

Upper Clark Fork River Basin Steering Committee

Accomplishments

April 2010

Changed Water Management Climate

Although it can point to many specific legal, policy, and on-the-ground water-related accomplishments, perhaps the most significant change to which the Steering Committee has contributed is the changed climate for managing water in the upper Clark Fork River basin. As the following excerpt from the Steering Committee's report to 1999 Montana Legislature discusses, the climate has changed from one of distrust and contention between and among local water users and government water planners and managers to one characterized by partnership and cooperation. This does not mean that all water issues have been resolved, all disputes ended, and water rights attorneys are without work. It does mean that the Steering Committee and other basin groups such as the Watershed Restoration Coalition, the Blackfoot Challenge and the Tri-State Implementation Council have demonstrated that respectful, collaborative approaches involving the broad spectrum water interests can and have successfully implemented innovative approaches to water management. The Steering Committee is not the only group to practice inclusive collaboration among local water users and interests and government water managers and regulators, but it was one of the first to do so.

In 1990, prior to the creation of the Steering Committee, a contested case hearing was scheduled to address competing water use issues in the upper Clark Fork Basin. Emotions ran high and trust low as water users prepared to make their arguments and defend their positions. Fish and wildlife managers, recreationists and conservation groups argued that to protect the fishery and other instream values, additional diversions of water from the River and its tributaries should not be allowed. Ranchers and irrigators, hydroelectric utilities, and industrial interests were concerned about their livelihoods, water rights, and the availability of water for future development. A series of drought years and prevailing low streamflow conditions heightened the competition and the universal concern that all water uses could not be sustained indefinitely.

At the same time, water quality concerns in the basin were mounting. The area from Butte to Milltown Dam was designated as the nation's largest Superfund complex due to impacts from historic mining activities. The effects of wastewater discharges on water quality became more apparent as drought reduced the amount of streamflow available for dilution. Nonpoint source pollution from a variety of land use practices continued to impair beneficial water uses in many miles of basin streams, and a host of new development activities were being proposed. Congress responded to citizen concerns of declining water quality by calling for a major pollution study of the Clark Fork Basin in amendments to the federal Clean Water Act. The State designated the Clark Fork Basin's water quality problems as among its highest priorities.

In 1991, the Steering Committee was officially convened and charged with the daunting task of addressing all of these water supply and water quality problems through a comprehensive, locally-based planning process.

Water resources management in the upper Clark Fork basin presents a much different picture today. In the span of eight years, much has been accomplished to address the many and varied water use and water quality issues of the basin. The Steering Committee, affiliate groups, local partners and basin water users have proven that collaborative approaches can work when all

interests are involved in and committed to finding common ground and workable solutions to problems.

Awards

On May 16, 2006, the Montana Watershed Coordinating Council awarded its 2006 Montana Watershed Stewardship Award to the Steering Committee.

Specific Accomplishments

The following list highlights actions taken by the Steering Committee since it was formed in 1991 to address basin water issues directly or to assist or stimulate others to do so.

Legislation

- ≡ In 1991, interests whose representatives were subsequently appointed to the Steering Committee successfully sought legislation to suspend the upper Clark Fork basin water reservation process, temporarily close the basin to most new water rights, and create the Steering Committee and charge it with writing a basin water management plan.
- In 1995, after receiving the *Upper Clark Fork River Basin Water Management Plan*, the legislature enacted into law the *Plan's* recommendations to close the basin permanently to most new surface water rights and to create a pilot instream flow water leasing program.
- In 1997, at the Steering Committee's recommendation, the Legislature amended the basin water rights closure to allow development of surface water when stream flows are augmented with groundwater.
- Also in 1997, the legislature, at the Steering Committee's request, provided that a majority of the Steering Committee members would be appointed by the basin's counties and conservation districts.
- In 2001, in response to the Steering Committee's request that the state not walk away from a negotiated agreement between the state and Avista concerning Avista's hydropower water rights and Clark Fork basin water rights holders junior to Avista, Governor Racicot directed DNRC to draft legislation authorizing creation of a Clark Fork Basin Task Force charged with preparing a water management plan for the entire Clark Fork River basin. The legislature enacted this legislation.
- ≡ In 2005, the Steering Committee supported a permanent extension of the state-wide water leasing program, based on the results of the upper Clark Fork basin instream flow pilot program.
- ≡ Also in 2005, the Steering Committee's paper entitled "White Paper on the Montana Water Rights Adjudication" helped to stimulate action by the legislature to substantially increase funding for the Montana Department of Natural Resources and Conservation and the Montana Water Court so that the state-wide water rights adjudication can be completed within fifteen years.

