

Hermosa Creek Workgroup

Meeting #16 Summary

Sept. 1, 2009

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

Update on the work of the Drafting Committee: Facilitator Marsha Porter-Norton said the Drafting Committee – which consists of Mely Whiting, Ed Zink, Jeff Widen, Meghan Maloney, Steve Fearn, Bruce Whitehead, Chuck Wanner, and Thurman Wilson in an advisory capacity – has had a total of five meetings. Marsha presented a handout on the agreements the Drafting Committee has reached so far, entitled, “Report to the Hermosa Creek Workgroup for the 9/109 Meeting From the Drafting Committee”.

The committee has decided to move forward with Option 1, which entails working to craft legislation that would provide land protection for the Hermosa Creek area while leaving the question of water protection for later consideration. Marsha said one key issue is the timing of when the legislation would be submitted. The River Protection Workgroup (“RPW”) Steering Committee is close to consensus on it, while the Drafting Committee still has some issues to work out.

Steve Fearn reviewed the Drafting Committee’s Report to the HCW.

Marsha said that as the committee began looking at water issues, including possible Wild and Scenic Rivers (“WSR”) designation and enhanced instream flow (“ISF) protection, the broader question was raised of whether it would make sense to address those issues from a basin-wide perspective. This would mean waiting until the workgroups for the Animas River, Vallecito Creek and Pine River, San Juan River, and Piedra River have completed their work. She said the Hermosa Workgroup seems to have reached consensus on the land-related part of the picture, but water is a more contentious issue. Are there areas in the basin where it might make better sense to have a WSR than the Hermosa watershed? Where are the communities most firmly behind the idea of preserving a river? These are questions to be considered.

Marsha said it was decided after the input from the Hermosa Workgroup’s last meeting that it would be important to move forward on the land-protection legislation as soon as possible. The goal is to have the legislation drafted by November or December. The legislation would involve creating a wilderness area within the Hermosa watershed, surrounded by some sort of special management area (e.g., a National Conservation Area, National Research Area, etc.). The boundaries of the special management area (“SMA”) would be the geographic boundaries of the Hermosa watershed, with adjustments based on

existing uses such as mineral-leasing and grazing. Bear Creek would be omitted. The legislation would spell out specifics, where there is agreement, on what uses would be allowed in the SMA. The legislation would be silent on the question of WSR designation. It would contain standard language regarding headwaters and wilderness, derived from the 1993 Colorado Wilderness Act, for the wilderness area within the SMA. Marsha said it is not possible to create a wilderness area that is silent on water, but legislation for a SMA can be silent about water.

Marsha said the drafting committee felt strongly that it would be unfair to the Workgroup to wait to decide everything, only the water-protection questions.

She reiterated that remaining water issues would be addressed after the four other river workgroups have completed their process. The idea is to "circle back" to water protection after the recommendations of the other workgroups have been formulated.

Marsha said she has proposed an accelerated timeline for the other groups because no one wants this process to continue for five or six years. The accelerated process may not mean achieving consensus on all issues, but the other workgroups will be creating their own values statements; studying issues, opportunities and concerns; and deciding what protections they will seek. Then there might be some type of regional negotiating team with representatives from each workgroup to look at the overall map and basin-wide water issues in a holistic way. Negotiations would be led by the RPW Steering Committee. The goal is to try to have this all completed by 2011.

In the Hermosa Workgroup's final report it is important that the group's sentiments, input and concerns be expressed so they are not lost. Marsha will write the report with input from the Drafting Committee. Marsha said the Drafting Committee wants to have the draft report prepared by two weeks before the November meeting for editing and approval by the Workgroup.

Jeff Widen reiterated that the Drafting Committee wants to pursue legislation in the coming session of Congress. Issues yet to be worked out are:

1. The location of the wilderness boundary on the east side and how close it would fall to the main stem of Hermosa Creek. Jeff said the wilderness boundary could be set close to the creek or some distance away. It could follow the floodplain or even follow the water line, in which case the boundary would move with the water.
2. The specific language related to uses allowed in the SMA. Jeff said the parameters and guidelines for SMAs are much looser than for wilderness areas. What would be allowed or prohibited in the SMA will be spelled out in legislation developed by the committee and Workgroup in regards to

uses such as logging, fire, travel management, mineral development, and general management issues.

3. An advisory council for the Hermosa area. Jeff said there is consensus that there should be an advisory body, but it has to be decided whether this should be stated in the legislation and, if so, who would appoint the members, what terms they would serve, what their role would be, and so on.
4. More specific language on which parts of the Hermosa watershed should remain roadless. Jeff said this issue is really a sub-set of No. 2.

