

Upper Clark Fork River Basin Steering Committee
Meeting Summary
January 6, 2011

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
Maureen Connor	Granite County Commissioner
Holly Franz	PPL Montana, LLC
Darryl Barton	City of Deer Lodge
Tom Mostad	Natural Resources Damage Program (NRDP) (for Carol Fox)
Bob Benson	Clark Fork Coalition (Coalition)
Jim Quigley	Little Blackfoot River

Agency

Mike McLane	Department of Fish, Wildlife and Parks (FWP)
Ann Schwend	Department of Natural Resources and Conservation (DNRC)
Tim Davis	DNRC Water Resources Division Administrator

Staff

Gerald Mueller	Facilitator
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Agenda

- Review December 9, 2010 Meeting Summary
- Updates
 - Milltown Dam water rights
 - NRDP Guidance Plan
 - Other organizations
- Steering Committee FY2012-13 Funding
- 2011 Water Legislation
- Treasure State Endowment Program
- Public Comment
- Next Meeting

December 9, 2010 Meeting Summary

The Steering Committee made no change to this meeting summary.

Updates

Milltown Dam Water Rights - Gerald Mueller and Tom Mostad reported on the status of the Milltown Dam hydropower water rights. On December 16, 2010, the ownership of the land and water rights at the site of the former Milltown Dam was transferred from NorthWestern to the State of Montana. At present, the Natural Resources Damage Program is acting as the active agent concerning them. No decision has been made about the state agency that will hold and manage the rights, and no decision is likely soon.

Question - Who holds the title to these rights?

Answer - The State of Montana holds the title.

Comment - FWP may eventually hold and manage the property and perhaps the water rights. FWP pays property tax on the real property it owns.

Question - What is the next step in the process regarding these rights?

Answer by Mike McLane - At some point a water right change permit may be necessary to avoid abandonment of the rights, but abandonment would not likely be an issue for a significant period such as eight years. There will need to be a dialogue among state agencies about the rights followed by a dialogue with the public. FWP has mixed feelings about holding and managing the rights.

Answer by Tom Mostad - Action regarding the rights are unlikely until after the present legislative session ends.

Comment - I would be disappointed if a change of use permit application is filed regarding the Milltown Dam water rights before public discussions take place.

Comment - If the Milltown Dam water rights are a part of the Confederated Salish and Kootenai Tribes reserved water right compact, a change of use permit would not be needed. Because the legislature must ratify the compact, the rights for the new instream use would be confirmed by legislation. Preliminary discussions are underway by state staff to use the Milltown rights to satisfy CSKT off-reservation, aboriginal rights. These rights were created by the Hellgate Treaty which confirmed the Tribes' right to hunt and fish in their usual and accustomed site in common with the people of the territory. One option to address these aboriginal rights in the upper Clark Fork might be for the state and the Tribes to hold in common the former Milltown rights to protect instream flow with a management strategy based on drought targets. The drought target idea was raised in the Steering Committee's November 2007 paper on the Milltown Dam water rights. Again, these discussions are preliminary only and no decisions have been made on this idea.

Comment - The issue regarding converting the Milltown Dam water rights to a new use will likely be volume. Has the state gotten the daily flow records at Milltown from NorthWestern?

Answer by Tom Mostad - I do not know, but I will check.

Comment - The Cunningham Study in the 1980s had the daily volume records.

Comment - I ask that the Steering Committee at its next meeting discuss its November 2007 issue paper so we can refamiliarize ourselves with the details regarding these rights and determine if anything in the paper needs to be changed.

Response by Gerald Mueller - We will review the paper at the next Steering Committee meeting.

NRDP Guidance Plan - Commissioner Maureen Connor reported on the status of the NRDP Guidance Plan. The Trustee Restoration Council (TRC) meet on December 21, 2010. Prior to this meeting, the TRC had decided that it would not make a decision on the Guidance Plan at this meeting. Instead, it heard a presentation from the chair of the Upper Clark Fork River Basin

(UCFRB) Advisory Council and took public comments on the Guidance Plan. UCFRB Chairman Bill Rossbach presented the Advisory Council's final recommendations concerning the Guidance Plan. Commissioner Connor passed out copies of the final recommendations and a red-line version showing the changes from the preceding version of this document. Two key changes were: clarification that injured areas of the mainstem of Silver Bow Creek and the Upper Clark Fork River would be eligible of allocation of the aquatic and terrestrial priority funds; and that an additional \$3.5 million will be encumbered and dedicated to the Silver Bow Creek Greenway project to fund unfinished ecological restoration activities. The TRC will make a decision on the Guidance Plan at its meeting in January or February.

