

RPW Steering Committee Meeting Summary
FINAL
Oct. 1, 2014
7 pages

In Attendance

Ann Oliver, Bruce Whitehead, John Taylor, Preston Groetzke, Chuck Wanner, Steve Fearn, Jimbo Buickerood, John Whitney, Jeff Widen, Darlene Marcus, Wanda Cason, Suzanne Sellers (by phone), Tami Graham: Facilitator, Gail Binkly: Recorder

Meeting Summary

The Aug. 28 meeting summary was approved with the suggested addition of the word “suitability” after “WSR” on the final page, in a statement summarizing Mely’s comments. This will be checked with Mely for her approval.

Hermosa Legislation Update

Darlene said the Hermosa Creek bill made it through the House committee and is waiting for a floor vote in the lame-duck session. John W. noted that the bill hit some obstacles in D.C. He and Darlene would like to see if some revisions can be made to the bill through a good conversation between their two offices to get it to a point where people are comfortable with it again. They would then like to send the revised version to all the stakeholders, including this group. Darlene agreed and noted that the House Natural Resources Committee also will have input. John said the Senate Environment and Natural Resources Committee has promised Senator Bennet that the next time they hold a markup session the bill will be on the docket. The chair has said they will have a voting session on Nov. 13. If that does take place, John would anticipate being ready to move the bill through the Senate committee at that time. John said he and Darlene believe it is very much possible to move forward. Darlene said it will depend on what Congress decides to vote on when it is back in session. If there is no vote on the bill, the effort will have to start over next January with a new Congress and the bill will have to be introduced again.

Jimbo said many people are interested in the legislation. It was agreed there is considerable public interest and concern.

Next steps

→ Anyone who has comments about revisions to the bill should provide them to both Darlene and John, preferably in writing, so they can incorporate them into the discussion.

Chuck said the Hermosa Workgroup assigned this to the Drafting Committee for discussion and any changes should go back to them. John and Darlene said that would be fine.

Jimbo asked if the San Juan Citizens Alliance will retain a seat even though their original representative left. He was told they will.

Bruce said there have been a number of additions and changes over the past few years and those didn’t go to the Drafting Committee. John said the committee may not need to formally reconvene. The revisions will also be sent to the Southwestern Water Conservation District, Trout Unlimited, SJCA, The Wilderness Society, and other entities.

Bruce asked if this will happen before the bill goes to the Senate committee. John said yes.

Bruce expressed concern about recent letters to the editor regarding the bill and said some have come from people who did not participate in this process. He said they have not been helpful to the work. John and Steve said they hope people will give this group some space to work through the issues.

Bruce suggested the possibility of a joint press release. Ann suggested that the Steering Committee write a letter urging Bennet's and Tipton's staff to work together on language. Others said the letter should be fairly broad in scope rather than focusing on specific issues, and there was consensus for that approach.

Jeff said such a letter would show faith that this group believes in the product that was agreed upon, and would demonstrate respect for both offices. He said he, too, has been a little frustrated by the letters to the editor. A lot of the changes to the bill were imposed by the House committee. He believes these are significant changes that need to be worked on and so does his group, but Senator Bennet's and Congressman Tipton's offices have been willing to work on them.

It was discussed whether this should be a letter to the editor or a letter to the two offices. Bruce said it would be better to encourage the offices to work together. Jimbo advised sending the letter to Udall's office too. Bruce and Steve agreed.

Next Steps

→ Bruce will draft a letter and send it to Jeff and Jimbo for their input. The letter will be from the Steering Committee, not the Drafting Committee, to the three congressional offices saying the SC urges them to continue working to move the bill forward.

Observer Input

Mark Pearson said the Hermosa Creek legislation provides a good reality check. There are groups across the West working on projects like this. When a proposal goes back to Washington and leaves the control of the local group, other factors come into play. What you decide at that point shows your commitment to each other and the agreement you reached.

