

**Upper Clark Fork Steering Committee
Draft Meeting Notes
October 24, 2001**

Members Present:

Bob Bushnell	Lewis & Clark C.D.
John Vanisko	Deer Lodge Valley C.D.
Robin Bullock	ARCO
Brent Mannix	N. Powell C.D.
Bob Benson	C.F. Pend Oreille Coalition
Jim Quigley	Little Blackfoot
Holly Franz	PP&L Montana LLC
Ole Ueland	Mile High C.D.
Eugene Manley	F.C. & MWRA
Jon Sesso	Butte/Silverbow
Jim Dinsmore	Granite C.D.
Gerald Mueller	Facilitator

Members Absent:

Gary Ingman	MT DEQ
Kathleen Williams	FWP
Jules Waber	Powell County
Steve Fry	Avista Inc.

Visitors:

Stan Bradshaw	TU
Dennis Workman	
Dave Struifert,	Powell Co. Extension Service
Carol Fox	NRDP
Dennis Gentry	NRDP
Mike McLane	DNRC
Susan Johnson,	Deer Lodge Valley C.D.
Nancy Sweeney	NRCS – Deer Lodge
Darlene Koontz	NPS – Deer Lodge
Phil Tourangeau	Confederated Salish & Kootenia Tribes
Mike Roberts	DNRC

Welcome

Gerald Mueller welcomed everyone and called the meeting to order.
Gerald reviewed the minutes from the June 21, 2001 meeting; no changes were made to any of the minutes.

Agenda Items:

Approve Agenda & Minutes
Reports:

Clark Fork Basin Task Force
Georgetown Lake Update
Avista's Response to Steering Committee Proposal
Natural Resource Damage Program Water Right Proposal
NRD Program Update
Report on Clark Fork Ditch Measurements
Public Comment

Reports:

Clark Fork Basin Task Force:

Gerald spoke of House Bill 397 passed last legislative session. This bill calls for the development of a water management plan in the Clark Fork Basin. He noted that the Steering Committee is partially responsible for the bill but did not ask for it. The bill grew out of the Committee's meeting with the Governor. This was the state's commitment to both a process and a budget to examine basin water management with consideration of downstream hydropower. The Governor has now designated the Montana Consensus Council as process coordinator for this project.

The Consensus Council began interviews with basin interests. These interviews are to assess the issues, concerns affected parties, and opportunities for future steps. A interview questionnaire was mailed. The Council is now waiting for responses. Interview questions look at water rights, water use, and basin water concerns.

A selected group of potentially key interests have been give personal or group interviews. Among those interview are Trout Unlimited, the Clark Fork Coalition, Flathead legislators. Folks in the Flathead are very interested in the Bill. Eugene asked if the Flathead Joint Board of Control had been interview or a suggested contacted. Gerald noted that they were still trying to contact them and asked if Eugene has a contact. Eugene recommended that they contact Bill Stack.

Jim Dinsmore asked who was coming forward as leadership – the Flathead CD? He noted that Marc Spratt who works with that CD is very interested and has done a lot of water planning. Gerald noted that they were interested. However, it appears they feel far behind on basins. They have concerns with the delayed in both adjudication of the Flathead and compact negotiations with the Tribe.

Gerald noted that the Tribes opposed the bill. After contact the tribe has now invited the Consensus Council to meet with them.

Over all there hasn't been a lot of interest thus far. Many folks appear to be waiting to see what Avista was going to do.

Georgetown Lake:

Mike McLane provided a very brief overview of recent events. The Flint Creek Dam Advisory Committee (A county created advisory committee that developed out of the past settlement agreement.) delivered their recommendations for fall operations. Those recommendations included a continued discharge of 30 cfs until Sept. 30th. At that time, discharges would be reduced, to 15 cfs, and lake levels monitored. A target lake elevation of 6427.5 was to be maintained or recovered. If necessary flows, after Sept 30th, might be ramped down to as low as 5 cfs discharge to provide for pool recovery. However, a

wintertime discharge target of 10 cfs was hoped to be attained prior to severe cold weather – in part to reduce the formation of anchor ice.

The committee delivered their recommendations and then met with the County Board of Commissioners. The Commissioners set aside the Advisory Committee’s recommendations and decided to continue discharges at 30 cfs.

