

**DOLORES RIVER DIALOGUE
STEERING COMMITTEE
Sept. 9, 2010**

Present: Randy Carver, MVIC; Patt Dorsey, CDOW; David Graf, alternate, CDOW; Vern Harrell, Bureau of Reclamation; Meghan Maloney, San Juan Citizens Alliance; Peter Mueller, The Nature Conservancy; Don Schwindt, Dolores Water Conservancy District; also Marsha Porter-Norton (facilitator), and Gail Binkly (guest recorder).

Agenda: The agenda was approved with two changes. Don asked to add a discussion of what it would take for the spill and the fish pool to be managed for native fish. This was added after Agenda Item #3. Also, the Hydrology Committee was added at the end of the agenda.

Presentation by Lower Dolores Legislative Committee on native-fish inquiry (Framework Proposal #1):

Marsha explained that the Lower Dolores Working Group Legislative Committee (the committee) has consensus on most of the legislative parameters document related to the Lower Dolores special area, but water issues have proven to be complicated. To help resolve the water issues, the committee decided to focus on native fish through a systematic inquiry into existing literature regarding the status and needs of native fish. Commissioner Ernie Williams and Amber Kelly of the Legislative Committee were present to represent the committee and to present the proposal for "A Way Forward". They said the Legislative Committee was at Phase I of this conversation using the DRD model, and was presenting a process proposal, not an action alternative. The purpose of this step, Marsha reminded everyone, was to have the DRD Steering Committee give input that will help guide the Legislative Committee as it moves forward.

Ernie reminded everyone that the Legislative Committee was working on the parameters of the legislation, at the direction of the larger Working Group. To help reach consensus on the water and fish issues in that legislation, the committee is embarking on a process to gather all available information about native fish on the Lower Dolores and aim to reach consensus on do-able alternatives. This native-fish inquiry is designed to take approximately six months. The committee is seeking funding from different sources and was successful in obtaining \$25,000 from the Southwest Basin Roundtable.

Amber said the inquiry will involve two or three contract scientists to review the native-fish literature, as well as a panel of experts in science and hydrology to help select the scientists and guide their work. The data reviewed will include DOW and DRD science and any other available science, published or unpublished. The goal is to have a transparent process to gather information that will be used to produce do-able alternatives for river management within existing hydrologic constraints. These alternatives could be actions that would be incorporated into the legislation or that would take place outside the legislation. The oversight panel and contract scientists are to work together to formulate recommendations for alternatives. The entire effort will be overseen by the Legislative Committee. Peter Mueller and Mike Preston are the project managers.

The plan calls for the oversight panel to include representatives of the DOW, BOR, DRD Hydrology Committee, Fish and Wildlife Service *or* USGS, Upper Colorado Recovery Program *or* an NGO fish biologist, and Division of Water Resources. Peter and Mike are the panel too. The oversight panel will sort through the ideas produced by the scientists, factor in existing constraints, and help decide what is and isn't do-able.

Don commented that the oversight panel is small and that DWCD is not represented other than through Mike as a project manager. Amber thanked him for the feedback. She said she wants the DRD Steering Committee to be apprised of what is happening and she hopes the SC will be supportive.

Don said it is a leap forward to have the oversight panel focus not just on science but on working within constraints. Previous efforts have focused on science alone. However, he questioned whether the panel can do what others have been unable to do over the years. Ernie said if the process is not done right and done locally, someone else will do it. He said the panel may not reach consensus but he believes a delay in action could mean losing water via WSR status or via a USFWS listing of the native fish. He said this concerns him greatly.

Don said any FRWR will come only with legislation involving a WSR or a wilderness area, and the odds of such legislation passing are slim. He said the Endangered Species Act is a larger, more troubling issue that will have to be faced eventually. Don said the only way that water rights will be taken from the Lower Dolores by a federal agency is if one of the native fish species is listed as endangered. Don said he does not feel the same sense of urgency about taking action as the Legislative Committee.

Amber said Diana DeGette's recent wilderness bill included two areas within the area proposed for special legislation, and there is a spotlight nationally on this river corridor. Don said he doesn't believe DeGette's bill or a WSR bill would pass. Amber said the conservation community wants some assurance that native fish will be addressed because, in this legislation, they are giving up the possibility of WSR designation and that is a large concession to conservationists.

