

**San Juan National Forest/Public Land
Management Plan Revisions
Governmental Water Roundtable
Meeting 7– Nov. 2, 2005
Summary**

<http://ocs.fortlewis.edu/forestplan/>,
click on Governmental Water Roundtable

Seated at the Roundtable:

Pat Page, Bureau of Reclamation
Bruce Smart, City of Cortez
Ken Beegles, Colo. Div. Water Resources
Bruce Whitehead, Colo. Div. Water Res.
David Graf, Colo. Division of Wildlife
Don Schwindt, Colo. Water Conserv. Board
Dan Merriman, Colo. Water Conserv. Board
Al Heaton, Dolores County
John Taylor, Hinsdale County
Brian Davis, San Juan Public Lands Center
Kelly Palmer, SJPLC
Thurman Wilson, SJPLC
Chuck Lawler, Southern Ute Tribe
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
Kay Zillich, SJPLC
Cindy Hockelberg, USFS
Eric Janes, for Colo. Sen. Jim Isgar
Ann McCoy Harold, for U.S. Sen. Allard
Jay Skinner, CDOW
Bob Brantlinger
Jamie Krezelok, San Juan National Forest

Water Quality: Kelly Palmer, hydrologist with the San Juan Public Lands Center, gave a Power Point presentation on water quality. The power point will be placed on the Roundtable website. Kelly explained that National Forests were originally set aside largely to protect watersheds, and that water quality is a major focus for the SJPLC. The existing San Juan National Forest and BLM Plans talk a great deal about water quality. Kelly said the agencies will find it helpful to get input on water issues from the Water Roundtable and the general public.

Many laws regulate water quality, but of particular importance are:

- **The Clean Water Act of 1977**, whose goal is to restore and maintain the integrity of the nation's waters.
- **The Anti-degradation Policy**, which was developed by the Environmental Protection Agency.
- **State Water Quality Standards.**

The Clean Water Act requires the states to develop water-quality standards. It focuses on point and non-point sources pollution. Non-point sources are the primary issues that

National Forests and BLM management and planning must address. Non-point source pollution is pollution that does not come from a single specific point, such as a factory discharging into a waterway, but rather from diffuse sources. On public lands such sources can include logging, agriculture, road-building, and similar activities. Like everyone else, the public-lands agencies must comply with the Clean Water Act, and their planning documents reflect these requirements.

The Anti-degradation Policy is part of water-quality standards developed by the Environmental Protection Agency (EPA) and says that, in general, existing quality of water must be maintained unless special permission is granted to degrade water quality. On National Forests, water quality is usually high, Kelly said.

State Water Quality Standards have been developed by Colorado for the different chemical and physical properties of water. In Colorado, the State is the lead agency for water-quality standards, Kelly said. The existing Forest Plan for the SJNF says to protect water quality and improve water quality in watersheds that don't meet these standards.

The Clean Water Act requires states to submit to the EPA a compilation of waters within their boundaries that do not meet standards under the Act. This is called the 303(d) list after the pertinent section of the Clean Water Act. Most impaired waters require the development of a Total Maximum Daily Load (TMDL) plan to improve their quality. Examples of such waters in Southwest Colorado include the Upper Animas River and Box Canyon on the Mancos River watershed. Overall, the SJNF has few waters on the 303(d) list, Kelly said.

The SJNF has water management areas designated for special protection. They include riparian areas (called 9A areas in the current Plan), which are defined as areas within 100 feet of the center line of a stream in either direction, as well as municipal watersheds, watersheds in general, and watersheds that need improvement such as those near abandoned mines. The SJNF wants to know what people want to see for these areas: what types of activities should be allowed and what protections should be required.

Discussion: Eric Janes, representing Colorado Sen. Jim Isgar, commented that non-native invasive plants such as tamarisk and Russian olive are an issue for riparian areas. Kelly said this is a growing concern, although it received little attention in the current Forest Plan. The new Canyons of the Ancients National Monument Management Plan being drafted includes specific language about targeting non-native vegetation in riparian zones. New language in the Forest Plan will include a policy of not using fire retardant for wildfire suppression near fishery streams because it can kill fish.

David Graf of the Colorado Division of Wildlife said defining a riparian area as within 100 feet of the center line of a stream may be too restrictive. Kelly said other language could define it such as where the riparian vegetation ends, or in relation to the 100-year floodplain.

Kelly said the current BLM Resource Management Plan is brief in discussing water quality, but is specific about specific areas, such as protecting water quality in the 4,700 acre area of Boulder Gulch, which is in Silverton's watershed, and reducing erosion and sediment yield in the Disappointment Valley/Big Gypsum area. Kelly said this language makes it easier to compete for funding for restoration work.

