

River Protection Workgroup for the Animas River
Summary - Meeting #12, Thursday, June 28, 2012
Kendall Mt. Rec. Center
Time: 5:30 to 8:30 p.m.

What happened in this meeting?

- * The group continued a "segment by segment" analysis working with a spreadsheet. This meeting focused on Mineral and South Mineral Creeks. Current protections and ideas for the future were discussed.
- * The group had a dialogue with the train (again) and with Tall Timbers Resort.
- * The group received a handout outlining what it has accomplished and what the process steps are in the future.

Facilitator Marsha Porter-Norton opened the meeting by conducting a quick overview of the agenda, as well as the ground rules, principles and RPW process framework (all noted as available via handouts). A new handout was discussed which summarized what the Animas workgroup has accomplished, where the workgroup is presently and where the group may be headed, process-wise. This coming fall, the group will be asked to start thinking about proposals or ideas or solutions, which will ideally consider all the interests which have been voiced thus far in the process. At that time, the group can also decide if they want to make their report and findings in a segment-by-segment format or a watershed approach, or both. This will be a consensus process. If the workgroup wants to designate a smaller review group to look at proposals or ideas or solutions and come back with recommendations, this is also an option. To be discussed further in future meetings. One of the goals of this process is a final report that will be widely disseminated and will reflect the group process, learning and findings.

Ty asked when proposals would be due. Marsha said around September the group can begin to bring forth ideas. There really isn't a deadline. The process is moving into a phase of looking at solutions, ways to protect values and ideas for the future. We will probably get through the segment-by-segment analysis in July.

Research Natural Areas (RNA)

As background, it was stated that the RNA tool was suggested last time as a potential way to protect some of the values in the South Mineral and Mineral areas, namely the iron fins (plant) and black swifts (bird). The group is in an information gathering phase. Therefore, Ann Oliver, who works to help gather information for the RPW, stated that the USFS has its hands full with wildfires

and as a result, they couldn't be here tonight so she did some of her own research on RNAs. The document Ann distributed will be available to the group online and as a handout next month. The document lays out authority objectives, management, etc. for RNAs. The authority to select and establish RNAs is given to the chief of the USFS. They are set up as areas where special values are studied and researched. RNAs are part of a network of natural areas designed to maintain biological diversity on national forest system lands. Authority to approve the establishment of a RNA is at the level of the USFS's Regional Forester. Management authority is given to the local Forest Supervisor and is fairly flexible and guided by the general principle that management must support basic objectives and principles by which the RNA is established. Regarding minerals, there are no automatic withdrawals, so RNAs could have minerals within them. No buildings are allowed, except for temporary buildings. Recreation, trails and roads are allowable but must be consistent with the objectives and purposes of the RNA.

A question was asked about when the public comment will come in. Ann clarified that this is just an idea the Working Group raised. There isn't an active proposal on the table to establish an RNA so this information, Ann clarified, and is brought forth because it was requested by the group. Marsha said the RPW isn't the type of group that is taking "formal public comment", it is a community working group.

If there ever was a proposal for a RNA, and if it would receive preliminary approval, it must go through NEPA (National Environmental Policy Act), which requires an analysis of all the alternatives. Public comment is required under NEPA. There is not an RNA in this watershed but there is the Sheep Mountain Special Management Area.

It was reiterated that no legislation is required to set up a RNA. RNAs are a tool available to the local land managers and only via the USFS. There is a BLM equivalent. RNAs are done in perpetuity. If this or any group were to propose an RNA, they would need to work closely with the USFS in crafting it. John Ott asked how RNAs compare to WSRs. Ann stated that RNAs do not require a federally reserved water right. Steve stated that he felt the target on South Mineral would be the Black Swift. Bill Dodge asked if there are any resources attached with RNAs. This was unknown.

Concerns/Issues noted regarding a RNA:

- The thought of the federal government designating this in perpetuity is a concern.
- Ray asked what Ann thought "natural" means. Ann first clarified that she is

not a proponent of this tool, she is only reporting on what RNAs are, as requested by the group.

- Kevin asked if the black swift would be considered equally with mining uses or other private property uses.

Tools available to the USFS in managing the fens as well as black swifts

Ann will have a handout next time. Black swifts are a species of concern but they are not endangered. It was also clarified that the fens are in wetlands and as such, do have some protections in place.

Wendy briefly stated the various regulations and designations that the USFS has utilized historically.

Comments from D&SNGRR and Tall Timber Resort representatives

Evan Buchanan was once again at the meeting representing the DSNGRR. He was accompanied by Denny Eggrow who owns Tall Timber Resort (TTR). Evan clarified that the train's interest is in the lower canyon, between Baker's Bridge and the Town of Silverton. Evan voiced the train did not support WSR because they perceive a WSR would add one more "layer" of regulation on their operations.

