Hermosa Creek Workgroup
Meeting #8 Summary
Nov. 3, 2008

Facilitator Marsha Porter-Norton reviewed the meeting agenda and presented the summary for Meeting 7 on Oct. 7, 2008. Both were approved with no changes.

Announcements: Peter Butler, a member of the Hermosa Workgroup as well as the Colorado Water Quality Control Commission, provided brochures on zebra mussels for anyone interested. The larvae of zebra and quagga mussels have been found in seven reservoirs in the state of Colorado, as well as Lake Powell and Lake Mead. These invasive non-native species are considered a serious threat to ecosystems.

Worksheet to evaluate issues and tools: Marsha presented a grid delineating issues and potential tools and organizing them in relation to each other. The grid is a beginning framework to analyze whatever tools the group may recommend. The list of issues is not definitive yet.

Colorado Water Conservation Board ("CWCB") presentation: Linda Bassi, chief of the Stream and Lake Protection Section of the CWCB, gave a PowerPoint presentation about the CWCB and Colorado's Instream Flow ("ISF") Program.

The CWCB was created in 1937 with the mission of promoting the protection, conservation and development of Colorado's water resources for present and future generations. It has five areas of responsibility; the Stream and Lake Protection Section, which manages instream flows, is one of them.

An instream flow is an in-channel or in-lake appropriation of water. The ISF Program was established in 1973 by the State Legislature, which recognized "the need to correlate the activities of mankind with some reasonable preservation of the natural environment". The ISF Program represents a balancing act between these interests. The CWCB appropriates the minimum amount of water necessary to preserve the environment to a reasonable degree.

There are two ways to achieve ISF protection:

- A new ISF appropriation;
- An acquisition for ISF use.

Since the ISF Program began, the CWCB has appropriated ISF water rights on close to 1,500 stream segments covering 8,700 miles of stream and 480 natural lakes. It has acquired more than 25 water-right donations or long-term contracts

for water totaling 500 cubic feet per second and 9,344 acre-feet.

Appropriations: Any person or entity may recommend streams/lakes to be considered for ISF appropriation to *preserve* the natural environment. A public ISF workshop is held each February in Denver for the presentation of recommendations. The CWCB usually works with the Division of Wildlife, Bureau of Land Management, Trout Unlimited, or other entities on ISF recommendations, but individuals can also make recommendations for ISF protection so long as they provide the necessary data.

The process for new appropriations is governed by ISF Rule 5. CWCB staff members prioritize and analyze each recommendation, conduct any additional field work needed, perform a water availability analysis, hold public meetings to gather input, consult with the Division of Water Resources, and finally bring the recommendations to the CWCB for appropriation, typically at the CWCB's January meeting. If a recommendation is contested, the staff negotiates a settlement or the board holds a hearing.

The CWCB must make three determinations, per state statute, before applying to water court for an ISF water right:

- A natural environment exists. This typically is identified by the presence of a coldwater fishery, but other indicators such as waterfowl, invertebrates, or a warmwater fishery can be used.

- Water is available for appropriation, based upon water-right and hydrologic investigations performed by staff experts.

- No material injury to other water rights will occur. The new appropriations are junior water rights and will not injure existing senior appropriations, but the ISF could affect future uses.

The CWCB can also *increase* an existing ISF water right, following the same procedure as that used to create an ISF. The increase must be made as a new appropriation and cannot be tacked on to the existing water right.

The rationale for increasing an ISF is that many early ISF decrees are for a single, year-round flow amount, and recent research has shown that a single minimum flow is often insufficient to meet the needs of fish and aquatic life. Seasonal high flows benefit certain streams and can provide spawning cues. Additional flows may also be needed in summer to address temperature issues.

To date, the CWCB has appropriated 21 increases to existing ISF water rights and will be considering three or four such increases next year.

Acquisitions: The CWCB also can acquire water for ISF use by working with willing donors, sellers and lessors of water on a completely voluntary basis. The

CWCB can acquire water in amounts it determines are appropriate to *preserve* or i*mprove* the natural environment to a reasonable degree. It can acquire water on a permanent or temporary basis and through donation, purchase, lease, or other contractual agreement.

