



Minutes on D-E NCA Advisory Council, June 15, 2011
Mesa County Courthouse Annex, Training Room A, 544 Rood St., Grand Junction, CO

Advisory Council members attending:

- Chair Katie Steele of Grand Junction
- Joe Neuhof of Grand Junction
- Oscar Massey of Whitewater
- Terry Kimber of Delta
- Neil "Mike" Wilson of Eckert
- Steve Acquafresca of Grand Junction
- Interim member Doug Atchley of Delta

Absent members:

- Vice-chair Bill Harris of Montrose
- Tamera Minnick of Grand Junction
- Jason Beason of Paonia

BLM staff attending: Ben Blom, Andy Windsor and Brodie Farquhar

Audience members: Lee Gelatt, Janice Shepherd, Mark Akerman, Terri and Janet Gray, Jan Potterveld, Kaye Simmonson, Joyce Olson, Steve Smith, Jan Burch, Nate Green, Kent Davis, Sherry Schank, Conrad Tucker, Mary Tucker, Eric Rechel.

Chairwoman Katie Steele called the meeting to order at 3 p.m. She noted the presence of a quorum.

Public comment (Round 1)

Lee Gelatt, of the Quiet Trails Group, asked the Council to always protect resources. He said the Wild and Scenic River process is an opportunity to stand strong for resources dependent on water and that stream segments found suitable for W&SR protection compliment the reasons for creating the NCA.

Steve Smith of the Wilderness Society, spoke on behalf of a coalition of 10 conservation organizations that made suitability and designation recommendations for W&SR segments inside D-E NCA. He urged BLM to include within the full range of alternatives for the D-E NCA resource management plan, an alternative that finds all D-E NCA river/stream segments suitable for W&SR protections.

While a local stakeholder group decided that D-E NCA had no stream segments suitable for W&SR protections, the 10 conservation groups that Smith represents came up with five suitability recommendations. Smit emphasized that for three of these five segments, the coalition suggested the BLM include a recommendation to Congress for full W&SR protections. Smith also emphasized that

regardless of a decision on suitability, all 11 segments merit some level of protection for their Outstandingly Remarkable Values (ORVs).

The suitable streams, *with* recommendation to Congress are:

- Rose Creek
- Cottonwood Creek
- Dry Fork Escalante Creek

The suitable streams, *without* recommendation to Congress are:

- Gunnison River, segment 3
- Escalante Creek, segment 1

The non-suitable streams are:

- Gunnison River, segment 1
- Big Dominguez Creek, segments 1 and 2
- Little Dominguez Creek, Segments 1 and 2
- Escalante Creek, segment 2

Eric Rechel, of the Sierra Club, asked the Council to consider a range of options for the W&SR issue, and to have some give and take during discussions.

Janice Shepherd, of Great Old Broads for Wilderness, asked the Council to preserve habitat for birds when recommending policies regarding gold panning in the NCA.

Pre-meeting Reminders

D-E NCA Planner Ben Blom, the interim federal official for the Council, recapped the recommendations that the BLM has received so far regarding Zone 2 of the NCA (May 18 and June 1 meetings). At the meeting on June 1, the Council heard input from gold prospectors about activities at Rattlesnake Gulch. Gold Prospecting Association of America club members (Olathe chapter) use gold pans, four-inch dredges and sluice boxes to process river gravels for gold. The Council also heard from Ryan Swygman, a Division of Wildlife game warden, about water fowl hunting and the limited use of power boats by hunters.

Blom said the Council's consensus on recommendations was that Zone 2 (Gunnison River) may require intensive management; that the mouth of the Dominguez Canyon is over-crowded and BLM should consider number restrictions on all groups. Other recommendations from the Council on Zone 2 include:

- Increase the number of camp sites to relieve pressure on Dominguez Canyon.
- Improve access to the river by working with the railroad.
- Define limits for casual use mining in the NCA.

