

PAGOSA SPRINGS DAILY POST

Rocks in the River, Part One

Bill Hudson | 7/25/08

As we walked out of Town Hall, following an intense, two-hour discussion about the stalled San Juan River Restoration project, editor Norm Vance of the news website *Pagosa.com* turned to me and smiled.

“Well, this meeting could certainly be written as a multi-chapter article.”

How true.

Three-and-a-half years after the start of the ill-fated San Juan River Restoration project first waded into the downtown stretch of the San Juan, the remaining players finally sat down, face to face, at Town Hall and laid their various perspectives on the table. And the perspectives were varied indeed.

I will say right off that I don't consider myself a 'neutral observer' as I write this article series. I began my career as a journalist in December of 2004 and quickly discovered that community leaders were not always happy to see news reporters actually investigating what those leaders were doing from their positions of power. One of the community leaders who had trouble with my novice reporter skills was Town Manager Mark Garcia, following a series of articles I wrote for the *Post* starting in March 2005. Those articles concerned the River Restoration project. Garcia did not return any of my numerous phone calls, and his assistant, intern Julie Jessen, told me that the “Town staff” considered my news website to be a detriment to the community.

Garcia, Jessen and I got off on the wrong foot, so to speak. And all three of us came away with bruised egos. At least, I know I did.

Garcia, Jessen and I have since gotten past our initial conflicts about the River Restoration “white water park” and my past *Post* coverage. But I still feel that important facts, which in an open, democratic society would benefit from being made public, have been kept hidden.

Yesterday's meeting, however, was a great start at getting some of those facts out in the open.

Some of the players in this three-and-a-half year saga have since passed out of the picture. Mark Garcia has resigned as Town Manager. Julie Jessen — now Julie Simmons, married to former Town Councilor Tony Simmons — has left the Town staff and works with Colorado Housing Inc. The Town Council — which supposedly approved the River Restoration project in 2004 — has several new members since then; Mark Weiler is new on the Council, as are Shari Pierce and Angela Atkinson; Jerry Jackson was on the Council back then, but took a three year sabbatical, so to speak. The remaining Council members — Stan Holt, Darrel Cotton and mayor Ross Aragon — have been part of the decision-making through the entire time.

From what I gather, Atkinson, the Councilor who lately has been most outspokenly in favor of

pressing ahead with the project, was part of a small, hand-picked committee that originally approved the project in 2004.

Also present at yesterday's Thursday work session were Springs Resort owner Keely Whittington-Reyes and her father, Bill Whittington, along with former Springs Resort owner and designer Matt Mees. The Springs Resort team was involved, in a very 'hands-on' manner, in the initial installation of the project's first piece — the so-called 'Davey Wave' — back in March 2005; as Whittington noted, his family business had at that time just purchased the Resort, in the name of his two daughters, Keely and Nerissa Whittington, and Bill and the Resort staff had participated in helping install the Davey Wave.

The Springs Resort has since expressed its non-support for the admittedly mismanaged “white water park” project.

The packed audience for the midday meeting contained other stakeholders, including representatives from the kayakers — supporting the planned project — and the fishing community — asking serious questions about the removal of the existing grant-funded “Fishing is Fun” structures which were installed in 1995.

Several important players, however, were absent from the room yesterday. Hydrologist Dave Rosgen, who designed the river's existing fishing-enhancement structures, made a presentation to the Council last month, but was not present at yesterday's work session. Davey Pitcher, owner of Wolf Creek Ski Area and the key person who donated the heavy equipment and labor for the installation of the Davey Wave in 2005 — and the person who, according to interim Town Manager Tamra Allen, is still willing to donate all of the equipment and labor for the completion of the remaining “white water park” — was not present.

Representatives of the state and federal agencies most important to the completion of any future river remodeling — the Army Corps of Engineers and the Colorado Division of Water Resources (DOW) — were absent as well.