Evan contacted Denny from Tall Timber Resort (TTR) and asked him to comment at this meeting. Denny stated that he is a small businessman trying to survive, as his family has done on the property for 100 years. He said he hasn't been present at meetings earlier because they stay pretty much on their ranch. His granddaughter is a 5th generation resident in the canyon. They have run the resort, which was Ah Wilderness Resort and is now Tall Timber. His family holds most of the private parcels from Rockwood to Silverton. They have seen a lot of water studies over the years and have seen a lot of improvement in the Animas. The quality of fishing was horrible in the 50's and 60's from the tailings. He attributes the improvement in water quality to two things – this section of the Animas is extremely remote. Access to TTR is by the train or helicopter.

What the Animas River Stakeholders Group, he said, has done has been a great improvement for them in terms of the water. His family stocked the river for 50-60 years. They didn't see any disease until the government got involved, when he believes the fishery in Durango (CPW) put Whirling Disease in the river. Their business depends on people fishing in the river.

He is supportive of maintaining the status quo and he made it clear that his business does not support a Wild & Scenic because of the regulations that would come with it and also because he thinks the current protections are adequate. Ty Churchwell asked what status quo meant to him. He said "what you see

today.” Ty asked him to be more specific and asked if he would support suitability remaining in the forest plan. Bruce Whitehead clarified that if the draft USFS plan goes into effect (becomes final, that is), the USFS would manage the river to protect the values that led to the river being identified for WSR suitability in the first place. It was clarified there would be no USFS authority on private land and no federal reserved water right with leaving the river suitable. Marsha reminded the group that there are two scenarios around what “status quo” means:

- a) Recommending that WSR suitability stay on the river as part of “status quo.”
- b) Recommending that suitability be removed as part of “status quo.”

It was clarified that this group is not a decision making body and it is a community group. The USFS manages the WSR suitability but does not manage private lands.

Ernie Kuhlman stated that he was hearing from the train and from Tall Timber that they would like to leave the management as it is now. Evan and Denny both agreed.

Ann thanked Denny for coming and recognized the importance of hearing from private landowners that might be affected. She asked Denny what he valued on this landscape. Denny said for 40 years his family operated a high-end resort. Because of the isolation that the canyon offers, he turned it into a business – an asset. His son is now running an ecology tour in the tree-tops, with skilled and highly trained ecologists. These staff show guests why they have old-growth ponderosa forests still remaining on their property. According to Denny, there is only 4% old growth ponderosa pine left in the U.S.A. They have a prime example of old-growth ponderosa pine left. Why? Their only answer is that the folks involved don’t take away what is there. They have trees in excess of 350 years old. They see 80 people a day from all over the world and feel like they are making an impact on educating people about natural values while they’re having a good time at the Resort. They are trying to show people why the section from Rockwood to Silverton is special. Ann asked Denny if, when he looks into the future, he has any concerns about his land or resources in general. He said first off, you have to make a living. They have to come up with something ecologically sound that people want to do. His intention is preservation, while making a living at the same time. He said they protect the natural resources of TTR because they want to and also because it is “good business” for them.

Bill also thanked Denny for coming. He stated that he feels the group is wrestling with what status quo means. He asked what his measure would be of status quo not being maintained. Denny replied that in years past, they came up to

Silverton and said “we have to do something about the water”, and they did via water quality improvements. He said that these types of efforts are what he supports because they are local and non-governmental.

John Ott stated that for him, status quo is improving water quality. Marsha reminded the group that there seems, based on this meeting and past ones, to be a solid consensus on this point, that the group recognizes water quality is very important (and a value), and that the complex efforts taken on by the ARSG should be supported and continued.

Ty asked Denny how he markets TTR. He said he markets on the internet. He said his market is the Disney market. He was asked if he was a hunter? He said that he started the Durango Wildlife Rehab Center 25 years ago. Denny stated that TTR does all the rehab for the Division of Parks and Wildlife in this area. They rehab the big animals at Tall Timber,. His clientele is not Durango-based. His guests are coming here for what we already have. His family is very proud of the preservation they have done, through the generations. Kevin stated that the Animas River Stakeholders Group came about partially at the request of Denny’s family. In response to Ty’s questions, Bruce stated that how TTR markets to their clients is their business, not really the purview of the RPW.

Darlene asked how they’ve prepared their children to continue the work at the resort in the way they have in the past, via preservation. Denny said that they developed and patented a system that hugs the tree with a wrap in order to protect it from the infrastructure of the zip line business.

John also thanked Denny for coming and commented on the efforts of the Animas River Stakeholders to improve water quality. John stated that in his opinion, this is an area where progress is being stymied because of the federal government and that we need a Good Samaritan Act so groups like the Stakeholders can do some passive discharge without invoking the wrath of the federal government.

