

Lower Dolores Working Group Meeting 13 March 8, 2010

Note: Presentations, documents, meeting summaries, agendas and other information related to the Lower Dolores Working Group process are posted at <http://ocs.fortlewis.edu/drd>. There is a button on the left on the home page for the Lower Dolores Working Group.

New location: The meeting was held at the Dolores Water Conservancy District (DWCD) offices in Cortez rather than at the Lewis-Arriola Community Center. Facilitator Marsha Porter-Norton said better acoustics were one of the reasons. She thanked the Montezuma Valley Irrigation Company (MVIC) for helping to arrange the meetings at Lewis-Arriola including Loretta Siscoe who did the bulk of the work. She also thanked the DWCD staff for all the work they are doing to meet at the new location.

Review of meeting summary: The review of the February meeting summary was postponed.

Public comment: none.

Landscape and water protection tools: Jeff Widen of the Wilderness Society gave a presentation that had been postponed from February's meeting. Jeff runs the Wilderness Support Center in Durango, a semi-autonomous division of the Wilderness Society, with eight staff members, that was started 10 or 12 years ago. Their philosophy is to support wilderness proposals that were from the ground up and community-based. He has been involved in other citizen-based processes in Colorado and some outside the state.

Jeff said it appears most people in the Working Group have common ground regarding what they would like to see for the Lower Dolores. They would like to maintain its existing character; protect traditional uses such as livestock, energy, and historic motor-vehicle use; and protect private property rights and access in general. Jeff said boating is also very important on the Lower Dolores, which offers one of the best river trips in the Intermountain West.

Jeff said the conservation community believes Wild and Scenic Rivers (WSRs) are a good thing in certain circumstances and when they are supported by the local community, as was the case with Colorado's only current WSR, the Poudre. However, WSRs are not appropriate everywhere. Conservationists have been listening to the concerns expressed around this table. Also, the points raised by a previous panelist, attorney David Robbins, that WSRs are more appropriate near headwaters and far from state lines, are valid.

The conservation community here believes the best way forward is collaboration. They are willing to look at alternatives to WSR designation that will still protect the corridor. It is important also to protect private property rights and access. Designating the area as a National Conservation Area (NCA) might be a good idea.

Jeff said the following things are important: that the group come to consensus; that whatever is worked out will protect the values; that some degree of permanency and certainty is provided. This generally means legislation, but that legislation can be very flexible in outlining the management of the area.

Jeff said examples of successful NCAs in Colorado include:

- Black Canyon of the Gunnison, which was upgraded from a national monument to a national park. Also, an NCA was created adjacent to the park, with a wilderness area in its center. There are provisions for OHV use and protection of property rights.
- Great Sand Dunes, where legislation created a national park and created the Baca National Wildlife Refuge. The legislation had a water component designed to keep the groundwater in the San Luis Valley and not let it be transported to the Front Range.
- The Rio Grande Natural Area, which came about through a community-based process. Jeff worked on this legislation, which precludes by law the designation of a WSR for the Rio Grande in that area.
- McInnis Canyons NCA near Grand Junction. This is an NCA with a variety of uses. There is a heavy OHV area in one portion, and the Black Ridge Canyons Wilderness Area on the other side. Jeff worked with the principal grazing permittee in the area, and they made sure the legislation addressed his concerns about being able to rebuild stock ponds. People in Grand Junction consider this NCA a great success, and it has been praised by former U.S. Rep. Scott McInnis.
- Dominguez-Escalante NCA, which has a wilderness area inside its boundaries.
- Hermosa Creek near Durango. This is a potential wilderness area as well as a potential NCA, under a consensus proposal reached by a citizens workgroup. The proposal has been endorsed by the commissioners of San Juan County and is likely to be endorsed by La Plata County. This was a similar process to the LDWG, with considerable give-and-take. The Hermosa Creek Workgroup hopes to move forward with federal legislation carried by U.S. Rep. John Salazar.

Jeff addressed a question raised previously by Dolores County Commissioner Doug Stowe about whether anything is “broken” in the corridor that requires “fixing” through a change in management. Jeff said that is a good question, but the status quo doesn’t seem to satisfy anybody at this table. The finding by the San Juan Public Lands Center (SJPLC) that the Lower Dolores is “preliminarily suitable” for WSR status is not acceptable to the water community, and a complete lack of protection is not acceptable to the conservation community. If WSR status is not to be granted to the Lower Dolores, there still needs to be protection of the water-related values.

