

San Juan River Workgroup
Monday, November 29th, 2010
Meeting Notes
Final – 7 pages

NOTE: The Web site for the River Protection Workgroup, including the San Juan River Workgroup, is <http://ocs.fortlewis.edu/riverprotection>

ALSO NOTE: The West Fork has been found suitable for WSR and the East Fork has been found eligible.

Information: Facilitator Marsha-Porter Norton reviewed the purpose, principles, and ground rules of the group for new attendees. She also noted that minutes from the May, June, August, September and October meetings need approval, and asked that members review them online.

Review of River Protection Workgroup Model: Marsha clarified that the original process explained to the group last February for the San Juan Workgroup was planned to last for 10-11 meetings. This is meeting #9. The process has followed the “inverted triangle” model, beginning with the San Juan Information Sheet, followed by the group’s development of a value statement, and the group’s discussion of options for the West Fork and now the East Fork. The product of this workgroup process will be a report that includes the process that the group has followed and any recommendations that the group has developed. Some might be consensus and some might reflect a range of opinion. The group will wrap up its work in February 1, 2011.

Recap of Recommendations:

Marsha gave a recap of where the group is “at” regarding their recommendations.

- For the West Fork, currently there are two ideas that will be reflected in the final report (and may change by the time the group completed its work):
 1. The current protections on the public land portion of the West Fork are adequate without the current preliminary finding of WSR suitability.
AND
 2. Chuck Wanner from the Five Rivers Chapter of TU and Meghan Maloney from the San Juan Citizens Alliance would like to reserve their final opinion until the East Fork discussions are completed. They report that they are more interested in WSR for the East Fork (on the public land section, not the private land) and would like that discussion to continue. Chuck also noted that the East Fork is a segment that he wants to be on the table in the larger “basin discussions” which will occur once the five public workgroups are completed (San Juan, Hermosa, Piedra, Animas and Vallecito Creek/Pine), which will be in early 2012.
- There was full consensus in favor of forming a local advisory group, with details to be worked out later. This could apply to both Forks.
- There is a lot of support for continuing to explore a mineral withdrawal to protect ORVs of geology, but more information was requested.

- There are ideas on the table for an alternative to WSR for the West Fork (and possibly the East Fork) such as deed restrictions, an MOU with the USFS/landowners, or a zoning overlay district. Landowners are being given the opportunity to vet these, flesh them out and bring back their concepts to the next meeting. There isn't agreement on use of any of these tools. They are just ideas at this point.
- There was full consensus that, whatever is done on the private lands, the landowners should be engaged, involved and in agreement with it. In this meeting, it was emphasized that the landowners need to be the ones to design a proposed alternative, **if they so choose**, and bring it back to the group for vetting.

Discussion:

A question was brought from a group member about who actually makes "consensus": the conveners or us? Marsha clarified that this is a local group and you (the San Juan Workgroup) forge a consensus or a range of opinions. The member asked what happens if we miss a meeting and then are not in agreement with the "consensus" agreed to at that meeting. Marsha put this question to the group, suggesting that one option is to state a minority opinion alongside any statement of consensus. She stressed that everyone's viewpoint is important, but there is also a balance needed in order to move ahead. The group decided that as consensus is reached, if a new idea needs to be explored at a future meeting, the members with the idea (or concern) should raise it. It was recognized that not everyone can attend every meeting.

A member asked what happens if there is a consensus that the West Fork should not be Suitable. Marsha clarified that there is still a draft finding of Suitability by the USFS but the report can reflect what the community thinks and is not bound to agree with the Suitability finding. The final San Juan Public Lands Draft Land Management Plan will be completed in 1.5 years, so the group should proceed to develop alternatives, if that is what they think is appropriate. The hope is that the USFS will listen and hear the Working Group's recommendations. Kevin clarified that the draft is now getting feedback and that the final decision is up to Mark Stiles, Forest Supervisor for the San Juan National Forest. The draft is available for review at the following link: <http://ocs.fortlewis.edu/forestplan/DEIS/default.htm>

Ted pointed out that if a member is not comfortable with a statement of consensus, they should be sure to raise their concern and state why. This prompted a question from a group member wondering if the group's recommendations have to wait on Chuck's concern about making consensus on the West Fork contingent upon recommendations developed for the East Fork.

John Taylor pointed out that the group's consensus can change. Marsha said that this is an emerging process, so there is space to state concerns. The important thing is to be sure that the final report has everyone's stamp of approval, so it may be important to reopen consensus. The group could elect to vote, but then 49% lose and 51% win, and nobody hears WHY. If you hear something that doesn't make sense to you, please speak up, Marsha said.

