

**San Juan National Forest/Public Land
Management Plan Revisions
Governmental Water Roundtable
Meeting 9 – Jan. 11, 2006
Summary**

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Click on Governmental Water Roundtable

Seated at the Roundtable:

Bruce Smart, City of Cortez
Scott Brinton, Colo. Div. Water Res.
Bruce Whitehead, Colo. Div. Water Res.
Don Schwindt, Colo. Water Conserv. Board
Dan Merriman, Colo. Water Conserv. Board
Al Heaton, Dolores County
John Taylor, Hinsdale County
Gerald Koppenhafer, Montezuma County
Steve Fearn, San Juan County
Mark Stiles, San Juan Public Lands Center
Brian Davis, SJPLC
Kelly Palmer, SJPLC
Thurman Wilson, SJPLC
Peter Ortego, Ute Mt. Ute Tribe
Janice Sheftel, SW Water Cons. Dist.
Steve Harris (Alt), SW Water Cons. Dist.
Mark Braly, Rio Grande County

Interested Audience Participants:

Chuck Wanner, San Juan Cit. Alliance
Eric Janes, for Colo. Sen. Jim Isgar
Ann McCoy Harold, for U.S. Sen. Allard
Ann Brown, for U.S. Sen. Salazar
Jerry Fischer, for U.S. Sen. Salazar
Lea Anders for U.S. Sen. Salazar
Roy Smith, Colo. BLM
Gary Thrash, SJPLC
Dave Baker, SJPLC
Eric Finstick, Colo. BLM
Kay Zillich, SJPLC
Jamie Krezelok, San Juan National Forest
Nancy Greif
Josh Martin, Four Corners Broadcasting
Steve Jarvis
Brian Bromelon, San Juan Basin Health
Chad Engelhardt, SJBH
Tom Klema, commercial river recreation

Wild and Scenic Rivers (3rd cut): **Chuck Wanner of the San Juan Citizens Alliance** discussed the Partnership Wild and Scenic Rivers (WSR) program and the 2(a)(ii) process for WSR designation. His presentation will be made available on the Roundtable website.

Chuck said the Partnership WSR program is facilitated by the National Park Service through its Rivers and Trails office. The process allows people to review a river's potential for protection and possible WSR designation.

The 2(a)(ii) process, which has been used mostly in the East, provides a means for rivers to be added to the WSR system other than through Congressional action. Under this process, a river can be added to the WSR system, if it is eligible for WSR consideration, through action of the Secretary of the Interior, upon passage of State legislation adopting a river management plan and a recommendation by the State's Governor.

Chuck noted that the San Juan National Forest (SJNF) has already analyzed all river and stream segments within its boundaries for WSR eligibility as part of its Forest Plan Revision process. The next step would be the development of a plan for long-term

protection of a river's values, developed through local discussions with various stakeholder groups, relevant agencies, water conservancy districts, affected permittees on public lands, etc. As with any WSR, the management plan must address water quality, recreation and public access, and specify the managing agency, but would need to be approved by the State legislature. Then the Governor could make a recommendation to the Secretary of the Interior, who would have the environmental and socio-economic impacts of a WSR designation evaluated under the National Environmental Policy Act (NEPA). After that, the Secretary could make a WSR designation. The entire designation process would take approximately three years.

Thurman Wilson of the San Juan Public Lands Center said the public appeal of the 2(a)(ii) process is that a federal agency would not spend time and money complying with NEPA only to have the issue of a WSR designation sit unresolved for years. Using 2(a)(ii), NEPA compliance would be undertaken only if the State legislature and Governor and the Secretary of the Interior support the WSR designation.

According to Chuck, following the 2(a)(ii) process, State water rights could remain in effect, existing grazing leases could continue, and limited timber harvesting might also be allowed. Actions that fall under Special Use Permits and that might require periodic changes could also be allowed, if they do not represent major, permanent changes. For instance, changes to a permit allowing a temporary water diversion might be permissible, but building a dam on the affected section of the river would not.

Chuck said the San Juan Citizens Alliance's priority for WSR designation is Hermosa Creek.

