

**San Juan National Forest/Public Land
Management Plan Revisions
Governmental Water Roundtable
Meeting 14– Aug. 2, 2006
Summary**

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

Seated at the Roundtable:

Bruce Smart, City of Cortez
Scott Brinton (alt), Colo. Div. Water Res.
David Graf, Colo. Division of Wildlife
Dan Merriman (alt), Colo. Water Cons. 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 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
Eric Janes, for Colo. Sen. Isgar
Ann McCoy Harold, for U.S. Sen. Allard
Ann Brown, for U.S. Sen. Salazar
John Whitney, for U.S. Rep. Salazar
Kay Zillich, SJPLC
Jamie Krezelok, SJPLC
Mely Whiting, Trout Unlimited
State Senator Jim Isgar

DISCUSSION OF DRAFT WATER LANGUAGE FOR PLAN REVISIONS:

Mark Stiles, Manager of the San Juan Public Lands Center (SJPLC), announced that starting Aug. 2, people will be receiving copies of the San Juan Basin Coalbed Methane Final Environmental Impact Statement which reviews a proposal for approximately 200 new gas wells, particularly in the HD Mountains. The Agency will issue its decision 31 days from Aug. 2. SJPLC received 68,000 comments on the drilling proposal.

The EIS involves water in two key ways:

- There is the potential for depletions of up to 200 acre-feet per year, especially from the Piedra River. As drilling gets closer to the outcrop, the potential for the impact to water increases.
- There is the potential for the loss of vegetation and contamination of wells tied to methane seepage.

The EIS will dominate Agency discussions for the next couple of weeks.

Mark said SJPLC personnel are doing their best to keep the Water Roundtable members apprised of what the San Juan National Forest (SJNF) is doing and to provide them with draft water-related documents as they become available. It helps the Agency to receive comments and feedback early on.

Kelly Palmer, a hydrologist with the SJPLC, said SJPLC had received comments from three Water Roundtable members regarding the draft documents from the July meeting and she has incorporated those suggestions wherever she could. Some of the changes could not be used because certain statements have been approved by higher-ups within the Agencies.

Desired Future Conditions: The group moved to a discussion of the working draft of Desired Future Conditions (DFCs).

Janice Sheftel, Attorney with the Southwestern Water Conservation District (SWCD), said she had understood that DFCs represented a broad vision, not a measurement criterion for specific actions. The fact that some aspirations may not be achievable at all, isn't acknowledged in the draft.

Thurman Wilson, Assistant Manager of the SJPLC, said DFCs are indeed aspirational and an expression of how the Agencies want the San Juan Public Lands to look. In some instances, the DFCs might be close to reality on the ground, but in others — such as mined land reclamation — it might take a long time to achieve DFCs, or they might never be achieved. However, DFCs should be reasonable and achievable since a monitoring aspect is involved. As the SJNF and Bureau of Land Management (BLM) SJPLC implement the Plan Revisions over a number of years, they must move in the direction of DFCs.

Mark said it's important to state clearly that DFCs, while achievable, are not standards that *must* be achieved.

Mely Whiting, Attorney with Trout Unlimited, said a 1998 U.S. Supreme Court decision in the case, Ohio Forestry Association, Inc; v. the Sierra Club, affirmed that Management Plans are expressions of wishes and goals that may not be achievable and are not enforceable. She said this might alleviate some of the concerns of the water-users.

Janice said case law may change and, therefore, the water users would like the Plans to express Mark's statement on their own.

Water and Aquatic Resources: Under the DFC heading "Water and Aquatic Resources," Janice voiced concern about the following statement:

Water quality for impaired water bodies on the State 303(d) list would move toward fully supporting State designated beneficial uses.

She noted that McPhee Reservoir has acceptable water quality which meets State standards, but the issue is that some species of large predatory fish within the Reservoir have high levels of mercury. No one is certain where the mercury comes from. It needs

to be acknowledged that some aspects of meeting water quality standards may be out of human control.

Kelly said a water quality issue may seem so undefined that nothing can be done about it, but several agencies are looking into the local causes of mercury contamination. Such efforts would be considered as working toward helping move the water body toward meeting standards. The DFC merely states to “move toward” — not that standards must actually must be achieved.

Janice suggested that something be added about identifying sources of pollutants that cause problems.

Thurman said it would be cumbersome to add qualifying words to every statement under the DFCs. It would be simpler to put the qualifying language at the beginning of the DFC Section.

Mark agreed, stating that in DFCs it’s preferable to avoid mentioning actions that may need to be taken.

Steve Harris of the SWCD disagreed with the following language in the fourth bulleted statement, because the statement as drafted seems to set a higher standard:

State Outstanding Waters on the San Juan Public Lands maintain existing high levels of water quality.