As everyone was settling into their places around the big work session table in Town Council Chambers, I asked interim Town Manager Tamra Allen if project designer Gary Lacy was in the room. Allen looked around and said, “I don't see him at the moment, but I know he's going to be here.”

If any player has been key to the River Restoration discussion — and to the political turmoil that has surrounded it — it has certainly been Gary Lacy of Recreational Engineering and Planning (REP) headquartered in Boulder, Colorado. And yet, in three-and-a-half years of reporting on the River Restoration project, I had never spoken with him nor seen his face. I didn't even know what he looked like.

Lacy did arrive within moments, and looked to be in his mid-50s, an unimposing fellow who for some reason made me think of someone I might meet on a hiking trail.

At the beginning of the meeting, the lines were drawn in roughly this fashion:

Town Councilor Mark Weiler has been openly questioning the wisdom of proceeding with the River Restoration as currently planned, despite the Town's investment so far in \$200,000 worth of boulders and perhaps \$80,000 paid out to Lacy and REP. Speaking in favor of going ahead with the project was Councilor Atkinson. The Council last year approved a \$50,000 budget item for this year, the only funding available to complete the entire project. Allen and her staff are willing to see the project through to completion if they are given the go-ahead — assuming Davey Pitcher is still willing to donate all the equipment and labor.

The Army Corps of Engineers (ACOE) and the DOW have not yet given their final approval of REP's design. The Springs Resort has not given the easements necessary to go ahead with the ACOE and DOW approvals.

Councilor Atkinson started off the discussion by asking engineer Gary Lacy to explain how such a possibly-worthwhile project could get so cross-ways with so many people.

Lacy stood up to make his defense, and the discussion was off and paddling...

Rocks in the River, Part Two

Bill Hudson | 7/28/08

"I'm just going to ask you really bluntly," Town Councilor Angela Atkinson began her question to Recreational Engineering and Planning (REP) engineer Gary Lacy at last Thursday's Pagosa Springs Town Council work session.

"How did we get so crossways with the [Army Corps of Engineers]? How did we arrive here? I think we're dealing with a lot of murkiness and facts here, a lot of numbers are being thrown around, and I will say for myself, I'm really confused about how the decisions were made along the way. Help me." *Continued...*



Gary Lacy of Recreational Engineering and Planning (REP) defends his company's performance in connection with the Town's proposed white water park, at last Thursday's Town Council work session.

The fact that Atkinson finds herself confused about the Town's four-year struggle to install a "white water" park in the downtown stretch of the San Juan River, may, in itself, say a good deal about how the Town and Lacy's company have handled the project from the beginning and through to the present moment. Atkinson was part of the committee that wrote the original Request For Proposal in 2004, and now finds herself sitting on the Town Council, discussing what to do next.

In this point in Thursday's meeting, we had already heard that REP and the Town still do not have the final permits needed to complete the project — not do they have the easements needed. Both the Army Corps of Engineers (ACOE) and the Colorado Division of Wildlife (DOW) must legally give their permission for the final phase of the project, but so far have not done so. We also knew that the owners of the Springs Resort, the Whittington family — who must grant the Town crucial easements before the project can proceed — are happy with the existing "Fishing is Fun" structures and would like to see any future white water park be located somewhere else besides where REP has it currently sketched, right along the Springs Resort property.

Gary began his answer to Atkinson's question by reviewing some facts about his company, which began in 1983 and which has built, he claims, 80 percent of the white water parks in the U.S. — about 60 projects — all of which, he said, were permitted by the ACOE.

"In 2004, we were contracted by the Town of Pagosa Springs to develop preliminary designs for a white water park extending roughly from the Hot Springs Boulevard bridge to the [Apache Street bridge] and we did create a preliminary plan for those improvements. It was a public process, we attended public meetings here; basically, in the public process, we took guidance from the Town; if we were requested to come to a meeting, we came to a meeting..."

