

Operating Guidelines & Ground Rules

Clark Fork River Basin Task Force

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1.0 Introduction

- 1.1 In 2009 the Montana Legislature passed Senate Bill 303, “An act requiring that sections of the State Water Plan address various water issues within the Clark Fork, Missouri, and Yellowstone River Basins; creating water user councils; and amending Sections 85-1-203” of the Montana Code Annotated (MCA).
- 1.2 Senate Bill 303 (SB 303) mandated that the Montana Department of Natural Resources & Conservation (DNRC) shall:
 - 1.2.1 Gather from any source reliable information relating to Montana’s water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state.
 - 1.2.2 Formulate and adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the “state water plan.”
 - 1.2.3 With adoption of the state water plan, set out a progressive program for the conservation, development, utilization, and sustainability of the state’s water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses (MCA § 85-1-203(2)).
- 1.3 SB 303 also mandated that “sections of the state water plan must be completed for the Missouri, Yellowstone, and Clark Fork River basins, submitted to the 2015 legislature and updated at least every 20 years” (85-1-203(3)). Each section of the state water plan must include:
 - 1.3.1 An inventory of consumptive and nonconsumptive uses associated with existing water rights;
 - 1.3.2 An estimate of the amount of surface and ground water needed to satisfy new future demands;
 - 1.3.3 Analysis of the effects of frequent drought and new or increased depletions on the availability of future water supplies;
 - 1.3.4 Proposals for the best means, such as an evaluation of opportunities for storage of water by both private and public entities, to satisfy existing water rights and new water demands;
 - 1.3.5 Possible sources of water to meet the needs of the state; and
 - 1.3.6 Any legislation necessary to address water resource concerns in these basins.
- 1.4 SB 303 directed the Department to create a “water user council,” or basin advisory council, in the Yellowstone and Missouri River basins.
- 1.5 However, with regard to the Clark Fork River Basin, the Legislature mandated that “the department shall continue to utilize the Clark Fork River basin Task Force” (85-1-203(4)).
 - 1.5.1 In this role, the Clark Fork River basin Task Force “shall make recommendations to the department on the basinwide plans” (85-1-203(4)(d)).
- 1.6 According to 85-2-350, the Governor shall “designate an appropriate entity to convene and coordinate a Clark Fork Basin task force to prepare proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin.” The designated appropriate entity shall:
 - 1.6.1 Identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;

- 1.6.2 Provide advice and assistance in selecting representatives to serve on the Task Force;
- 1.6.3 Develop, in consultation with the Task Force, appropriate opportunities for public participation in studies of water management in the Clark Fork River basin; and
- 1.6.4 Ensure that all watershed and viewpoints within the basin are adequately represented by the Task Force, including a representation from the following:
 - 1.6.4.1 The reach of the Clark Fork River in Montana below its confluence with the Flathead River;
 - 1.6.4.2 The Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River;
 - 1.6.4.3 The Flathead River basin upstream from Flathead Lake;
 - 1.6.4.4 The reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;
 - 1.6.4.5 The Bitterroot River basin as defined in 85-2-344; and
 - 1.6.4.6 The Upper Clark Fork River basin as defined in 85-2-335.
- 1.7 In response to this legislation, in August 2013 the Montana Department of Natural Resources & Conservation entered into a contract with the Center for Natural Resources & Environmental Policy to “provide coordination and facilitation services to the Clark Fork Task Force for purposes of conducting water resources issues scoping, and preparing a final Water Resources Issues Scoping Report for the Clark Fork River Basin pursuant to MCA § 85-1-203.”

