

**Hermosa Creek Workgroup**  
Meeting #14 Summary  
May 5, 2009

**Meeting summaries:** The April meeting summary was approved with some changes.

**Discussion of wilderness:** The designation of a wilderness area within the Hermosa Creek Area is a component of Scenario #1, the Trails 2000 proposal, and is also a separate scenario unto itself (#6). Jeff Widen of the Wilderness Society gave an overview of wilderness areas from a Colorado perspective, while Mark Stiles, manager of the San Juan Public Lands Center (“SJPLC”), offered an agency perspective

Jeff said there are many misconceptions about wilderness designation. Jeff has been working with wilderness campaigns and issues for more than 20 years, and many of these misconceptions are the same today as they were two decades ago. Some of them are:

- **You can’t hunt in a wilderness area.** This is not true.
- **Wilderness means phasing out livestock-grazing.** Jeff said Congress has specifically said this cannot occur and livestock-grazing should be allowed.
- **Wilderness involves a top-down approach.** Jeff said this also is untrue. With rare exceptions, successful wilderness campaigns have been grassroots efforts. This has been particularly true in Colorado. Jeff has worked on about a half-dozen such efforts in the state and every one of those had a high degree of grassroots involvement. Every wilderness bill passed in Colorado has had bipartisan support, and this is true nationally as well with only a few exceptions. He said wilderness campaigns routinely involve compromises. The legislation never looks the same when it comes out of Congress as it did going in. Many elements such as wilderness boundaries and language to protect certain interests may be changed. Jeff said when the Black Ridge Canyons Wilderness was designated in 2000 in Colorado, a provision was added to protect a rancher’s ability to rebuild stock ponds if they were washed out by a flood. In another case in Colorado, the recently designated Dominguez Canyon Wilderness, a compromise was made to accommodate stakeholders with specific problems.

Jeff also commented on concerns about wilderness that have been brought up by the Hermosa Workgroup:

- **Lack of local control.** Jeff said it may seem that, because Congress passes the legislation to designate a wilderness, this entails giving up local control. However, the tradition in Colorado and in the nation is for wilderness proposals to be crafted by local stakeholders, who then take their product to Congress. It is very rare for Congress to alter or renege on the agreements that were made locally. If Congress has a problem with something in the legislation it will send the language back to the local stakeholders to fix the problem. A local advisory committee is usually established to help manage the wilderness, so there is a high local-control aspect.
- **The fear that a designation shines a spotlight on an area** and attracts more people, increasing impacts. Jeff said the reports he's seen indicate there is an initial spike in interest and visitation following a new wilderness designation, but usage tends to level off and then follow a steady pattern. Over time, visitation generally does increase, but this is probably because there are more people using public lands today. He said national parks are a different case, but wilderness areas are much less of a draw. What lures people are specific features such as high peaks, not just a wilderness.
- **The notion that because legislation is permanent, it should be avoided** so as to leave flexibility for future generations. Jeff said he would argue that nearly any decision about land use — whether a water project, a new road, or other developments — is a permanent decision.

Jeff also discussed the “why” of wilderness. Why do he and others advocate for wilderness in general and a designation within the Hermosa Creek Area in particular? He said the reasons are:

1. Having some certainty about how a particular piece of land is managed is good.
2. The Hermosa Workgroup almost universally desires to keep the Hermosa Creek Area as it is now. Wilderness designation will do that, and will retain the more flexible management on the east side.
3. Some areas rise to the level where they deserve the highest degree of protection. Hermosa Creek is one of those.

Mark Stiles asked whether, in the case of the Black Ridge Wilderness (which is within the McInnis Canyons National Conservation Area) the language to protect the rancher's right to rebuild stock ponds was really necessary, or whether it would have been covered by standard wilderness provisions. Jeff said the issue was not cleaning the ponds but replacing them. The standard language says any water user can maintain, repair or replace ponds and structures, but the rancher was worried he might have to rebuild his ponds further down the hill in the case of a flood.

Steve Fearn of the Southwestern Water Conservation District asked *how* the rebuilding is allowed to be done. Jeff said any activity within a wilderness area

must utilize the minimum tools that are practical. Digging a stock pond with a shovel would not be practical, so you could use a backhoe, but such decisions are discretionary on the part of the managing agency unless something is specifically stated in the legislation. Jeff said in the past the Forest Service may have been tougher on ranchers operating within wilderness, so in 1980 Congress adopted clearer grazing guidelines that allow for new fences, water and other developments needed for livestock.