A member asked whether Wild and Scenic Suitability affects adjudicated water rights. Ted confirmed that it does not, except that federal agencies must consult with USFS on actions that could affect the river's Suitability and affect the ORV that led to suitability in the first place (in this case, geology). Water rights are protected through their state processes (such as decrees). If a segment is designated as a Wild and Scenic River (which takes an act of Congress), then a Federal Reserve Water Right plugs into the state's system as a junior water right.

A member asked about the effect of Section 13 d of the Wild and Scenic Rivers Act which relates to the authority the federal government has over WSR segments actually designated. Marsha said she would ask Roy Smith for clarification and get back to the group when he provides that clarification.

Mely said there is a whole body of law clarifying that a Federal Reserve Water Right is junior and cannot trump the state system. The whole body of law must be read and interpreted together with the Wild and Scenic Act. Meghan Maloney noted that the Panel Discussion held in August is now available for viewing/listening on the Web site:

<http://ocs.fortlewis.edu/riverprotection/sanjaun/resourcedocuments.htm> (the second entry in the list)

It was noted that there are three parts to the group's deliberations and process: 1) whether or not WSR suitability or eligibility should exist on the public lands that are Wilderness or Roadless; 2) whether or not Wild and Scenic suitability or eligibility should exist on the non-wilderness USFS lands (applies to the West Fork section between the private lands and the Wilderness); and 3) what tools should be recommended on private property (Wild and Scenic suitability or eligibility or some other local tool). Marsha again recapped the ideas generated to date for the West Fork (listed above).

Marsha moved the group into recapping the ideas for alternatives on Private Land raised during the October meeting, noting that if something is crafted it can be an alternative expressed in the final report.

Ideas for Alternatives on Private Lands:

- Landowners agree to deed restrictions: This would be some type of agreement where landowners would agree to deed restrictions in exchange for WSR suitability or eligibility being removed. J.R. Ford proposed this idea. It would obviously need a lot of work but could be an alternative. For example, they could agree to not dam the river segment going through their property. (NOTE: This is not a final decision and is just an idea recorded. This idea to date does not have consensus.)
- Form an Advisory Council: Kevin explained that formal Advisory Councils to the USFS or BLM are governed by the Federal Advisory Council Act (FACA). FACA requires a group charter, designated representatives, minutes, a mission and a defined period. Marsha explained that the origin of the idea had been concerning Wild and Scenic designation based on geologic and scenic ORVs. Perhaps an advisory group could serve instead of designation to help protect the values, while giving more local control to protection of those values and allowing the community to weigh in on land use/management proposals with their reasoning. This idea had consensus at the last meeting and a smaller group agreed to meet and bring back specifics. It was noted that an Advisory Council does NOT have to be formed through the government. It can be a community based group. The smaller group that agreed to bring specifics back is: Pete, Tom, Kurt, Rusty, Lucille, Gail, J.R., Tom, Kathy, Mely, Michael, John, Ray and Don Weber. Everyone indicated an interest in looking at the council (note: it was stated that the Southern Ute Tribe needs to be involved too).
- Donna wondered why another committee would be needed, pointing out that a local person might have more concerns than even the community. Kevin pointed out that indeed, site-specific projects are ALWAYS open to local feedback. Marsha asked who proposed the idea in the first place and asked the person to explain it. J.R. and John T. responded that it was out of an interest for local control. The USFS can't decide fast or may flip-flop its policy, so a local advisory council could help provide consistency.

Winsor said the advantage of a group within the community is that it could be well informed about a given process and have their feet on the ground ready to move much faster.

Buck noted that it sounded like the group was really talking more about a watchdog or stewardship group than a FACA committee – a group that would be local and meet occasionally to track and act on public lands proposals and actions. Marsha noted that when a group is established through FACA, then the USFS must consider their input in a more formal way. Again, it was noted that there is a big distinction between a FACA group and a community group. A FACA group is prohibited from creating policy and issuing decisions. Kevin said that a FACA-formed group will not create speed in any process that decides the project. He then shared his experience in Wyoming with a steering committee formed under an MOU to advise the forest planning process. He noted that they still meet even after the Plan was completed. That group did not go through FACA.

Marsha suggested that a group of people who are interested in this concept should take a stab at developing the idea. Read the information (provided by Kevin) and come back to the group with specific ideas. Examples would include the BLM Regional Advisory Council, the Hermosa Creek Work Group, and the Mixed Conifer Work Group. Kevin added that he would definitely encourage a more formalized group and would welcome input.

