

**San Juan National Forest/Public Land
Management Plan Revisions
Governmental Water Roundtable
Meeting 10– Feb. 1, 2005
Summary**

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

Seated at the Roundtable:

Robin Schiro, Archuleta County
Bruce Smart, City of Cortez
Scott Brinton (alt), Colo. Div. Water Res.
Bruce Whitehead, Colo. Div. Water Res.
David Graf, Colo. Division of Wildlife
Don Schwindt, 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
Chuck Lawler, Southern Ute Indian Tribe
Janice Sheftel, SW Water Cons. District
Steve Harris (Alt), SW Water Cons. District
Mark Braly, Rio Grande County

Interested Audience Participants:

Chuck Wanner, San Juan Cit. Alliance
Kay Zillich, SJPLC
Eric Janes, for Colo. Sen. Jim Isgar
Ann McCoy Harold, for U.S. Sen. Allard
Ann Brown, for U.S. Sen. Salazar
John Whitney, for U.S. Rep. Salazar
Jamie Krezelok, SJPLC
Dale Rodebaugh, Durango Herald
Martha Gowin

Feedback from Water User Work Session: Steve Harris of the Southwestern Water Conservation District relayed the common positions agreed upon by water users during their work session before the roundtable, listed in the numbered paragraphs below.

- 1. The San Juan National Forest (SJNF) should not perform a suitability analysis of potential Wild and Scenic Rivers (W&SRs), but should stop with an eligibility designation.** Steve suggested this is compatible with what other National Forests are doing, more specifically the Grand Mesa-Uncompahgre-Gunnison (GMUG) National Forest.
- 2. The draft list of eligible stream segments is too long.** The Water Users understand that the GMUG forest has only five to 10 segments on its eligibility list. Water users believe the eligibility list should be shortened and the criteria for determining Outstandingly Remarkable Values (ORVs), used to decide whether a stream segment is eligible, should be reviewed, with more input from the Water Roundtable.

If the SJNF wants to address suitability in some manner, the Plans Revisions could define a process to be undertaken outside of the constraints of the Plans Revisions timeline and funding to allow adequate study and public input. Water users are willing to formulate a proposal for a suitability process within the intent of the USFS/BLM Colorado (DNR/CWCB) MOUs.

Don Schwindt of the Colorado Water Conservation Board (CWCB) stated that suitability determinations and the process for arriving at those determinations are of major concern for water users. The State of Colorado still needs to develop its position on suitability. Neither the Colorado Department of Natural Resources, the Division of Wildlife nor the CWCB has been briefed, brought up to date on the issues or even flagged the issues appropriately. Don said the suitability designation process also requires a strong outreach to local communities.

John Whitney, for U.S. Rep. John Salazar, said the Congressman has been following the Water Roundtable and wants to make sure that the concerns of the non-federal stakeholders are thoroughly addressed.

Steve Harris informed the SJNF that there could be a big clash at the end of the Plans Revisions process if the concerns of water users about the suitability analysis go unaddressed.

Janice Sheftel, attorney for the Southwestern Water Conservation District, said if the SJNF does decide to include a separate section on the process for deciding suitability outside the Plans Revisions schedule, the water users would like to work with the SJNF on a draft proposal.

Chuck Wanner of the San Juan Citizens Alliance asked if SJCA could also participate in discussions for proposing a process for suitability analysis. Janice said yes.

Steve Fearn of San Juan County said the water users have questions about whether all of the stream segments on the draft eligibility list truly qualify to be on the list. The water users are concerned that protecting the ORVs for all these segments could affect water development and water use. Steve suggested that the list be narrowed.

Thurman Wilson, Assistant Manager of the San Juan Public Lands Center (SJPLC), provided some background on the W&SR Act. He said the SJNF was ordered in the original W&SR legislation to study five rivers for their potential as W&SRs. Segments of the Dolores, Pine, and Piedra Rivers were found suitable for designation, but the San Juan and Animas Rivers were not found suitable.

In response to a question by Mark Stiles, Manager of the SJPLC, of whether the water users were suggesting that the Plans Revisions should undo those earlier studies, the water users said yes, adding that circumstances have changed in the 25 years since the earlier studies were conducted. Janice said the original study for the Dolores River may have been intended partly to prevent the Dolores Project from being built. With the

Project constructed and a downstream Dolores River Dialogue in place for dealing with water uses and conflicts, the prior suitability study is outdated. The new studies may find that some stream segments qualify as suitable, but the water users believe that because of changes in circumstances after the old studies, rivers previously found suitable deserve a new look.

Steve Harris agreed, saying no streams or rivers should be “grandfathered in.” If a stream segment cannot be removed from the suitability list without an Environmental Impact Statement, this reaffirms the water users’ concerns about the long-term ramifications of a river being found suitable for W&SR designation.