Eric Finstick, Colorado Bureau of Land Management (BLM) Wilderness Coordinator, said most of the rivers designated under the 2(a)(ii) process in the East were on private lands. Here, they would be on public lands, which would require a joint agreement between the State and the Federal agency involved, but this would not necessarily pose a problem.

Chuck said the Federal government would pay to administer a WSR designated river on Federal lands but not on private or State lands. There could be a small cost to the State.

Janice Sheftel, attorney for the Southwestern Water Conservation District (SWCD), asked whether protection of a river and land within one-quarter mile on either side, which is traditional under WSR designation, would preclude livestock drinking from the river. Chuck said that would depend on the management plan for the river, but nothing in Federal law specifically precludes livestock drinking from a WSR.

Eric Finstick added that, depending on the political situation, either method of designating a WSR could work – through Congressional legislation or through the 2(a)(ii) process. A Congressional delegation will typically want evidence of substantial local involvement and support before introducing a bill to designate a WSR, as would a State

legislature in a 2(a)(ii) process. Under either method, the effort would necessarily be based on grassroots support and collaboration.

Roy Smith, Water-Rights and Instream Flow Coordinator with the Colorado BLM office, gave a Power Point presentation on WSR suitability analysis. The complete power point presentation can be viewed on the Roundtable website.

Roy reviewed the criteria by which river or stream segments are determined by Federal agencies to be eligible for WSR consideration, noting that such streams must be free-flowing and must contain one or more Outstandingly Remarkable Values (ORVs). Which eligible streams are then found to be suitable for WSA designation requires consideration of factors such as ownership of lands adjoining the stream, valid existing rights, usage levels, use trade-offs and conflicts, and manageability. The criteria for suitability are not precise because the WSR Act is a nationwide act, and rivers are very different in different parts of the country.

The agency's draft revised management plan (Revised Plan) then considers alternatives for eligible stream segments that range from all WSR-eligible streams being found unsuitable to all WSR-eligible streams being found suitable, with various alternatives in between. The impacts of each proposed alternative are analyzed. The Agency then reviews public comments on the Revised Plan and its Environmental Impact Statement, which may prompt changes in the final decision about WSR suitability.

Segments identified in the final Revised Plan as suitable for WSR designation will be managed to protect the segments' ORVs until Congress, or the Secretary of the Interior, acts to determine whether a segment will be designated as a WSR. After a Plan expires, the agency must re-evaluate stream segments for eligibility and possibly suitability in the next Plan Revision.

Roy said no federal reserved water right is created for a stream until it is actually designated as a WSR by Congress or the Secretary of the Interior.

Steve Harris of the SWCD asked how agencies will respond to requested changes in points of diversion on a stream segment which is designated as suitable. Roy said each case is handled differently, depending on the ORVs of the segment. Roy clarified that an implied Federal Reserved Water Right exists upon designation of a WSR, even if that right is not quantified.

Kay Zillich, hydrologist with the San Juan National Forest (SJNF), gave an update on the WSR process for the SJNF. The complete power point can be viewed at the Roundtable website.

Eric Finstick noted that the original WSR Act of 1978 required segments of five rivers in Southwest Colorado to be studied for suitability for WSR designation, a larger concentration of rivers than anywhere else in the State.

Kay recapped the process the SJNF used to arrive at a total of 73 stream segments with ORVs eligible for WSR status, some of which were removed from consideration as suitable because the only ORV was an archaeological site. Archeological sites can be better preserved through existing archaeological protection laws. That left 54 eligible segments. The NEPA, EIS, process for the Revised Plan will evaluate the consequences of finding all eligible segments as suitable, none of them suitable, or only a select set of river segments as suitable. Kay provided a handout, which will be placed on the website, summarizing the eligible river segments, their ORVs, and the segments about which SJNF staff is most excited, including:

- The Dolores River below McPhee Reservoir (previously recommended as suitable under the WSR Act);
- LaSalle Creek;
- The West Dolores (previously recommended as suitable);
- Hermosa Creek and its tributaries;
- The main stem of the Animas River below Silverton (previously studied);
- The Pine River above Vallecito, and its tributaries (previously recommended);
- Vallecito Creek above Vallecito Reservoir
- The Piedra River and its forks (previously recommended).