Also at its December meeting, the TRC approved the 2010 work plan with one change related to the Butte pumphouse plan.

Question - When Representative Jon Sesso explained his position on the Guidance Plan at our October meeting, he advocated a different funding percentage allocation among the three categories, injuries to ground water and services, injuries to aquatic resources and services, and terrestrial resources and services. He argued that compensable damages should not be used to determine the allocations. Did the Advisory Committee's final recommendations adjust the allocation percentages?

Answer - No.

Question - The allocation of Silver Bow Creek left-over funds was another concern of Representative Sesso. He argued that the left-over funds should be expended above the Warm Spring ponds. Did the final recommendations change the disposition of the Silver Bow Creek remainders?

Answer - The Advisory Committee recommendations did not limit expenditure of the left-over funds to the area above the Warm Springs pond. The recommendations did change the language regarding the left-over Silver Creek funds to read as follows:

Future distribution of this reserve of restoration funds should be designated for additional, unfunded, restoration of aquatic and terrestrial resources in these priority injured areas, after exhaustion of available NRD funds earmarked for these areas in the NRD consent decrees: Silver Bow Creek, Butte Area One, and also for the Silver Bow Creek Greenway project, keeping in mind the allocation priorities set forth herein and, particularly, the Tributary Prioritization Plan, and the recognition that the UCFRB areas upstream of Garrison are the most severely injured and were the subject of a broader release of NRD claims against ARCO than were the UCFRB areas downstream of Garrison.

Comment - People in Butte believe that all restoration funds should go to Butte. Others argue that restoration funds should be used to assist economic prospects in Butte, and that because the remedy is failing, restoration dollars should be used to fix it. I don't agree with these views, even though I think that most of the restoration funds will continue to be used in the upper basin.

Question - If the remediation fails, can EPA take additional actions to fix the failure?

Answer - If remediation fails then remediation is responsible to fix the problem and not restoration.

Question - Does ARCO participate in meetings concerning the remediation?

Answer - No. The state and ARCO agreed on the responsibility for remedy in the settled portions of the basin. The state is responsible for the Clark Fork River remedy.

Other Organizations - There were no additional reports from other organizations.

Steering Committee FY2012-13 Funding

Gerald Mueller and Ann Schwend reported on funding for the coming biennium. The Water Management Bureau remains committed to working with the Steering Committee to meet joint goals. However, the Bureau is unable to commit funding to support the Steering Committee because of budget short-falls and additional budget cuts that may occur by this legislature. This means that the Steering Committee is not guaranteed funding for FY2012-13.

The Conservation and Resource Development Division CRDD supports traditional watershed groups through its Watershed Assistance Program. Base funding for the Missouri and Yellowstone Conservation District Councils is included in the CRDD budget. DNRC also provides funding for the Flathead Basin Commission. The DNRC budget does not include line-items for the Steering Committee or the Clark Fork River Basin Task Force. The Water Resources Division has applied for a Renewable Resource Grant and Loan Program grant to support the Task Force. Tim Davis, the Water Resources Division Administrator is interested exploring in a single budget for the Steering Committee and the Task Force.

Gerald Mueller stated that at a past Steering Committee meeting, Senator Lewis indicated interest in continued funding for the Steering Committee. Mr. Mueller asked for direction regarding Steering Committee funding for the coming biennium.

Comment - While former Steering Committee members have not continued to attend meetings, I continue to see value in this group.

Steering Committee Action - Those members of the Steering Committee present at today's meeting authorized Mr. Mueller to talk with Senator Lewis and explain the group's funding situation.

2011 Water Bills

Gerald Mueller passed out a summary of introduced and unIntroduced bills in the 2011 legislative session related to water from the Legislature's web site. The Steering Committee has previously discussed the four of the bills introduced at the request of the Water Policy Interim Committee (WPIC), HB24, HB28, SB8, and SB36. Mr. Mueller highlighted and passed out copies of four other bills, SB103 introduced by Senator Jackson, and three bills not yet introduced and that are not yet on the legislative web site.

