

**Upper Clark Fork River Basin Steering Committee**  
**Meeting Summary**  
**December 8, 2009**

**Introductions**

Gerald Mueller, members of the Upper Clark Fork River Basin Steering Committee (Steering Committee), and others in attendance introduced themselves. Those in attendance included:

<b>Members</b>	<b>Group/Organization Represented</b>
Holly Franz	PPL Montana
Bob Benson	Clark Fork Coalition
Stan Bradshaw	Montana Trout Unlimited (TU)
Senator Dave Lewis	Senate District 42
Rep. Jon Sesso	House District 76 & Butte-Silver Bow
Mike McLane	Montana Department of Fish, Wildlife and Parks (DFWP)
Jules Waber	Powell County

**Public**

Chris Brick	Clark Fork Coalition
Darryl Barton	Clark Fork River Technical Assistance Committee (CFRTAC)
Maureen Connor	Granite County

**Agency Personnel**

George Mathieus	Montana Department of Environmental Quality (DEQ)
Jenny Chambers	DEQ

**Staff**

Gerald Mueller	Facilitator
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**Agenda**

- Review summary of the October 14, 2009 Meeting
- Water Quality Related Permit Coordination
- Clark Fork TMDL
- Clark Fork River Subbasin Planning
- Updates
  - Draft Upper Clark Fork Restoration Work Plan
  - Joint Upper Clark Fork River Basin Newsletter
  - Interim Legislative Water Policy Committee
  - Blackfoot River Recreation Management Plan
  - Land Application of Sewage Treatment Plan Effluent
  - Flint Creek Dam FERC License
- Public Comment
- Next Meeting

**October 14, 2009 Meeting Summary**

The Steering Committee made no changes to the meeting summary.

## **Water Quality Related Permit Coordination**

Representative Jon Sesso introduced this topic and George Mathieus, DEQ Planning, Prevention, & Assistance Division Administrator, and Jenny Chambers, DEQ Water Protection Bureau Chief, responded. Rep. Sesso stated that cities in the upper Clark Fork River basin face several simultaneous water quality regulatory challenges: the Montana Pollutant Discharge Elimination System (MPDES) permitting; Phase 2 of Storm Water permitting; Total Maximum Daily Load (TMDL) permitting, particularly for nutrients and metals; and Superfund decisions such as priority soils. Regulation has been conducted to date in silos, and needs to be integrated. The resource should drive the regulatory response.

Mr. Mathieus acknowledged that, historically, DEQ has not had the best reputation for integrating its regulation. However, DEQ Director Richard Opper has made integration an agency priority. Changes to department philosophy and management have produced significant progress toward this objective. Programs are now working together on a daily basis. DEQ is striving to produce “one stop shopping” in permitting in which all stakeholders are brought to the table with DEQ program staff so that permittees can plan their actions more efficiently. Recent examples include the DEQ’s efforts to work with the cities of Deer Lodge, Philipsburg, and Laurel regarding implementation of nutrient standards and TMDLs. Also, the City of Helena and DEQ were at odds, but are now working together regarding water quality regulation.

Jenny Chambers stated that DEQ has had a significant permit backlog, but her bureau is working to reduce it. One or two years before permits expire, permit staff are meeting with permittees. Permit staff are having more contact with Superfund staff. Recent actions regarding the Burlington Northern cleanup in Whitefish and the Butte-Silverbow sewage treatment plant (Publicly Owned Treatment Works or POTW) are examples of coordination of Superfund and permit staff. Storm water regulation is a big issue statewide, particularly for the seven largest cities. While the increased upfront contact may slow permitting on the front end, it has long term benefits by improved planning and reduced appeals.

Mr. Mathieus summarized by saying that improved coordination boils down to increased communication internally and externally. Implementation of SB95 by the 2009 legislature is an example of DEQ attempting to work up-front with all stakeholders in an important water quality issue, the development of nutrient standards. DEQ is willing to roll up its sleeves in meetings with permittees and stakeholders to provide time for funding and planning. The department is seeking to develop administrative orders of consent (AOC) to get permittees off of non-compliance lists.