"Then in March of 2005, there was a lot of excitement in Town to get something done, and basically, there were a couple of things that were highlighted to me. There were a couple of structures that were a hazard to people, for inner-tubers particularly, a foot-entrapment issue. The fire department had been called out to get people off these structures... One of the things our company has done, probably the majority of our work, has been modifying rivers for public safety..."

From what I have been able to learn, the Town has had two instances of inner-tubers stranded on the "Fishing is Fun" structures in the past 13 years.

Lacy also noted that the original "Fishing is Fun" structures, installed in 1995 with ACOE and DOW permission, failed to correct certain hazardous riverbank issues. Across the river from the Springs Resort, a "failing" riverbank was shored up by exposed I-beam pilings, rusted wire mesh and chunks of broken concrete when the Town began its incorrectly-permitted work in March 2005 under Lacy's supervision — and those riverbank conditions "made it extremely hazardous for anyone to get to the river," in Lacy's opinion. Lacy's plan would try to address safe public access and prevent erosion by hardening that same riverbank with rock terracing.

“At that time, the Town staff notified me that they had applied for a ACOE permit to do the first phase of the work, and that they’d like to do it quickly.” River work is normally done during periods of low water flow — during the spring or fall. So time was of the essence in March 2005. As noted in Part One, the actual labor and heavy equipment was donated by Wolf Creek Ski Area owner Davey Pitcher — and the March time-frame apparently worked well for him as well.

Unfortunately, the Town had not actually obtained the correct permit — nor the other agency permissions — to do the work Lacy had sketched out. It was not quite clear, from Lacy’s explanation, how he missed the fact that the Town had obtained a permit to perform “maintenance” but not to install a brand-new white water feature.

“Our company is not hired to obtain permits for that, the Town obtained the permit — a Nationwide 3 Permit for the removal and replacement of structures and maintenance work, to replace the [existing “Fishing is Fun” structures] and the bank work, with essentially the work that is there now.”

A few questions arise in relation to Lacy’s explanations. Looking at the contract Lacy signed with the Town in December 2004, it seems fairly clear that REP in fact agreed to oversee the permitting process as part of the scope of work for which they would be paid \$50,000.

Meanwhile, a letter to the Town from the ACOE dated March 1, 2005 stated that the Town’s Nationwide Permit 3 allowed the Town to “to repair several rock structures within the San Juan River for recreational safety purposes... by relocating several large rocks.”

Lacy’s design involved much more than simple “repair” to existing rock structures and “relocating several large rocks.” The REP-designed modifications included complete removal of three or four grant-funded “Fishing is Fun” structures, the construction of a completely new “U” structure in a completely new location, and the installation of over thirty new boulders along the west bank of the San Juan.

The ACOE responded to the “repairs” supervised by Lacy and REP with the following reprimanding letter, dated April 6, 2005:

“... The intent of the Nationwide Permit 3 is to authorize work... consistent with the original permit (199375014). The work performed within the Town of Pagosa Springs... exceeded this verification and includes the following:

1. Removal of the “W” structure near the Visitors Center;
2. Removal of the USGS stream gage #9342500;
3. Failure to notify the USGS per special condition #5 of permit 199375014;
4. Installation of a new “U” structure downstream of the “W” removed;
5. Use of concrete grout for the new “U” structure;
6. Approximately 300 feet of west bank work;
7. Removal and reconstruction of... three triangular rock deflectors...

8. Installation of large random boulders (6-9) within the river..."

Click here to view the [ACOE letter as a PDF](#).

"In addition," the earlier March 2005 ACOE letter had noted, "the proposed project shall not adversely alter the flow of the river or cause bank degradation downstream of the activity." From comments made by Bill Whittington at Thursday's meeting, it appears that the "U" structure installed under Lacy's direction has, in fact, caused significant erosion downstream.