John Taylor of Hinsdale County said he personally knows of two incidents that seemed to contradict that policy. Several years ago, a ditch washed out in the Weminuche Wilderness and the owner replaced the headgate and was fined for doing so. In the other, the Pine River diversion to the Rio Grande, there are ditches that were built soon after World War II. John was up there around 1995 saw workers cleaning those ditches, which are 10 to 15 feet wide and 6 feet deep, with teams and scrapers, which is not really adequate or practical.

Jeff said wilderness guidelines have a greater degree of clarity these days. In the first case, the situation depends on the rancher's agreement with the agency. Jeff has remained in touch with the rancher in the Black Ridge and things are going well with his allotment. The rancher says there is more paperwork but he can still do what he's done before.

Mark Stiles then gave the agency perspective on wilderness. He said during the first 20 years after the Wilderness Act was passed in 1964, many wilderness areas were designated without much controversy, but since then it has become more difficult to designate new wilderness.

Mark described the agency's role when there are citizen-led efforts to designate a wilderness. Before a bill is introduced, when discussions are taking place about the possibility of a wilderness, agencies are in a supportive role. They don't lobby one way or another, but they identify areas and make recommendations, help refine boundaries, and provide information. In the case of the San Juan Public Lands, the recommendations are done through the resource management plans ("RMPs"). The chief of the Forest Service can then formally make a recommendation to the Secretary of Agriculture and Congress.

When a wilderness bill is introduced, the chief of the Forest Service or undersecretary of natural resources and environment provides the agency's viewpoint for the record and answers questions for the congressional committee involved.

If the legislation passes, the agency's role turns to management of the area. Section IV of the 1964 Wilderness Act has a high level of specificity regarding grazing, mining, and motorized and mechanized uses. Since 1983, mountain bikes have been identified as mechanized uses, which means they are generally banned from wilderness areas. Commercial operations are not allowed in wilderness areas except to the extent needed to help people enjoy the

wilderness, such as outfitters and guides.

Mark noted that the Wilderness Act contains very poetic language, defining wilderness as “. . . an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain....” There ensued a discussion on the meaning of “untrammelled”. No one in the group was certain what “trammeling” is. Mark said it sounds like something we shouldn’t be doing. Later it was ascertained that to trammel is to hinder or impede.

The values the agency looks at in considering whether something should be recommended for wilderness are:

- **Size.** The area must be 5,000 acres or larger, or else it must be contiguous to another wilderness area.
- **Naturalness.** It must be unroaded and natural in character. Man’s presence cannot be obvious. This doesn’t mean there could not be an old two-track or some other minor improvement, however.
- **Outstanding opportunities for solitude or a primitive and unconfined type of recreation.** Solitude is a somewhat difficult test. Mark said it’s only the *opportunity* for solitude that must be available, not a guarantee of it. Many people use portions of the Hermosa Creek unit and there can be crowding at the access points, but there are places where you could go a long time without seeing anyone else.
- **Special values such as ecological, geologic, or other features of scientific, educational, scenic, or historical value.** Wilderness is defined more broadly and vaguely than wild and scenic rivers (“WSRs”). You’re managing the whole entity, not just the outstandingly remarkable values (“ORVs”) as in the case of WSRs.

Wilderness is a national system of lands managed by federal agencies including the Forest Service, Bureau of Land Management (“BLM”), U.S. Fish and Wildlife Service, and National Park Service. Although the areas are managed by different entities, all are managed for the same purpose. There is great variety in the size and characteristics of wilderness areas but they are managed the same way except for particular non-conforming uses that may be grandfathered in. Agencies must consider whether an area will add to the overall diversity of the system when deciding whether to recommend an area for designation.

Mark said the Hermosa Creek Area meets the above criteria: It is larger than 5,000 acres, it is natural, and there are opportunities for primitive recreation and solitude. It doesn’t have many special values but it represents a tremendous range of life forms and elevations. In addition, Hermosa Creek and its tributaries provide habitat for the native Colorado River cutthroat trout. The Hermosa area was the only stand-alone area recommended for wilderness designation in the San Juan Public Lands’ 2007 draft RMP. The SJPLC recommendation for

wilderness was for only the west side of Hermosa Creek. The San Juan National Forest currently is about 23 percent wilderness, just below the national average.