The Homeowners Association and Trout Unlimited then filed for injunctive relief in the federal court. Again, their concerns include lake values and lake levels as protected in the FERC’s surrender order.

The federal judge granted their request, ordered that the target lake level be met and began the process to hear how the “potentially conflicting” management targets are to be resolved. Flows have been reduced dramatically, the lake is filling, and lake elevation is nearing the winter elevation target. Parties are preparing for the next phase of litigation.

Eugene, who is also a member of the Advisory Committee, explained the 30 cfs discharge as required in the 1906 decree and the 30 cfs irrigation season (May 1 to Oct 15) discharge condition listed in the FERC order. Eugene also shared with the committee some local concerns related to constraints to spring discharges and reductions to irrigation water volumes that might occur next spring. Jim Dinsmore asked why this happened. It appeared that irrigation demands had reduced and the Advisory Committee’s recommendations might have adequately met downstream water demands. John Vanisko asked how the Homeowners got standing, since they do not have water rights. Mike explained that they were not arguing water rights in state court but compliance with a federal order in federal court. Those items addressed in the federal order are related to lake conditions – fishery, recreation, and irrigation discharges.

Avista Proposal – i.e. Basin Water Management:

Gerald announced that Steve Fry, Avista representative, could not attend today’s meeting due to the Company’s restrictions on travel. Steve had sent, and Gerald had forwarded Avista’s written response to the Steering Committee’s proposal as crafted on June 21. Gerald’s two observations were;

- a) Avista appeared to decline in part because their water rights should not be “devalued” with limitations to their ability to make call, and
- b) There is a need for more transparent water rights enforcement.

Avista appears to be asking for help in protecting their water rights.

Eugene wondered what they want? Does Avista want water commissioners appointed earlier? Holly noted that currently a private ski area in the Gallatin Canyon is proposed to take water solely during high water. Objectors have requested a condition before the DNRC that would require the developer to have appointed early and pay for a water commissioner. The commissioner is to assure that they don’t create adverse affect for senior water users. In this instance the junior would pay for a commissioner. This is a different approach.

Gerald asked if there was a better way to manage water rights? Jim Dinsmore asked if Avista is asking for help to protect their water rights? If so, does the state or the Steering Committee do that for other water right holders? Robin asked if there was a way the state could intervene and when flows were low. State held agreements could be created that would then add flow to the river. Jim Dinsmore noted that the complexities of making a call

may protect most junior users. Jim Quigley noted the existence of a high water stipulation being suggested on Three Mile Creek near him.

Gerald asked if this issue matters any more. Gerald noted that DNRC brought this issue up. Avista isn't making a call and does not appear to be interested in making a call in the near future. Does the committee still care about the proposal or issue?

Robin commented that if the original proposal has no value then it should be dropped. Jim Dinsmore noted that the issue hasn't gone away. Bob Benson noted that uncertainties remain and it would be nice to push our knowledge a bit more.

Jim asked if it is worth developing another proposal. John Vanisko asked if the issue should be tabled. Gerald noted that this comes back to the Clark Fork Task Force. How significant is the task force? Jim asked if there was anything in it for us (Upper Basin Water Users).

Dennis Workman noted that Avista simply wants water for their turbines. What if we ask them to help with conservation efforts in the upper basin – dollars for water?

Holly noted that we may need to watch the Task Force. The upper basin would not want to get left out of those discussions.

Natural Resources Damage Program – Water Rights Proposal

Bob Gentry, Council with the State's Natural Resources Damage Program, has been evaluating an number of NRDP "grant requests". Some proposal initiate projects that invoke water right issues. Since the Upper Clark Fork Basin is "closed" to new appropriations of water and since the Steering Committee was instrumental to the development of this closure, the NRD program wished to share some concerns and solicited some advice from the Committee.

Bob noted that in approving a grant they need to have assurances that the benefits derived are protected. Protected both from litigation and if involving water from appropriation.

This year one of the proposals – Rock Waste Water Treatment Wetlands, stimulated both a request for assistance and some suggestions for guidance. Bob provided an overview of the Rock project, which includes wetland cells. These cells include both constructed treatment cells out of the active stream flood plain and a cells lying in the alluvial bed near the channel. Treatment and discharge are to be accomplished through the lower wetland area. The applicant was suggesting benefits both in increased treatment with nutrient removal and providing wetland and associated wildlife benefits.

