

Upper Clark Fork River Basin Steering Committee
Meeting Summary
December 9, 2010

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:

Members	Group/Organization Represented
Jules Waber	Powell County
Stan Bradshaw	Trout Unlimited
Tom Mostad	Natural Resources Damage Program (NRDP) (for Carol Fox)
Jim Dinsmore	Granite Conservation District
Darryl Barton	City of Deer Lodge
Maureen Connor	Granite County Commissioner
Bob Benson	Clark Fork Coalition (Coalition)
Becky Guay	Anaconda - Deer Lodge
Jim Quigley	Little Blackfoot River

Agency

Mike McLane	Department of Fish, Wildlife and Parks (FWP)
Ann Schwend	Department of Natural Resources and Conservation (DNRC)

Public

Renee Myers	Watershed Restoration Council (WRC)
Will McDowell	Clark Fork Coalition

Staff

Gerald Mueller	Facilitator
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Agenda

- Review November 8, 2010 Meeting Summary
- Updates
 - Steering Committee Funding and the DNRC Budget
 - 2011 Water Bills
 - Other Organizations
- Watershed Restoration Coalition Restoration Planning
- Plan Revision Process and Work Plan
- Continued Discussion of the Long Range Restoration Priorities and NRDP Restoration Fund Allocation Guidance Plan
- Public Comment
- Next Meeting

November 8, 2010 Meeting Summary

The Steering Committee made no change to the November 8, 2010 meeting summary.

Updates

Steering Committee Funding and the DNRC Budget - Gerald Mueller reviewed his November 28, 2010 memorandum on this topic. See Appendix 1 below.

Question - Could the Steering Committee apply for a Renewable Resources Grant and Loan Program (RRGLP) planning grant to fund data collection for the water management plan revision?

Answer by Ann Schwend - The RRGLP does offer planning grants up to \$15,000 as seed money for project grants. These grants are commonly used to hire engineering firms to prepare grant applications. However, the RRGLP prefers not to award grants to other DNRC entities. If the Steering Committee opts to pursue a RRGLP grant, it should probably do so through a conservation district.

Question - What about applying for a Watershed Assistance grant?

Answer - The Steering Committee was funded by Watershed Assistance grants through the Granite Conservation District for fiscal years FY2002-2007. However, after FY2007, the Watershed Assistance Program indicated that because the Steering Committee addresses water management planning rather than on-the-ground projects, its funding should come under the Water Resources Division rather than a Conservation Resources and Development Division Program.

Comment - I am optimistic that funding for data gathering for the basin water management plan revision may be available through different grant programs.

Comment - The Steering Committee might consider requesting funding related to the plan revision from the Watershed Restoration Program Board.

Comment - The last session of the Montana legislature enacted a statute aimed at revitalizing the state water plan. Prior to this legislation, water plan activities focused on resolving specific water-related issues rather than basin planning. We might talk with the Water Management Bureau Chief to see if and how the Steering Committee fits into the Bureau's vision.

Response by Ann Schwend - Funding associated with the legislation just referenced was removed from the DNRC budget as a part of the department's five percent reduction requested by Governor Schweitzer. Also, the Water Management Bureau currently has two vacant positions. We applied for RRGLP grants to support two Bureau activities, the USGS Stream Stats program and irrigated lands mapping to help us understand consumptive and non-consumptive water uses in the state. These grant applications were ranked below the expected \$5 million total available for the grants. The low ranking was due, at least in part, to the department's reluctance to fund its activities using the RRGLP funds. By applying for these funds, we are in effect competing against with on-the-ground water development projects. However, we still have to figure out how we are going to get our work done. The Steering Committee plan revision may be helpful in this regards. The Steering Committee will have to be able to show what results will follow from additional funding.

Response - I have a meeting this coming Monday to talk with the new Administrator of the Water Resources Division about the Steering Committee.

2011 Water Bills - Gerald Mueller passed out a summary of introduced and un-introduced bills in the 2011 legislative session related to water from the Legislature's web site. Four of the introduced bills, HB24, HB28, SB8, and SB36 have been introduced at the request of the Water

Policy interim committee and have been discussed at previous Steering Committee meetings. HB24 is the water marketing bill. It would allow a water right holder to convert the purpose of a water right to marketing without a specific water marketing project. The water right holder could go through the change process to determine the historic consumptive use of the right, i.e. the amount of water that would be available for marketing. A specific marketing proposal would still have to go through the water right change process. HB28 requires that a septic system mixing zone would have to remain within the boundaries of a subdivision unless an easement is obtained from another land owner. SB8 clarifies the authority of local governments to require public water and sewer systems. SB36 allows the award of court costs and attorney fees in district court appeals of permits for new water rights and water right changes at the discretion of the district judge. HB52 would authorize the Montana Department of Environmental Quality (DEQ) to regulate the use of reclaimed waste water from public sewage treatment systems.

