

**River Protection Workgroup for the Animas River
Summary – Meeting #13, July 26, 2012
Kendall Mtn. Rec. Center
Time: 5:30 to 8:30 p.m.**

What happened at this meeting?

- Overview of black swift and fens.
- Cement Creek issues and concerns discussed.
- Values and protections for Upper Animas section discussed.
- Pros and cons of National Conservation areas and Wilderness zones debated.
- Consensus achieved on protecting private property rights.
- Mining interests and overregulation discussed.
- Value of various protection tools discussed.
- Decision made to hear presenter on minerals and energy.
- Many additions to spreadsheet segments. (see attachment page)

Next meeting:
Sept. 13, 2012
Kendall Mtn. Rec Center
5:30 p.m. to 8:30 p.m.
(no meeting for August)

Facilitator Marsha Porter-Norton reminded the group to stay focused on the issues, not people. She said group members need to realize there are different opinions and that people need to respect those opinions.

South Mineral Creek is home to the black swift, a unique bird that uses waterfalls as habitat. Forest Supervisor gave an overview of black swift management status, and also presented information on iron fens.

Black swift

The black swift is not a common bird in general. Its nesting habitat is extremely specific to locations behind waterfalls. The birds nest behind waterfalls in small colonies and it is thought that the moisture helps to bind the nest material together. The waterfall offers security screening.

Management focuses on preserving the waterfall and the cliffs to protect the swift's habitat. The bird and its habitat are managed by the forest as a species of special interest, which means it is protected from adverse impacts.

Twenty percent of all swift populations in Colorado are located within the San Juan National Forest. Local areas include South Mineral Creek, Treasure Falls, and along the West Fork of the San Juan River.

A key population of black swifts live around Engineer Mountain where there are a lot of waterfalls. Stiles said that anything that diminishes water supply for waterfalls or takes away cliffs would have a negative affect on the bird.

Steve Fearn, of SWCD, said flows in swift habitat could be worked into the instream flow program as a possible approach for protection.

Fens

Fens are a unique type of wetland or bog located within the Animas watershed. Fens are a water-fed system and remain saturated throughout the year. Forest material, like leaves and dirt fall into the fen, making it acidic. A type of peat forms on fens.

Stiles said the key to a healthy fen is saturation, and no interruption of the water coming in and flowing out should occur, or the fen will dry up.

He explained the threat of trails, roads and off-road vehicle impacts on fens. Driving over these sensitive water features can cut off underground seeps and springs that feed the fen. Compaction in the summer, or on snows covering the fens in the winter, can permanently damage them.

Maintaining the flows to the fens is a key management concern, Stiles said. Forest staff tried to reclaim damaged fens in the Chattanooga area by removing a ditch to see if the water would return and restore the fen.

It was asked how fen management impacts mining claims. Stiles said it is complicated, but the BLM and Forest Service has authority to work with valid claims to mitigate mining impacts on fens. He said the standard upheld for fens is unnecessary undue degradation, but not to the exclusion of mine access.

Roy noted that when a mine area has wetlands like fens, expect more government employees to show up. He said miners don't hate fens, and noted their acidic nature.

Accumulation of forest debris in fens contribute to their low PH, but other fens can be less acidic. Plant communities around fens have evolved to survive in the acidic conditions.

Steve Fearn asked for an inventory of fen areas the forest service does not want to see disturbed. Identifying which fens are most important would be helpful to find solutions for protection of those areas.

Stiles said the Chattanooga fens were the largest in the area. Jimbo of San Juan Citizens Alliance, noted that the Ophir Pass area also has a population of fens that are undergoing a restoration project.

Todd, a mine and minerals professional, said mines in wetland areas are extremely regulated by the Army Corp of Engineers. Operations in wetlands need a 404 permit outlining procedures and mitigation requirements, including replacing wetlands that have been filled in or destroyed. He added that fines are commonly associated with wetlands and mine companies.

Regulations and enforcements protecting fens were to be added as protection in place to the spreadsheet.

I. Cement Creek

A. Issues, concerns and ideas of protection were brainstormed by the group for Cement Creek.

It was noted that this tributary of the Animas does not qualify for Wild and Scenic suitability status under the forest management draft plan. It has a long history of pollution from mine activities, and is in the process of undergoing a reclamation project.

B. Cement Creek details:

- Short section goes through Silverton.
- Does not include instream flows, a set flow amount established through the CWCB for maintaining a healthy stream.
- There are reportedly protections in place for the creek in the San Juan county land use code.
- Not suitable for Wild and Scenic river status, also not included in the scenic overlay for San Juan County.
- It is included in the Animas Stakeholder area, a group that works to protect the watershed long term.