Discussion: It was asked how the Option 1 proposal differs from the Trails 2000 proposal presented early in the workgroup process. Jeff said, as the proposal stands now, it is identical to the Trails 2000 proposal with a few minor exceptions. The eastern wilderness boundary along Hermosa Creek has yet to be defined and Bear Creek has been eliminated from protection. The SMA boundaries might be tweaked slightly and thus might differ from the Trails 2000 proposal. Also, the new proposal adds in the advisory council and language about using management practices that reduce human-caused sedimentation in the watershed. Those items are new. But, as with the Trails 2000 proposal, there is still a wilderness-area setback from the Hermosa Creek trail to allow for continued mountain-biking on the trail.

It was asked why the wilderness-area boundary should not extend all the way to the creek. Steve Fearn said placing the wilderness boundary next to the creek would eliminate the ability to build new structures, thus impeding water development, and it would be preferable to wait until the water issues have been decided before implementing a measure of that sort. One proposal is to designate the wilderness boundary as one-quarter-mile from the river, which would mesh with any potential WSR boundary. Steve said the boundary can be adjusted later if Hermosa Creek does not ultimately become a WSR.

Jeff said all the wilderness areas designated under the 1993 Colorado Wilderness Act were located at headwaters of rivers or streams. The conservation community had wanted a federal reserved water right ("FRWR") designated for those streams, but settled for a compromise because the FRWR was a moot issue as headwaters have no upstream. The bill's language said the federal government could not go to court to assert such a right. In return, the conservation community was granted a provision that rescinded the standard ability of the President to override wilderness-area provisions and allow a water project within a wilderness area.

Steve said a WSR designation traditionally does include a FRWR, so such a designation for Hermosa Creek would preclude new water development upstream from the protected Hermosa area and would affect the ability to manage existing waters upstream.

Ed Zink said it seems the Workgroup has decided it likes the Hermosa Creek area as it is now and wants to protect the values that exist and try to make certain those will not be changed.

Ty Churchwell of Trout Unlimited asked how the legislation will address the 160-acre private inholding within the Hermosa area. Jeff said standard SMA language generally says the protections are “subject to valid existing rights”. There is language to use for inholdings that states that if an inholding is acquired it will become part of the SMA.

The issue of road-building within the SMA is to be determined. Jeff said a common provision in SMA legislation of this type is that motorized use is limited to designated routes and trails. The legislation could prohibit new road-building if that is decided.

It was asked what would happen if the recommendations in the final Revised San Juan Public Lands Resource Management Plan differ from the group's recommendations. Thurman Wilson, assistant manager for planning with the San Juan Public Lands Center, said the agency's staff will listen to the group, as will the congressional delegation. At some point the discussion will not be so local. Thurman noted that the regional forester for the U.S. Forest Service in Denver has to approve the final plan.

John Whitney, representing Rep. John Salazar's office, said Congress often decides to take a different path than the Forest Service recommends. Congress is a direct route for communities to decide the future of public lands in their area.

Process for remaining rivers: Steve said the RPW Steering Committee will remain in charge of the process, along with the San Juan Citizens Alliance. However, the people at the table may be different for the remaining workgroups.

Consensus: Marsha asked whether there was consensus on the Drafting Committee's recommendations so far. The group said there was.

Advisory council: Marsha asked whether the advisory council for the Hermosa Creek area would be legislative or community-based. John Taylor of Hinsdale County said, in order to have permanent standing, the council needs to be established and defined through the legislation.

Ed said he has concerns about too formal a process. He said something that has worked well is the San Juan Mountains Association (“SJMA”), a nonprofit group. There is a formal relationship between the SJMA and the Forest Service but it is a community-driven organization. There is no effort to define the membership narrowly. Membership is voluntary and unpaid. Membership flows in response to public interest. Ed said it is an extremely responsive model but there is a formal memorandum of understanding and defined interaction with the agency. He said

such a group might be preferable to a formal group with membership limited to one fisherman, one hiker, and so on. The advisory board for the Hermosa area could even operate under the auspices of SJMA.

Marsha recommended that the Drafting Committee take these ideas into consideration and return to the group with recommendations. She said there is clearly a range of opinions from having a formal, appointed council to an advisory group that might operate the umbrella of SJMA.

Thurman said when a committee or council is chartered in legislation, it falls under the auspices of the federal Advisory Committee Act. The Secretary of Agriculture appoints the members. One benefit of this method is that it establishes that the group will exist even if a new forest supervisor doesn't want it. Thurman said the question is whether the Workgroup wants something that is "homegrown" but with less of a guaranteed existence. He likes the idea of a group that has an MOU with the Forest Service, but every such MOU he's seen has included a provision that the group can be dissolved with 30 days' notice. It's a trade-off.

It was asked how to make the group more influential. Thurman said the more effective a group is, the more influence it will have. He said any government agency will gladly take advantage of advisory groups if they provide useful input.

Next meeting: There will be no October meeting. The next meeting will be Tuesday, Nov. 3, at 6:30 p.m., at the Durango Recreation Center.