Steele said the Council will hear from BLM Recreation Planner Andy Windsor on the recommendations received by the BLM about D-E NCA's W&SR segments. Two stakeholder groups submitted recommendations to the BLM: the Gunnison River Basin stakeholder group and a coalition of environmental groups.

Wild and Scenic River suitability recommendations

Windsor said the review of Wild and Scenic River suitability recommendations would take place in three parts:

1. Implications of Wild & Scenic River Suitability and Designation
 - Eminent Domain
 - Water Rights

2. Wild & Scenic River protections vs. Alternative Management Tools
3. Considerations regarding the four eligible segments where the Stakeholder and Environmental recommendations differed
 - Review eligibility
 - Consider the current uses
 - Consider the threats to the Outstandingly Remarkable Values (ORVs)

Implications of Wild & Scenic River Suitability and Designation

Suitability

Windsor explained that a finding of suitability for *any* stream segment, “maintains the process.” If there is no suitability finding, there is no continued W&SR process. Yet if a stream segment is found suitable, the BLM is obliged to protect those values.

According to the Wild and Scenic River Act, rivers are evaluated for suitability under two, separate sections: **Section 5(a) rivers vs. Section 5(d)(1) rivers.**

A Section 5(a) river is one where Congress tells agencies to evaluate a specific stream – a higher standard. Under Section 5(d)(1), a stream is evaluated within the context of a larger planning effort. Section 5(d)(1) is the section that is applicable to ALL D-E NCA streams.

Windsor emphasized that a finding of suitability for a stream segment has limited consequences:

- BLM would coordinate with other federal agencies to protect the free-flowing nature, ORVs, and tentative classification of each suitable segment
- Non-BLM agency actions that protect W&SR values are *voluntary*
- Private land uses that protect W&SR values are *voluntary*
- BLM would *not have regulatory authority* over private lands
- *No* land or interest in land could be acquired under the authority of the Wild & Scenic River Act
- BLM would protect W&SR values to the extent of BLM’s *administrative* authority

Designated

If a suitable stream is ultimately designated by Congress under the Wild and Scenic Rivers Act, the full authority of the Act comes into play. (Some W&SR suitable stream segments have waited decades for Congressional designation. Many are still waiting.)

Even after Congressional designation, the Act’s powers are applied in a limited fashion:

- Subject to valid and existing rights, federal minerals would be withdrawn
- Lands within the boundary of a designated W&SR would be withdrawn from the land laws
- Hunting and fishing would be administered under current laws and regulations
- Existing rights and privileges held by private parties on BLM lands would not be changed without the consent of the private party
- The BLM would have the authority to acquire land or interests in lands (fee title and scenic easements)
- BLM can only acquire State land through a donation
- BLM cannot acquire lands within an incorporated city, town, or village

Windsor said there are limits on the use of condemnation powers under the W&SR Act. If state/federal lands exceed 50 percent of the property along a stream segment, then eminent domain cannot be used to gain fee title.

His mapping analysis of all the D-E NCA river/stream segments shows that all segments have state/federal ownership in excess of 50 percent, therefore eminent domain cannot be used to gain fee title. Eminent domain, however, could still be used to acquire scenic easements, which could limit property owners’ development options.

W&SR eminent domain powers have not been widely used (1,413 acres in fee title; 6,339 acres in scenic easements in the entire country since the W&SR Act was passed in 1968).

Federal Reserve Water Rights

- Generally, designation includes a Federal Reserve Water Right
- Federal reserved waters rights would only be the water necessary to carry out the purpose of the W&SR Act (protect free-flowing nature, ORVs, and tentative classification)
- A water right would be subject to State water law (unappropriated water needed to protect the W&SR values); priority dates are usually at the time of designation
- Some designations include water rights language to clarify priority dates and amount deemed necessary
- Federal government has the authority to condemn existing rights (as of 2009, the condemnation power has never been used)

The primary intent of the W&SR Act in 1968 was to protect rivers from dams.

