

Lower Dolores Working Group Meeting 15

May 17, 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.

Report to the Dolores Public Lands Office

Facilitator Marsha Porter-Norton explained that the report to the Dolores Public Lands Office (DPLO) that was the focus of this meeting is only a first draft, and asked for comments. Steve Beverlin, DPLO manager, said the report is exactly what the DPLO needs. Shauna Jensen of the DPLO said she found it very comprehensive and likes the background information. Some specific issues were addressed:

Road along the river from the pumps to Slickrock: Ernie Williams, Dolores County commissioner, said the road is a maintained Dolores County road, not a 4x4 road as stated in the draft report, and there is no discussion of it being closed down to the Dolores County line.

San Miguel County Commissioner Joan May said the section downstream from the Snaggletooth rapids has been viewed as closed by San Miguel County for some time and they would like it to remain closed. She said she doesn't know whether San Miguel County ever actually vacated the road, but either it was vacated, or it was never a county road to begin with. Either way, she believes it should now be a trail and not open to motorized use past the rapids.

Ann Oliver said she researched the road issue. She said there is a resolution by San Miguel County, dated 1999, vacating the road downstream from Snaggletooth. She said the road starts as CR 10 in Dolores County, continues to the pumps, and then goes to the San Miguel/Dolores County line. For that entire stretch, it is a Dolores County road. In San Miguel County it becomes Road 14F and continues for 2.4 miles to just below the Snaggletooth rapids. That stretch is a San Miguel County road, but Ernie said Dolores County maintains it for safety. Beyond Snaggletooth, the resolution comes into play, and the road is excluded from the county maintenance system. It continues to the BLM boundary.

Joan said San Miguel County would like to see the route past Snaggletooth remain non-motorized, with exceptions for emergency vehicles. Ernie said the road is used occasionally as a Jeep or 4x4 trail that is traveled at one's own risk. It is closed seasonally to protect bighorn sheep. Steve Beverlin said the BLM maps show the seasonal closure but provide no other information about the road's status.

Ann said an issue to be considered is where the road comes out, as it appears to exit onto private land. She said the LDWG needs to be careful about making a recommendation that involves private land. Clint Cressler said the road has two exits: One goes up onto a hill and onto BLM land, and one goes downriver onto David James' property. Clint said Mr. James has been receptive to people driving through his property. Clint said it is not only OHV enthusiasts who use that road, but rafters and anglers.

Ann said the section managed by the BLM, from just below Snaggletooth to the James ranch or onto the rim, is the only part of the road that the LDWG should be making recommendations

about. She said the group consensus was not to change the road's current management. However, Joan said there are different perceptions of what the current management is that need to be clarified.

Jim Siscoe, manager of the Montezuma Valley Irrigation Company (MVIC), said the group also should talk about long-term access solutions in Big Gypsum Valley because the Suckla family is in a situation there similar to the one involving David James. Shauna said it would be good to have an appendix to the report containing Ann's research and more on this issue.

It was agreed that the interested parties, including county officials, Marsha, Ann, Shauna and Clint, can schedule a conference call or meeting on the road issue before the next meeting of the LDWG.

Clint also suggested that the proposed language stating that spur roads should be closed should say, "no new spur roads," as some of these existing spurs represent commonly used accesses to the river through the thick brush.

Management plan goals: Marsha said the input reflected in this section came from the small-group discussions but has been reworded to fit into the overall vision for the corridor. She said the *1990 Dolores River Corridor Management Plan* had some confusion over goals and objectives and this represents an effort to clean those up and reflect the input of the LDWG.

Amber said the report needs to address WSR issues in the goals section in case the legislation does not happen. The report needs to articulate that the river will remain at WSR suitability in that case. Steve said in the agency's record of decision and final plan there will likely be language saying that there is legislation proposed and the agency supports it, but if the legislation doesn't pass then there will be a finding of WSR suitability (not preliminary).

Next steps for the report: Jim Siscoe asked how it can be ensured that the Working Group effort does not meet the same fate as previous citizens' group recommendations. He said he wants the San Juan Public Lands' Interdisciplinary Team (ID team) to make sure the recommendations are not ignored. Steve said he wants the ID team to review the entire document. He said the NEPA analysis for the management plan update must be followed and the KDWG's recommendations, if legal, will form the basis for the proposed action for the plan. Where there are divergent opinions they will form the basis for different alternatives.