Ground Rules

2.0 Participant Qualifications, Selection, and Service

- 2.1 **Participants.** As defined by 85-2-350, participation includes people interested in or affected by water management in the Clark Fork River basin.
- 2.2 **Eligibility.** Appointees to the Clark Fork Task Force (hereafter “Task Force”) will be made by the DNRC, which will select from a comprehensive list of nominees. Nominations will be solicited from the conservation districts, basin watershed groups, industry groups, economic development groups, resource interest groups, and the public at large. All of the nominees should have demonstrated interests in the economic, social and environmental sustainability of the Basin. To be eligible for appointment a candidate must:
 - 2.2.1 Be qualified through education, training, knowledge, or experience to give informed and objective advice regarding an industry, discipline, or interest specified in the Task Force’s guidelines; and
 - 2.2.2 Have demonstrated experience or knowledge of the geographical area under the scope of the Task Force.
- 2.4 **Duration of Appointment.** Members will be appointed to serve approximately a two-year term. Appointments will be effective upon written DNRC approval.
- 2.5 **Conflict of Interest.** Members must disclose their direct or indirect interest in issues pertaining to water within the Basin. Membership may be terminated if they no longer represent the constituency for which they were appointed.

- 2.6 **Vacancies.** Vacancies occurring for reasons such as resignation, death, a change in residency through relocation outside of the basin, or failure to regularly attend meetings, will be reported to DNRC. The entity represented shall propose a replacement to fill the vacated position.
- 2.7 **Compensation.** Members serve without salary, but will be reimbursed at the official state government rate for lodging, mileage and per diem expenses incurred in transit to and from official meetings. Reimbursement for overnight accommodations must be pre-approved by DNRC.
- 2.8 **Membership.** Membership on the Task Force will be balanced with representation from the following water interests:
- 2.8.1 Agricultural, industrial, commercial and local business. For example: agricultural producers; irrigation districts; petroleum producers and refiners; electrical generating plant operators; agricultural product processors; and real estate development interests.
 - 2.8.2 Conservation, recreation, and instream flow. For example: representatives of environmental and resource conservation groups; watershed groups; sportsmen and outdoor recreation advocates; commercial river recreational businesses; cultural and historical interests; the public at large; and scientists/engineers/biologists involved in water science and water-related resource inventory.
 - 2.8.3 Elected and administrative. For example: local, county, federal and tribal elected officials or employees with responsibility pertaining to water use and management; conservation district supervisors; dam operators; land use planners; public water supply managers; park managers; and disaster/emergency coordinators.
 - 2.8.4 Public at Large.
- 2.9 The Task Force may have up to 20 members (85-1-203(4)(c)). To the extent possible, membership on the Task Force will be geographically distributed within the basin with individual members distributed through-out the upper, middle, and lower basin.
- 3.0 Roles and Responsibilities**
- 3.1 **Purpose of Clark Fork Task Force:**
- 3.1.1 Provide input and recommendations to the DNRC and other agencies as appropriate on the basin plans, as required by MCA § 85-1-203 and 85-2-350.
 - 3.1.2 Serve as advisors to DNRC and provide an avenue of communication and discourse between various interests within the basin.
 - 3.1.3 Evaluate strategies, studies and proposed actions for improving the understanding, management and conservation of water resources in the basin.
- 3.2 **Advisory Capacity.** The Task Force will act in an advisory capacity to the DNRC for purposes of the basin planning process.
- 3.3 **Geographic Jurisdiction.** The geographic jurisdiction of the Task Force's work is restricted to the Clark Fork River and Kootenai River basins.
- 3.4 **Duties and Responsibilities.** Responsibilities of the Task Force are as follows:
- 3.4.1 Serve as a forum for public comment and communicating the results of technical studies pertaining to water supply and use.
 - 3.4.2 Represent their constituency and assist the DNRC in communicating with local water interests.

- 3.4.3 Assist the DNRC in identifying Best Management Practices for the management and conservation of water resources.
- 3.4.4 Develop recommendations for the DNRC regarding the preparation, amendment, and implementation of the State Water Plan.
- 3.4.5 Report to:
 - i. DNRC on a periodic basis.
 - ii. Environmental Quality Council annually.
 - iii. The appropriations subcommittee that deals with natural resources and commerce each legislative session.
 - iv. Other committees (e.g. WPIC) and agencies as appropriate.