Administrative Rules

- In 1996, the Steering Committee convinced DNRC to adopt a rule clarifying that no one has a right to the use of water discharged as effluent from a sewage treatment plant, thereby making land application of nutrient laden sewage treatment plant effluent possible.
- ≡ In 2005, the Steering Committee worked with the Natural Resources Conservation Service to modify its EQIP application material to ensure coordination with DNRC water rights

administrators.

Clark Fork Basin Water Management Planning

- ≈ Several members of the Steering Committee (Jim Dinsmore, Holly Franz, Steve Fry, and Eugene Manley) participated on the Clark Fork River Basin Task Force that developed the *Clark Fork Basin Watershed Management Plan* in September 2004 and is working to arrange a contract between the State of Montana and the Bureau of Reclamation for water from Hungry Horse Reservoir to provide a long-term source of water for the Clark Fork Basin.

Instream Flow/Drought Management

- ≈ The Steering Committee retained consultant, Dennis Workman, to pursue mitigation of dewatering of the mainstem of the Clark Fork River in the general area below the Warm Springs Ponds and above the City of Deer Lodge. Mr. Workman identified the dewatered reaches critical to the fishery, specified the nature of the dewatering, identified the water rights holders in the effected stretch of the river, identified possible mechanisms to address the dewatering, and determined the amount of minimum flows needed by the fishery. The Steering Committee convened a group of local water users in an attempt to stimulate development of a local drought management plan for the effected reach and obtained grant funds to install and record two years of data from flow measuring devices in the effected reach.
- ≈ The Steering Committee assisted water rights holders on the Morrison Ditch with obtaining measurements of ditch losses by the Montana Department of Natural Resources and Conservation. Reducing or eliminating these losses may reduce dewatering of Racetrack Creek.

Point Source Water Pollution Reduction

- The Steering Committee hosted a meeting between officials of the City of Philipsburg and the Director of the Montana Department of Environmental Quality (DEQ) concerning the need for and the design of a new City sewage treatment plant. Communication between the City and DEQ improved substantially as a result of this meeting.
- ≈ Members of the Steering Committee worked with the City of Deer Lodge, the National Parks Service, and DEQ to develop, fund, and implement land application of Deer Lodge sewage treatment effluent that would otherwise be discharged directly to the Clark Fork River. In 2010, at the Steering Committee's request, the DNRC clarified the relationship between water rights and sewage treatment plant effluent, assisting the City of Deer Lodge with its planning to upgrade its sewage treatment plant.
- ≈ After issuance of the *Upper Clark Fork River Basin Water Management Plan* which recommended that basin communities ban phosphate detergent, Butte-Silver Bow did so.

Non-Point Water Pollution

- The Steering Committee assisted DEQ's efforts to implement its TMDL responsibilities in the basin by co-sponsoring meetings on the 303(d) list and pilot tests of voluntary water quality planning on Racetrack and Fred Burr Creeks.

New Water Storage

- The Steering Committee formed a committee ranked the potential for increasing storage in new and existing sites. The committee recommended two sites that were evaluated by the Soil Conservation Service. The committee's work helped stimulate focus on the Silver Lake water

system that was later acquired by Butte-Silver Bow.

Repair and Restoration of Basin Water Storage Projects

- The Steering Committee helped to facilitate communication between DNRC and local Rock Creek residents when a sink hole threatened the East Fork Dam on the east fork of Rock Creek and during the subsequent repair activities.
- The Steering Committee supported funding by the Montana Legislature for the repair of East Fork and Nevada Creek Dams.

Water Dispute Resolution

- The Steering Committee sponsored the formation of the Georgetown Lake Watershed Committee in response to controversy concerning the operation of Flint Creek Dam and its effects on Georgetown Lake.
- The DEQ included in its 2002 record of decision for the Silver Bow Generation Project direction to the project developer that it ask the Steering Committee to develop a water management plan for Warm Springs Creek that adequately addresses minimum instream flows for the protection of the fishery. The Generation Project was cancelled, so the Steering Committee did not develop the management plan. Under contract with ARCO, Montana Trout Unlimited subsequently developed and implemented a plan for protecting flows in Warm Springs Creek.
- The Steering Committee assisted Granite Conservation District as it sought enforcement of 310 violations causing discharge of old mine tailings into Fred Burr Creek.

Fishery

- The Steering Committee helped to involve water users in Rock Creek with the state bull trout recovery effort.
- The Steering Committee sponsored a grant request to a private foundation for a preliminary plan view, preliminary design and budget analysis for a stream renaturalization project on a portion of Rock Creek.
- As discussed above, the Steering Committee sponsored work to reduce chronic dewatering of the mainstem of the Clark Fork River.