Jim said Mark Stiles, San Juan Public Lands Center (SJPLC) manager, may receive pressure from outside groups that were never at this table to change or ignore the LDWG's recommendations. Jim said he would like it stated that the ID team will handle this report with great respect because of the time and effort devoted to it. Steve suggested the LDWG write Mark a letter expressing support for the recommendations and emphasizing the effort that went into creating them..

Shauna said she will be having a meeting with others in the agency and wants to convey to them the importance of this process. Steve said anyone from the LDWG can come to that meeting.

Shauna estimated that the NEPA process and approval of the revised corridor management plan will take a year. John Whitney, representing Rep. John Salazar, said it's best if the report to the DPLO is completed before serious work begins on drafting legislation for the special area. John said the legislation might be finished before the SJPLC adopts the final corridor plan.

Marsha said the LDWG had two charges: to protect the Outstandingly Remarkable Values (ORVs) of the river and to find an alternative to Wild and Scenic River (WSR) status. The legislation represents the alternative.

Brian MaGee of the Colorado Division of Wildlife (DOW) said the DOW is reserving the right to make additional scoping comments on the corridor plan that may be contrary to or more in-depth than what is in the plan. Steve said anyone can make scoping comments; it is a public process. However, he recommended that the DOW not sign the letter to Mark Stiles if the DOW does not support the LDWG's recommendations.

Marsha said it is understood that there are entities around the table that will present detailed comments on the updated corridor plan, but she thinks it will be problematic if members of the LDWG are saying there is not consensus on the recommendations. Marsha reminded the group that in December, the LDWG arrived at a set of recommendations that have been available for review for four months, and at the March meeting there was consensus to move ahead with special legislation. Marsha said she needs to know now if there is not true consensus. It's one thing to have a specific concern but if there is not consensus about the report and letter to Mark, she needs to know.

Joan said she hopes people will sign the letter of support, which will be broad in nature. She said if there are a few small parts of the recommendations that someone has concerns about they can still comment on those, but she hopes they will be able to support the recommendations as a whole. Ernie agreed and said while there will be discussion on details, people have to make some compromises. He said Dolores County has been willing to support a mineral withdrawal in the corridor to get other concessions.

Steve said the letter to Mark Stiles would address the report, not the special legislation. Marsha agreed and said the report to the DPLO is focused on issues such as the 4x4 road, the overlooks, rafting and more. It can just allude to the legislation.

Meghan Maloney of the San Juan Citizens Alliance suggested broadening the report's focus to the entire outcome of the LDWG's efforts, not simply recommendations to the DPLO. In this way, the report could include the legislation.

Don Schwindt of the Dolores Water Conservancy District (DWCD) board said the LDWG began as an advisory group to the DPLO. He said he hopes everyone's comments, divergent as they are, will be captured in the appendices. He said both what the agency does and what ultimately happens to the legislation will be out of the control of the Working Group. He said the DWCD's support of the legislation will depend on what is in the final legislation.

Mike Preston, manager of the DWCD, said Congress will ultimately decide the contents of the legislation and the public will be able to weigh in on that. Mike said the consensus report to the DPLO represents another track, and signing the letter means support for that effort.

Cole Crocker-Bedford said there are some things that have to be done through legislation because they are beyond what the agencies can do. He does not believe the legislation is in conflict with the report to the DPLO.

Shauna said she believes the ID team would appreciate the legislation being described in the document.

Bill Kees of American Whitewater said some people weren't at the meetings where consensus was reached. He said if he signs something, he wants to be in consensus with it, and he still has questions.

Marsha said it would be very damaging to try to revisit every consensus issue now, four months after publishing the consensus recommendations. She said there will be a lot of rich opinion reflected in the report's appendices and there will be much more opportunity for public scoping.

Cole said consensus can be reached if someone has a nagging doubt about one item but does not feel he or she is truly hurt by the overall effort. It was suggested that the document define "consensus".

