

San Juan River Workgroup

Meeting #9 Summary

Jan. 27, 2011

final - 5 pages

NOTE: The Web site for the River Protection Workgroup, including the San Juan River Workgroup, is <http://ocs.fortlewis.edu/riverprotection>.

Recommendations: Facilitator Marsha-Porter Norton briefly reviewed the draft recommendations of the Workgroup. She said this is an emerging, living document and it is definitely not final yet.

Supplementary information: Ann Oliver had prepared a handout with information to address questions and needs identified during the Nov. 29, 2010, meeting. This was presented and some of the issues were discussed.

Mineral withdrawal as a way to protect the Outstandingly Remarkable Value of geology: San Juan Forest Supervisor Mark Stiles gave an overview of mineral withdrawals. He said a withdrawal can be made administratively, by the Interior Secretary, who has authority over federal minerals; or it can be done by Congress.

Mark said there are differences in the two methods. When done administratively, a withdrawal can occur relatively quickly, and there is immediate protection for the area while the process is going on. Protection through Congress takes longer. However, Congress can withdraw as much acreage as it desires, while the maximum withdrawal that can be done by the Interior Secretary is 5,000 acres. Mark said mineral withdrawal is not taken lightly by the federal government. He said mineral withdrawals are also easier where there are not many minerals available.

He said the federal government classifies minerals under three categories:

- Locatable – hard-rock minerals, which fall under the 1872 Mining Law
- Salable – lower-value minerals used in construction and building, such as sand and gravel, stone, and clay
- Leasable – energy resources (oil and gas, coal and geothermal)

Mark said in regard to locatables, the federal agencies do not stipulate which lands are or aren't available for development. Instead, developers come in and make a claim where they believe the mineral exists. With salables, the agency processes applications for sales and permits for mining the resources. Regarding leasables, the land-use plan for each national forest identifies land to be made available for leasing. There can be restrictions on how the resource is developed, such as no surface occupancy, limited timing, and others.

Mark said mineral withdrawals can be done to cover all three types of minerals. The maximum time for a mineral withdrawal is 20 years if it is done administratively. Only Congress can make a withdrawal permanent.

Mark said sand and gravel are often associated with river beds, so it is very likely these are present in some of the areas along the East and West Forks of the San Juan. For locatables such as gold and silver, there are just a few active mining claims and not many patented claims in the area. He said claims can be made for a lode (vein) or a placer claim (on the surface). When someone files a claim, he or she doesn't gain ownership of the surface, just the right to work it. Mark said the agency has been in a moratorium for new patenting of claims since the mid-1990s because of concerns about clean-up of old mines and it is not likely any new patents will be granted until the 1872 Mining Law has been revised, which may not happen for a long time. There are some new claims being filed in the San Juan watershed. Not many sites here have the potential for gold and silver. Generally those elements are found where quartz is also found, such as Quartz Creek.

Buck Skillen of Trout Unlimited asked whether there is potential for tellurium, a rare-earth element vital to photovoltaic production, in the San Juans. Mark said he is not sure. He said this area does have some neodymium, another of the rare earths.

Mark said Wolf Creek has moderate to high potential for oil and gas. There are old coal mines in the area; they are not active. He said there are also some geothermal resources in the area that could be protected against development if the group desires. These resources are leasable and are accessed by drilling a deep well.

Becca Smith of the Pagosa Ranger District said the federal government owns some of the mineral rights on private land, so those rights could be included in a withdrawal as well.

Mark said the geology that led to the finding of WSR suitability/eligibility is present throughout the area, not just within the quarter-mile corridor on either side of the river that would be protected by WSR designation. He said WSR may not be the best protection for certain types of geology because of this limit on the width of the protection. WSR protections do not necessarily match up with geology as well as with an ORV such as fish, for example.

Jimbo Buickerood of the San Juan Citizens Alliance asked whether the West Fork between Boot Jack and Born's Lake, where the West Fork gravel pit is now, is open for development of salable minerals. Mark said it is.

John Taylor said he has reconsidered his concerns about gravel and now believes it would be beneficial to the Forest Service to have gravel available in the area for road maintenance. Rusty said the gravel pit on the West Fork still has plenty of gravel available and it might be better to take gravel from an existing pit than a new one. He suggested exempting that site from a possible mineral withdrawal.

Marsha said a broad mineral withdrawal could be a tool to protect the larger set of values beyond geology that was defined by the Workgroup. She asked what would be the concerns with that tool.

J.R. said on the East Fork Ranch most of the mineral development rights have been given up because of conservation easements. Mark said it needs be established that the McCarthys actually own those minerals; there could be a split estate and the government could own them.

Ann said it seems that protecting the geology ORV means protecting the scenic values of the watershed and it seems that a mineral withdrawal wouldn't entirely protect those because other things could affect the scenery, such as new roads.

Buck said he supports a conservation tool other than WSR. John said he doesn't want WSR, nor does he want mineral withdrawal as a recommendation, but he would accept a recommendation of *consideration* of a mineral withdrawal.

Mark asked whether there would be a complementary measure to a federal mineral withdrawal so there would not be mineral development on adjoining private lands.

Jimbo said on the Boot Jack Ranch, the conservation easement allows for a gravel operation that could be a big visual disturbance. He said it's unlikely to happen, but under a previous owner there was an operation that was disturbing, so it is possible.

