



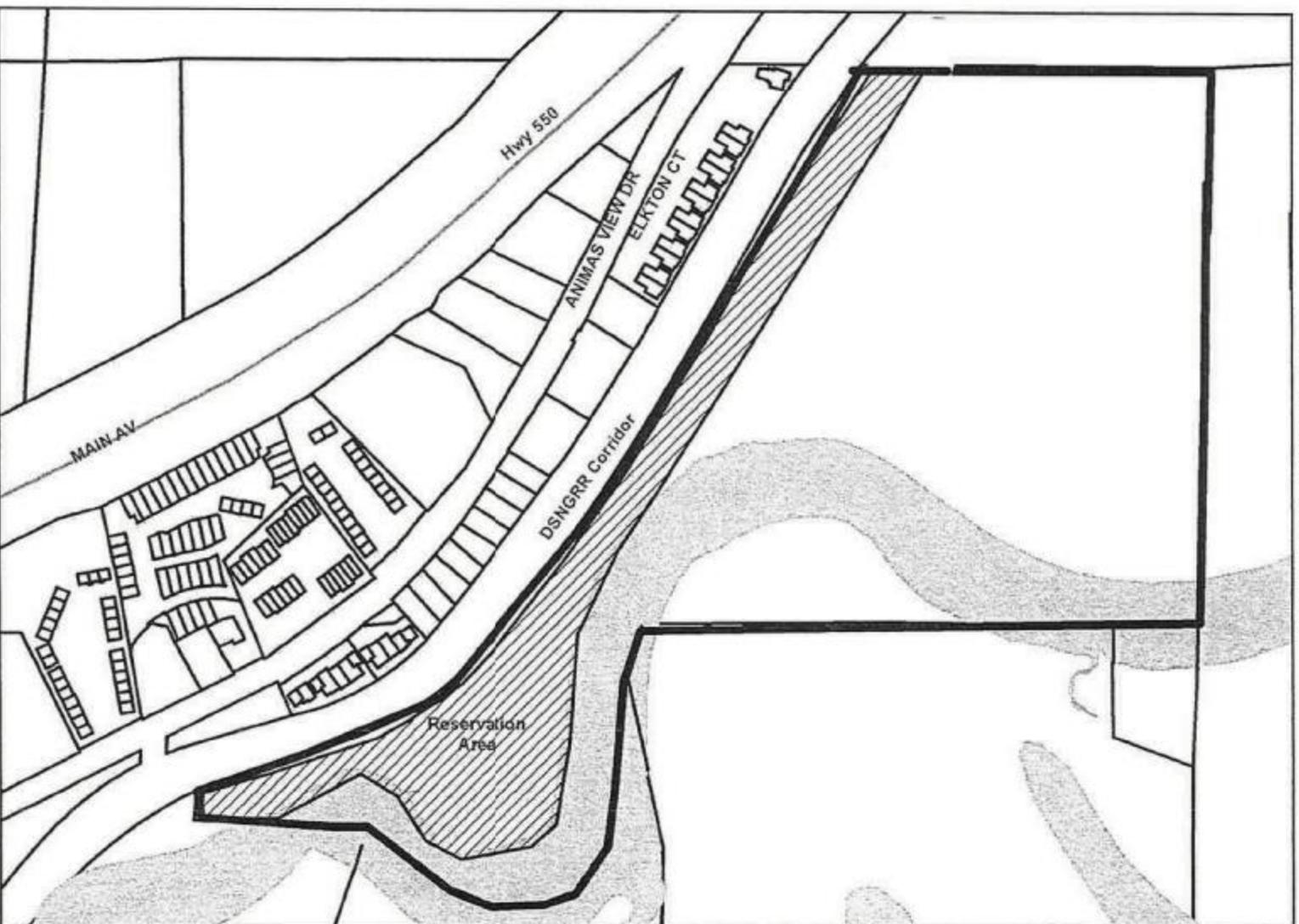








Exhibit C  
Reserved Development Area



Dear Ms. Metz,

Regarding our meeting at Riversong Ranch on April 28<sup>th</sup>, we appreciate you and Kevin Hall taking the time to meet with us and the Klingman's personally. Both ourselves, and the Klingman's, would like to make it very clear to yourself and other members of the city and surrounding property owners, that we do not support the city purchase and subsequent development of the Sterk/Cameron and/or Romad property into a park/boat launch site. It has come to our attention after several conversations with other people affected by this possible acquisition, that you feel we are in favor of this purchase, and we want to go on record that this is not true at all.

From the beginning of this process, we have been concerned about the development of this park area, and fallout from providing access to possibly thousands of tubers, commercial rafting companies and revelers, to the Animas River in an area not owned by the city, but by private land owners. During our conversation, we discussed our concerns about policing the park, trespassing violations on our property, degradation of the wildlife habitat and numerous other issues we had. You were not able to address any of our issues with any specific solution, except that the policing of the river would possibly be done by the volunteer mounted police in a row boat. We were also shocked to learn of the city's other plans for land purchases and subsequent boat launch sites along the river. This is unacceptable to us.

It appears the city is attempting to purchase one portion of river front property and allow access to thousands of people. This is a slap in the face to the numerous land owners who own to the center of the river who will now be faced with policing their property and the added liability and confrontation issues. The city should be ashamed of itself when it tries to pursue a scheme that creates these types of problems for the adjacent private landowners. At the very least, the city should be trying to keep tourists in the city area so they can have access to restrooms, food and beverages and, hopefully, spending money with our local businesses.

\*\*\*\*\*

Frazier Ranch

1825 County Road 250

Durango, CO 81301

[970-426-9096](tel:970-426-9096)

Thursday, March 10, 2011

TO: Lise Aangeenbrug, Executive Director, Great Outdoors Colorado

SUBJECT: **Animas River Greenway Preservation Project**

Dear Ms. Aangeenbrug:

The undersigned of this letter are all property owners and ranchers in the Animas River Valley. We are very concerned about an open space grant proposal that has been submitted to you by the Durango City Council named the *Animas River Greenway Preservation Project/Sterk Property*. This project has been listed as a "Greenways/Stream Corridor Open Space Acquisition" but it will wind up being nothing of the sort.

The City is trying to acquire two pieces of property that are directly west of the river from Riversong Ranch (74 acres) and Frazier Ranch (96 acres). **Both of these ranches are in conservation easement with the La Plata County Open Space Conservancy.** The City plans to provide river access (ingress and egress) from this acquired parcel for both commercial and private rafters and tube floaters.

We feel that **this usage of the property will severely degrade our riparian and ranch land environments.** The City never contacted us about this proposed usage. If they had, we could have informed them about the situation as it currently exists. There are serious issues with environmental and riparian habitat degradation due to the unauthorized use of these vacant properties. Both ranches have had serious problems with trespassers on the "beach" areas of the Sterk property and adjoining Romad property. Every day last summer we had to ask trespassers to get off of our property. We were met with belligerence and non-compliance in most cases, and vandalism to our posted no trespassing signs. Due to the fact that both ranches are in the county and the Romad parcel is in the City, legal jurisdiction for confronting this issue is hard to resolve due to jurisdictional finger pointing. In addition to trespass, we have to deal with noise levels (able to be heard at the barns 1000 yards away), litter, alcohol abuse, human waste on our property, loose dogs, sexual displays and general disrespect for our private property and the environment.

Frazier Ranch uses the portion of their property adjacent to this beach area for grazing cattle, including a bull, raising asparagus, grazing pigs and is in the process of upgrading the rangeland with an intensive weed control program and grassland reseeding. Riversong Ranch uses their adjacent portion to provide a serene environment for horseback riding for their boarding guests. Both owners rely on the fact that their private property is being respected from the river side boundary.

Our combined river frontage is greater than a mile long and we obviously cannot spend all of our time policing it for trespassers and still run our respective ranches. A major concern to us is how the City plans to police the 4000 feet of river frontage of these two parcels. It was apparent at the meeting with the Parks and Recreation Board on February 16, that Cathy Metz feels that it is not an issue that the City will deal with. She stated that it would be up to us to call the police if trespassing/vandalism was a problem. It would seem from the Board comments at this meeting that the City has no true concern for the effects this park will have on private property rights or the health of the Animas River riparian environment (not only at the park site, but along several additional miles of the Animas River that will now be accessible by hoards of tubers).

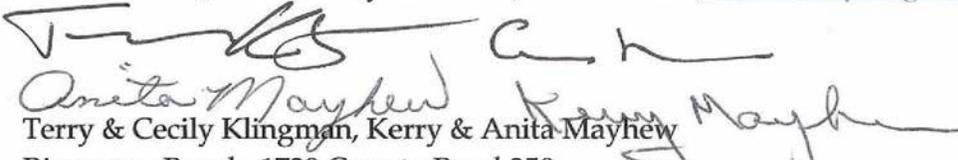
In an effort to try to mitigate the impacts of this "park", may we suggest that GOCO could modify the grant proposal to eliminate all river access, including appurtenant improvements (road, parking lot and turnaround), and not allow commercial access of any kind or any type of beach improvements. Since this project was started as an extension to the bike trail, access would be limited solely to foot and bicycle on the river trail.

We appreciate your consideration of our concerns. We would be happy to meet with you and would appreciate the opportunity to be included in your tour of the property.

Sincerely,



Daniel & Cecilia Whitaker, Sylvia Frazier  
Frazier Ranch, 1825 County Road 250, 970-426-9096, [cwhitakerpls@gmail.com](mailto:cwhitakerpls@gmail.com)



Anita Mayhew, Kerry Mayhew  
Terry & Cecily Klingman, Kerry & Anita Mayhew  
Riversong Ranch, 1729 County Road 250



Tony Ganzerla  
Ganzerla Ranch, 5725 County Road 250



Sandy & Mike Bruce  
Sandy & Mike Bruce  
Rancho del Perro Feo, 3125 County Road 250

# The Right to Float in Colorado: Differing Perspectives

**Editor's Note:** River running has become one of the most popular forms of recreation in Colorado, yet some believe that state law regarding the right to float through privately owned property is not well defined. This perceived ambiguity has prompted several lawsuits between outfitter companies and private land owners, and the stage is set for future legal entanglements related to this issue. In this article, we present the differing perspectives of two legal experts in Colorado: John R. Hill, attorney and shareholder in the firm of Bratton Hill Wilderson & Lock, LLC; and Lori Potter, attorney with Kaplan Kirsch & Rockwell LLP. In sharing their perspectives and expertise, both authors were asked to respond to the following questions:

1. What does Colorado law (both statute and case law) say about the right to float in Colorado?
2. Are there issues regarding the right to float that are still open to interpretation? If yes, which issues and why?
3. Do you have any stories you can share that will help readers understand the issues?

**John R. Hill:** a shareholder in the firm of Bratton Hill Wilderson & Lock, LLC, in Gunnison, Colorado. He holds a B.S. from the U.S. Military Academy at West Point, a M.S. in Civil Engineering from Stanford, and a J.D. from George Washington University.

## What does Colorado water law (both statute and case law) say about the right to float in Colorado?

There is no right to float. The Colorado Supreme Court in *People v. Emmert* held that “the land underlying non-navigable streams is the subject of private ownership and is vested in the proprietors of the adjoining lands” and “the public has no right to the use of waters overlying private lands for recreational purposes without the consent of the owner.” There is no reported case holding any Colorado stream navigable. C.R.S. § 41-1-107 provides that “[t]he ownership of space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight of aircraft.” No Colorado statute expressly confers a right on the public to float through private property. To the contrary, when the Colorado Supreme Court in *People v. Emmert* held that the public has no right to use the waters overlying private lands without the consent of the owner, it also found support in several statutes noting that such statutes imply legislative recognition of the right of the land owner to deny or limit access to his land and water.

Proponents of the right to float often argue that C.R.S. § 18-9-107, which provides in pertinent part that one who “without legal privilege . . . obstructs a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway, or hallway to which the public . . . has access” commits a crime. On its face, the statute does not create any rights, it simply makes it a crime to obstruct any waterway “to which the public has access.” “Access” necessarily means legal access, which the public does not have over private land. The General Assembly could not have intended to make it a crime for a landowner to obstruct a waterway by using his airspace to construct a fence or bridge, thereby making a rancher a criminal for

fencing across a stream to keep cattle from straying off his land. That would be an unconstitutional taking of the landowner’s immediately enveloping airspace and his right to exclude others.

## Are there issues regarding the right to float that are still open to interpretation? If yes, which issues and why?

There are no such issues. The law was and remains settled by *Emmert*. The question the Court decided was whether section 5, Article XVI, of the Colorado Constitution gave the public the right to float through private property. Therefore, the Court’s holding is universally applicable, notwithstanding the fact that it was made in the criminal context. Proponents will also argue that a 1977 Attorney General’s opinion by then Attorney General Duane Woodward found a public right by stating that C.R.S. § 18-4-504.5 defining “premises” for purposes of the criminal trespass statute did not authorize land owners to control floating through their property. Aside from the fact that attorney generals’ opinions do not bind courts or law enforcement officers, that statement is wrong. The General Assembly does not have to authorize property owners to keep others off their property. The United States Supreme Court has held that the right to exclude others is inherent in the right to own property, as well as one of the most important attributes of that right. Also, in a recent case in Gunnison County, the district court ruled that C.R.S. § 18-4-504.5 is not a defense to civil trespass. That ruling is well-reasoned and, while not precedent, should be followed by other courts<sup>1</sup>.

Of equal importance, any statute now in existence or that may be enacted in the future opening streams flowing through private land to public use would violate the Fifth Amendment to the United States Constitution if it

did not provide for payment of just compensation to the landowner.

One fact proponents choose to ignore is the fact that the Supreme Court has stated that the landowner has the right to the immediately enveloping airspace. The landowners use their airspace over the streams and stream beds for fences and bridges.

Proponents also make much of the positive financial impact from commercial rafting revenues in arguing that there is a general right to float the streams of Colorado flowing through private land. They ignore the fact that the landowners pay taxes on the land supporting their industry and that the rafters are using it for free.

Finally, it is possible, but not probable, that one or more Colorado streams may be navigable as a matter of federal law<sup>2</sup>. A detailed discussion of the various theories under which a water body may be navigable as a matter of federal law is beyond the scope of this article. However, the characteristics of Colorado streams that make them

<sup>1</sup> In contrast, there is a half century-old unreported district court ruling from Gunnison County that the Gunnison River is navigable from Almont to Sapinero. The district judge provided no analysis or cited no legal authority for his opinion and ignored the two Colorado Supreme Court opinions from the early 1900s discussed below holding that there were no navigable streams in Colorado. While those opinions are also subject to criticism for also containing no analysis, the district judge was obligated to explain why he did not follow them. The case was also a stipulated settlement, which binds only the parties and carries no precedential value.

<sup>2</sup> The U.S. Army Corps of Engineers considers the Colorado River downstream of Grand Junction to the Utah line and Navajo Reservoir as navigable waters of the United States.

**Lori Potter:** a Denver attorney who has represented river outfitters associations, rafting companies, and private boaters in cases involving the right to float (including the Cannibal Outdoors and Colorado Whitewater Association cases mentioned below). She can be reached at [lpotter@kaplankirsch.com](mailto:lpotter@kaplankirsch.com)

## Introduction

More people—over 500,000 in 2007 and 2008—take commercial whitewater raft trips in Colorado than in any other state. Commercial rafting powers Colorado's summer tourism economy. Private recreational boating also draws countless kayakers, canoeists, and rafters to the rivers and streams of Colorado every year. In fact, the state is named for one of its mightiest and most boatable rivers.