Other tools in the toolbox

Since 1968, a number of environmental laws were passed, which add to the regulatory toolbox and can be used to protect the ORVs of eligible/suitable river segments. These include:

- Wilderness Act (protects wilderness values; untrammeled, undeveloped, naturalness, opportunities for solitude or primitive and unconfined recreation, and supplemental values)
- Endangered Species Act (protects habitat for specific species)
- NHPA, ARPA, NAGPRA protect cultural resources
- PRPA protects paleontological resources
- National Conservation Area designation (protection focused on purposes)

Administrative tools:

- Areas of Critical Environmental Concern (ACECs) protects relevant values
- Special Recreation Management Areas (SRMAs) protect recreation experiences and settings
- Closure to uses that threaten W&SR values
- Visual Resource Management (VRM) can protect visual/scenic resources
- BLM sensitive species lists
- Stipulations on rights of way, recreation, grazing, etc.

Other tools: county zoning ordinances, instream flow water rights.

Windsor said the suitability issue has three questions, including:

1. Should the river's free-flowing character, water quality, and ORVs be protected, or are one or more other uses important enough to warrant doing otherwise?
2. Will the river's free-flowing character water quality, and ORVs be protected through designation? Is it the best method for protecting the river corridor?
3. Is there a demonstrated commitment to protect the river by any nonfederal entities who may be partially responsible for implementing protective management?

Discussion

The Council then focused on the four eligible segments where recommendations differed between the Gunnison River Basin Stakeholder Group and the Environmental Coalition. These segments are Gunnison River Segment 3, Escalante Creek Segment 1, Rose Creek and Cottonwood Creek. In discussions between the Council, Smith and Windsor, several themes emerged.

- **Wilson**, representing the Gunnison River Basin stakeholders feared that suitability would lead to Congressional designation, which could result in harm to private property interests – especially water rights. Wilson said that this was a major reason why the stakeholders did not recommend that *any* river segment be suitable under W&SR.
- Several **Council** members (Aquafresca and Kimber) expressed the desire to protect the ORVs of the river segments, by using legislative, administrative and regulatory tools *other than* the Wild and Scenic Rivers Act. No additional layer of bureaucracy is needed or wanted.
- **Smith** agreed that some river segments are not suitable, simply because of mixed public/private ownership and development. The stream segments his group recommended as suitable AND warrant recommendation for W&SR designation to Congress, are those segments that have zero private ownership involved and would have little, if any, impact on existing water rights. For the suitable streams without a recommendation to Congress, Smith said that option would force BLM to be a good neighbor to private property owners whose cooperation is necessary for the protection of ORVs.

Motion and Vote

Aquafresca made a motion (seconded by Wilson) to recommend that all four D-E NCA river/stream segments (Gunnison River Segment 3, Escalante Creek Segment 1, Rose Creek and Cottonwood Creek) be found not suitable for protection under the Wild and Scenic Rivers Act. Prior to the vote, Blom read a note from Council member Harris, who supported suitability for only the Cottonwood Creek segment. Neuhof said the approach of suitability without a recommendation to Congress should be considered, and that at least a few segments should be suitable. The vote was 4-2 in favor of Aquafresca's motion.

Public comment (Round 2)

Smith thanked the Council and BLM staff for a thorough discussion of W&SR issues. He noted that the Dry Fork of the Escalante Creek has a rare plant community that still needs protection, and reiterated earlier statements that the full range of alternatives should include one alternative that makes all stream segments suitable.

Other business

Blom said the Council could switch to a once-a-month schedule in October. When he asked if other days and times would work better, several Council members said they've arranged their fall schedules around the current pattern of Wednesday afternoon meetings.

The next meeting of the Council will be July 6 in Delta, where the focus will be on Zone 3 of the NCA, which includes Cactus Park and Nine-mile Hill.