

San Juan Public Lands Management Plan Revisions

Governmental Water Roundtable Meeting 1 Summary May 10, 2005

Seated at the Roundtable:

Robin Schiro, Archuleta County
Pat Shcumacher, Bureau of Reclamation
Bruce Smart, City of Cortez
Ken Beegles, Colo. Div. Water Resources
Mike Japhet, Colo. Div. of Wildlife
Dan Merriman Colo. Water Conserv. Board
Al Heaton, Dolores County
Gerald Koppenhafer, Montezuma County
Steve Fearn, San Juan County
Mark Stiles, San Juan Public Lands Center
Kelly Palmer, SJPLC
Thurman Wilson, SJPLC
Vern Ebert, San Miguel County
Chuck Lawler, Southern Ute Indian Tribe
Janice Sheftel, Southwestern Water Conserv.
Dist.
Carl Knight, Ute Mountain Ute Tribe

Interested Audience Participants:

Chuck Wanner, SJCA
Bill Simon, San Juan County (Alt.)
Bob Deibel, USFS, WO
Dave Gerheardt, SJPLC
Randy Kartstaedt, USFS, R2
Polly Hays, USFS, R2
Steve Harris, SW Water Cons. Dist. (Alt)
Brian Davis, SJPLC (Alt)
Eric Janes, Colo. Senator Isgar
Lynn Herkenhoff, SW Water Cons. Dist.
Bruce Whitehead, CDWR (Alt.)
Aaryn, U.S. Senator Allard
Ann Brown, U.S. Sen. Salazar
Jack Rogers, City of Durango
Kirk Kennedy, Ute Mountain Ute Tribe
John Whitney, U.S. Rep. Salazar
Wanda Cason, U.S. Sen. Salazar
Tonia Guren, U.S. Sen Salazar
Janet Boerboom, Intern, U.S. Rep. Salazar

Facilitator Mike Preston explained the process that will govern the Governmental Water Roundtable meetings. The Deliberation Funnel, which begins with a big-picture overview and funnels down into specific plan concepts, will be used to decide the issues of importance to everyone involved and possible solutions. Issues for consideration by the Roundtable are also being compiled into a list of Desired Outcomes.

A draft of the Desired Outcomes was circulated to all participants. The Colorado Water Conservation Board, San Juan Public Lands Center and Southwestern Water Conservation District all contributed to the draft. Roundtable participants will have an opportunity to add to the list during Roundtable meeting two. The Desired Outcomes list will be kept open beyond the second Roundtable meeting to be fleshed out as input is received. Some of the issues on the Desired Outcomes list may be determined to be outside of the scope of the Plan revisions, and will be moved into a separate category for consideration in other forums.

Mike briefly reviewed the Roundtable Process Matrix, which lays out a structure for the first four Roundtable meetings. Meeting Two will focus on Multiple Use and In-Stream

Flows. The remainder of the topical sequence will be structured based on Roundtable input into the deliberation funnel and Desired Outcomes. The agendas for the third and fourth meetings includes topics that are to be determined (TDBs).

Mark Stiles and Thurman Wilson, both of the San Juan Public Lands Center, presented an overview of the joint revision process for the Management Plans for the San Juan National Mark Stiles, SJPLC Manager, said that a joint plan revision has never been done before. The current plans, written in the 1980s, are overdue for revision. The plans govern approximately 2.5 million acres of public land in Southwest Colorado, as well as some separate mineral estates.

The plan revision process is to be based on extensive public input. In the late 1990s, several scoping groups were convened to begin the process, but the agencies did not fully launch the planning process until January 2004. Public input is currently being sought through:

- Study groups convening monthly in the three districts of San Juan public lands;
- Web-based input;
- The Water Roundtable meetings.

The overall plan revision touches water issues from a number of perspectives. Pipelines, wildlife habitat, timber-harvesting, recreation, cattle-grazing and other activities all can affect water quantity and quality. The Water Roundtable meetings are designed to provide a general framework for dealing with water in the Plan revision.

Mark Stiles referenced concerns that have been expressed about the Roundtable's limitation on participants to representatives of government entities. Having a Roundtable comprised only of governmental representatives allowed it to be convened without triggering the time consuming and expensive requirements of the Federal Advisory Committee Act (FACA). Although governmental entities are represented at the table, the Roundtable process is structured to include frequent input and interaction between Roundtable members and the audience of interested participants.