Thurman Wilson of the SJPLC said the language also makes it easier to do work under NEPA. He said salt reduction is a major focus of the SJPLC. Mancos shale has a high salt content which leaches into rivers.

Janice Sheftel, Attorney for the Southwestern Water Conservation District, asked how the agency can reduce salt loading. Kelly said the agency capped about 14 wells in the Disappointment Valley that had been drilled and abandoned. These were artesian wells that bring very saline waters to the surface. Another example of a possible remedy for salt loading would be changing grazing practices to maintain more ground cover so there is less erosion.

Kelly said the SJNF Management Plan is not as specific as the SJBLM but is more goal-oriented. It includes Best Management Practices (BMPs), which involve practices designed to demonstrate compliance with the Clean Water Act. BMPs are designed to take care of most non-point source pollution. An example would be maintaining 80 percent of ground cover within 100 feet of lakes, streams and other waters.

Janice said that some of the things most onerous to water users in the current Forest Plan were not directly apparent in relation to water. An example would be the standard that says wildlife habitat has to be maintained at 40 percent of potential. She said the new Plan should have water-related rules and information in one section or at least referenced in that section.

Water Quality: Kay Zillich of the SJPLC gave a presentation on water quality in the case of the Upper Animas River Basin. She distributed a document on the TMDL Assessment for the Upper Animas and discussed work done by the Animas River Stakeholders Group to address pollution in the river.

There is a gauge on the Animas River a few miles below Silverton where some water-quality compliance issues were first identified. The area of the Animas under discussion is above that point, Kay said. The State developed a TMDL for that river reach and it included discussion about the quantities of the pollutants that need to be reduced to meet water-quality standards.

Talks began in 1991 after the EPA questioned why there were no fish in the Animas. The Animas River Stakeholders Group formed in 1994 with seed money from the EPA, and the Upper Animas became an experiment in getting various groups to work together to address pollution problems better, faster, and with fewer traumas than would have occurred had the EPA taken a heavy-handed approach. The group includes mining interests, which were just finishing active mining there, as well as State and Federal

regulators, environmentalists, Federal land managers, private landowners, local government, the U.S. Geological Survey, and the State Division of Minerals and Geology. The group is not a legal entity, but everyone who comes to the table is allowed to speak. Decisions are reached by consensus. Kay said the group is working well and its progress is exciting.

Kay said there are almost 2,000 mining sites in the area involved. The group initially looked at those sites to see which could be contributing pollution through discharges and narrowed the list to 360 sites. Studies indicated that about half of the pollution was coming from natural sources, and half from man-made sources related to mining. Waste-rock piles in front of mines still contain a lot of minerals that can leach into the stream. Also, after the ore went through the mills and came out in the form of tailings, these tailings were often dumped in or adjacent to the stream.

An analysis found that if 33 of the top 173 sites that were draining minerals into the Animas could be remedied, which would address 90 percent of the man-caused pollution. Furthermore, addressing 32 of the 157 waste piles could remedy about 90 percent of the waste, Kay said. This effort would cost about \$20 million over 20 years, which is not an enormous sum for what would be accomplished. The stakeholders group presented its remediation ideas to the State Water Quality Division and they accepted it.

Tables in Kay's handout show which sites lie on SJNF/SJPLC lands.

Discussion: Don Schwindt of the Colorado Water Conservation Board said the idea of stakeholder groups and of getting the most "bang for the buck" when it comes to remediation could be put into the Forest Plan.

John Taylor of Hinsdale County said the idea of determining what is natural and what is man-caused should apply to salt loading, as a lot of that is natural.

Janice commented that sometimes the EPA says that everything has to be cleaned up, without prioritization. This can ultimately prove much more costly than going after key sources of pollution, even though research into the sources costs more at the start of the effort. She asked what would happen if new mining is proposed near Silverton, as the minerals aren't entirely played out. Kay said with the new mining technology it would probably be allowed.

Kay said competition for funding for clean-up is becoming fierce nationwide. Another problem with such efforts is that if you try to clean old mines up you may incur the responsibility to clean the area up forever. If the contamination lies on Forest Service land it may be the taxpayers' responsibility anyway, but if the mining site is abandoned on private land, people are scared of attempting clean-up because of potential liability. Some efforts have been launched to pass "Good Samaritan" legislation to relieve liability if something goes wrong during clean-up. U.S. Sen. Wayne Allard introduced a bill to that effect but it was not supported by environmentalists. A similar bill introduced by U.S. Rep. Mark Udall is more restrictive but has more environmental support and may be

successful. The Animas stakeholders group wants to use the Upper Animas as a test case, with pilot Good Samaritan legislation written to apply only to that area, to see if similar legislation could then be applied nationwide. The group has written a bill to that effect and is seeking a sponsor.