3.5 Responsibilities of participants to one another:

- 3.5.1 Each participant agrees to candidly identify the interests he/she represents.
- 3.5.2 Each participant agrees to listen carefully and respectfully to the other participants and avoid interrupting other participants.
- 3.5.3 Each participant agrees to offer suggestions with respect and care.
- 3.5.4 Each participant agrees to share relevant public information regarding the issues under consideration.
- 3.5.5 Each participant agrees to communicate with each other directly, rather than through the news media.
- 3.5.6 Each participant agrees to challenge ideas, not people.
- 3.5.7 Each participant agrees to respect the decision of any participant or stakeholder group to withdraw at any time and for any reason.
- 3.5.8 Each participant or stakeholder group agrees to explain to the other participants the reason for withdrawal from the process.
- 3.5.9 Each participant agrees to consider and include the interest(s) of the group as a whole.

3.6 Responsibilities to constituents. Each participant agrees to:

- 3.6.1 Inform and educate other people about the issues and options being addressed by the Task Force, as well as any recommendations that emerge from the Task Force.
- 3.6.2 Seek the input and advice of other people on the issues, options, and recommendations being considered by the Task Force.
- 3.6.3 Where appropriate, identify the interests of the constituents she/he represents.
- 3.6.4 Represent and speak for her/his constituents.
- 3.6.5 Explain and interpret the process and its proposed outcomes to his/her constituents.
- 3.6.6 Keep her/his constituents informed of the ideas and activities emerging from the process.

3.7 Center for Natural Resources & Environmental Policy Responsibilities. The Center will provide the following services consistent with its Code of Professional Conduct:

- 3.7.1 Work with all the participants to design a collaborative problem solving process, including opportunities for public participation.
- 3.7.2 Serve as an impartial facilitator during meetings; focus the energy of the group on a common task; protect individuals and their ideas from attack; encourage everyone to participate and share their ideas; help the group find mutual gain solutions; coordinate pre- and post-meeting logistics; and, where necessary, communicate with the participants between meetings.
- 3.7.3 Enforce the ground rules agreed to by the participants and confront any participant when the Center believes the participant is not acting in good faith and is inhibiting the group from moving forward.
- 3.7.4 Work in teams to ensure that we effectively coordinate the project.

- 3.7.5 Respect the confidentiality of private communications with any of the participants.
- 3.7.6 Prepare and maintain an objective record of the public process, including areas of agreement, disagreement, and strategies for implementation.
- 3.7.7 Prepare both draft and final documents, and when appropriate, research reports.
- 3.7.8 Provide consultation to the participants during the process of implementing any agreement, and help the participants amend an agreement during the implementation process.

3.8 **Responsibilities of Water Resources Division, Department of Natural Resources and Conservation.**

- 3.8.1 Provide technical information and advice.
- 3.8.2 Serve as the fiscal agent for the Task Force, reimbursing participants for travel and expenses and otherwise managing the financial resources available.
- 3.8.3 The Task Force recognizes that the State of Montana has a responsibility to fund the Clark Fork River Basin Task Force, and requests continuing support and assistance from the DNRC.

3.9 **Ex Officio Membership**

- 3.9.1 Ex officio members provide advice, guidance and expertise. Ex officio members will not be reimbursed for travel expenses.
- 3.9.2 Ex officio members do not vote, but are encouraged to participate in discussions leading to tests for consensus during Task Force meetings (see section 4.3.1).
- 3.9.3 At any point during Task Force discussions, ex-officio members are encouraged to disclose reservations and concerns, and make suggestions or recommendations to inform Task Force discussions and recommendations.
- 3.9.4 Ex officio members (or their designees) should participate and attend meetings on a consistent basis, as is reasonable and appropriate for the interests they represent.
- 3.9.5 It is incumbent upon ex officio members to share relevant information regarding the issues under consideration by the Task Force.
- 3.9.6 Ex officio members agree to act as a liaison between their interests and the Task Force and will routinely keep their interests informed of the activities of the Task Force.

