in the report, Marsha said.
- Commissioner Fetchenhier asked if this group was representative enough to propose this. How do you get the input of those communities? Steve responded to Scott's question that the Steering Committee spent a year designing the process and said that we've had 17 publicly noticed meetings with plenty of opportunity for the community as a whole to participate and voice their views. Ty, from TU, commented that the RPW has done a great job of creating a process. Almost every person in this room is representing a constituency or a viewpoint, he told the group. He feels that many,

many interests are represented in the room. He feels that it's fair and balanced and well represented. Kevin Heiner said there are tools available to reach out to other stakeholders if need be. With that said, he felt there was good representation of various interests here tonight.

- Steve said the problem with a potential designation in La Plata County from a water rights standpoint is that it's downstream of other water rights that could be impacted.
- Kevin B. re-stated that these areas we continue to talk about include major stakeholders not present tonight, including the Train, Excel energy and Tall Timber. We would need to go back to them if we're looking at other options for WSR (i.e., in La Plata County).

The group then decided to close out WSR for the Main Stem.

Outcome: The group reached consensus to move on from the WSR conversation on the Main Stem. They further agreed that they cannot agree on WSR but that the various views – and reasons for those views – will be in the final report.

### **Discussion of additional potential tools (Main Stem)**

⇒ Utilize County Land Use Codes (San Juan and La Plata counties)

#### **Discussion and comments:**

- Commissioner McKay said they have done this in the past with the DMR development. It's not unheard of and is a great idea.
- Commissioner Kuhlman said the tools discussed on the handout regarding coordinating county codes are not in place now. It's a use-by-right county for mining.
- Fritz K, a local resident, said that in San Juan County they've had the same land use code since 1971. In the last 10-12 years, a few things have been done but if you look at the map of the lower Animas, there's virtually no private property. The land use code in SJ County only controls private property. He doesn't see that anything could be done by SJ County due to this ownership pattern.
- Commissioner Kuhlman stated that the county doesn't have any control over Iron Fens.
- The next private land, below Silverton, is at Needleton which is in La Plata County.
- The railroad already has a scenic view corridor designation via highway 550.
- Fritz pointed out that the railroad doesn't actually own any land in the canyon south of Silverton. A question was asked about the railroads permission status in the canyon. Mark said it is via an exclusive use easement exclusive to railroads.
- Commissioner McKay asked the new county planner if there was a permit pending for private property development. He said yes, where Deer Creek comes in.
- It was suggested that from the top of the WSR suitable segment to Silverton there be a scenic view corridor put in place.
- Bruce asked if the county can only deal with private property and if they already have some protections in place there. Fritz said yes.
- Adam, from La Plata County, said their land use code is not cut and dry regarding zoning on private property. It varies throughout the county.

- The state requires a sign-off from the county on mining. There is a protection in place now for that.
- Do we need to review what the current Scenic Corridor actually protects?

Outcome: The group gained consensus that this tool is off the table because of the land ownership pattern. This tool would be most appropriately explored if there was a lot of private land in this segment. There is not.

⇒ Designate the two WSAs adjacent as Wilderness Areas

#### **Discussion and comments:**

- The areas are West Needles and Whitehead Gulch.
- Ty said we need to acknowledge that the SJNF public lands office is reviewing when permitting occurred regarding recent events around snowmobiling. He suggested that the group needs to consider, given that snowmobiling is very important to San Juan County, an allowance for West Needle Creek having a management regime that is more permissive of those kinds of activities. If this occurred Ty said, TU would advocate that that other areas be enacted as Wilderness. In other words, this could be a potential compromise.
- Ken advocated for no more Wilderness. He said his group has made some proposals to public lands managers regarding releasing other WSAs that the BLM has said are not suitable for Wilderness. They are willing to support some WSAs that are deemed suitable in exchange for other areas that are not deemed suitable. Ken said this conversation is happening with Congressman Scott Tipton and he feels the group should let that negotiation happen apart from this process.
- Ty said he didn't know that there have been any formal proposals around this. He said he was aware that the Adobe Badlands and Camelback are potential trade-offs for WSAs that could be released but that those two areas are not in this area of focus.
- Mark S. stated that WSAs have statutory protection until congress acts on them – they're either deemed as Wilderness or released. Over-snow travel just popped back up again and is being reconsidered by the BLM. It doesn't say "no motorized" but rather that you have to protect the wilderness character. In Colorado the BLM decided to close off WSAs to over-ground motorized travel.
- Some WSAs have patented claims. Is a WSA vs. Wilderness more restrictive in terms of access? Mark said not necessarily – it's almost a toss-up. They still have the right to access their claim, either way. The kind of access depends on the terrain and location.
- There are patented claims in Whitehead Gulch.
- Ty reiterated that he feels it's a collaborative process to make these kinds of decisions. He doesn't feel that it's something for TU and the Jeep Club to decide. He feels that the WSAs in this county have been in place for 30 years or so, and that it's time to make a decision one way or another.
- Ken said the WSAs are being managed as Wilderness now so if there's no change, it's status quo.
- Ken wanted it to be reflected in the report that in the future, there may be some negotiations regarding the WSAs and that there is a separate process going on regarding the West Needles contiguous area.