Phase II Regional Discussion

The idea of an Outstanding Waters designation as a potential alternative tool for protecting Grasshopper and Tank creeks was discussed. Chuck explained the components of an Outstanding Waters designation. In order to qualify, a stream segment must have at least one outstanding attribute, and its water quality must meet certain standards. Sampling data must be available for 12 chemical constituents. This would require sampling at the lower end of the creek. Chuck said such a designation is do-able and fairly durable. Some examples are Little Taylor, Spring, Hermosa, and Rio Lado. He doubts Tank Creek would qualify because it lacks an outstanding attribute. However, Grasshopper has the native-trout fishery. Chuck said the next review of possible Outstanding Waters in Colorado will be done in 2018.

Chuck said an Outstanding Waters designation would preclude discharges into the creek, but would exempt agricultural nonpoint source discharges.

Bruce asked if the designation could prevent diversions. Chuck said in theory it could, but he doesn't see that happening on the upper Grasshopper because if a diversion was lower, it wouldn't affect the creek, and if it was at the top and removed all the water, that would be that. He said in general, water-quality protections are not able to prohibit the exercise of water rights.

Chuck also said there is no provision in this designation that mandates certain flows. The state will continue to sample the water when the flow is low.

Jimbo said it would be helpful for him to get clarification from the SWCD representatives regarding the definition of “development”. Bruce said, regarding water available to appropriate, it belongs to the citizens of the State of Colorado. If there is water available it can be developed and used for multiple purposes.

Jimbo asked whether that means that on one of the WSAs, Grasshopper Creek, or any other area where protections or special management are being considered, the SWCD believes there needs to be unrestricted access to be able to put in a structure such as a diversion so the water right can be developed in the future if not now.

Bruce said he didn’t say that. He said there are federal laws that will come into play in permitting, and there are compacts that Colorado is bound to.

Ann said this group is about finding places where protection can happen in the face of these other needs. She suggested talking about specific places.

John T. said he has questions about the purpose of extending wilderness protection to Grasshopper Creek. It is a small stream with a steep gradient. He believes the protection being proposed would make it more likely that the Colorado River cutthroat trout in that stream would be destroyed if there were a fire because it would make it more difficult to fight the fire.

Jeff said the issue of fire mitigation in wilderness areas is debated frequently. The law says federal agencies can employ whatever means necessary to fight fires and can also do fire-prevention activities. There is disagreement within the agencies over their interpretation of those provisions. Jeff said TWS would like to see more clarity on how fires are dealt with in land designations in general and wilderness in particular. He said these are thorny issues and common ground needs to be found.

John said that would be very valuable, but it isn’t in place now. Trout Creek just had a massive fish kill because of a fire.

Preston said there are other factors to consider regarding the Grasshopper and Tank Creek areas. There are outfitters who would experience major economic impacts if those areas became wilderness, because wilderness is problematic for outfitters. He had to give up two camps this year in a wilderness area because he can’t get to them any more. This idea needs to go back to the public soon and he believes there would be stiff opposition.

Jimbo said he fished this year in Goose Creek and a section of the Rio Grande, both of which were affected by the West Fork Fire, and did catch fish. He said the group is seeking balance here. If a protection is let go, there needs to be another in place to protect values in another way.

Bruce said these areas may be worthy of protection, but he does not recall those values being identified and those reaches being discussed by the Animas Workgroup. He is not sure this group has the authority to make decisions such as a Special Management Area designation.

Ann said Grasshopper Creek was not specifically discussed for active protection, but it is mentioned in the information sheet as having genetically pure cutthroat trout, and they were an

identified value. She thinks it would be best to go back to the workgroup. The door was never closed on new ideas, but their support is needed.

Jeff agreed that this group doesn't have the authority without the workgroup's approval. Whatever this group decides should be brought back to them. It is more important to do the process right than fast.

Chuck said he thinks TU's proposal can be done without consulting the workgroup. He said going back could be problematic and could jeopardize items where consensus has already been reached. Chuck said language in the final report gives this group some latitude. TU feels it would be comfortable using that latitude.