Marsha said anyone with further comments about the report to the DPLO should e-mail her before the next meeting. She will do another draft of the report with changes to reflect tonight's discussion. The legislative document will be included in the report but it will merely be a "point in time" reflection of where the legislation is at the moment.

Thresholds

Marsha presented a list of questions, prepared by Shauna, relating to thresholds that might require additional or different management tools.

Shauna said the ID team will be looking at thresholds from a scientific point of view, trying to delineate specific thresholds such as the percent of watershed disturbed or the condition of fisheries. The goal is to identify at what point it can be stated that resource damage is excessive and/or can't be reversed, or is heading that way. She said the agencies would like the LDWG to give input on what those thresholds are. Some comments were:

- Regarding a possible limit on the number of visitors/day in the case of impacts to ORVs, the group felt this would be difficult to monitor. For some users, such as hikers, it's difficult to know they are even there. Also, how do you know who's doing the damage? It was noted that not all impacts to ORVs are human-caused.
- The threshold could be a moving target. Regarding rafting, when there is a good spill the river corridor is trampled, but in drier years it heals. Until there is a better flow-forecasting system and steadier releases, the rafting threshold needs to show flexibility.
- The concept of capacity needs to be considered, e.g., how many people will fit in a campsite. User experience also must be considered: How many rafters do you see per day?
- Dolores River Dialogue and DOW science need to be considered.
- Thresholds will be different for every use. Thresholds will change and can't be decided now for 10 years in the future.
- 2005 and 2008 were the only years in the last decade with good enough flows to support many rafters. That represents very little use over an entire decade except for brief pulses of intense use. Ranger Rick Ryan surveyed the corridor between 2005 and 2008 and found it to be pristine, so it had healed from the heavy use of 2005. Rafting thresholds may be moot because there may be little opportunity for boating in coming years.
- A visitor threshold may have been met when the bluegrass festival was being held. It had a big impact one weekend a year and eventually it was shut down.

- Thresholds require a commitment to monitoring. First, a baseline has to be established and the status of the ORVs has to be assessed, and if an ORV is degrading, the next question is why.
- The threshold for tamarisk should be no tolerance. Shauna commented that that is a tough standard to meet.
- The threshold for knapweed should also be no tolerance. Shauna said you can't eliminate knapweed, just control it.
- A threshold is needed for large woody debris in the area. The river corridor lacks such debris, but it is needed to create pools and support bacteria and fungi that are fed on by insect larvae, which are then eaten by fish.

David Graf, DOW alternate, asked what the agency considers to be the threshold for fish. He said the DOW believes some thresholds have been crossed already for the native fish species of concern, such as the roundtail chub on the portion of the Lower Dolores this group is discussing. The question is, how do we know we're at a threshold and what do we do about it? Shauna said the Forest Service and BLM need to work in concert with the DOW. The DOW manages the fish and the agencies manage the habitat.

Jim Siscoe said the BLM, Forest Service, DOW and Bureau of Reclamation policymakers need to come to consensus on their goals for the Lower Dolores. Marsha agreed that discussions about thresholds require crossing agency jurisdictions and including counties as well.

Brian said the U.S. Fish and Wildlife Service (FWS) can step in to act when other jurisdictions fail to protect an endangered species.

Scott Clow said he thinks the threshold has been crossed for the roundtail chub. The dam was great for many people but the losers were the fish. Don Schwindt said he doesn't believe it is known that the threshold has been crossed or when it was.

Marsha said all these comments would be input to the DPLO. Anyone with other comments regarding thresholds should e-mail Marsha at porternorton@animas.net.

Discussion (Q & A) on legislation

Amber Kelley, chair of the legislative subcommittee, said the subcommittee's work has not been easy and the consensus principles represent considerable give and take. She said the subcommittee has come to consensus on all issues but water.

Bill Kees asked whether the language about protecting existing water rights includes conditional water rights. Carolyn said this needs to be defined in the legislation. Don said the DWCD wants conditional water rights protected and that development of those conditional rights, for example, the right to fill Plateau Creek, would have minimal impact on spills.

Jim said the owner of a conditional water right has to prove due diligence in water court, but conditional water rights are private property rights. He said MVIC's conditional right is for a direct flow and would have no effect on the spill. The DWCD's conditional rights could theoretically affect spills, but only minimally. He said the legislation cannot either make a conditional right absolute or take it away; only a water court can do that.