Text is now available for one un-introduced bill, LC0190. This bill would direct FWP to create a list of chronically or periodically dewatered streams that are important fisheries and are gauged. Upon a request, a district court or a board of commissioners may determine the average annual flow of a stream on this list and may curtail use of waters from this stream to 25% of the average annual flow. Water use would be curtailed proportionately to reach the 25% level.

Other Organizations

- Clark Fork River Technical Assistance Committee (CFRTAC) - CFRTAC is a volunteer citizens' organization created to provide public outreach the Superfund remediation, restoration and redevelopment of the Clark Fork River. Darryl Barton reported that Mike Kustudia has recently left CFRTAC to become the new superintendent of the new park being created at Milltown. In this position, he will be a FWP employee. As a result of this change, the location of CFRTAC offices will move to downtown Deer Lodge.
- Clark Fork Coalition - Will McDowell stated that Rankin Holmes, who managed flow projects in the upper Clark Fork basin for the Coalition, has left the Coalition to start his own firm and will conduct projects for Ecosystem Economics LLC. Rankin will be involved in projects in several western states. The Coalition is reviewing applications to fill its flow manager position.
- Montana Trout Unlimited - Stan Bradshaw stated that TU is advertising for a fishery biologist to work on restoration projects in the upper Clark Fork.
- NRPD - Tom Mostad reported that December 16, 2010 is the scheduled date to rewater the restored channel of the Clark Fork River at the former Milltown Dam site. This Milltown project is winding down.

Question - Will there be a less hazardous access to the bluff about the former dam site?

Answer by Tom Mostad - I believe this is part of the land deal, but I am not sure of the details regarding bluff access.

Question - What is the status of the Milltown Dam water right transfer?

Answer by Tom Mostad - The transfer of the water rights to DEQ is pending. After cleanup of this site is completed, the water rights will be transferred from DEQ to FWP.

Watershed Restoration Coalition Restoration Planning

Renee Myers, WRC Executive Director, discussed the restoration planning underway by WRC. This planning is a follow-up to the Total Maximum Daily Load (TMDL) developed by the WRC and the DEQ for the upper Clark Fork Basin, the area from river's confluence with Hoover Creek to its confluence with Silver Bow Creek. Hoover Creek itself is in the area, but Silver Bow Creek is not. DEQ required the WRC to write a restoration plan for all tributaries in this area except for the Little Blackfoot River and Silver Bow Creek. A WRC contractor compiled the existing information on all of the tributaries. The WRC has used this information to identify issues regarding by which the tributaries might be scored and ranked. FWP fishery biologist Jason Lindstrom, Will McDowell, Tom Mostad, and Ms. Myers will score the tributaries.

The three issues were water quality, water quantity, and the fishery. The stream characteristics assessed under each issue are shown in the following table. Information for each stream was also collected regarding vegetation, wildlife, land ownership, and social feasibility.

Water Quality Characteristics	Water Quantity Characteristics	Fishery Characteristics
TMDL Status (Strictly metals, sediment, temp)	State Dewatered Streams List (FWP)	Bull Trout Present
Other Listed Impairments	Other Known Dewatered (Not on list)	Western Cutthroat Trout Present
Other Documented Impairments	Number of Irrigation Diversions	Other Native Fish Present
Nutrients	Number of Irrigation Wells	Fishery Priority (FWP/NRDP)
Metals	Total Irrigated Acres within Watershed	Sport Fishery Value
Fine Sediments	Significant Municipal Water Use/ Allocation	Perennial Connectivity with Clark Fork Mainstem
Temperature	Storage in the Watershed	
Channel Alterations (Riprap, channelized, dams, dikes)		
Priority Mine Sites		
Priority Mines listed in Top 25 Statewide		
Road Density (from FP)		
MPDES Permits		
AFO/CAFO Permits (DEQ & Dept. of Livestock)		

In the next step in this process, WRC will be develop a three-year restoration work plan based on the prioritization from the scoring and ranking in collaboration with its partners.

Question - How is the road density determined?

Answer - It is calculated as the miles of road per square mile of drainage.

Question - How is the sport fishery value determined?

Answer - It is determined by FWP using their prioritization study.

Question - Was the source of data used by your contractor statewide or basin specific?

Answer - Both.

Comment - The NRDP-FWP aquatic prioritization is weighted by specific goals. As WRC determines the priority for restoration, it should identify the goals it is seeking to achieve. This effort is valuable because of the large amount of data you have collected.

Question - When will the restoration plan be written and who will write it?