- Conservation Easements: There are two easements on Bootjack Ranch that are held by the Southwest Land Alliance and Colorado Open Lands. In Marsha's assessment, based on talking to experts in Durango who deal with easements for a living, they are very solid and would be extremely hard to renege on (a concern raised in a previous meeting). There is developable land remaining on the Bootjack Ranch. The easements are public documents, but out of respect for private property rights and the landowners, Marsha said copies will not be distributed to the group. She does have them if someone wants to review.
- Zoning Overlay: Todd Starr, the Archuleta County Attorney, spoke. The idea being discussed and proposed by Bob Formwalt is for a planning and zoning district "overlay." There are very initial plans between Mineral and Archuleta Counties to form such a district regarding the proposed development of Wolf Creek. The idea is that perhaps a special planning district could add protection via impact fees, etc. At this point, such a district would entail a lot of work (possibly years) in order to become a reality – but could serve as an alternative to WSR. Essentially, it is a statutory scheme that allows for unincorporated areas of multiple counties to form a planning district that would allow development of codes with standards to protect values. For example, areas on either side of a river, etc. Such a district could be set up in many ways. It could be very formal, such as a new entity, or it could be an MOU between the USFS and the private landowners involved.

Bob Formwalt posed the following questions: Who would create the district, who would serve on the board, and who would have voting rights? Marsha asked if such a district would only apply to private land or would it also apply to public lands? Todd said there would be no jurisdiction over federal lands, so it would only apply to areas of private land. Later it was noted that there are MOUs that help guide decisions in areas where public and private land are involved. However, such an MOU would not dictate to the USFS what they can or cannot do. The various county boards of commissioners would have to be involved. Todd guessed that initially the regional board would be appointed by each county. That board would then spell out their by-laws including terms, mechanics, etc.

Bob asked what it takes to start the process. Todd answered that it takes a majority agreement of landowners, and county commissioners would need to formalize the process. It does not go to a vote of the people concerned. Such a district is meant for areas where there is no zoning. To

dissolve such a district, an intergovernmental agreement would spell out the terms/mechanics contractually.

John Taylor mentioned a special district in Hinsdale County where any landowner could be a member and 51% of the land owned could approve a measure. It is called the "Special Piedra Land Use District" and was formed ~10 years ago. It only applies to private land, but has a provision that federal agencies must coordinate with it. The district can do agreements with federal agencies to emphasize coordination.

Todd said, clarifying that he was not speaking for the county commissioners but only as county attorney, that "coordination" is definitely on the commissioners plate right now, and it is not a word without teeth.

Marsha proposed that landowners be involved and in agreement with any solution. It may be time for the landowners to get together and tell the group what they think. This would be a chance to propose alternatives to be included in the final report. How do you want to proceed?

Katy said that some of the ideas seem to take the control out of the hands of those most directly affected. Maybe the advisory group should be the landowners themselves.

Donna said that as they have stated before, they want nothing to do with it. There is no mining district likely, there is no way to extract minerals, and there are tons of protections. It almost seems like Wild and Scenic Designation would be easier than another district.

Marsha said the group knows that the landowners don't like regulations and that they have a lot of concerns about WSR. She suggested that the landowners get together and decide what works for them, given that the group's values statement underscores respect for private property rights. Marsha ended by emphasizing that the landowners have an opportunity here. They can get together outside of the process and report back their desires. Those desires/ideas will be discussed and eventually reflected in the group's final report. She said it's not very efficient for the larger group to work on solutions regarding a few landowners.

Donna said she just wants to keep the current level of protection and nothing more (which means no WSR suitability on the West Fork). Winsor said she is not sure that the current protections would last into perpetuity. Will they be there in 50 to 100 years? She said that she thought seeking mineral withdrawal was an excellent idea, and that the group should pursue the protections available to them. Donna said mineral extraction was not possible. Winsor noted that it has become possible elsewhere, e.g. West Virginia. Ted said that the state is in agreement that it doesn't want massive mineral development, but not in agreement on the need for additional protections. Ted proposed that the report should say "these are concepts that should be considered further: e.g. mineral withdrawal." Donna said she is very much in agreement.

J.R. asked if landowners were willing to put deed restrictions on their land to protect geology in exchange for all the other controls that come with Wild & Scenic Suitability.

Buck said it seemed like the USFS would be receptive given the politics, land, and landowners. If the landowners go to their congressman then there would probably be pressure by congress on the USFS. Jimbo asked if that meant that landowners would all agree to deed restrictions (e.g. gravel mining, oil and gas development, and view protections). J.R. said the idea would be that they would agree to give up some of these things as long as the federal agencies agree to give up the things they want.

