

## **San Juan River Workgroup**

Meeting 3 Summary

April 22, 2010

**Final** - 4 pages

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

**Presentation on Boot Jack Ranch:** David Smith, manager of Boot Jack Ranch, discussed concerns of the ranch owners about the finding of preliminary suitability for Wild and Scenic River (WSR) status on the West Fork of the San Juan River. He said the West Fork runs from the north through Boot Jack Ranch and Saddleback Ranch to the confluence. He said the WSR suitability finding on the West Fork affects a little more than 4,000 acres of private property.

David said David Brown purchased Boot Jack in 1995 with the goal of keeping the valley intact and undeveloped. The Outstandingly Remarkable Value (ORV) that led to the suitability finding is geology, primarily on the east side of the valley. Within the private property is a 1,103-acre area protected by a conservation easement held by Colorado Open Lands. There is also a conservation easement held by the Southwest Land Alliance on 440 acres. David said this means that about 40 percent of Boot Jack Ranch is protected by easements, including most of the area that contains the scenic geology.

David noted that the East Fork was found eligible but not preliminarily suitable for WSR consideration. However, he said there is just one landowner along the East Fork; there are nine property owners and about 60 different water rights along the West Fork. David questioned how the West Fork could logically be considered suitable for WSR designation, given those facts. He said there is also an instream flow (ISF) right on the West Fork and questioned the benefits of one more junior water right (the federal reserved water right that would presumably come with the WSR designation) when protection is already provided through the ISF and conservation easements. David said the WSR suitability finding has put a cloud of uncertainty over nine property owners in terms of what they can do on their property.

Facilitator Marsha Porter-Norton said Boot Jack is a major stakeholder in the area and she hopes representatives will come to more meetings.

Steve Fearn of the Southwestern Water Conservation District (SWCD) board said the SWCD shares the concerns expressed by David Smith. Steve reiterated that the San Juan River Workgroup process is part of a larger, regional discussion about alternatives to WSRs that involves four other workgroups, one of which (Hermosa Creek) has concluded its process. He said after all the workgroups have finished their efforts, there will be a regional discussion of water protection, and it's possible that Hermosa Creek and/or one other stream in the region could become WSRs, but a WSR designation requires an act of Congress and local support. Steve said one provision of such legislation might be that other streams in the basin would be removed from consideration for WSR eligibility/suitability.

Michael Whiting of the Southwest Land Alliance said the McCarthy family, which owns

East Fork Ranch, has placed a conservation easement on 1,062 acres of the ranch and is planning two more easements. The family's concern is to make sure the Forest Service is not working at cross purposes with their efforts to protect the ranch and the area through other conservation tools. He said further restrictions such as a WSR designation would constitute a pre-existing covenant on the property and reduce the benefits of private land conservation.

**Information sheet:** Marsha said more information will be provided at the meetings and will be made available on the web site, including maps, water-quality data, the source water pollution plan, the U.S. Forest Service list of sensitive species, and the Division of Wildlife's list of species in the area.

Mike Reid of the Division of Wildlife discussed the list of terrestrial wildlife on the information sheet. He said it can be difficult to define what species are "here". Some species, such as the sharp-tailed grouse, were present once but aren't any longer. Others, such as the brown pelican, an ocean bird, arrived recently. Mike said the brown pelican flew in after a bad storm, but some foreign species have been introduced by people, including feral hogs and trumpeter swans. He said there are different lists of species of concern, including the federal list of endangered species and candidate species, the U.S. Forest Service list of sensitive species, and others. Steve asked whether it might be best to list only species that naturally occur in the area; Mike said that would leave out the moose, which many people consider important. Marsha suggested Mike work further to narrow the list somewhat with a focus on native species, species of concern, and critical habitat. The list will never be perfect, she said.

Mike commented that any change in management of the river and corridor will affect some species negatively, others positively.

He was asked whether the San Juan watershed contains critical wildlife migration routes. Mike said fortunately there is so much public land in the vicinity that wildlife has not yet been crowded into "pinch points" by development and is able to spread out. The audience commented that wildlife has an economic value to the county.

