

Lower Dolores Working Group Meeting 14
April 19, 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 Working Group.

Agenda: Facilitator Marsha Porter-Norton said the group, at its March meeting, came to consensus to proceed with special legislation for the Lower Dolores area. Since then, the drafting sub-committee has met four times, resulting in the report that was sent to LDWG members via e-mail. That report was the focus of this meeting.

Public comment: Ann Brown of Sen. Michael Bennet's office said she is proud of the work the group has done and the senator is willing to do whatever is needed to facilitate the legislation.

Sub-committee report on the legislation

Members of the sub-committee reported on different aspects of the legislation that have been proposed, noting where there is and is not consensus within the sub-committee. The specifics that have been developed so far are included in the "Legislative Components Working Document," which is available on the web site listed above.

Name of designated area: Jeff Widen reported that, because special management areas have no over-arching legislation that defines them, the designated area could theoretically be called almost anything. A National Conservation Area (NCA) is one of the most common designations on BLM land, but the sub-committee has expressed some concern about using the word "national". Jeff said the BLM and Congress may prefer calling the designated area an NCA so there is consistency across the agency's National Landscape Conservation System, but the group does not have to agree. Jeff said terms such as "Protection Area" and "Outstanding Natural Area" also have been used before.

Cole Crocker-Bedford said some on the sub-committee are concerned that the wrong name could draw more people to the area and part of the purpose of the legislation is to protect the area from the impacts of over-use.

Several LDWG members said they like the name "Dolores River Conservation Corridor", but there was no consensus and it was agreed to circle back to this issue.

Boundary: Amber Kelley reviewed the length and width tentatively proposed for the designated area. She said the legislation would not apply to private inholdings. She said the sub-committee has not discussed whether to include Bull Canyon, which was found eligible for Wild and Scenic River (WSR) status by the BLM. Meghan Maloney of the San Juan Citizens Alliance said Bull Canyon should be included, but Dolores County Commissioner Ernie Williams said the Montrose County commissioners need to be consulted, as Bull Canyon is in their county.

Because the width of the designated area has been proposed as generally following the viewshed, there was discussion of how the viewshed was determined. Steve Beverlin, manager of the Dolores Public Lands Office (DPLO), said it was based on the distance that something the height of an oil derrick or wind turbine, 110 to 120 feet, could be seen from the river. Don Schwindt of the Dolores Water Conservancy District asked whether the viewshed should drive

the boundary and said it seemed too wide in places. Jeff said the feeling was that the designated area should include the area that gives the canyon its character. Carolyn Dunmire suggested that the road to the pumps, which is on BLM land, be included because there will need to be a parking area and signage.

The LDWG agreed that anyone with comments about the boundary in general or specific sites that should be included or excluded will e-mail Amber.

Intent of legislation: Jim Siscoe reviewed the main purposes of the legislation and explained that the intent is NOT to have specifics of the area's management written into the legislation. Those will be in the management plan. The legislation is an attempt to guide that management and provide the managers the ability to do what they believe is appropriate.

Jim emphasized that the intent also is that the management plan will not harm a landowner's right to access, improve or develop his property within the rules set by county land-use codes. He said the sub-committee struggled to identify the real flow-dependent Outstandingly Remarkable Values (ORVs), those that can actually be affected by flows, and they are fairly narrow. Native fish came to the top of the list; trout, on the other hand, are not an ORV. Removing the possibility of a WSR requires language the conservation community believes will still protect the ORVs, and that is a balancing act.

David Vackar of Trout Unlimited said the intent should be the simplest part. The intent is to work out a plan for the long-term protection of the Dolores River corridor.

Management plan: Gerald Koppenhafer said the sub-committee recommended the formation of an advisory council, which would develop a management plan within three years. Dolores River Dialogue (DRD) science would be considered when deciding how to protect the ORVs, and a representative of the DRD would be on the advisory council. He said it had been suggested that the advisory council operate as a sub-committee of the Southwest Resource Advisory Council, which reports to the BLM, but there was not consensus on that. Amber said it is more common for such councils to be a specific advisory council for the designated area.