Don said he is not sure that finding consensus on water and native fish is achievable. Marsha asked whether it is fair to a proposal team to tell them upfront that something is not do-able. She said the DRD Framework Process was designed so proposals would not be pre-judged.

Ernie said it's impossible to make headway if you don't set a goal and work toward it. The only way to get anything done he said, is to try and aim high. He said that he and others on the Legislative Committee want the past two years of work on the Lower Dolores Plan Working Group to result in something. If not, everyone's time was just wasted.

Don said consensus would be especially hard to reach in six to eight months. He said he appreciates the work Ernie and others are willing to do, but he thinks it is appropriate to question whether someone may be biting off too much, and to suggest a smaller piece. He said goals should be realistic. He said he is opposed to having the native fish prioritized in legislation because it would provide legislative authority for native fish to have standing for water rights.

Amber said not all the work on the Dolores will be done in six months but it's possible this process will move the effort forward to a point where there is consensus on the legislation and it can proceed.

Meghan said taking steps to protect native fish is something the DRD has wanted to do for a long time and she believes it's a good goal. She said the Legislative Committee has already come to consensus on many tough issues and she is hopeful it will be able to do so regarding these issues as well.

Patt said the DOW will cooperate in the native-fish inquiry and will share data. David said there will be more data coming next month.

Vern said he likes the idea of more science but is not sure about the legislation focusing on the native fish. He said the DOW has responsibility for the fish and will make the ultimate decision as to their management, whereas the committee can only offer recommendations. He said BOR's commitment is to the trout fishery unless the DOW says otherwise. He said commitments have been made to the trout fishery and to the boaters and BOR will live up to those. Vern said he thinks the potential listing of a fish is not as close as some would like everyone to believe.

Amber said she sees this effort as a way to reach middle ground and encourage trust. Ernie said the NCA legislation would remove the Lower Dolores River from WSR study and create a management plan which local could impact. He said the committee knows that BOR has constraints and does not want to push anything down anyone's throat.

Amber said there needs to be a native-fish focus now because the needs of the trout and rafters were well-considered when the Project was created, but not the needs of native fish.

Don said he is concerned about the responsibility that will be given to the oversight panel. He suggested the Legislative Committee rewrite the grant proposal that was presented to the Southwest Basin Roundtable and more narrowly direct it to gathering information. Marsha will talk to Mike about this but that it sounded like the entire grant didn't need to be rewritten but rather some steps in the work plan could be tweaked.

David said he believes the Legislative Committee is ready to move forward and is close to being able to overcome some of the constraints. Don said there are difficulties with any identified piece of water that anyone tries to work with, and overcoming constraints is often more difficult than people envision.

Marsha said the Steering Committee needs to be involved in this process and to share concerns as it proceeds.

She asked the Proposal Team how this session went for them. Amber and Ernie said it was helpful. They realize that this is a lot to take on and they appreciated the inquiry, and the hard questions.

Correction to "A Way Forward": Patt said "hybridization and the presence or absence of white suckers" should be on the list under "Process" in "A Way Forward" as something that will need to be addressed regarding native fish.

Adding native fish as a priority to spill and fish-pool management: Don said action has already been taken in the past, on a year-by-year basis, to manage the spill, when possible, for native fish as well as rafters. Don said there is a lot of political will to have native fish added to existing priorities and asked if it is appropriate for the Steering Committee to be a driving force behind this push, and if so, how? He asked Vern what it would take to make native fish a priority of the fish pool and spill. Don said he had proposed this at the last DRD meeting in March and there was no consensus then (the reason being that they DRD-SC was waiting to see what the Legislative Committee would come up with). Don said now that we know where the Legislative Committee is going, he still believes it is a good idea. He asked if the DRD-SC would take it on as a proposal to explore.

Vern said the BOR has been doing a "pre-spill" for native fish at McPhee when flows allow. He obtained a categorical exclusion from NEPA to allow that to happen. He said a CE differs from an environmental

assessment in that there is no public involvement required for a CE. The quantity of the water released early for native fish is not enormous. Vern said the BOR told the rafters the releases for native fish might affect boating slightly, but the rafters were amenable and said the impacts to them were minimal. Vern said BOR can do early releases to a larger extent if the water is there.

Amber said formally adding a priority to the fish pool should involve the public through an EA, and Vern said that could be done. Don said an EA would ensure transparency and money would have to be found for it. Meghan said this effort needs to mesh with the Legislative Committee's efforts. Amber said putting the native fish on an equal footing with trout and rafters would be supported by conservationists and could happen before the legislation was completed and passed.

