

**San Juan National Forest/Public Land
Management Plan Revisions
Governmental Water Roundtable
Meeting 4 – Aug. 3, 2005**

Seated at the Roundtable:

Pat Page (Alt), Bureau of Reclamation
Bruce Smart, City of Cortez
Ken Beegles, Colo. Div. Water Resources
David Graf, Division of Wildlife
Dan Merriman, Colo. Water Conserv. Board
Al Heaton, Dolores County
John Taylor, Hinsdale County
Mark Braly, Rio Grande County
Steve Fearn, San Juan County
Mark Stiles, San Juan Public Lands Center
Kelly Palmer, SJPLC
Thurman Wilson, SJPLC
Chuck Lawler, Southern Ute Tribe
Steve Harris (Alt), SW Water Cons. Dist.

Interested Audience Participants:

Bruce Whitehead, Colo. Div. Water Resources
Brian Davis, SJPLC
Dave Gerhardt, SJPLC
Gary Thrash, SJPLC
Kay Zillich, SJPLC
Chuck Wanner, SJ Citizens Alliance
Eric Janes, for Colo. Sen. Jim Isgar
John Whitney, for U.S. Rep. Salazar
Polly Hayes, USFS
Michele O'Connell, USFS, Lakewood
Carole McWilliams, Pine River Times
Cindy Hockelberg, USFS

Facilitator Mike Preston reminded all presenters using Power Point to provide him a CD so that they can be posted on the Water Roundtable Web Site

Thurman Wilson of the San Juan Public Lands Center gave a presentation on Forest Plan Rules and their applications for Roundtable issues. A new planning rule for the U.S. Forest Service was published in the Federal Register on Jan. 5, 2005. It contains a “grandfather clause” allowing National Forests that began their planning process under the previous, 1982 planning rule to choose whether to continue following the old rule or switch to the new. Thurman said San Juan National Forest officials are close to a decision to operate under the new rule, but that in any case he assured the Roundtable that work done so far would be compatible under either rule.

The 1982 rule was widely criticized as cumbersome, expensive, and difficult to implement. The 2005 rule represents a paradigm shift with a greater focus on adaptive management and responding to changing conditions.

One of the major differences between the 1982 and 2005 rules is who approves the Plan developed by each National Forest. Under the 1982 rule, it was the Regional Forester; under the 2005 rule, it is the Forest Supervisor.

Another important difference is that the 2005 rule does not provide for making final decisions on projects in Forest Plans, shifting the burden of decision-making from the plan level to the project level. For example, a plan decision will determine which areas

are potentially available for future oil and gas development. Decisions on specific leases will be made at the project level.

Another difference involves the appeals process for decisions. Under the 1982 rule, an appeal of a decision went from the Regional Office to the Washington Office of the USFS and often took four to five years to resolve. The new rule tries to streamline the process. When a National Forest is ready to make a decision, the decision isn't signed immediately but is put out for a 30-day objection period. People can object and the National Forest can try to resolve issues, before the decision is signed. The 30-day time can be extended as needed in the interest of resolving objections. It is intended that this approach will be more likely to avoid litigation, as well as reducing delays in the appeal process.

Thurman's presentation entitled "Forest Planning Rule" may be viewed at: <http://ocs.fortlewis.edu/forestplan/>, click on Governmental Water Roundtable and click on Slideshows.

Dan Merriman, administrator of the Colorado Water Conservation Board's (CWCB) Stream & Lake Protection Program, said he is optimistic that the new rule will provide more individuality and flexibility for the U.S. Forest Service. He asked whether there will be two planning documents, one for the San Juan National Forest and another for the other San Juan Public Lands. Thurman said he envisions two separate plans with a slightly different elements and style, but with many similarities. Officials want the plans to be easy to understand and use in a coordinated fashion.

John Taylor, representing Hinsdale County, said it appears good to be able to make decisions that are pertinent to each individual Public Land office, but expressed concern about consistent decision-making among different National Forests.

Thurman said the Grand Mesa-Uncompahgre-Gunnison National Forest is currently doing its plan revision, so it will be relatively easy to coordinate this effort with San Juan Plans. The Plan for the Rio Grande National Forest, on the other hand, is about 10 years old and a plan revision is not under way, so coordination will be more difficult. Thurman said officials are communicating about ways to make the plans consistent particularly in border issues.

