

Bibkey: 2173454

From: Clayton Kyte/Partner/NPS
To: Gary Lenhart/CARE/NPS@NPS
Date: Thursday, August 28, 2003 10:11AM
Subject: Re: FOBU springs and seeps

Gary,

Here is some background material for the proposed I&M seep and spring inventory. The indented, bolded text that follows this paragraph was taken from a recent memo from the FOBU Superintendent. My response to this memo is in the first attachment included with this e-mailing.

I would like your collective help with determining which of our park issues warrant briefing statement status and your help in drafting our presentation of them. They are trying to get all the parks into an updated briefing book for the new RD in September. The current ones we have are quite old, have all changed a bit, and are only in outline form.

How about these titles as part of a fresh start? See if you think we have left out any or need to redescribe:

4. Multi-year reclamation efforts on highly eroded Chicken Creek Drainage and functioning park's overall hydrology.

5. Development and use of park water resources to meet mandates of legislation to provide for stock drives and external stock operations.

David McGinnis

Liz Parker managed to locate the EA written pursuant to the development of another spring on the monument to supply water for livestock use on BLM lands. I sent the attached summary of the EA to Dave as a follow up to my briefing statement memo.

I will have copies of the documents you requested sent ASAP. I will check with Aneth, and if she does not have the ArcView hydrology info I prepared, I will get this information to you also.

Attachments:

2 of mem. Printed out + stapled to this

Memo to: Dave McGinnis
Date: 8/12/2003
From: C. R. Kyte
Subject: comment on briefing statements

Dave, this is in response to your 8/7/03 11:29 am memo on briefing statements. You requested that I comment on the draft statements before the next staff meeting.

First, I would add a title for natural resources similar to your draft title #1. Something like this should do: **Cooperative and collaborative scientific and interpretative efforts with the BLM, State, County and other government agencies, the I&M program, and the NCPN CESU regarding resource issues and research pertaining to predator control, exotic weed control, management of local populations of plant and animal species of special concern, and inventories and monitoring of other natural resources present on Fossil Butte N. M.**

Second, I would revise the wording in title #5. Your text implies that the founding legislation requires us to provide water for external livestock operations. I do not reach this conclusion after reviewing the founding legislation which reads: **Upon termination of the uses set forth in subsection (a) of this section [which pertains to livestock grazing], the Secretary of the Interior is authorized to provide for the disposition and use of water surplus to the needs of the monument, to a point or points outside the boundaries of the monument.**

The authors of the founding legislation clearly authorized the Secretary of the Interior to provide only for the disposition of water surplus to the monument's internal needs to outside users. The Secretary would be exceeding his or her authority if he or she authorized the development of the monument's water resources for outside users without first determining those "needs".

Although the legislators did not define "needs," it is reasonable to include these things among the monument's needs for water: water for fire protection, water for plant communities dependent on saturated soil for survival, water for wildlife including but not confined to nesting waterfowl and sandhill cranes, amphibians, beaver, large ungulates, aquatic macroinvertebrates, & etc.

I contend that water excess to the monument's needs is only the surface water that crosses the monument boundary after the sustaining the monument's wildlife and riparian vegetation, and recharging the monument's perched alluvial water tables and groundwater systems. Water consumed inside the monument boundary by these processes is probably not excess to the needs of the monument, but only a comprehensive study can determine this for certain.

You already determined that a study was needed to determine whether or not the monument had water surplus its needs. This text is quoted from the 1991 Statement for Management: **In response to the monument's authorizing legislation, there is a need to develop a process to determine water quantities that are surplus to the monument's needs. There is also a need to determine what effect(s) there may be to the federal water right at Fossil Butte, from providing water from the monument to private parties outside the monument. The question of water needs for the monument now and in the future should be addressed. I concur with the position you took on this issue in 1991. We need to determine if we have water surplus to the monument's needs before we initiate projects to dispose of excess water. We need to conduct a study in order to make that determination.**

Before we proceed with any plan to distribute water to outside users I think we need to review an EA that was referenced in the 1980 Superintendent's Annual Report to Director of the Rocky Mountain Region. The report contained this statement: **An Environmental assessment was written in response to BLM's request to horizontally drill a well into a spring in the north slope of Cundick Ridge. The request was denied. Cundick spring was developed in 1978, so this EA must be for the development of another spring. A copy of the EA should still exist, but I don't know where it is. It could have been prepared by the BLM.**

The reason the NPS denied the BLM's request for the development of an additional spring should be contained in the decision document prepared for this EA. Perhaps, the question of whether or not the park has excess water has already been answered. A review of the EA that resulted in the denial to tap another spring could save us a lot of time and trouble, especially when you consider what will be involved in a project to deliver water to outside users, or, for that matter, for any project that consumes significant quantities of water for internal use.

Furthermore, implementing title #5 without determining whether or not we have excess water would be inconsistent with the reclamation effort stated in title #4. You also have to clean up the wording in title #4 as its meaning is unclear. I assume you meant to say something like this: **A continuing goal is to restore the highly eroded Chicken Creek Drainage and other aspects of the park's hydrology to a properly functioning condition.**

If you still want to proceed with this water development project, after reviewing my comments and the EA decision document that I just referenced, you might want to rephrase title #5 to read something like this: **Develop a proposal pursuant to Sec. 4 (b) of the founding legislation that results in the funding of a study to determine whether or not the monument has water in excess to the water needed to sustain the monument's vegetation, wildlife, groundwater systems, and the water needed to provide for the monument's current and projected internal consumptive uses.**

In conclusion, although it is highly probable that a wolf passed through the monument earlier this year, to say that the presence of one has been confirmed in title #8 may be an overstatement. Until a wolf takes up residence, which I doubt happens, it may not be worth putting a lot of effort into developing monitoring and public relations strategies pursuant to wolves. However, a briefing statement regarding public relations is appropriate. How about a briefing statement that goes something like this: **Develop public relations strategies that promote NPS ideals pertaining to issues like resource conservation and protection, predator control, exotic weed control, recycling, etc., etc.**

Liz found the EA that was prepared for the development of a spring in 1980. The spring was located in the aspen grove north of the road a few hundred yards west of the north entrance (N1/2, SE 1/4 Sect. 11, T22N, R118W). The BLM desired to develop the spring and convey the water a short distance beyond the monument boundary. Two alternatives were analysed: the no action alternative, and the spring development alternative. Ted Fremd was the EA author.

The EA indicated that development could dewater a perched aquifer and deprive hydrophytic vegetation of water. The presence of the spring allowed wildlife to be more evenly distributed throughout the monument, especially grazers and browsers like deer and elk. If spring development dewatered the perched aquifer, the area occupied by hydrophytic vegetation and aspen would contract or disappear altogether and habitat for nesting birds and other wildlife species would be lost. The no action alternative was recommended because the proposed spring development had the potential to undesirably affect the environment.

Kenneth Ashley, the Regional Director, wrote a letter to Roger Martin, FOBU Superintendent, regarding the "no action" alternative being recommended. Mr. Ashley made this statement in his letter: **"We congratulate you on taking a positive stance to strongly defend the natural resources of the monument against exploitation."**