Janice asked how previous recommendations on segments have affected management decisions. Kay said she is not aware of the agency having to cite WSR suitability in developing any protective measures.

Mark Stiles, manager of the San Juan Public Lands Center, said the agency has used suitability recommendations to try to get more money for purposes such as weed control along stream segments.

Bruce Whitehead of the Colorado Division of Water Resources asked whether a WSR requires a Federal reserved water right if the stream already has a CWCB instream flow water right. Roy said it may, because the Colorado Water Conservation Board's ISF program is ecologically and biologically oriented, but does not protect recreational values. A Federal Reserved Water Right is more sweeping.

Thurman Wilson, Assistant Manager of the SJPLC, discussed the Plan Revision process, concepts and framework and the NEPA compliance required when a Federal agency proposes an action that could affect the environment. An EIS is required when a Federal proposal would have a significant effect on the environment. If a proposal's effect on the environment would not be significant, NEPA requirements can be addressed with an Environmental Assessment or a Categorical Exclusion.

An EIS includes review of alternatives and public disclosure of the consequences of an action. NEPA requires public notice and "scoping," and an opportunity for public comments.

The SJPLC will prepare an EIS for the Plan Revisions being prepared by the SJNF and the BLM's San Juan Resource Area. The proposed Plan Revisions and their draft EIS will be published, and a formal comment period, probably 90 days, will follow.

Thurman explained that, although the Forest Service's new planning rules, adopted in 2005, do not specify that an EIS must be prepared for every Forest Plan Revision, the BLM planning process still requires an EIS. Because the SJNF and San Juan Resource Area are jointly managed and the agencies are conducting a joint planning process, it makes sense to prepare an EIS for the Plan Revisions. In addition, an EIS is required for the minerals leasing analysis which will be part of the SJNF Plan.

The No Action alternative for WSRs would mean continuing the existing management prescriptions on stream segments already studied and deemed suitable. The SJNF's preferred alternative for WSRs will list segments where a WSR designation is applicable. The EIS analysis will discuss trade-offs and possible impacts.

Thurman said the SJNF has been refining its proposed Plan Revisions based on feedback from Community Study Groups about different pieces of land. Agency personnel will present WSR alternatives in the context of alternatives regarding management themes for each part of the public land base, including river corridors being considered for WSR suitability. The public will have the opportunity to present input on ORVs and trade-offs in a series of community meetings, one in each District, probably in March or early April. Mark Stiles said the meeting format has not yet been decided.

The list of 54 eligible stream segments is not likely to be "whittled down" any further in the Revised Plan. Still under consideration are suitability determinations for the segments. Any actual WSR designation will require action by Congress or the initiation of a 2(a)(ii) process. The Revised Plan will not make a recommendation to Congress, but will identify suitable stream segments, should Congress take an interest.

Kay said that anyone with concerns could best help by enumerating trade-offs for the segments in question. She recommended that the Water Roundtable group provide such information for all 54 segments. Governmental Water Roundtable members can help with that process by pointing out plans of uses for specific streams that aren't compatible with a WSR designation.

Thurman reiterated that public meetings on the WSR issue will take place in March or early April. He hopes the draft Plan Revision will be available by June. Anyone with thoughts on the WSR issue should talk to him, Kay or Kelly. Kay added she would like information on suitability trade-offs before the March meetings.

Don Schwindt of the Colorado Water Conservation Board said the Roundtable could not adequately cover trade-offs for all 54 segments in such a short time frame, and could best work with a smaller list. Don expressed concern about how segments designate as suitable will be protected to preserve their ORVs, especially the Dolores River below McPhee Reservoir. Mark responded that the Dolores below McPhee was identified for

study in the original WSR legislation and has been managed as suitable to protect its ORVs for many years.