Ken Beegles of the Colorado Division of Water Resources noted that the public lands around Silverton are one-third San Juan National Forest and two-thirds BLM. He asked whether the plans for the two agencies will match. Thurman said planners will try to make them match.

Eric Janes said the Wyden Amendment of 1996 allows BLM money to be spent on private lands, but it is still a problem for the USFS and the BLM to spend money on each other. Kay said half of BLM money for clean-up nationwide is going into the Upper Animas. Kay also said that while mining killed some of the fisheries in the Upper Animas, in some places they were never present because of the natural geology. There will never be fish in Cement Creek, for example, she said.

Janice said there is a section of the lower Dolores River where selenium is an issue and there are places on the Mancos where copper levels are a problem, and asked how that will be handled. She asked if the stakeholder process could be used more broadly. Kelly said a TMDL was done for those places.

In the case of Box Canyon, it was on the 303(d) list because of sediment loading. It is a tributary to the Middle Fork of the Mancos River and is a fishery stream. Road-building was the main source of the problem. She said there could have been more of a stakeholder process there. After the listing and TMDL, there was a lot of comment about the effort, pro and con, and if she were to do it over she would have it be more of a public process.

Kelly said the Box Canyon stream was put on the 303(d) list at the request of the Forest Service, which is somewhat unusual. The EPA called the Forest Service recently and offered \$50,000 for monitoring to see if the recovery effort has been effective. Kelly said currently, if a stream or river segment is put on the 303(d) list and a TMDL is done, the waterway comes off the list and there isn't a lot of pressure to show whether the clean-up effort was effective. Kelly said she thinks the EPA recognizes this shortcoming and that is why it is funding studies to look at clean-up results.

Kelly said the BMPs were rewritten by officials high up in the agencies to say that they must include stream health. The philosophy is to try to restore a stream to its natural state. One way of deciding this is to compare a stream to another that is identical in geology and other factors but is less affected by irrigation, development or other human-caused impacts.

John Taylor said it could pose problems if you try to return a stream to its condition before water was taken out for irrigation. Kay commented that it would also be difficult

in the Dry Creek Basin to find a slope that hadn't been grazed to provide a baseline for comparison.

Kelly said that in the case of Durango Mountain Resort's proposed expansion, the SJNF does not know what the streams in the area looked like before there was a ski run, so officials looked around for one similar enough to compare it to that they could call natural.

Janice asked if this means that the stream in the ski area must be returned to a standard of "natural". Kelly said that is indeed the new standard. Otherwise you could just say an action was good or bad and wouldn't have to tie it to data.

Janice asked what happens if a stream is not in violation of state water-quality standards but also is not in the condition of being a "natural" stream. How do you decide if you can add any more impacts? Kelly said she is trying to figure this out.

Thurman asked whether the idea is to simply do an analysis comparing the stream to what is natural, or to actually return the stream to a natural condition. Kelly said in the case of the ski resort, the agency is trying to manage the whole system so it doesn't unravel. There is a cutthroat fishery at the bottom of the hill in Hermosa Creek and SJNF officials don't want massive amounts of sediment from machine activity going into the East Fork. The cutthroat are still trying to recover from past development.

Steve Harris of the Southwestern Water Conservation District asked how BMPs fit into the Forest Plan without contradicting each other. Kelly said officials are trying to make sure they fit together.

Steve said the 40 percent habitat standard in the Plan does not seem to match the BMPs because BMPs don't have a specific percentage attached to them. Thurman said the agency cannot violate standards that are in the Forest Plan. A guideline, however, is more advisory in nature. An action can be taken outside a guideline if there is a rationale for it and the reason can be documented. BMPs can be either standards or guidelines.

Eric said the term "BMP" is not found in the Clean Water Act but was promulgated by the EPA in the 1970s. The USFS and BLM aren't treating BMPs the same way. The BLM considered them as voluntary guidelines for achieving standards. BMPs are how you get to the accomplishment of a standard. Eric said the whole area of non-point source pollution under the Clean Water Act is basically voluntary.

Eric said it would be helpful in the Forest Plan if the BLM and USFS operating procedures for water-quality standards and BMPs for point and non-point sources of pollution could be organized in coherent fashion, maybe in a table.

Kelly said the new planning regulations may not have separate standards and guidelines, and some of that language may go away. Thurman said the plans still have standards but don't say "standards and guidelines".

2005 Planning Rule: In response to a question, Thurman said the SJNF has decided to use the 2005 planning regulations in formulating its new Plan.

Facilitator Mike Preston said a link can be put on the Web Site to the Upper Animas process.

Forest Management Themes: Thurman gave a brief presentation on the themes the SJNF is using in writing its new Plan. They run a spectrum from Theme 1 (Natural Processes Dominate, as in Wilderness and Wilderness Study Areas) to Theme 8 (Permanently Developed Areas, such as ski resorts). They provide a system for saying how each area should be managed and what uses and activities are suitable there.