He suggested changing the language to read “maintain levels of water quality necessary for State Outstanding Waters”.

Kelly said the Agencies try to maintain or improve water quality.

Eric Janes, representing Colorado Sen. Jim Isgar, said that salt-loading in the Colorado River Basin should be mentioned as a special instance. He suggested that the language state that for appropriate soils, the BLM will minimize non-point source mobilization of salts.

Kelly said that such language could be added under Strategy. Mark said it could be added to DFCs as well and it is mentioned elsewhere in the Plans.

Stream Channels and Floodplains: Roundtable members discussed the fine points of language under this heading. Steve Harris expressed concern about the term “historical ranges of variation” in the first bulleted statement:

Stream channels and floodplains are in proper functioning condition or are moving toward a stable condition consistent with the existing climate, basin morphology, geology, soils and vegetation and historical ranges of variation.

He noted that the definition of “historical ranges of variation,” as provided by the Agencies for the Plan Revisions, is “Spatial and temporal variation in various ecosystem characteristics when the influences of Euro-Americans were minimal.” He questioned

whether the language constituted a mandate to return the Forest to its condition before people arrived, and how it could even be ascertained what those conditions were. The language appears to indicate an Agency attempt to get everybody off the Forest. This is a blatant expression of that attitude.

Thurman stated that if an ecosystem has been functioning for centuries it is more likely to continue doing so if historic conditions are continued than if the DFC is outside the historic range. Although the concept of “historic range of variation” is helpful, it cannot be used too frequently in the Plans or to imply that the Agencies will always move in that direction.

Mark said that if that term isn’t used, the plan may be viewed as setting goals that are not achievable, because the condition never existed. The same definitions must be used throughout the Plans. There can’t be different definitions for terms used only in Plans sections regarding water.

Steve Harris said the definition *should* be changed throughout the plan.

Dan Merriman, Administrator of the Colorado Water Conservation Board’s (CWCB) Colorado Stream and Lake Protection Program, said this issue is fundamental to the Plan Revisions because it is a building block for determining baseline conditions.

Mely said the definition appears to be taken from a 2003 study in a regional manual and is presumably being used in other regional forests. She said that to tinker with the definition on the SJNF could affect regional policy.

Kelly said some terms used internally by the Agencies are institutionalized, but people not familiar with Agency nomenclature may be concerned about their use. There has to be a happy medium where the meaning of a term is understood in context. The term “historic range of variation” is pervasive in the literature and Agency documents.

Mark said the Agency will find a way to clarify that the term does not imply preclusion of development.

Discussion continued concerning other bulleted items. A lengthy discussion involved the third item, which states:

The regime of water elevations in streams include bank-full and over-bank flows that access the floodplain regularly where floodplains are within the probably natural geomorphic state of a stream. For all streams, allow the effective transport of sediment and water such that long-term equilibrium is maintained within the probable natural geomorphic state of the stream.

Steve Harris questioned several phrases in that item. He asked how “equilibrium” will be defined.

David Graf of the Colorado Division of Wildlife said it should incorporate the concept of dynamic stability.

Kelly said she may include language to explain that the bank-full and over-bank flows (peak flows) generally occur every 1.5 to 2 years

Steve also voiced concern about the phrase “the probable natural geomorphic state of the stream”, because Agency personnel performing an evaluation may set the bar and choose something that never occurs.

Al Heaton, representing Dolores County, said the concern of water-users is that individuals within the Agencies can interpret such language to create problems.

Mark said the problem with defining everything in concrete terms is that the Plan ends up as a detailed handbook.

Kelly noted that the Forest Service’s new planning regulations call for general, visional, and aspirational statements, rather than specific delineations of policy. While the old Plans would have contained standards and guidelines, the new ones will not. In writing the definitions, she tried not to use her own value judgments but to take definitions from textbooks and other documents.

Kelly also said that State and Federal laws are written to maintain or improve water quality. The Agencies cannot write anything in their Plans saying it is acceptable to degrade water quality. Actions that would result in degradation are not allowed, except in very specific cases.

Concerns were then expressed over the meaning of the eighth statement,
Upland watersheds do not contribute to stream channel, riparian or wetland degradation.

Kelly responded that, for example, if there are multiple roads within a watershed, they shouldn’t have a negative impact on that watershed.

Steve Fearn, representing San Juan County, expressed concern about how this might be applied to water depletions. There are a number of watersheds on private land in San Juan County where development will likely occur. He asked whether someone would need a Special Use Permit to develop a water right on such private land because Agency personnel believe depletions will affect a downstream riparian area.