Thurman Wilson, a member of the team working on the plan revisions, stated one reason for having the Water Roundtable was as a response to a concern with the difficulty of finding information about water issues in the existing plans. The team wants to make sure the revised plans will be easy to understand and that information on different subjects, such as water, will be easy to locate.

Thurman said the management plans are legally mandated, but are also needed to provide a focus and context for the activities the agencies perform on a day-to-day and project specific basis. He explained that the plans, broad, umbrella documents, are different from projects, which are specific matters such as building a trail or having a timber sale.

Plans have three components:

- **A Vision**, which describes where we are going, what is unique about San Juan Public Lands, and related “desired conditions”.
- **A Strategy**, which is “how we get there,” or what actions to take to realize the vision.
- **Design criteria**, which are the details of implementing actions and the restrictions and technical criteria necessary.

Thurman stated that the decision space for the agencies is bounded by existing laws and policies on issues such as water, archaeological resources and many other matters. These laws and policies are not repeated in plans, but plans cannot contain anything that conflicts with them.

Also affecting the plans are physical and biological constraints – e.g., forage, timber availability, terrain, and soils. The needs of local communities also must be considered.

Timetable: The agencies want to complete draft plans by the end of December 2005 and final plans by December 2006. After the first week of August 2005, the plan revision process will transition from community study groups to public open houses.

Planning regulations: The Forest Service has published new regulations on how to accomplish forest planning, which allow forests that have already begun their plan revision process to choose whether to follow the 1982 regulations or the 2005 regulations. Thurman said the San Juan Public Lands will make that decision about which regulations to utilize soon, perhaps by June.

Hydrologist Kelly Palmer of the San Juan National Forest gave an overview of federal laws and regulations affecting water management on Public lands. By law, management plans must address water-management issues.

Some major laws affecting water management on public lands are:

- **The Organic Administration Act of 1897**, which defines the original purposes of national forests, some of which are to protect and enhance water supplies, reduce flooding, and secure favorable conditions of water flows.
- **The Multiple Use Sustained Yield Act of 1960**, which broadened the purposes of national forests to include outdoor recreation, range, timber, watersheds, and wildlife and fish populations.
- **The Endangered Species Act of 1973**, which protects threatened and endangered plant and animal species and their habitats.
- **The National Forest Management Act of 1976**, which mandates that national forests do intensive long-range planning, and requires public participation.
- **The Federal Land Policy and Management Act of 1976**, which guides the management and protection of public land resources, including water. It also requires long-range planning. (FLPMA)
- **The Clean Water Act of 1977**, which seeks to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.”

Other laws affecting water management include the Colorado Ditch Bill, an amendment to FLPMA, Wild and Scenic Rivers, Wilderness Act, and Colorado River Basin Salinity Control Act.

Janice Sheftel, Southwestern Water Conservation District’s Roundtable representative gave an overview of state water law. Colorado is a prior appropriation doctrine state, which means that earlier water uses generally have a senior priority to water, in contrast with the Eastern U.S., where people under the riparian doctrine, have the right to take water as it passes through their land. Under the prior appropriation doctrine (“first in time, first in right”), earlier appropriators may have the right to water senior to users who come later.

Among the types of water issues that have local impact are:

- **Compacts.** Colorado is the headwaters of many streams flowing east and west out of the State. An important issue was what to do about other states that also utilize the appropriation doctrine, such as California. The seven Colorado River Basin states negotiated the Colorado River Basin Compact to deal with such questions. Other compacts affecting SW Colorado include the Upper Colorado River Compact, La Plata River Compact, and Animas-La Plata Project Compact.
- **Federal and Indian Reserved Water Rights:** When federal land is reserved, water is impliedly reserved to serve the purposes of the land reservation. The question of how much water is reserved for federal lands and Indian reservations is a question for litigation or negotiation. The Colorado Ute Tribes settled the issue through negotiations, as did Mesa Verde National Park. Litigation/Negotiations regarding the reserved water rights claims of the U.S. Forest Service are pending.
- **State Constitutional Provisions.** In Colorado, unappropriated water in streams is considered to belong to the state and public, but parties, both public and private, may acquire rights to that water. (Usufructuary right)

Although the prior appropriation doctrine establishes the rights of prior users as senior water rights, users must go to court to establish those rights. Some entities failed to go to water court early in their history and thus received junior rights although they were “first in time”.