Mike noted that the old plan had specific designations for riparian corridors that aren't in the Themes. Thurman said riparian areas are small and don't show up on the theme maps, so the agency decides by on-the-ground conditions whether something is a riparian area. Such areas will be listed and defined in the Plan.

Thurman said there will be opportunity for more public input into the themes. The agency is trying to firm them up into a proposed Theme map with alternatives. Theme Maps based on Agency and Community Study Group input to date are on the Web site. Thurman agreed to bring the most current iteration reflecting progress on a preferred Theme Mapping Alternative to the next meeting.

Bruce Whitehead of the Colorado Division of Natural Resources asked what would happen if a historic ditch were maintained by backhoe and the theme was changed to a more primitive one. Would the backhoe still be allowed? Thurman said the Forest Plan doesn't supersede valid existing rights. However, there might be negotiations if the applicant had an existing Special Use Permit and there was a change in management theme and the SUP came up for renewal. However, the agency wouldn't demand an end to that use, it just might try to make it more compatible with the current plan. If necessary, the Plan could be amended to allow for the valid existing use. There are several options.

Mike said since the Plan Revisions are in the drafting stage they are still fluid. The Water Roundtable is working to focus on water aspects of the Plan and can contribute to shaping the final outcome to deal clearly and effectively with water issues in the final Plan Revisions. He said he wants to start working on an initial list of Planning Concepts related to water that can be refined later.

Thurman said the planning rule divides the Plan into:

- Vision (a broad overview)
- Strategy (how to accomplish that vision)
- Design criteria (details)

Janice asked whether the 40 percent habitat standard in the current Plan was adopted because the SJNF had to include it by law, or whether it was decided locally to include the standard. Thurman said that particular standard was an attempt to provide direction to help the agency meet the law about maintaining viable wildlife populations. The regional office of the USFS wanted things to be standardized. The new round of plans does not have the same level of standardization, Thurman said.

Plan Revision Concepts related to Water Issues: Mike took input into concepts to be considered in formulating the plan. Suggestions included:

- Encourage the collaborative stakeholder process
- Get more bang for the buck (by using the collaborative process to comprehensively evaluate priorities and approaches for efficient use of resources e.g. Upper Animas process)
- Investigate how the reintroduction of species impact water management including any restrictions on diversions.
- Put more specific direction into the Plan regarding implementation of USFS/BLM-CDNR/CWCB MOUs with regard to issues such as stream protection, fisheries and WSR.
- Continue the collaborative theme throughout all levels of the Plan: Vision, Strategy and Design Criteria
- Develop criteria to determine when by-pass flow analysis is triggered.
- Respect and protect private rights under Colorado Water Rights system, and specifically recognize pre-forest diversion rights

Janice said she wants to know more about public input on Wild & Scenic Rivers. By the next meeting she would like to know in detail what the specific ORVs are for each stream segment. Steve Harris said he would also like a serious discussion on how segments were chosen as eligible.

Thurman said the agencies tend to make the eligibility determinations internally and to make suitability a more public process, but that doesn't have to be the case. There could be more public input now, during the eligibility process, although that may mean that some people will come forward with stream segments they think should have been included as eligible that were not.

Thurman said if a stream segment is found to be suitable by the agency, the SJNF will put something in the Plan to preserve the ORVs on that segment until a final decision is made by Congress. For eligible streams that are not found suitable, the agency will say there's another way to manage them to protect the ORVs, or that there are competing values that take precedence.

Dan Merriman, Director of the Colorado Water Conservation Board's Colorado Stream & Lake Protection Program, asked if eligibility would provide the same level of protection as suitability. Kay said if the agency only goes to the level of eligibility analysis, then everything that is eligible will be protected. If the agency goes to the level of deciding suitability, then it will protect those streams found suitable and free up those

not deemed as suitable to be managed under other relevant management criteria called for by the plan (e.g. Management Themes) or required by Federal Law (e.g. The Antiquities Act).

Thurman said a work session specifically on WSRs may be needed in December or January.

Janice said she would like a discussion of Federal Reserved Water Rights. Mike said that the possibility had been discussed of taking Federal Reserved Water rights off of the table because of pending litigation, but it can be brought back up if the Roundtable decides to do so. Kelly suggested that such discussions would need to be carefully framed for relevance to the Forest and BLM Plan Revisions.

The December Meeting: The meeting will be Wednesday, Dec. 7, at 10 a.m. in the San Juan Public Lands Center. Topics to be discussed are:

- Livestock water facilities and ponds (Mark Tucker will organize this),
- Ditch Bill (organized by Dave Gerhardt)
- Planning framework
- Planning concepts.

The January Water Roundtable meeting will be moved to Jan. 11, instead of Jan. 4 because of holidays and vacations.