Bruce said this same topic has been on the agenda for four or five meetings and no consensus has been reached. He doesn't know where else to go but back to the workgroup. He doesn't think three more meetings will bring this group to consensus.

Jeff said that going back to the workgroup with some ideas the RPW Steering Committee has discussed could help people understand the give-and-take, and that could help shape the discussion. Chuck agreed if there were something this group agreed on and could take to the workgroup it would probably get support.

Jeff said if the SC can get agreement on anything, that is what should be taken to the workgroup. He is not convinced that agreement is impossible, but it may require a tedious process.

Preston, Chuck, and Suzanne said going back to the workgroups, especially the Animas, would cause problems and would not likely produce more consensus than was already reached.

Darlene said she attended most of the Animas meetings and she believes this is expanding on what they did and she is not comfortable with it.

Bruce said the SC can say, "We agreed on certain points but there are others we did not and that's why we're going back," and let the workgroup weigh in, along with the public. It will be a slower process.

Jeff agreed and said the "circle-back process" did allow for new ideas, if they were taken back to the workgroups. An SMA for South Mineral Creek wasn't brought up before, but the possibility of WSR designation was, so the SMA could be viewed as a potential alternative to WSR. Is it a new idea? Yes, but it addresses a known issue.

Steve said finding an alternative to WSR has been on the table forever on South Mineral Creek. The SMA is a new *tool*, not a new idea. The regional discussion sheet says "remaining flexible" and Jeff is saying that justifies new *ideas* for Grasshopper and Tank Creek and maybe South Mineral Creek. When the group gets away from what was discussed in the final report, the integrity of the process is threatened. Many new things could be brought to the table if the SC reaches beyond what was discussed. Steve said new ideas need to go back to the workgroup involved. Much of this community wanted a WSR segment in Southwest Colorado, but he believes the chances of that happening are remote because Front Range interests have high-altitude conditional water rights for future development and don't want to risk them being tied up in future WSR designations and don't want what is done here to spread across the state. Steve said the most that can be hoped is that those Front Range interests won't oppose this package,

so it needs to be a good package that is supported by the SWCD board and the water community.

Jeff agreed.

Chuck agreed with Steve's assessment of the political realities and said the longer the SC delays, the less chance there is for moving forward.

John T. said he is not convinced WSR designation is a good way to protect a river, and cited the Poudre as an example. He believes the removal of suitability is worth doing in the Piedra Basin and he is comfortable with that as a tradeoff for a WSR designation on Hermosa Creek.

Bruce said the Piedra discussion stood on its own.

Preston said he had a phone conversation with the Hinsdale County commissioners and they have concerns about the Piedra because of the protections the group wants to put on it. They believe the Piedra can stand on its own for legislation.

Bruce agreed and suggested bifurcating the legislation.

Chuck said two agreements have been reached so far as a result of this group, Hermosa and Piedra.

Jeff said when he and Jimbo came to this group with ideas, they were four different possibilities – a menu, not a package. They are willing to discuss any combination of those four, but the answer they got was just “no”. He and Jimbo think it's worth continuing the discussion to try to get to the “sweet spot” as was done with Hermosa Creek.

Bruce urged the group to bifurcate the legislation, set up a drafting committee, continue work on the Animas and see if that needs to go back to the Animas Workgroup. Steve said the first step in drafting is to develop the principles or points of the legislation, so the first step is to get a group together to work on the basic principles.

Jimbo said SJCA has always said that Phase II was to involve taking a “big picture” look at all the other drainages together in order to find some balance. The more things that are pulled off the table, the less chance there is of finding such balance.

Chuck disagreed with Jimbo. Chuck said if the group wants to talk about drafting points on the Piedra and define what is needed to get a bill together, TU does not agree to reopen that one process where a conclusion was actually reached.

Jeff asked if the deal would include a WSR designation on the Hermosa. Bruce and Steve said no, that would be separate. Jimbo said SJCA is fairly happy with the Piedra package, but only if it is a piece of the basin-wide package.

Tami said there is a minor change in the TWS/SJCA proposal that extends the mineral boundary to 300 feet from the stream. Bruce said that was not part of the consensus.

