

**San Juan National Forest/Public Land
Management Plan Revisions
Governmental Water Roundtable
Meeting 13– June 14, 2006
Summary**

<http://ocs.fortlewis.edu/forestplan/>,

click on Governmental Water Roundtable

Seated at the Roundtable:

Scott Brinton (alt), Colo. Div. Water Res.
Bruce Whitehead, Colo. Div. Water Res.
Dan Merriman (alt), Colo. Water Cons. Board
John Taylor, Hinsdale County
Steve Fearn, San Juan County
Mark Stiles, San Juan Public Lands Center
Brian Davis, SJPLC
Kelly Palmer, SJPLC
Thurman Wilson, SJPLC
Janice Sheftel, SW Water Cons. District
Steve Harris (alt), SW Water Cons. District
Mark Braly, Rio Grande County

Interested Audience Participants:

Dave Gerhardt, SJPLC
Chuck Wanner, San Juan Cit. Alliance
Jamie Krezelok, SJPLC
Jim Siscoe, Montezuma Valley Irrigation
Mely Whiting, Trout Unlimited
Mark Pearson, San Juan Citizens Alliance
Dave Wegner, Animas Riverkeeper

REVIEW OF WATER-RELATED PLAN REVISION PRELIMINARY DRAFT MATERIAL:

Thurman Wilson, Assistant Manager of the San Juan Public Lands Center

(SJPLC), said the San Juan National Forest (SJNF) is trying to deliver its draft Plan Revision and NEPA documents to the U.S. Forest Service (USFS) Office in Denver by September for feedback. By mid to late November, he hopes to have the draft Plan Revision(s) out for public comment.

Thurman distributed a draft Table of Contents for the Proposed Management Plans for the San Juan Public Lands. The Plans will have three main sections: Vision, Strategy, and Design Criteria. He said the reasons for utilizing this particular format are: (1) It seems to be the format that most other National Forests are following, with the exception of the Grand Mesa-Uncompahgre-Gunnison (GMUG) National Forest; (2) Some parts of the Plans will change more often than others and this format makes it easier to keep the Plans up-to-date. He said while the water-related material is not all contained in one section, he is thinking of having a separate water-users' guide to the Plans that would pull together water-related information from all three sections.

Janice Sheftel, Attorney for the Southwestern Water Conservation District

(SWCD), said that a water-related guide would be very helpful. She suggested making the guide an appendix to the Plans or a part of the Plans so it is considered to be on the same level as the rest of the Plans. She suggested it would not be necessary to repeat

text, just to use references. In the current Plans, a critical piece of information for water-users is tucked away in an unobtrusive place and water-users would like to make sure that does not happen again.

Mark Stiles, Manager of the SJPLC, said he would like to make the language in the guide a verbatim reiteration of what's in the Plans so there will be no misinterpretation. He said by using CD-ROMs it will be possible to provide links to all water-related material.

The Table of Contents may be viewed on the Roundtable Website.

Roundtable participants also reviewed a working draft of Water and Aquatic Resources Desired Future Conditions. Kelly Palmer, hydrologist with the SJNF, said the draft document still needs considerable work. Material relating to Strategy is missing, as well as some language relating to water quality. She said the entire planning team is working on the material and will be adding to and refining the draft.

Janice said it is difficult to comment on the draft at the June Roundtable meeting because the draft was distributed only the day before the meeting. Mark said any feedback at the meeting would be accepted as initial comments. There will probably be several more revisions before an actual draft is released.

John Taylor, representing Hinsdale County, said he has a water right that precedes the formation of the SJNF. He views later laws, such as the Clean Water Act and Wild and Scenic Rivers Act, as potentially impacting that water right. In addition, the region is entering a drought. His ditch, which typically carries 10 cfs, went down to 1 1/2 cfs this year. That water is important to him even if he cannot grow a full crop, because whatever he produces helps to pay expenses. It might be better if he could temporarily reduce that water and simply leave it in the stream, but he will get no credit for doing so and there is no financial compensation that would help pay his bills. He said changes need to be made to state water law to make such an option feasible.

Dan Merriman, Administrator of the Colorado Water Conservation Board's (CWCB) Colorado Stream and Lake Protection Program, said there have been some changes to the state water law regarding the CWCB Instream Flow (ISF) Program. The CWCB can enter into agreements to acquire water to be left in a stream without going to water court. The difficulty lies in finding money to compensate the water-right holder. No state funds have been appropriated for that purpose, although federal funds might be available if the ISF benefits the National Forest. The tools are there to let the CWCB acquire water on a temporary basis.

Bruce Whitehead of the Colorado Division of Water Resources added that there has to be an evaluation of consumptive use and a review by his office as well.