Bruce Whitehead said you do not necessarily need deed restrictions if mineral withdrawal is what you want to accomplish. J.R. noted that if he was a landowner and he wanted suitability to go away, he would put ideas on the table sooner than later. Mineral withdrawal only applies to federally owned mineral rights. Does a deed restriction guarantee that Suitability goes away? J.R. responded that it's only a guarantee if there is an agreement with the federal government to make it go away in exchange for deed restrictions. Ted said there would need to be federal legislation in order to relieve the USFS of the need to assess suitability in the future. J.R. acknowledged that there might need to be legislation, but it seems possible to find a willing sponsor. Marsha said the concept can be forwarded. Mely said she doesn't think deed restrictions are necessary except for absolute assurances.

Marsha will check with Roy and Jackie on whether or not landowners would be willing to put deed restrictions in place and how this might work to remove suitability. Jimbo said the release language would be the key question. Todd noted that deed restrictions offer the greatest flexibility, property to property. Mely cautioned the group to keep in mind that anything can happen, citing the example of the proposal to take Green River water to Oklahoma.

Discussion Related to Current Protections and Recommendations for the East Fork:

Marsha reviewed the protections currently in place, which include roadless areas, wilderness, the Draft Forest Plan management, Instream Flows, and "WSR Eligibility" in the current Draft Plan.

Bruce reminded the group that the initial water roundtable discussions with the USFS made clear that if a stream segment was found to be "not suitable", then it was not required to be managed as Wild and Scenic. Therefore, eligibility may not mean much. Ted added that "eligibility" has been an issue where the land management agencies have not gone through the "Suitability" determination phase, therefore if draft becomes final, the East Fork would be off the table for management as Wild and Scenic.

Chuck said that scarcity weighs into decisions about Suitability. If the West Fork is not found Suitable, then the East Fork could arguably be more suitable. Meghan said that the San Juan Citizens Alliance supports Chuck's comments.

Mely asked how the East Fork changed under the Colorado Roadless Rule. Becka answered that it is almost exactly the same, with a few minor adjustments. Mely asked about reservoir sites, noting that the Colorado Roadless Rule allows exceptions for water that the Federal 2000 Rule does not. Pete said that the water rights for the reservoir sites have all been given up. Bruce added that the Colorado Roadless Rule gave access to existing structures, so the conditional rights no longer exist and the question is probably moot.

Marsha asked for the group's thoughts on the current protections and if they were adequate to protect the values.

Ted asked why the East Fork was not found Suitable. Meghan remembered Glen Raby from the field trip saying that on the West Fork there is the ability to see a span of geologic time from one vantage point, and that this bumped it up compared to the East Fork.

Bob asked about the ski area status. Becka said that the Draft Plan removes the ski area as an allowable use.

Marsha asked if the protections are adequate for the values identified.

Bob said that they are, without WSR eligibility. Chuck said he felt the USFS made a wrong decision regarding suitability due to the complexity of ownership on the West Fork versus the East Fork. He said that Wild and

Scenic could be structured to avoid private property on the East Fork, and might complement the McCarthy's plans for their property. He said that his view is that it is a question of scarcity of WSR in the region and a question of proximity to other Wild and Scenic Rivers. He noted that there are more values than just geology, such as fish, recreation, and "other similar values" per the Act. If we take one out of Suitability we should put one in. It all depends on the larger picture. Chuck feels this is a reasonable point to consider if it meets the purpose of the Wild and Scenic Act.

Bruce asked if Chuck was proposing that there would be one or the other – if the East Fork is suitable then the West Fork would not be. Chuck answered, yes, it is worth discussion.

Bob asked if access would be allowable. Chuck answered, yes, the East Fork would only be suitable as a recreational river due to the road along it. Meghan asked about potential impacts of Suitability to road repair/pipeline maintenance. She said Mark Stiles did not think that there would be impacts. Donna noted that accessibility is much greater on the East Fork than on the West Fork.

Ted said the CWCB submitted comments supporting the finding of "not Suitable" on the East Fork. He said they might have an issue with "going backward". He appreciates the sentiment of scarcity of resource values. He noted that there are ISFs in place to protect the fishery values. As for the geology values, should mineral withdrawal be considered the best way (without raising other concerns) or should mineral withdrawal be considered for the East Fork as well?