Brian MaGee of the Colorado Division of Wildlife (DOW) noted that there is already a biology committee that decides flow recommendations in regards to fish. Vern Harrell of the Bureau of Reclamation, Dolores Project liaison, said the DRD lacks authority to make decisions, and noted that it may not last forever. Jim said the suggestion to create a role for the DRD reflects a recommendation by the Bureau of Reclamation itself. Jim said the biology committee is autonomous and this legislation won't change its authority, nor that of Reclamation, but it would be desirable to have an outside interest that can provide input into decision-making. San Miguel County Commissioner Art Goodtimes said advice is needed that goes beyond the technical decisions of agency staff. Marsha emphasized that the DRD would just be given a spot at the table; it would not be the advisory council itself.

Several people favored the idea of the advisory council being established permanently. There was discussion but no agreement on whether the council should be a sub-committee of the RAC. Art said the downside would be that its recommendations would have to go through two reviewing bodies. Gerald felt that having the recommendations go through the RAC would give them more weight with the BLM.

Private property: Cole explained that, under the legislation, acquisition of private property would be from willing sellers only. The legislation would also allow the BLM to *lease* easements

for recreation, access or conservation from willing leasers. This would let private property owners transfer liability to the BLM and would also give both parties a chance to "try out" an easement. Cole said defining "adequate access" for private landowners is a major issue. He would like the BLM, when deciding on access, to have to consider the effects of access proposals on the environment as a whole - not just on BLM land but on private land too.

Minerals: Ernie said the sub-committee has generally agreed it does not want to see new mines and surface occupancy between the canyon rims, so it has tentatively proposed a full mineral withdrawal and no leasing of fluid minerals within a narrow area in the river corridor and a stipulation of no surface occupancy for the broader area defined by the viewshed. Existing rights would be honored until leases expire. Ernie said few operators want to put a well in the bottom of the canyon anyway. The area to be withdrawn would be 1 mile to 1.5 miles wide and would not take many resources out of production. However, a WSR corridor would be only one-quarter mile from each side of the river, so the legislation would actually offer more protection. Specific areas would be delineated where power lines and pipelines could cross the river.

Amber said she thinks this proposal would achieve what the conservation community wants. Steve said there is a stipulation of no surface occupancy for fluid minerals in the river corridor, but there is no hard-rock mineral withdrawal yet. Jeff said he has been told there have been no NCAs that have been divided up in such a manner, so he is not sure how congressional committees will view this proposal. Ernie said mineral extraction is critical to the economy of Dolores County and the county won't support a larger withdrawal. Cole said surface occupancy is currently allowed in the viewshed area, so this would provide additional protection. Jeff said he does favor this proposal and will advocate for it to Congress.

Water: Mike Preston reviewed the water-related bullet points on the "Legislative Components" document and said there was consensus among the sub-committee in support of the first nine. There is still debate about whether the language should merely *allow* leasing/purchase of water or should encourage it. There is also still vigorous discussion about spill-management guidelines.

Vern said he opposes the idea of leasing water to benefit the ORVs because a lease could go away; buying water would be preferable. Peter Mueller said a lease would be a stepping-stone measure. He said flows are one factor in the decline of native fish, and while flows can't be legislated, the conservation community is looking at giving up the possibility of a WSR and a federal reserved water right (FRWR). Under the current status of suitability, the river is managed to protect the ORVs and conservationists don't want to let go of those protections without a provision for other protection. He believes the lease option should be on the table in an affirmative way.

Brian MaGee said there is no place for politics in managing fishery-related flows. He doesn't want the legislation to usurp any authority of the biology committee and believes the proposed language prioritizing native fish would do so. Ernie and Art said politics enters into most discussions and it's important to consider all aspects of a community, including socioeconomic concerns, as well as science when making decisions. Art said the advisory council should suggest options. Mike said the BLM, DOW and Reclamation are all involved in managing the river and corridor, and the potential contribution of the DRD is to provide science that is available and transparent to everybody. Vern clarified that the biology committee manages the fishery pool, not the spill. There is a spill committee as well, and its No. 1 priority is rafting. Both are advisory bodies only.