Janice voiced a concern about the mention of "desired aquatic species" under "Aquatic Habitats" in the working draft of Water and Aquatic Resources Desired Future

Conditions. Although it might be desirable to have native Colorado River Cutthroat Trout everywhere, that isn't a realistic goal. Is the goal to protect the health of existing species or to change the existing condition by bringing in other fish? What does it mean to have "desired species"?

Thurman agreed the meaning is unclear and should be defined.

In the same section, Janice said, there is a reference to providing for long-term sustainability of "all native" species. Not all native species may be present, she noted.

Janice also expressed concern about language under "Stream Channels and Floodplains" relating to "bank-full and over-bank flows". When ditches exist on the SJNF, this could lead to conflicts with water-diverters.

Mark said for floodplains to remain functional, there sometimes need to be over-bank flows or bank-full flows. While there shouldn't be much conflict with water-users' rights, the language should be clarified so it is not overly stringent since such flows do not need to take place every year.

Janice referred to language under "Groundwater Resources" concerning "aquifers, springs and seeps" persisting "in their natural conditions". This may conflict with development of some of these resources by grazing permittees to enhance their permitted activity. The improvement may have been developed to improve grazing permit management and productivity rather than natural conditions.

Mark suggested adding the language "subject to valid existing rights".

Janice voiced concern about language under "Water Quality" that states, "Water quality for impaired water bodies on the State 303(d) list would move toward fully supporting State-designated beneficial uses." She suggested recognition of the practicality of that goal for different water bodies. In the case of McPhee Reservoir, there is a TMDL, but there is no clear understanding of the precise cause of the impairment. The reservoir's water quality is acceptable, but there are concentrations of mercury in large, predatory fish. In the Silverton area, there is a huge natural component to the pollution of streams.

Janice also discussed language under "Aquatic Habitats" relating to avoidance of fragmentation of habitats. She said it is important to realize that this is a very long-term goal in some places, such as Hermosa Creek.

Mark said the language needs to stress site potential. He would like to avoid action verbs when painting a picture of what is present, using them instead in the discussion of Strategy.

Dan noted that the issue of USFS Federal reserved water rights has not been settled on the SJNF.

Mark said the SJNF does not want to have that court case mixed up in the Plan Revisions. He would like to have that issue resolved, but not in the Plans.

Bruce said that USFS Federal reserved water rights are a key issue. Having that settled should be part of the Desired Conditions and Outcomes. Kelly said SJNF personnel would have to think about it.

Facilitator Mike Preston stated that there may be a way to integrate broad statements about the desired future with a discussion of collaborative relationships. Desired Outcomes and Conditions, in addition to statements about land and biology, could include collaborative relationships.

Thurman said the Table of Contents is subject to change. Collaborative relationships could be included under Watershed or Social and Economics in the Vision section, or under a separate heading called Water Use and Development. A Water Use and Development section probably needs to be included under Strategy as well.

Dan suggested including the April 2004 Memorandum of Understanding between the Colorado Department of Natural Resources, CWCB and USFS, and a similar MOU involving the Bureau of Land Management (BLM), as part of Other Applicable Guidance under the Design Criteria section.

Thurman said the Design Criteria probably will be available to Roundtable members in a matter of weeks.

Janice also expressed concern about the language under Water Quality under the Desired Future Conditions that, “All water bodies have water quality sufficient to fully support a broad spectrum of beneficial uses on and *downstream of* the San Juan Public Lands.” Thurman responded that the language was intended only to say that when water leaves San Juan Public Lands the quality will be good.

John said that, on the Pine River, there used to be both sheep and boreal toads, but both are now gone. There continues to be fecal material in the stream, but now it is from humans rather than sheep. Water quality is a concern, but the only way to manage it is to have some control over humans visiting the SJNF, which the USFS has not done.

Mely Whiting, an attorney with Trout Unlimited, said regarding Desired Future Conditions, the State, not the USFS, has the authority to determine beneficial uses and water quality standards. The State also has a responsibility to identify impairment. She added that she is hearing many requests for specificity in the Plan Revisions, but under the new planning rules the Plan is supposed to be general. If there will be lots of “shalls” from the water-users’ side, there will be reciprocal requests from the conservation side. The language is fairly one-sided now, although Trout Unlimited does believe in collaboration. The USFS has the obligation to balance water rights with resource protection.

Mely said she reads the final paragraph under Federal and State Cooperation, as the USFS yielding its authority to impose conditions protective of endangered species. The USFS has a duty to make unilateral decisions if cooperation does not work. While cooperation needs to happen, if it fails, the USFS has the duty to follow the Endangered Species Act.

Jim Siscoe, Manager of the Montezuma Valley Irrigation Co., agreed that the language is fairly one-sided and needs to be clarified. Community-based collaboration is the most effective way to constructively and cooperatively address resource protection issues citing the Dolores River Dialogue (DRD) as an example.