It was asked why Cement creek was even being discussed because it is not considered suitable for Wild and Scenic status. Stiles said it was considered eligible at one point but the designation was not carried forward in subsequent draft management plans. As a tributary of the Animas, the group is willing to discuss Cement creek to get a bigger picture of the overall health of the Animas watershed.

Additions to spreadsheet

Protections in place on Cement Creek were adequate, a group member remarked, and the "status quo" of current protections for the creek was to be added to the spread sheet under ideas for protection.

It was also voiced that protections in forest management regarding iron fens in the vicinity of the Cement Creek drainage should be listed in the 'protections in place' section of the spreadsheet.

It was also suggested that winter recreation should be added to the list of values for Cement Creek, including skiing and snowmobiling.

Abandoned mine mitigations/reclamations in the Cement Creek area should be added to the protections in place and ideas for protection.

Ray added that upgrades made by irrigators in the area have improved water quality in Cement Creek and that should be added into the current protections as well.

He noted that the area would benefit from a Good Samaritan law, a type of legislation that allows local mitigation efforts to be made with less liability and red tape.

Steve Fearn reported that a possible Superfund site status for Cement Creek was backed off by environmental officials as long as they see progress in recovery on the polluted creek.

It was reported that there is potential for the lower end of Cement Creek to be transferred from the BLM to San Juan county.

C. Instream flow status

Discussion took place regarding instream flows on Cement Creek and fens.

Currently the CWCB does not have instream flows on the creek. Some portions of rivers and streams do not qualify. ISFs typically require more fish habitat than Cement creek has, but ISFs could be useful to help maintain local bogs and fens for the long term. ISF's are intended for the natural environment overall, Stiles said, and should be considered.

D. Private property

Todd reminded the group of private property interests in the region of Cement Creek. He said most of the fens around the creek were on private land, and therefore outside federal jurisdiction. Ray agreed that there is a concern by private land owners of government interference. Marsha said ISF's are something to look at but there is no intention of telling people what to do with their private property.

E. Good Samaritan Law/Clean Water Act

The group discussed private mining claims in the Cement Creek vicinity and the need for Good Samaritan laws allowing local mitigation without risks of fines and lawsuits.

John Fergusson, a long time miner, said mine permitting and regulations are a protection in place that covers a lot of environmental issues and mitigations. The rules within the Clean Water Act also regulate the mining industry, Todd added, and should be added as a protection in place as well.

Kevin lamented that the Clean Water Act makes it impossible for local governments or organizations to conduct clean up operations in old mining areas.

John Taylor agreed the CWA's strict regulations ironically work to prevent local efforts to clean up water resources.

There has been interest in the area for a water treatment plant to improve water quality and group members said that opportunity should be considered. Overcoming red tape of the CWA and other government agencies was seen as a significant barrier for progress by some in the group.

Wendy McDermott, of the San Juan Citizens Alliance, expressed the successes of the Clean Water Act overall. As a result of the Act, waters in the U.S. are much cleaner, including on the Animas River between Silverton and Durango.

II. Animas thru town

Next, Marsha directed the group to segment #6: Animas up to Cement Creek (small segment in town) She said that some of the values from segment #5 (Upper Animas above Cement Creek) should be pasted into the values for segment #6 because they overlap. Neither segment has been found suitable for Wild and Scenic by the forest service.

Clean Water Act is to be added to protections in place for segment #6, and status quo is to be added into the ideas for protections list.

It was noted that the BLM is conducting clean-up operations on the Animas River in town, especially around an area of a historic community dump.

Meeting break

III. Upper Animas Section #5 discussion

Jeeping was added as an economic value to the region as well as the Old 100 Mine tour.

It was clarified that the headwaters of Cunningham Gulch begins in a Wilderness Area.

A. Mining interests

Todd emphasized that the headwaters of the Animas are a key mining resource locally and nationally for important minerals. He said mineral wealth in the region is a strategic deposit and mining the metals was important for national security and U.S. energy independence. He said if local minerals are not mined domestically the market could be dominated by foreign countries. He said he has a presentation about the area's importance, and would like the group to hear it.

Jimbo, of San Juan Citizen's Alliance, questioned the validity of the statements and asked about published documentation. He said his research has not shown a domestic crisis for minerals.

Todd said his presentation explains it all and mineral samples he has studied show high grade metal reserves, including for silver and gold.

