

**DOLORES RIVER DIALOGUE  
STEERING COMMITTEE**

**Jan. 11, 2013**

**7 pages**

**Present:** Don Schwindt, Dolores Water Conservancy District; Randy Carver, Montezuma Valley Irrigation Company; David Graf, Colorado Parks and Wildlife; Wendy McDermott, San Juan Citizens Alliance; Peter Mueller, The Nature Conservancy; Nathan Fey, American Whitewater; Phyllis Snyder, San Juan Farm Bureau; Drew Gordanier, Southwestern Colorado Livestock Association. Guests: Mike Preston, DWCD; Amber Kelley, SJCA; Jerry Koskie, Farm Bureau . Contract staff: Gail Binkly, recorder.

**Note:** David Graf acted as facilitator, as Marsha Porter-Norton could not attend.

**Presentation from the Implementation Team:** Peter recapped the latest developments involving the IT. He said the conversation about the IT's Implementation, Monitoring and Evaluation Plan started in October, when the DRD-SC last met. At that time, Don S. said he had concerns about the plan. In order to move on to other agenda items, a fuller conversation about those concerns was tabled until a future DRD-SC meeting. Peter said Don later presented his feedback to the IT in the form of a letter that was signed by a number of other people as well. Meanwhile, other feedback about the plan was coming in from the state, BLM, MVIC and DWCD. The IT wanted to be responsive to all the feedback, so it compiled a list of questions and began responding to them. However, the team decided to slow down, realizing it would not be helpful to address each question on a piecemeal basis when the process of receiving feedback has not concluded. Peter said this is where things stand. He said the DWCD's full input is not likely until the end of February.

Don said he wanted to correct the description of the letter as "Don's letter". Although it was written on his computer, he had significant help from other players, who also signed it. Nobody signed the letter who didn't have the full plan available and the ability to read it.

Peter said the IT members are excited about their work. They spent a year putting together the plan, trying to ensure that it was science-based and focused on how best to implement the nine opportunities to aid native fish that had been delineated by researchers. The feedback coming in indicates that there needs to be a process of waiting and evaluation. Peter said the IT members believe they did a great job responding to the nine opportunities, but for this plan to be truly effective they need to rely on the kind of input they are receiving from the districts, BLM, BOR, CPW, and more.

Peter said they have set the end of March as a "soft" deadline for people to provide feedback to the IT. From April through August they hope to take a look at the overall intent, purpose and message of the plan. They believe the plan is incredibly important as it relates to bringing the community together to find a solution to aid the native fishery and a clearer solution to the water situation.

David said he agrees that stepping back is a good idea. They are still not clear whether they are going to rewrite portions of the plan in response to the feedback. Their goal for the plan is that it will benefit the native fish and the community as well. They want to find the "sweet spot" where it is going to work.

Randy said the MVIC board was initially reluctant to go over the plan as a board because the community truly believes any type of protection on the Lower Dolores is not a high priority. One comment he heard was that Wild and Scenic River designation is no worse than a National Conservation Area. Randy said

the board was asked to consider the way in which Canyons of the Ancients National Monument was created, which dismayed many community members. Randy contrasted it with McInnis Canyons National Conservation Area, which was created around the same time through a community process and legislation, and has resulted in much less rancor and bitterness. Randy said the seven MVIC board members had to get past the idea of doing nothing. They weighed whether to be proactive in working toward an acceptable solution or just saying, 'We're not going to allow anything down there.' Randy said they decided a proactive approach was better than risking a heavy-handed government approach like the monument's designation.

Mike said he was working for Montezuma County at the time the monument was created through presidential proclamation. There had been an effort to protect the area through NCA legislation instead, but there was resistance that made that impossible, so the community ended up with a monument. In contrast, when McInnis Canyons NCA was created, it was done through legislation and the community had to be on board. When issues or concerns came up, citizens could go directly to their congressional delegation for answers. Mike said he believes that is why there are fewer problems with the management of McInnis Canyons NCA vs. CANM.

Mike said when the Lower Dolores Working Group began meeting, there was initially a sentiment of, 'Don't do anything.' Then water attorney David Robbins made a presentation to the LDWG and pointed out that WSR suitability or even WSR designation could create another federal obligation that would be in conflict with the obligations under the Dolores Project. Robbins suggested that some type of special legislation, crafted locally, might create some stability for the water regime as well as further protect the river's Outstandingly Remarkable Values. The idea behind NCA legislation was to address ORVs without detriment to water rights and Dolores Project allocations.

