

Hermosa Creek Workgroup

Meeting #13 Summary

April 7, 2009

Meeting summaries: The March meeting summary was approved with one change.

Discussion of scenarios: Facilitator Marsha Porter-Norton provided clarification on some of the scenarios that had been listed at the March meeting. Scenario #4, "A basin-wide framework/umbrella concept," has been renamed the "tiered approach." Credit goes to Ed Zink for providing this scenario. Its concept remains the same: Some things would be managed at the local level, perhaps by a citizens or county group. Other elements, such as water, would be managed at the state level, and the land mass would be managed at the federal level — meaning through federal legislation, not simply by the San Juan National Forest staff. It would be a flexible approach under one umbrella.

Marsha also clarified that Scenario #5, Wild and Scenic River ("WSR") designation, means *only* a WSR. Likewise, #6, Wilderness, means *only* designating a wilderness area. Also, it should be noted that Scenario #7, to create a National Scenic Area, Natural Resource Area, or National Conservation Area, is also partly contained in Scenario #1, which has a National Conservation Area designation included.

Discussion of WSR designation: Tonight the group delved into Scenario #5, WSR designation. A dialogue panel of Chuck Wanner and Meghan Maloney, both of the San Juan Citizens Alliance, and Bruce Whitehead and Steve Fearn, both with the Southwestern Water Conservation District ("SWCD"), discussed this option.

Bruce said he does not believe the SWCD has taken a position on any of the scenarios/proposals, although the future of the Hermosa Creek Area was discussed at the last SWCD meeting. Concern was raised about how a WSR designation might hinder future water use, whether for irrigation, consumptive or non-consumptive uses, or other purposes. The SWCD's mission is to look at existing and future water supply and needs within district boundaries. A major concern of the district and the Colorado Water Conservation Board ("CWCB"), which Bruce also represents, remains the federal reserved water right ("FRWR") that a WSR designation historically carries.

Bruce said a FRWR means local and state control have been lost. This seems contrary to the state constitution, which says, "the right to appropriate unappropriated water in the state of Colorado shall never be denied." He said WSRs have not often been designated in arid regions because there is such a need for that water. In Bruce's understanding, a WSR would limit future

development. It would limit impoundments (storage) and could limit diversions or the ability to get federal funding for water projects. It could even limit transmission lines. Some group members have spoken of protecting the "hydrograph". That means there would not be any diversions, and that's a very big step. The SWCD wonders if a WSR designation is really right if the values can be protected in other ways.

Bruce noted that a potential reservoir site on the upper end of Hermosa Creek was identified under the Statewide Water Supply Initiative ("SWSI"), an 18-month study of water supply and needs that was launched in 2003. The site came from a study the Bureau of Reclamation had done in conjunction with the Animas-La Plata Project. Whether having a reservoir there is feasible now is uncertain, but will it be needed in 75 years?

Steve agreed it is difficult to say that reservoir site, or something else in that area, will never be needed. Trying to undo a WSR designation to allow for such a reservoir would be difficult. He said in the Colorado Constitution, there is the concept that all water in the state belongs to the people of Colorado for beneficial use. The Colorado Constitution was approved by Congress in 1876. The concept of the federal reserved water right was developed long after the state constitution was approved.

Meghan and Chuck then gave their views on the positive aspects of a WSR designation. Meghan said alternative water-rights language could address many of the water-users' concerns. Most of the land mass in the Hermosa Creek Area is federally owned, so there would be fewer conflicts involved with a WSR designation there than in other places.

Chuck said he sees no real reason not to support the WSR designation. The right to develop water is already constrained; you can't, for instance, go develop water rights for recreation. He believes it would be possible to craft a right that would be appropriate and reasonable in terms of its size and timing. The water right would of course be low-priority.

Chuck said only 14 of the hundreds of WSRs in the country have a quantified water right. He believes protecting the hydrograph doesn't mean saving all the water but preserving the shape of the hydrograph. A WSR designation for Hermosa Creek would mean giving up only one development site that hasn't been thoroughly explored, not giving up the water itself or the right to develop it on some other part of the creek.

Chuck said the state has leaned too heavily in the direction of development. Colorado has many outstanding rivers but only one WSR, which seems strange. Recreation and the environment are legitimate uses under Colorado water law. Those uses weren't concerned legitimate in 1941 when the SWCD was formed, but they are now. This basin is an area with a variety of multiple uses and it is worth protecting through some specially crafted language.

Bruce said a WSR could affect existing water rights, not just future ones. It could make it difficult to change a water right. Steve said it's important to preserve opportunities for the future. He doesn't feel we have the ability to quantify what will be needed in coming decades. Bruce said SWSI projected water-supply gaps by 2050 throughout Colorado, mostly on the Front Range. Steve said this area also has many trans-basin diversions and we need to look at the big picture and consider that Hermosa Creek's water may be needed for a trans-basin diversion — to Dolores, for example. Bruce said there are needs in some of the adjacent basins already.