*Question - Can AOCs address more than one permit?*

Answer - Yes. For example, we have an AOC with the town of Brady that addresses both drinking water and waste water treatment

*Question - Where does fine money go?*

Answer - Fines are levied for failure to meet stipulated permit milestones. DEQ does not receive fines. Some go to the Superfund and some to Coal Tax funds. DEQ must report on AOCs

regarding federal programs such as Clean Water and Clean Air programs to EPA. DEQ does not seek to use permits as enforcement hammers or to collect penalties.

*Question - What are the four forms of enforcement?*

Answer - The four are AOCs, penalties, judicial orders, and EPA orders. The latter two occur only in extreme cases.

*Question - When are storm water discharge permits for subdivisions required?*

Answer - Storm water discharge permits are required in subdivisions when more than 1 acre is disturbed during construction.

*Question - Is affordability being addressed in the SB95 nutrient standard development process?*

Answer - First, some background regarding nutrient standards. In 1998, EPA ordered development of nutrient standards by 2002. In 2000, DEQ began data collection and analysis to determine appropriate standard levels. In 2002, we produced a compliance schedule. We have known for six or seven years that numeric nutrient standard levels based on fish and aquatic life and recreation would likely be an order of magnitude lower than current treatment, particularly for small towns and cold weather. Small towns would also face affordability issues because of low median household incomes. If the standards at the identified levels could take effect, 95% of dischargers would be out of compliance. Because of these concerns, DEQ proposed SB95 to allow the first case-by-case affordability variances in the nation.

*Question - What is the long-term plan for nutrient standard compliance?*

Answer - Variance periods would last up to 20 years, with three to five year reviews. This would allow municipalities to plan on a long-term, 20 to 40 year basis. The reviews would set up milestones. Improving technology could be incorporated.

*Comment - The Town of Philipsburg is looking at a 40 year financing period for improvements to its sewage treatment plant. It is worried about standards being ratcheted to higher levels that make existing technologies obsolete. We are now five years into the discussion of sewage treatment plant upgrade. The citizens of Philipsburg don't talk about protecting the environment. They are focused on treatment costs and their bills.*

Response - This is a delicate balance. Standards reflect societal values. Nationally, concerns are being driven by situations such as Chesapeake Bay and the Gulf hypoxia.

*Comment - Public perception may be that the variances are not providing progress towards standard compliance.*

*Question - You said that nutrient standard levels are expected to be low. What does low mean?*

Answer - Today, the secondary effluent standard level for phosphorus is 10 milligrams per liter (mg/l). To protect the aquatic, fishery and recreation beneficial uses, the phosphorus level would have to be about 0.1 mg/l. The technology cost curve has an exponential shape at these levels.

*Comment - In the Racicot Administration, we reorganized the DNRC and Health Departments creating the DEQ in an attempt to change the regulatory culture to focus on what can be done working together to solve pollution issues.*

Response - We have seen a mind set change. For the most part, we have moved away from black and white perspectives. Some black and white remains in permitting, which can be expected depending on the statutes driving specific regulation, but we are working together to figure things out.

*Comment - The relationship between DEQ and EPA is not healthy right now.*

Response - Our relationship with EPA's Montana, Region 8, and Headquarters offices are not the same. Upper level positions in Montana and Region 8 are filled with acting rather than permanent managers. However, both agencies are committed to working together and are meeting to discuss issues on a regular basis.