Peter said the sub-committee wants the spill priorities changed to benefit all flow-dependent ORVs instead of just rafting. He said the flow-dependent ORVs are the roundtail chub, New Mexico privet and rafting. Ann Oliver later added that the canyon tree frog is another flow-related ORV for a tributary of the Dolores. Peter said the sub-committee recognizes there is not enough water in the system, certainly not enough for rafters. He said the question is whether to give up some rafting days in order to benefit native warmwater fish. Some stakeholders, including the Nature Conservancy, believe it is more important to prioritize warmwater fish because they are a species in decline and they need every bit of support possible.

Ernie said locals' right to manage the river could disappear if the native fish are listed as endangered. He believes protecting the fish is also protecting local rights. Don Schwindt said tackling such a complexity of issues will doom the legislation. He said the DWCD and MVIC have been proactive in dealing with endangered-species issues, but he cannot support putting the native fish first in the legislation. He said water users need flexibility to manage the river without priorities being legislatively directed. He said he opposes prioritizing native fish. Vern said he also opposes prioritization.

Brian said the DOW is aware the native fish are declining and the problem in the Lower Dolores River is related to low flows. The downstream habitat has changed since the dam was built and there are no longer the deep scour pools needed for the warmwater fish to survive. He said the DOW has already studied the flows needed for native fish and trout, and more flow research is not needed. He said there is an instream-flow right of 78 cfs on the Dolores and if that amount were actually available, the fish would be doing better.

Mike said there are other factors harming native fish, including the timing of flows, water quality, and predation by non-native fish. He does not believe all the answers are known, and that is why there should be a transparent scientific inquiry through the DRD process. The reason the 78 cfs is not met is that McPhee's storage right is senior to the ISF water right. What needs to be decided in the long term is how to take the available water supply and use it to help the ORVs.

Carolyn Dunmire, representing the rafting community, agreed with Don. She said she cannot support prioritizing the native fish in the legislation. She said more studies won't solve the problem; there will never be enough data to get rid of all uncertainty. The issue is whether a roundtail chub is worth a day of rafting, and science can't answer that. There needs to be a group to decide such matters. Art said prioritizing the native fish destroys flexibility, and agreed that a council should decide priorities. Ernie said he wants to see the use of local science mandated in the legislation.

Meghan agreed with Peter that giving up WSR suitability and an FRWR is a big step and the water-leasing option should be supported in the legislation. Don said there is no FRWR unless a WSR is actually designated. He said the proposed Plateau Creek reservoir is one proactive step the DWCD has tried to take to help endangered fish by providing storage for more water.

Brian said building a new reservoir to protect native fish would be crazy. It would be better to look within the system that exists.

David Vackar said the priority should be to take the Dolores River corridor out of the BLM's general multiple-use management and protect it from the impacts of mineral development and other potentially damaging uses. The idea is to protect the river ecosystem for the long term. He

said the warmwater fish are already endangered species, and the real issue is whether the Dolores is listed as critical habitat. He recommended that the legislation not be too specific.

Cole said if there is no prioritization of values, lawsuits may ensue over trying to protecting all ORVs equally and "doing everything for everybody". Art suggested requiring the council to make recommendations annually on how to balance the ORVs. Ann said there is a priority in place already regarding spill management, and that is for rafting. Carolyn said the management plan would change existing law regarding the dam and river and would have to go through the NEPA process.

Gerald said he believes native fish should be prioritized because if the Lower Dolores is designated as critical habitat, the U.S. Fish and Wildlife Service will take the water, and this would mean the end of local control of the corridor. At present, spills are managed for rafting, but he doesn't believe that regimen is the best for scouring the river to benefit native fish. Art said local control would be stronger if nothing is prioritized legislatively, not even rafting, and the priorities are left to the advisory council. David said it would be better to plan to manage the river so the Endangered Species Act never comes into play; the legislation should provide a foundation for a preventive plan to protect the river system and ecology.