Chuck Wanner said revisiting and updating the studies makes sense. The San Juan Citizens Alliance is interested in again studying the Animas River. When the previous study was prepared, the situation was totally different.

3. The Proposed Criteria to trigger analysis of a Bypass Flow requirement, originally drafted by Steve Harris, were approved by the water users’ group. . Facilitator Mike Preston said that criteria proposed by Steve are on the Roundtable web site.

4. Steve Harris reported that the Ditch Bill easement issuance process is a concern. The process for handling Ditch Bill easements on the SJNF seems more complicated and slower than on other forests. The Ditch Bill concerns are related to the bypass-flow criteria.

5. Forest Water Resources Goals and Needs should be addressed in the Plans Revisions by incorporating the intent of the MOUs, the State Instream Flow Program, County Land Use Management Plans, etc. The Plans Revisions need to be flexible enough to allow some negotiations concerning Forest resource goals regarding water. Incorporating that flexibility in the Plans Revisions might also help resolve bypass, Ditch Bill and reserved water rights issues.

6. Operation and Maintenance (O&M) plans. The Water Users expressed the hope that the effect of the Plans Revisions would not be to ratchet up O&M requirements for existing uses. Thurman said that issues regarding valid existing rights and uses differ from issues regarding the issuance of new special use permits and/or ground disturbing activities.

7. Land Management Themes in the Plan Revision. If a water facility crosses lands with different management themes, the Water Users asked whether there would be differing affects on the O&M of facilities. How will the Plans Revisions interact with O&M plans? For example, if a ditch crosses land with three different themes, will the ditch owner need to use a backhoe within one theme and a shovel within another? The water users suggested that the ditch owner be able to use a backhoe across land within all themes, particularly for already existing facilities.

Thurman said valid existing rights will not be affected by Plans Revisions, which will not override existing agreements. It is possible, however, that when permits or plans need to be renewed, terms and conditions would be affected by the new Plans. Mark Stiles said there is still an issue of what is an existing use and what uses require a new Special Use Permit.

Brian Davis of the SJPLC said major ground-disturbing activities may be associated with work on a ditch. Some SJNF lands do not have O&M plans in place. Some old ditches were never permitted. O&M plans need to define how the agencies will deal with their concerns about cultural and NEPA issues. There has to be clear language about the types of O&M activities allowed, to make sure no other resources are jeopardized by activities. Each permit will have an O&M plan and each will be looked at independently.

Thurman said there is little relationship between O&M plans and the Plans Revisions. The Plans Revisions will have a greater effect on new proposals, such as a new ditch, than on existing ones, because the agencies' more site-specific, project-level decisions are supposed to be consistent with the Management Plans. For ditches that have been in place a long time, the agency will not be making a decision about whether the ditch may be constructed. O&M plans relate more to the requirements under the Clean Water Act, Endangered Species Act, and historic preservation laws.

Janice said she sees a relationship between the Plans Revisions and the O&M plans. Ditches already in existence have been maintained in certain ways. Will the themes or other aspects of the Plans Revisions require someone to change what they've been doing historically? Protection of water rights and the ability to use water facilities are important issues for water users, who would like to see requirements defined more clearly in the Plans Revisions. They would also like to reduce the burdens on water users as much as possible and increase certainty as much as possible in the Plans Revisions.

8. Janice reiterated the need to discuss the inclusion of historic water development in baseline habitat conditions for permit renewals and initial permitting of historic facilities. Brian said the SJPLC still must follow existing laws.

Thurman said that if an existing ditch were in a Management Theme 1 area (Natural Processes Dominate) and the ditch holder wanted to maintain that ditch by building a new road, it probably would not be allowed. If a road exists, the agency probably would not put that area into Theme 1.

Steve Harris said the water users would like to continue to meet for several hours, ahead of the Water Roundtable meetings. Steve Fearn added that the roundtables have been helpful and educational, but now the process is moving into a different phase.

Mark Stiles said the best way to proceed is for the agency to produce some draft written portions of the Plans and obtain feedback.

Thurman said he was not surprised to hear that the water users were concerned about W&SRs. He *was* surprised, however, to learn that they do not want to proceed with the suitability analysis, which would narrow the number of eligible segments and allow the SJPLC to take into consideration conflicts and trade-offs.

Mark Stiles said the unintended consequence of stopping at the eligibility designation is that all eligible segments must be protected as potential W&SRs. Stopping at eligibility requires the same protection of stream segments as does suitability, and for more stream segments.

Thurman said SJPLC officials felt that preparing suitability analyses would make things more manageable. The agency does not have a legal requirement to prepare a suitability analysis.

Kelly Palmer, an hydrologist with the SJPLC, said eligibility does not consider local values, economics and future desires. Even if planners tweak the ORV criteria, there will still be a large number of stream segments on the eligibility list. If the agencies proceed with a suitability analysis, streams found eligible but NOT suitable can be managed as regular streams because the agency has completed the process of analyzing suitability..