*Comment - I appreciate what George and Jenny have said today, but in my 20-year view, DEQ and EPA regulation is not well-coordinated. It is still in silos. The Montana Pole site and Priority Soils record of decisions are examples. The Montana Pole record of decision was issued in 1995-96. Cleanup is still not completed, and we are at wits end for a remedy. We were dealing with PENTA. Now the water treatment plant ground water plume is an issue. In 1969, we rebuilt the sewage treatment plant to address metals. Now the problem is nutrients. In 1992, EPA favored disposing of the sewage treatment plant sludge on land. We built a pipeline to the industrial park to do so. Then in 1996, this investment came to naught. EPA decided that composting the sludge has metals issues. In response to a discharge order, we recently dewatered the ground to begin constructing a sewage treatment plant upgrade. The EPA Superfund Program found that the ground water pumping was a problem because it was moving the contaminated Montana Pole ground water plume towards Silver Bow Creek. In spite of the fact that our metals remedy is linked to the nutrient health of Silver Bow Creek, discharge and Superfund regulation is not coordinated. Eight years ago our compliance point for the treatment plant was the outflow of the Warm Springs ponds. ARCO built a pipeline to move discharges around the ponds. Now the compliance point is the end of the discharge pipe. Also, the Superfund metals decision does not reflect the storm water discharge standard. Our treatment discharge has increased from three million to seven million gallons per day due to storm runoff. The copper levels in the metro storm water effluent are higher, but a storm water remedy cannot be included under Superfund. The storm water and sewage treatment waste streams come together at the metro sewage plant. Butte is still negotiating a consent decree for Priority Soils. It is difficult for a municipality to come up with more money when treatment revenues are not increasing, and we are not dealing with toxics. Finally, turnover in DEQ regulatory positions is also a problem.*

Response - Regarding toxics versus beneficial use protection, the goal of the Clean Water Act is to make our waters fishable and swimmable. Retention of DEQ regulatory program staff is viewed as a huge issue by Director Opper. He increased salaries so that staff retention is better now. However, the 2009 legislature imposed a 7% vacancy savings on the DEQ budget. We are attempting to break down the walls between the Superfund and other programs.

*Comment - Don't misunderstand me. Butte-Silver Bow cares about the resource and is proud of its achievements. Things would be better if regulation was integrated, including the issue of who pays for cleanup.*

*Comment - From a county perspective, it is unclear who is in charge regarding subdivision storm water, DEQ, the county sanitarian, or the county commission.*

*Comment - DEQ regulates the water in the Powell County school system. EPA recently changed the arsenic standard from 50 parts per million (ppm) to 10 ppm based on what I consider to be junk science. The schools use bottled water for drinking, but we still have to install expensive water treatment to so that restroom water can meet the new arsenic standards. We need some common sense. The children do not drink the restroom water.*

Response - Restroom facilities must meet the arsenic drinking water standards.

*Comment - It would be useful if DEQ could prepare a one or two page summary of today's discussion.*

Response - We will do so. (Note: After reviewing and commenting on a draft of this meeting summary, Mr. Mathieus decided not to write an additional summary.)

## **Clark Fork TMDL**

George Mathieus stated that TMDLs for sediment, metals, and temperature were completed recently completed for tributaries of the Clark Fork River throughout the upper basin. A fact sheet regarding them will be provided to Mr. Mueller for distribution to the Steering Committee. See Appendix 2.

## **Clark Fork River Subbasin Planning**

Stan Bradshaw discussed sub-basin planning for the Clark Fork River basin using a PowerPoint presentation entitled "Sub-basin Planning in the Upper Columbia River Basin". The content of this presentation, minus pictures, is included below in Appendix 3. Mr. Bradshaw oversaw development of the Blackfoot sub-basin plan for the Northwest Power and Conservation Council Columbia River Basin Fish and Wildlife Program (CRBFWP) on behalf of Montana Trout Unlimited. The Montana Water Trust oversaw development of the Bitterroot sub-basin plan, also for the CRBFWP. The Blackfoot plan is available at:

[http://www.blackfootchallenge.org/am/uploads/blackfootsubbasinplan8-31-09\\_final\\_1\\_.pdf](http://www.blackfootchallenge.org/am/uploads/blackfootsubbasinplan8-31-09_final_1_.pdf).