Mike said moving forward with legislation will require broad community support. Dealing with the fish is probably the most complicated and challenging issue involved. If a plan to aid the fish can be developed that works for everyone, that would provide a foundation for legislation that could create some certainty and stability.

Drew said the use of the Antiquities Act to create CANM eliminated discussion. He said this local process needs to continue before things get to that point.

Amber briefly reviewed the history of the LDWG and how it came to consensus on the idea of pursuing NCA legislation in exchange for the permanent removal of Wild and Scenic River suitability on the Lower Dolores. She discussed the creation of the Legislative Committee and said the Leg Comm had made considerable progress until it had to deal with the question of native fish and flows. That triggered the "A Way Forward" process, which became the basis of the IT. The Leg Comm is waiting to see what happens with the Implementation Plan; then it will take up question of how the plan relates to the legislation. She said in order for environmentalists to accept the idea of doing away with WSR suitability, there needs to be an assurance that the native fish and other Outstandingly Remarkable Values on the Lower Dolores will be protected in perpetuity. Amber said the nature of a process like this is that no one will get everything they want but that's why it works.

Peter said some of the feedback about the plan is to the effect that embedded in the IT's plan is an implication of an obligation. The question is how to move from an obligation to positive, voluntary actions while maintaining the scientific integrity of the document. Peter said the IT is not trying to sneak the camel's nose into the tent to create an obligation so the government can then require more to

happen. They need to figure out how to retain ideas for benefiting native fish without creating a blind commitment that wasn't intended.

Randy said there is a difference between the words “may” and “shall” and some of the “shalls” in the document may be inflammatory.

David said CPW believes there is an obligation to do everything possible to ensure native fish persist in that reach. But CPW needs the help of others. If WSR suitability is removed in perpetuity, they need some assurances that protection efforts for the fish will stay the course a long time. He said that does represent a type of commitment. He would like to see that there is a commitment and said there is a lot to work out about how to write that into the plan, or how to link the legislation to native fish.

Jerry talked about private inholdings within CANM and said not a lot of private land should be incorporated into the NCA or there could be a great deal of bitterness. Mike said Al Heaton has been working with individual landowners on that issue, and Ernie Williams has been active on the boundary questions. Amber said most private land on the Lower Dolores is in the Slickrock area. The Leg Comm has worked closely with John Whitney, aide to Sen. Michael Bennet, on the NCA language and concepts. Amber said Al was feeling good about the efforts so far to protect private property rights.

Mike said if the community does decide to move ahead with legislation, there will be a legislative record to establish valid existing rights. And if people feel private rights are being abrogated, they can go to their congressional representatives, who can act to make sure compliance is within the intent of the law.

Amber said there will be more meetings of the LDWG and this will be a good place for more input.

Don said the comparison of this process to the creation of CANM is not necessarily valid. He said water is the critical issue and it is a private property right as well. The commitment David talked about still potentially involves wrestling with a private property right. Don said he was caught off guard by Randy's statement that his board couldn't begin to constructively evaluate the plan without a significant discussion about the NCA vs. the monument. Don said the DWCD board hasn't had that discussion at all. Don said the process is critical. The IT seems to have settled on a fairly formal process and he is not sure that's the best way to reach their goals.

David said all types of input about the plan, formal or informal, are welcome until late March.

Don said the process hasn't necessarily allowed for informal input. The plan was handed to the DWCD board and there was no opportunity to discuss it. At the October DRD-SC meeting there wasn't an opportunity for informal discussion. Presenters at the joint DWCD-MVIC board meeting also said, 'Wait, we're not ready to listen.' Don said the most constructive informal discussion he has had was with Peter at lunch at the DRD-SC meeting. Don said there are still some key people who have a private property right they don't want to see impinged upon, particularly the MVIC water users. They are concerned that their water rights are in the gun sight of this plan.

Don said the more formal process results in considerably fewer words, although those may be better articulated. He said communication is very important. He compared it to a courtship: Formal letters might be nice, but in the end, informal discussion is critical. Don said the plan needs informal discussion and informal feedback on key issues. He said the IT has some good ideas but they are not necessarily in tune with the majority of the community. If a good idea is presented as a sales job and there is only a

formal process, you really haven't addressed enough issues to obtain grassroots support.