- 1) The question arises then given this dual purpose (treatment and wildlife) does this reflect an new use of water rights or a "change of use"? Bob thinks it important to make this hand in hand with DNRC. At this point in time, the question may be "is this a new appropriation". If so how can this be accomplished?
- 2) If it is a "change" in the historic municipal use, can Rocker legally own a water right for wildlife? Do they have control over the resource or do they benefit from the resource? It appears there may be a need to formulated a policy that provides protection in such circumstances.
- 3) If the Rocker project is put in place do down-stream appropriators have room to compete? May they make call on this water?

- 4) Since the lower wetland cells may intersect near surface alluvial groundwater? How will that interact with other water rights? What steps in water right protection might be required with such conditions? Are ground water permits required?
- 5) Wetlands as Storage. Some have suggested that the wetland cells be operated and utilize the “exemptions” in the basin closure that allow the appropriation of water through storage. Will the storage exemption always work? Can the Rocker project even be considered a storage action?

Comments:

Ole noted that they use water from Warm Springs Creek about 2 miles below the proposed Rocker project. Not all of the water is from Rock discharges but it does not interrupt the creek. We think there will be some good out of the Rocker project. The clean-up work is improving water supply

Robin noted that the Steering Committee worked on this issue before – City of Deer Lodge. Treatment does not require a water right.

Jim Dinsmore asked if there was a request for a “super-priority” for wetlands or NRD projects? The committee asked to what extent “storage” could meet project needs, especially for wetlands. Bob noted that at one time the Upper Clark Fork Basin Closure include an exemption for superfund projects but that had expired.

Stan Bradshaw noted that having the most junior water right in the basin might not be worth the knotholes, trouble, people might go through to get such a right. Changes, purchase, and storage might be better tools.

Lunch Break

Gerald noted that the Northern Lights grants, which have been supporting, at least in part, the committee is no longer available. At this time, the committee’s operation funds are coming solely from a DNRC Watershed Assistance Grant. Limitations of that grant no longer allow him to purchase lunch for the committee. So lunch reservations were made but he apologizes for not being able to host the lunch.

Jim Quigley asked if Gerald could draft a letter of thanks and appreciation to Northern Lights for the long-standing support. The committee concurred.

NRDP – 2001 Upper Clark Fork Basin Restoration Work Plan

Carol Fox, Restoration Program Chief, provided a brief update on the Natural Resource Damage Program. She provided a couple of handouts – the gray sheet, “Upper Clark Fork River Basin Natural Resources Damage Litigation and Restoration”, described the program, its origination, and current efforts. As noted in this handout not all geographic areas of litigation have been settled. Those in litigation are not a current priority for NRDP restoration activities.

Also the settlement monies are currently being used in a grant program to fund restoration efforts. Such restoration efforts, as discussed in the past, are linked to the “lost” public benefits or the injured resources. The grants are to repaired or replace lost resources or the services they supply. The map shows the damage areas. Injured resources include fish, wildlife and ground water.

Carol noted that it is important to realize that the settlement of claims has not yet occurred on the river (Warm Springs Cr to Milltown). Therefore not monies are being spent on that segment.

Dave Struifert noted that it is had to build consensus in the community. He suggested that EPA is pushing the community for input. The state is now in litigation and will only discuss constraints of the suit. This makes community decision making very tough. This has also increased focus on the river claims.

Carol noted that they are only working on areas where remediation decisions have been made. Dave Gentry noted that the state's claim is an assessment of losses after remediation decisions are made. At that time river project will move forward.

Bob Benson asked if future settlements will be kept separate or will they be added into the same pot and existing damage restoration efforts? Carol noted, that to date, everything has been pretty much been put in the "same pot". There are a couple of specific earmarked funds. In the future it is possible for future dollars to go into a single program.

Eight projects are fund in the first year totaling \$6,935,208.00. Tonight a public hearing will be held on project proposals.