Thurman also noted that the SJNF has been trying to gather relevant county and city land-use plans in order to coordinate with those regulations. Mike Preston asked everyone who is able to provide such a plan to flag the portions that are considered pertinent to the forest planning process.

Eric Janes, representing State Sen. Jim Isgar, asked where decision-making authority would lie in places where large parcels of land managed by the other public lands agency are intermingled with National Forest land, such as the area around Silverton.

Mark Stiles, Manager, San Juan Public Lands Center, said in such cases the authority will lie with the other agency's director at the state level. He said it will be important to make sure that plans are matched along boundaries so that there are smooth transitions between jurisdictions.

Mark said a service-first concept is in place where National Forest and other agency lands are managed jointly by the San Juan Public Lands Center. Language in the Forest Plan Revision will encourage even more cooperation and it may be possible to get decision-making authority delegated from the State Director to the SJPLC Manager. However, it is sometimes difficult for agency officials in Washington, D.C., to understand the necessity for such measures.

Chuck Wanner of the San Juan Citizens Alliance said he believes the new rule opens up a can of worms by removing a shield against regional politics. The new planning rule will offer more flexibility but will also mean less-consistent decision-making and a lack of consideration of long-term policy ramifications. An example, he cited the Rio Grande National Forest's approval of access for the controversial Village at Wolf Creek.

Cindy Hockelberg of the San Juan Public Lands Center gave a presentation on the SJNF special use permitting framework. All uses except timber, mining, or grazing are considered special uses and need authorization. Examples include ski areas, weather stations, energy-transmission equipment, outfitter-guide services, and organization camps. The type of use determines what type of authorization is needed, e.g., a permit, term permit, lease or easement.

Most Water uses get a Special Use Permit to occupy and use National Forest land for a specific term. A Ditch Bill Easement for irrigation water, in contrast, provides a permanent, fully transferable easement, so long as the water is used for agriculture or livestock. The easement will continue as long as it is used in accordance with its terms and conditions.

Cindy's full presentation entitled "Special Uses on Public Lands" may be viewed at: <http://ocs.fortlewis.edu/forestplan/>, click on Governmental Water Roundtable and click on slideshows

Dan Merriman said the CWCB has entered into an agreement with the other public-lands agency for a long-term lease of water rights, which the CWCB is protecting for instream flow purposes. He asked whether the Forest Service would be willing to enter into similar agreements.

Cindy said the other agency employs leases and rights-of-way more than the Forest Service, which prefers Special Use Permits and such permits typically do not extend beyond 20 years except in the case of ski areas.

Mark Stiles said the Forest Service would entertain the idea of a long-term lease but said it is rare for the USFS to own water rights. Polly Hayes of Region 2 of the USFS agreed that the agency might be interested in the concept if the circumstances were right.

Bypass Flows: Other discussion centered on the issue of bypass flows on the National Forests in general and the case of the Dutton Ditch Pipeline near Pagosa Springs in particular. The Pagosa Area Water and Sanitation District (PAWSD) recently sought a special use permit to install a pipeline in the Dutton Ditch, located on the West Bank of Four Mile Creek, a tributary of the San Juan River. To obtain the SUP from the SJNF the PAWSD agreed to a bypass-flow to maintain trout habitat in the stream. The primary issue was the timing of flows.

Steve Harris of the Southwest Water Conservation District questioned why a bypass flow was required when the project did not change the diversion out of the river but merely involved using pipe instead of a ditch. He said the mitigation requirements for a project should be based on what the impact the diversion has. Mark Stiles responded that National Forest officials cannot violate statutory requirements under the law.

Steve said another issue raised by the situation is that less than 1 mile of National Forest land lies downstream of the diversion point. He said the bypass isn't providing much benefit for National Forest land and the real benefits accrue to somebody else downstream. Mark Stiles responded that this is a planning question that needs to be figured out.