Steve Harris of the SWCD said he is concerned about the Vision part of the Plans because Vision items could become standards over time. He suggested adding that these conditions are not to be viewed as standards. Also, in the Desired Future Conditions, too many words represent unachievable goals, such as “healthy and resilient”.

Thurman said Desired Conditions and Guidelines are treated differently under planning regulations, but he will try to clarify the language in a preface.

Steve said the USFS definition of cooperation is like his definition of unilateral action.

Mike suggested a 10-day period following the meeting for Roundtable members to provide further comments on the drafts under discussion, followed by 10 days for the SJPLC to prepare another draft before the next Roundtable meeting. Mark said they will try to meet that goal.

Comments should be sent to Kelly at kapalmer@fs.fed.us or Thurman at twilson02@fs.fed.us.

Kelly said the Plan will be very general because that is what the Washington office wants. Mely said the lack of specificity concerns her, from the conservation viewpoint. John said it’s the interpretation of rules and regulations that is key, which changes with each supervisor. Kelly said she shares those concerns.

Bruce voiced a concern about the Theme 1 land-management designation on San Juan Public Lands and how it might affect water rights. Thurman said Theme 1 — which is designed to maintain pristine, undeveloped conditions – refers more to on-the-ground development, such as dams, and not to the amount of water in a stream.

Chuck Wanner of the San Juan Citizens Alliance (SJCA) said most Theme 1 areas are upstream and that water-users shouldn’t have a “Chicken Little” approach and assume that “the sky is falling” when any restrictions are mentioned.

BASELINE FOR PERMITS:

Janice asked how the baseline discussion will feed into the draft Plan outline, and whether an activity will be “grandfathered” when permit renewals are considered.

Mark said the old standard of 40 percent of habitat capability is not likely to be the standard in the new Plans. Instead, the Plan will refer to “site potential”. He is not certain that the term “baseline” will be in the Plans. Some existing facilities on San Juan Public Lands do not follow Best Management Practices. He believes everyone wants to see those repaired. Therefore, the question of permit renewals will not be simply a matter of “what’s there stays there”. Site potential may mean managing some of these areas to produce better conditions.

Mark said the Strategy section for water uses and developments needs to discuss how the Agencies will deal with the reauthorization of existing facilities. To say that everything now existing is within acceptable baseline conditions would mean there will never be a change. The Agencies can’t go that far. They might, however, include language allowing for deference to existing uses, when possible. In only a few cases could the SJPLC add more conditions, although it might be done to protect endangered species.

Dan said the Tacoma power plant is an example. It predated the National Forest. He would have difficulty accepting a baseline condition without the power plant.

Mark said in such cases a very reduced stream level would be noted. It can’t be ignored. The key is the nature of what should be the decision space under such circumstances. The Agencies always must look at the future site potential, not just the current site potential. The Agencies will analyze activities that have been going on a long time in context as historical uses. But the Agencies have to look at how far conditions are from the site potential and practical opportunities to close the gap.

Dan said “site potential” sounds a lot like “baseline”. Mark responded that site potential is at the Vision level. The Agencies look at the site potential and ask: Are we there? What would it take to get there? Is it worth it? Is there a reason to try to get there?

Kelly said “baseline” and “site potential” are not the same in her mind. When something changes, the site potential changes. It’s hard to return arroyos to floodplains.

Mark said “pre-European” doesn’t mean much, either, because things have changed. The Agencies must consider what is realistic for a site.

Mike said it sounds like the Agencies want to acknowledge existing uses, but also that there could be, in some cases, better practices to move a site closer to its potential. It would be helpful to flesh out the concept of site potential.

Mark said it isn’t necessarily a separate concept. Webster’s definition can be used. Site potential isn’t necessarily listed under any of the three sections in the Table of Contents, but it influences Desired Future Conditions.

CRITERIA FOR TRIGGERING BYPASS FLOW ANALYSIS:

Mark said he agrees with the MOU concept that Federal Agencies should not just jump to imposing bypass flows. He hopes to address this issue within the Strategy or Design Criteria portions of the Plans. A bypass flow would be one of the least desirable options. The Plans should state that a bypass flow is an option of last resort and explain why, as well as describe other options and why they would be preferable to a bypass flow.

WILD AND SCENIC RIVER INVENTORY:

Mark said he believes it makes more sense to conduct a Suitability analysis during the planning process than to stop at the Eligibility level. Performing a Suitability analysis for all river or stream segments at once makes it possible to look at them in context and measure one against another. The other option is set forth in the White River National Forest Plan is conduct a Suitability analysis only if a proposed development threatens a specific stream or if there is broad support for obtaining Wild and Scenic River (WSR) status for a particular stream. Analyzing individual streams for WSA suitability after the planning process requires an individual EIS process, which must seek public comment and provide alternatives.