Discussion: In response to questions, Jeff said that legislation could “undo” the SJPLC’s finding of suitability for the Lower Dolores. That is what happened with the legislation that created the Rio Grande Natural Area. Legislation can some day be overturned, but only through

another piece of legislation. On the other hand, the Forest Service/BLM can't be expected to "undo" their finding of preliminary suitability and to say that the values they found aren't worth protecting. Legislation, however, would trump the agency's finding. Legislation can be written to protect a variety of values, including private property rights, and it can recommend different protection tools for different reaches of the river. There could even be legislation that simply eliminates the suitability determination, but the conservation community would resist such a measure. Creating and passing legislation takes several years; for McInnis Canyons it took about four years, while Dominguez-Escalante took two or three. However, most of that time is usually for the community process, and the Lower Dolores Working Group is well into that. Once legislation is prepared, it usually takes most of a two-year session of Congress to be passed. The Working Group could collaborate with Congressman Salazar's office on the specific bill..

Marsha said that the group owes the Dolores Public Lands Office (DPLO) its report and recommendations by June. The group could choose to make broad recommendations by that date and then hammer out details later.

Judy Woods, intern for Dolores County, asked whether any of the examples Jeff gave had been challenged legally. He said no. David Vackar of Trout Unlimited said an agency's management plan can sometimes be challenged, but a federal bill almost never is.

Cole Crocker Bedford, landowner, said the agency language regarding suitability lists four factors to be considered in making the determination, one of which is whether WSR status is the best method for protecting the river's values. If an NCA were to be created, would the management plan then state that this was a better protection method than a WSR?

Steve Beverlin, manager of the DPLO, said it is possible that something could change the finding of preliminary suitability for the Lower Dolores, but he cannot speak for what the forest supervisor and SJPLC manager, Mark Stiles, would do.

Ann Oliver of the Dolores River Dialogue Science Committee said until the *San Juan Public Lands Draft Revised Resource Management Plan* is made final, which is expected to be in 2011, there is an opportunity to change the suitability finding. After that, it remains until the river is designated as a WSR or Congress chooses to remove the finding. Jeff Widen said that "nothing is real" until a law passes, and after the plan is final, the finding couldn't be removed except by legislation.

Amber Kelley of the San Juan Citizens Alliance said the conservation community wants a solution that works for everyone. They are not fixated on having the Lower Dolores be a WSR.

Jim Siscoe, manager of MVIC, said he believes that Mark Stiles has indicated that the suitability finding will be a "placeholder" until a new solution is found. Steve Beverlin said Mark was asked previously if the suitability finding would be eliminated if the group finds another solution, and Mark responded that the draft plan does not say WSR would be taken off the table.

Dolores County Commissioner Ernie Williams said the group should move forward with a plan and not argue over whether the suitability finding could be removed. Jim Siscoe agreed and said getting the WSR possibility removed would be very valuable for private property owners.

Brian MaGee of the Colorado Division of Wildlife asked if the legislation would include water protections. Marsha said that would be determined by the group; the Hermosa Creek Workgroup chose to stay silent on water for the time being. Amber said water protection should be considered because some of the river's values are water-related (rafting and fisheries). Doug Stowe said the group should consider both water-rights and water-protection issues. Shauna Jensen of the DPLO said the Dominguez-Escalante bill contains "if/then" language that says if a value isn't protected, then something will happen. The LWDG could include such language in its proposal.

Consensus: Marsha asked if there is consensus to begin looking in earnest at alternatives to WSR status through some type of special legislation. She explained that she realized this was moving ahead quickly and circumventing the evening's small group exercises. However, she said, it seems like a logical time to call the question especially given the panel last month and the comments occurring at tonight's meeting.

Montezuma County Commissioner Gerald Koppenhafer said legislation could be passed and 10 years later, Congress could change the area to a national park. Ernie said U.S. Rep. Diana DeGette is already trying to have the area designated as wilderness without the group's efforts. John Whitney, representing Congressman Salazar's office, said a future Congress can always change something done by a previous Congress. However, generally congressional committees will respect the wishes of the congressperson who represents the congressional district in question. No member of Congress survives by ramming legislation down the throats of folks who don't want it in their community.

Ernie said the Black Canyon of the Gunnison was turned into a national park. John Whitney said the part that became a national park was already a national monument and managed by the National Park Service, and the community *wanted* it to be a national park. The change in status came after years of local people pushing for it. If this group does not want a national park on the Dolores River, that can be stated in the legislation. However, that could always be overturned by another Congress, but it's rare for an NCA to become a national park. It's a huge amount of work to get any legislation passed, much less a bill to overturn another bill. Once Congress passes a law to protect and manage an area, there's a sense of completion.