This year, the CWCB was given two new funding sources for acquisitions:

- An annual appropriation of $1 million from the construction fund to pay for the lease or purchase of water rights for ISF use and for related costs. This money must be used to preserve, not improve, the natural environment.

- An annual appropriation of $500,000 from the Species Conservation Trust Fund to pay for acquiring water for ISF use to preserve habitat for declining native fish species. Specific permission from the Legislature is required to use this money.

The process for water acquisition is governed by ISF Rule 6. The CWCB staff works with the water-rights owner to bring the proposed acquisition to the board. There is opportunity for public comment. If the CWCB decides to proceed with the acquisition, an agreement is developed cooperatively with the owner. After acquiring the water right, the CWCB applies to water court to change the type and place of use to obtain a decreed right to use the acquired water for ISF use. A key issue is that there can be no injury to other water rights.

ISF water rights are adjudicated and administered within Colorado's priority system. The CWCB has standing in water court to ensure that changes to senior rights do not alter stream conditions in a way that injures decreed ISF water rights.

For more information, see the CWCB's Web site,
http://cwcb.state.co.us/StreamAndLake/

Hermosa Creek: In the Hermosa Creek basin, the ISF ends a short distance above the Animas River. Most of the significant tributaries of Hermosa Creek already carry ISF protection, and most of these are fairly senior water rights, having been appropriated in 1987. A tributary, even if it has no ISF itself, could be part of the ISF on Hermosa Creek because even the small tributaries are part of the main-stem ISF. In the case of a shortage on the main stem, the tributaries would be subject to a call.

Comparative stream-flow analysis: Linda presented results of a stream-flow analysis estimating flows in Hermosa Creek based on flows in the Animas River. The modeling compared current readings from an existing gauge at Durango to readings taken at the same site between 1920 and 1980, and correlated that information with readings from an old gauge at the San Juan National Forest boundary that was removed in 1980. Modeling was employed to produce flow

estimates from 1982 to the present.

Discussion: Chuck Wanner of the San Juan Citizens Alliance described the concept of an "upside-down ISF water right". Under this concept, a certain amount of water is allocated to development and the remaining flows in a stream, however much they may be, are protected. Although this particular method has not been used in Colorado, Chuck said it has been used in other places and might be a potential tool for the Hermosa Workgroup. It was stated that there would have to be federal legislation or a change to state legislation to authorize use of such a tool.

Grazing: In October, the Columbine Ranger District of the San Juan National Forest ("SJNF") released a draft environmental impact statement for the Hermosa Landscape Grazing Analysis, which proposes changes in the current grazing plan in the Hermosa Creek area. Public comments were being accepted until Nov. 17.

There are currently four grazing permittees for the area. Changes to these permits are proposed to protect the Hermosa Creek watershed, especially the fishery.

Cam Hooley, environmental coordinator for the Columbine Ranger District, said the U.S. Forest Service is currently in a nationwide process to analyze grazing permits on all allotments. The Forest Service is analyzing data on vegetation and riparian conditions and comparing them to desired conditions. In the Hermosa Landscape, roughly one-half of the data points analyzed did not meet desired conditions, so the SJNF proposed a series of actions, including shortening some grazing seasons and using measures such as range riders to keep cattle better distributed. The problem is not caused so much by the number of cattle but their distribution. Fences and range riders have been used in the past with limited success; the Hermosa is a difficult landscape to manage. It's believed that more range riders and a shorter grazing season might help.

Workgroup members commented that maintaining agriculture was one of the values supported by the Workgroup, and expressed concern that a change to grazing permits might harm this value.

It was agreed that group members should comment individually on the draft EIS if they chose, but that the Workgroup itself should not become "bogged down" in side issues such as grazing and travel management on the Hermosa landscape.

Next meeting: The next meeting of the Hermosa Workgroup will be Tuesday, Dec. 2, from 6:30 to 8:30 p.m., at the Durango Recreation Center. The group will start delving into values and tools in depth.