Kelly said that these statements apply to Federal land by implication. This is a very standard statement for Plans across the nation.

Thurman said the statement applies mostly to actions the Agencies take, such as timber sales. There are good reasons to include such a statement in the Plans.

Steve Harris said the statement could be interpreted to mean that the Forest Service will not issue any more Special Use Permits on the SJNF.

Mely responded that this type of language has been used for years. The biggest contributor to sediment is off-road vehicles, but she has never seen language such as this used to close a road, prevent oil and gas drilling, or shut down an SUP. It is not a “must”, it’s a vision statement.

Facilitator Mike Preston said it appears that in this statement the Forest Service was thinking about sediment, while water-users are concerned that it refers to water depletions.

Janice expressed concern about the second bulleted statement in the section on “Water Conditions/Watershed Scale.” Her concerns go back to those expressed earlier about the eighth bullet under “Stream Channels and Floodplains”. It is difficult to know when springs and seeps are within their historic ranges.

Kelly said in some places the Agency does know of historic ranges from monitoring efforts.

Janice asked whether the term “within historic ranges” is the same as “historic ranges of variation”. Mark said the terms should be changed to “known historic range”. Thurman said they are two different things.

Aquatic Habitats, Riparian and Wetland Ecosystems and Biota: Steve Harris expressed concern about the use of the terms “fully” and “full” in places under this heading, e.g., “Aquatic ecosystems are fully functional. . .” Mark said such words could be dropped.

Steve also expressed concern about the use of the terms “thrive” and “vast” in the third bulleted item:

Native and/or desired sport fisheries thrive in the vast majority of systems historically capable of supporting such fisheries.

He questioned whether fish must be returned to all systems “historically capable” of supporting them.

Mark stated that “thrive” is a word commonly used in such documents. The pitfall of saying streams “historically known to have had certain fish” is that streams may then be limited to having only fish that were present historically and that may leave out certain sport fish.

Thurman said the SJPLC is certainly not trying to shut down all human activities on public lands. Activities such as livestock grazing, timber sales and recreation are part of the Agencies’ mission. Streams, forests and rangelands need to be healthy and functioning well for such activities to continue. The agencies want to show that they support many uses.

Steve Harris asked where Thurman's statements appear in the draft documents. Kelly responded that the whole Plan Revisions must be reviewed to obtain this understanding.

Mely said there is an entire section that specifies water rights cannot be abrogated. Thurman said the plan may need to include a statement about multiple uses in the water-related section. Kelly said she will discuss establishing and maintaining a reasonable balance between ecosystem health and water development under the "Socio-Economic" heading.

Roundtable members also questioned references to "desired fish" and desired aquatic species", asking what does the word "desired" mean. Mely responded that the use of the term gives flexibility.

Kelly said some statements were taken from other Forest Plans. The goal is to have various Plans resemble each other. Either a native or non-native species might be desired. She will try to clarify the language.

Janice also asked about the meaning of the term "natural potential condition" in the seventh bulleted statement under "Aquatic Habitats". Kelly said the term was taken from a manual that discusses riparian conditions. The definition of "potential" came from the same manual.

Mely said the wording represents specific language and precise scientific terminology from a manual that took years to prepare. Removing one word can cause a major change in meaning. She advised using caution. The Agency may have to explain why it is departing from scientific concepts.

Janice said she remains concerned about the term "potential" as defined. Mark responded that Agency officials had already agreed to add something to the Vision section about using water for multiple purposes.

Roundtable members also discussed the eighth bulleted statement,
Riparian plant communities are healthy and self-perpetuating, where native riparian species are dominant and exotic vegetative species or noxious weeds are rare or absent and a variety of age classes are present.

Steve Harris asked whether non-native species are always undesirable. Mark said the Forest Service does not want exotic species to dominate because they cause wildlife-conservation issues. They should either be absent or few in number. .

Thurman said that while exotics are sometimes deliberately introduced, this causes problems down the road.

Dan said the Forest Service in some situations has required native grass to be re-seeded after a land disturbance, which can be 100 times more expensive than non-natives and difficult to establish.

Mark responded that occasionally non-native grasses, such as cereal ryes, are used in re-seeding, but native species are wanted in the long-term.

It was agreed that the eighth statement and the 10th statement were very similar.

Socio-economic: Ann McCoy Harold, representing U.S. Sen. Allard, said the second paragraph under this heading seems to imply that people's needs come last.

Steve Harris said the section doesn't discuss money or other socio-economic factors, but focuses more on aquatic habitat. He is still concerned about the concept of a "baseline condition". The benchmark should be whatever is currently in a creek, not the creek's "historic potential."