4.0 **Decision-making Process**

4.1 **General Provisions**

- 4.1.1 Each participant agrees to fully and consistently participate in the process unless they withdraw.
- 4.1.2 If participants withdraw from the process, they agree to explain their reasons for doing so, and give the Task Force a chance to accommodate their needs and interests.
- 4.1.3 Each participant agrees to fully explore and understand all issues before reaching conclusions.
- 4.1.4 Each participant agrees to seek creative opportunities to address the interests and concerns of all participants.

4.2 **Decision-making Rule**

- 4.3 **Consensus.** Members agree to seek consensus. Consensus is defined as unanimous agreement among all of the participants. Consensus means that even though a voting member may not agree that a given issue or recommendation warrants inclusion in the Basin Plan, he/she does not disagree enough to warrant opposition to its inclusion. Moreover, consensus means that a participant is comfortable implementing the discussed idea or task.

4.3.1 **Findings of Fact:** Recommendations formed by consensus will be forwarded to the DNRC with a “finding of fact” that explains underlying facts and reasoning supporting the recommendation.

4.3.2 The following scale (or some adaptation of the scale) can be used to test for consensus at any point during Task Force discussion. Each participant can express their level of comfort and commitment according to the following scale:

1. Wholeheartedly agree
2. Good idea
3. Supportive
4. Reservations – would like to talk
5. Serious concerns – must talk
6. Cannot participate in the decision – must block it

If all the participants fall between 1-3, consensus has been reached. When someone falls between 4-6, that person must assume the burden of clearly articulating their concern to the larger group and offering a constructive alternative.

4.4 **Disagreement.** Each member has the ability to disagree with any reasonable and/or legitimate proposal, but assumes a responsibility for providing an alternative proposal that would address his or her concerns.

5.0 Meetings

5.1 **Meeting Purpose and Frequency.** Task Force meetings convened as part of the Montana Water Supply Initiative will occur in 3 phases:

Phase 1 - issue identification (scoping),

Phase 2 - technical studies (presentation of results), identification of alternatives to meet projected demand and protect existing beneficial uses.

Phase 3 - recommendation and plan development.

The Task Force will meet during all three phases. It is anticipated that there will be 10-12 meetings convened over the term in various parts of the basin.

5.2 **Public involvement.** All meetings are open to the general public and representatives of the news media.

5.3 **Public notification.** A notice of each meeting and a meeting agenda will be sent to the news media in advance of each meeting. The notice shall set forth the purpose, time and place of the meeting.

5.4 **Quorum.** A quorum will consist of a majority of the appointed members.

5.5 **Voting.** Task Force Members (excluding ex-officio) constitute the voting membership.

5.6 **Lack of Consensus.** If after repeated attempts, consensus is not achieved on an issue/recommendation, the majority voting membership of the Task Force shall report to DNRC on the issue/recommendation dividing the membership, along with a voting record (meaning a record of group percentage for and against the issue/recommendation, not a record of “who said what”). Under a split vote circumstance, a minority report from the minority voting membership will be included with the report to the DRNC.

5.7 **Proxy votes.** Voting by proxy will not be accepted.

5.8 **Meeting Management**

5.8.1 **Officers.** The Task Force may elect a Chair and Vice-Chair.

5.8.2 **Chair responsibilities.** The Chair will manage and coordinate the regular meetings, including focusing the group on a common task; protecting individuals and their ideas from personal attacks, encouraging everyone to participate; and assisting the group to reach consensus.

6.0 Media Relations and General Communications

6.1 The Chair and/or Facilitator will act as liaison to DNRC.

6.2 The work of the Task Force will be reported regularly to DNRC by the Facilitator and/or Chair who will represent the consensus views, characterize deliberations, and when appropriate, express minority opinions.

6.3 The Facilitator, in consultation with DNRC and the Chair, will send meeting notices to the interested public and the media.

6.4 Communications with the media on behalf of the Task Force shall be made only by the Chair or Vice-Chair, or in their absence, the DNRC.

6.5 **Rules of Media Engagement.** Task Force members shall not characterize the views of other members to the news media or in other forums such as Internet blogs. Task Force members who speak to the news media must clarify that they speak only as an individual and not on behalf of the Task Force.