"I think there were some mistakes made," Lacy continued with his response to Atkinson's question. "I think, looking back, the ACOE's position has been that we exceeded the boundaries of that type of permit. I been involved in this type of permit in many, many cases similar to this — such as in Boulder Creek, where structures fail or get outdated and we get this permit and replace these structures. It sure seemed fairly simple to me to do that type of work here.

"I think there was a lot of misinformation, with people getting upset and calling the ACOE and saying the Town is doing this or that or the other thing. Since that time, our company has worked diligently for the Town to make sure, if there is any violation or perceived violation, and particularly, any permitting for the entire project — and that easements and permits and any 'Fishing is Fun' permissions are obtained so the overall project can be completed."

Lacy did not elaborate on what he may have meant by "diligently." Earlier on in the Thursday meeting, Councilor Jerry Jackson asked interim Town Manager Tamra Allen if REP and the Town have obtained any of the several easements needed to install the REP white water park design. Allen replied simply, "No."

Nor does REP have any of the necessary permits finalized.

Four and a half years after signing the REP contract, the Town has no easements, no final permits, and has been told by the ACOE to remove the only structure installed thus far — the Davey Wave — because of erosion problems and a raised flood level.

Hydrologist Chris Philips of Riverbend Engineering, a Pagosa Springs engineering firm which also submitted a response to the 2004 RFP for the river work, stood up at the Thursday meeting and suggested that the Town has already paid out about \$80,000 to REP for the unfinished project.

The original contract between the Town and REP was for \$50,000, so I wondered if Philips' figure was accurate. I obtained a printout from the Town Finance Department, and it appears that the Town made its first payment of \$12,490.50 to REP on April 15, 2005, and the most recent invoice, dated July 1, 2008, was for \$3786.25.

Payments made to REP total \$83,924.20.

How is it possible that the Town has paid out nearly \$84,000 for an unfinished plan, for which they have no easements and no final permits after four and a half years of "diligent" work?

Rocks in the River, Part Three

Bill Hudson | 7/29/08

Back in 1994, when the Town of Pagosa Springs began work on the original restoration of the downtown San Juan River funded by a sizable “Fishing is Fun” grant, the actual placement of the boulders were the last step in a long process. The first part of the process — a step required by the federal government and the Colorado Division of Wildlife (DOW) before any rocks could be placed — involved securing easements in and along the river to assure that the public would be able to legally access the planned fishing enhancements.

According to a source close to the original “Fishing is Fun” project (who prefers not to be identified) the “Fishing is Fun” project was aimed at improved fishing opportunities in the downtown San Juan, so the federal and state governments wanted the Town to acquire a ten-foot-wide access easement above the high water mark, from all the property owners along the downtown San Juan. The Town spent just over \$100,000 securing those easements in 1994. According to my source, the only property owner who did not grant the ten-foot fishing access easement was the Spring Inn — now the Springs Resort. The Town and their “Fishing is Fun” contractor, hydrologist Dave Rosgen, placed the fishing enhancements in places that generally offered easy fishing access from at least one side of the river.

I attempted to verify my source’s easement information at the County Assessor’s office, but discovered that the County Assessor does not usually record easements in their computer database, since easements generally have little or no impact on property values. At this point, I am not sure if the 1994 easements were ever recorded.

The fact remains, however, that the easements were a crucial part of the “Fishing is Fun” planning process, and were seen as important enough to justify a \$100,000 investment.

Fast forward to December 2004, and a new \$50,000 contract between Town Manager Mark Garcia and white water park designers Recreational Engineering and Planning (REP) of Boulder, Colorado. The contract specifies the design of a well-engineered white water park that essentially replaces the 1995 “Fishing is Fun” structures with new boating-friendly structures.

As Town Manager Garcia signs this contract, he has no permits for this project, he has no permission from the federal government or DOW to remove the grant-funded “Fishing is Fun” structures — and he has no easements for the new project. All the Town’s existing easements were obtained through careful agreements that supported the “Fishing is Fun” structures — not a future white water park.