Steve Harris said criteria are needed for SUPs and bypass-flow requirements so people know what to expect when they want a water use on National Forest land. Currently the criteria and process are undefined. He said he doesn't believe there should have been a bypass requirement because the PAWSD pipeline project involved a change not in water use but in land use, to put in the pipeline. In addition, he asked, if it is only affecting 1 mile of Forest land downstream, what's the point of having the Forest put in a by-pass? He also asked what would happen if flows increased by 1 or 2 cfs in the Dutton Ditch. How would that affect the bypass-flow requirement if there were one or more new users?

Dan Merriman asked whether the full bypass environmental impact would have been taken care of by the first SUP or whether the SJNF would go back and say that, because there was another user dividing the same amount of water, the bypass requirement should be distributed among the additional permittees. Mark Stiles said the main concern for the USFS is how much water remains in the stream. He said the issue does arise when you have a change in diversion.

Dan Merriman said the situation could involve the same diversion point, with a change of use meaning that the water wouldn't fall under the original Ditch Bill Easement. Having some overall guidelines in the Forest Plan would be good, he said, but each case also may need to be considered individually to determine it is equitable to make the first SUP applicant bear the full burden for the bypass. Under the CWCB's Instream Flow Program, every case is unique.

Mark Stiles suggested that there could be a component in the Forest Plan that talks about the importance of water to support biological habitat such as trout fisheries, then describes options for dealing with multiple diversions or changes in use. Mark said bypass is a condition of an SUP and the holder of the permit must ensure that the water level is what it should be.

Steve Harris said the habitat standard is not clearly defined. He suggested “standard” is too strong a term for what the current Forest Plan has, and “criteria” might be better.

Dave Gerhardt, fishery biologist for the San Juan National Forest, said there is a minimum standard required for the Plan, a quantifiable amount for habitat that has to be maintained as a Desired Condition.

Dan Merriman said the CWCB uses other methodologies, and their standards protect the natural environment to a degree. The CWCB could have an original appropriation for 10 cfs in a stream and the Forest Service could say it needs 15 cfs and the CWCB could acquire water rights to enhance that stream. Or, if a district is building a reservoir, the flow requirements could be built into the design. Then the Colorado Division of Water Resources can administer the water and protect it downstream, whereas with a bypass flow, once the water leaves the reservoir it’s up for grabs. Dan added that there could be a drought provision to the instream flow so that, in a drought, the amount provided for the Instream Flow Program could be reduced.

Mark Stiles said the use of instream flow raises issues for the USFS – how do they secure it without people feeling they’re being extorted to give water to the state?

Steve Harris said when a situation arises where the USFS thinks it needs a bypass flow, it should trigger a negotiation among water users, the CWCB and the USFS to explore alternatives to a bypass requirement. He said the existing system does not work well. He would like the new Plan to include specific criteria for when an environmental review is triggered.

Ken Beegles, engineer for the Colorado Division of Water Resources, agreed, saying if a project does not cause a change in the historic way water was diverted, a new bypass flow should not be required.

Kelly Palmer, hydrologist for the San Juan National Forest, pointed out that the 2004 MOU between the USFS and the Colorado Department of Natural Resources emphasizes negotiation with all parties.

It was suggested the USFS try to avoid bypass-flow requirements and look at alternatives. However, Mark Stiles said the issue is whether the alternatives meet biological standards. If bypass flows are taken off the table as a tool, the Forest Service may not be able to meet statutory requirements for species of concern.

Dan Merriman said the bypass-flow requirement should be a last resort. The CWCB is fully exercising the water rights it acquires. He said the question has arisen of how that is different from a bypass flow, and said a lot of the difference is just political. From a state viewpoint it's more palatable to work within state water law rather than federal authority. Furthermore, the instream flow can be administered.

Polly Hayes said the administration issue is important, but it can be handled in different ways. In one situation outside Colorado, a new water right was filed for on National Forest land. The USFS had the bypass-flow requirements included as part of the water-court decree so it could be administered that way. Also, instream flows can become part of an SUP authorization, so there are a variety of options for administering water rights.

Dan said a new junior instream flow provides just as much protection as a bypass flow, because it's administrable. If there is a change, the CWCB could object to that new appropriation, whereas with a bypass flow that protection is not available. A donated water right is even better yet because it retains its priority. Furthermore, the CWCB's reach doesn't end at the National Forest boundary.