Chuck said Durango has enough rights to support a population of 44,000 without significantly reducing the number of gallons per day used per capita. He would guess the gap for Municipal & Irrigation water for this area is under 10,000 acre-feet. He doesn't think anybody is going to die of thirst because of it.

Jeff Widen of the Wilderness Society asked Bruce, if there were a way to do a WSR without a FRWR — such as designating the FRWR and immediately donating it to the CWCB's Instream Flow ("ISF") program, as has been suggested — would that make the WSR more palatable? Bruce said the further you get away from a FRWR the more palatable this scenario becomes.

Jeff explained recent legislation creating the Dominguez Canyon Wilderness Area in western Colorado because it had special language surrounding water. This was legislation to designate wilderness, not a WSR. It says, upon designation of the wilderness area, two things happen simultaneously: The federal government asserts a federal water right but the state starts a process for determining what an ISF should be in Dominguez Creek. If the Secretary of Interior finds the ISF is adequate to protect the values, the ISF becomes the permanent solution. If the state flow is found not adequate, then the federal government can continue to pursue the FRWR.

Jeff said the conservation community tends to look for federal control because of the feeling that ISF standards are not enough to protect the whole range of river values.

It was asked whether a FRWR means that, once the water flows off the federal land, it still can be used. You could put a dam further down on the stream; you still have all the water that comes out of the Hermosa Creek Area. It was agreed that this is correct. But Steve said upstream on Hermosa Creek, there are existing water rights, so if someone wants to change the use or change a point of diversion there could be a big problem. A FRWR could also prevent a future upstream use in the Hermosa drainage area. If a mining claim needed a small amount of water or someone wanted to build a stock pond that might be prevented, if all the unappropriated water is dedicated to a FRWR.

Chuck said that could be true but not necessarily. You could craft the right

locally and it would not necessarily reserve all the unclaimed water. To him these are very surmountable hurdles. You could take all the rights that are conditional on Hermosa Creek and save enough water for them. There are not many rights up there. Accommodating such small amounts should be easy if there is a willingness to do it. The question of the reservoir site, however, may be tougher to deal with.

Bruce said there is a question whether a FRWR would recognize conditional rights under state law.

Steve said the language would have to be crafted before the WSR designation and included in the authorizing legislation and that could be difficult, but if it could be done up front the WSR designation might be more possible.

Ann Oliver of the Nature Conservancy asked whether other reservoir sites have been identified in the area that would provide better storage options — not on the Hermosa but in the basin. Bruce said there have been other reservoir sites identified in the San Juan Basin.

David Vackar of Trout Unlimited said Hermosa Creek is unique and valuable and should be protected. He doesn't see a way for good long-term protection without protecting the water rights as well. With few watersheds left in the Southwest like Hermosa Creek, it would be advisable to structure something so there is strong protection.

Bruce said Hermosa Creek is indeed special but there were 26 stream segments identified as "suitable" for WSR consideration in the San Juan Public Lands' draft 2007 management plan, so the group can't make the assumption that this is the only one. The workgroups formed by the River Protection Workgroup will be looking at five other stream segments.

Marsha said the RPW Steering Committee is having the workgroups look at one river at a time and not compare one to the other.

Chuck said if by some administrative procedure the feds "donated" a FRWR to the state, then there could be more water included than the minimum needed for an ISF. Protection needs some level of permanence.

Ed Zink asked what mechanisms are available for the state to increase an ISF to where it would materially protect the hydrograph.

Bruce said there can be a donation of a water right to enhance values. The ISF program has historically been acceptable because it takes the minimum and leaves the upper end of the hydrograph available for other uses.

David Vackar said a WSR means much more than just protection of water rights. It also can mean withdrawal of lands from mineral development, protection from

other federal projects, and more.

Jeff Widen said, in his view, the farther we move in the direction of protecting enough water and preventing impoundments, the more palatable the solution becomes. He said there are protections in the WSR Act that wouldn't come with an ISF, such as a ban on new dams in the stretch, although that can also occur with a wilderness designation.

John Taylor of Hinsdale County said he does not believe a WSR designation provides the protections people imagine. He said he doesn't consider the Poudre as "wild and scenic" any more, but he doesn't know what it would have looked like if it hadn't been designated.

Ann Oliver said there may be middle ground between the minimum ISF and the FRWR. There are unknowns about future human needs but there are also ecosystem needs that should be considered. The geomorphology of a stream needs to be taken into account along with the future human needs.

John Taylor said anyone interested can check out aztrails.org to learn about the protection of Arizona's Verde River, which involved a process similar to this one that began 20 years ago. Local groups are involved in management there.

Next meeting: The next meeting of the Hermosa Workgroup will be Tuesday, May 5, from 6:30 to 8:30 p.m., at the Durango Recreation Center. The group members said they found this format useful for discussing scenarios but did not want to make the meetings longer than two hours. There was a comment that, at that rate, it will take eight months to go through the remainder of the scenarios. Marsha said some of the other scenarios won't take as long to discuss as the WSR designation did.