Mark said there is protective language regarding water rights under the Strategy section. The Vision and DFC portions of the Plans need to describe what the Agencies hope to achieve. These portions should not under-sell what the Agencies would like to see on public lands, such as clean water and sustainable forests.

Thurman said the Vision section should reflect somewhat the tone of the Strategy section.

STRATEGY: The Roundtable members discussed the working draft of the Strategy section.

Kelly said much of the first 2 1/2 pages is taken from other documents dictated at a higher Agency level and cannot be changed very much. Mark said the material came from the Agency's Four Cornerstones for managing water resources on National Forest lands and that the Four Cornerstones could be included as an appendix.

The section titled "Other Operating Principles" incorporates material from the April 16, 2004, Memorandum of Understanding between the Forest Service, the Colorado Department of Natural Resources, and the CWCB. Mark said he would rather not simply refer to the MOU because its principles may be changed or superseded by later MOUs. He would rather incorporate the philosophy of the MOU directly into the Plans.

Eric said Senator Isgar wanted to know where new authorizations are covered. Mark said a bulleted item could be added to cover new facilities.

Mark and Kelly said time is running out for the Agencies to receive comments on the water-related language in the Plan Revisions. She and others are working on the writing on an ongoing basis. Comments may be sent to her at kapalmer@fs.fed.us or Thurman at twilson02@fs.fed.us.

WILD AND SCENIC RIVER INVENTORY

Mark said talks about Wild and Scenic Rivers (WSRs) are continuing across Colorado. He reiterated that the Dolores, West Dolores, Pine, and Piedra rivers were all previously found Suitable for WSR designation and recommended to Congress.

Mark said the draft list of Eligible rivers on San Juan Public Lands has been winnowed from 56 to 42 or 43 stream segments. Some segments that were originally included in the Eligible list because of black swift nests were removed because other segments have more significant concentrations of black swifts. Some segments that were defined as eligible for native Colorado River cutthroat trout (CRC) were also removed where other streams have better CRC for Outstandingly Remarkable Values (ORVs). The draft list will form the basis for a Suitability analysis in the Plans EIS if the Agencies proceed to that step. Many of the segments on the Eligibility list will probably not make the cut for Suitability. Both the BLM and Forest Service prefer to perform the Suitability analysis in the Plan Revision.

Mark said the Agencies have a mandated checklist for deciding whether a stream segment is Suitable. Suitable factors include the percentage of Federal land involved; existing structures on the stream; water-rights issues; and other available protections for the stream's ORVs that might be more appropriate than a WSR designation.

Everything concerning WSRs will be in an appendix to the Plan Revisions. There will be a minimum period of 90 days for public comment on the draft Plans. Mark said he envisions that the Water Roundtable members will help conduct public meetings and discuss Suitability criteria during the public comment process.

Thurman said Thanksgiving is the target date for having the draft Plan Revisions available, but that the withholding from release of the Grand Mesa-Uncompahgre-Gunnison (GMUG) National Forest plan may impede the process. Some of the elements of the SJPLC Plan were patterned after the GMUG's draft Plan, which are being criticized by Regional, State and Washington offices.

Dan asked what would happen under the Suitability analysis if other protections might be available for a particular ORV, but those protections can't be made available right away, e.g., a future wilderness designation.

Chuck Wanner of the San Juan Citizens Alliance said the Agency should focus on protecting streams with mechanisms that are realistic, not pie-in-the-sky.

Mark said there are a number of ways the Agencies can deal with Dan's issue in the Plan decision. If a segment is found Suitable but a wilderness designation would be a better way to manage it, the Agency could write the Plans so the Suitability designation will disappear if a better protection option is established.

Dan and Chuck both voiced concern about whether there will be enough time for a full public discussion regarding the possible Suitability of all Eligible stream segments.

Mark said the alternative for the Agencies, if the Suitability analysis is not performed in the Plans EIS, is to prepare such an analysis on a case-by-case basis every time there is a proposal for a significant development on any Eligible stream. In that case, the applicant would probably bear the cost for the process. He would prefer to analyze all the streams in context as part of the Plans Revision process.

NEXT STEPS:

Janice asked if there will be another chance for the Roundtable members to comment on the draft water language before the draft Plan Revisions go public.

Thurman said funding is running out for the planning process and the Agencies must move forward rapidly. However, there may be time for another round of comments from the Roundtable in October. Mark suggested meeting after the language is ready for review.

Kelly said that the specific comments she heard today were extremely helpful. Some of the broader comments will require some thought.

Janice and others expressed appreciation for Kelly's patient and receptive attitude in listening to the comments. Steve Fearn thanked the Forest Service for having the Water Roundtable meetings.

Mark said the members have had more influence than they realize.