The Bitterroot plan is available at:

<http://www.nwcouncil.org/fw/subbasinplanning/bb.htm>.

*Question - Did the plans address water right issues?*

Answer - Yes.

*Question - You mentioned that the Northwest Power and Conservation Council (NPCC) defines the Clark Fork as one basin even though it is a long and diverse basin. Is there some reason that it could not be broken into two sub-basins?*

Answer - Given the basin's diversity, a proposal to the NPCC to divide the basin into an upper and lower basin may make sense. I don't think the NPCC has considered such an idea.

*Question - How hard was it to fit existing information into the NPCC sub-basin planning format?*

Answer - Doing so was not easy.

*Question - How relevant would the sub-basin plan be for a road map to guide the Natural Resource Damage Program funding in the Clark Fork?*

Answer - The information developed would be a useful point of departure for the NRDP road map. The NRDP process is broader than PNCC sub-basin planning. BPA funding could be a source of matching dollars for NRDP grants.

## **Updates**

Draft Upper Clark Fork Restoration Work Plan - Gerald Mueller passed out copies of press release from Attorney General Steve Bullock soliciting comments on the twelve projects recommended for funding by the Governor's Trustee Restoration Council. The comment period runs through December 11, 2009. Information about the 13 projects is available at:  
<http://www.doj.mt.gov/lands/naturalresource/pendingapplications.asp>.

*Question - Will the Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council be taking up the road map to guide future grants next?*

Answer by Commissioner Connor - Yes, after the present grant cycle is completed.

*Question - Has DFWP completed its prioritization of the tributaries from a fishery perspective.*

Answer by Commissioner Connor - The prioritization may be finished in January 2010.

Joint Upper Clark Fork River Basin Newsletter - Gerald Mueller passed out copies of Volume 1, Issue 1 of *Water Words*. It was mailed to 326 names. The total cost was \$332.24 for printing and mailing. A copy of the first issue will be available on the Steering Committee web page at:  
[http://dnrc.mt.gov/wrd/water\\_mgmt/clarkfork\\_steeringcomm/default.asp](http://dnrc.mt.gov/wrd/water_mgmt/clarkfork_steeringcomm/default.asp).

Water Policy Interim Committee - Gerald Mueller reported that Joe Kolman, staff of the Water Policy Interim Committee (WPIC), contacted him and asked for a presentation regarding the Milltown water right at the January 13-14, 2010 WPIC meeting. Mr. Mueller explained to Mr. Kolman that the transfer of the water right to the state has not yet occurred and Governor Schweitzer has not designated the state agency that will hold and manage the right. The transfer may occur by the end of this year. Mr. Kolman said that presentation may better fit, therefore, at the March 2010 WPIC meeting.

Blackfoot River Recreation Management Plan - Jules Waber stated that DFWP has issued a draft plan for managing recreation on the Blackfoot River. The plan has had little publicity. DFWP has an advisory committee called the River Recreation Advisory for Tomorrow (RRAFT) committee to assist with the planning process. The committee has only one member from Powell County, Jerry O'Connell from Greenough, and no one from Lewis and Clark County. The draft plan would restrict floating of the Blackfoot River in Powell and Lewis and Clark Counties. Mr. Waber expressed frustration with DFWP over the lack of publicity and involvement of Powell County.