Bob asked if there was any potential for new mining operations in this segment of the river. Denny said not that he knows of. Bob asked what his reaction would be to new mining operations in the canyon. Denny said he’d have to think about it.

Bob asked if the railroad or TTR provided input to the USFS when they were asking for public opinion on the current draft plan. Denny wasn’t sure. Marsha clarified the difference between the RPW process and the USFS forest planning process. The RPW is not in charge of the draft USFS Forest Plan. However, one of the reasons the RWP process started is because the draft Forest Plan, in 2007, stated that some rivers in the region were suitable for WSR. Evan said he

personally had no involvement in the USFS planning process. Denny said the same thing.

Marsha again clarified that this is not a formal public comment period for anything the USFS is doing. It's a community group.

Hydrograph

Marsha stated that CWCB (Colorado Water Conservation Board) is producing a hydrograph, as per the request of the group. It will be for the Animas River and will be available soon.

Mineral Creek

Marsha reviewed page 3 of the segment-by-segment analysis sheet, including the current protections in place, values, and ideas for protection, as identified by the group previously. On ideas for protection, the flow protection tool for in-stream flows needs some clarification regarding what that tool would look like. Marsha then opened up the discussion on any of the tools listed. Bruce asked about the Mineral Creek corridor and if the historic right-of-way was still in place. Apparently it is not. Bill Dodge asked what the value is now. It was stated that it has historical value.

Marsha asked if there were any questions about the tool of status quo. John stated that there were continuing ambiguities about status quo. He submitted that we might identify status quo without reference to the USFS plan, as the USFS may not include suitability in their plan. In other words, he said, the group should separate out the USFS component and call it two different things. Bill said he liked the notion of breaking it into two, i.e., what is currently in place and what is proposed by the USFS.

Thoughts on all current protections in place but adding suitability, as a recommendation:

Wendy stated that it's tough to think about, as there are three different ways to look at it: status quo without suitability; current protections with suitability; and the draft management plan. Steve stated that under current management, it has been protected adequately to where it's a candidate for suitability. For Steve, the question is whether we need additional protections for those values. Ray commented that he feels the protections in place now are adequate because the only future use that is likely going to happen for these areas are a campground and a couple of houses. John said that is not true. A private property owner could build a home or file for a mining permit. Steve said that with suitability, an operating plan for a new mineral operation would be more difficult to obtain. Currently, the state approves mining permits. With suitability, the USFS would be consulted as well.

Ray asked for clarification about the wetlands and their level of protection. Ann stated that the physical, wet soils are protected under the Clean Water Act. The hydrology that sustains the fens may come from upland areas and may be ground water, not surface water, and may not be protected. This is a question. Ann said she doesn't understand the hydrology in the area enough to comment further on that, and added that one thing that could change is further development of water upstream that might affect water quality and flow in these reaches, i.e., mining and home development. It's a hydrograph question and a question of how much water is available in the Creeks.

Ernie stated that he recalled there were very few in-holdings in the Mineral Creek and South Mineral Creek area. We need to get the maps produced by the county planner that include this information.

John Ott wanted to make sure that a WSR designation wouldn't preclude us from protecting water quality. Bruce and Kevin also asked if suitability would preclude the Animas Stakeholders from doing their work. Darlene asked if a Good Samaritan Law could be enacted if WSR designation occurred. These are areas of inquiry.

Wendy asked what the work of the stakeholder group in Mineral Creek is now. Steve stated that there are remediation targets on Mineral and South Mineral. Mineralization in the river from zinc has decreased markedly. Steve said there are consistent in-stream flow rights (a State tool) which are a protection now. John asked, "As we look at expanding fish habitat and improving water quality, what obstacles would WSR put in place?"

Marsha said it sounded like the group was moving towards discussion of the tool of WSR. That is fine, but there is a range of opinion on many of the questions the group has about WSR. Marsha said she would like to take a moment and be open and transparent with the group. She said that many, many questions have come up about WSR from various angles. She said that one principle of the group is to bring "accurate facts and information to the table." However, she said that she is concerned that a lot of work will be done by staff on finding answers or opinions to all the questions about WSR. However, because of the polarization on this issue, that information may not be trusted or believed. She also said that it is clear that for some of these things, there isn't a clear cut answer(s). So, we are in a situation where more information is requested but perhaps once it's gathered, it will not be trusted, used or helpful in moving the process along. She said she wanted the group to know that all these questions about WSR were not being disregarded but there is a balancing act here of how and if to gather the information. She asked the group what should be done?