Vern said the BOR is not willing to enter into a controversy with the DOW and Trout Unlimited over changing the management of the trout fishery. David Graf said having a trout fishery on the Lower Dolores is not entirely DOW's mandate; the agency was told to establish the trout fishery to mitigate for the Project.

Marsha asked if there was consensus for the DRD-SC to take on this project as Don was suggesting.

Don said he believes there is value in having the Steering Committee have the initial discussions about adding native fish as a priority for the fish pool and spill. The BOR and DWCD could be the applicants for the EA, or the full DRD could be. Don said he has not talked to his board or the full DRD about the idea and it would be premature to decide today who will be the applicant. Randy said any water spilled will be MVIC call water, so MVIC should have input. Vern said that spill water was not MVICs.

David said he doesn't have enough information to give an answer today related to the question. The DOW tries to manage for both trout and native fish. To potentially manage for one at the exclusion of other would be problematic for the agency. David said the DOW should discuss the proposal Don put forth. He said there will be a backlash if the DOW says it is abandoning the trout fishery.

Patt asked if the Project environmental impact statement would have to be amended. Don said he believes it would. He suggested it would be more politically palatable just to add native fish to the list of priorities for the pool rather than making it the No. 1 priority.

Amber and Ernie said this could help in resolving issues in the legislation. Meghan said rafters will have concerns. Amber said she believes rafters would welcome an open process to discuss the proposal to add native fish to the priorities for management of the fish pool and spill.

There was consensus that the DOW representatives will discuss the idea with their colleagues. Don will write the concept as a one-page proposal. The idea will be discussed at future DRD-SC meetings.

Patt said DOW aquatic biologist Jim White has developed a spreadsheet about what could change if the river and lake were managed for native fish, and the DOW will share it with the Legislative Committee. She said the DOW is doing a good job of managing for both.

Update on Framework Proposal #2 (SLOWs Project) and funding: Meghan said the total funding for the SLOWs Project was \$10,787.75. The idea was discussed previously of sharing that among the DWCD, MVIC, TNC and SJCA. Meghan said Chester Anderson invoiced her for \$3,000 before there was a final agreement. SJCA paid the invoice and considers that their share. Now SJCA is the fiscal agent. She

would like some funds to come to her or to have an agreement that the funds are there. The balance is \$7,787.75 and she is seeking three or four partners to share that amount.

David said he has asked for money from the DOW but has not gotten a response. He will follow up and should have an answer within a week. He will ask for \$2,000. Don said after DOW's answer, DWCD will have an answer. Marsha said the Steering Committee should agree to have this resolved by the end of the month. Meghan will e-mail the members with the amounts their organizations would owe depending on the number of partners sharing the money.

Update on DRD funding: Marsha wants to start the next meeting with a conversation about base funding for DRD. A total of \$22,500 has been committed by DWCD, SJCA and TNC together. A total of \$30,000 is sought. That includes \$15,000 for science, \$7,500 for facilitation, and \$7,500 for coordination. This will be reassessed in one year.

Meghan said the next round of funding for Southwest Basin Roundtable grants is in January. Don said he is sorry the DRD missed applying for the October funding. Randy said MVIC is in a very different budgetary process than most other organizations. The board approves the budget, but they vote on assessments per share. If the board is too reckless with money the members could be voted off. Marsha said this is not a "pay to play" group and no organization will be kicked out for not being able to contribute funding.

Hydrology Committee: The notes from the 9/1/10 meeting held were handed out. There was not time to discuss the Hydrology Committee or how it should be coordinated. It was clarified that at the last meeting, a decision was made that Ken Curtis and Ann Oliver would co-coordinate it. Marsha said that Randy had then talked to her and said he had some concerns about that arrangement. The group agreed to talk about it next time and agreed with the importance of everyone feeling comfortable with the coordination.

Next meetings: It was agreed that the Steering Committee should try to meet monthly except in June, July and August, when haying season is happening. Therefore, summer meetings will have to be set individually and perhaps the group will not meet monthly. The first Tuesday of the month was set for the regular meeting date. The Steering Committee will have its next meeting on Wednesday, Sept. 29, instead of the first Tuesday in October. The meeting will be at 9 a.m. in the DWCD board room.