*Comment - The management of the Blackfoot River is shifting floating to upper Rock Creek.*

*Comment - The planning is being conducted by DFWP's Parks Division. The draft management plan and environmental assessment was issued on October 14, 2009.*

*Comment by Gerald Mueller - I will locate a web address for the draft plan and email it to the Steering Committee members.*

Land Application of Sewage Treatment Plan Effluent - Gerald Mueller stated that he facilitates the Nutrient Work Group which is providing advice to DEQ regarding the development of nutrient water quality standards. At a recent meeting of this group, the director of the city of Billings Public Works Department said that he was told by DNRC that if he land applied the 16 million gallons per day of effluent from the city's sewage treatment plant, the city would have to mitigate the loss of discharge to the Yellowstone River. NWG members were concerned about a requirement because it may adversely affect land application. Because of the Steering Committee's past assistance with the City of Deer Lodge's land application project, Mr. Mueller inquired about DNRC's position regarding sewage treatment plant effluent and water rights with Terri McLaughlin, DNRC Water Rights Bureau Chief. Ms. McLaughlin confirmed that mitigation is *not* required for land application unless the effluent is put to a beneficial use, in which case a water right is required. Mr. Mueller asked Ms. McLaughlin about the situation with the Deer Lodge land application because in the past, the Grant-Kohrs National Monument used the Deer Lodge effluent for irrigation. She said that she would check and get back to him.

*Comment - The situation may turn on the intent of the use of the sewage treatment plant effluent. If the intent is to dispose of the effluent through land application, no water right may be necessary. If, however, the intent is to use the effluent for a beneficial purpose such as growing a crop, then a water right may be required.*

*Question - What is the situation regarding the Deer Lodge land application project?*

Answer by Darryl Barton - Land application is not currently occurring. The City has limited alternatives for land application. Grant-Kohrs is reluctant to resume the land application because no other National Park or Monument hosts such a project. Land on the Rock Creek Cattle Company property was considered, but pumping costs would be too high. The Prine property is another possibility. The Kohrs-Manning Ditch which runs by the sewage treatment plant leaks water into the plant, increasing the amount of water that must be treated.

*Comment by Gerald Mueller - I will put land application and the Deer Lodge situation on the next Steering Committee meeting agenda.*

Flint Creek Dam FERC License - Granite County Commissioner Maureen Connor reported that a license for hydropower production at Flint Creek Dam is forthcoming from the Federal Energy Regulatory Commission.

## **Public Comment**

There was no additional public comment.

## **Next Meeting**

The next meeting was scheduled for Wednesday, February 3, 2010 in Deer Lodge. The agenda will.

**Appendix 1**  
**Upper Clark Fork River Tributaries TMDLs – Quick Fact Sheet**

- TMDLs for Sediment, Metals, and Temperature were completed for tributaries throughout the Upper Clark Fork TPA (which extends from the headwaters near Butte to the confluence with Flint Creek at Drummond).
- The Clark Fork River and Silver Bow Creek were not addressed at this time, nor were any nutrient listings in the TPA.
- The following pollutant/waterbody combinations were addressed:

**Sediment:** Antelope, Brock, Cable Dempsey, Hoover, Peterson, Tin Cup Joe, Warm Springs (near Phosphate), Willow and Storm Lake creeks.

Sediment reductions necessary to meet the TMDLs vary based on the stream between 26% to 54%.

Sediment sources include bank erosion, sediment from roads, and upland land use related sources – particularly grazing and agricultural land.

**Metals:** Beefstraight, Dunkleberg, Gold, Lost, Mill, Modesty, Peterson, Warm Springs (near Anaconda), and Willow creeks, and German Gulch and Mill-Willow Bypass.

Metals reductions necessary vary dependent on the metal of concern and waterbody combination and range between 8% to 96%.

Metals loading fluctuations are dependent on time of year and flow events (high flow, low flow, storms).

Source areas, and when possible, discrete sources were identified. These include tributary drainages, abandoned mines, and historic atmospheric deposition.

**Temperature:** Peterson Creek

Temperature variability in Peterson Creek was assessed using a QUAL2K water quality model. The model showed reduction capabilities of as much as 13 degrees in some sections of the stream, under certain conditions.

Water quality restoration goals to meet the temperature standard is largely dependent on improving riparian shade, as well as maintaining current stream dimensions, improving irrigation infrastructure, and reducing human caused surface water inflow.