Despite the popularity of the state's waterways, the right of public boaters to float rivers as they run through private property in Colorado is frustratingly unclear. Thirty years ago, the Colorado Supreme Court concluded in a criminal trespass case under a now-superseded law that the public has no constitutional right to touch the bed or banks of a non-navigable river that overlies private lands. However, that decision ("Emmert") raises far more questions than it answers. Don't citizens have a right to float on navigable waters? What if a boater does not touch the river's bed or banks? The Emmert case was a criminal one; what happens when no one brings criminal charges? Almost every other state in the country recognizes and protects a boater's right

attractive to whitewater enthusiasts also make it unlikely that they are navigable under any traditional test. A century ago, the Colorado Supreme Court stated that there are no navigable streams in Colorado. Those opinions are subject to criticism for containing no legal analysis. However, they do reflect the common knowledge of that time that no streams were being used in commerce. There are no other cases that support any stream in Colorado being navigable under any theory.

## Do you have any good stories you can share that will help readers understand the issues?

In 2001, I represented a landowner on the Lake Fork Gunnison River in a suit for trespass against a commercial rafting company. After the court ruled that the statute defining premises in the attorney general's opinion discussed above was not a defense to civil trespass, the defendant ultimately confessed judgment and went out of business.

to float through private property; surely there is a good answer for Colorado.

## The Law of the Current in Colorado

Long before David Emmert decided to test the limits of the right to float by touching the bed of the Colorado River, another boater brought a test case, *Arnett v. Trouthaven*, on the Gunnison River. The Gunnison boater won a ruling from the state district court that said, based on historical use by rafts and boats, the Gunnison River from Almont to Cimarron is a navigable stream and its waters are open to the public. Proof of navigability was the key to this precedent, and even in 1961—years before the widespread popularity of commercial whitewater float trips—the court found sufficient evidence to support navigability and thus a public right to float.

As private and commercial rafting grew in popularity, there were more incidents of streamside landowners calling the sheriff when boaters floated through. At times, boaters needed to get out of their boats to portage around fencing erected across a river to control livestock. At other

times, floaters left their boats to fish or simply to picnic or relax on the banks. Some of the incidents involved boating through stream reaches that contained prized trout fisheries. The Emmert case was designed to test the constitutionality of the law that made the touching of the river bed a criminal trespass.

The Emmert float trip in 1976 began with a put-in on public land and continued through a private ranch that the boaters knew to oppose raft trips. Emmert deliberately touched the river bed and then floated under a strand of barbed wire strung to catch boaters. The rancher had the sheriff waiting on the other side to arrest Emmert for trespass.

Emmert argued in court that Colorado boaters have a right under the state constitution to float on the state's rivers. Colorado's constitution declares the water of every natural stream to be the property of the public, dedicated to the people's use. The Supreme Courts of Wyoming, Montana, and New Mexico had approved the right to float through private land based on nearly identical text in their state constitutions. The Colorado Supreme Court parted ways with neighboring states, holding that the constitution protects only the right of appropriation of water.

Meanwhile, however, the Colorado legislature reacted to Emmert's trespass conviction with disapproval and, with an alacrity that legislatures are not known for, amended the criminal trespass law. Henceforth, boaters who floated through private property but remained in their boats could not be charged with criminal trespass. The hearings on the amendment contained strong statements supporting the right to float. A formal opinion by Colorado's then-attorney general, Duane Woodard, stated that this immunity from liability extended to charges of civil trespass as well.

There continued to be the occasional flare-up along stretches of floatable water on private land. The South Platte River above Denver, prized by both fishing clubs and kayakers, is an example. Boaters secured a victory on at least a segment of that waterway when a landowner who had historically placed barriers in the river agreed that the Colorado Whitewater Association had established a right to float by more than 20 years of persistent use. The owner settled a lawsuit by formally granting that easement.

In 2001, a landowner along the Lake Fork Gunnison River demanded an end to float trips run by a husband and wife outfitting team known as Cannibal Outdoors. Despite operating under a federal permit and having a long history of running small, family-friendly trips on this quiet stretch of water near Lake City, Cannibal found itself defending a civil trespass complaint in state court. The outfitter was forced out of business by the cost and stress of the lawsuit before it could get a court ruling on the river's navigability.

The court issued a partial ruling, holding that the state's abolition of criminal trespass liability did not resolve the question of whether civil trespass liability still remains.

## Where Things Stand

What, then, is the state of the law on the right to float in Colorado? It is widely agreed that no criminal liability exists for floaters who remain in their boats and do not touch the bed or banks; sheriff's tickets issued to them are usually dismissed. Boaters who do touch the bed or banks of a private owner may be cited, but they have raised a choice-of-evils defense to trespass where their contact was a direct result of fencing or another hazard in the water.

On the civil trespass side, the status of the law is about as clear as the water of a mighty river at the height of spring runoff. Navigability continues to be the basis on which boaters who put in on public land are entitled to float a river as it passes through private land. No fewer than 42 other states sustain the right to float in those circumstances, as did the state district court in Gunnison in the 1961 Arnett case, but no higher court in Colorado has yet weighed in. Navigability remains a complicated concept because it has at least three different definitions, but its central proposition is that proof of the use of a waterway for transportation renders it available to boaters for float trips today. The Emmert case is widely cited in opposition to a right to float based on navigability, but Emmert explicitly did not decide that legal issue because the parties stipulated that the river was not navigable.

## Floating Downstream or Paddling Against the Current?

The two most common flashpoints involve (1) float trips through riverside subdivision developments marketed as exclusive second home sites, and (2) float trips through waters where fishing clubs or leases are maintained. Where the streamside land owner is absentee, as is often the case, the conflict takes on an additional dimension. The loss of commercial rafting revenue or, as in the Cannibal case, the loss of an operating business, to say nothing of the loss of a prized recreational opportunity, is a heavy price for a tourism- and recreation-driven economy to pay.

The status quo is hardly satisfactory if streamside landowners can use the mere threat of a civil trespass lawsuit to force longstanding river runners to cease river trips rather than face crushing legal costs and possible damage awards. Colorado's neighboring states with river-running opportunities have protected the right to float, notwithstanding those states' unquestioned sensitivity to private property interests. When presented with a new right to float case, Colorado courts will have a chance to follow suit.

# The Connection between Environmental Concern and Outdoor Recreation: The Case of Fly Fishing

by Alan D. Bright, Associate Professor, Department of Human Dimensions of Natural Resources, CSU

A prominent issue for researchers in the human dimensions of natural resources is the level of concern the public has for the environment. Such concern may translate into support or opposition to many different environmental and natural resource initiatives. One factor that may influence a person's concern for the environment is participation in outdoor recreation activities, which exposes people to instances of environmental degradation where they recreate and increases their concern about such degradation on a broader scale. While this may appear to be intuitive, research results on the connection between environmental concern and outdoor recreation participation have been mixed.

Early research found that people who participated in non-consumptive outdoor recreation activities, such as backpacking and wildlife viewing, had a higher level of environmental concern than people who participated in consumptive activities such as hunting and fishing. However, none of the correlations reported were particularly significant. Other research has failed to find any connection between outdoor recreation participation. Finally, several researchers, while finding a positive relationship between pro-environmental behavior and outdoor recreation activity, also found that non-consumptive recreationists did not exhibit more pro-environmental behavior than did consumptive recreationists.

One factor that may explain the ambiguous results of research on the connection between outdoor recreation participation and environmental concern is that these studies focused on a direct relationship between activity participation and environmental concern without considering what the activity means to individuals. Given that the same activity may mean something different for two individuals, it is reasonable to suspect that differences in meaning may explain the ambiguous findings regarding the direct relationship between outdoor recreation and environmental attitudes.

We examined the relationship between outdoor recreation and environmental concern, and the extent to which the meaning of these activities to participants provides a better explanation or prediction of environmental concern

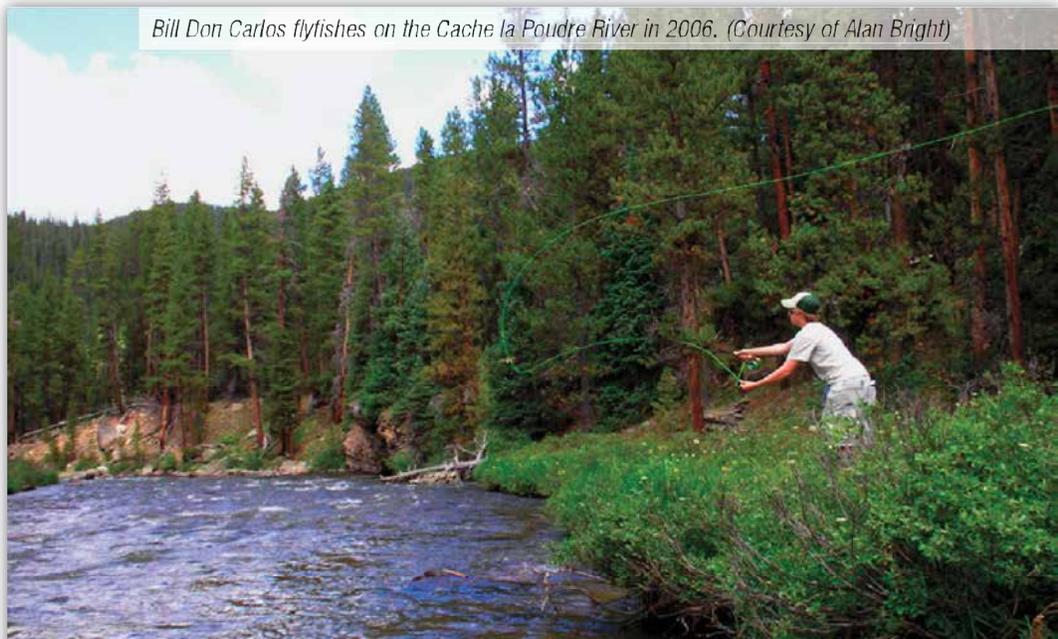
than participation. This article describes the results related to those individuals who reported that their most important outdoor recreation activity was fly fishing.

## Methods

This study was part of a larger mail survey of hunting and fishing license holders in the state of Washington. Of a total 250 survey respondents, 155 indicated that fly fishing was the most important outdoor recreation activity to them. *Participation* was measured as the anglers' experience use history (the examination of past behavior and experience levels) by estimating how many years they had been fishing and how many times per year. Meaning was defined as anglers' most important *personal motivations* for fly fishing. *Environmental Concern* was measured using The New Ecological Paradigm, a common measure of environmental concern.

Mediation analysis was used to examine the extent to which the meaning of participation in fly fishing mediates the direct relationship between participation and environmental concern. Mediation requires three conditions. In the first condition, the direct correlation between participation in fly fishing (the predictor variable) and environmental concern (the criterion variable) is computed and must exist. In the second condition, a direct correlation between participation in fly fishing and the meaning of the activity (the predictor variable) is computed and must exist. Finally, in the third condition, the correlations between both participation in fly fishing and meaning with environmental concern are computed together. Mediation occurs if, when the meaning of the activity is included in

Bill Don Carlos flyfishes on the Cache la Poudre River in 2006. (Courtesy of Alan Bright)



**Public Comment: Submitted by Jane Gerstenberger  
To Natural Lands Advisory Board  
Re: Oxbow Park Draft Management Plan**

**GOCO Policy and State Compliance**

*Rationale to Request a  
12-Month GOCO Board Extension and  
Conservation Easement Amendments  
for Oxbow Park & Preserve Management Plan*

GOCO limits Open Space Grants exclusively to “passive recreation.” “Active recreation” is allowed under Local Government Grants. GOCO has described river put-ins and take-outs as “active recreation” through Local Government Grants (Source: GOCO River Initiative Grants, pp. 3-4).

GOCO does not acknowledge City referenced “Hybrid Open Space,” (both active and passive recreation on Open Space under a conservation easement) as an allowable “funding purpose.” This would violate the GOCO State of Colorado Constitutional Amendment, GOCO Board Policy and the annual State of Colorado GOCO Financial and Compliance Audit.

In order to bring Oxbow into GOCO Open Space compliance, the City of Durango and the La Plata Open Space Conservancy must request a 12 month extension and appropriate conservation easement amendments, as allowed by GOCO policy (GOCO Overdue Grants Policy, GOCO Guidelines for Amending a Conservation Easement).

**1. Management Plan must detail Open Space Management Objectives to protect Conservation Values *as stated* in the 2011 GOCO Grant Application** (Source: GOCO Stewardship Policy).

2011 GOCO Open Space Grant Application Conservation Values Approved by GOCO Board:

- Floodplain
- Wetlands and Riparian Vegetation (*deleted in 2013 DRAFT*)
- Wildlife habitat
- Viewshed
- Passive recreation (*deleted in 2013 DRAFT*)
- Environmental education opportunities
- Legal public river access and open space for Animas View Drive Neighborhood (*Deleted in 2013*)

2011 Open Space Conservation Values *deleted* in the 2013 Draft Management Plan:

- Passive recreation (critical Open Space term defined and approved by both GOCO and POST 2010)
- Wetlands and riparian vegetation
- Legal public river access and Open Space for the Animas View Drive neighborhood

2013 Open Space Conservation Values *added* in the 2013 Draft Management Plan:

- Recreation *and* low impact recreation. (GOCO does not use the term “recreation” to describe allowed or prohibited Open Space uses.)

***Action Items Requested in both CE and Oxbow Management Plan:***

- The following Conservation Values from the 2011 Grant Application must be added/deleted to CE and Oxbow Management Plan:
  - 1) Add 'Wetlands and riparian vegetation'
  - 2) Add 'Legal public river access and open space for the Animas View Drive'
  - 3) Delete 'Recreation' and replace with 'passive recreation' as defined by GOCO and by the adopted POST 2010 Plan and as originally submitted.

**2. Oxbow Management Plan must include management strategies to minimize impacts on adjacent properties and to address special and/or known management needs.** (Source: GOCO Stewardship Policy, GOCO Open Space Technical Supplement)

- Animas View Drive Residential Community
- Upstream/Downstream Riverfront Property Owners of riverbanks and river bottoms
- Known Management Needs as stated in:
  - 2013 52 Citizen signers Public Comment Letter
  - 2012 Animas River Management Plan
  - 2010 Governor's Task Force River Mediation, Final Report
  - Colorado Water Law, Article XVI of Colorado Constitution

***Action Items Requested:***

- Include Special Management Needs (as stated above) in the Oxbow Management Plan
- Include Known Management Needs (as stated above) in the Oxbow Management Plan

**3. Oxbow Management Plan must limit "Reserved Development Rights" to those approved by the GOCO Board in the original 2011 GOCO Grant Application.** (Source: GOCO Grant Application Instructions)

2011 GOCO Grant Application "Reserved Development Rights"

- Reserved development for river access = 3 acres (CE = 6 acres; DRAFT Plan Drawing = 11 acres using LPC GIS).
- Both Commercial Use and Special Event Use were added to the 2012 LPOSC CE Reserved Rights and appear in the 2013 Draft Management Plan. Neither was in the original reserved rights of the 2011 grant application as approved by GOCO Board.

***Action Items Requested in both CE and Oxbow Management Plan***

- Reinstate "3 acre reserved development area" and Animas River Trail along western edge of property.
- Delete "commercial use" reserved right
- Delete "special event use" reserved right

**4. GOCO Management Plan must further include the following.** (GOCO Stewardship Policy, GOCO OS Technical Supplement)

- Management costs and source of funding
  - (including costs to minimize impacts to adjacent parties: neighbors and North Animas River Valley property owners)
- Public access location, construction and identification of amenities
- Time frame for implementation

***Additional Action Items Requested in Oxbow Management Plan:***

- Detailed budget and source of funding
- Detailed site development plan with appropriate studies
- Detailed time frame for implementation

From: Lise Aangeenbrug <laangeenbrug@goco.org>

Date: Fri, Jun 14, 2013 at 1:28 PM

Subject: Oxbox Parcel

To: Kevin Hall <HallKS@ci.durango.co.us>

Kevin -

Due to the concerns that we are hearing about public input/public process on the potential plans for the Oxbox parcel, we need to get an update on some specifics surrounding that process and ask that no final plans or construction move forward on the parcel until GOCO has an opportunity to assess how the plans – particularly plans for specific volume and type of commercial use for the parcel – fit with the conservation values on the site that made the project competitive within the open space grant program.

