

Hermosa Creek Workgroup

Meeting #15 Summary

July 7, 2009

Meeting summaries: The May meeting summary was approved with no changes.

Review: Facilitator Marsha Porter-Norton presented handouts on the “Process, Principles, Ground Rules & Definition of Consensus” for the Workgroup and the “Drafting Committee Consensus Recommendations & Issues for Continued Work”. She asked whether all the interests of group members were represented under “Interests Expressed by the Hermosa Creek Workgroup” in the “Process, Principles” document, and there was consensus that they were.

Discussion: The Workgroup had a lengthy discussion of the Drafting Committee’s recommendations and issues for continued work. One of the committee’s recommendations was to move forward with “Hermosa Creek Legislation” that could be at the federal or state level. It was asked what kind of legislation would be at the state level; Marsha explained that if any recommendations were made relating to stream flows that did not involve Wild and Scenic River (“WSR”) designation, that would involve state legislation.

Another recommendation was to address the Hermosa area’s water issues (especially a WSR designation) from a basin-wide perspective. This would mean that final recommendations related to water would be developed after the River Protection Workgroup’s (“RPW”) four remaining workgroups conclude their studies.

It was asked which stream segments in Southwest Colorado are being considered for WSR designation. Besides Hermosa Creek, the ones to be studied by the RPW workgroups are the upper reaches of the San Juan River, Vallecito Creek, the Piedra River, the Pine River, and portions of the upper Animas River. (Vallecito Creek and the Pine will be examined by one workgroup.) In addition, the Lower Dolores River was found “preliminarily suitable” for WSR consideration by the San Juan Public Lands Center (“SJPLC”) in the 2007 Draft Revised San Juan Public Lands Resource Management Plan (“RMP”). A separate working group not connected with the RPW is developing recommendations for managing the Lower Dolores.

The final version of the RMP is due out in late 2010; the approval process will probably extend into 2011. Thurman Wilson, assistant manager for planning with the SJPLC, said the SJPLC will need the workgroups’ recommendations prior to 2011 to incorporate them into the final RMP. The SJPLC can craft a decision that gives the workgroups’ most current recommendations and ask that the RPW

process continue, but he is not sure this would be satisfactory at higher agency levels.

Mark Stiles, SJPLC manager, said there are ways to accommodate the recommendations coming from the workgroups, but there are limits. The preliminary suitability list for WSRs will remain in the plan. But the SJPLC can note what parallel work is going on and can say the center will move forward with the workgroup recommendations that mesh with the SJPLC's. Regarding the designation of any wilderness area and/or WSR, the SJPLC can only make recommendations. If the workgroups ultimately recommend something different, Congress can choose to pursue that alternate recommendation.

Land trade: La Plata County Commissioner Wally White said it appears that the Hermosa Workgroup is moving forward without considering the proposed land trade between the San Juan National Forest and the Glacier Club at Tamarron. The Glacier Club would like to exchange two 160-acre private inholdings in the Hermosa area for a portion of the Haviland Lake Recreation Area near the resort. If the swap should not occur, the private land within the Hermosa area could be developed. Any discussion about future legislation presumes the deal will go through. If it doesn't, there is another issue to deal with.

Marsha noted that the group has voiced a great deal of concern about the land exchange at past meetings. Mark Stiles said the SJPLC will produce an environmental impact statement regarding the proposal this fall and many public comments are anticipated. It was asked what would happen to the water rights held by the Glacier Club if the swap takes place. Mark said in a typical land exchange, if the Forest Service/BLM doesn't have the ability to protect those water rights, often a third party such as a water conservancy will step in and put the rights in escrow to make sure they eventually come to the agency. This can't be stated up front, however, because it would affect the land appraisal.

Marsha said to put the land exchange/inholding on the list as a concern.