- The WRC and Deer Lodge CD were the major collaborators on this project, however many local and agency people were involved.

- The WRC will be developing a Watershed Restoration Plan which will prioritize project needs throughout the basin, based on the findings of the TMDL, as well as other local, state, and federal priorities (including Superfund, and NRDP decisions).
- This plan will help outline some of the restoration work necessary to improve stream conditions throughout the UCF.
- TMDL is available at the DEQ website. <http://deq.mt.gov/>
- Public review is currently open and comments will be accepted until 5pm on the 18<sup>th</sup>.
- Public meeting will be held on Tuesday, December 15<sup>th</sup> at the Deer Lodge Community Center from 7-9pm.

**Appendix 2**  
**SUB-BASIN PLANNING IN THE UPPER COLUMBIA RIVER BASIN**

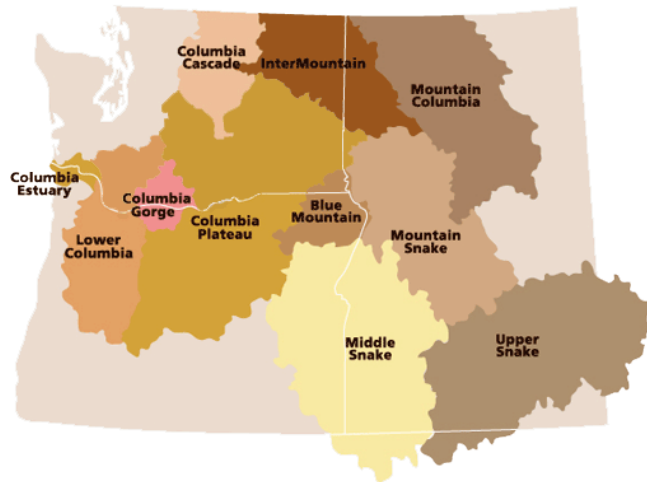
**COLUMBIA BASIN FEDERAL POWER DAMS**

**FEDERAL DAMS IN WASHINGTON, OREGON, IDAHO, AND MONTANA**

- Montana:
  - Libby Dam
  - Hungry Horse Dam

**BONNEVILLE POWER ADMINISTRATION**

- Responsible for marketing Power from federal projects in the Columbia basin



**LONG HISTORY OF FISHERIES ISSUES**

**NORTHWEST POWER ACT OF 1980**

- Addresses the Impact of hydropower Dams in the Columbia Basin on Fish and Wildlife
- Created the Northwest Power and Conservation Council

**NORTHWEST POWER AND CONSERVATION COUNCIL**

- “to give the citizens of Idaho, Montana, Oregon and Washington a stronger voice in determining the future of *key resources* common to all four states”
- Key Resources = hydropower and fish/wildlife
- Funded by wholesale power revenues from BPA
- Two representatives from each state (appointed by governor)

**NPCC MANDATES**

- Develop a 20-year electric power plan that will guarantee adequate and reliable energy at the lowest economic and environmental cost to the Northwest.

- Develop a fish and wildlife program to protect and rebuild populations affected by hydropower development in the Columbia River Basin.
- educate and involve the public in the Council's decision-making processes.

### **COLUMBIA BASIN FISH AND WILDLIFE PROGRAM**

- “A program. . . to protect, mitigate, and enhance fish and wildlife and related spawning grounds and habitat that have been affected by hydroelectric development
- “Hydropower, Habitat, Hatcheries, & Harvest
- Update every five years

#### **PRE-2000, COMMON CRITICISM OF NPCC FISH/WILDLIFE APPROACH**

- No clear program-wide foundation of scientific principles
- No over-arching strategy