David said the end point is a community-supported plan and how to implement the nine opportunities. The process of going back and forth is very important. He feels remiss that the IT has not opened a wider door to informal feedback.

Don said there may be more choices than “NCA or nothing”. If an NCA produces even the fear of obligations, it will go nowhere. He believes the IT has had a minority viewpoint of water users. Randy's vision has helped color this to the exclusion of people on the MVIC system that might not agree with him. Don said if the plan is not representative of the majority, it leads down the wrong path. More communication might flesh that out.

David said the largest shortcoming of this plan is it's open-ended. It's a full-disclosure document of all the hurdles and issues that might occur if managers try to implement even one of the nine opportunities. The IT doesn't really know where this is going to go and they need the DRD-SC's help and support so the plan is palatable to everybody. The baseflow discussion is where the talk about private property rights is centered. David said the IT has always talked about the acquisition of more water as occurring only as a business deal that makes sense for people in the community. That is the only way it would happen, and that is a huge hurdle. If there's an opportunity available, good, but the IT is not going to hang their hats on it.

Don said the IT's language leaves that option open, and to him that is more than a “nose in the tent”. If a 51 percent majority can be persuaded to support a lease of MVIC water, that is the target that is still hanging. The water he is using today is in the bull's eye.

David said it's fine to have the opinion that not one drop more should go down the river, but not everyone may agree. Don said he doesn't want a drop of *his* water going down the river but he isn't necessarily saying nobody's should.

Peter said what they learned from the failed lease proposal is that there is currently no water available for a lease or purchase without drying up somebody's field, and nobody wants that. The IT has talked about that reality. They tried in the initial draft to say the system is fully allocated. If there is an opportunity for more water, it could happen through a willing seller, or the development of additional storage, or greater efficiency. They are trying to figure out what's palatable without being too vague.

Don said the constructive way to move forward is to acknowledge how difficult it is for any base flow enhancement.

David said Don is describing a cost-benefit analysis of ways of augmenting baseflows. David said the IT chose not to do that. The issue is one of supply, so they laid out the supplies and then laid out the importance of water for fish. But he doesn't think a full-blown analysis is possible in this document.

Don said he doesn't want that full-blown discussion in the plan but he wants the possibility of enhancing baseflows described as something arduous, with a slim chance of success. David said he thinks it *is* described as difficult, but Don said it wasn't shown to be as difficult as it should have been.

Don repeated that things are better understood with a face-to-face conversation. It really does enhance

understanding. This is a courtship with the community.

David said, as with a courtship, there is a bit of faith involved that this is on a path forward. He is wrestling with how to formalize and articulate that “faith” so there is some assurance and something his superiors can buy into so the fish can be protected more.

Randy said he has been dying to hear some informal discussion. He is begging for it. He hasn't gotten one phone call. The only way to get the dialogue out there is to get it out there. The lease proposal was put out, and people are talking about it now. Nothing has happened that's bad. There's no obligation to put more water downstream. The shareholders had a vote and they voted against the lease. They still want to talk about it. People are now more aware of the issues. He said it's good for them to understand that the baseflow discussion involves much more than the lease, but also decrees and how they work, efficiencies, and more. He is eager for that discussion.

Wendy asked how the IT could best approach the Farm Bureau and Livestock Association.

Phyllis said the Farm Bureau hasn't had a board meeting since the plan came out. They had an annual meeting and there is a Farm Bureau meeting next week. She said not everyone on the board is an MVIC shareholder. She said she can ask the board whether to have the IT make a presentation to them. Phyllis said it may be more productive to let the DWCD and MVIC boards go through the plan and then have an informational meeting. She said she doesn't see the Farm Bureau's board going over it in detail.

Drew said the Livestock Association will not likely have detailed comments either, although it might have a few. The Livestock Association had one board meeting after the last meeting of the DRD-SC and they did discuss the Implementation Plan. They have a meeting Monday night that will be more in-depth. At that time they will probably decide whether and how much time to allot to the IT at their annual meeting on Saturday, Feb. 9.