To that end, it would be most helpful to know:

- What specific public notice was given alerting citizens to the need and opportunity for public comment on proposed uses specific to the Oxbox/Cameron-Sterk parcel through the Animas River Management Plan and subsequent public planning sessions surrounding the River Management Plan.
- What specific community outreach has occurred to date to gather public comment on the draft Oxbox/Cameron-Sterk parcel management plan.
- What the specific plans are for environmental review of any development options on the site (roads, volume of commercial use, etc).

As you can appreciate, we need to ensure GOCO funds are being used by communities in a manner that is both consistent with appropriate public access on open space properties and consistent with GOCO's policies asking local governments to ensure transparent and inclusive public comment.

Please let us know when you think you will be able to get us the above information or if you have any questions.

Thanks.

Lise Aangeenbrug

Executive Director

Great Outdoors Colorado

On Tue, Jul 2, 2013 at 10:28 AM, Josh Tenneson <[jtenneson@goco.org](mailto:jtenneson@goco.org)> wrote:

Kevin and Cathy:

We greatly appreciate the City of Durango's response to GOCO's questions. Thank you for clarifying the public process the City has gone through to date regarding the Oxbow/Cameron-Sterk parcel. We all desire to see adequate public process in determining the future of the property and hope to achieve community-backed results.

We also understand that there are a lot of details that still need to be worked out through the management and site specific planning processes. GOCO expects the City to fully undergo adequate environmental and engineering research for the siting of facilities within the building area on the parcel; GOCO also expects that the City will pursue substantial analysis for determining acceptable uses on the property – particularly for potential commercial uses.

Please keep us informed of any future developments. Do not hesitate to contact us with questions or comments.

Sincerely,

**Josh Tenneson, Open Space Program Manager**

**Great Outdoors Colorado**

**303 E. 17th Avenue, Suite 1060**

**Denver, CO 80203**

**Phone: [303.226.4522](tel:303.226.4522) | Fax: [303.863.7517](tel:303.863.7517)**

**[www.goco.org](http://www.goco.org)**

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*The following list of allowed and prohibited uses is for guidance only, and is not exhaustive. GOCO may allow or prohibit other uses as GOCO deems appropriate to keep the project consistent with GOCO's Open Space program:*

<i>Use Category</i>	<i>Allowed Open Space Uses</i>	<i>Prohibited Open Space Uses</i>
<b>Recreational Activity</b>	<u>Low-impact (passive)</u> recreational use such as walking, running, hiking, environmental education, interpretive signage, fishing, and (in certain circumstances) bicycling	<u>High-impact (active)</u> recreational uses such as motorized recreational use (e.g. snowmobiles, dirt bikes, etc.), paved running tracks, ball fields, playgrounds, golf courses, etc.
<b>Construction of buildings or other structures</b>	<b>If requested in the application, approved, and specifically identified in the conservation easement:</b> * a reserved home site or agricultural business area * repair/replacement/construction of fences for purposes of customary management of livestock, wildlife, and separation of ownership and uses * environmental education signs	Construction of any other buildings or structures.
<b>Road/trail or parking lot construction and paving</b>	<b>If requested in the application, approved, and specifically identified in the conservation easement:</b> * Continued use and maintenance of existing roads and trails on the property * Construction of a new unpaved trail or trailhead	Construction of new paved parking lots, roads, and/or paved trails.
<b>Mining</b>	<b>If requested in the application, approved, and specifically identified in the conservation easement:</b>  Mining activities that will minimally disrupt the surface of the property, and/or will have only a limited localized impact on the conservation values of the project.	Mining activities that will have surface impacts or other adverse impacts on the conservation values of the project.
<b>Trash</b>	None	Dumping or unconfined accumulation of trash.
<b>Commercial Uses</b>	Commercial activities that would not substantially diminish or impair the property's conservation values or otherwise interfere with the purposes of the easement.	Commercial activities that have adverse impacts on the conservation values of the project.



949 E. Second Ave.  
Durango, CO 81301-5109

May 26, 2011

Kathleen Staks, Program Coordinator  
Open Space Grant Program  
Great Outdoors Colorado  
1600 Broadway, Suite 1650  
Denver Colorado 80202

*Mayor*  
Christina Rinderle

*Mayor Pro-Tem*  
Doug Lyon

*City Council Members*  
Paul Broderick  
Sweetie Marbury  
Dick White

*City Manager*  
Ron LeBlanc

Dear Kathleen:

The purpose of this letter is to provide a response to a letter received by Great Outdoors Colorado from Mr. Tim Wolf regarding the City of Durango Spring 2011 Grant Application.

As indicated in our grant application, preservation of the Animas River Greenway is a long-standing priority of the community. The 43 acre Cameron-Sterk Parcel is an important part of the Greenway, offering over a half mile of river frontage, stands of large Cottonwood trees, significant wildlife habitat, and several large sandy beaches that will provide exceptional public access to the river throughout the year. It is for these reasons that the City feels very strongly about its application and is comfortable providing clarification to the concerns raised by Mr. Wolf.

Provided below in *italics* are excerpted sections from Mr. Wolf's letter dated May 17, 2011. A City response is provided immediately following each italicized statement.

*My background with river related issues is as follows:*

*I have advocated for private boater river rights in Colorado and Utah during the last 30 years. In 1989 I designed the recreational Whitewater Park for the City of Durango at Smelter Rapid. This included obtaining the required 404 permit with the Army Corp of Engineers and creating plans for "whitewater play features" in the rapid for boaters. This park has been used extensively ever since and has been designated as an Olympic "Center of Excellence" training center. I also helped form the City's Animas River Task Force and have served on it since it's inception about ten years ago. We have advocated for a number of river related improvements during that time including the RICD (recreational in stream water rights), developing a city code restricting motorized craft from the river, developing a comprehensive plan for creating more in stream parks for boaters and fishermen. We helped design river park put-ins and take-outs up and down*

*the Animas River corridor through town and partnered with organizations to implement river bank stabilization projects.*

**City Response:** Mr. Wolf has been a regular participant in many of the discussions, meetings, and efforts meant to improve river access and management strategies to enhance the user experience on the Animas River. We are appreciative of this past involvement.

*As part of this Animas River Task Force, we also address various ideas and concerns brought to us by the city and people in the community associated with river uses. During the last four years there has been an increasing problem associated with “tubers” using the river. This especially pertains to the area just north of town near the Sterk property. The problems associated with this influx of non traditional river use by tubers include trespassing, disturbing property owners, noisy partying day and night on the river and on beaches, and disrespectful and drunken behavior. It includes trashing the river with beer cans, bottles and other litter that often ends up on river banks and in the water throughout the river corridor. It included disturbing and displacing wildlife. This has become a major river issue discussed at Task Force meetings, neighborhood meetings at the north end of town, and meetings with city officials. It is unfortunate, but in my opinion, the City along with local law enforcement has shown a lack of responsibility or willingness to control or manage this problem.*

**City Response:** As Mr. Wolf points out, there has been significant discussion with the community regarding increased use of the river in recent years. This includes recognition of the increased use of the slower moving, flat water sections of the Animas River north of the existing 33<sup>rd</sup> Street put-in. This flat water area has not just been of increased interest to tubers but also many others who find this unique stretch of river to be a much safer place to learn to canoe, kayak, paddle board, and raft. With this increased use has come the challenge of providing adequate facilities and strategies to manage and patrol the users. The City believes that the acquisition of the Cameron-Sterk Parcel is a critical early step in ensuring that these activities north of the 33<sup>rd</sup> Street put-in will be properly managed, with a resultant lessening of impacts on property owners adjacent to the river in this area, including Mr. Wolf.

The vast majority of river recreation in Durango occurs on the lower Animas River south of the 33<sup>rd</sup> Street put-in. It is here where the river narrows, drops, and begins to pick up speed. It is a much different user experience than north of the 33<sup>rd</sup> Street put-in. The Durango Parks and Recreation Department, working closely with the Durango Police Department, patrol and enforce City Code violations throughout the City of Durango river corridor south and downstream of the 33<sup>rd</sup> Street put-in. Increased education and enforcement efforts south of the 33<sup>rd</sup> Street put-in, particularly over the past several summers, has largely eliminated the types of problems referenced by Mr. Wolf. Working with the community, the Animas River Task Force, the City’s

Parks and Recreation Advisory Board and the Durango City Council have all participated in shaping and establishing the policies that have effectively addressed these problems south of the 33<sup>rd</sup> Street put-in. This effort has included a range of initiatives including increased patrols by City police and park rangers; an incentive program to redirect users to a wider-variety of river access points; and improvements to better organize and increase capacity at the City's existing river put-ins. In the near future, the City will institute an on-river patrol with rangers patrolling the river by boat.

Because the City does not currently own or manage riverfront property north of the 33<sup>rd</sup> Street put-in, nor have access to a public put-in in the vicinity of the Cameron-Sterk Parcel, it has no authority to manage river use in this area. Acquisition of the Cameron-Sterk Parcel would allow for the expansion of effective management strategies both on land, and on the river.

*This relates to the Sterk property because the vast majority of tuber use is in this flat water section of river goes by the Sterk property. For the city to advocate for expanding the use in this area by developing a river put-in at the Sterk property, I feel will contribute to the problem. The proposal to purchase the Sterk property for a park and river put-in was brought to the attention of the Animas River Task Force only about two months ago. The plan is to include a parking lot, bathrooms and other facilities, and a public and commercial river launch. It is to be the new "destination point" for the proposed extension of the City's river trail. The Sterk property acquisition proposal appears to have come about in conjunction with problems associated with the proposed goals of the river trail extension.*

**City Response:** Mr. Wolf's assertion that the proposal to acquire and improve the Cameron-Sterk river-front parcel is a recent proposal tied to developing the Animas River Trail is a bit surprising given his knowledge of and participation in river corridor planning, management and development initiatives of the City. As is described in the City's grant application, expansion of the Animas River Greenway north of the 33<sup>rd</sup> Street put-in has been a long-standing community vision. The Cameron-Sterk Parcel, along with the adjacent Romad Parcels, makes up what is known as the Cottonwood Peninsula. It is an area identified as potential public greenway in various City Council adopted community plans as far back as the **1994 Animas River Corridor Plan**, and as recently as the City's **2010 Parks, Open Space, Trails and Recreation Master Plan**, both elements of the City's adopted Comprehensive Plan. While it is true that a specific concept-level plan for a river put-in on the Cameron-Sterk Parcel had not previously be presented to the Animas River Task Force prior to the grant request, the concept of river access, open space and trail extensions to and through the Cottonwood Peninsula have been discussed time and time again with the community over the years. Mr. Wolf has been part of these deliberations. The

presentation of a conceptual level plan for a river put-in at the Cameron-Sterk Parcel is consistent with these past discussions and planning efforts.

Prior to a decision being made on specific site improvements for the Cameron-Sterk Parcel, a management plan will be developed for the property. Additionally, the City is embarking on the development of a new Animas River Management Plan beginning in June 2011. This Plan will build upon past river corridor planning efforts. It is anticipated that a draft plan will be complete in early fall 2011, in advance of the desired closing on the Cameron-Sterk Parcel. Both of these planning initiatives will involve the Animas River Task Force, the Parks and Recreation Advisory Board, the Natural Lands Preservation Advisory Board, Durango City Council, and interested public.

*The City's original trail extension proposal was to extending the trail a half mile further to the north. The City signed a \$1,000,000 contract with the D&SNG Railroad to use their right-of-way for the trail. However, during the last 2 ½ years, the City has been unwilling or unable to negotiate with private property owners for the use of their land for the trail. Rather, there have been threats of condemnation and suits by the City and the Railroad to acquire the use of privately own property. Property owners have held their ground in these disputes. Recently, the proposed trail was shortened by half a mile and the original goal to provide a trail to housing developments further to the north was set aside. This appears to have been done to avoid disputes with property owners to the north. The Sterk property park became the "new destination" to legitimize the shortened trail. Other disputes with land owners and the City/Railroad to the south of the Sterk property for the trail extension still exist. This proposed trail and park is now being pushed through various city advisory boards despite protests from land owners in the vicinity and neighborhood residents.*

**City Response:** The City does not feel Mr. Wolf's opinions relative to the trail extension are particularly germane to the acquisition of the Cameron-Sterk Parcel and feel his attempt to synthesize several years of intensive community outreach into a few short paragraphs here does not accurately or fairly reflect the full breadth of the City's spirit and intent relative to this effort. However, for clarity sake, we will attempt to address Mr. Wolf's comments.

For nearly three years now the City has been actively working with the community, advisory boards, and City Council on the proposed trail extension and the preservation of open space in the north greenway. The City has held 12 public meetings with close to 20 hours of public testimony; numerous small group stakeholder meetings, individual property owner meetings (including several with Mr. Wolf), a multitude of site visits, and has analyzed no less than 9 separate alternative alignments for the trail. We are very confident that our efforts have been comprehensive, transparent and in

good faith, and we are willing to provide GOCO with any additional information you may desire.

The City's full build-out plan for the Animas River Trail has always been to complete it to the northern City limits. This has not changed. The Animas River Trail is built in phases to best utilize local funding, grant opportunities, and developer-dedications. The City will not build to the north City limits for many years, and as such, has chosen to defer trail design and engineering in this area (north of the Cottonwood Peninsula) until a future date.

As pointed out in the grant application and noted by Mr. Wolf, the City has negotiated and executed an agreement to build the trail within the railroad corridor. The City does not believe any additional property rights will be necessary in order to do so. The City has never used eminent domain to acquire property for parks, open spaces or trails and does not believe it would be necessary in this case either since all necessary rights have been acquired from the railroad. The City has negotiated a purchase of the Cameron-Sterk Parcel and has also entered into preliminary negotiations for the acquisition of the 51 acre Romad property--the balance of the Cottonwood Peninsula.

As noted in the grant application, a majority of community residents support the extension of the Animas River Greenway and Trail to the north. The City has worked diligently over the past several years to inform the neighbors and community on the project; considered a wide range of other alternatives for the trail, and has slowed the process at the request of the neighbors. The Parks and Recreation Advisory Board, the Natural Lands Preservation Advisory Board, the Animas River Task Force and the City Council have each been part of these discussions and deliberations. Mr. Wolf's assertion that the project is being "pushed through" is contrary to the facts.