Answer - The schedule calls for writing the plan by the end of January 2011. The WRC Board will decide who will write it. I will not do so, because I am leaving my position later this month because my husband has a new position in the Fish and Wildlife Service in Portland.

Question - Will the restoration plan be approved by an agency?

Answer - Yes, DEQ will have to approve it.

Question - Will the plan address all of the streams in the upper Clark Fork basin?

Answer - No. It will not address the Little Blackfoot or the Silver Bow Creek watersheds.

Plan Revision Meeting and Next Steps

Gerald Mueller reviewed the basin water management plan revision outline and the draft revision process and work plan discussed at the October and November Steering Committee meetings. The outline and draft process and work plan are included below in Appendix 2. Mr. Mueller asked for comments and approval of the draft process and work plan.

Question - Could you review how the Steering Committee came about?

Answer - The Steering Committee was formed pursuant to a state statute passed in 1991. The impetus for the statute was an agreement voluntarily negotiated by traditional basin water antagonists: agriculture organizations; environmental groups; state agencies including the Department of Fish, Wildlife and Parks (DFWP) and Health and Environmental Sciences; local government; as well as hydroelectric utilities. These diverse and conflicting parties were able to reach agreement because all saw it in their interest to avoid an expensive and contentious legal proceeding of uncertain outcome, the water reservation process for the Upper Clark Fork River Basin. In the late 1980's, DFWP and Granite Conservation District (GCD) had filed apparently conflicting water reservation applications in the Upper Clark Fork River Basin. DFWP sought to protect instream flows of the Clark Fork River mainstem and tributaries from future water right appropriations. GCD made application to reserve water for two new water storage projects to increase irrigation. However, rather than pursue a contested case water reservation hearing, the

two parties and their allies made use of a forum created by a neutral third party, the non-profit Northern Lights Research and Education Institute, to negotiate an historic agreement requesting the Montana Legislature to: (1) halt the water reservation process; (2) temporarily close the basin to most new surface water rights permits; and (3) during the closure allow the basin's water users and managers to develop a basin water management plan. Because of the unprecedented coalition of interests supporting them, the 1991 Legislature enacted these requests into state law.

Question - Could you review the primary recommendations in the 1994 water management plan and what happened as a result of them?

Answer - Key recommendations addressed closing the basin to most new surface and ground water permits, continuing the Steering Committee to provide an ongoing water planning mechanism, implementing a pilot instream flow leasing program in the basin, water storage, and nutrient reductions to improve water quality. In the legislation introduced to implement the water right closure, the Steering Committee sought to require "...a report prepared by a professional engineer or hydrologist verifying that the source of the ground water is not a part of or substantially or directly connected to surface water." This language anticipated the requirement in HB831 passed in 2007 that required hydrogeologic studies in closed basins. In response to the Steering Committee's request, the legislature permanently closed the upper Clark Fork to most new surface water rights but left ground water open. The closure contained the Steering Committee's report requirement to verify the nature of the surface and ground water connection. The 1995 statute also included an instream flow pilot study for the upper Clark Fork. Regarding water storage, the 1994 plan recommended continued evaluation of the priority new and expanded existing storage sites identified in a Steering Committee study. Ultimately, the local water users decided not to pursue the Douglas Creek Site, and Butte-Silver Bow took ownership of the Georgetown-Storm-Silver Lake system. To improve water quality, the 1994 plan recommended that basin communities ban the sale of phosphate detergents and that DNRC resolve water right issues surrounding the land application of sewage treatment plant effluent. A basin wide phosphate detergent ban was passed by the legislature in 2009. In 1996, the DNRC issued a Declaratory Judgement that water right holders cannot rely on the effluent of sewage treatment plants, making land application feasible. Stan Bradshaw prepared a more detailed summary of the status of the implementation of the 1994 plan recommendations, and his analysis was included as Appendix 3 of the summary of the Steering Committee meeting.

Question - What has happened regarding ground water?

Answer by Mike McLane - As a result of a request from the Steering Committee, the Montana Bureau Mines and Geology (MBMG) completed the ground water inventory assessment for the upper Clark Fork. I am not sure that this information is an adequate basis from which to manage ground water, however.

Comment - Terence E. Duaine with the MBMG is testing new upper basin wells for arsenic.

Comment - The revised plan should set out how water use has changed since 1994, e.g. conversions from flood to sprinkler irrigation.

Comment - DNRC could provide information about changed water uses through its geographic information system capabilities. It could overlay water rights with 2009 color aerial photographs.

Comment - The plan revision should include storage opportunities.

Comment - Target flows are a powerful idea. The targets should be developed for the major tributaries as well as the river mainstem.

Comment - A flow plan would provide credibility to grant applications seeking to develop flow-related projects.