Mark Stiles, manager of the San Juan Public Lands Center and supervisor of the San Juan National Forest, suggested that the web site provide a link to the WSR appendix to the *2007 San Juan Public Lands Draft Revised Resource Management Plan*.

Marsha started a list of "Issues and Concerns" and said this process will continue; people can add items to the list as they come up.

## **Issues and concerns**

### **Boot Jack Ranch**

- Manager feels that the West Fork should not have been preliminarily suitable; the number of landowners affected is more than on the East Fork.
- Key geology is already protected via conservation easements.
- There is enough protection in place already, especially with an instream flow.

- WSR status would create one more layer of government regulations and hoops that their ranch doesn't want.

#### **Other concern**

- A West Fork landowner feels that due to the inaccessibility of the area, it is protected already and WSR is a concern.

**Values statement:** Marsha presented a draft values statement she had prepared and explained that it is an effort to reflect and briefly summarize the many different values that have been listed as present in the San Juan River East and West Forks. She asked that the group be prepared to discuss the statement at the next meeting.

**"Water 101":** Scott Brinton of the Colorado Division of Water Resources (DWR), assistant division engineer for Water Division 7, gave a PowerPoint presentation on the DWR and the basics of state water law. His presentation is available at the web site listed above.

He explained that Colorado is divided into seven water divisions based on the seven major river basins in the state. All surface and ground water in Colorado is considered a public resource for beneficial use by public agencies, private persons and entities. A water right is a right to use a portion of the public's water resource. A water right is a property right separate and distinct from land ownership.

Scott said water rights in Colorado are handled in a unique manner known as the "Prior Appropriation Doctrine". This means, informally, "first in time, first in right". A person/entity acquires a water right by taking water and putting it to a beneficial use. This right is protected by going to water court for adjudication. The first person or entity to appropriate and use the water has the most senior water right on that stream; subsequent users are considered to have water rights junior to the first one, and water rights must be satisfied in order of their acquisition. Senior water-rights holders are entitled to get their water first during periods of water shortage. In Colorado, the priority of a water right is determined by both the date the water was first put to a beneficial use (the appropriation date) and the date when the right was decreed by the court (the adjudication date). During a water shortage, someone with a senior water right can place a "call" for his/her water through the water court and junior rights will be shut off till the more senior water right is fulfilled.

The actual diversion and beneficial use of water is considered an *absolute* water right. A proposed future use conveys a *conditional* water right.

Scott said interstate compacts are the No. 1 water right in the United States. He said 19 states rely on Colorado water, and Colorado has entered into nine interstate compacts, including the Colorado River compact, which involves seven states. There are also international treaties with Mexico.

The interstate compacts involved in Division 7 are:

- Colorado River Compact (1922)
- Upper Colorado River Compact (1984)

- La Plata River Compact (1922)
- Animas-La Plata Project Compact (1969)

Scott said instream flow rights were established by state statute in 1972 to preserve the natural environment to a reasonable degree. The Colorado Water Conservation Board is the only entity that can hold ISF rights.

The concept of a federal reserved water right was established by the U.S. Supreme Court in 1908. Previously, the federal government had acted on the premise that water law was purely a state matter. An FRWR is based on the idea that when the federal government sets aside land for public uses such as Indian reservations or national forests, there is an implicit water right created in an amount sufficient to satisfy the purposes for which the reservation, forest, etc., was created. The priority date of an FRWR is the date the "reservation" was established. Scott said there is an open court case in Division 7 involving a FRWR for the Forest Service, but the case is in limbo at the moment.

Mark Stiles explained that the FRWR that would be conveyed for a WSR would be a junior water right based on the date of the legislation that created the WSR, but it could still affect applications for changes in use by more senior water-rights holders. Marsha said Roy Smith of the state Bureau of Land Management will be coming to speak to the group about WSRs in detail at a later meeting.

**Next meeting:** The next meeting will be Thursday, May 27, at 5:30 p.m. at the Ross Aragon Community Center cafeteria.