Other members of the group expressed similar views on the importance of mining as a driver of the economy.

It was thought that ISF's were within the upper Animas drainage, but were mostly on tributaries. The exact data was to be looked into.

Status quo is to be added to ideas for protection for upper Animas.

B. NCA discussion:

The group debated whether a National Conservation Area or similar designations would be suitable for the Upper Animas.

John Fergusson said he was opposed to a National Conservation Area for the upper Animas because the designation is too restrictive. He is concerned that an NCA would include a mineral withdrawal and restrict access. He said citizens have a right under mining laws to enter public lands and make mining claims. Current protections under the state and federal mining rules are adequate, he said, adding that Colorado mining is the most regulated industry on the planet.

Ken said he also opposes NCAs because they limit roads and motorized usage, and do not protect economic values of the Silverton region.

Supporters said an NCA could be custom crafted to allow mining, recreation, roads and development.

For example, as an alternative to NCA, it was explained that the Hermosa Creek workgroup developed a consensus for a Hermosa Watershed Protection Area that allows a mix of multiple use and high levels of conservation, including Wilderness, in sensitive areas. The bill has been introduced in Congress by U.S. Sen. Michael Bennet and Mark Udall, D-Colo.

Some members of the group expressed suspicion and distrust of NCA bills because once they go to Congress they get modified from their original version agreed upon by stakeholders.

Jimbo said the Hermosa special management bill was in close alignment with the original. But others disagreed.

Marsha said there are some things, like what Congress will do, that the group can't control. She also believes the Hermosa watershed protection legislation closely resembles what the working group had envisioned.

Wendy said the specifics of NCAs are negotiated by stakeholders in regards to roads, trails and business development, and are a possible solution for sustaining various values long term.

Marsha said a mineral withdrawal for an NCA is not automatic.

Fearn said if the final Hermosa bill does not reflect what was originally agreed upon by the group, then it should be dropped. Working closely with congressional sponsors of bills is important and they understand keeping with local recommendations is key to a bill's survival.

It was added that bills do have a tendency to change as they move through the legislative process and receive input from senators and representatives with wide ranging opinions.

C. Mining/Local control

Ray returned to the topic of mining importance. He said rare earths, used for super conductor experiments and other breakthrough studies in physics, had to be imported from China. Becoming totally dependent on imports of rare earth minerals was a matter of national security and mineral withdrawals in the area would make matter worse.

John Ott said he thought the protections in place were adequate and an NCA wasn't necessary. Marsha asked him to elaborate, and he said he feels NCA's restrictive nature threatens economic values locally.

Chuck Wanner, of TU, said natural values are an economic force as well and inaction to preserve them can have negative impacts also. Not acting as a local body does not equal local control, he said. During the Hermosa process, being active in promoting protections for different values, provided the group with local control.

Todd pointed out private interests in the area. He said 1500 patented claims have been transferred to private property and their primary value are the minerals underground. Access to some claims is across federal lands, and any restrictions on access would take away the value of private property with mining claims.

Bob MCloud stated that local control is difficult for NCAs because they are managed by the forest service or BLM. Locals can make recommendations but do not control the management.

D. Government concerns

Some in the group expressed general distrust in the federal government's efforts to work in the best interests of the local community. Lack of local control is seen as a problem.

Kevin, a Silverton resident, said government red tape and bureaucracy is an obstacle to local interests and that some federal employees seem to have one-sided views or are pushing a certain agenda. He said too many layers of government leads to a lack of local control resulting in bad decisions being made by people who are not familiar with the area.

Ray noted that 99 percent of income comes from people doing something on private land. Skip said the federal government doesn't care about unintended consequences of its laws and there is a level of uncertainty in communities when local issues are decided at a federal level.

Another member of the group said that the issue of overregulation goes both ways. He remembers when there were no regulations and it resulted in a lot of clean-up work later on the Animas River.

Kevin said recent wildfires show mismanagement of local forests. He said the federal government should allow more thinning of overgrown forests in Wilderness areas to reduce the fire danger.

Stiles said WSAs and Wilderness areas are managed for natural processes to take place, that includes fire and beetle killed trees.

It was mentioned that river sections deemed suitable for Wild and Scenic designation are similar to wilderness study areas being a precursor to a Wilderness Area. One key difference however is that WSAs are statutory, where suitability for Wild and Scenic can change with new management plans. Only Congress can approve a new Wilderness Area or remove a WSA.

Local control is added as a value on the upper Animas segment of the spreadsheet.

Marsha said that the group needs to focus on what they can influence within the process and keep the conversation respectful. Some threats the group could control, while others were out of their hands.

