

Hermosa Creek Workgroup Meeting #6 Summary Sept. 2, 2008

Facilitator Marsha Porter-Norton reviewed the meeting agenda and presented the meeting summary for Meeting 5 on Aug. 5, 2008. Both were approved with no changes.

Meeting date change: Because the November meeting of the Hermosa Creek Workgroup (“Hermosa Workgroup”) would normally fall on Tuesday, Nov. 4, which is Election Day, members agreed to move the meeting to Monday, Nov. 3. Marsha will check to see what venues are available.

Stream-flow analysis: In previous meetings, the Hermosa Workgroup had asked the Colorado Water Conservation Board (“CWCB”) to do a comprehensive analysis of stream flows, comparing current readings from an existing gauge at Durango to readings taken at the same site between 1920 and 1980, and correlating that information with readings from an old gauge at the San Juan National Forest boundary that was removed in 1980. From this data, it should be possible to extrapolate what the current flows are at the national-forest boundary. Ted Kowalski, a program manager with the CWCB, said the task is taking longer than expected but that the information should be available for the next Hermosa Workgroup meeting.

Values statement: The values statement adopted by the Hermosa Workgroup at the August meeting was reviewed and edited slightly, by consensus, to read:

The Hermosa Creek Area is exceptional because it is a large intact (unfragmented) natural watershed containing diverse ecosystems (including fish, plants and wildlife) over a broad elevation range, and supports a variety of multiple uses, including recreation and grazing, in the vicinity of a large town.

Marsha explained that this is a broad, inclusive statement that does not list every specific concern or value, but that does not mean other concerns or values are not important.

The group then started in on the discussion questions on the agenda:

Discussion question 1: What protections are in place now to protect the values identified by the Hermosa Creek Working Group?

Marsha and the group reviewed the current protections:

- **Roadless designation:** Much of the Hermosa Creek Area is included within the

U.S. Forest Service 2001 Roadless Rule boundaries.

Thurman Wilson, assistant manager for planning, and Mark Stiles, manager for the San Juan Public Lands Center (“SJPLC”), provided background regarding the 2001 Roadless Rule, which is currently under litigation.

The Forest Service initially began conducting an inventory of roadless areas nationwide simply to document existing conditions, but in 2001 the Forest Service wrote the Roadless Rule to establish policy on those roadless areas. The rule prohibits building roads and harvesting timber on approximately 58 million acres nationwide, including much of the Hermosa watershed, with a few exceptions, such as road-building to allow access to private property. The roadless designation also prevents the reopening of old roads.

Hermosa Creek is also included in the state’s own proposal for a Colorado-specific roadless rule.

The proposed Colorado Roadless Rule addresses the management of roadless areas on national-forest lands within Colorado. Following the writing of the 2001 Roadless Rule, then-Colorado Gov. Bill Owens convened a task force that held meetings statewide to gather input on roadless areas and came up with recommendations. Owens then petitioned the Forest Service to follow those recommendations within Colorado. The proposed Colorado rule and associated draft environmental impact statement are now in their public-comment period, which will end Oct. 23, 2008.

The proposed Colorado Roadless Rule prohibits road-building and tree-cutting, with exceptions similar to those under the 2001 rule as well as some specific Colorado exceptions. These include temporary roads needed for fuels treatment to protect communities in the wildland/urban interface; and roads needed to construct or maintain water and utility infrastructure, including ditches and water diversions. Any facilities for new water rights would require obtaining a special-use permit and going through the National Environmental Policy Act (“NEPA”) process.

The Colorado rule would correct roadless-area boundaries based on updated inventories. For the San Juan National Forest, the inventory used is about two years old. The 2001 Roadless Rule relied on information from around 1989.

The 2001 Roadless Rule has the force and effect of law while it is in place.

The 2001 Roadless Rule has a provision for updating roadless-area boundaries, but mostly to change mistakes. Before the SJPLC can make adjustments to roadless areas within the boundaries of San Juan Public Lands, it will have to finalize its management-plan revision.

There are two different inventoried roadless areas within the Hermosa watershed that encompass much but not all of the watershed.

- **Research Natural Area:** A Research Natural Area designation has been recommended for a small portion of the Hermosa watershed under the draft SJPLC plan revision.

It was noted that the current San Juan National Forest plan offers considerable protection for the Hermosa Area. The gist of the current management prescription is to maintain the unroaded character, which includes approximately 95 percent of the Hermosa Area. The exceptions are the ski areas and a timber-management area, as well as East Hermosa Road, where there is a motorized-recreation emphasis.

- **Wilderness designation:** The SJPLC's draft plan revision proposes wilderness designation for much of the Hermosa Area on the west side. A working group formed by the Wilderness Society and the San Juan Citizens Alliance and supported by Trails 2000, a trails advocacy group, has been meeting for several months to figure out how to work with the management plan as proposed. The effort was prompted by conflicts between the proposed wilderness designation and current trail use, particularly by mountain-bikers. The current wilderness proposal includes a 4.5-mile section of the Colorado Trail that's used by mountain-bikers as a key north-south connector.