Mark compared wilderness areas to national conservation areas (“NCAs”). Wilderness is more fixed, known, and institutionalized. Wilderness has clear policies and guidelines. NCAs are more or less what their establishing legislation says they are, and that legislation can be specific to each area. Most NCAs to date have been on BLM lands, but they could be under other agency management.

There are three NCAs in Colorado and 13 nationally. Colorado’s are Gunnison Gorge, McInnis Canyons (formerly Colorado Canyons), and Dominguez-Escalante. These NCAs contain smaller wilderness areas within their boundaries.

In answer to a question, Mark explained the different protections provided by a wilderness area and a WSR designation. A WSR is a ribbon through a landscape, whereas wilderness involves the whole landscape. Wilderness offers broader protection; WSR status relates to water rights and water uses. Wilderness does not actually prevent impoundments on a river, it just restricts the ways they can be constructed, although that can be tantamount to preventing them — obviously it would be difficult to construct a dam in a wilderness area using minimal tools. In contrast, WSR status can protect against all impoundments if they would conflict with ORVs. In the SJPLC draft RMP the wilderness boundary proposed in the Hermosa area does not include the stream. This is also true in the Trails 2000 proposal.

Jeff said for a long time the wilderness community tried to get a federal reserved water right (“FRWR”) attached to wilderness. In Colorado this has never happened and the wilderness community here realizes it probably never will. Because of that, it’s typical that if a proposed wilderness area is bounded by a river, the wilderness proponents draw the boundaries so as to exclude the river just to avoid the fight over the FRWR. In McInnis Canyons, even the NCA designation specifically excludes the Colorado River, although proponents were willing to put in language to protect water rights. The boundary instead is the 100-year floodplain.

Mark said most recent wilderness legislation in the West has contained a disclaimer stating it does not create a FRWR. However, when you designate a WSR, you do so by basically amending the original WSR act, so there is generally little discussion of FRWRs because this could be construed as amending the entire act and affecting other WSRs.

Mely Whiting of Trout Unlimited said there has been at least one case where a WSR specifically said that no FRWR was included.

**Discussion of Scenario #2 (local management group):** John Taylor said the

local community was largely in favor of the designation of the Weminuche Wilderness. However, since then he has seen sheep-grazing disappear from the areas of that wilderness he's familiar with, and there are many more people visiting the area. He said some designations do cause impacts. The Hermosa Creek Area needs protection, but the group should be aware that what it decides could cause damage. Any plan should have provisions to retain diverse forms of recreation, although there may be a need to require permits and have people take an orientation course to familiarize them with the needs and concerns of different users (hikers, cyclists, horseback riders). Perhaps the Forest Service should supervise the Hermosa area, but supervisors may need guidance too. John said different supervisors can have dramatically different policies for wilderness, and cited examples. He believes a citizens committee representing diverse interests could provide some continuity to modify the extremes.

John said he would like to see a plan that would set up guidelines for the Hermosa area and establish a local management organization. The plan would require legislation to make it permanent. The organization would constantly monitor the area. It would consist of users who are aware of conditions on the ground. Local people have the knowledge to do good management.

**Discussion of Scenario #4 (tiered approach):** Ed Zink said the Hermosa Creek Area is a hot topic and is so special primarily because it remains roadless. All its values have been protected by this roadlessness. The Organic Act of 1897, which provided the main statutory basis for the management of the nation's forest reserves, states that the intention of the forest reservations was "to improve and protect the forest within the reservation . . . securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States." Ed noted that this makes it clear that water is key in the creation of the national forest system. He also said that historic studies of the Hermosa Creek Area gave water a top priority.

Ed believes the area should be managed as follows:

Manage the land area through statute by passing legislation to create an NCA that would include all the entire Hermosa area. Having a wilderness portion within that NCA would be acceptable, but he believes the same management objectives could be accomplished without the wilderness designation. Either way, the primary objective is to keep the land roadless. If you establish a wilderness on the west side down to the floodplain, the group has effectively prevented construction of a reservoir because you couldn't build much of a reservoir just up to the floodplain. Merely keeping the roadless quality gives the preponderance of protection people are looking for. But there could be extra language to deal with impoundments, water quality and other items.

Ed advised avoiding the fight over a FRWR that would come with a WSR designation. It is wiser not to take on the State of Colorado. The group can get everything it needs to protect the water without having the battle over a WSR.