Jeff said a deal was made on the Piedra. As part of the SC, he respects that deal. He doesn't feel it would be proper to go back to the Piedra Workgroup and say, “We want to make a major change”. The whole approach in Phase II has been a regional discussion. He and Jimbo

wouldn't be in favor of stand-alone Piedra legislation. There might be nothing wrong with having a group to talk about the mechanics of a major legislative package. His concern is if you start talking about one part of something, it can develop a momentum on its own, and if this group moves forward on another piece of legislation, it needs to have other basins included.

Bruce said that will have to be addressed at the time.

Jeff said if there is another piece of legislation, TWS would like it to include provisions for the Piedra and the Animas as well as WSR designation for Hermosa Creek. TWS has never said they are OK with stand-alone Piedra legislation.

Steve said Piedra is its own piece but it can be wrapped into a bigger bill. Any work done now is something that doesn't have to be done in the future. He is not saying not to continue with the original concept, just to try to move the process along faster.

Jeff said he doesn't disagree from a process point of view, but the group should make sure as a Steering Committee that they don't put out a public impression that they are supporting a piece of stand-alone legislation.

Steve said his preference is do what was talked about, one big package. If consensus can't be reached on the Animas and Hermosa in a reasonable period, the SC can decide what happens next.

Bruce said the Steering Committee is committed to working out the issues. There could be a multiple-part package. They didn't say it would be one big package.

Chuck said the question is not one of content but process. Is it a good use of time while this group is at loggerheads to start talking about the other piece, which will take some real crafting? To him it is a question of how to proceed. He is willing to do that without anything else.

Jeff said he has no problem with having that sort of discussion.

Steve said he agrees on the need to define "major impoundments".

Bruce said the Steering Committee should move forward with looking at drafting language for something that may be part of a broader package.

Tami said there needs to be clear parameters if the SC decides to move forward with discussing elements of legislation that relate to the Piedra.

Chuck asked if there is agreement to discuss the Piedra, because there are definitions and points that would have to go into legislation in the future, making no assumptions about what role this will play overall and recognizing that some people don't want to pursue this path as it's not part of a package. He said there is no presumption it would be accepted as stand-alone legislation, but this could be productive work toward getting further down the road.

Jeff said he is OK with having those discussions. The conservation interests agreed to leaving WSR and water development on Hermosa Creek out of the discussion, but their assumption during all these meetings was if there is going to be a release of suitability and WSR designation, it has to be coupled with something else.

Bruce disagreed and said the Piedra group didn't agree to that.

John Whitney said he remembers that there was talk by many partners that it needed to be part of a package. He suggested checking the old minutes.

Bruce said not all of those questions, such as what was agreed to in the past, have to be resolved today. There just needs to be a decision on whether to move forward.

Chuck said it is sensible to start working on some of the hard parts, but he is not ready to say there would be stand-alone legislation for the Piedra.

Jimbo said he doesn't think the group should make a decision today. He doesn't want to say he is supportive of the Piedra effort and have it come back to him down the road that he supported stand-alone legislation. He said nothing in the discussion over the years has indicated anything other than that the work for the remaining basins would produce a package that is interdependent. He said that's the whole counter-balance to a Hermosa Creek wild and scenic designation. He asked whether the group should now talk about legislative parameters for a stand-alone Hermosa Creek wild and scenic bill.

Bruce said there is no consensus on that, while there was on the Piedra.

Jimbo said if someone wants to delineate what legislation for the Piedra would look like, that would be a good step. There is also some research to be done into the minutes. He said that should be brought to the next session.

Chuck agreed. Bruce disagreed.

Tami said there appears to be no consensus except to continue to talk. Steve said he is not sure there is anything to continue to discuss.

Observer Input

Mark said he is dubious the Piedra is a viable stand-alone piece of legislation. There is not enough substance in it to induce other external interested parties to support it.

Sandy Young said why not request WSR status for the Hermosa main stem and be done with it?

Closed Session

The Steering Committee decided to meet in a closed session.