*Although there has been a request to study the environmental and neighborhood impacts of this proposed Sterk acquisition for a park, the City has not been willing to provide this. Also of concern, the City has no proposed management plan for the use of this 45 acre Sterk property. The Sterk property itself is 50% within the FEMA 100 year Floodway/Hazard Zone and almost entirely in the FEMA 100 year floodplain. It holds limited development potential. It is riparian in nature and consists, I believe, predominantly of wetlands as defined by the Army Corp of Engineers. It is also in a setting unlike the river through in town. It is rural in nature and adjacent to ranching. It is quiet and peaceful, and consists of flat water meandering through endless curves. Wildlife is abundant in this area as it is throughout this flat water section of the river north of town that would be affected. I have dealt with river issues for many years and have been supportive of many river related projects. However, if the City purchases the Sterk property and turns it into the proposed high intensity river access point and park that is being planned, it will no doubt change the character of this stretch of river. This park is not needed. I fear its impacts will cause degradation to this riparian area, to the*

*wildlife habitat, and to the peaceful and quite enjoyment of the residents in this area. I opposed this acquisition of the Sterk/Cameron property for a City park and river put-in. I hope that Great Outdoors Colorado will not help fund this controversial Sterk property acquisition.*

As with all GOCO-funded open space projects, significant due diligence is undertaken prior to closing on a land acquisition. A Phase I Environmental Assessment of the parcel will be completed as a condition of sale to ensure there are no known environmental hazards on the property. The City will acquire all mineral rights with an acquisition so a geologic remoteness study will not be undertaken. The La Plata Open Space Conservancy as the proposed third-party holder of the conservation easement will complete a baseline assessment that will include an evaluation of existing flora and fauna, and will outline conservation values to be protected as part of its stewardship plan. This effort includes concurrence from the Colorado Division of Wildlife. Upon acquisition, the City will donate a conservation easement and develop a community-based management plan for the property to outline existing conditions, future uses, and stewardship commitments consistent with the conservation easement. Additionally, as stated previously, in June 2011 the City will initiate the preparation of a new Animas River Management Plan. All of these items will occur in advance of any final consideration or design of site specific improvements, including a boat put-in.

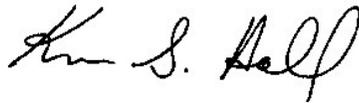
The City of Durango's efforts to preserve property within the Animas River Greenway occur for a variety of reasons, only one of which is to limit development adjacent to or within the floodplain. Protection of habitat, watershed, viewshed, and recreational access to the Animas River are also primary purposes.

As shown in the grant application, the majority of the properties surrounding the Cameron-Sterk Parcel have already been protected by way of easement or deed restriction. The Cameron-Sterk Parcel has no such protection, nor does the Romad Property directly north of the Cameron-Sterk Parcel. Because neither parcel has on-site owners, both are experiencing slow and steady natural resources degradation due to the informal and impactful activities of trespassers. A City acquisition of the Cameron-Sterk Parcel, and eventually the Romad Property, would allow the City to: 1) actively control and manage recreational activities on the parcel and downstream to the 33<sup>rd</sup> Street put-in; 2) restore and repair degraded resources and acts of vandalism; 3) provide open space and river access for residents of the Animas View Drive Neighborhood; and 4) provide ongoing stewardship to protect and enhance the property.

While the continued establishment of the Animas River Greenway and Trail has been a long-standing vision of the community, it is recognized by the City that implementation of the plan, particularly into areas of the City that do not currently have such amenities, will change neighborhood character. We believe that by working closely with the affected neighbors, we can implement the plan in a sensitive manner that will ensure a positive experience for everyone, and a lasting legacy for the community.

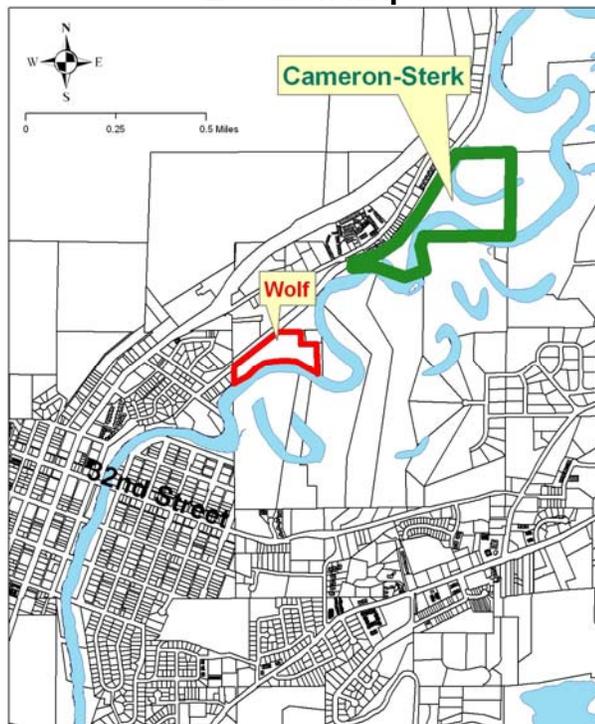
The City of Durango is very appreciative of Great Outdoors Colorado and its ongoing support of our land preservation program. We would be happy to further discuss these issues with you if necessary. Thank you for your consideration in this matter.

Respectfully,



Kevin Hall  
Director of Natural Lands, Trails and Sustainability

### Location Map



## **Governor's River Access Dispute Resolution Task Force Final Report – December 13, 2010**

On July 26, 2010, Governor Bill Ritter, Jr. issued Executive Order B 2010-010, thereby creating the Governor's River Access Dispute Resolution Task Force. The following excerpt from Executive Order B 2010-010 succinctly describes the Mission and Scope of the Task Force.

### “II. Mission and Scope

The mission of the Task Force established by this executive order is to re-establish a dialogue between landowners and rafters that will lead to the establishment of a fair and efficient dispute-resolution process for the future. The charge of the Task Force is to develop a proposal for resolving conflicts among landowners, anglers, commercial rafters, and the boating public. The Task Force will be charged with developing a framework for resolving disputes on Colorado rivers on a stretch-by-stretch basis as those disputes arise. This approach recognizes that disputes vary from place to place and that a one-size-fits-all strategy is unlikely to succeed. Moreover, the Task Force shall clearly articulate the sources of conflict between rafters and landowners, recommend potential solutions, and develop a process for resolving disputes when they arise in a cost-effective, timely manner.” (Executive Order B 2010-010 Paragraph II. Mission and Scope)

The Task Force met five times: in Denver, Colorado on September 2, 2010, November 5, 2010, and November 18, 2010; in Salida, Colorado on September 22, 2010; and in Glenwood Springs, Colorado on October 13, 2010. These meetings included extensive dialogue about historical sources of conflicts, historical solutions between boaters and landowners around the state, and ways to efficiently minimize and resolve future conflicts. During these meetings, the Task Force heard presentations by representatives of the Arkansas Headwaters Recreation Area and the Yampa River Legacy Project, both of which are administered by the Colorado Division of Parks and Outdoor Recreation, and by a representative of American Whitewater, and by Mike Mitchell, owner of Queen of the River Consultants. The Task Force also solicited and received public comment at the Salida and Glenwood Springs meetings.

The Task Force was originally comprised of fourteen (14) voting members and three (3) non-voting members, all of whom are highly knowledgeable members of the affected stakeholder groups, including commercial river outfitters, non-commercial boaters, landowners, including members of the agricultural community, and law enforcement. One original voting member of

the Task Force resigned for personal reasons and was not replaced. The Task Force was co-chaired by Mike King, Executive Director of the Colorado Department of Natural Resources, and Rebecca Swanson, from the Colorado Governor's Office.

## **Conflicts and Resolutions**

A variety of conflicts occur between boaters and landowners on the rivers and streams of Colorado. Colorado's rivers and streams vary widely by size, rate of flow, historic use, landowner use, and associated recreational values. Our rivers and streams also vary by segment, from year to year, by season and by month. As the rivers and streams themselves differ over time and on a segment-by-segment basis, the conflicts and solutions will vary accordingly. The majority of situations are characterized not by conflict but rather by locally derived mutual accommodations, agreements, or simply respectful co-existence. Reaching resolutions has not always been easy, and conflicts will continue to exist, if only because recreational boaters, on the one hand, and private landowners, on the other hand, disagree about the public's right to boat on waters flowing through private land.

Ultimately, however, responsible landowners and boaters on Colorado's rivers and streams share a deep affinity for these special riparian habitats and corridors. The Task Force seeks to incentivize and facilitate locally derived, mutually acceptable solutions between the parties involved and to encourage the leadership and citizens of all interested communities to advocate and foster an environment and attitude of mutual respect and good conduct as the best way to serve the interests of all. While the members of the Task Force have not always agreed on the sources of river-use conflicts or how to resolve them, the Task Force members are unanimous on two points. First, conflicts between members of the boating public and landowners can and should be minimized and resolved where possible. Second, nothing in this Final Report should be understood to endorse any stakeholder's side of the "right to float" dispute. The Task Force has attempted to objectively describe historical conflicts and solutions to those conflicts, and has offered recommendations to ameliorate or resolve conflicts between landowners and boaters. But nothing in this Final Report is intended to endorse one side of the debate at the expense of the other and no one should maintain otherwise.

## **Historical Conflicts**

Conflicts between boaters and landowners arise in a variety of contexts. In no particular order, those conflicts include the following:

- 1) Criminal Trespass (on the land):** The law in Colorado provides that floating on rivers or streams flowing through private property does not constitute criminal trespass as long as one does not touch the bed or banks of the stream. A significant

number of the conflicts between landowners and boaters arise, for example, when boaters anchor or beach their crafts or get out of their boat to use the bed, banks, or adjacent property for activities such as walking, wading, picnicking, camping, resting or bathroom breaks. Conflicts also arise over contact by boaters with the streambed.

- 2) **Civil Trespass/Right to Float.** Some landowners assert that they have the right to exclude the public from the surface of waters flowing over privately owned stream beds. Some boaters assert that the waters of the state belong to the public for their use, whether or not those waters flow over private property. Conflicts over boating through private property have led to litigation.
- 3) **Diversion Structures, Bridges, Fences; Stream Improvements and Natural Obstructions:** Diversion structures, fences, bridges, stream improvement structures and natural obstructions, such as downed trees, are common features of Colorado's rivers and streams. Generally, recreational boaters view these types of man-made structures as legitimate necessities or property improvements, and treat their presence in the river channel as such. Boaters also acknowledge that natural obstructions occur frequently and unpredictably. However, to the extent that such structures or obstructions impede boaters' passage downstream, they are also viewed as potential hazards to safe boating. Conflicts arise when landowners object to boaters portaging these obstructions or when boaters cut fencing or otherwise damage structures to continue their downstream travel. Boaters, on the other hand, think that clear passage, or a portage alternative, should be maintained on rivers and streams with flows and access that support river surface recreation.
- 4) **Deliberate Obstruction of Waterways:** The Task Force was made aware of situations where landowners created deliberate obstructions in river channels presumably to impede boaters. Examples include hanging barbed wire and fishhooks below a bridge, felling trees across river channels, and constructing impassable fences that are maintained even during high water and in the absence of livestock. Such obstacles can be dangerous to boaters and may be illegal pursuant to C.R.S.18-9-107.
- 5) **Misconduct:** There are a variety of descriptions of poor conduct by both landowners and boaters. In addition to topics already covered such as trespassing and deliberate obstruction of waterways, examples of misconduct include inconsiderate and disruptive passage near wade fishermen; adversarial exchanges by both sides; littering; harassing livestock; and excessive use of a waterway during periods with physically impassable flows. In rare instances, both landowners and boaters have reported criminally menacing behavior by members of the other group.

- 6) **Lack of Enforceability:** The Task Force has heard primarily from landowners that they are unable to prevent repeated acts such as trespass and misconduct because of two issues: unresponsive local law enforcement officers and an inability to identify non-commercial boaters. Commercial boaters are required to be licensed and to display identification on their vessels. Some assert that non-commercial boaters should be required to identify, license or register their vessels to improve identification and to improve enforcement of the law. Boaters counter that Colorado does not require identification for other non-motorized activities such as biking, hiking, horseback riding or snowshoeing. They also have expressed concerns about the cost to individuals and the bureaucratic viability of a large, new licensing program at the state level.
- 7) **Fishing:** Conflicts occur when anglers fish while boating through private property. Some believe that landowners have exclusive rights to fish on streams within private properties. Fishing also raises conflicts when landowners have created a private fishing resort for which they charge guests to fish a particular segment of river; or when landowners have improved fishing habitat and float anglers linger in eddies or drop an anchor to fish in that improved habitat. Some assert that fish found in the state's rivers and streams belong to the People of Colorado and that investment in stream improvements does not change the legal definition of premises nor confer additional ownership or control of the surface of the river. Dropping anchor or getting out of a vessel to wade-fish on private land has been an additional source of conflict.
- 8) **Variation in Streamflow:** The actual water flow in rivers and streams in Colorado varies significantly throughout the year. Depending on the channel configuration, low flows may make it impossible or difficult to boat without touching the stream bed or to avoid conflicts with anglers, and can necessitate additional fencing by ranchers to control livestock. In some instances, diversion dams can also create significant changes in streamflows. Changes in the flow regime can create conflicts between competing uses, particularly when different segments of the boating community perceive different stream flow thresholds as viable for floating. The degree of conflict may vary with actual changes in the flow regime.
- 9) **Change in Ownership of the Land:** There have been instances in which a change in the ownership of the land has eventually caused a conflict between the landowner and the local boaters who had enjoyed a more constructive relationship with the prior landowner(s). Prospective purchasers from other states or countries may not be familiar with Colorado law or may not appreciate the potential conflicts associated with boating on waters flowing through private property.

- 10) Discharge of Firearms Across a River or Stream.** Landowners who utilize or lease their land for hunting have liability concerns when boaters are on the water while hunters are hunting and possibly shooting across the river or stream. Conversely, there are instances when boaters hunting from their vessels could endanger persons or property on the land.
- 11) Alcohol and Boating:** Inebriated people may be more prone to engage in bad conduct or may need assistance should they find themselves in unsafe situations on the river.
- 12) Landowner Concern About Liability:** Landowners have expressed concern over their liability should a boater be injured while floating downstream, portaging around an obstacle or hazard, or simply using designated launch points on their property. Landowners also assert that Colorado’s premises liability and recreational use statutes are unclear as applied to boating, conflict with one another, and do not provide enough protection from lawsuits.

### **Historical and Potential Solutions (Or Historical Best Practices)**

A variety of creative, locally derived and mutually acceptable historical solutions have been described to this Task Force. Each solution tends to be very case-specific, but the successful approaches can be applied to other locales as well. Many of these locally derived solutions find inventive ways to circumvent the underlying or unaddressed issue of “right to float” or “no right to float”. In each case, detailed local knowledge and personal relationships are the key factors that help the involved parties understand, reduce, and ultimately resolve or pragmatically “work around” the specific conflict. Potential solutions have included or may include:

- 1) Mutual Desire for “Good Conduct” by All Parties:** As stated so well by Tim Canterbury, a rancher along the Arkansas River, if this Task Force can “legislate respect” then its task would be finished. On the other hand, there are many stories of mutual respect and accommodation by boaters and landowners along the rivers and streams of Colorado. Above all, a conscious effort to develop personal relationships and “treat others with respect” has been a very effective tactic to avoid, minimize, and resolve conflicts.
- 2) Communication.** Communication between landowners and boat owners can help reduce conflicts. Communication promotes a better understanding of each party’s concerns, expectations and objectives. Communication can also allow landowners and boaters to identify each other when problems arise.