### **2000 FISH AND WILDLIFE PROGRAM**

- Sought to address fish and wildlife issues at 3 levels:
  - Basin wide, articulating objectives and principles applying generally to fish and wildlife;
  - Describing 11 unique ecological “provinces” within the basin, each representing a particular kind of biological community;
  - Identifying sub-basins

### **SUB-BASIN PLANNING**

- The plans will guide the future implementation of the Council’s Columbia River Basin Fish and Wildlife Program
- provide guidance by providing the context in which proposed projects *are reviewed for funding* through the Council’s program
- integrate strategies and actions funded by others→requirements of ESA, CWA

### **BPA FUNDED PLANNING PROCESS THROUGHOUT THE BASIN**

- Plans completed within 58 of 62 sub-basins
- Three basins in which plans not completed:
  - Blackfoot
  - Bitterroot
  - Upper Clark Fork

### **COLUMBIA BASIN WATER TRANSACTIONS PROGRAM**

- BPA/NPCC response to ESA—Pilot water leasing/transfer program to enhance instream flows

- 2003-present
- TU, MWT “Qualified Local Entities”—eligible to receive funding
- Increasing competition for funding

#### **BLACKFOOT AND BITTERROOT SUB-BASIN PLANS**

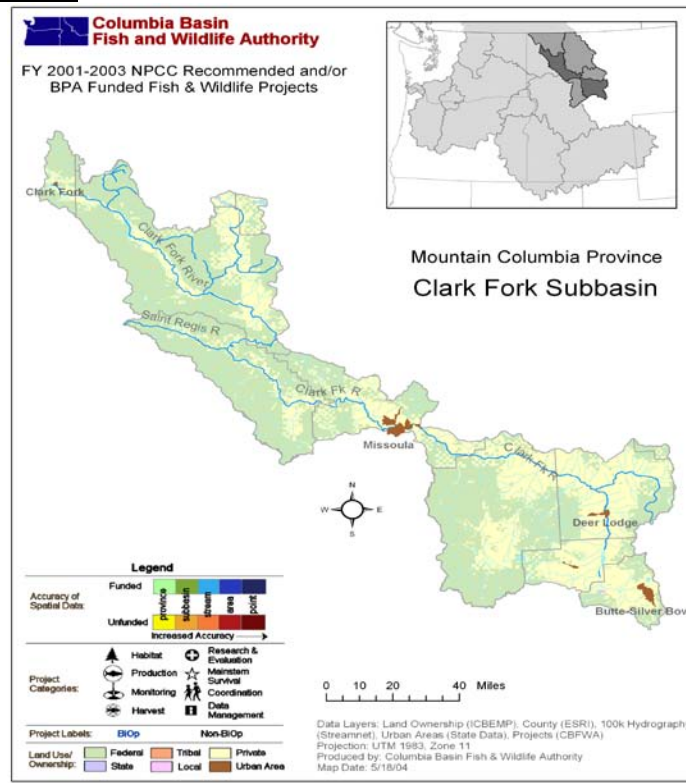
- Addressing that competition—Sub-basin Plans are increasingly important in BPA/NPCC funding decisions
- 2007 TU, MWT applied to BPA to fund a two-year planning process
- Plans have been published—going through public comment

#### **PLANNING PROCESS IN A NUTSHELL**

- Heavy on solicitation of public involvement
- Technical working groups
- The document:
  - Inventory
  - Assessment
  - Management plan
  - Monitoring, Evaluation, and Research
  - Independent Scientific Review
  - More public comment

## CLARK FORK RIVER SUB-BASIN

- INCLUDES THE ENTIRE CLARK FORK BASIN
- LONG, DIVERSE BASIN
- PLANNING CHALLENGES



## WHY DO A SUB-BASIN PLAN

- **To improve standing for BPA/NPCC funding of fish and wildlife mitigation, enhancement, protection projects**
  - Plan can be a valuable document for other funders
  - Whether seeking BPA/NPCC funding or not, can be a useful organizing tool for conservation, restoration within the basin

## QUESTIONS