Janice said she believes balancing one stream against another should be part of the Eligibility analysis. Thurman answered that the Eligibility screening involves comparison of features, not streams.

Janice asked whether the draft Eligibility list will be in the draft Plan Revisions and available for public comment. Mark said yes. The draft Plans are tentatively set to be completed this fall, and the final Plans are to be completed by the fall of 2007. He wants the draft Plans to focus especially on the streams that are “in the middle,” with regard to WSR designation, where there are remaining questions about trade-offs. If a stream is found to be Eligible, but not Suitable, it is no longer managed under the WSR Act, but its Outstandingly Remarkable Values (ORVs) still need to be protected.

Mark said a revised Eligibility list is being worked on. Regarding black swifts, which are a Sensitive Species that is river-related, the new list will describe an ORV as including congregations of nests vs. just one or two nests. This will reduce a dozen streams to one or two key locations. The question still remains whether a WSR suitability designation would be the best way to protect the nests. It might be better to obtain an ISF.

Dan said a DRD subcommittee had a productive work session the week before the Roundtable meeting and is preparing a draft letter to Mark. The subcommittee looked at streams and ORVs and narrowed down the Eligibility list considerably. DRD will probably recommend that no Suitability analysis be performed but that the USFS closely examine the Eligibility list.

Jim said two years ago the local water community wouldn't have given two cents for the idea of the DRD. This year, water users were willing to donate water to facilitate fish studies. He is convinced a group like DRD is necessary for resolving many crucial water issues such as WSRs, ISFs, etc.

Mark discussed issues raised at previous meetings:

1. Is the SJPLC using a new approach to WSRs?

He said no, the Agencies are following policies. The most recently completed Plan in USFS Region 2, for the Bighorn National Forest, includes a Suitability analysis. BLM offices around the State are preparing Suitability analyses, as are several in Utah. One of the Plans in Utah found 34 stream segments Suitable. The White River was somewhat of an anomaly in not performing a Suitability analysis in the Plan revision process.

2. Is the overall Eligibility list too long?

The Agencies are looking at tightening up the Eligibility list, but a Suitability analysis will result in an even shorter list.

3. Will protections be dropped for streams that fall off the Suitability list?

The streams that make it through the suitability screening will be managed as WSRs, while the others won't, and their ORVs will be protected by other means.

4. Trust in the Agencies and their personnel.

The SJPLC is trying to keep the process open and clear to the public. Congress will make the ultimate decision as to any WSR designations. Congressional consideration would involve extensive additional public involvement.

5. Suitability demands a longer process.

Since the Plan Revisions are being adopted through an EIS process that will result in thousands of public comments, the process is an opportune time to address WSR suitability. Between the draft and final Plans Roundtable members could help convene listening sessions to hear WSR comments from the public.

Chuck said the bottom line for the SJCA is whether some rivers will be managed seriously to protect their values, whether through WSR status or some other means. Chuck wants meaningful, community-based and locally driven discussions. Hermosa Creek, the Animas River above Baker's Bridge, the Piedra River, portions of the East and West Forks of the San Juan, and the Dolores River landscapes need special protection. He would like a substantive commitment from a group of representative stakeholders to discuss protection issues.

John said that if there were a way to protect grazing on the Hermosa, he would have no objections to it being protected. The East Fork of the San Juan offers some potential he would be willing to discuss. He would have to take a long look at the Piedra before deciding. He still believes the Eligibility list is too long, in part because an overly broad interpretation of “free-flowing” was used.

Janice said she would be glad to mention Chuck’s interest in a dialogue to the SWCD board. She expressed concern about WSR protection on the Animas. If it has special protection, how will environmental groups respond when Special Use Permits are needed for water development above the area?

Mark Pearson, Executive Director of the SJCA, said it is important to let the public weigh in completely on the WSR issue before the Eligibility list is cut. He noted that only in the last two weeks had the public been invited to participate in the WSR discussion.

Chuck said the SJCA will be less concerned about the Eligibility list if there will be serious discussions about special protections for key river segments.

Bruce asked about the incentive for water-users to seriously discuss special protections for four or five river segments when there are still 40 or 50 segments on the Eligibility list. Chuck responded that if water-users wait until the end of the planning process to start a dialogue on river protection, the SJCA will have to argue for an extensive Eligibility list because its members won’t know whether any other protective options are on the table.

MEETING PLAN:

The next meeting of the Governmental Water Roundtable will be Wednesday, July 12, from 10 a.m. to 3 p.m. at the San Juan Public Lands Center. [Note the meeting was subsequently postponed until August 2, Suggested agenda items include:

1. A continuation of the discussion on the draft Water and Aquatic Resources Desired Future Conditions;
2. A continuation of the WSR discussion.

Comments about WSRs should be e-mailed to Mark Stiles at mstiles@fs.fed.us.