- 3) **Agreements between Landowners and Boaters.** Landowners and boaters have reached agreements on some or all of the following topics:
- a. **Agreements to Resolve Disputes Over Floating:** Disputes arise between landowners and boaters concerning floating through private property and many of the other issues noted in the preceding section. In some cases, those disputes have been resolved, and litigation has been avoided, by oral or written agreements. Such agreements can address, among other issues, the timing and frequency of boating, minimum streamflows, fishing, boater and landowner conduct and removal of obstacles.
  - b. **Agreements to Cross or Lease Private Land:** There are multiple examples where landowners and boaters, either commercial or non-commercial, have agreed, either orally or in writing, on terms for the use of private land for access or launch points. In exchange for passage across the private land, these agreements sometimes require limitations on the amount and nature of the boating activities, particularly as the water flow in the river decreases. The agreements typically indemnify landowners against liability. In other cases, the actual variation in streamflows creates a *de facto* lower threshold for boating as boaters are not interested in “scraping rocks” in a river with inadequate flow. Furthermore, many riparian landowners in Colorado are farmers and ranchers and additional sources of income are often highly valuable to the continued agricultural production of these undeveloped lands and the widely supported preservation of their “picture postcard” views. Such agreements can enhance boating opportunities and reduce conflicts.
  - c. **Agreements to Portage:** To address landowner and boater concerns about instream structures such as fences, diversion structures, bridges and stream improvement structures, an Agreement to Portage can be negotiated between willing parties to accomplish mutually acceptable objectives. The Task Force is aware that the Colorado Division of Parks and Outdoor Recreation has entered into such agreements with landowners on the Yampa River as part of the Yampa River Legacy Project.
  - d. **Liability.** For the agreements discussed in subparagraphs a through c, landowner and/or boater liability may also be discussed.
- 4) **Official Signage:** Official signage has reportedly reduced alleged criminal trespass conflicts significantly in the Arkansas and Yampa River areas. “Official Signs” from

the State of Colorado are reported to be much more effective than simple, private “No Trespassing” signs. The State Parks has developed simple but effective signage for its Yampa River efforts. Such signage could have applicability in other areas of the state. Further, information boards at public access points displaying landownership maps could help reduce inadvertent trespassing.

- 5) **Professional Mediation:** Professional mediation has been successfully utilized to resolve particularly acute conflicts between landowners and boaters on rivers and streams in Colorado.
- 6) **Use of Fences that Permit Downstream Passage:** The Task Force was made aware of types of fences that allow boaters downstream passage when flows are high yet still control livestock during low flows. By way of examples only, the Task Force was advised that suspended fences and streamside fences that are pushed down during higher water flows and rise up during lower flows control livestock without obstructing downstream travel. Designing fences and other structures to be boater-friendly will incentivize boaters to remain on the water and not trespass to get around a structure.
- 7) **Enforcing Existing Criminal Laws:** Existing criminal laws prohibit unlawful criminal trespass on private property and the unlawful obstruction of a waterway. Such actions are sources of conflict that can be addressed by thoughtful and consistent enforcement of existing laws. Similarly, harassment, menacing, and boating under the influence are prohibited under Colorado law and should not be tolerated.
- 8) **Public Education of Boaters, Landowners and Law Enforcement Officials:** Effective education as to what activities are and are not prohibited by criminal laws would also reduce conflicts. Publications by Colorado State Parks, official government websites and information boards at public access points could help educate the public.
- 9) **Resource Management Plans (RMPs):** RMPs have been utilized in Colorado on a large scale manner with the statutorily created Arkansas Headwaters Recreation Area. Similarly, the Colorado Division of Parks and Outdoor Recreation has effectively used RMP techniques to systematically manage access and use on approximately 175 miles of the Yampa River in Northwest Colorado. These RMP techniques and approaches can be employed on a smaller scale for shorter stretches of river to help identify and manage such key factors as stakeholder groups and input, environmental

issues and concerns, appropriate uses and impacts, consequences for non-compliance, and enforcement.

## **Recommendations to the Governor**

As previously described, conflicts have occurred and will continue to occur between boaters and landowners. These disputes could benefit from the application of one or more historically successful resolution tactics that have been employed on a variety of rivers and streams in Colorado. Knowledge of historical conflicts and solutions throughout the state could help resolve future disputes, at little or no cost, as affected parties work to identify, understand, and hopefully minimize or eliminate those disputes.

The Task Force has reviewed and discussed the sources of conflicts and the historical and potential solutions, and has listened to public testimony. The Task Force has considered legal, political and policy implications of proposing a vision for a cost-effective, timely process for resolving disputes when they arise.

Below are specific recommendations that the Task Force has *unanimously agreed* to make to Governor Bill Ritter, Jr. regarding river access disputes in the State of Colorado:

- 1) **Report Publication.** Publish or post this Final Report in a readily accessible location as an education tool to help facilitate the cost-effective and timely resolution of future disputes as they arise. Armed with the knowledge of historical conflicts and solutions between boaters and landowners on the rivers and streams of Colorado, the affected parties in future disputes might more readily identify cost-effective and timely solutions to their own local conflicts.
- 2) **Executive Leadership.** Utilize the Governor's pulpit to encourage and foster an environment and attitude of good conduct and respect as multiple stakeholder groups with different viewpoints continue to share the use, conservation, and protection of these special riparian corridors and environments.
- 3) **Public Education.** Promote public education via publications by Colorado State Parks, official government websites, and information boards at public access points to inform the public at large about ways to avoid or resolve conflicts; recommend best practices for boaters and landowners; and address liability for unlawful trespass, unlawful obstruction of a waterway, and other prohibited activities.
- 4) **Official Statewide Signage System.** Direct the Colorado Department of Natural Resources to design an Official Signage system modeled after the signs developed by

State Parks for the Yampa River that clearly designate “No Public Access” and “Public Access”. A signage system with statewide application and recognition would more clearly delineate land use boundaries along Colorado’s rivers and streams. These signs could be purchased from State Parks, if desired, by interested parties.

- 5) **Engage Law Enforcement.** Implement a proactive and ongoing effort with county sheriffs and district attorneys to raise their awareness of the conflicts between landowners and boaters, and their role in helping to resolve conflicts. Advocate for more consistent enforcement of existing laws regarding trespass, illegal obstruction of waterways, boating under the influence, harassment, criminal mischief and menacing. Provide members of sheriffs’ associations and district attorneys with all educational materials and with information concerning contact, activation, and utilization of the River Access Dispute Mediation Commission.
- 6) **Landowner Liability Legislation.** Recommend legislation to clarify Colorado’s recreation use and premises liability statutes to specifically address landowner liability, or exemption from liability, when a member of the public is floating on waterways flowing over private property and suffers injury.
- 7) **River Access Dispute Mediation Commission.** Occasionally, a contentious and personalized conflict can arise between boater(s) and landowner(s). Usually these conflicts involve one or two parties on either side and are specific to the local stream segment in question. For those cases in which parties are unable to resolve the conflict, the Task Force recommends that the Governor of Colorado create, by Executive Order, the River Access Dispute Mediation Commission, as outlined in Attachment 1 hereto.
- 8) **Funding Sources.** Encourage funding opportunities including, but not limited to, tax credits/incentives, GOCO, state agency or private funds. Such funding could be used to develop and implement dispute resolution tools, provide public education, develop/acquire river access and/or portage sites, remove barriers for downstream passage or otherwise implement recommendations of this Task Force.

The Task Force *did not* agree on the following recommendation:

- 9) **Vessel Identification.** The Task Force did not reach consensus on a recommendation to establish a vessel identification program. However, the Task Force does recommend further exploration of vessel identification as a potential tool to prevent or resolve conflicts and as a source of funding under Recommendation number 8 above. **Final vote: No: 6 Yes: 5**

This Task Force appreciates the Governor's leadership and effort to establish a constructive dialogue between the interested and affected stakeholders. We are hopeful that this report constructively contributes to a future environment of mutual respect, accommodation, and cooperation that has served Colorado well in the past.

Respectfully Submitted,

Members of the River Access Dispute Resolution Task Force:

Undersheriff Richard Besecker

Carolyn Burr

David Costlow

Gregory Felt

Jay Fetcher

James R. Ford

Senator Dan Gibbs

Robert Hamel

Jay Kenney

Thomas Kleinschnitz

John Leede

Lee Spann

Patrick Tooley

Leslie Tyson

Charles White

## **Attachment 1**

### **Governor's River Access Dispute Mediation Commission**

Formed by Executive Order.

- **Purpose:** On an as-needed basis to help mediate and resolve particularly acute disputes between boater(s), either commercial or non-commercial, and the relevant private property owner(s). Non-DNR commission members would be volunteers and participation by disputing parties would be voluntary.
- **Authority:** The mediation commission would be empowered to hear disputes and provide a sounding board for both parties. The objective would be to mediate and resolve the dispute without litigation or legislation. This commission would not have the power of arbitration.
- **Criteria for participation:** Commission members shall determine which disputes they will accept for mediation. Considerations may include, but not be limited to, a commitment by all parties to explore solutions and to participate in good faith negotiations.
- **Composition:**
  - 3 standing members appointed for four-year terms:
    - Executive Director of Colorado Department of Natural Resources or his/her designee.
    - 1 representative of the boating community.
    - 1 representative of the private riparian landowner community.

Additionally, the commission may select up to four people from the local community to participate in the mediation of a particular dispute.

LPOSC/CDOW  
 Wildlife Habitat Scorecard  
 Conservation Easement

Property Name: City of Durango Cameron-Sterk	Date: 10 Jan 2013
Evaluated by: Eilene Lyon	

Criteria		Point Value		Weight Value	Score
Parcel Size- AFTER Development	0-35 acres	1	2	X 4 =	8
	35.01-60 acres	2			
	60.01-120 acres	3			
	120.01-640 acres	4			
	>640 acres	5			
Habitat type- Most Valuable or Most Dominant	riparian	5	5	X 5 =	25
	farmed agricultural	2			
	pasture agricultural	2			
	sagebrush	3			
	pinyon-juniper	2			
	mountain shrub	4			
	Ponderosa Pine	3			
	Aspen	4			
Douglas-fir	1				
Spruce-fir	1				
Number of Habitat types	1	1	2	X 4 =	8
	2	2			
	3	3			
	4	4			
	5 or more	5			
Proximity to Public land	<1 mile	5	5	X 1 =	5
	1-2 miles	3			
	> 2 miles	1			
Proximity to Protected land	<1 mile	4	4	X 1 =	4
	> 2 miles	1			
Part of identified corridor or easement	Yes	5	5	X 3 =	15
	No	0			
Mapped attributes:	Severe Winter Range	5	5	X 3 =	15
	Production Area	5			
	Winter Range	2			
	Winter Concentration Ar	3			
Wildlife species	T/E/S	5	5	X 2 =	10
	Economic	3			
Wildlife diversity	Great	4	4	X 1 =	4
	Moderate	3			
	Low	1			
Score					94
Wildlife Value Demerits-adjacent to highway, intensive recreational use, etc		subtract 15%		14	

FINAL SCORE

80

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Article published Jul 1, 2013

## River access

City of Durango is moving in the right direction to meet increasing demand

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The Animas River is, quite literally, Durango's centerpiece. Many residents and visitors spend time boating, swimming, fishing, relaxing or otherwise playing in its waters or on its shores, and a limited but fortunate number of Durangoans have homes that abut the river. The river's appeal is broad, but access to it is limited by geography, infrastructure and property rights. Striking the balance between providing public access to a public resource and protecting the values that make the river such a treasured community feature is neither easy nor expedient, but the city of Durango has demonstrated a commitment to achieving that goal through the long term.

That vision is embodied in the Animas River Corridor Management Plan – a community-based, city-initiated process “intended to help ensure protection of the river as a valuable natural and community resource and provide management objectives for its recreational use.” In that plan, and in discussions that have followed, river access was identified as a key issue needing improvement, and the city has worked diligently to address it. Most recently and notably, that has meant the purchase of a 44-acre riverside parcel now called Oxbow Park and Preserve along Animas View Drive. This property will someday serve as a keystone in the river access complex, but it will not be immediate.

For now, though, the city has opened the park for public use – with the very large caveat that there is no public parking anywhere near the site. That is fine for those who can bike, walk, run or trolley to the park, but it does create a bit of a hassle when those options are not available. It also makes it virtually impossible to use Oxbow Park as a launching point for watercraft of any significant size. That is a bit of a frustration for those impatient for a new and less-crowded put-in alternative to 33rd Street or 29th Street, but the city did the right thing in opening the parcel before to its full development – the alternative would have been to keep it closed, as with Lake Nighthorse, until every “i” is dotted and “t” crossed. The city went with pragmatics, with some constraints, and was right to do so. It is a perfect spot to enjoy the river, and, in time, will be an excellent access point.

The Oxbow Park and Preserve is a superior addition to the city's open space holdings and its long-term vision for managing the Animas River Corridor. It will one day help alleviate the put-in bottleneck that frustrates homeowners farther south on the river, and the space provides the immediate effect of adding an unparalleled, natural river experience that appeals to all levels of river rat. That it is not yet developed to its full potential should not diminish residents' and visitors' enthusiasm for the park or the city's commitment to improving and expanding the river experience. There is much good work that has been done and much more to come.

April 8, 2013

Commissioner Bobby Lieb  
Commissioner Gwen Lachelt  
Commissioner Julie Westendorff  
Board of County Commissioners  
La Plata County, Colorado

Mayor Doug Lyon  
Mayor Pro Tem Dick White  
Councilor Sweetie Marbury  
Councilor Christina Rinderle  
Councilor Paul Broderick  
City Council, City of Durango, Colorado

Dear Commissioners and City Councilors,

This letter is in reference to the Oxbow Park and Preserve (formerly known as Cameron Sterk), a 43-acre riverfront parcel located in the North Animas River Valley that was purchased by the City of Durango with an Open Space Grant from Great Outdoors Colorado. This land has been placed under a GOCO-required conservation easement with La Plata Open Space Conservancy.



**We request that the BOCC and the City of Durango address Oxbow's development at your Joint Planning Meeting *before* the creation of a GOCO-required Oxbow Management Plan. In particular, we'd like you to consider the river corridor impacts of the City's proposed plan as it affects La Plata County.**

**We request that the Joint Meeting agenda include items 1-6, as detailed below.**

County residents are extremely concerned about the City's proposed use of this state-funded GOCO Open Space as a vehicle-based, high traffic, high environmental impact, commercial and public river put-in / take-out area.

We believe that there has not been enough collaborative river corridor planning between City and County officials. In 2010, the *Governor's River Access Dispute Resolution Task Force* strongly encouraged commercial rafters, the boating public, and riverfront property owners (who own both river bottom and river bank) to engage in "creative, locally derived and mutually acceptable solutions" regarding the type, volume, and intensity of river use, levels of river enforcement required, and flow guides for boating. Relevant jurisdictions are encouraged to develop clear guidelines for both Sheriff's departments and riverfront property owners regarding trespass and legal liability. This has not yet been done. (*Governor's 2010 River Access Report available upon request.*)

Former Commissioner Wally White, who initially supported the Open Space acquisition, now feels that the City was not fully transparent in its intentions for development, and that the City should have had extensive discussions with the County about how this project would affect people and land use in general (*see attachment 1, LPC GOCO Grant Letter of Support*).

In particular, we are concerned with the City's apparent lack of commitment both to mitigate negative impacts in county jurisdiction budgets, operations, and law enforcement, and to follow the City's own 2010 *Parks, Open Space and Trails (POST) Plan* as well as the *GOCO Prohibited Uses of Open Space Guide*. Unfortunately, the 2012 *Animas River Management Plan*, implemented and monitored by the City Parks and Rec Department, is silent on the pressing issues detailed below.

**1. Financial and Managerial Impact on Upstream/Downstream Uses in La Plata County Jurisdiction:**

The City of Durango places the burden of management, legal liability, trash, trespass and lawlessness on the County Sheriff and the private property owners of the riverbanks and river bottoms in the North Animas River Valley. The City of Durango has no legal jurisdiction upstream and only limited downstream jurisdiction from Oxbow Preserve. Additionally, the City has no funding mechanisms in place to offset the costs of this expanded river recreational use in the North Animas River Valley. For example, the City collects approximately \$6000 in commercial rafting permit fees (no sales tax is collected on rafting services) for over 50,000 commercial user days each summer. The City does not charge for nor track private usage on the Animas River.