Garcia has also budgeted the project for materials and design only, depending totally on Wolf Creek Ski Area owner Davey Pitcher to donate all the heavy equipment and labor costs.

At last Thursday’s work session between the Town and REP’s Gary Lacy, it became quite evident that, three and a half years later, the Town still has no final permits, no final permission to remove the “Fishing is Fun” structures — and no easements. Yet the Town has paid Lacy

nearly \$84,000 for design work — and for help obtaining permits, permissions and easements.

During Thursday's meeting, several members of the public spoke from the audience, including a couple supporters of the white water park concept. Many of the comments from the audience, however, were critical of the way the Town and REP have handled the project — particularly, how the project could have come so far without any easements or permits in place, and without any clear idea who would be overseeing the entire project, now that the white water park's key proponent, former Town Manager Mark Garcia, has resigned from the Town.

Springs Resort representative Bill Whittington, who attended the meeting with his daughter, resort owner Keely Whittington-Reyes, and resort pool designer Matt Mees, explained the reasons why the Springs Resort has withdrawn its support for the current white water park — even though Bill Whittington had originally helped with the construction of the Davey Wave in March 2005, only weeks after the Whittingtons purchased the Springs Resort.

“We were just new to town and we thought everybody loved everybody. The [new west bank rock work] looked fantastic, but then everything started unwinding... Kara Helige from the Corps had a big problem with grout being used in the river... the USGS guy was very hot and very directed about the loss of the gauging station, and offered to whip my ass... and I felt like there was obviously a gigantic problem. And I got a lot of phone calls about the fishing grant money that was already spent there; we got raked through the coals from those folks...”

Referring to documents he obtained from the Army Corps of Engineers, Whittington stated that the ACOE had never agreed with the Town that the existing “Fishing is Fun” structures needed replacement.

Whittington praised the existing structures at Thursday's meeting. “We spent the time, we spent the money, we did 12 years of study. It's not flooding anybody, it's doing a good job. We personally book many thousands of dollars worth of river rafting on that river — and we also see the kayakers using the [existing “W” weirs] all up and down the river. Why are we spending money — and why are we having these conversations — if what's out there is already working?”

“I thought the reason the Town wanted to [reconstruct the river] was based on some grandiose reason, but when I researched what was going on and read the documents, I can't see why you want to change it. The fishing guys come to me and say, ‘There's thirty people out there playing on that Wave; we can't fish there.’ I helped you build [the Davey Wave,] I grant you that, but I watch the river eight, ten hours a day. There's no conflict between fishermen and boaters when the boaters are floating through — they wave, the fishermen wave — but when you put a stoppage in the river [like the Davey Wave] that's when you start creating a problem between boating and fishing.”

Whittington implied that the resort might be willing to support a white water park located elsewhere in the river, by providing easements and even donating additional funding.

“You guys [at REP] have designed some very nice projects, I'm not debating that. But I think we can better utilize our money if we can keep what we've got and move [the white water park] to

another area.”

Lacy’s associate at the Thursday meeting, Shane Sigle, affirmed that REP would be happy to redesign the project for a different location — at cost, of course — but suggested that a white water park would function better in a popular, accessible area of river like the stretch indicated in the present REP plans.

If only REP and the Town had the permissions needed to place it there.

The Councilors currently sitting on the Town Council are not all the same ones who have been funding REP’s work for the past four years. Listening to the comments from the various Councilors during Thursday’s meeting — and especially hearing the comments from the Springs Resort representatives — it appears doubtful that the downtown water park, as currently sketched, will be completed under this Council’s watch.

Whether the Town Council will try and relocate former Town Manager Mark Garcia’s pet project to a different stretch of the river — and pay REP for totally new designs and hydraulic modeling — is a question that seems, at this moment, as muddy as the San Juan River after a serious rainstorm.