- Ty would like the report to reflect that we've made an attempt to discuss these 3 of 45 WSAs in the state.

Outcome: No consensus reached on designating the area of focus a WSA wilderness.

⇒ Mineral withdrawal within the area between wilderness areas and private land

**Discussion and comments:**

- This area is downstream of the patented claims.
- An alternative to WSR suitability and designation would help retain the character of the corridor.
- Current regulations are sufficient to mitigate mineral withdrawal potential.
- This area is just within the ribbon of the suitability corridor, butting up to wilderness.
- Private claims are not included in the mineral withdrawal.
- There are already many layers of protection around mining and existing regulations. Not in favor of a withdrawal. Leave it as it is – enough protection.
- Chuck said the things in place are administrative vs. an actual withdrawal, so he is in favor of a withdrawal in this area.
- Steve doesn't feel the regulation is necessary, even though there are not any known significant deposits there.
- Ty wanted to note that this section is only found suitable for recreation and as such. Mineral withdrawal would need to be negotiated even if WSR were designated.
- Bruce asked if the group is even close to consensus on the question of removing suitability if mineral withdrawal occurred. Chuck stated that it's worthy of discussion.

Outcome: This notion could be discussed at the Regional Discussion. Marsha reminded the group that the Regional Discussion would not usurp any recommendations of this group.

**Fens presentation, Aaron Kimple, MSI**

Aaron discussed the San Juan Fens fact sheet as produced by MSI. It's available by email and on the website.

- MSI tried to distill information about what Fens are, what retains their characteristics, what's there on the ground, and how local governments deal with Fens.
- 2,000 Fens are found in this area. Some are on private lands, most on public.
- Most people see Fens as wetlands – also known as Iron Bogs.
- Local governments address Fens as wetlands, not specifically as Fens.
- There are some real opportunities for local governments to address protections.
- Fens are not protected by the Army Corps.
- The San Juan County code does not address Fens now.
- La Plata County does not have Fens. It's too low.
- Several other counties and municipalities are included in how local governments address Fens.
- San Juan County suggests you identify and map wetlands on your private land.

- No buffers around wetlands or Fens are addressed in San Juan County code.
- Marsha restated what the group has previously agreed to and discussed in regards to Fens (see previous meeting summaries).

### **Mineral withdrawal on Animas Forks**

Mark Stiles was asked to research this topic at a previous meeting.

- Withdrawals are always subject to existing mining claims.
- Withdrawals made prior to 1976 don't have a sunset.
- The only withdrawals now are Engineer and Cinnamon Pass. Distances range from 100-200 feet of centerline of road.
- There is no withdrawal on Animas Forks proper now.
- Commissioner Kuhlman asked about California Gulch. Mark said there are no withdrawals there.
- The notion behind this question is about protecting the historic values of Animas Forks. You'd need to define an area that would do that. One place to start would be with the San Juan County Historical Society mapping to identify a suitable, logical block for withdrawal.

Outcome: Marsha summarized that this could be reflected in the report as an opportunity for future work.

### **Next meeting set for Monday, April 22 (NOTE: It was later moved to the 29<sup>th</sup>)**

Marsha will work to have a good portion of the report done by then for the group to review. Next, time the group needs to discuss the water-shed wide proposal(s) (see Mr. Dodge's proposal) and finish up any further discussions plus begin to review the report.

### **Inclusion in the final report of letters submitted and/or read to the group**

- Ken Emory distributed a packet from the Leave It As It Is Coalition and said he wanted their views to be reflected in the report. They are concerned about the make up of the RPW-Steering Committee. Marsha stated that the RPW Steering Committee had been communicating with Ken and had written a response to him and his group. This was handed out as well. Bruce W. and Steve F. reiterated that other individuals and/or groups were not going to have their letters included as a whole in the report, but rather a summarization of the concerns will be included. Ken agreed to this but said he just wanted everyone to know their group's views.

### **Minutes review**

Minutes from November 2012 and January 2013 will be reviewed at the beginning of the next meeting.