Quantification: Pete Turner, outfitter, said the threat to the Hermosa area is not the inholding, it's water development. Fifty years from now there is going to be a gap in the water needs of the country. He said the group needs to show leadership and protect Hermosa Creek, knowing that gap will emerge. He believes there can and should be some quantification of water to be protected. The unappropriated rights on the Hermosa are a key question the group needs to deal with. It isn't impossible that some day there might be a tunnel/diversion on Kennebec Pass to Bear Creek. Pete said the group needs to get down to quantification instead of skirting the issue. The group is here to protect the Hermosa, but it seems it isn't getting any closer to doing so. He said any legislation will require quantification and the group should have been working on this from the beginning.

Marsha said legislation for land protection would not necessarily require quantification, but it would indeed be needed for certain types of protection.

Alice Outwater of the Durango Water Commission said there are five separate rivers under the RPW's umbrella. It won't be possible to protect all five. Until the group can say which one will be protected through WSR designation or some other measure, she doesn't see how the Hermosa Workgroup can move forward at all. She said there should be one stream in Southwest Colorado that is natural, but she doesn't care which.

Bruce Whitehead of the Southwestern Water Conservation District ("SWCD") said it will be difficult to do quantification because a consumptive use could be developed in another basin. Without knowing what the rest of the needs are throughout the basin, it is difficult to quantify.

Ann Oliver of the Nature Conservancy said if the concern is that all the rivers might be proposed as WSRs, it should be noted that a WSR proposal can't progress without the support of the state.

Bruce said without knowing what tools are proposed for the other rivers, there is no certainty for the future of this basin from the SWCD's view. So a proposal to protect Hermosa Creek's water wouldn't have the support of the state water community. The SWCD can't agree to such a proposal without knowing that somewhere in this basin there remains the ability to develop for future needs. Maybe WSR status can be talked about for Hermosa if the outcome for the other rivers is known, but until then there will not be support for such protection from the water community or possibly the state.

Mely Whiting of Trout Unlimited said the question isn't *whether* there will be water development, but *where*. There are places everyone can agree should not be touched by logging, mining or water development, but it won't be possible to protect every single one of them. The quantification decision is difficult to make without talking to the other basins.

Instream Flows ("ISFs") for water protection: Marsha said ISFs, either enhanced or donated, are another tool that is an alternative to WSR status. The Drafting Committee's recommendations say there can be discussions of water-protection tools that are not related to WSR.

Peter Butler of Animas River Stakeholders said the calculated flow information for Hermosa Creek is not terribly helpful because it uses averages, and most of the water comes in the spring as runoff. When the stream is low, the ISF amounts to about half of the stream flow. To his knowledge there is no way under state law to appropriate for ISF purposes the majority of the hydrograph.

Mely said the state has the authority to appropriate a reasonable and necessary ISF, and when you're talking about a wilderness area or a special place such as

the Hermosa watershed you should be able to appropriate an adequate ISF. If not, many people would see the state law as insufficient for water protection and might recommend either seeking a federal reserved water right (“FRWR”) or changing state law.

Alice said she finds it disingenuous to state that protecting the flows in Hermosa Creek means no water development. All the water is available for development as soon as it hits the bottom of the creek. To say it’s not available for development if the creek is protected is not true. The water is 100 percent available, just not for trans-basin diversions.

Bruce agreed that it is available, but in a different place. He said there could be a Recreational In-Channel Diversion or some development lower on the Animas River, but the water wouldn’t be available for certain uses higher up. Storage would be forbidden, not just trans-basin diversions. He said some of the SWCD’s opposition to WSR status is based on principle.

Marsha agreed that principle is involved. The RPW’s letterhead states that the RPW is “involving the public in protecting the natural values of selected streams while allowing water development to continue”. Those are the two key principles that have to be considered.

Ed Zink, a member of the Drafting Committee, said a FRWR would be the most stringent way to ensure all the water runs out of Hermosa Creek. The next step down the scale would be an increased ISF. Yet another way of ensuring water protection would be to restrict road-building, because then there would be no way to construct a trans-basin diversion or a dam.