Robin asked if the NRDP has a process that evaluates project effectiveness – are you reaching your goals. Carol noted that we will be monitoring and evaluating the attainment of values suggested in the specific project proposal. At this point they do not have a "basin wide" plan. NRDP asks for proposals and try to determine of the grants are matching the values desired for repair or replacement. Dave noted that there could be a more comprehensive methodology but those might also be a bit more command and control.

John V. asked if there were taxes on easements. If some lands or values are going into state ownership is there some "in-lieu" of taxes issues?

Jim Dinsmore asked how many of the current proposals are "continuing projects? Carol noted that the "greenway", a land acquisition proposal and the Butte Silver Bow proposals are phased projects. Butte Silver Bow may apply for 17 million over seven years. Jim asked if these "continuing projects" reduce available funding in later years? Also will these continuation projects limit future funding opportunities? Carol stated that at this point each year is competitive. Applicants could ask for multiple year projects. She also noted that right now the program is only spending the interest from the funds. However, after the cases are all settled there may be a proposal to spend the principle.

Gerald asked if the program will continue as it is. Carol expected a continuation of the current program, at least until the litigation is done. However, they are trying a pilot comprehensive planning process in the Silver Box Basin.

Carol then talked specifically on the East Deer Lodge Valley Watershed Project. This was a large proposal of 49 projects on 10 tributaries. Staff did not recommend funding. They could not assess the public benefits at least in terms of fish, wildlife or recreation. There appeared to be a lack of information related to the assessment of conditions and the values added. The missing link related to the public benefits to lost resources. The NRDP's Trust Restoration Council asked the staff to develop an alternative demonstration project. The question is can we find work on agricultural lands where public benefits are defined and tied to restoration goals.

Howe Cortright asked if FWP's proposal had to meet the same criteria. Carol noted that they did and the Lost Creek project showed positive benefits in the moving the feedlot could be tied in a quantitative way to improvements in the fishery. Dave asked if easements would be necessary or were implied to show public benefits. Carol state that it would depend. The Manley easement set aside time and use for public hunting and access. That increases the measurability of public benefits.

Eugene asked about the Wood Cr. proposal. He noted there was family interest in lands along that stream. Reports they had linked the best fish habitat to private ground and that restored areas had limited fish production. Carol noted that their project was linked to the lower ½ mile of the stream and revegetation. NRC had other projects in the area.

Clark Fork Ditch Measurements

Mike Roberts, hydrologist, DNRC Water Management Bureau, provide a power point presentation on his measurement of several ditches up stream of Deer Lodge and on the east bank. The Westside Ditch and Whalin ditch were not measured by DNRC but by the water users using a local consultant. DNRC did provide some technical assistance. Losses were quantified through synoptic runs on Johnson Ditch, Valiton Ditch, Peterson Creek and a reach of the Clark Fork River. General Conclusions:

- All ditches monitored lose water due to seepage during conveyance.
- Greatest and most consistent losses observed in the Johnson Ditch followed by Peterson Ditch.
- Magnitude of ditch losses generally decrease during irrigation season (i.e. greatest losses observed in June when ditches are full)
- Clark Fork River seepage loss negligible adjacent to upper Johnson Ditch.
- Ditches were not full for most of the irrigation season (drought).

The “biggest bank for the buck” might come through work on the following ditches

- Johnson Ditch (0.22 cfs/1000 feet)
- Upper Johnson Ditch carrying 8-12 cfs (0.36 cfs/1000 feet).
- Peterson Creek Ditch (0.10-0.13 cfs/1000 feet)
- Valiton Ditch (appx. 0.14 cfs/1000 feet)
- Westside/Whalen Ditch Complex (based on magnitude).

Gerald noted that what the Steering Committee is missing is DFWP’s assessment of fish needs in this reach. We then need to talk with water users to determine interests and opportunities – who’s interested and what are they interested in.

Next steps – Gerald will talk with FWP, (Kathleen). Mike Roberts will talk with West Side Ditch to determine if they would share their data. Dennis will do some work to determine FWP interests on Race Track Creek.

Water Issues Paper

Gerald passed out a paper discussing past and potentially future water related issues that have concerned the Steering Committee. He hoped the committee would be willing to discuss these concepts at their next meeting.

Next Meeting:

The meeting date was set of Deer Lodge, St. Mary’s Center, November 28, 2001