Dave Gerhardt said the Dutton Ditch application would have been reviewed, regardless of whether a ditch or pipeline was involved, because the permit was up for renewal and under those circumstances the USFS must go through an Environmental Analysis to see if the use is consistent with existing laws. In the Dutton Ditch case, there were certain times of the year when the stream in question was totally depleted and that alone would have triggered an analysis. It is part of the environmental review process to make sure that a permittee is in compliance with regulations and policies, including new ones since that last time the permit was issued.

Ken Beegles said that could mean almost all the current diversions would be out of compliance. Mark Stiles said that ensuring compliance with new conditions and laws is why SUPs have a set time length and are revocable.

Cindy said SUPs define exactly what the permittee is required to do. If a diversion point is going to be moved, or heavy equipment used, or if there will be a change in alignment of a ditch, the USFS must be notified and a new authorization is required.

Steve Harris said the USFS should not need to look at the "global perspective" for a small change such as a change in alignment. Decisions should be based only on the impact on National Forest resources. He reiterated that the Forest Plan should contain specific criteria on what decides the level of review and offered to draft ideas as a starting point for discussion.

Mark Stiles said the issues will never be so clear-cut. Air quality is an example. If the USFS has a request to authorize 300 new natural-gas wells, it has to consider cumulative impacts on air quality, not just the impacts of the 300 wells.

Dan Merriman said he gets the sense that the situation pits water users against the USFS, and that needs to change. He suggested looking at laws creatively to see how they can work to allow things to happen, rather than preventing things from happening. Steve Harris suggested that the time and energy that goes in to non-essential permitting conflicts could be used to work collaboratively on making positive headway on meeting needs on high priority streams.

Steve Fearn, representing San Juan County, asked if there is an inventory of streams that need more flow. Kelly Palmer said a number of people have been working to identify areas that may be in conflict because of a shortage of water. The information is tabulated, but there is currently no “short list” of high-priority streams.

Mark Stiles said the GMUG forest decided to deal with streams differently depending on what percent of their flows are appropriated. If they are over-appropriated, the National Forest sets goals to enhance the flow.

Eric Janes said a piecemeal approach to water shortages as use authorizations or amendments is not a good way of doing business. Water districts and other entities such as the Colorado Division of Wildlife deserve a longer planning range because they need to see years in advance where hot spots are going to be. He said federal land managers should give thought to that in terms of how they organize their inventory.

Mike Preston suggested the development of specific situations to analyze for a second-cut discussion of the permitting topic at Meeting 6 on October 5, 2005:

- Steve Harris will come up with a short list of projects that came out of SWSI which could require SJPLC permitting.
- Kelly Palmer will provide a short list of examples of 4-5 priority streams that are high value and potentially short on water.
- Cindy Hockelberg will develop a representative short list of various permits that have been issued in recent years that could benefit from a collaborative approach.
- John Taylor and Steve Fearn can represent the views of local water users.

The above examples will be used to analyze options for creative and collaborative options for permitting and flow protection issues as follows:

Situation, Impact, Need	Option A	Option B
SWSI Examples	Benefits Concerns	Benefits Concerns
Existing Permit Case Examples	Benefits Concerns	Benefits Concerns
High Value, Water Short Streams	Benefits Concerns	Benefits Concerns

Plan for Meeting 5: Wild and Scenic Rivers, Wilderness, Federal Reserved Water Rights September 7, 2005.

- 1. Wild and Scenic Rivers** – Set up presentations Kay Zillich, SJNF and Roy Smith, State BLM will do set up presentations followed by roundtable discussion.
- 2. Wilderness** – Thurman will give a set up presentation followed by Roundtable discussion.
- 3. Federal Reserved Water Rights** – Steve Harris and Kelly Palmer will overview the inventory process that they were involved in and highlight some of the more challenging examples.

Mike said the Water Roundtables will be moving toward fewer presentations and more time devoted Roundtable discussions. After the September 7 meeting the last known major issue to be brought up for first cut discussion is water quality. The Water Roundtables will continue at least through December, with the goal of trying to finish material for the Forest Plan Revision by then. **The next Water Roundtable Meeting will be on Wednesday, Sept. 7, at 10 a.m., at the San Juan Public Lands Center, 15 Burnett Court, Durango.**