Mining: Several Workgroup members questioned a part of the Drafting Committee’s land recommendations that says legislation should address multiple-use issues and work to protect uses such as mining, timber and more. Joe Griffith asked whether there is really a need to preserve the possibility of mining. What is being mined in the area?

Steve Fearn of the SWCD said no mining is going on now but the area is mineralized and there are some private mining claims that come over the top of Clear Creek and the South Fork of the Hermosa. Mining is part of multiple use.

Ann asked whether mining could occur off the patented claims. Thurman said it would present more of a conflict in the roadless part of the Hermosa area because mining requires roads. The upper end of the watershed has a fair amount of roads, however, and it is also the more mineralized area.

Mark Stiles said there is a moratorium on patenting mining claims. Since the early 1990s no new claims have been patented on public lands and won’t be till the mining law is resolved. Someone can work a claim; there just won’t be a patent on it.

Joe said mining would compromise water quality. He said the two big issues involved in protecting water quality are preventing development (agriculture, mining, housing) on the upper watershed, which may require limiting some uses. The other relates to the quantity of water and climate change. The Southwest is predicted to become drier. Joe said we need to preserve water quality in the Hermosa because the water will be needed for the people in the valley and for agriculture. These are far more important needs than mining. There is little uranium there anyway compared to the Disappointment Valley-Naturita region.

Timing: The Workgroup debated the key question of whether to move forward with the Drafting Committee's recommended land protections and wait for the RPW process to be completed for the other rivers before considering water protections.

Some members said land protections would provide short-term protection to the water and the group should not wait to seek wilderness-area and conservation-area designations.

Meghan Maloney of the San Juan Citizens Alliance said there are water implications to the land protections that may influence water protections later. She feels the Hermosa Creek watershed should be treated as a unit.

Steve Fearn recommended looking at the whole basin first, focusing on 1-3 prime candidates for WSR status, and then moving ahead with legislation.

However, some other members voiced strong concern about losing momentum by moving forward only with land protections. They said there is a potential for a wild-goose chase for the next two years or more.

Marsha said she believes the workgroup process can be shortened for the remaining groups, perhaps to just 6-7 months. There would be plenty to do regarding Hermosa Creek in the interim, such as working out the specifics of the land legislation and the advisory council.

It was asked whether the Forest Service's preferred alternative in its draft RMP provides the most effective tools to manage the Hermosa area.

Mark Stiles said he thinks there is a lot of potential for a Hermosa wilderness area but the boundaries are flexible. There is also a lot of potential for a Research Natural Area, an idea that hasn't been discussed much by this group. Hermosa Creek was one of the "top-tier" candidates for WSR designation, one of the "cream streams". But the SJPLC has not put forth a WSR recommendation, just found the creek preliminarily suitable. He believes there should be a combination of tools.

Thurman said the SJPLC can put good ideas into the plan but there is still the

issue of permanency to wrestle with, as a Forest Service RMP is not permanent.

It was asked what decision point the other RPW workgroups have to come to before the Hermosa Workgroup can re-engage. Do they all have to say they *don't* want WSR status before the Hermosa Workgroup can talk about WSR designation for the Hermosa? Marsha said unless the RPW Steering Committee changes the process, the other workgroups need to have a fair chance at the same process.

Marsha proposed that the Drafting Committee take up the following issues: mining, quantification, development or private land; loss of momentum; timing. She said she will take this input and come back with more blanks filled in. The Steering Committee will judge the basin approach and perhaps come to a recommendation when it meets on July 28. Anyone wanting to write Marsha with ideas and concerns can do so.

Land-protection recommendations: Marsha asked whether there was general agreement on the Drafting Committee's land recommendations. The group said yes.

Next meeting: The next meeting will be Tuesday, Aug. 4, at 6:30 p.m. at LPEA. (Note the different location.)