Comment - The WRC has a grant from DEQ to fund a two year monitoring program. This program may be available to funding flow measurements.

Comment - We need to do for flow what the WRC is doing for restoration. We need to coordinate developing and implementing a plan.

Comment - We need to communicate with others about the flow plan. As a result, the Steering Committee plan may involve into something else.

Response - We invited watershed, local government and other groups potentially interested parties to an evening meeting on October 21 to discuss the outline of the plan revision. We will continue to seek to involve any interested parties in the revision process.

Comment - Are things happening in the compact negotiations regarding the Confederated Salish and Kootenai Tribes aboriginal treaty right claims in the upper Clark Fork?

Response by Mike McLane - There have not been public discussions of the Tribes' off-reservation water right claims in the compact negotiations. State staff are discussing ideas internally related to this topic.

Question - DNRC received 400 comments in the upper Clark Fork River basin water reservation process that Mr. Mueller mentioned in his summation of the history of this group. Why aren't people as involved with water issues today? Is it because they are tired, or they rely on groups such as the Steering Committee to address them?

Answer by Stan Bradshaw - In the late 1980s and early 1990s, it was easier to get the public to respond to water issues. Today, the issues are not as emotionally gripping, and many more entities are addressing them.

Comment - The plan revision should identify the entities working on water topics now.

Steering Committee Action - Those members present at this meeting agreed to proceed with the plan revision based on the outline, process and work plan discussed at this meeting. Mr. Mueller should revise the outline, process and work plan to reflect comments at this meeting.

Continued Discussion of the Long Range Restoration Priorities and NRDP Restoration Fund Allocation Guidance Plan

This topic was not addressed to time constraints.

Public Comment

At the next Steering Committee, I would like to discuss Governor Schweitzer's budget recommendations regarding the Treasure State Endowment Program (TSEP). The Governor is proposing not to fund any TSEP projects in the coming biennium. TSEP was established twelve years ago to use a portion of the interest on the Coal Tax Trust Fund to fund local government drinking water, waste water, and transportation projects. The loss of this funding will be a hardship for the City of Deer Lodge.

Next Meeting

The next meeting was scheduled for Thursday, January 6, 2010 at a location in Helena to be announced.

Appendix 1

Appendix 2

Plan Revision Outline

I. Goal of the Revision

A. Goals of the 1994 Plan

1. To provide for continued planning and management of the waters of the upper Clark Fork River Basin rooted at the local level; and
2. To balance all of the basin's beneficial water uses.

- ##### B. The goal of the revision is to develop a basin flow plan to correspond to the remediation and restoration plan(s).

II. History

A. Steering Committee

1. Formation
2. Accomplishments

B. 1994 Plan

1. Implementation of the recommendations

C. Other basin watershed groups

III. Basin Information

A. Hydrology

B. Water uses

1. Use changes from 1994 to today

C. Water measurement and supply forecasting system

1. Stream gauges
2. Snowtel sites
3. Water supply forecasts

D. Remediation and restoration plan summary

IV. Water Regulatory Framework

A. Water law

B. Adjudication status

C. Basin closure

V. Water Management Issues

A. Water right enforcement

B. Dewatered reaches

C. Milltown Dam water right change

D. Aboriginal Confederated Salish and Kootenai Tribal Rights

VI. Flow Plan Components

A. Target flows for the mainstem river and major tributaries

B. Water sources

C. Drought plan

VII. Recommendations

Plan Revision Process

- Approve revision outline.
- Draft revised plan chapters 1, 2, and 4, goal of the revision, history, and water regulatory framework.
- Update basin information:
 - Hydrology;
 - Demographic and land use changes;
 - Water uses;
 - Water measurement and supply forecasting system; and
 - Remediation and restoration plan summary.
- Draft issue papers for chapter 5:
 - Water right enforcement;
 - Dewatered reaches;
 - Milltown Dam water right change; and
 - Aboriginal Confederated Salish and Kootenai Tribal Rights.
- Develop recommendations.
- Assemble draft plan.
- Hold public meetings and solicit written comments on the draft plan.
- Revise the draft plan in light of public comments.

Work Plan

Activity (What)	Entity (Who)	Deadline (When)
1. Approve revision outline	Steering Committee	December 2010
2. Draft revised plan chapters 1, 2, and 4	Gerald Mueller	February 2011
3. Update basin information	?	April 2011
4. Draft issue papers for chapter 5	Gerald Mueller and Steering Committee	May - October 2011
5. Develop recommendations	Steering Committee	November 2011 - January 2012
6. Assemble draft plan	Gerald Mueller	February 2012
7. Hold public meetings and solicit written comments on the draft plan	Steering Committee	March 2012
8. Revise the draft plan	Steering Committee	June 2012