Everything else — recreation, grazing, etc. — can be managed through Forest Service policies and RMPs, as well as by local advisory groups. However, Ed opposes having an ongoing local management group because they just create busywork. It could be burdensome on the agency to have to meet every month with a bunch of busybodies. Instead, re-seat the advisory group every 10 years. Ed thinks this scenario has the best chance of passing.

**Discussion:** Jeff said NCAs usually contain one or more wilderness areas. Those wilderness areas have language that protects water to some extent but NCAs usually do not protect water.

Ed said he does not want to see any impoundment or diversions on Hermosa Creek. There could be language in the NCA legislation to restrict road construction so a diversion could not be built.

Mark said if you say you can't do water diversions, that is close to saying you have a water right.

Bruce Whitehead of the Southwestern Water Conservation District noted there is an existing conditional water right on the Hermosa for the uses in the basin upstream from the recreational in-channel diversion ("RICD").

Mely said she agrees with John that citizens groups are essential. It doesn't seem right that agency managers can be changing their minds all the time in a wilderness. Laws can't be specific enough to prevent such inconsistency so an advisory group is a critical part of whatever the group decides to do. But no matter what mechanism the group selects, it will have to deal with the water-rights issue. The group may decide that adopting land-use protections is sufficient, but she thinks the water-rights discussion will inevitably come up.

Bruce said the original premise of this group was to allow some water development to occur.

Chuck Wanner of the San Juan Citizens Alliance said when the process began no one said there had to be water development on every creek, but that seems to be the "back side" of what Bruce is saying. Chuck said water could be diverted lower on the creek and put to a variety of uses without having development in the Hermosa area.

Alice Outwater of the Durango Water Commission said all the water in the Hermosa watershed can be developed to the mouth of the creek. Then no one is denying the right to appropriate undeveloped water; the group is just saying it should not be developed everywhere. She asked Bruce if it would be acceptable that water development not occur in the Hermosa Creek Area but could occur downstream.

Bruce said he could not agree with saying development can occur only up to the mouth at the Forest Service boundary. He said the group seems to be proposing a prohibition on building impoundments on the forest, but maybe there is a way that type of structure could occur if there were some “sideboards”. Bruce said the conditional water right already allows for water development within that basin. The conditional right is for 20 to 40 cfs of depletion at the upper end of the RICD.

Mark Stiles said that water right does not provide for siting. It does not allow for development to be occur in that specific area. It doesn’t say that it’s possible to actually develop it *there*.

Chuck said water available for development in the river as a result of the RICD does not have a specific point attached to it. Bruce said it has a decreed point; it says “somewhere in the basin”. Chuck said that does not specify and does not exclude.

Steve Fearn repeated that a possible reservoir site has been identified in the upper Hermosa basin. To propose legislation to make it more difficult to develop that site is not something he can support.

Jeff said WSRs and wilderness water rights are not necessarily synonymous with FRWRs. Within the wilderness community there is great willingness to consider alternatives, such as instream flows (“ISFs”). Water is one of the central values of the Hermosa Workgroup. Although he thinks the group could come up with a solution without addressing water in any way, it would be better to explore the options for water protection. There are many ways other than a FRWR that water can be protected.

Ted Kowalski of the Colorado Water Conservation Board noted that ISFs are present in Hermosa Creek and are senior to the water right that was part of the RICD development. One of the things he’s heard from the group is that the ISFs may not be adequate. Perhaps the ISFs could be increased to provide more flow protection but in a manner that wouldn’t prevent all upstream water development.

**Drafting committee:** Marsha said the River Protection Workgroup Steering Committee has recommended forming a drafting committee to study the Hermosa Workgroup’s ideas, concerns, and opportunities and try to reach a consensus and bring back an outline, or a couple of consensus outlines, in June suggesting how to protect values while allowing water development to continue in the Hermosa area. Jeff, Mely, Ed, Meghan Maloney of the San Juan Citizens Alliance, Chuck, Steve, and Bruce volunteered to be on the drafting committee. John Whitney will be an ex officio member. Marsha will facilitate. Mark Stiles said the Forest Service can be a resource. The committee will examine the different scenarios and bring something back.



**Next meeting:** The next meeting of the Hermosa Workgroup will be Tuesday, June 2, from 6:30 to 8:30 p.m., at the Durango Recreation Center.