This environmental working group has suggested different boundaries for the proposed Wilderness Area. The group also recommends that the remainder of the Hermosa Area be protected by some special designation that would be less stringent than wilderness. They are calling this the Hermosa Watershed Protection Area. It would be bounded by the Hermosa headwaters on the north, Bear Creek on the west, Highway 550 on the east and Junction Creek on the south. It could be designated a National Recreation Area, National Scenic Area or National Conservation Area (NCA), a designation typically given to BLM lands. These protections are defined by the legislation that creates them; there is not a single over-riding act that spells out how such an area should be managed. Such designations often include the limiting of motorized use to certain routes, a mineral withdrawal, and a prohibition on timber-harvesting. The continuation of grazing is often allowed. Most grazing currently takes place on the east side of the Hermosa Area, so there could be language to allow stock ponds and range improvements.

Jeff Widen noted that under an NCA designation, governance is decided by the individual plan, but in a Wilderness Area, the only grazing that can occur is that which already is taking place.

Water diversions are considered a valid existing right in Wilderness Areas and are allowed to be maintained, but it can be difficult deciding exactly what maintenance activities are included in that right.

Jeff said most NCA legislation he has seen is silent on the question of unappropriated water, so the special designation does not either facilitate or

prohibit water development.

The only existing water rights on the Hermosa are the state instream flow rights and one private right, so if someone wanted to develop a new water right, a new special-use permit would have to be issued. The Forest Service might object to allowing a party to occupy the land long enough to develop that water right.

Mark Stiles said the Trails 2000 proposal recommends approximately 38,000 acres of wilderness, while the SJPLC draft plan revision recommends 51,000 acres. The draft plan revision did not provide for a special designation for that part of the Hermosa watershed that would not become wilderness, although it would have a travel-management plan under which the motorized trails in the eastern portion of the Hermosa Area would remain motorized while the trails on the west side, such as Clear Creek and Corral Draw, would not be motorized. The area would be managed under Theme 3, "Natural Processes Predominate."

- **Wild and Scenic River status:** The SJPLC draft plan revision also recommends that Hermosa Creek be considered for Wild and Scenic River designation to protect its two Outstandingly Remarkable Values, recreation and native Colorado cutthroat trout.

- **Instream flow rights:** Four CWCB instream flow ("ISF") rights have been established on the Hermosa Creek mainstem and additional rights on some of the tributaries. Mely Whiting of Trout Unlimited said these are limited protections because they aren't designed to protect other wildlife, only fish. They are decided by the minimum flow needed for the fish to survive; a truly robust fishery may require greater flows. The methodology used to determine the ISF doesn't necessarily address flow variations, temperature and other factors. Temperature is an emerging issue that may not be fully protected by ISF.

The CWCB can decide that fish in a given stream need more water than the current ISF provides and can create a new ISF, but this would be a new water right and a junior one. The CWCB can also decide to acquire an existing water right to improve a particular reach. The Species Conservation Trust Fund has some money available to benefit species of concern or endangered species. It was noted that an ISF right does not create new water.

- **DOW fishing rules:** It was recommended that these regulations be added to the list of current protections. Flies and lures only are allowed in the Hermosa watershed, and catch-and-release only is allowed in the stream reaches where Colorado native cutthroat trout are to be re-established.

- **Water-quality protection:** Hermosa Creek has been named an Outstanding Water of the State of Colorado by the Water Quality Control Commission. This is the highest water-quality designation the commission uses. It means there can be no degradation of water quality in the stream and no new, permanent source of pollution. The East Fork is not included in the designation, but because it is upstream of the designated segment, any discharge into the East Fork would

affect the protected reach, so it is a *de facto* protection for the East Fork.

The Outstanding Water designation does not prevent a person or entity from using his or her water right to remove water. Water-quality standards likely cannot be used to preclude a new diversion. Taking water out of a stream probably would not affect water quality, although it could change temperature.

It was recommended that the water-quality designation on Page 3 of the Initial Information Sheet should be left under “current protections” and that an explanation of the Outstanding Water designation be added to the sheet.

Land swap: It was recommended that this be added to the list of potential tools.

Discussion question 2: Are there any values not being sufficiently protected now? Why or why not?

The Hermosa Workgroup began discussion on this question and will continue discussion at its next meeting. Some comments were:

- Water quality in terms of temperature is not being protected.
- Some tools aren't really permanent. Forest Service leadership can change, plans can change, special-use permits can change. They are temporary.
- The Hermosa Area could see much more recreation in coming years, especially depending on the tools chosen for protection. Some research, much of it anecdotal, has been done into how different designations such as Wilderness Areas and NCAs affect visitation. Sometimes the designation causes an increase in visitation, but before long, surrounding visitation catches up. Publicity surrounding a new designation can prompt a surge of interest, but whether this lasts is another question.

Now that there are more than 40 Wilderness Areas in the state, the effect of adding another may not be pronounced. Human population is increasing and recreation is becoming more important to people, so those are factors behind increased visitation as well. Mark will try to provide some information on the issue.

Next meeting: The next meeting of the Hermosa Workgroup will be Tuesday, Oct. 7, from 6:30 to 8:30 p.m., at the Durango Recreation Center. On the agenda will be a continuation of the discussion on whether values are being protected now. Thurman will bring a summary of past discussions regarding Hermosa Creek.