Brian and Doug said even an increase of 10 cfs has been shown to improve the biomass and possibly the survival of warmwater fish. Tony said he and many other boaters are willing to give up something for the warmwater fish.

Scott Clow, representing the Ute Mountain Ute Tribe, said the tribe traded its 1868 senior right on the Mancos River for Dolores Project water, but this decreased its influence into management of the Mancos River, about 70 miles of which flows through the reservation. This has some very good roundtail-chub habitat. The endangered-species threat is a concern for the tribe, which has worked with the DOW to help the fish. He said the Fish and Wildlife Service prefers not to designate critical habitat on Indian reservations, so the Lower Dolores is one of the last possible habitats for the roundtail. The impact on the Ute Mountain Utes could be profound if this fishery is not managed properly.

It was agreed that the sub-committee should continue to work on the water question. Marsha emphasized that this is a consensus process. People with suggestions for the language should e-mail them to Amber at amber@sanjuancitizens.org.

Grazing: Ernie explained that the legislation would not change current grazing guidelines except within the wilderness area, which would follow standards under the Wilderness Act but would allow pre-existing grazing to continue. Jeff said that the proposed prohibition on new dams on the Dolores River would be written so as not to affect grazing-related impoundments such as stock ponds. He said the ability of permittees to increase permit numbers and build new facilities would be more limited in the wilderness area, but reasonable motorized access for maintenance could continue.

Wilderness: Jeff said the subcommittee has reached agreement that the Dolores River Canyon WSA can be designated as a wilderness area so long as the Montrose County commissioners support the idea. So far they have been supportive. Discussion about possible additions to the wilderness area will have to include Montrose County and local stakeholders.

Regarding the Snaggletooth Citizens Wilderness Proposal, Jeff said the area involved is just downstream from Bradfield Bridge to Ponderosa Canyon, extending 6 to 8 miles into San Miguel

County. He said this area was never inventoried for wilderness qualities. He said there is a lot of local concern about this area becoming wilderness and it may be possible to protect its qualities through a hard-rock/energy withdrawal and protection of the existing roadless area under the legislation. The roadless area would include only the eastern half of the canyon downstream from the pumps, not the western half, which contains the road. The working group was amenable to this proposal.

Motorized use: Rick Gersh said most of the issues related to motorized use would be handled in the management plan. Steve clarified that the designated area's plan, developed through the advisory council, would specify what routes are available for motorized use. This plan would trump the agency's existing travel-management plan. Jody Schwindt, a member of the public, said existing overlooks for motor vehicles should be retained.

Regarding the road through the corridor that starts in Dolores County and continues into San Miguel County, Art said that the San Miguel County commissioners don't believe it is a county road any longer in their jurisdiction and don't feel it's an appropriate route. Ernie said Dolores County is willing to maintain its end for emergency purposes and would like to see the road continue as a four-wheel-drive route that would not have to be maintained. Art said the San Miguel County commissioners would like to see emergency access down to Snaggletooth but would prefer not to have that route continue beyond that point. Marsha said there was consensus at the December meeting to keep the route open. Art suggested bringing the issue up at the tri-county meeting. The legislation will not address this specifically.

Disposal: Amber explained this means there will be a provision in the legislation stating that the BLM cannot sell or trade any portion of the designated area. There were no objections.

Future meetings: Marsha said the sub-committee will meet three more times before May 17. The LDWG will meet May 17 and, if needed, June 7. Prior to the May meeting, Marsha will write a report on the Working Group and the process, to be presented to the DPLO for its consideration in updating the *1990 Dolores River Corridor Management Plan*. There will also be an updated report from the sub-committee regarding the legislation. These reports will be sent via e-mail to members of the LDWG. Anyone with comments or suggestions regarding the legislation should contact Amber at amber@sanjuancitizens.org.