**2. Zoning/Compatible Use Standards for Either City or County:** With substandard roads and no sidewalks, Animas View Drive residents believe the proposed traffic and crowds of this development adversely impacts their neighborhood's health, safety and welfare. While this is a City neighborhood, this site, as proposed, fails to meet City or County "compatible use" standards for neighbors living along Animas View Drive.

*Below: summer traffic jam, 32<sup>nd</sup> & E 3<sup>rd</sup> Ave*



**3. Adverse Impacts to FEMA Floodway and Wildlife:** The City plans to develop with impermeable surfaces up to six acres of open space in a critical riparian buffer within the federally regulated floodway of the Animas River. The proposed development includes paved roads, parking lots, bathrooms and an 80' commercial bus/trailer turnaround. This development may adversely impact wildlife and the floodplain's function in La Plata County, but no Environmental Assessment has been proposed or conducted to review concerns regarding carrying capacity in this relatively untrammelled area.

COURTESY OF OPEN SPACE CONSERVATION BOARD

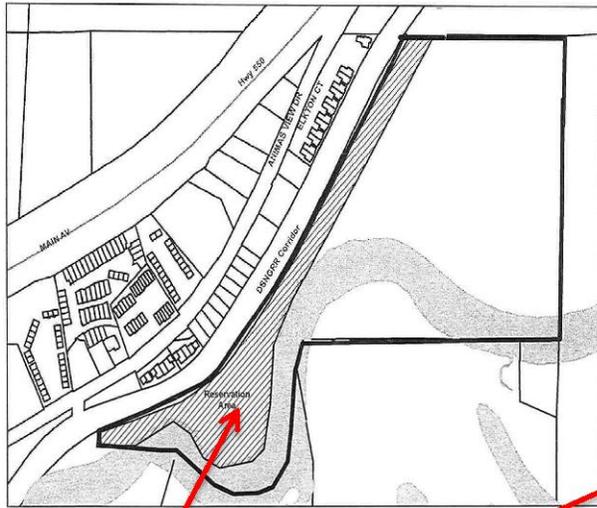
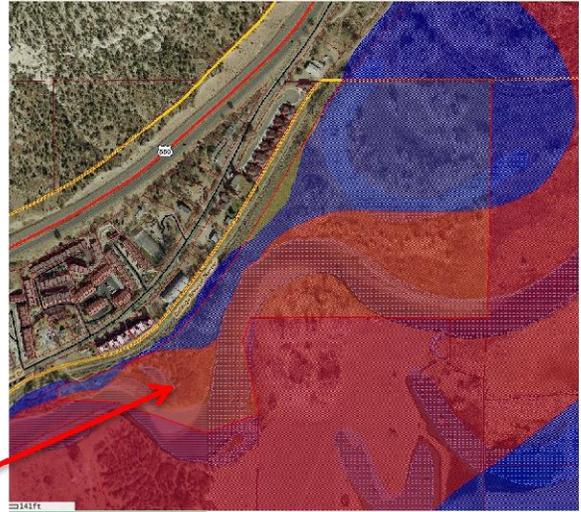


Exhibit C  
Reserved Development Area



Same spot.

*Above: the proposed area to be developed with parking lots, bathrooms, ramps.*

*Upper Right: the known floodway.*

*Below Right: June flooding in the valley.*



**4. City Open Space Definition: Violation of City of Durango Comprehensive Plan Core Tenets of Open Space:** Open Space uses, as defined by the POST 2010 Open Space Plan, are limited to trail-based, unstructured passive recreation for individuals or small groups, requiring only limited modification to the natural landscape (*see attachment 2, POST 2010 Open Space highlights*). The City's disregard of the 2010 POST Open Space Plan directly and indirectly affects intergovernmental planning maps and jurisdictions.

**5. Violation of State-Funded GOCO Open Space Prohibited/Allowed Uses:** As defined by GOCO, passive, but not high-impact recreational uses, are allowed on Open Space properties acquired with GOCO funding. Specifically, construction of new paved roads and parking lots are prohibited, and any commercial activities that have adverse impacts on the conservation values of the project are also prohibited (*see attachment 3, GOCO Prohibited Uses*).

**6. Non-Sustainable Recreational Use in the North Animas River Valley:** The Open Space Preservation Areas identified in the 2010 POST Plan now appear to be intended for the northward expansion of high impact, high volume commercial river access points, as exemplified by plans for the Oxbow Park and Preserve. Without transparency on the City's part regarding its intended use of Open Space acquisitions in the Animas Valley, without the development of a shared vision with La Plata County residents and government, without a sustainable funding source for ongoing management, and without the direct involvement of property owners of both river banks and bottoms, the City is developing a Recreational Use in the flat waters of the North Animas Valley that is not sustainable.

*Below: summer day on a river in New Braunfels, TX.  
How many people do we want on our flat water Animas?*



Thank you for your consideration of our request. We look forward to meeting with you to discuss our concerns in further detail.

Sincerely,

*Below are the County and City residents who have signed to date. We are continuing to gather citizens' input and support throughout the Valley.*

Wally White  
541 High Llama Lane  
Durango, CO 81301

Mike Bruce  
3125 CR 250  
Durango, CO 81301

Sandy Bruce  
3125 CR 250  
Durango, CO 81301

Terry Klingman  
1729 CR 250  
Durango, CO 81301

Cecily Klingman  
1729 CR 250  
Durango, CO 81301

Tony Whittle  
48 Ptarmigan Lane  
Durango, CO 81301

Paul Sugnet  
604 Riverbend Street  
Durango, CO 81301

Charles Kuehn  
3403 County Rd 250  
PO Box 9111  
Durango, CO 81301

Madalaine Waters, General Partner  
Romad Investments LP  
28342 Ortega Hwy  
San Juan Capistrano, CA 92675

Sylvia Frazier  
Frazier Ranch  
1825 County Road 250  
Durango, CO 81301

Cecilia Whitaker  
Frazier Ranch  
1825 County Road 250  
Durango, CO 81301

Dan Whitaker  
Frazier Ranch  
1825 County Road 250  
Durango, CO 81301

Elizabeth S. Spencer  
457 Animas View Drive, Unit 1  
Durango, CO 80301

Daniel E. Farmer  
457 Animas View Drive, Unit 1  
Durango, CO 81301.

Jim Thurmond  
3509 Silverton Street  
Durango, CO 81301

Patti Thurmond  
3509 Silverton Street  
Durango, CO 81301

Kathy Firestone  
640 Animas View Drive  
Durango, CO 81301

Darlene Mills  
580 Animas View Drive #5  
Durango, CO 81301

Allen Mills  
580 Animas View Drive #5  
Durango, CO 81301

Dennis Simmons  
580 Animas View Drive #4  
Durango, CO 81301

Maria Simmons  
580 Animas View Drive #4  
Durango, CO 81301

Anne Markward  
3254 E 6th Avenue  
Durango, CO 81301

Douglas Walker  
3254 E 6th Avenue  
Durango, CO 81301

Spencer Compton  
580 Animas View Drive #3  
Durango, CO 81301

Melda Adams  
3550 Silverton Avenue  
Durango, CO 81301

Isabelle Schueller  
3550 Silverton Avenue  
Durango, CO 81301

Kim Jordan  
457 Animas View Drive #4  
Durango, CO 81301

John D Heavenrich  
457 Animas View Drive #2  
Durango, CO 81301

David Schuppner  
582 Animas View Drive #3  
Durango CO 81301

Tim Wolf  
3900 Silverton Street  
Durango, CO 81301

Kathy Turner  
3900 Silverton Street  
Durango, CO 81301

Linda Borene  
Animas View Drive #12  
Durango, CO 81301

George B. Keen  
580 Animas View Drive #2  
Durango, CO 81301

Margery N. Keen  
580 Animas View Drive # 2  
Durango, CO 81301

Anne C Parker  
1000 Cordova #559  
Santa Fe, NM 87505

Susan H. Ulery  
590 Animas View Drive Unit A  
Durango, CO 81301

Patrick Gerstenberger  
10 Riverbend Court  
Durango, CO 81301

Jane Gerstenberger  
10 Riverbend Court  
Durango, CO 81301

Gary Arnett  
670 Animas View Drive  
Durango, Co. 81301

Tracy Arnett  
670 Animas View Drive  
Durango, CO 81301

Terry Word  
582 Animas View Drive #2  
Durango, CO 81301

Mary Ann Garcia-Word  
582 Animas View Drive #2  
Durango, CO 81301

JoDee Singer  
590 Animas View Drive Unit B  
Durango, CO 81301

Edgar Riecke  
457 Animas View Drive #8  
Durango, CO 81301

Jack Irby  
5 Riverbend Court  
Durango, CO 81301

Ann Bond  
3303 E. Fifth Ave  
Durango, CO 81301

Mary Irby  
5 Riverbend Court  
Durango, CO 81301

Luke Angel  
457 Animas view Dr. #19  
Durango, CO 81301

James Callahan  
150 Rockridge Drive  
Durango, CO 81301

Ashlie Angel  
457 Animas view Dr. #19  
Durango, CO 81301

Darwin Williamson  
610 Animas View Drive  
Durango, CO 81301

CC:

Dean Brookie, Elected, Durango City Council

Keith Brant, Elected, Durango City Council

La Plata Open Space Conservancy Board of Directors

GOCO Board of Directors

Governor's River Access Dispute Resolution Task Force

ATTACHMENTS:

Attachment 1: BOCC 2011 Letter of Support of Cameron / Sterk GOCO Grant

Attachment 2: 2010 POST Open Space Highlights

Attachment 3: GOCO Prohibited Uses

**Attachment 1: BOCC 2011 Letter of Support of Cameron / Sterk GOCO Grant**



KELLIE C. HOTTER • BOBBY LIEB • WALLACE "WALLY" WHITE • COMMISSIONERS  
PHONE 970/382-6219 • FAX 970/382-6299 • TDD 970/382-6218

February 8, 2011

Grant Review Committee  
Open Space Grant Program  
Great Outdoors Colorado  
1600 Broadway, Suite 1650  
Denver Colorado 80202

Dear Committee Members:

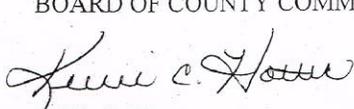
The La Plata County Board of County Commissioners fully supports the City of Durango's application to Great Outdoors Colorado for an open space grant to purchase and preserve 43 acres of the Animas River greenway. The property includes approximately three-quarters of a mile of river frontage, significant riparian and upland vegetation and large stands of mature cottonwood trees. This parcel is home to a wide range of wildlife and is in the view corridor of U.S. Highway 550. Acquisition of this parcel would represent another meaningful step towards permanent preservation and stewardship of the Animas River greenway, a goal in the City of Durango 2007 Comprehensive Plan.

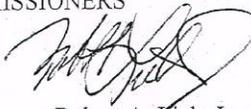
As the City of Durango develops and expands, the preservation of critical areas for habitat and passive recreation become even more important. A core strategy of the La Plata County strategic plan supports the conservation and stewardship of our environment, and the 2010 draft of the new La Plata County Comprehensive Plan encourages the preservation of wildlife corridors, wetlands, and riparian habitat. The purchase of this property will protect this pristine riparian area for the future residents and wildlife of La Plata County.

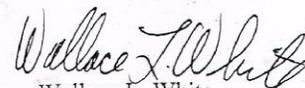
The Animas River Greenway is an important and visible open space area in the County and we strongly support the City's efforts to preserve it. We thank you for your efforts on behalf of the residents of Colorado and for your thoughtful consideration of this application.

Sincerely,

LA PLATA COUNTY  
BOARD OF COUNTY COMMISSIONERS

  
Kellie C. Hotter  
Chair

  
Robert A. Lieb, Jr.  
Vice Chair

  
Wallace L. White  
Commissioner

## **Attachment 2: 2010 POST Open Space Highlights**

### **City of Durango**

#### **Comprehensive Plan Parks, Open Space and Trails**

#### **POST 2010 Open Space Plan**

#### **(Excerpts Highlighted as Follows)**

**4.1.1 Introduction** “. . .the preservation of additional lands for open space needs to be qualified based on the uniqueness of the land to be preserved rather than on the basic pursuit of setting aside lands for public purposes. . .The highest quality of open space landscapes in the Durango planning area include the Animas River corridor. . .The preservation of viewsheds, habitat, Animas River watershed, and passive recreational lands are core tenants of the City’s Comprehensive Plan”

**4.2 Functions of Open Space** **Open Space** “is not just scenic land to view and enjoy as recreational space. Open space is natural and green infrastructure that provides a number of important functions and benefits for Durango.”

**4.3.2 Rivers, Streams and Lakes** “Objectives of greenways include preservation of wildlife habitat and routes for wildlife circulation, protection of water, air and scenic qualities; control of flooding, protection of historic and cultural values, and creation of trail corridors and greenspace within the built environment.”

**4.3.5 Urban Interface Wildlands** These are close-in parcels readily accessible from neighborhoods. . .These areas may serve as buffers that separate the highly developed edge of town...These areas are easily accessible for residents and offer close-to home opportunities for unstructured, passive recreation in a natural setting.

**4.4.2.1 What is Open Space?** Open Space Lands possess values important to the community including: unique scenery, views and landscapes; sites for low impact passive recreation; ecological function; habitat for wildlife and flora. . .

**4.4.2.3 What is Passive Recreation?** Passive recreation is any activity typically undertaken on an individual or small group basis that is non-motorized, trail oriented activity requiring only limited modification to the natural landscape in order to occur.

**4.8 Priority Preservation Areas Animas River Greenway North:** This area includes a variety of preservation values including the Animas River, riparian river frontage, floodplain and view shed from Highway 550.

**4.12.1.3 Improvements of Open Space Lands** Improvements on acquired open space land should be limited to actions required to manage/protect habitat and native vegetation, continuation of agriculture, and to provide passive recreational amenities.

**Attachment 3: GOCO Prohibited Uses**

*The following list of allowed and prohibited uses is for guidance only, and is not exhaustive. GOCO may allow or prohibit other uses as GOCO deems appropriate to keep the project consistent with GOCO's Open Space program:*

<i>Use Category</i>	<i>Allowed Open Space Uses</i>	<i>Prohibited Open Space Uses</i>
<b>Recreational Activity</b>	<u>Low-impact (passive)</u> recreational use such as walking, running, hiking, environmental education, interpretive signage, fishing, and (in certain circumstances) bicycling	<u>High-impact (active)</u> recreational uses such as motorized recreational use (e.g. snowmobiles, dirt bikes, etc.), paved running tracks, ball fields, playgrounds, golf courses, etc.
<b>Construction of buildings or other structures</b>	<b>If requested in the application, approved, and specifically identified in the conservation easement:</b> * a reserved home site or agricultural business area * repair/replacement/construction of fences for purposes of customary management of livestock, wildlife, and separation of ownership and uses * environmental education signs	Construction of any other buildings or structures.
<b>Road/trail or parking lot construction and paving</b>	<b>If requested in the application, approved, and specifically identified in the conservation easement:</b> * Continued use and maintenance of existing roads and trails on the property * Construction of a new unpaved trail or trailhead	Construction of new paved parking lots, roads, and/or paved trails.
<b>Mining</b>	<b>If requested in the application, approved, and specifically identified in the conservation easement:</b>  Mining activities that will minimally disrupt the surface of the property, and/or will have only a limited localized impact on the conservation values of the project.	Mining activities that will have surface impacts or other adverse impacts on the conservation values of the project.
<b>Trash</b>	None	Dumping or unconfined accumulation of trash.
<b>Commercial Uses</b>	Commercial activities that would not substantially diminish or impair the property's conservation values or otherwise interfere with the purposes of the easement.	Commercial activities that have adverse impacts on the conservation values of the project.