Wendy said the IT has tended to be put on people's agendas and given just 20 minutes to talk, not enough time to get much feedback. She said they would like to talk more but sometimes the meeting agenda of groups doesn't allow this.

David asked how best to do informal discussion. Don suggested scheduling time with the DRD-SC. The more discussion and agenda time that can be devoted to the plan, the better. That dialogue is very useful. The DRD-SC is the place for feedback. Don asked whether the DRD-SC could schedule a time to discuss the comments of both boards. David said that would be agreeable if the discussion goes both ways and includes not just the concerns of the irrigation community but also CPW and environmentalists. Don agreed the DRD-SC is the appropriate place to have that discussion.

**Next steps:**

→ The IT is continuing outreach and presentations. They want feedback by the end of March and hope to have an August document reflecting the input. Peter said the IT will take feedback however they get it. They will look for additional informal processes and how to make the revisions honor the community's sentiment.

→ It was agreed the DRD-SC needs to meet more regularly. Drew suggested some meetings might be in the evenings.

**319 Watershed Plan:** Wendy provided background on how the DRD came to apply for and receive funds

to do a 319 watershed study. The process started in 2008 but was put on the back burner because of other, more pressing efforts going on, such as the LDWG. Last spring the DRD-SC picked up the process again. Don and Wendy became a subcommittee focused on the 319 plan.

Don explained that this plan is a DRD product directed by the Steering Committee. The plan is answerable to the DRD and then to the Colorado Department of Public Health and Environment, which regulates nonpoint source pollutants. He and Wendy want substantive involvement of the DRD-SC at some point.

Wendy said Chester Anderson, the original contractor, had moved to California and taken a full-time job, but was continuing with the work. The DRD-SC approved an outline and called for appendices to provide a history of agriculture and boating and a history of the DRD. Wendy said all seemed to be moving forward nicely until late November 2012, when they got a draft from Chester that was not robust in meeting the requirements of the state. Wendy said the subcommittee had a lengthy meeting by phone with Chester and gave detailed feedback. They raised the concern that Chester might not be able to deliver the high-quality product they were expecting, and agreed to wait for his next draft to see how well he had incorporated the feedback. When they did receive it they were disappointed. They met last Friday with Marsha and reworked the outline. Some of the pollutants they are wrestling with are unique, so they came up with the idea to focus on how unique this plan is.

Wendy said it appears Chester will not be able to finish the product. Chester has offered to hand off the plan to someone local. Possibilities are to scrap the project and return the grant monies, to hire a new consultant and start over, or something in between. The DWCD board has approved a contract with attorney Jeff Kane for some help in moving the plan along. Wendy said they could hire another consultant with more technical knowledge, and Ann Oliver has been suggested. They need to see how much data Chester has collected.

Wendy said the deadline to deliver a product to the state is March 31, 2013, but they are trying to see if that can be extended. The contract is between the district and the state, not Chester and the state, so the existing contract should continue to be viable. There are still funds available from the original \$25,000 and there is about \$7,000 to put toward Ann's work or someone else's.

Don said the subcommittee met Wednesday and Friday of last week. They agree they want a quality product and would rather abandon the effort than produce an inferior product. He said Jeff has already been involved and is familiar with the draft and outline. Don believes Jeff will be very useful. The three of them were optimistic they would have a path forward to a quality product.

Wendy said the pollutants being examined in this 319 plan are temperature, sediment, salinity and uranium. The focus is the river from McPhee to Paradox. Wendy said some of the temperature and sediment mobilization feeds into the work of the IT, so maybe David Graf or someone else with CPW could add technical expertise to some sections.

David said he could not commit to anything beyond his current workload. He does think a substantive and meaningful 319 plan is still possible. He said the draft he saw contained some good information, although the data was somewhat unclear and there wasn't anything to suggest what they're doing in the future, so those are two big holes.

David suggested requesting an extension from the state for the purpose of linking with the completion

of the Implementation Plan and other efforts happening on the river and obtaining the feedback of the full DRD.

Nathan said the state itself and other 319 plans can be a significant resource.

→ It was agreed that it would be best to transfer the work to another consultant.

**Next meeting:** The next meeting was set for Wednesday, Feb. 13, at 9 a.m.

**Meeting summary:** The summary from the Oct. 2 meeting was approved with no changes.

*Other items on the agenda were tabled because Marsha was not present.*