Janice asked whether a WSR designation would add extra protection for a river segment if it is already within a Wilderness Area. Thurman said it might bring some additional water-related protections as well as a Federal Reserved Water Right. Roy said that without a WSR designation, a river segment could be affected by upstream events outside the Wilderness Area.

Kelly Palmer, hydrologist with the SJNF, said the purpose of the WSR Act was to carve out places where impoundments will never happen.

Steve Harris asked whether, if water-users could support the designation of one stream segment as a WSR, other segments still needed to be reviewed for suitability.

Chuck said the SJCA would like to begin discussions about one stream as a good place to start, but SJCA would still be interested in suitability designation for a number of segments. He expressed his hope that the meetings in March will be discursive, not just open houses.

Oil and Gas Development: Thurman said the SJNF is nearly finished working on a study of reasonably foreseeable oil and gas development on the National Forest, which would be considered in formulating Plan revision alternatives.

Eric Janes, representing State Sen. Jim Isgar, expressed concern about storm water discharge management and water quality around oil and gas drilling sites, where storm water can wash dirt off roads and well pads into streams, impairing water quality.

Kelly said the SJNF is adopting a new approach to monitoring water quality at oil and gas well sites: requiring the oil and gas companies to conduct monitoring and report to the SJNF regularly. National Forest personnel will then conduct only spot checks. She said the State has the primary responsibility for monitoring water quality.

Chuck said the Colorado Oil and Gas Conservation Commission (COGCC) now requires storm water discharge inspections for all oil and gas sites one acre or larger, as opposed to five acres or more, as in the past. The State of Colorado has stricter rules regarding storm water management than the Federal government. There are a lot of messy well pads in the San Juan Basin that deposit sediments into culverts and gullies.

Brian Davis of the SJPLC said the agency conducted approximately 600 inspections last year on both tribal and Federal land, and that the goal for tribal land is to visit every well every year. Eric Janes said storm water run-off is an ephemeral phenomenon and once-a-year visits probably are not adequate.

Forest Plan Revision Format: Thurman said the draft Plan Revision for the Cimarron and Comanche National Grassland is completed – the first draft plan to be finished under

the Forest Service's 2005 Planning Regulations. A link to the draft plan will be placed on the Roundtable website. Mark and Thurman emphasized that plan revision issues are different for a National Grasslands and that the structure of plans under the new rules is likely to evolve based on what is learned from each initial plan revision.

Federal Reserved Water Rights: Bruce Smart, Public Works Director for the City of Cortez, said he would like to have a discussion of the basics regarding Federal Reserved Water Rights. Mark said the issue of Federal Reserved Water Rights for National Forests is still in litigation in Colorado Water Division 7, which involves the SJNF, but SJNF personnel could discuss the basics, as long as discussions didn't go into the legal details of the case. Don Schwindt asked that the Federal Reserved Water Rights issue be tabled rather than totally eliminated from consideration by the Roundtable. Don acknowledged that limitations could be imposed on discussions of the pending litigation, but he still thinks that the Plan Revisions could help create the context for the future resolution of Reserved Rights issues. Mark expressed openness to such a possibility and the Reserved Rights issue was tabled.

Announcements: Janice said the SWCD board has expressed willingness to help the SJNF identify the owners of water rights who have applied for a Ditch Bill easement. Mark accepted this offer and will help set the protocols in motion for SJNF-SWCD cooperation in this effort.

Dan Merriman said the CWCB will meet on Jan. 24-25 at the Holiday Inn Denver International Airport. Regional Forester Rick Cables will talk about the Ditch Bill easement process.

Meeting Plan: The next meeting of the Governmental Water Roundtable will be Wednesday, Feb. 1, from 1 to 4 p.m. at the San Juan Public Lands Center. Local water-users will meet separately in the morning to prepare for the Feb. 1 Roundtable discussion.

Topics to be discussed at the February 1 meeting will include:

- Water-user feedback from their work session
- Discussion of that feedback
- Specifics on the WSR eligibility short list
- Competing uses
- ORVs clarification
- Means of protection of ORVs other than WSR suitability designation
- Plan Revision structure (preliminary discussion).