J.R. said he believes if surrounding land were protected from mineral development, the owner of Boot Jack would opt to protect his land from development as well. He said if the group does recommend a mineral withdrawal it should be bigger than 5,000 acres in order to substantially protect the view.

Ideas for recommendations:

- A mineral withdrawal for public lands (area to be defined)
- *Consideration* of a mineral withdrawal
- A mineral withdrawal if WSR cannot be attained
- Exempt the existing gravel pit and allowed it to be used (consensus)
- Have a complementary tool on private lands to go with withdrawal, such as a zoning overlay
- Use planning decisions – federal and county – for protection
- If there is a WSR designation, have a mineral withdrawal along with it to give wider protection
- Address potential visual disturbances
- Broad mineral withdrawal with a small piece exempted to provide gravel for federal agency

Windsor Chacey suggested also protecting the watershed for clean water. Becca said there is a source-water protection zone on the West Fork for the Pagosa Area Water and Sanitation District.

John said there are a couple of creeks in the area that have native trout. A mineral withdrawal could help protect those.

Windsor said there is subsidence associated with taking oil and gas or coal from an area. Withdrawal is a good way to protect the landowners from such an occurrence. She also said the originally small oil and gas wells in La Plata County are now growing into large ones and creating a major visual disturbance.

Various sentiments about mineral withdrawal :

- It should be considered.
- Have it on a broad area.
- It could be a trade-off for no WSR or could be used with WSR.
- Work with private landowners on deed restriction to keep mineral development from occurring on adjoining private lands.
- The Forest Service gravel pit on the West Fork should remain.
- Use existing planning tools (federal and county).
- Protect water quality, scenery, geology, private property rights, land values.

Marsha said there is clearly not consensus to support a WSR designation, so she thinks a key issue is whether those who desire WSR status believe that any of these other tools are adequate to replace it. If so, there is a good chance the group could come to consensus on one or more of those tools. Another question is whether there is a tool to replace WSR that is acceptable to the private landowners. She said the group needs to think about these questions before the next meeting.

Advisory council: John said he and three other people met Jan. 20 to discuss how an advisory council for the San Juan watershed should be created. He said the group agreed such a council would have merit thought it could be formed by the Southwestern Conservation District. The group originally said only the East and West Forks would be covered, but then thought maybe there should be a separate, additional council or additional members of the council to work on the Piedra River as well. John said the group thought the Forest Service would be involved in the council in an advisory capacity but not as a member of the council. John said the council could serve as a liaison with the agency and could help make the Forest Service aware of concerns and opportunities related to the landscape.

Windsor asked whether there would be a larger regional council. John said it's possible when the River Protection Workgroup circles back, a guiding body may be created. That was not discussed by his small group. Windsor said it would be good to be able to join together to protect each river basin. Marsha said the RPW Steering Committee may want to talk about the idea of having different councils locally in the long term.

Marsha said the idea of an advisory council was originally discussed as an alternative to WSR and asked if that was OK. John said it would be helpful to have a council in place whether or not there is a WSR designation. Windsor said a council would not give permanent protection by itself.

Mark said two particular words, "consensus" and "advice", trigger some legal concerns under the Federal Advisory Committee Act (FACA) of 1972. The act is designed to ensure that special segments of the population do not unduly influence the federal government. Mark said if the

advisory council were designed to advise the agency, or if consensual advice is involved, this would trigger the many requirements of FACA. The council would have to have a charter and be approved by the General Services Administration. Members would have to be chosen from different groups to provide broad representation; appointments would have to be made by the Interior Secretary.

Marsha asked what constitutes advice. If the group wants to come talk to an employee of the ranger district, does that violate the law? Mark said possibly. He said it is very time-consuming and expensive for the agency to be involved in such committees, and if there were one for each river group, the San Juan National Forest couldn't afford to provide a designated forest official for each council as required. He said it might be possible to organize the council so it is not giving advice but is a river-watch or river-monitoring group to bring issues to the agency's attention.

Roadlessness: Marsha said Mely Whiting of TU had asked about the permanence of roadless status. Ann said it's more permanent than a local land-use plan but less permanent than legislation.

Mark said roadless status is established by federal regulation through a very defined process that is more onerous than an environmental impact statement or a land-use plan. Right now Colorado is considering writing its own roadless rule rather than waiting for the national rule to be figured out. After the San Juan Public Lands revised land-use plan is finalized, local roadless areas are evaluated and the Colorado plan is enacted, local roadless areas will be established.

Marsha said she had been asked whether, if the East Fork were to become a WSR, the road would be closed. Mark said that is not likely. Because the East Fork already has a road, it could only be classified as a recreational WSR, and roads are allowed under that classification.

Meeting summaries: The minutes from April through October were approved. Marsha said if there are concerns about them, to bring those to her.

Next steps: J.R. will talk to the owners of Boot Jack Ranch about their feelings regarding a zoning district, mineral withdrawal, deed restrictions and the advisory council.

Information is needed on the following:

- Ownership of the minerals on the East Fork Ranch conservation easement.
- Whether there are examples of places where deed restrictions have been incorporated as part of the package in a trade-off for abandoning WSR consideration. Mark said he can research that.

Next meeting: The next meeting will be on Thursday, Feb. 24, from 5:30 to 8:30 p.m., at the Ross Aragon Community Center in the easternmost conference room.