Thurman said that streams found not suitable still might be managed in a stricter way to preserve their values, whether scenery, recreation, or something else, but not under the umbrella of W&SR status

Steve Harris said he had believed that stopping at the eligibility designation would not require the USFS to manage stream segments for their W&SR values. Mark Stiles said they will manage both eligible stream segments and suitable ones that way, depending on how far the USFS goes with its analysis.

Steve Harris responded that if that is the case, the water users would prefer no list of either eligible or suitable streams. Mark said this is not possible because of the requirements of W&SR laws.

Janice asked how the agencies are directed to manage the two rivers that were previously studied and found not suitable. Thurman said Congress had directed the agencies to study five rivers in the current Plan. The Pine, Piedra and Dolores were studied separately, and portions of all of them were found suitable. Those portions are managed under the 10-d prescription in the current Forest Plan to preserve their W&SR values.

Mark said the agency must conduct an eligibility analysis as part of its Management Plan Revision and must follow existing rules. It cannot invent eligibility screens. He explained that the job the agency is now doing was required by Congress in the W&SR Act. It must be done every time a Forest Plan is revised. If the agency goes only as far as determining eligibility, its obligation is then to preserve those eligible streams as potential W&SRs until Congress chooses to decide which, if any, will become officially W&SRs.

Thurman said the original W&SR Act designated some rivers as W&SRs and required the study of others in detail, for evaluating suitability. The complete process of evaluating all streams for eligibility has never been performed before for the SJNF/San Juan Resource Area. There is over-arching agency guidance on how to prepare the analysis. The law directs the definitions of the terms “eligible” and “suitable.”

Kelly said only two factors determine whether a segment is eligible. It must be free-flowing, and must have at least one ORV. Don said that defied common sense.

Kay Zillich, an hydrologist with the SJPLC, said the Forest Service and BLM implementing regulations tell the agencies how to define ORVs.

Janice stated that there is not enough time to prepare a suitability analysis, consider trade-offs and obtain community input within the framework of the Plan Revisions. Mark said the other option is to stop at eligibility and manage all those segments as W&SRs. He also said when an agency takes the eligibility list to the public, some people will say *more* segments should be on the list, not fewer.

Steve Harris said the water users want to research what other National Forests are doing with regard to eligibility.

Kelly said when agencies don't prepare comprehensive studies, there have been lawsuits, which the agencies have lost. She said the SJNF has pretty spectacular terrain and it is not surprising it could have more eligible stream segments than the GMUG. Mark said when the W&SR Act was enacted, half the State's rivers on the list were within the SJNF. The amount of water, acreage, and mileage involved in stream segments must also be considered in order to compare the number of eligible segments in different National Forests. Thurman added that Hermosa Creek system, for example, could have been listed as one stream but was broken into eight or nine tributaries.

Thurman added that the SJPLC will need feedback as quickly as possible because planners want the proposed Plan and draft EIS to be ready in June. There will be public meetings and many other opportunities for feedback.

The water users said they would like to see the relevant legislation and implementing regulations regarding W&SRs. Mike Preston said they could be posted on the Roundtable web site. [Note: Information on W&SRs has been consolidated on the Governmental Water Roundtable website. Click on: Reports Relating to Wild and Scenic Rivers]

Plan Structure: Mark Stiles said a major water user issue has been assuring that all the factors regarding water are readily identifiable in the Plans Revisions. The SJPLC has not decided on the format to achieve this. Cross-referencing all water-related issues could be one way. There might also be a Q&A appendix on water issues.

Thurman said the SJPLC has not started to draft the Plans Revisions. The structure for Plans Revisions under the new Forest Plan rules is fluid, but the San Juan Plan must also take into account BLM requirements. The GMUG Forest Plan is in preliminary draft. Responses to internal reviews of the GMUG draft could contribute to the structuring of the San Juan Plan. By the March Roundtable meeting, Management Themes should be ready for discussion. The part of the Plan entitled “Vision” could address the relationships and principles in the cooperative MOUs between the DNR, CWCB, and USFS and BLM. Mark Stiles said the MOUs may not be included in whole but referenced, with the principles woven into the “Vision”.

Meeting Plan for March 1, 2006: The next meeting will be Wednesday, March 1, at the SJPLC, at 1:00. After a review of potential topics, the following topics were selected for March 1:

- Land allocations/themes as they affect water/water facility management,
- Overall plan structure – review progress in outlining the plan structure
- W&SR Eligibility and proposed process for evaluating suitability.
- Address USFS water resources, goals, needs — through MOUs, State ISF program, county land use plans – How Roundtable principles will be addressed.

On the list of topics for future discussion are:

- Criteria for triggering bypass flow analysis and allocations
- Baseline for Permit Renewals – (habitat standards for already developed areas, initial permitting of historic facilities and new water related developments.)
- How the Plan will address or affect O&M issues