Jeff Widen said wilderness areas and WSRs are defined by over-arching acts, but there is no such act to define special areas, which can be called NCAs, outstanding natural areas, national scenic areas, and other terms. Therefore, the legislation can be tailored to meet the individual area's needs. One advantage of the designation "NCA" is that all the NCAs so far are managed

by the BLM, which already manages much of the Lower Dolores corridor, but there are many other terms that could be used.

Marsha asked again if there is consensus to pursue special legislation to protect the ORVS, as well as water rights, agriculture and private property rights, recognizing that preliminary suitability will stay on the table until and if the special legislation passes. The group will be involved in crafting the legislation. The consensus was yes after a visual consensus vote was taken (thumbs up if the member approved).

Gerald again expressed the concern that Congress could change the status or management of the NCA at any time to make it a more restrictive area, or the President could turn it into a national monument. Marsha said that concern will be noted and that the ongoing *Issues, Opportunities and Concern* document will be edited to reflect this concern and she noted that this concern should be registered in the minutes too.

Drafting sub-committee: David Vackar suggested creating a committee to expedite the process by drafting a framework for the legislative proposal that the larger group could then add to and subtract from. The consensus was to do so.

The sub-committee members were chosen by consensus and are: Mike Preston (DWCD manager); Al Heaton (private landowner); Amber Kelley (SJCA); Cole Crocker-Bedford (private landowner); Rick Gersh (town of Dove Creek), Jim Siscoe (MVIC manager); Peter Mueller (Nature Conservancy); Ernie Williams (Dolores County Commissioner), Jeff Widen (Wilderness Society) and Gerald Koppenhafer (Montezuma County). Steve Beverlin and John Whitney will serve in an ex-officio capacity. Marsha will facilitate and Gail Binkly will take notes

Marsha said the committee should start working from the statement, "This bill should. . ."

Overview of the DRD and its work: Ann Oliver of the DRD Science committee said the DRD was originally formed to discuss flow management. Last November, the Technical Committee had a retreat and committed to actions related to flow management. Broadly speaking, the actions could involve direct improvement of the channel downstream from the dam, different management of the spill from the reservoir, and different management or enhancement of the base flows out of the reservoir. All are flow-related and related to aquatic habitat.

Marsha said the DRD is setting up a Steering Committee because the Technical Committee was growing and growing, and having a separate committee would be more efficient.

Find Ann's handout below.

DRD meeting: The full DRD will meet on March 23 from 9 a.m. to 3 p.m. at the DWCD offices.

Major interests: Marsha reviewed the List of Major Interests. San Miguel County Commissioner Joan May suggested adding “protection of plant and animal species” under “ORVs and Other Natural Values”. Al suggested adding “access to land and water” under “Rights”. There were no other changes.

Find the revised Major Interests handout below.

Timeline for sub-committee: Al said he wants the sub-committee to try to come up with a draft before the next Working Group meeting. The sub-committee will meet on the next several Mondays at 6:30 p.m. at the DWCD offices.

Rick Ryan’s retirement: Scott Clow said that, during small-group discussions at previous meetings, Working Group members expressed a general consensus not to be too heavy-handed in directing management for the Lower Dolores because people trust the management by the BLM through Ranger Rick Ryan. However, Rick is retiring March 26. Scott said it is important to get his input soon and incorporate his recommendations into the plan. Steve Beverlin said Rick has said he will give his input regardless of whether he is retired.

Next meeting: The next Lower Dolores Plan Working Group full meeting will be Monday, April 19, at 5:30 p.m. (dinner at 5) at the DWCD offices.

Handout from Ann Oliver, DRD Science Coordinator

The Dolores River Dialogue (DRD): Frequently Asked Questions

History – How did the DRD begin?

- The DRD was begun in 2004 by Chuck Wanner, SJCA and John Porter, DWCD, who then invited other entities to participate (e.g. counties; MVIC; Division of Water Resources; Bureau of Rec.; Colorado Water Trust; USFS/BLM; CDOW; the Colorado Water Conservation Board, Ute Mountain Ute Tribe, Dolores River Coalition, rafters, etc.)
- The DRD was built around the ideas that:
 - Discussions and actions should be science-based,
 - The group should engage a diverse array of interests.
- A Statement of Intent and Plan to Proceed (<http://ocs.fortlewis.edu/drd/>) were agreed to in 2004.
- Two fundamental documents were produced in 2005: Hydrology Report and Core Science Report (<http://ocs.fortlewis.edu/drd/>). The Correlation Report (<http://ocs.fortlewis.edu/drd/>) then linked these two documents together.

What is the Purpose of the DRD?

At a retreat held November of 2009 the DRD-TC recommitted to the following purpose statement:

The DRD is a coalition of diverse interests, whose purpose is to explore management opportunities, build support for and take action to improve the ecological conditions downstream of McPhee Reservoir while honoring water rights, protecting agricultural and municipal water supplies, and the continued enjoyment of rafting and fishing.