Ann said bullet points 4 and 5 under water, about state-adjudicated water rights and currently held water rights, would protect conditional and absolute water rights.

Peter Mueller of the Nature Conservancy asked whether development of conditional water rights would adversely affect some ORVs. Mike said if a conditional water right is put to a consumptive use it could reduce spills slightly, but even small projects such as Plateau Creek would require environmental analysis, and any change in water use has to go through water court.

Don said several of the bottom seven bullet points in the water section that talk about protecting flow-dependent ORVs could in effect be creating a new water right.

Vern Harrell of the Bureau of Reclamation, Dolores Project liaison, said the last bullet, regarding spill management, may be unnecessary because it doesn't recommend anything that is not done under current McPhee management. Vern said there is not much flexibility in managing spills. If you know water is coming you can release early, and this is already done.

Peter said McPhee managers did a good job in 2008 managing for rafting and native fish. He said the goal of the final bullet point is to ensure that when there is a big spill year, the environmental and rafting communities will sacrifice some rafting days for a bigger spill to help the native fish. The intent is to change the priority for the spill from only rafting to all ORVs.

Vern said there are other factors to be considered in spill management, such as public safety, filling the reservoir, and infrastructure concerns. He said dictating the priorities is a concern.

Carolyn said rafting's status is protected in the contracts and the environmental documents for the Dolores Project, but the legislation would relegate rafting to equal status with all ORVs and that is a change she does not support. What is good for rafting is good for fish but not necessarily the reverse. Carolyn said she doesn't want the legislation to have specifics on management of the fish pool and spill because that is reallocating water. She suggested eliminating the final seven bullet points.

Amber said the change regarding spill management not intended to be negative to rafting. The subcommittee wants to see adaptive management so managers can work together to help native fish and rafting. She said the change would ensure that McPhee's managers don't have to do a categorical exclusion to manage for native fish during a spill. She said things have changed since the dam was built and native fish are now a significant issue.

David Graf agreed that native fish were not a major issue in the early days of the Dolores Project. He said management for native fish wouldn't be much different than managing for trout. DOW biologists believe it is primarily low flows that are limiting habitat..

Don said protecting native fish is an endangered-species issue, not a WSR issue, and this legislation may not be the place to address it. Meghan said the environmental community wants the native fish addressed.

David Vackar said Trout Unlimited members like to fish for trout below the dam but they also recognize the importance of native fish. He supports authorizing the leasing/purchase of water to protect ORVs and aid native fish and believes that is crucial to the legislation.

Cole said having a phrase in the legislation about managing the fish pool for native fish may not change actual management, but it can be an important sign to the FWS when that agency considers what other regulatory and lawful mechanisms are in place to protect the species.

David Graf said the best native-fish habitat is below the San Miguel confluence and that is where the DOW is concentrating its efforts. If the legislation can authorize the lease/sale of water to benefit the fish, the DOW would like to pursue that. David disagreed that native fish are outside the purview of the LDWG effort. He said different efforts throughout the basin to address native fish will demonstrate to the FWS a good-faith pre-emptive strategy.

Tony Littlejohn said there is nothing in the legislation to require the water-consumptive community to conserve. Jim explained that Colorado is a "use it or lose it" state, and greater efficiency can mean that an owner of water rights loses some of those rights. He said the Dolores Project is almost 98 percent efficient and noted that MVIC has spent millions of dollars to improve its efficiency.

Jody Schwindt, representing private landowners, questioned the ban on new dams.

Anyone with feedback on the legislation should e-mail Amber at amber@sanjuancitizens.org or Marsha at porternorton@animas.net, or call the subcommittee members.

Future steps: The next LDWG meeting will be Monday, June 7, at 5:30 p.m., with dinner at 5. After the subcommittee meets one more time on May 26, that group will see where consensus lies on the legislative parameters. Marsha said it will be important to clarify the role of the LDWG once the legislation moves forward.

Rafters should contact Marsha and Amber regarding a special meeting to address their concerns.

Marsha will send out a revised report and draft the letter to Mark Stiles.