# GOCO Policy and State Compliance

## *Rationale to Request a* **12-Month GOCO Board Extension and** **Conservation Easement Amendments** *for Oxbow Park & Preserve Management Plan*

GOCO limits Open Space Grants exclusively to “passive recreation.” “Active recreation” is allowed under Local Government Grants. GOCO has described river put-ins and take-outs as “active recreation” through Local Government Grants (Source: GOCO River Initiative Grants, pp. 3-4).

GOCO does not acknowledge City referenced “Hybrid Open Space,” (both active and passive recreation on Open Space under a conservation easement) as an allowable “funding purpose.” This would violate the GOCO State of Colorado Constitutional Amendment, GOCO Board Policy and the annual State of Colorado GOCO Financial and Compliance Audit.

In order to bring Oxbow into GOCO Open Space compliance, the City of Durango and the La Plata Open Space Conservancy must request a 12 month extension and appropriate conservation easement amendments, as allowed by GOCO policy (GOCO Overdue Grants Policy, GOCO Guidelines for Amending a Conservation Easement).

### **1. Management Plan must detail Open Space Management Objectives to protect Conservation Values *as stated* in the 2011 GOCO Grant Application** (Source: GOCO Stewardship Policy).

2011 GOCO Open Space Grant Application Conservation Values Approved by GOCO Board:

- Floodplain
- Wetlands and Riparian Vegetation (*deleted in 2013 DRAFT*)
- Wildlife habitat
- Viewshed
- Passive recreation (*deleted in 2013 DRAFT*)
- Environmental education opportunities
- Legal public river access and open space for Animas View Drive Neighborhood (*Deleted in 2013*)

2011 Open Space Conservation Values *deleted* in the 2013 Draft Management Plan:

- Passive recreation (critical Open Space term defined and approved by both GOCO and POST 2010)
- Wetlands and riparian vegetation
- Legal public river access and Open Space for the Animas View Drive neighborhood

2013 Open Space Conservation Values *added* in the 2013 Draft Management Plan:

- Recreation *and* low impact recreation. (GOCO does not use the term “recreation” to describe allowed or prohibited Open Space uses.)

### ***Action Items Requested in both CE and Oxbow Management Plan:***

- The following Conservation Values from the 2011 Grant Application must be added/deleted to CE and Oxbow Management Plan:
  - 1) Add ‘Wetlands and riparian vegetation’
  - 2) Add ‘Legal public river access and open space for the Animas View Drive’

- 3) Delete 'Recreation' and replace with 'passive recreation' as defined by GOCO and by the adopted POST 2010 Plan and as originally submitted.

**2. Oxbow Management Plan must include management strategies to minimize impacts on adjacent properties and to address special and/or known management needs.** (Source: GOCO Stewardship Policy, GOCO Open Space Technical Supplement)

- Animas View Drive Residential Community
- Upstream/Downstream Riverfront Property Owners of riverbanks and river bottoms
- Known Management Needs as stated in:
  - 2013 52 Citizen signers Public Comment Letter
  - 2012 Animas River Management Plan
  - 2010 Governor's Task Force River Mediation, Final Report
  - Colorado Water Law, Article XVI of Colorado Constitution

***Action Items Requested:***

- Include Special Management Needs (as stated above) in the Oxbow Management Plan
- Include Known Management Needs (as stated above) in the Oxbow Management Plan

**3. Oxbow Management Plan must limit "Reserved Development Rights" to those approved by the GOCO Board in the original 2011 GOCO Grant Application.** (Source: GOCO Grant Application Instructions)

2011 GOCO Grant Application "Reserved Development Rights"

- Reserved development for river access = 3 acres (CE = 6 acres; DRAFT Plan Drawing = 11 acres using LPC GIS).
- Both Commercial Use and Special Event Use were added to the 2012 LPOSC CE Reserved Rights and appear in the 2013 Draft Management Plan. Neither was in the original reserved rights of the 2011 grant application as approved by GOCO Board.

***Action Items Requested in both CE and Oxbow Management Plan***

- Reinstate "3 acre reserved development area" and Animas River Trail along western edge of property.
- Delete "commercial use" reserved right
- Delete "special event use" reserved right

**4. GOCO Management Plan must further include the following.** (GOCO Stewardship Policy, GOCO OS Technical Supplement)

- Management costs and source of funding
  - (including costs to minimize impacts to adjacent parties: neighbors and North Animas River Valley property owners)
- Public access location, construction and identification of amenities
- Time frame for implementation

***Additional Action Items Requested in Oxbow Management Plan:***

- Detailed budget and source of funding
- Detailed site development plan with appropriate studies
- Detailed time frame for implementation



May 31, 2013

Jane Gerstenberger  
North Animas River Work Group  
Durango, CO

Via e-mail

Dear Ms. Gerstenberger:

I am writing in response to your request that GOCO review what the City of Durango is proposing on land acquired, in part, with Great Outdoors Colorado (GOCO) funding. As nearby landowners to the parcel, we understand you have concerns with what the City may or may not do on the property and how that might impact nearby property owners.

GOCO is concerned about the relationship between its grant making and the impacts that its grants have on communities and their citizens; GOCO strives to ensure that there is adequate community support for every grant it awards, which is why it requires formal resolutions from cities and counties that have jurisdiction over the lands GOCO helps to acquire and evidence of public process as part of the community planning or decision-making. The acquisition of the Oxbow Park in La Plata County is no exception; GOCO obtained resolutions from the applicant – the City of Durango – and from La Plata County prior to awarding the Animas River Greenway Preservation Project Open Space grant (the “Grant”). Your concerns seem to go beyond just GOCO’s involvement and we can only address what you raise specific to GOCO’s policies and procedures.

It appears that the main issue you raise related to GOCO is that you believe what the City proposes in terms of public access, parking, and trail access/river access is inconsistent with GOCO’s grant policies for Open Space. GOCO’s full grant guidance for open space projects is attached and does allow for GOCO, in its discretion, to allow some development on a property if it is clearly stated at the time of application. The big distinction between an open space project and a local government park and recreation project is that an open space project must be primarily to protect land for various conservation values and a local government recreation project must be primarily to develop the site for public recreational use. Projects may have some of each benefit and staff must look at what the primary purpose is – in this case, the majority of the 43 acres will not be developed for recreation.

The Amendment creating GOCO requires GOCO to broadly “preserve, protect, enhance, and manage the state’s wildlife, park, river, trail and open space heritage.” We are charged with investing in projects that protect open space, but also to provide trails and parks. Sometimes those are accomplished separately and sometimes those are accomplished jointly.

For the Oxbow parcel, the City was clear that it intended to reserve a building envelope for parking and reserve the right for a future trail corridor. Our understanding at the time of application was that up to three acres would be used to build a parking lot and boat ramp and additional acreage would be required for the trail corridor. The exact location of the building envelope and trail corridor do not need to be identified specifically at the time of application, and the final site selection or envelope designation is done with GOCO approval at the time the conservation easement is recorded.

The conservation easement was carefully negotiated between the City of Durango, GOCO, and the La Plata Open Space Conservancy, and GOCO determined that the final deed of conservation easement was consistent with the grant application (the “Application”), as well as GOCO’s policies and procedures.

Because you have delineated specific concerns regarding the conservation easement and draft management plan, we have tried to respond to each of the issues you identified in your request, titled “Rationale to Request a 12-Month GOCO Board Extension and Conservation Easement Amendments for Oxbow Park & Preserve Management Plan.”

First, you state that a management plan must detail management objectives to protect conservation values as stated in the Application. GOCO will analyze the final draft management plan closely to ensure its adequacy and consistency with the conservation easement. Conservation easements cannot address every possible contingency related to the use and management of the conserved property; however, the conservation easement will be the controlling document if a conflict exists between the two documents.

Specifically, you requested that the following three conservation values be incorporated into or deleted from the conservation easement and management plan to ensure consistency with the Application:

- 1) Add wetlands and riparian vegetation;
- 2) Add legal public river access and open space for the Animas View Drive Neighborhood; and
- 3) Delete “recreation” and replace with “passive recreation.”

Our views on these three requests:

- 1) Wetlands and riparian vegetation are called out as conservation values in the conservation easement (see Conservation Easement, Recital B and Exhibit B). Therefore, GOCO does not see a reason to pursue a conservation easement amendment since those values are already incorporated.
- 2) While the Application discussed the Animas View Drive Neighborhood and its lack of limited access to public parks, trails, open spaces, and the river (see Application, page 3), the specific conservation value listed in the Application included “passive recreational and environmental education opportunities” for the general public (Application, page 2). The Animas View Drive Neighborhood was cited as an example of one neighborhood that would benefit from public access to the property in the Application and was not intended to be the sole beneficiary of the public access.

- 3) The conservation easement lists recreation as a conservation value (see Conservation Easement, Recital B.3), and it further defines what activities are permissible (see Conservation Easement, Paragraph 4(a), (b), (c), (d), and (f)). All recreational activities permitted in Paragraph 4 are non-motorized activities and are consistent with GOCO's model conservation easement and what was provided in the narrative of the Application.

Second, you detailed that the Oxbow Management Plan must include management strategies to minimize impacts on adjacent properties. GOCO's Open Space Technical Supplement requires that a management plan delineate "management objectives to protect the conservation values of the property, including any special management needs, such as weed or soil erosion control to minimize adverse impacts on adjacent properties." GOCO does not have a specific definition of what "special management needs" entails. Instead, GOCO will discuss this requirement with the City of Durango, and the City of Durango and La Plata Open Space Conservancy will be responsible for identifying and addressing management needs through the management plan drafting process, and it is GOCO's understanding that the process will be open to – and take into consideration – public comment from the entire community.

Third, you outline that the Oxbow conservation easement and management plan must limit "Reserved Development Rights" to those approved by the GOCO Board in the original Application and request that:

- 1) The conservation easement reinstate a "3 acre reserved development area" and Animas River Trail along western edge of property;
- 2) Delete "commercial use" reserved right; and
- 3) Delete "special event use" reserved right.

GOCO determined that the reserved rights in the conservation easement are consistent with the Application. The Application discussed an "approximately 3 acre" building envelope "located at the southwest corner of the parcel;" it also detailed the right to construct "an extension of the hard-surface Animas River Trail along the westerly edge of the parcel..." Instead of trying to address each of these separate reserved rights through two different conservation easement provisions, GOCO, the City of Durango, and the La Plata Open Space Conservancy decided that it was appropriate to address both reserved development rights in one single conservation easement provision (see Conservation Easement, Paragraph 4.d). Although the building envelope acreage increased to six acres in Paragraph 4.d, when you compare Exhibit C of the conservation easement to the two Concept Plan maps and narrative in the Application, you will see that the Application and easement are consistent. The addition of the three acres of "reserved development area" in the conservation easement allow for the future alignment and construction of the Animas River Trail.

The Application also explicitly delineated that public access would be provided on the Oxbow Park & Preserve. GOCO, the City of Durango, and the La Plata Open Space Conservancy determined that commercial use and special event use were consistent with the ability to provide public access. Please note that these activities are limited so that they cannot be detrimental to the conservation values listed in the conservation easement. Moreover, limited commercial uses are consistent with GOCO's model conservation easement and the Internal Revenue Code.

Finally, you assert that in order to be consistent with GOCO policy and GOCO's OS Technical Supplement, the Management Plan must contain a:

- 1) Detailed budget and source of funding for management;
- 2) Detailed site development plan; and
- 3) Detailed time frame for implementation.

Durango has proposed an acceptable bifurcated process where it will first finalize a management plan, which will detail larger management objectives, and then it will subsequently create a site-specific development plan. The management plan must contain a "projection of management costs," not necessarily a "detailed budget and source of funding for management" (see GOCO OS Technical Supplement). Items 2 and 3 will be addressed in the site-specific development plan. Again, this approach is acceptable to GOCO. The bifurcated approach is also consistent with GOCO's Stewardship Policy, which states that "The Board reserves the right to make case-by-case exceptions to this policy as circumstances may require. While it is expected that state agencies adhere to the spirit of this policy, special accommodations may be made to address their particular needs and circumstances."

Please let me know if you have any additional questions or concerns.

Sincerely,



Lise Aangeenbrug  
Executive Director  
Great Outdoors Colorado

cc: City of Durango

Bruce G. Smith



Direct 303.260.5042  
Email [bsmith@dmsl-law.com](mailto:bsmith@dmsl-law.com)

Darling • Milligan • Smith & Lesch, PC

June 12, 2013

Damian Peduto, Planning Director  
Carolyn Hunter, Staff Planner  
Planning Department  
La Plata County Courthouse  
1060 E Second Avenue  
Durango, CO 81301

VIA E-MAIL [damian.peduto@co.laplata.co.us](mailto:damian.peduto@co.laplata.co.us); [carolyn.hunter@co.laplata.co.us](mailto:carolyn.hunter@co.laplata.co.us)  
AND UNITED STATES MAIL

Re: Use permit for commercial rafting/ Sleeping Beauty Ranch

Dear Mr. Peduto and Ms. Hunter:

This letter is written on behalf of Romad Investments, LP, owner of property along Las Animas River downstream of the above property. Romad opposes the grant of the above permit on the grounds set forth below.

Romad owns two parcels potentially affected by the above permit, a 21-acre parcel located in La Plata County and an adjacent 29-acre parcel in the City of Durango. The county parcel includes a river-front portion known to local inhabitants as "the Beach." This portion, and the entire 50 acres, have increasingly been subject to trespass by rafters and campers who use and litter the property with little deterrence from law enforcement. This has progressed, in part due to the reported intention of the City to purchase the property, to the point where many have come to regard the property as quasi-public. (After numerous documented statements of this intention, the City has apparently decided not to move forward with purchase.)

The Sleeping Beauty Ranch (SBR) proposal, when coupled with the City's recent acquisition of the Oxbow (Sterk) property which borders Romad's, makes it likely matters will only get far worse. The property represents an enormous bend and frontage on the river which makes it attractive for put-in, take-out and "potty breaks" of rafters. It cannot be meaningfully fenced because of its extent of floodway. Therefore, SBR's proposal for commercial rafting use, which will not be subject to any effective regulation or at least policing, presents every likelihood trespassing will increase. Romad does not grant any such user the right to use the frontage, interior, or deeded streambed of its property and will enforce its property rights to the full extent of the law. However, given the extent of frontage and acreage, it has limited means to enforce its rights civilly. Moreover, the expeditions will expose Romad to potential liability to any

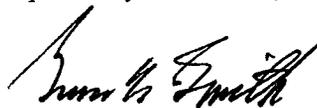
Damian Peduto  
Carolyn Hunter  
June 12, 2013  
Page 2

individuals accessing its property, even in trespass. To our knowledge the proposed permit to SBR contains no effective protection against stops along and encroachment upon Romad's attractive beachfront portions.

SBR's request represents what will undoubtedly be a flood of requests from commercial rafting companies for similar permits, either through the Oxbow, SBR or similar access points. It is our legal opinion the City's Oxbow plan as currently disclosed violates the statutory restrictions on use of GoCo funding, but in any case opens the door to a launching of expanded commercial use of the river and the properties along it which will remain largely unregulated and unpoliced. We have similar concerns about the legality of La Plata County permitting commercial use of what is effectively private property, the streambed, and which will lead inevitably to encroachment on at least that private property. Our client has asked us to carefully examine the legality of the County's planned permit to SBR as well as the City's planned use of the Oxbow property.

For the foregoing reasons our client urges the County deny the application of Sleeping Beauty Ranch for a commercial rafting permit. While an alternative would be to so restrict the permit that the confirmed encroachment on private property is grounds for immediate revocation, we know of no plan by the County, or City, to patrol the river. This places the burden, which is now greatly increased, unduly on private property owners such as Romad.