Studies and Surveys

- The Steering Committee conducted studies using an EPA grant of the basin's groundwater resources, including management of groundwater resources in other western states and summarizing records of existing groundwater development. One of the consequences of the Steering Committee's ground water study was the development by the Natural Resource Information System (NRIS) of the template for the water right search engine.
- The Steering Committee helped to initiate study of return flows in the Flint Creek Valley to understand and document the role of irrigation return flows by the Montana Department of Natural Resources and Conservation, the U.S. Geological Survey, and the Bureau of Reclamation.
- The Steering Committee commission a University of Montana History Department graduate student to write a Flint Creek watershed history, *The Boom, the Ghosts, and the Importance of Memory: A Watershed History of Flint Creek*, by David H. Meyer, 1999.
- The Steering Committee also helped to stimulate measurements of losses in the ditches which affect flows in the mainstem of the Clark Fork River in the upper Deer Lodge Valley.
- The Steering Committee conducted a survey of water right holders in two of the basin's sub-

basins to assess their experience with the state-wide water right adjudication process and their expectations after this process is completed.

- ⌘ In August 2006, the Steering Committee published the *Upper Clark Fork River Flow Study*. This study told the story of the flows in the upper Clark Fork began with a vision of a fishery the quality of Rock Creek or the Blackfoot Rivers and continued agricultural water use. It examined current flow conditions including the location, amount and frequency of dewatering and its importance for the fishery, and it identified alternatives for addressing the dewatering and enhancing instream flows and ended with an assessment of how these alternatives might be achieved.
- ⌘ The Steering Committee funded a University of Montana Geography graduate student to survey basin cities and towns to assess the adequacy of their existing water rights to provide for existing and future municipal and domestic water uses. Because of the existing basin closure, new water rights are not an option to provide for additional uses.
- ⌘ The Steering Committee interviewed basin water commissioners to document current water management and allow it to be compared with management activities in surrounding states.

Policy Papers

- “Conservancy District, An Option for the Management of Georgetown Lake Dam” in February 2004 - This paper was drafted to discuss how a conservancy district might help resolve issues that have arisen as a result of the ownership and management of the Georgetown Lake Dam by Granite County. Drafts of the paper were discussed with the Granite County Commission and the final paper was presented to the Commission and the Flint Creek Advisory Committee.
- “White Paper on the Montana Water Rights Adjudication” in March 2004 - The adjudication paper resulted from discussions with Montana’s Chief Water Judge Bruce Loble and officials of the DNRC and the Attorney General’s Office. The final version of the paper was circulated to Judge Loble, the Adjudication Advisory Committee, the Environmental Quality Council, the Montana Association of Conservation Districts, and several water users organizations. This paper helped stimulate action by the legislature to increase funding to the DNRC and the Montana Water Court to speed completion of the state-wide water rights adjudication.
- “How Will Completion of the Adjudication Affect Water Management in Montana?” in February 2006 - The third paper was written to stimulate discussion by Montana water users, water managers, and policy makers of changes that will result from completion of the water rights adjudication as well as the implications of these changes so that appropriate responses to them can be identified, discussed and put in place before the final water rights decrees are issued.
- “Milltown Dam Water Right Paper” in November 2007 - Because of the removal of the Milltown dam and power house, the existing Milltown Dam storage and hydropower water rights must be changed or they will be void. The hydropower water rights have a flow of 2,000 cubic feet per second and a priority date of December 11, 1904. This paper identified and explored alternatives regarding the purpose and ownership of the Milltown Dam water rights and explained why and how the ultimate disposition of those rights may be of crucial importance to upper Clark Fork basin water users.

Education

- Through well over a hundred publicly noticed and open meetings and other subbasin meetings, ten issues of a basin-wide news letter, the *Upper Clark Fork River Basin Water Management Plan*, and sponsorship of a master thesis, the Steering Committee has provided education on numerous water quantity, quality, and fishery related topics including water law, water rights,

the on-going state water rights adjudication, the public trust doctrine, basin water rights closure, wetland water rights, the basin's ground water resources, the status of the basin's water supply infrastructure, basin annual water supply, basin water use, basin hydropower production, water quality standards, the state TMDL law and planning process, water rights leasing for instream flow, grazing best management practices, utility irrigation efficiency programs, fish habitat needs and restoration projects, fish screens, irrigation return flows, the basin Superfund project, and the Natural Resource Damage Program.

Grant Requests

- In 2008, the Steering Committee drafted two successful grant applications to the Natural Resource Damage Program. Neither funded the Steering Committee. One application on behalf of the Westside Ditch Company was for a \$25,000 project development grant to examine the structure and operation of the Westside Ditch to identify opportunities for increasing the flow of the Clark Fork River to enhance the fishery as a result of increasing ditch water conveyance efficiency, improvements in water management and/or changes to the use of water. The second on behalf of Granite Conservation District, Granite Headwaters Watershed Group, and the Georgetown Lake Homeowners Association (GLHA) was for \$109,447.57 to implement a study of the state of Georgetown Lake.