Different types of water entities. Janice Sheftel explained that there are special water districts, which usually deal with treated water; water conservancy districts (such as the Dolores Water Conservancy District), which usually are associated with specific water projects; and water conservation districts, which are established by the state legislature. The Southwestern Water Conservation District, created in 1941, is one of just three in the state and oversees a nine-county area of Southwest Colorado.

Ditch Rights vs. Ditch Property: Janice explained that obtaining a water right was not synonymous with obtaining a ditch right-of-way. She mentioned several ways to obtain a ditch right-of-way.

Water quality: Janice Sheftel gave an overview of water-quality laws, noting that there can be conflict between water-quality and water-quantity issues. Because Colorado is a headwaters state, there can be problems if states downstream have stricter water-quality standards than does Colorado. Authority to regulate water quality was delegated by the Environmental Protection Agency to the Colorado Department of Health and Environment. A Water Quality Control Commission is appointed to set water quality standards and classify streams and lakes with regard to these standards.

Mike Preston briefly reviewed the draft Desired Outcomes. Discussion moved to the Deliberation Funnel, focusing on the question of “What’s Most Important”. Members of the Roundtable, with input from the audience, suggested the following list of “What’s Most Important” for future consideration by the Roundtable with regard to Plan Revisions:

What’s Most Important?

1. Regarding Bureau of Reclamation reservoirs within and adjacent to public lands, consider obligations to manage facilities, and meet commitments to water-rights holders.
2. Problems, challenges and conflicts with regard to historical uses: What are they and why?
3. How can Federal and State laws work for us to accomplish goals? Flexibility to work together.
4. Look at flexibilities in permitting that allow existing and future water rights to be addressed.
5. Work together to avoid new petitions or listings of endangered species.
6. Consider previous uses and rights (land and water) that will be affected by plan revision decisions.
7. Fully consider water quality.
8. Prioritize and balance use and protection across the forest and use flexibility to achieve this balance.
9. Apply rules with or without consideration of rights to deal with real needs in achieving an overall balance of uses and protections.
10. Encourage water conservation over consumptive use.
11. Encourage restoration and protection of functions in special hydrological regimes such as high-altitude wetlands, natural lakes, aquifers, fens, etc.
12. Consider nutrient impacts on Forest waters – e.g., sewage treatment plants, non-point sources.
13. Define requirements for renewed or new special-use permits.
14. Define existing water rights including high and low altitude including where watersheds begin and how far rights extend.

15. Consider cumulative water-quality development impacts within and beyond public land boundaries.
16. Recognize responsibility for monitoring (including baseline) for water-quality impacts resulting from use authorizations supported by funding, fairly allocated, including cost share by beneficiaries.
17. Include process in Plan for interaction with State water-quality standards and reviews.
18. Don't unduly burden users from developing consumptive uses under state compact entitlements.
19. Include an educational component concerning lessons learned and any changes needed in the plan revision.
20. Address need and constitutional rights concerning future uses.
21. Allow the opportunity to develop water above Public Land areas.
22. Make the plan a reflection of local issues concerning water.
23. In the San Juans – address Ute Mountain Tribe treaty rights, water rights, and executive orders, and provide the Tribal Council with an explanation.
24. Develop collaborative facilities to provide multiple uses.
25. Consider development in high mesas all the way to Utah, including mining, oil and gas, residential, second-home and recreational development – understand these trends. Pending 2477 legislation could lead to more claims.
26. Is there existing direction (Public Land Agency or otherwise)? Is it working or not?
27. Include provisions and process for Plan amendment including trigger points, adaptive management, and who is included in the process.
28. Understand how land uses might affect water production and quality.
29. Consider relationship of plan to regional impacts of growth (outside and within the public land boundary) including air pollution, drought, chemicals. Recognize and respond to cumulative impacts.
30. Address impacts of prescribed fire on water quality on a watershed basis.

Next meeting: The next Water Roundtable Meeting will be on Wednesday, June 1, at 10 a.m., at the San Juan Public Lands Center, 15 Burnett Court, Durango. Key areas of discussion will include Multiple Use and Stream Flow protection.