She said protecting private property rights was a universal value for the group.

Consensus: The group agreed that private property rights are a value and deserves protection.

IV. Wilderness discussion

Wilderness Areas, such as the nearby Weminuche and Uncompahgre, for the most part ban development, large dams, roads, mining, drilling, logging and motorized or mechanized equipment.

Wilderness Study Areas are in a kind of administrative limbo. They must be managed to protect wilderness qualities, generally don't allow mining, road building and logging, but do not have the full protections or funding of a Wilderness designation.

Chuck said there are four WSA's in the vicinity of Silverton and San Juan County. The total acreage was thought to be 5,400 acres.

Todd said there are problems with historical access into private inholdings that must cross WSA's. It was also a concern that mineral resources that fall within WSAs cannot be accessed. Mining advocates in the group support lifting public-land restrictions on mining within areas of high mineral development potential. Stiles said he was unaware of access issues into WSAs. He said they are closed to cross-country travel (off road) and by definition have no roads. He said during forest inventories, areas with roads are weeded out and do not qualify as Wilderness Study Areas.

There is a long-standing debate on what constitutes a road, especially historic ones, which sometimes fall under a legal category (RS2477) that predates current forest laws, thereby allowing continued public use.

John Fergusson said restricted access to WSA's and Wilderness Areas denies the public use of those areas, especially for the old and disabled who rely on motorized transport.

Wendy, of San Juan Citizens Alliance, said the untouched nature of WSAs and Wilderness Areas represent a national value that add to a preservation legacy that benefit future generations. She said Wilderness Areas can be negotiated to allow valid, existing rights and is a tool worth considering.

Long-term protection is added as a value for the upper Animas.

V. ACEC

The special designation called Areas of Critical Environmental Concern (ACEC) was discussed as a possible protection tool.

It is a forest plan tool, not a congressional action. It is considered a flexible management designation to protect specific values and uses.

Wendy said ACEC's represent a good balance for protecting various values. It respects the values of mineral development and other land uses, but also identifies more sensitive areas needing protection. It is not a broad, sweeping regulation on the landscape and allows for activities important to the community. Stiles said the Chattanooga fen area could be a good candidate for an ACEC.

Minerals/Energy presentation

The group discussed whether Todd should give his minerals and energy presentation, expected to take a half hour or so.

It was suggested that the presentation be done along with a state geologist to provide balance and context.

Chuck said in the spirit of an open forum, all presentations should be available in a printed form so it becomes part of the official record.

Wendy said that mining is not the only economic force in the area. She suggested a presentation by an economics panel that included representatives from recreation, tourism, boating, motorized and non-motorized interest groups.

Marsha said it was important to keep the playing field fair and balanced. Communicating different viewpoints is a critical part of the grassroots process. She said there seemed to be support for the presentation and it would be scheduled. Copies of the presentation would also be available.

Meeting adjourned 8:40

Next meeting Sept. 13

Next page is an attachment

Questions and additions to the spreadsheet from July 26th meeting.

Questions:

1. Steve Fearn asked for an inventory of fen areas the forest service does not want to see disturbed. Identifying which fens are most important would be helpful to find solutions for protection of those areas.
2. It was thought that ISF's were within the upper Animas drainage, but were mostly on tributaries. The exact data was to be looked into.

Spreadsheet additions:

1. Regulations and enforcements protecting fens were to be added as protection in place to the spreadsheet.
2. Under the Cement Creek and Animas segments, 'keeping the status quo' is to be added under current protections and also under ideas for protections.
3. Local control is to be added as a value for all segments.
4. It was also voiced that protections in forest management for iron fens in the vicinity of the Cement Creek drainage should be listed in the 'protections in place' section of the spreadsheet.
5. It was also suggested that winter recreation should be added to the list of values for Cement Creek, including skiing and snowmobiling.
6. Abandoned mine mitigations/reclamations in the Cement Creek area should be added to the protections in place and ideas for protection.
7. Upgrades made by irrigators in the area have improved water quality in Cement Creek and that should be added into the current protections as well.
8. Mine permitting and regulations, and the Clean Water Act should be added as protections in place for segments that have mining activity.
9. Clean Water Act is to be added to protections in place for segment #6, and status quo is to be added into the ideas for protections list.
10. Jeeping is to be added as an economic value to the region as well as the Old 100 Mine tour.
11. Long term preservation for natural values is to be added as a value of the upper Animas.
12. Values from Segment 5 should be pasted into the values for Segment 6 because they overlap.