Ty said other states have many miles of WSR and Colorado only has one. Bruce said that those states don't have 150 years of water law to contend with. Bob stated that most of the objections seem to be regarding adding a layer of bureaucracy. Darlene stated that practically speaking, WSR may be managed differently depending on who is managing it. It's not good or bad but just reality. A manager at the local level, she said, can take a broad policy and apply it in many different ways. This is concerning to some, she said. Ray said he'd like to know what impact WSR would have on fighting forest fires.

Bob said that we should ask Chuck about who might be a good person from the Poudre River to talk about WSR. Wendy encouraged everyone to look at various resources on the internet in regards to WSR. Maybe an information sharing session would be good. One option is to go through all the minutes and pull out the questions related to WSR. Steve said we already had Roy Smith come in and talk to the group. Some don't agree with Roy's statements, as it's a matter of perspective and how it's applied. He also stated that CWCB has some concerns about Colorado's water compact issues as it relates to WSR.

Bill feels it's not very useful to throw out hypothetical ideas or "what ifs" because we can't predict the future or answer the questions. The goal, as he understands it, is to protect the water quality and quantity of the watershed. Bill said that the group needs to explore this question: What set of coordinated tools would give us the confidence to address whatever is thrown at us in the future? He suggested that we take off the table the questions of mining and development and the prospect of taking away any of those current rights, then, within that framework, look at what tools we do need to manage – whatever might come our way in the future. If the values are at risk, what new or existing tools would protect water quality and quantity in the future, if any?

Marsha stated that Bill's proposal could be something for the group to look at and that is Bill wished to, what he said could be the basis for an idea (proposal) for the group to evaluate if they supported or not.

Ernie said he felt we've already discussed the question of various tools on the lower Animas, so why do it on Mineral Creek? Marsha said what the group is doing now is really honing in on each segment. Again, she said we are "working through" the spreadsheet so as to understand the various ideas for tools that have been brainstormed, by segment.

John feels we need to know more about the swifts and fens. In Mineral and South Mineral, there is significant potential for mineral development. We need to know what layer of protection the swifts need, and added that we don't need to make them the spotted owl of southwest Colorado. When John was a kid, the fens were mined commercially for paint pigment and for soil amendment. John

stated that we need to protect them while allowing for mineral development to continue.

Ty said that the conservation community really does strive to understand the water development and mineral development viewpoints. Ty said we really don't know what's coming in the future, and that is scary. Development of private property for mineral development is one thing but when it happens on public property, it's difficult for those in the conservation community. Ty said he was stating what he thinks are the conservation communities' positions and was interested in what others' positions are.

Marsha reiterated that the group has an opportunity to be positional or to talk about shared interests. When we get to proposals, we will be asking the group to state what their shared interests are. Wendy shared that she'd like to finish the process that we began in terms of each segment. She learns a lot about each stretch through the process.

Steve stated that one difference between Mineral and South Mineral is that there are sediments in South Mineral.

Ty asked if we ever clarified whether the right-of-way for the state highway on the Poudre is similar or different than the right-of-way of the train through the canyon. We will add this to the list of questions regarding WSR.

Marsha asked for clarification on the protection stated as "flow protection tool for in-stream flows." Steve thought the question was really "Are in-stream flows adequate?"

After much discussion, it was decided that for now, the information needs around WSR need to be "out there" as an issue (i.e. how do we gather trusted information). Next, information that is easily accessible about WSR will be emailed out. Everyone needs to do their own research for now. Tami and Marsha will develop a list of all the various questions that have come up around WSR which mostly are about "what if's". It needs to be understood, Marsha noted, that we simply do not know how some issues would be treated under a WSR (suitability or full designation) because those decisions are left up to managers and/or because they can vary across WSRs. In other words, how an issue is handled on a river in another state could be very different than how an issue is handled here.

The question was asked about whether a tool was needed to prevent trans-basin diversion (the final tool listed on the Mineral Creek page). Bruce said you have to be very careful about selective subordination as related to this issue. To be followed up on at the next meeting.

Durango Meeting:

Marsha reported that the Durango meeting had about 40 people in attendance. A presentation was given on the process, background, etc. Documents were handed out. Comments, broadly stated, were that some wanted more diverse interests represented, better water quality upstream, appreciation for the work of the group, and many comments reflected issues and concerns already raised in the workgroup. Also, some stated that they would like more meetings downstream. The Steering Committee will chew on that one. Bruce commented that it might be worth holding a meeting(s) in Purgatory.

The January through June 2012 minutes were discussed. Amendments were:

- Steve asked that we amend the May 24, 2012 minutes to show that he did not say that there were no storage rights for the Howardsville site.

- Meeting 10 – April, 2012 – Change notes that say a WSA can only exist on BLM, not FS.

All minutes not approved to date were approved by the Workgroup.

The next meeting is July 26th. Bring calendars to the July meeting so we can find a date for late August (and set other meetings dates as well).

Meeting adjourned at 8:37 p.m.