What is the DRD doing?

- Planning and facilitating the Lower Dolores Plan Working Group (LDPWG) process.
- Field and literature-based investigations, to address the following questions:
 - How does new scientific information produced (by DRD, partners and/or others) since 2005 relate to spill and base flow management out of McPhee Reservoir?
 - How does riparian vegetation vary across the Big Gypsum Site? What areas can be flooded by spills out of McPhee and how frequently?
 - Is soil salinity likely to be limiting to riparian plant species in the Big Gypsum Study Site, and how do flows affect salinity?
 - What changes have occurred to the river channel at the Big Gypsum Study Site pre- and post-dam?
 - What flows correspond to the establishment of cottonwoods growing along the Dolores and San Miguel Rivers?
 - How do the flow and the level of release of water from McPhee Reservoir affect temperature, dissolved oxygen, conductivity and pH in the cold and warm water reaches below McPhee? Could the Selective Level Outlet Works be used to improve water quality downstream?
 - Are temperatures, dissolved oxygen, conductivity, pH, and turbidity downstream of McPhee likely to be limiting to trout? Natives? Non-native competitors and predators?
- Implementing outcomes of the Fall 2009 DRD Retreat:
 - Revisiting and clarifying DRD structure for proposal to full DRD on March 23.
 - Developing a systematic process for evaluating opportunities for flow management in light of anticipated benefits, drawbacks and sideboards. A new Framework of questions has been developed and proposals will be "run through" the Framework.

What is the connection between the DRD and the Lower Dolores Plan Working Group (LDPWG)?

The DRD convened the LDPWG in order to engage a broader, community-based group of stakeholders in discussions about the long term management of the Dolores River Landscape.

The 2007 San Juan Public Lands Draft Land Management Plan addressed Wild and Scenic issues in a manner responsive to a DRD comment letter of June 2006. The Plan recognized the role of the DRD in finding alternatives to Wild and Scenic Suitability: "The DRD process shows great promise in achieving enduring protections for this stream reach. Should the DRD make substantial progress in identifying and securing needed protections of the ORVs, the recommendations of the group could be used to supplement or replace this preliminary finding of suitability." [Appendix D, page D-20]

In order to respond to this opportunity, the DRD sought and received funding for creation and facilitation of the LDPWG from the Colorado Water Conservation Board. While the DRD-TC helps plan the LDPWG meetings, it does NOT speak for or make decisions for the LDPWG.

One of the key questions before the LDPWG is “How should the ORV’s and other values of the Lower Dolores be protected?” Three of the ORV’s, the roundtail chub, the New Mexico wild privet, and rafting, are closely connected to flows in the river. While the DRD doesn’t have all the answers, it is working with renewed focus to advance science and science-based actions for the improvement of the downstream environment, while honoring water rights, on the Lower Dolores River. The DRD has been and will continue to work on the tough issues surrounding flows, and welcomes any flow-related ideas arising from the LDPWG.

How can I get more informed about and/or involved in the DRD?

- All DRD meetings are open to the public and time is on the agenda for public comment.
- DRD-TC recently recommitted to twice a year full DRD meetings. Next one: March 23.
- Check out the DRD website: <http://ocs.fortlewis.edu/drd/>

Lower Dolores Plan Working Group

Planning Process -- List of Major Interests

(Note: These are not listed in priority order.)

ORVs and Other Natural Values

- Protection of the ORVs (this is the charge to DPLO – USFS/BLM)
- Protection of the landscape and water for locals, visitors and future generations
- Ability of local, visitors and future generations to enjoy the natural beauty, recreational options, wildlife and ecology of the area
- Biodiversity of plant and animal species

Rights

- Respect for and protection of private rights in the corridor (land and water and access)
- Protection of various land and water uses (economic and recreational)
- Desire for the fewest and less cumbersome regulations as is possible
- Desire to use one’s land to make a living
- Privacy

Level of Protection

- Desire for permanent, long term and lasting protections

- Desire for flexibility in the protection mechanisms
- Local control and local input into Federal and State decision making, policy setting & rule making

Economic

- Jobs and economic development and vitality for the surrounding community (ies)
- A need to capitalize on future opportunities (for example, more rafting days or oil and gas development)

Various Groups and How they Use the Land/Water

- Finding solutions that make sense; that work “on the ground” for as many interests/groups as is possible
- Avoid over use of the land by one group or another (for example, certain camp sites)

Other

- Desire to keep things the way they are
- Desire to see the area not impacted by too much use of one kind or another
- Protection of water quality and the health of the river

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