SB103 - The short title of this bill is "Water Permit Exemption for Heating and Cooling Applications". As the title indicates, this bill would exempt from permitting a well or developed spring located outside the boundaries of a controlled ground water area that would appropriate ground water for use in heating or cooling applications where substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

Comment - A concern that I have with this bill is that it does not define the source of supply. This lack of definition may result in local stream impacts.

Aquatic Invasive Species Bill - A bill drafting request for this legislation was originally made by Senator Brueggeman; however, when Senator Brueggeman resigned from the Senate, Senator Jackson agreed to carry the bill. This bill does not yet have an LC number and is not yet posted on the legislative bill web site. It would amend the Aquatic Invasive Species Act passed by the 2009 legislature, SB343. Among the key statutory changes that the 2011 bill would make are:

- Inclusion of a boat/user fee to fund the aquatic invasive species (AIS) program. This fee is modeled on a similar fee in Idaho. In-state boat owners/users would pay a lower fee than out-of-state owners/users.
- Designating the Montana Department of Agriculture (DA) as the lead in administering the program. Currently, FWP and DA are co-administrators, and this relationship has led to accountability issues. Under the proposed bill, DA would be responsible for the program budget and would contract with FWP for specific services.
- Aquatic invasive species check stations would be mandatory rather than voluntary. Compliance with voluntary check stations have been too low, about 32%.

Mountain Water Company Bills - At yesterday's Clark Fork River Basin Task Force meeting, Ross Miller, the Task Force representative of Mountain Water Company, discussed two bills that his company is seeking to have introduced. These bills may be carried by Representative Champ Edmunds. One bill would address the timing of mitigation for ground water appropriations in closed basins. Presently, only seasonal irrigation water rights are available for purchase to mitigate the adverse affects of new wells in closed basins. Municipal water rights must have a year-round period of use. In Mountain Water's proposed bill, an applicant for a new or change permit must include in the application an analysis of whether an adverse affect would occur on an annual basis and a plan to mitigate the adverse affect on an annual basis. If no valid objections are filed to the application, then DNRC could not deny the new or change permit based on timing.

Comment - Considering adverse impacts on an annual basis, may result in shortages when stream flows are the lowest. This bill may be problematic for senior water rights holders.

Comment - There will be bills in this session that address combined appropriations when considering exempt wells.

Question - HB52 has a short title reading "Authorize municipal use." What does it address?

Answer - HB52 directs the Board of Environmental Review to adopt rules authorizing uses of reclaimed waste water.

Steering Committee Action - Those members of the Steering Committee present at today's meeting directed Mr. Mueller to poll Steering Committee members about the four WPIC bills and SB103 and the other bills discussed today when their texts become available.

Treasure State Endowment Program

Darryl Barton discussed the Treasure State Endowment Program (TSEP) and Governor Schweitzer's proposal regarding it in this legislature. TSEP is a state infrastructure-financing program approved by Montana voters by referendum in 1992. Funding for program grants come

from investment earnings on coal severance tax funds and an allocation of the coal producer's license tax. Local governments and tribal governments can receive TSEP grants for drinking water systems, wastewater treatment, sanitary or storm sewers, solid waste systems, and bridges. These grants typically require a 50% match, and can be used to match federal grants. TSEP grants are awarded by the legislature via a public and competitive grant process. This year 59 local governments applied for grants. Governor Schweitzer has recommended that grants not be awarded this year and that the funds that would have been used for them be used for other purposes. This recommendation is not fair to the 59 local governments because the cost of applying for the grants was high. Deer Lodge applied for a grant for its waste water plant. We understood that our application had been ranked third by the Department of Commerce, that implements the program.

Comment - Granite County spent four years developing a TSEP application to fix county bridges and culverts. Several counties are upset by the Governor's proposal.

Comment - Because of the active interest of local governments in this issue, I do not see the need for the Steering Committee to take a position on it.

Public Comment

There was no additional public comment.

Next Meeting

The next meeting was scheduled for Monday, February 7, 2011 at a location in Helena to be announced. This meeting will be a joint meeting with the Clark Fork River Basin Task Force. The first part of the meeting will address the Milltown Dam water rights and the 2011 water legislation.