John Taylor said the East Fork is a very important snowmobiling area. They groom to Quartz Meadow and he wouldn't want that limited. He views the major impact to the East Fork as overuse, although he doesn't see impacts from private land use. He said that Wild and Scenic does nothing to address overuse. Chuck said Wild and Scenic may or may not address overuse. He emphasized that Colorado is a headwaters state for 11 or 12 other states and yet there is only one designated Wild and Scenic River in the state. He said this is the argument of scarcity with regard to national values. He said that in his view, Colorado is behind the curve. Part of the argument for Wild and Scenic is to recognize national resources.

Marsha asked if the landowners on the East Fork wanted to weigh in. Kurt Laverty said he is the manager for the McCarthy's. He said they are doing their part and that is good enough (referring to the conservation easements). Part of the road on the East Fork is currently better protected than others. Kurt asked the group what Wild and Scenic designation would be for, since there are very few things you can do there. John Taylor said mineral withdrawal might be important as there are mining claims on Quartz Creek.

Marsha said she would try to get a speaker to address impacts of designation to the road, pipeline, snowmobile trail, mineral potential on the East Fork, and the process of mineral withdrawal.

Ted asked if the possible reservoir site would be affected if only the upper portion (above private land) was designated. Bruce clarified that this is not a CWCB position – the USFS has moved beyond the East Fork and is only revisiting in this one case. Mely asked how easy it would be to go back to a more restricted area. Kevin said it would take a plan amendment. Mely asked, "If someone wanted to designate, would it require a plan amendment?" Becca said that with private land in a Conservation Easement, it would be much less probable. Kurt said the conservation easement is being completed in phases, and they are almost done with the second phase.

Jimbo asked Ted to explain the importance of previous comments made by the CWCB. Ted explained that the CWCB Wild and Scenic fund is there to help explore protections. The preference is towards NOT Wild and Scenic, if other ways can be found to protect those values. If the East Fork has already been determined

“not suitable”, then the board’s perspective may be, “let’s keep moving down the road”, but they might reconsider based on the bigger picture.

Mely asked if the reason the funds are available is for grassroots, stakeholder groups to weigh in. Ted answered, yes, but also the state sees USFS as holding a gun to its head, so if the gun is already removed, then we should look at other ways to protect values. Marsha clarified that the San Juan Citizens Alliance, the Southwestern Water Conservation District, and Trout Unlimited are also funding the River Protection Work Group process. Meghan said she is very appreciative of the fund, but hopes it doesn’t turn the group in a certain direction.

John said that the report should cover all views but when we enter the Basin Discussion, the East Fork is an ideal one to consider at that time.

One member pointed out that regarding the geology, Glen presented well on the field trip but didn’t address the East Fork. The geology on the East Fork is glacial, not volcanic, so there is no danger of destruction unless from a natural disaster. There is no concern about protecting the ORV from commercial activity because it is glacial.

Marsha asked if the East Fork is the same as the West Fork with respect to the private land approach.

Beth said the geology will protect the East Fork to a great extent because it will just keep falling down. Jimbo noted that there is a distinction between geology and mineral extraction. A member said the McCarthy property seems to be well protected, but what about potential mining claims? Becka said there are basically 2 claims, and both are above the Wild and Scenic segment. The member asked if Wild and Scenic would help protect those claims from development, or are there other protections that would be better to look at? Marsha will get a speaker to address mineral questions.

Kurt said the McCarthy’s need clarification on the upper end of where the segment ends. Jimbo asked for more information on actual lands under easement on the East Fork. Kurt said the intention is to cover the entire property. The second phase baseline is nearly completed.

Marsha asked if the current protections are adequate on private lands.

The group’s answer was YES for McCarthy property, but not sure on mining claims.

Steps for wrapping up the Working Group: Marsha summarized the next actions on the flipchart:

- Landowners can meet if they choose to in order to recommend tools for protection. Their views will be discussed by the group. If there is consensus, that will be reflected in the report. If there is not, their views will still be reflected in the report as an alternative to WSR suitability or eligibility.
- Consider a mineral withdrawal in the future to protect the ORV of geology (in the entire watershed). There are lots of details to work out and the group wants more information.
- A small group will meet and discuss recommendations around an Advisory Council and bring back a recommendation to the group.
- More information is needed on deed restrictions and how Wild and Scenic suitability could be taken off the table permanently if they were in place.
- Information needs:
 - Minerals
 - Roadless
 - Reservoir site

- Road
- Pipeline
- Trails
- Easement
- Snowmobile

Marsha noted that based on information needs expressed at the last meeting, a handout was prepared and handed out to the group.

Kurt will try to bring a map of the easements for the McCarthy property.

Note that there are federal mineral rights on both forks and on both public and private lands.

John Taylor remembered that the mineral on East Fork is called sphelomite and it exhibits trumbloluminescence.

Next meeting: January 27, 2011