Respectfully submitted,



Bruce G. Smith

BGS/bja



## COLORADO PARKS & WILDLIFE

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151 East 16<sup>th</sup> Street • Durango, Colorado 81301  
970 274-0855 • 970 382-6672  
wildlife.state.co.us • parks.state.co.us

11 June 2013

Cathy Metz, Parks & Recreation Director  
Kevin Hall, Assistant Community Development Director  
2700 Main Avenue  
Durango, CO 81301

### **Re: Oxbow Park and Preserve Draft Management Plan**

Dear Cathy and Kevin,

Colorado Parks and Wildlife (CPW) has reviewed the April 26, 2013 Draft Oxbow Park and Preserve Management Plan. The Management Plan seeks to establish a framework for the City of Durango's stewardship of the property, by outlining how potential future improvements will be evaluated and balanced with public expectations and conservation commitments.

The City of Durango acquired the Oxbow Park and Preserve (OPP) in 2012. There are two distinct areas on the parcel referred to as "the Park" and "the Preserve". The Park is targeted for recreation facility development and is approximately six acres in size. The Preserve is approximately 38 acres and is to remain in a predominately undeveloped natural state, and preserved for conservation and habitat, education, and some passive recreation. This portion of the OPP property has the highest potential to provide quality habitat for wildlife and is the portion that CPW is most interested in.

#### Wildlife Habitat and Use

The Preserve is dominated by riparian forest. Riparian communities have the highest species richness of all habitat types in Colorado, particularly for avian species. A broad diversity of avian species use riparian communities for the nesting component of their life history, making these systems a critical habitat type. Winter range habitats are the biological limiting factor for big game populations in Colorado.

OPP is in an area of the Animas Valley that CPW has mapped with the following wildlife uses: Bald Eagle winter range, winter forage and winter concentration; Black Bear, summer and fall concentration; Elk winter range and concentration; Geese forage, brood concentration, winter range and concentration area; Mountain Lion overall range; Mule Deer resident population; Peregrine Falcon foraging area; and Wild Turkey overall range. It also provides important habitat for multiple species of passerine birds, shorebirds and waterbirds not mapped by CPW. As mentioned earlier, the riparian area with the associated cottonwood gallery is sought out by a multitude of species during different life phases such as nesting, feeding, and resting to name a few.

#### Recreational Management

The construction of trails and trail use restrictions within these habitats should be carefully planned. Miller<sup>1</sup> et al (1998) demonstrated a shift in avian species composition associated with

#### STATE OF COLORADO

John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources  
Rick D. Cables, Director, Colorado Parks and Wildlife  
Parks and Wildlife Commission: Robert W. Bray • Chris Castilian • Jeanne Horne  
Bill Kane, Vice-Chair • Gaspar Perricone • James Pribyl • John Singletary, Chair  
Mark Smith, Secretary • James Vigil • Dean Wingfield • Michelle Zimmerman  
Ex Officio Members: Mike King and John Salazar

trails. Other studies (Knight and Gutzwiller 1995, Garber and Burger 1995, Taylor and Knight 2003, Cassirer et al 1992, Miller<sup>2</sup> et al 2001), have shown non motorized recreation (eg hiking and biking) can alter species composition and behavior, lead to avoidance of otherwise suitable habitat, and decrease species composition and activity levels. Disturbance to big game in the winter can lead to poor body condition, shift distribution to sub optimal habitat types, can effect over winter survival of adults and result in a decrease neo-natal survival rates (Ciuti et al 2012).

To balance the needs of recreational users and wildlife, CPW supports having areas with minimal development and low intensity use, trails use restrictions which prohibit off-trail use and seasonal trail closures. CPW supports a seasonal winter wildlife closure on OPP as proposed in the Draft Management Plan which is consistent with existing seasonal closures on BLM lands and Twin Buttes.

CPW recommends a bird survey be conducted to determine species composition and activity by birds using OPP. The survey, conducted over time, could help monitor and track changes of use and species composition. The results of such monitoring could help to identify appropriate management actions and best management practices to protect and preserve avian use of the Preserve portion of OPP.

CPW strongly encourages the enforcement of the seasonal closures and the no dogs off leash rules. Without consistent and rigorous enforcement, public use of the closed area and allowing dogs to run off leash will severely impact wildlife's ability and desire to use this critical habitat. Although dogs have been domesticated for thousands of years, they still have predatory instincts and are effective predators. Any dog, no matter the size or the dog's temperament, can harass, injure, or kill wildlife when not under physical control. The easiest solution to these issues is enforcement and education. Lack of enforcement of off leash and closure rules will create a conflict with the Draft Management Plan's stated goal to preserve this area for wildlife and habitat as well potentially decreasing the conservation value for wildlife of the property.

Thank you for the opportunity to comment. CPW looks forward to continuing to work on with the City of Durango on ways to avoid, minimize, and mitigate potential impacts to wildlife. If we can provide additional information, please contact me at (970) 247-0855.

Sincerely,



Steve McClung  
District Wildlife Manager, Durango West  
xc: SWR, Area 15, DWM

Literature Cited

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Garber, S.D., Burger J. (1995) A 20-yr study documenting the relationship between turtle decline and human recreation. *Ecol Appl* 5, 1151-1162.

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Miller<sup>1</sup>, S.G., Knight R.L., Miller C.K. (2001) Wildlife responses to pedestrians and dogs. *Wildlife Soc Bull* 29, 124–132

## DurangoHerald.com

Article published Jul 13, 2013

By Anne Markward

# Go slow on Oxbow

*City should consider its impact on all those affected*

The City of Durango is currently reviewing a management plan for the 44-acre Oxbow Park and Preserve, formerly known as Cameron-Sterk.

The development, as outlined to the public in meetings for the Animas River Trail in 2012, was to be for open space with a trail running through it, access to the river for “passive” recreation and some parking.

Somehow, in the intervening months between applying with Great Outdoors Colorado for open-space funding and today, it morphed from 3 acres of developed space into at least 6 acres, complete with proposed roads up to 40 feet wide, parking lots, launch ramps, etc. Most will be built in floodway. Significant word changes, such as “commercial use,” “special events” and “active” recreation now direct Oxbow’s draft management plan.

The development of this open space acquisition deserves considerably more public debate than the Parks and Recreation Department has scheduled for it. Real collaboration must be crafted between interested parties: rafting companies trying to be profitable, ranchers worried about their livestock and irrigation weirs, city residents already significantly affected by this summer’s increase in river users’ parking and partying at Oxbow, 33rd and 29th streets, the city and

county officials and enforcers who will be tasked with patrolling, controlling and financing recreation on this stretch of river. Indeed, the Colorado Governor’s River Task Force emphasizes that creating a long-term, mutually acceptable strategy is the only way to have sustainable river use.

Colorado “Right to Float” river law is central to this question: the river banks and river bottoms of the Animas Valley are privately owned, which means no one should ever be out of his or her water craft to swim, to wade, to alight on beaches. Obviously, given the number of complaints already registered by residents with the Durango Police Department and the La Plata County Sheriff’s Office this year, trespass is an issue. Litter, urination, public nudity and, critically, illegal bonfires are all serious concerns on private riverbanks inaccessible by road and, therefore, by the authorities.

Decisions made by Parks and Recreation and its advisory boards will affect boaters, floaters, the police and sheriff’s departments, Animas View Drive residents and all riverfront property owners up and downstream from Oxbow. As important, it will affect a truly sweet riparian area. We are gifted to share our valley space with migrating birds and mammals – merganzers, mallards, buffleheads, ouzels, kingfishers, bald eagles, golden eagles, condors and the great blue herons, which are

currently teaching their young to fish along the Animas' banks. Coyote, fox, deer, elk and bear live in this corridor. Much of this wildlife is sensitive to exposure of loud noises and human presence.

I would like to see the city and county jointly review the Oxbow proposal and its impacts: financial, floodway issues, "carrying capacity" (how many can enjoy the river without causing undue harm or frustration to all involved), safety, how unrestricted and ungoverned access at Oxbow will affect downstream takeouts at 33rd and 29th, and how development at Oxbow fits into Durango and La Plata County's long term open-space planning.

The recent application by a local rafting company to open a put-in farther north in the Animas Valley for commercial trips will compound these concerns. The company has requested a minimum of 40-passenger launches, twice a day, 120 days a year – potentially \$600,000 in revenue. Its guests will be floating for five hours through entirely private lands, which brings up questions involving sanitation, trespass and evacuation in case of emergency. Then they'll take out at an already swamped access in Durango. It's a great move for the company, especially if the county collects the same measly \$500 a year in permits per company that the city currently does. The commercialization certainly won't stop there. Other companies will then want to benefit.

What levels of use should we encourage? What level destroys the resource people want to enjoy? What level compromises private-property rights? And how do we pay for it – as taxpayers, or as individual users of the river?

Other cities in Colorado and around the country have hired independent, professional river resource management planners to help identify and align all the competing points of view. Let us learn from the best management practices already identified by national experts. Let us collaborate: There are low-impact, high-value ways to make this area both accessible to the public and still protective of the river

itself. The city is rushing through this management plan for Oxbow and committing us all to a future many do not feel is sustainable – politically, economically or environmentally. We can do better.

*Anne Markward has worked with governments and conservation groups on sustainable tourism planning in Africa, Latin America and Asia-Pacific countries. A community-based marine project she developed in Belize with The Nature Conservancy won the United Nation's sustainability award in 2002. Reach her at [amarkward@gmail.com](mailto:amarkward@gmail.com).*



Photo by: JERRY McBRIDE/Durango Herald  
The public is already enjoying the river at the city's Oxbow Park and Preserve north of Durango, shown here July 8. Nearby landowners, however, fear the city's newest park will re-create and worsen the problems that have drawn complaints from neighbors of the 33rd Street put-in.



949 E. Second Ave.  
Durango, CO 81301-5109

June 25, 2013

*Mayor*  
Dick White

*Mayor Pro-Tem*  
Sweetie Marbury

*City Council Members*  
Christina Rinderle  
Dean Brookie  
Keith Brandt

*City Manager*  
Ron LeBlanc

Lise Aangeenbrug, Executive Director  
Great Outdoors Colorado  
303 E. 17th Avenue, Suite 1060  
Denver, Colorado, 80203

RE: Oxbow Park & Preserve (Cameron-Sterk Contract No. 11315)

Dear Lise:

Below please find City of Durango responses to the questions asked in your June 14, 2013 email:

- 1) What specific public notice was given alerting citizens to the need and opportunity for public comment on proposed uses specific to the Oxbow/Cameron-Sterk parcel through the Animas River Management Plan and subsequent public planning sessions surrounding the River Management Plan?***

The Durango Animas River Corridor Management Plan was initiated in August 2011 with a community survey administered on-line with over 400 respondents. Six public meetings, facilitated by a Community Planner with the National Park Service, were held between November 2011 and February 2012. The meetings were well attended, with over 100 people attending each.

On January 4 and 5, 2012, two 3-hour long Issues Workshops were held. The first explored the interests and desired river experience for: (1) Anglers; (2) Commercial Outfitters; (3) Personal Rafting, Tubing and Unstructured Recreation; (4) Whitewater Boaters and Kayakers; (5) Adjacent Property Owners; and (6) Conservation and Habitat. The second meeting explored strategies and potential solutions to achieve the desired river experience for each of these groups.

Recommendations and ideas for potential shared solutions that were developed in the January Issues Workshops were carried over to a two day workshop held on February 15 and 16, 2012. Participants self-selected an issues working group to join and helped to further develop recommendations for management of the Animas River. A full range of perspectives were represented on each work team. The work groups focused on six different issues, River Access Points; Recreational Amenities (in-stream and shore improvement opportunities); Conservation and Habitat; Regulation and Law Enforcement; Water Quality; and Education and Community Outreach. A variety of resource experts were on hand to assist the groups as they worked to explore opportunities and develop recommendations. By the end of day two, as a result of many hours of discussion and negotiation, participants developed a set of recommendations for management in all six categories that were presented to the public on the evening of February 16.

The draft Durango Animas River Corridor Management Plan was posted to the City's website and a public meeting on the draft Plan was held on April 30, 2012. Public comments were received and incorporated in the final plan document.

The City's Parks and Recreation Advisory Board and the Natural Lands Preservation Advisory Board reviewed and discussed the draft plan several times between its completion in spring 2012 and its adoption in February 2013.

Public notifications of the meetings associated with the Durango Animas River Corridor Management Plan were as follows:

- Letters were mailed on November 1, 2011 to property owners located with 300 ft. of the river corridor for the entire 16.3 mile planning area to notify them of the planning process and meeting schedule.
- Press releases were issued to the media in advance of each public meeting, specifically on October 18, 2011, November 29, 2011, December 22, 2011, February 6, 2012 and April 24, 2012.
- An extensive email list was developed including individuals that responded to the survey, people who attended any of the public meetings and all interested parties who requested to be placed on the email list. Email notifications were sent in advance of each public meeting when the River Corridor Management Plan was discussed, specifically on November 8, 2011, November 29, 2011, December 22, 2011, February 8, 2012, February 14, 2012, April 17, 2012, September 14, 2012 and October 10, 2012.
- The calendar of public meetings were published in the Durango Herald and on the City of Durango website with dates and times for discussion on the Durango Animas River Corridor Management Plan.

The adopted plan can be found at the following address:

(<http://issuu.com/durangoparksrecreation/docs/rivermpsept2012>)

**2) *What specific community outreach has occurred to date to gather public comment on the draft Oxbow/Cameron-Sterk parcel management plan?***

The City utilized the large email list developed during the public process associated with the Durango Animas River Corridor Management Plan and asked all interested community members to notify the Parks and Recreation Department if they would like to be placed on a new email list pertaining to improvements to river access sites. Three emails have been sent to date on May 2, 2013, May 15, 2013 and June 21, 2013. This updated river access email list was used to notify community members of the release of the draft Oxbow Park and Preserve Management Plan posted on the City website, request for comments on the draft Plan, and the notification of the schedule of initial public meetings on May 8 and 13, 2013 as well as the upcoming July 25, 2013 meeting to discuss the draft plan.

A press release was also issued on June 21, 2013 to notify the community of the draft Oxbow Park and Preserve Management Plan posted on the City website, encourage public review and comments, and notify the community of the upcoming meeting on July 25, 2013.

The City's Parks and Recreation Advisory Board and the Natural Lands Preservation Advisory Board have both had the Oxbow Park and Preserve Management Plan discussion on their publicly noticed monthly agenda several times in 2013. The City will be holding a joint Board meeting on July 25, 2013 to review and discuss the draft plan and public comments provided to date. After the joint Board Meeting, revisions to the plan will be made and the revised draft plan will again be returned to the Boards at a future date for additional review/consideration.

**3) *What are the specific plans for environmental review of any development options on the site (roads, volume of commercial use, etc.)?***

As with all City of Durango Park, Open Space and Trail development projects, a full range of engineering, environmental analysis, and permitting will be undertaken to ensure compliance with all local, state, and federal rules and regulations. The City has already completed an extensive baseline documentation process with the assistance of the La Plata Open Space Conservancy. The baseline documentation includes a Phase I & II Environmental Assessment; a mineral assessment; a wildlife assessment; and a general overview of the property's flora including riparian and floodplain considerations. Site development will require additional analysis that will be determined upon initiation of this effort which is anticipated for 2014.

Please let us know if we can provide any more information or answer any additional questions.

Respectfully,

A handwritten signature in black ink that reads "Cathy Metz". The signature is written in a cursive, flowing style.

Cathy Metz  
Parks and Recreation Director

C: Kevin Hall